Do not let the detail stop you

International debt recovery is a local game and having your terms and conditions correct from the start will give you the best chance

Pierre Haincourt
Chief executive, Credit Limits International
pierre.haincourt@creditlimitsinternational.com

In my experience as a debt collector, sending letters or picking up the telephone from the UK, after the usual credit control activities have taken place, is not going to do much good for a number of reasons.

Even if you can communicate in the customer's language, because debt collection activities are often regulated, you would be at risk of breaking the law.

Often, the first debt collection demand letter, in order to be compliant, needs to include specific language, state articles of law, and refer to a regulated period of time in which to pay. It may also need to mention the industry regulator where a complaint can be filed. In some countries, the first demand letter needs to be sent (locally) recorded delivery.

It is, therefore, essential to evaluate the processes of your international debt collection service providers: ask them how they do it.

Jurisdiction

What often gets in the way of successful cross-border debt recovery are the terms and conditions (T&Cs) applicable to the contract.

Although it might seem a good idea to give jurisdiction to the Courts of England and Wales because your lawyer is familiar with these and that is what they recommend, this is not always convenient.

Other law firms may recommend using an arbitration clause. Although an Arbitration Award is immediately enforceable in 159 countries in line with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (aka the New York Convention of 1958), it is an expensive process and, in my view, not appropriate for small to medium size claims.

Having the choice of which jurisdiction to use is key, but beware of the law applicable: if you are forced to sue in a foreign country under English law, an English judge may need to be appointed and travel there! This will complicate matters and trigger delays.

Having said that, I have seen remarkably well written T&Cs which truly deliver on this. Even if you just sell to UK consumers, remember that people do move. In the EU, Regulation (EC) 1215 of 2012 basically states that you need to start proceedings in the country where the consumer resides, so where does this leave you if your T&Cs give exclusive jurisdiction to the Courts of England and Wales? That is right: nowhere!

B2B debts

In the B2B world, exporters who can only secure judgments in the Courts of England and Wales can start court action using the European Order for Payment Procedure (Regulation (EC) 1896/2006) or Regulation (EC) 1215/2012 to certify their English judgment as enforceable throughout the EU – well, until 29 March at least.

However, beyond Europe, many countries offer no possibility of immediate enforcement of an English judgment. Here exporters will need to start all over again and obtain a fresh judgment in the jurisdiction where their debtor is based, before they can seek enforcement: twice the costs, twice the time!

Having no flexibility in the jurisdiction, or poor options, greatly affects the effectiveness of pre-legal debt recovery: making empty threats is never helpful. By 'poor options' I mean, for example, if your company is the EU subsidiary of a US corporation and you use the same T&Cs as your mother company which give exclusive jurisdiction to the Courts of Los Angeles, CA. Good luck to you if you ever need to sue any of your EU customers – and enjoy California!

Post Brexit – if or when this eventually happens – the Pound may be so weak that we will probably export more beyond Europe, so let us take a look at our T&Cs now to give ourselves the best chances of collecting overseas effectively. CCR2

Even if you can communicate in the customer's language, because debt collection activities are often regulated, you would be at risk of breaking the law