

EUROPEAN STUDY CONCERNING THE MEANS OF PREVENTING OUTSTANDING PAYMENTS (OUTSIDE THE SCOPE OF LEGAL ACTION)



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BELGIUM

Means to be implemented in case of non-payment	Legal Basis (civil/commercial code, ...)	Mandatory - “public order” (Yes/No)	Legal procedures	Implementation of one clause/provision in the Contract if “means” is non-mandatory (Yes/No)	Modalities	Useful contacts
Guarantees:						
Questions: Are these kinds of guarantees used in your country? Which is the most used?						
<p>Guarantees:</p> <p>Bank guarantee (documentary credit, letter of credit, stand-by, etc.)</p> <p>First request guarantee</p> <p>Mortgage</p> <p>Stock guarantee</p> <p>.....</p>	<p>- International instruments</p> <ul style="list-style-type: none"> ● Uniform Rules for Contract Guarantees (URCG), ICC, 1978; <p>Uniform Rules for Demand Guarantees (URDG), ICC, 1992;</p> <p>Uniform Rules for Contract Bonds, (URCB), ICC, 1993;</p> <p>United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, UNCITRAL, 1995 and the UCP for Documentary Credits (relating to stand-by letters of credit) and the Uniform Rules on Stand-by Letters of Credit, ICC, 1999.</p> <ul style="list-style-type: none"> ● The UCP govern stand-by letters of credit; provisions other than the URDG and Uniform Rules on Stand-by 	No			<p>A mortgage must be registered with the registrar of mortgages to be enforceable against third parties .</p> <p>There are various kinds of bank guarantees:</p> <p>- depending on the type of risk covered:</p> <p>bid bond</p> <p>performance bond</p> <p>repayment bond</p> <p>maintenance bond</p> <p>payment guarantee (granted to the vendor, not the buyer)</p> <p>- depending on the scope of the guarantor's obligation:</p> <p>on-demand guarantee/simple demand guarantee</p> <p>first reasoned demand guarantee</p> <p>first documentary demand guarantee</p>	

	<p>Letters of Credit; importance of the parties clearly specifying the choice made</p> <ul style="list-style-type: none"> • UNCITRAL Convention, 1995 • URCB, ICC, 1993 <p>- Conflict of laws rules</p> <ul style="list-style-type: none"> • basic report (Rome II) • guarantee and counter-guarantee: law of guarantor/counter-guarantor • contractual nature of guarantee >< unilateral commitment • scope of the applicable law 				<p>Advantages of documentary credit:: a secure technique if the documentary credit is irrevocable. It is completely secure if it is confirmed.</p> <p>Balanced obligations between the buyer and the exporter.</p> <p><u>Disadvantages:</u> Very cumbersome administrative management, based on accuracy of documents.</p> <p>Relatively expensive technique (bank commission) used for transactions of a relatively large amount.</p> <p><u>Advantages</u> of the stand-by letter of credit: less administratively cumbersome than the documentary credit (simpler documentary management).</p> <p>This technique is a back-up for a defaulting importer and comes into play only if the latter does not pay (in the case of documentary credit, it is invoked whatever happens).</p> <p><u>Disadvantages:</u> This technique does not offer the same balance between obligations of the two parties as the documentary credit is biased against the buyer.</p> <p>It is a recent technique where there is a risk of a legal vacuum on account of the limited case law.</p>	
Credit insurance (e.g.: COFACE) <u>Question:</u> What are the different kinds of existing coverage?						
		No			<p><u>Advantages:</u> Possibility of making use of related services such as monitoring of the financial health of customers and analysing the solvency of new customers. This technique can be suitable for invoices of small amounts.</p> <p><u>Disadvantages:</u> Principle of globality: the exporter is bound to cover all invoices satisfying the criteria laid down by the credit insurer, not only the bad risks.</p> <p>It is a relatively expensive technique.</p> <p>The indemnity does not cover the full amount of the loss.</p>	<p>COFACE BELUX Boulevard du Souverain B-1170 Brussels Belgium Tel.: +32.(0)2.404.01.11 Fax: + 32 (0)2 663 76 59 Mail: info@coface.be http://www.coface.be/</p> <p>Main credit insurers in Belgium: <u>Office National du Dueroire</u></p> <p><u>MUNDIALIS CREDIT ASSURANCE</u></p>

						<u>EULER-COBAC Belgium S.A. (EULER)</u> <u>GERLING NCM</u> <u>COFACE BELGIUM</u> <u>American International Group (AIG)</u>
Advance payments						
Question: May the Creditor request an advance payment to the Debtor (payment before carrying out transport and not at the end of the worked month) in case of bad financial situation of the Debtor?						
					<ul style="list-style-type: none"> <u>Advantages:</u> The simplest and most secure payment technique for the exporter (though it is not without risks, such as the risk of non-transfer of funds). A financing technique for the exporter. <u>Disadvantages:</u> It is a commercially bad technique as it implies mistrust on the part of the exporter and the importer bears the whole financial cost of the operation. 	
Financial deposit						
Question: May the Creditor request a financial deposit (paid to the Creditor before starting the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor?						
Payment of legal interest						
Question: May the Creditor request payment of legal interest if the debtor does not pay the creditor in time?						
	Law of August 2nd 2002 on fighting late payment in commercial transactions. Government Gazette of 07/08/2002 p. 34281 (between businesses only, and unless otherwise agreed between the parties)				<ul style="list-style-type: none"> In the event of late payment, the statutory interest rate is applied unless the parties have agreed on a higher rate. The rate is currently 8%. The judge may reduce the agreed interest rate if it is clearly excessive. 	

	Transposition of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions				<ul style="list-style-type: none"> • Agreed rates commonly accepted by the courts vary between 10% and 12%. • For commercial transactions between businesses, the Law of August 2nd 2002 applies unless otherwise agreed on by the parties. The Law provides that late payment of more than 30 days automatically and without notification leads to the application of a late-payment interest that is reassessed every six months and is higher than the statutory rate. • The creditor may ask the debtor for reasonable compensation for all recovery costs incurred as a result of late payment. 	
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Retention of goods

Questions: May the Creditor retain the debtor's goods if the debtor does not pay the creditor in time? May the Creditor sell the debtor's goods when the debtor does not pay the creditor in time?

	<p>Walk away clause</p> <p>Does not apply to all sectors</p> <p>Not provided for in any text, but recognised by case law => Cass., 13 September 1973</p>					
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Suspension of contractual obligations

Question: May the Creditor suspend his/her obligations (to carry out transport) if the debtor does not pay the creditor in time?

	<p>Walk away clause</p> <p>Not provided for in any text, but recognised by case law => Cass., 13 September 1973</p>				<ul style="list-style-type: none"> • Notification: no particular formal requirements; it must be clear and unambiguous; it must be sent by registered letter to be used as evidence. <p>Compulsory before forced execution</p> <ul style="list-style-type: none"> • Should there be no o response: <ul style="list-style-type: none"> - the debtor may be summoned before a judge to obtain forced execution, damages, rescission of contract, etc. - European procedures depending on the 	
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					<p>amount concerned (European order for payment / European enforceable title / European procedure if \ < €2000)</p> <ul style="list-style-type: none"> • A judge's permission is not required to invoke the walk away clause. <p>However, the judge may subsequently check whether it was reasonable to invoke the walk away clause was invoked correctly.. If not, it is regarded as breach of contract.</p>	
Termination of the Contract						
	Article 1184 of the Civil Code					
Payment through a third party						
					<ul style="list-style-type: none"> • Sureties <p><u>Advantages:</u> This technique is a back-up for a defaulting debtor – it comes into play only if the debtor defaults.</p> <p>This technique is used mainly to protect the importer against the non-fulfilment of the vendor's obligations (under an invitation to tender, for example) rather than the reverse.</p> <p><u>Disadvantages:</u> Highly diverse legal systems from one country to another – necessitate the use of specialists.</p> <p>This technique is fairly well accepted commercially – the collateral provider has to give undertakings to its bank.</p> <ul style="list-style-type: none"> • Factoring. <p><u>Advantages:</u> Simplified administrative, accounting and legal management: they are handled by the factoring company.</p> <p>Total cover of the risk of arrears (100% compensation of the amount of the</p>	

					<p>contested invoices).</p> <p>May be used as a financing technique (85% of the amount invoiced) with protection against exchange rate risks.</p> <p><u>Disadvantages:</u> Relatively expensive.</p> <p>Principle of globality: obligation to send all receivables satisfying the criteria laid down by the factoring company (good risks as well as bad).</p> <p>Depersonalisation of the relationship with the customer: you cannot offer terms of payment for particular customers as you wish. Management of debt collecting sometimes...</p>	
Reservation of title clause						
	<p>Article 101 of the Law on bankruptcy of 8 August 1997</p> <p>Article 1583 of the Civil Code</p>	No		Yes	<ul style="list-style-type: none"> To be enforceable against other creditors of the debtor, the clause must be set down in writing no later than the time of delivery of the goods. The goods must be in kind in the assets of the debtor. Account should be taken of the transfer of risks. In the event of bankruptcy, the vendor must invoke the clause before the admission of debts report is closed. 	
Pledging of personal property						
		No			<ul style="list-style-type: none"> Formal notification Followed by a petition to the president of the commercial court who will order the pledged property to be sold 	

Notes:

- 1) It is recommended to have an established general policy for arrears, as:
 - Considering each commercial transaction individually would make them very cumbersome to administer.
 - If the credit risk is transferred to an external agency, the principle of globality applies.
- 2) Another useful clause for debt recovery is the penalty clause which sets beforehand a flat rate for damages that the creditor can claim if the debtor fails to meet its commitments.
- 3) Other kinds of legal pressure:
 - internal: walkaway clause and compensation; external: out-of-court recovery can be entrusted to a lawyer, debt-recovery agency or bailiff.

CZECH REPUBLIC

Means to be implemented in case of non-payment	Legal Basis (civil/commercial code, ...)	Mandatory - « Ordre Public » (Yes/No)	Legal procedures / Competent court / bailiff intervention	Implementation of one clause/provision in the Contract if “Mean” is non mandatory (Yes/No)	Modalities	Useful contacts
Guarantees: Questions: Are these kinds of guarantees used in your country? Which is the most used?						
<p>Articles 313 à 322 of Commercial code (Bank guarantee)</p> <p>Articles 682 and follow of Commercial code (letter of credit)</p> <p>Articles 546 and following (guarantee retained on remuneration)</p>				<p>first of all, the amount of money must be due. Negotiates with one or several banks</p> <p>Writing of a "guarantee letter" by one or several banks.</p> <p>guarantee – creditor, debtor, (guarantor). Both commercial and civil code are applied – article 546 of the civil code (lex generalis), articles 303 – 312 of the commercial code (lex specialis). Fines defined in articles 365 – 386 of the comm. code. When the debtor does not pay, the guarantor is obliged to pay (on first call). Judges are contacted only in case of disputes.</p>	<p>CzechTrade (www.czechtrade.cz)</p> <p>Ministry of trade and industry (www.mpo.cz)</p> <p>Commercial code :</p> <p>http://www.cnb.cz/miranda2/export/sites/www.cnb.cz/en/legislation/leg_capital_market/download/commercial_code.pdf (English)</p> <p>http://business.center.cz/business/pravo/zakony/obchzak/ (Czech) Civil code :</p> <p>http://www.praguerealtyportal.com/dw-data/Civil-Code.pdf</p> <p>(English)</p> <p>http://business.center.cz/business/pravo/zakony/obcankzak/ (Czech)</p>	

Credit insurance (ex: COFACE)						
<u>Question:</u> What are the different kinds of existing coverage?						
	Law n°58 / 1995 relative to the insurance and to the financial measures used within the framework of the export.				Negotiates directly with the concerned bodies	Export Guarantee and Insurance Corporation => www.egap.cz Czech Export Bank => www.ceb.cz
Advanced payments						
<u>Question:</u> May the Creditor request an advance payment to the Debtor (payment before carry out transport and not at the end of the worked month) in case of bad financial situation of the Debtor?						
	Commercial code					
Financial deposit						
<u>Question:</u> May the Creditor request a financial deposit (paid to the Creditor before starting of the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor?						
	Commercial code					
Payment of legal interests						
<u>Question:</u> May the Creditor request payment of legal interests in case the debtor does not pay the creditor in time?						
	unless contract parties state otherwise, article 517 of the civil code and article 369 of				The amount of interest is planned in the contract. Otherwise, we apply the legal rate Parties can agree on any interest rate, but in case the interest rate would be significantly inadequate for the debtor and the debtor would suit it, the judge can decide that the	

	Commercial code, in both cases there is <i>lex specialis</i> – in case of civil code act no 142/1994, in case of commercial code government announcement no 163/2005				interest rate is inadequate and can decide on another interest rate. If the interest rate is not stated in the agreement between debtor and creditor, the interest rate is then based on article 517 of the civil code or article 369 of the comm. code. In both cases there is <i>lex specialis</i> – in case of civil code act no 142/1994, in case of commercial code government announcement no 163/2005 (both as amended). The interest rate is based on rates of the Czech national bank (CNB) – annual repo rate of the CNB announced the last day of the half-year before the half-year when the debt is due – plus 7 per centile points. The rate is then constant even if the CNB later increases or decreases the repo rate.	
Penalty Clause	Articles 544 et 545 of Civil Code and articles 300 à 302 of Commercial Code				The penalty clause is due, even in case of «circumstances excluding the responsibility » such as defined in the article 374 of the commercial law. The amount of the penalty clause can be reduced by the judge.	
Retention of the goods						
Questions: May the Creditor retain the debtor's goods in case the debtor does not pay the creditor in time? May the Creditor sell the debtor's goods in case the debtor does not pay the creditor in time?						
	Articles 175 à 180 of Civil Code				The creditor must notify the debtor forthwith of the retention of the goods and the grounds therefore. If the creditor retains the goods on the basis of a written agreement, then notification must also be in writing.	

Suspension of Contractual obligations						
Question: May the Creditor suspend his/her obligations (to carry out transport) in case the debtor does not pay the creditor in time?						
	Articles 344 – 351 of the Commercial code				simple letter to the debtor, judge does not have to be contacted	
Termination of the Contract						
Termination of the Contract (default by the debtor)	Articles 365 à 369 et 373 à 386 of Commercial Code and articles 517 à 521 du Civil code	Yes for article 365 of Commercial code			The creditor can ask for the execution of the contract, end it in certain cases or ask for compensation. He can also ask for the payment of interest.	
Termination of the Contract (default by the creditor)	Articles 370 à 372 et 373 à 386 of Commercial Code and articles 522 et 523 du Civil code	Yes for articles 370 et 371 of Commercial code			The debtor can ask for the execution of the contract, end it in certain cases or ask for compensation.	
Payment through a third party						
	Articles 303 à 312 of Commercial code				The person who undertakes to satisfy the creditor if the debtor defaults on its obligations is called “debtor’s surety” or “guarantor” (in Czech: “rucitel”). This undertaking is valid only if set down in writing. The creditor may demand the fulfilment of the obligation by the third party only if the debtor has not complied within a reasonable time after written notification on the part of the creditor.	
Reservation of title clause					only in particular cases, always to be decided by the judge, according to act no 120/2001 (as amended), on distraint	

Pledging of personal properties	defined in articles 170 – 180 of the civ. code				simple letter to the debtor, judge does not have to be contacted	
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Notes :

The civil and commercial codes are the most important documents in a business context.

Concerning the information in the above table, from a general viewpoint it is not required by law to insert a security disposition (letter of credit) or a clause concerning the legal procedure to be applied should the contract be broken (conciliation, jurisdiction, law to be applied) It is however highly recommended to do so.

Protection laws exist (commercial code) however the final contract has a certain contractual liberty. It is the responsibility of both parties to determine the clauses which should figure in the contract)

Chapter 5 of the civil code (articles 544 to 558) deal with the security of obligations.

The Czech Republic is a member of all important worldwide trade associations and organisations and even if general dispositions are not covered by a law (incoterms), these dispositions are nevertheless applied.

The Czech Republic also counts local organisations who help exporters with their endeavours

The Export Guarantee and Insurance Corporation (EGAP) => www.egap.cz ;

Czech Export Bank (CEB) => www.ceb.cz ;

CzechTrade => www.czechtrade.cz ;

Ministry of trade and industry => www.mpo.cz.

useful webs could also be www.businessinfo.cz – this web page is administrated by the Ministry of trade and industry and is being regularly updated; and www.czech.cz which is on general environment of the Czech Republic but some information go really in deep. This web is administrated by the Czech Government and is being also regularly updated.

FRANCE

Means to be implemented in case of non-payment	Legal Basis (civil/commercial code, ...)	Mandatory - « Ordre Public » (Yes/No)	Legal procedures	Implementation of one clause/provision in the Contract if “Mean” is non mandatory (Yes/No)	Modalities	Useful contacts
<p>Guarantees:</p> <p>Questions: Are these kinds of guarantees used in your country?</p> <p>Which is the most used?</p>						
<p>Guarantees:</p> <ul style="list-style-type: none"> • Bank guarantee • First request guarantee • Lettre of intent • Mortgage • Stock guarantee • 	<p>Contract with the bank</p> <p>Art 2321 civil code.</p> <p>Art 2322 civil code</p> <p>Art. 2393 and following of civil code</p> <p>Art 2333 civil code.</p>	<p>No</p>	<p>Letter to the third party remembering the contract and asking for the execution of the guaranty</p> <p>Court action if no respect of the contract by the guarantor in front of the Commercial Court</p>	<p>YES</p>	<p>For Mortgage: it's necessary to appeal to a notary public (Notaire) and to register the act in a specific register: “La Conservation des Hypothèques” The mortgage registry</p>	<p>http://www.legifrance.gouv.fr/ (for codes, cases & Laws)</p>

Credit insurance (ex: COFACE)						
Question: What are the different kinds of existing coverage?						
		No		NO	Contract between the COFACE and the Creditor	Ex: COFACE and SFAC , http://www.eulerhermes.fr/fr/ http://www.coface.fr/
Advanced payments						
Question: May the Creditor request an advance payment to the Debtor (payment before carry out transport and not at the end of the worked month) in case of bad financial situation of the Debtor?						
		No	No specific process	YES	Contract or commercial agreement between the parties Customer pays before the contract execution on the basis of the outstanding risks	
Financial deposit						
Question: May the Creditor request a financial deposit (paid to the Creditor before starting of the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor?						
		No	No specific process	YES	Contract The customer could send a blocked amount to the supplier to guaranty the payments He could also deposit the sum in a specific account in a bank	
Payment of legal interests						
Question: May the Creditor request payment of legal interests if the debtor does not pay the creditor in time?						
	Art L441-6 Commercial code	YES		NO unless if a higher rate wanted	Debtor shall pay without any request from Creditor. Mainly, this is not respected	http://claude.gervais.pagesperso-orange.fr/taux_de_l'interet_legal_1990-2003.htm

Retention of goods (+ gage)						
Questions: May the Creditor retain the debtor's goods if the debtor does not pay the creditor in time? May the Creditor sell the debtor's goods in case the debtor does not pay the creditor in time?						
	Art. L133-7 commercial code (transporter) Art. L132-2 commercial code (commissionnaire)	Yes		NO	Letter (better to send by registered mail with acknowledgment of receipt + fax) to the customer (debtor) and goods' freeze till the regularization of all the debt	
Suspension of Contractual obligations						
Question: May the Creditor suspend its obligations (to carry out transport) in case the debtor does not pay the creditor in time?						
		NO	Assignment	YES	<ul style="list-style-type: none"> • Clause of the contract • Pre-legal letter) to the debtor or customer • If no answer or regularization, Court action in front of the commercial court with : <ul style="list-style-type: none"> - French actions (summons and complaint)) to the termination of the contract or recover the due debt - European process (European order for payment procedure)/ European enforcement order if < 2000€)) to recover the due debt 	Commercial Court LYON: http://www.greffe-tc-lyon.fr/
Termination of the Contract						
	<ul style="list-style-type: none"> - - Walk away clause (case law) - Settlement: 1183 and following of the Civil Code - Termination: Clause of the contract 	NO		YES	<ul style="list-style-type: none"> • Pre-legal letter (mise en demeure) to the debtor or customer • If no answer or regularization, Court action in front of the commercial court 	

Payment through a third party						
	<p>Gayssot Law (n°98-69)</p> <p>L132-8 of the Commercial code</p>	YES	Injonction de p Assignment	NO	<ul style="list-style-type: none"> • Pre-legal letter (mise en demeure) sent to the third party (sender or consignee) • If no answer : - court action in front of the commercial court (Summons/ Order for payment) 	<p>Commercial Court LYON :</p> <p>http://www.greffe-tc-lyon.fr/</p> <p>http://www.legifrance.gouv.fr/ (for codes, cases & Laws)</p>

GERMANY

Means to be implemented in case of non-payment	Legal Basis (civil/commercial code, ...)	Mandatory - « Ordre Public » (Yes/No)	Legal procedures	Implementation of one clause/provision in the Contract if “Mean” is non mandatory (Yes/No)	Modalities	Useful contacts
Guarantees: Questions: Are these kinds of guarantees used in your country? Which is the most used?						
Bank guarantee (Bankbürgschaft)	BGB = German Civil Code	No	Legal action, immediate legal protection	Yes	Note: written form required, email or facsimile not sufficient	http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBe ngl_000P765
First request guarantee (Bürgschaft auf erstes Anfordern)	Sect. 765ff BGB Sect. 765ff BGB	No	Costs: Depend on value in dispute Duration: at least several months	Yes	Note: Generally, first request guarantee can only be granted by banks, insurance companies and companies in whose business such first request guarantees are common practice	
Mortgage (Hypothek)	Sect. 1113 BGB	Partially yes	Foreclosure action Costs: Depend on value in dispute Duration: several months	Yes	Note: Notarization required special mandatory mortgage rights: The contractor for a building or an individual part of a building may demand, for satisfaction of his claims under the contract, that a mortgage over the building plot of the customer is	http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBe ngl_000P1113

					granted, Sect. 648 BGB	
Land charge (Grundschuld)	Sect. 1191 BGB	No	Foreclosure action Costs: Depend on value in dispute Duration: several months	Yes	Note: Notarization required Land charge may be granted and exist independent from any debt therefore a security agreement is common practice obliging the obligee to return/reduce the land charge when the performance owed is (partially) rendered	http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBl_000P1191
Stock guarantee (Verpfändung von Geschäftsanteilen)	Sect. 1274 BGB, 15 GmbHG (German limited liability company act)	No	enforcement proceedings	Yes	Note: Pledge of shares in German GmbH requires notarization	http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBl_000P1274
Credit insurance (ex: COFACE)						
<u>Question:</u> What are the different kinds of existing coverage?						
	None	No		Yes		

Advanced payments

Question: May the Creditor request an advance payment to the Debtor (payment before carry out transport and not at the end of the worked month) in case of bad financial situation of the Debtor?

<p>A person who is obliged to perform in advance under a reciprocal contract may refuse to render his performance if, after the contract is entered into, it becomes apparent that his entitlement to consideration is jeopardised by the inability to perform of the other party. The right to refuse performance is not applicable if consideration is rendered or security is given for it.</p> <p>The person required to perform in advance may specify a reasonable period in which the other party must, at his choice, render consideration or provide security reciprocally and simultaneously against performance. If the period ends without result, the person required to perform in advance may withdraw from the contract. Section 323 applies with the necessary modifications.</p>	Sect. 321 BGB	Yes		Yes		http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBengl_000P321
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Financial deposit

Question: May the Creditor request a financial deposit (paid to the Creditor before starting of the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor?

	<p>rent security deposit:</p> <p>Sect. 551 BGB</p> <p>Builder's security:</p> <p>Sect. 648a BGB</p>	<p>No</p>	<p>Legal action</p> <p>Depend on value in dispute</p> <p>Duration:</p> <p>at least several months</p> <p>Costs:</p> <p>Depend on value in dispute</p>	<p>Yes</p>	<p>If the lessee must give the lessor a security deposit for the performance of his duties, then this security deposit may amount at most to three times the rent for one month, exclusive of the operating costs shown as a lump sum or as an advance payment. If security is to be provided in the form of a sum of money, then the lessee is entitled to pay in three equal monthly instalments. The first instalment is due upon commencement of the lease. The lessor must invest a sum of money transferred to him as a deposit with a banking institution at the usual rate of interest for savings deposits with withdrawal notice of three months. The parties to the contract may agree on another form of investment. In either case the investment must be made separately from the assets of the lessor and the lessee is entitled to the income.</p> <p>A contractor for a building, outdoor facilities or a part thereof may demand a security from the customer for the remuneration also agreed in additional commissions</p>	<p>http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBEngl_000P551</p> <p>http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBEngl_000P648a</p>
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					and not yet paid, including associated incidental claims, which are to be estimated at ten per cent of the remuneration claim to be secured. Sentence 1 also applies to the same degree to claims replacing the remuneration. The security may also be provided by means of a guarantee or other promise of payment by a banking institution or credit insurer authorised to conduct business operations within the area of application of this Code.	
Payment of legal interests (<i>Verzugszinsen</i>) Question: May the Creditor request payment of legal interests should the debtor not pay the creditor in time?						
warning notice from the obligee that is made after performance is due There is no need for a warning notice if a period of time according to the calendar has been specified, performance must be preceded by an event and a reasonable period of time for performance has been specified in such a way that it can be calculated, starting from the event, according to the calendar, the obligor seriously and definitively refuses	Sect. 286, 288 BGB implement EU-directive 2000/35 dated 29 June 2000	Yes	Legal action; interest are normally enforced with the legal action concerning the principal claim Costs: Depend on value in dispute Duration: at least several months		Note: Default of the obligor required The default rate of interest per year is five percentage points above the basic rate of interest. In the case of legal transactions to which a consumer is not a party the rate of interest for claims for payment is eight percentage points above the basic rate of interest. Deferring interest rate could be stipulated by contract Note: Vis-à-vis consumers and/or in general terms of business, higher rates could be invalid	http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBEngl_000P286 http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBEngl_000P288

<p>performance,</p> <p>for special reasons, weighing the interests of both parties, the immediate commencement of default is justified</p> <p>The obligor of a claim for payment is in default at the latest if he does not perform within thirty days after the due date and receipt of an invoice or equivalent statement of payment; this applies to an obligor who is a consumer only if these consequences are specifically referred to in the invoice or statement of payment</p>						
<p>Retention of the goods (<i>Zurückbehaltungsrecht</i>)</p> <p>Questions: May the Creditor retain the debtor's goods if the debtor does not pay the creditor in time? May the Creditor sell the debtor's goods if the debtor does not pay the creditor in time?</p>						
<p>Right of retention must be exercised by declaration vis-à-vis the other party</p>	<p>Sect. 273 BGB</p>	<p>Yes</p>			<p>Note: obligee may avert the exercise of the right of retention by providing security ; providing of security by guarantors is excluded</p> <p>In Germany, the principle of abstraction (Abstraktionsprinzip) applies. In general, the contract of purchase does not trigger the</p>	<p>http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBengl_000P273</p>

					<p>passing of ownership to the purchaser. In fact, a separate transfer of ownership is required, which is – in general – carried out by delivery. Therefore, a seller may sell the goods assigned to the purchaser at any time before delivery. However, if the seller wants to avoid to be still obliged to deliver, he must withdraw from the contract of purchase.</p>	
Suspension of Contractual obligations						
Question: May the Creditor suspend his /her obligations (to carry out transport) if the debtor does not pay the creditor in time?						
	None, but see remarks as to retention of the goods	No		questionable	Note: German law does not provide for such general suspension. But in general, the principle of retention of the goods entitles the obligee to refuse the performance owed by him, until the performance owed to him is rendered (right of retention), Sect. 273 BGB	
Termination of the Contract (<i>Rücktritt</i>)						
Question: May the Creditor terminate the contract if the debtor does not pay the creditor in time?						
Withdrawal is effected by declaration to the other party, Sect. 349 BGB	Sect. 323 BGB	Yes	If other party denies effectiveness of withdrawal, withdrawing party may take legal action for declaratory judgement (<i>Feststellungsklage</i>) Costs: Depend on value of the matter		Note: If, in the case of a reciprocal contract, the obligor does not render an act of performance which is due, or does not render it in conformity with the contract, then the obligee may withdraw from the contract, if he has specified, without result, an additional period for performance or	http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBEngl_000P323 http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBEngl_000P349

			Duration: several months (legal action)		<p>cure.</p> <p>The specification of a period of time can be dispensed with if</p> <p>the obligor seriously and definitively refuses performance,</p> <p>the obligor does not render performance by a date specified in the contract or within a specific period and the obligee, in the contract, has made the continuation of his interest in performance subject to performance being rendered in good time, or</p> <p>there are special circumstances which, when the interests of both parties are weighed, justify immediate withdrawal.</p> <p>Contracts for a performance of a continuing obligation (Dauerschuldverhältnisse) e.g. contracts of service, lease agreements, may be terminated in case the debtor does not pay the creditor in time; in general, the arrears must exceed certain amounts.</p>	
<p>Payment through a third party</p> <p>Question: May the Creditor request direct payment to a third party in case of failure on payment of the Debtor?</p>						
German law does not provide for a legal instrument like the “action directe”. Therefore, an agreement with the third part is necessary.		No		Yes	<p>Note: A debt may be assumed by a third party by contract amongst: obligee and third party or obligor and third party.</p> <p>If the assumption of the debt</p>	<p>http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBEngl_000P414 http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#BGBEngl_000P415</p>

					<p>is agreed between the third party and the obligor, its effectiveness is subject to ratification by the obligee. Ratification may only occur when the obligor or the third party has informed the obligee of the assumption of the debt. Until ratification, the parties may alter or cancel the contract.</p> <p>If ratification is refused, assumption of the debt is deemed not to have occurred. If the obligor or the third party requests the obligee, specifying a period of time, to make a declaration relating to the ratification, the ratification may only be declared before the end of the period of time; if it is not declared it is deemed to be refused.</p> <p>As long as the obligee has not granted ratification, then in case of doubt the transferee is obliged to the obligor to satisfy the obligee in good time. The same applies if the obligee refuses ratification.</p> <p>Furthermore, by a contract of suretyship the surety may put himself under a duty to the creditor of a third party to be responsible for discharging that third party's obligation.</p>	
Reservation of title clause (<i>Eigentumsvorbehalt</i>)						
Retention of title (<i>Eigentumsvorbehalt</i>):	Sect. 449 BGB	No		Yes	General remarks: Retention of title (<i>Eigentumsvorbehalt</i>): If the seller of a movable thing has retained title until payment of the purchase price, then in case of doubt it is to be assumed that	
Claiming for return of property after withdrawal from contract						
Extended retention of title						

<p>(verlängerter Eigentumsvorbehalt):</p> <p>Collection of the assigned claim</p>					<p>ownership is transferred subject to the condition precedent that the purchase price is paid in full (retention of title), Sect. 447 BGB</p> <p>Extended retention of title (<i>verlängerter Eigentumsvorbehalt</i>): The seller of a movable thing may also retain title until payment in so far, as the purchaser is entitled to sell the movable thing to a third party before the purchase price is paid in full and the purchase price claim against the third party takes the place of the retention. Thus, the purchase price claim is assigned to the seller instead of the retention.</p> <p>Note: The term «<i>extended retention of title</i>» or «<i>verlängerter Eigentums-vorbehalt</i>» derives from German law. Thus, it cannot be excluded that a court in France or another country may regard the very use of this term as insufficient to agree on such extended retention. Therefore, it is strongly recommended to implement a clause in the contract describing precisely the function of the extended retention of title.</p>	
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Pledging of personal properties (Pfandrecht an beweglichen Sachen)

<p>The satisfaction of the pledgee from the pledged item is effected by sale. The pledgee is entitled to effect the sale as soon as the claim is due in whole or in part. The sale of the pledged item is to be made by public auction. The pledgee must warn the owner of the sale in advance and at the same time specify the sum of money for which the sale is to take place. The warning may be given only after the right of sale has arisen; it may be omitted if it is impracticable.</p>	<p>Sect. 1204ff, 647, 562ff BGB</p>	<p>Partially yes</p>		<p>Yes</p>	<p>Note: To create a pledge by contract, it is necessary for the owner to deliver the thing to the creditor and for both to agree that the creditor is to be entitled to the pledge. If the creditor is in possession of the thing, agreement on the creation of the pledge suffices. The delivery of possession of a thing in the indirect possession of the owner may be replaced by the owner transferring indirect possession to the pledgee and notifying the possessor of the pledging.</p> <p>Special mandatory pledges:</p> <p>contractor has a security right over the movable things of the customer that he has produced or repaired if they have come into his possession during the production or for the purpose of repair, Sect. 647 BGB</p> <p>The lessor, for his claims under the lease, has a security right over things contributed by the lessee. It does not extend to the things that are not subject to attachment, Sect. 562 BGB</p>	
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Transfer by way of security (Sicherungsübereignung)						
Measures as stipulated in security agreement; in general: sale after prior warning and fixing of a period for payment	Sect. 929ff BGB	No		Yes	Note: Sect. 929ff BGB are only general provisions as to property transfer therefore a security agreement is also required obliging the obligee to return the property when the performance owed is rendered and entitling the obligee to sell the property when the performance owed is not fully rendered	
Assignment by way of security (Forderungsabtretung)						
Measures as stipulated in security agreement; in general: collection of the claim assigned after prior warning and fixing of a period for payment	Sect. 398ff BGB	No		Yes	Note: Sect. 398ff BGB are only general provisions as to assignment therefore a security agreement is also required obliging the obligee to reassign when the performance owed is rendered and entitling the obligee to receive/keep payments by third parties when the performance owed is not fully rendered	

ITALY

Means to be implemented in case of non-payment	Legal Basis (civil/commercial code, ...)	Mandatory - « Ordre Public » (Yes/No)	Legal procedures	Implementation of one clause/provision in the Contract if “Mean” is non mandatory (Yes/No)	Modalities	Useful contacts
Guarantees: Questions: Are these kinds of guarantees used in your country? Which is the most used?						
Guarantees: Bank guarantee First request guarantee Mortgage Stock guarantee	All these means of guarantee do exist under Italian Law. Namely: - guarantees: sections 1936 and following of Italian Civil Code (CC); - mortgage: sect. 2808 and following CC; - pledge (also of stocks): sect. 2784 and following CC NDL IT does NOT make recourse to guarantees apart from when the client is a start up which requires investments. Bank guarantee is the usual choice..	A guarantee is not compulsory by law.	In case of First Request Bank Guarantee, normally a letter to the Bank is enough to obtain the payment. In any other case, it is necessary a legal action in Court.	Not foreseen for the time being.		

Credit insurance (ex: COFACE)

Question: What are the different kinds of existing coverage?

	<p>Credit insurance is very rare in logistics in Italy. To my knowledge, NDL IT does not have relevant records so far.</p> <p>The subject matter of insurances is regulated by sect. 1882 and following CC.</p>	<p>A credit insurance is not mandatory under Italian Law.</p>		<p>Not foreseen for the time being</p>		
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Advanced payments

Question: May the Creditor request an advance payment to the Debtor (payment before carry out transport and not at the end of the worked month) in case of bad financial situation of the Debtor?

	<p>Yes, if: (i) bad conditions are worst than those existing when logistics agreement was entered into by parties, unless an adequate guarantee is given (sect. 1461 CC); or (ii) customer has not fulfilled its obligation to pay consideration for services already rendered (sect. 1460 CC).</p>	<p>Not mandatory under Italian Law</p>	<p>Services may be halted without an order/injunction from Court. However, in case of abuse (suspension of services for a non-fulfilment of small relevance; unjustified revocation of line of credit etc.), the other party of the contract may obtain</p>	<p>It is not necessary to write such provision in a contract, because it applies per se. Sometimes customers try to exclude by contract the provisions of Sect. 1460 CC, which is lawful.</p>		
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			relevant damages.			
Financial deposit						
Question: May the Creditor request a financial deposit (paid to the Creditor before starting of the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor?						
	It is possible, as an universally accepted analogical interpretation of the discipline of pledge (of money). It is however not common in the logistics services sector, because a first demand bank guarantee gives (almost) the same level of guarantee and is easier to manage.	Not mandatory under Italian Law	Once the money is in hand of the Creditor, it can make recourse to it without going to Court should the Debtor fail to deliver. Debtor may make recourse to Court to avoid the seizure, it this is unjustified.	Not foreseen for the time being		
Payment of legal interests						
Question: May the Creditor request payment of legal interests if the debtor does not pay the creditor in time?						
	Yes, the Creditor can: it is provided both by CC and by Legislative Decree 231/2001. Le montant des intérêts légaux est établi par l'article 1284 du Code Civil Italien, qui est mis à	Not mandatory under Italian Law	It is not necessary to act in Court in order to be entitled to interests. However, it may be necessary to formally	It is not necessary to write such provision in a contract, because it applies per se ex CC and ex Legislative Decree 231/2001. Sometimes customers try to		

	jour une fois par an par le biais d'une loi. Pour l'année 2010, le montant des intérêts légaux est de 1% (un pour cent)		require them by registered letter with return receipt.	exclude or limit the rate of interests set forth by D.Lgs. 231/01 , which is lawful.		
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Retention of the goods

Questions: May the Creditor retain the debtor's goods if the debtor does not pay the creditor in time? May the Creditor sell the debtor's goods in case the debtor does not pay the creditor in time?

	Yes, the Creditor can retain Debtor's goods (sect. 2761 CC) and can sell them to obtain its consideration (sect. 2756 CC).	Not mandatory under Italian Law	To seize Debtor's goods, it is sufficient to notify to the Debtor, thorough a Bailiff, an act of seizure. After this first step, which secures a privilege on the goods in favour of the Creditor, it is necessary to act in Court in order to sell them and satisfy the credit on the sale's results.	It is not necessary to write such provision in a contract, because it applies per se ex sect. 2756 and 2761 CC. Sometimes customers try, in the contract, to exclude or limit the rights of retentions and seizure, which is lawful.		
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Suspension of Contractual obligations

Question: May the Creditor suspend its obligations (to carry out transport) in case the debtor does not pay the creditor in time?

	Yes, according to sect. 1460 CC	Not mandatory under Italian Law	Services may be halted without an order/injunction from Court. However, in case of abuse (suspension of services for a non-fulfilment of small relevance; unjustified revocation of credit etc.), the Debtor may obtain relevant damages.	It is not necessary to write such provision in a contract, because it applies per se. Sometimes customers try to exclude by contract the provisions of Sect. 1460 CC, which is lawful.		
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Termination of the Contract

Question: May the Creditor terminate the contract if the debtor does not pay the creditor in time?

	Yes, and furthermore ask for damages, according to sect. 1453 CC.	Not mandatory under Italian Law	Contract may be declared terminated without an order/injunction from Court. In general, after doing so, Creditor would go to Court in order to obtain confirmation	It is not necessary to write such provision in a contract, because it applies per se.		
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			of the proclaimed terminations and restoration of damages. In case of abuse (suspension of services for a non-fulfilment of small relevance etc.), the Debtor may obtain relevant damages.			
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Payment through a third party Question: May the Creditor request direct payment to a third party in case of failure on payment of the Debtor?

	No, unless this third party has given a warranty or is considered obliged to do so by a relevant statute of law (e.g. stockholders of a company which are not entitled with limited liability by the relevant law of incorporation, such as so called SNC and SAS in Italy).	Not mandatory under Italian Law	Generally speaking, in order to compel a third party to perform instead of the Debtor, it is necessary to stipulate in writing a warranty coming from the third party. That said, statistically third parties do not perform unless they are obliged to	Not foreseen for the time being		
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			do so by and order/injunction from a competent Court.			
Reservation of title clause						
	Not Applicable to Italian Services because ownership of Goods remains always to Customers/Debtors					
Pledging of personal properties						
	Yes, the Creditor can retain Debtor's goods (sect. 2761 CC) and can sell them to obtain its consideration (sect. 2756 CC).	Not mandatory under Italian Law	To seize Debtor's goods, it is sufficient to notify to the Debtor, thorough a Bailiff, an act of seizure. After this first step, which secures a privilege on the goods in favour of the Creditor, it is necessary to act in Court in order to sell them and satisfy the credit on the sale's results.	It is not necessary to write such provision in a contract, because it applies per se ex sect. 2756 and 2761 CC. Sometimes customers try, in the contract, to exclude or limit the rights of retentions and seizure, which is lawful.		

Notes:

The local correspondent was unable to find the requested information. We did learn, however, that – generally speaking – very little use is made in Italy of late-payment prevention methods. The most commonly used route in this area is still judicial recovery, notably by means of payment orders.

We were also given a contact for resolving disputes over arrears: “Camera arbitrale del Piemonte” (Piedmont Court of Arbitration) (<http://www.pie.camcom.it/cameraarbitralepiemonte>).

There is a lot of information on the internet about Italian law, but it is not always reliable. However, a totally reliable site on the Civil Code, Criminal Code and Code of Procedure is www.simone.it.

Regarding other laws and judgments (and decisions), it is better to go to a paying site such as www.giuffre.it (subscription not available).

IRELAND

Means	Legal Basis (civil/commercial code, ...)	Mandato ry « Ordre Public » (Yes/No)	Legal procedur es	Implementati on in the Contract if non mandatory (Yes/No)	Modalities	Useful contacts / Links
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Guarantees

Questions: Are these kinds of guarantees used in your country? Which is the most used?

<p>Guarantees:Bank guarantee</p> <ul style="list-style-type: none"> • First request guarantee • Mortgage • Stock guarantee • Standby import/export letters of credit • Export / Bills for collection :document against Payment/Document against Acceptance • Import Bills for Collection : documents against Acceptance (payable on deferred terms)/ documents against payment(payable at sight)- Cash against Documents 	<p>-Contractual</p> <p>-Bank Guarantees, 1st Request guarantees , mortgage and stock guarantees are all used in Ireland</p> <p>-ICC Uniform Customs and Practice for Documentary Credits (UCP 500) (- documentary credits letters of Credit)</p>	<p>Not mandator y</p>			<p>Commercial arrangements with banks</p> <p>Mortgage:</p> <p>Provided the debtor owns property which is free of other charges. Yet suppliers very often ranked behind the bank who may have a '1st chance on the item, reducing level as preferred creditor of security for supplier'.</p>	<p>For further information please visit http://www.pjod.ie/News/Articles/Aspects%20of%20Guarantees.pdf</p> <p>http://www.boi.ie/html/gws/includes/corporate/pdfs/corporate_banking/trade_finance.pdf</p> <p>http://www.irishexporters.ie/section/ExportImportDocumentation</p>
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• (payable at sight, no bill of exchange)						
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Question: What are the different kinds of existing coverage?

Export and Commercial (protection) Credit insurance (ex: COFACE)	Credit Insurance is none compulsory in Ireland	Not mandatory			Companies are encouraged to purchase credit insurance to protect the holder against export customer insolvency protracted default and political risks. Commercial Credit insurance is a protection agreement against both bad debt losses on profit and against temporary loss of cash flow This can be done by applying directly to the Insurance company or through a broker	http://www.irishexporters.ie/section/CreditInsurance http://www.coface.ie/
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May the Creditor request an advance payment to the Debtor (payment before carry out transport and not at the end of the worked month) in case of bad financial situation of the Debtor?

Advanced payments	Contractual	No		Needs to form part of the Commercial Agreement	Payment in Advance, Bid/Bond Guarantee, Documents against Payment -Letter of Credit And Documentary collection are all commonly used in Ireland With regards to Payment in Advance wire transfers are commonly used as they have the advantage of being almost immediate. Funds can also be sent by cheque or bank draft.	For further information on advanced payments please see "A Step by Step Guide for Irish Exporters", County and City Enterprise Boards (www.wceb.ie/download/1/WCEB_export_guide_lo_res_web.pdf) <ul style="list-style-type: none"> - Payment in Advance p.21 - Bid/Bond Guarantee p.23 - Letters of Credit p.25 - Documentary Collections p.27 - http://www.irishexporters.ie/section/ExportImportDocumentation
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May the Creditor request a financial deposit (paid to the Creditor before starting of the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor? Retainer fees (freelance work & consulting) Down payments (construction industry)

Financial deposit Escrow bank account(governm ent)	Contractual	Not Mandatory		See Contract	Why would you want to do business with someone if they are not credit worthy? le they might go bust! Financial deposits are gradually disappearing since the end of the Celtic Tiger days...	
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May the Creditor request payment of legal interests if the debtor does not pay the creditor in time?

interest on late payments	<p>European Communities (Late Payment in Commercial Transactions) Regulations 2002 (SI 388 of 2002)</p> <p>www.irishstatutebook.ie/2002/en/si/0388.html</p> <p>The regulations allow that where the purchaser does not pay for goods or services concerned by a relevant date, the supplier shall be entitled to interest on the amount outstanding under the contract concerned at a specified rate.</p> <p>Also Contractual</p>	Mandato ry	<p>Range of choices:</p> <ul style="list-style-type: none"> - Registering judgment - Referral to sheriff for collection - Garnishee order - Operation of lien - Appointme nt of liquidator 	<p>Interest becomes payable if payments for commercial transactions are not met within 30 days, unless otherwise specified in a contract or agreement.</p>	<p>-These Regulations provide that unless otherwise specified in an agreed contract, the interest rate will be the European Central Bank main refinancing rate plus 7 percentage points. The ECB rates in force on 1 January and 1 July apply for the following six months in each year. Only one rate will apply to a late payment – that is the rate in force on the payment date. From the 1st July 2010, the late payment interest rate is 8% per annum. That rate equates to a daily rate of 0.022%. Penalty interest due for late payments should be calculated on a daily basis.</p> <p>-Where the contract does not specify a payment period a default payment period of 30 days will apply. This 30 day payment period begins on: the date of receipt by the purchaser of an invoice for payment or the date of receipt of the goods or services where; - the date of receipt of the invoice is uncertain or the purchaser receives the invoice before the delivery of the goods or services in question.</p> <p>-The following is a sequence of actions some of which that may be</p>	www.deti.ie/enterprise/smes/latepay.htm
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					<p>used in combinations that best suit the parties involved :</p> <p>(i) Telephone customer, confirm safe receipt, satisfaction with supply, obtain an agreed commitment to pay by a fixed date and by an agreed method e.g. post-dated cheque.</p> <p>(ii) Send standard reminder letter(s) setting out consequences for customer of late payment</p> <p>(A) Breach of agreed terms (B) May effect future credit terms (C) May attract interest (D) Impact of retention of title (E) Additional costs they have to incur for collection costs (F) Your option to seek appointment of liquidator - if appropriate (G) Your option to refer to solicitor or collection agency and register judgment outlining impact of this on other suppliers</p> <p>(iii) If the above does not have the desired result you may consider the following</p> <p>1 Meet with customer and agree new terms to deal with debt and usually new terms of trade. 2 Discontinue trading 3 Exercise retention of title. 4 Appoint solicitor</p> <p>(iv) Once appointed a solicitor will advise on the most appropriate option from a range of choices including</p> <p>(a) Registering judgment (b) Referral to sheriff for collection (c) Garnishee order (d) Operation of lien (e) Appointment of liquidator: Application can be made to wind-up the company under the provisions of the Companies Acts (1963/1990/2003) and an Order can be obtained to liquidate the company and realise the debt.</p>	
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					These actions can take from one month to several years (liquidation)	
May the Creditor retain the debtor's goods if the debtor does not pay the creditor in time? May the Creditor sell the debtor's goods in case the debtor does not pay the creditor in time?						
Retention of Title also called reservation of Title clause (ROT) 2 types "simple" clause where the seller retains title in goods delivered until they have been paid for. "all -monies" where the supplier retains title until the goods and any other amount owed by the buyer to the supplier has been paid.	The law of retention of title clauses was given statutory effect by s. 19(1) of the Sale of Goods Act, 1893	No	Contractual	Yes, ROT clauses need to be incorporated in standard terms of trade & conditions. Incorporation means that the seller's terms of trade have been accepted by the buyer. As a general rule, the party sending the last contractual document prior to the delivery of goods will succeed in incorporating his terms.	The seller has to show that he can identify the goods which were supplied. A supplier will not succeed in a claim if the goods in question have been irreversibly incorporated into the finished product or have been used in the production process. A receiver is appointed by a debenture holder, normally a bank, and he has a duty to collect in and preserve the assets. A liquidator is generally appointed by a special meeting of creditors. When suppliers are notified of a receiver's appointment, they need to gather promptly all relevant documentation such as unpaid invoices, delivery notes, acceptance of terms of trade and visit the customer's premises. Upon arrival, they should ask to see a member of the receiver's staff and explain that they are a creditor wishing to enforce their retention of title claim: they either wish to take the goods away or enter an arrangement with the receiver for him to pay them. An inventory count follows by the supplier. The inventory sheet needs to be signed off by an insolvency staff member. The supplier needs to give him a copy. After the inventory count the supplier should promptly write to the Receiver enclosing copies of his terms of trade together with the evidence that they have been	

					<p>incorporated. He should also send copies of the unpaid invoices. The supplier should seek the return of the goods or seek the Receiver's personal undertaking that he will pay for the goods.</p> <p>The receiver will carefully consider the suppliers claim in conjunction with his solicitors. Even if the supplier has a valid claim the Receiver may attempt to attack the claim, while making an offer to pay for the goods which he holds. The offer to pay for the goods will generally be less than the invoice value of the goods.</p>	
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Suspension of contractual obligations :

Question : May the Creditor suspend his obligations (to carry out transport) in case the debtor does not pay the creditor in time?

	<p>-Companies Act 1963 - Section 37 and 38 Form of Contracts: http://www.irishstatutebook.ie/1963/en/act/pub/0033/print.html -Netting of Financial Contracts Act 1995: http://acts2.oireachtas.ie/zza25y1995.1.html There isn't Irish legislation (such as an Act or Regulations) which is directly relevant to this issue. Instead, what is relevant is the right the supplier would have to sue the Irish customer in the courts for breach of contract.</p>	No	Enforced under the contract	Must be included in the contract	In general, where there is a breach of contract, there is no right to "suspend" the contract unless the contract actually provides for that right or the innocent party has obligations under the contract which are dependent on the obligations of the breaching party.	
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Termination of the contract

Question : May the Creditor terminate the contract should the debtor not pay the creditor in time ?

	<p>There isn't Irish legislation (such as an Act or Regulations) which is directly relevant to this issue. Instead, what is relevant is the right the supplier would have to sue the Irish customer in the courts for breach of contract.</p>	Not mandatory	Contractual Claim	See contract	If a customer breaches the credit terms offered, this might allow the supplier to terminate, or threaten to terminate a contract. However the agreement (esp. notice periods and whether the debtor has/ can create a valid claim) should be carefully consider. If a creditor threatens to terminate and doesn't follow through, the right to terminate for that breach may be lost as the creditor may be deemed to have affirmed the contract.	
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					A breach of condition in a contract will entitle the innocent party to "terminate" the contract. A condition is a term which is of sufficient importance to the contract between the parties. Where an Irish company fails to pay its supplier, the supplier is the innocent party and the obligation to pay for goods delivered is a fundamental term / condition of the contract. Therefore, the supplier is entitled to terminate the contract and sue for the money that it is owed by the Irish company. The right to terminate is not indefinite and if the supplier delays too long in asserting that right the law will interpret the delay as an affirmation of the contract by the supplier.	
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Payment through a third party

Question : May the creditor request direct payment to a third party in case of failure on payment of the debtor ?

Merchant vendors, collections agencies, debt recovery services Solicitors	contractual	No	See contract	Yes- the service providers must adhere the code of conduct for debt collection agencies of the Irish Institute of credit management	http://www.iicm.ie/Filestore/Debt%20Collection%20Code%20of%20Conduct.pdf	
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LUXEMBURG

Means to be implemented in case of non-payment	Legal Basis (civil/commercial code, ...)	Mandatory - "public order" (Yes/No)	Legal procedures	Implementation of one clause/provision in the Contract if "means" is non-mandatory (Yes/No)	Modalities	Useful contacts
Guarantees:						
Questions: Are these kinds of guarantees used in your country?						
Which is the most used?						
Independent guarantee or first-demand guarantee	Provided by the practice.	No	The guarantor is obliged to pay a sum either at first demand or in accordance with procedures bound by contract. The guarantor cannot raise any objections to the payment.	No	Preliminary formal notice is not normally needed. 1. Simple guarantees: the guarantor is bound to pay when the creditor applies for (most of these guarantees are in the field of lease agreements). 2. Documentary guarantees: the creditor must produce any document referred to in the agreement. 3. Reasoned guarantees: the creditor must make a statement (although the guarantor is not supposed to check its accuracy).	
Special assignment	Law 11 November 1970 Grand-ducal Statutory Order 9 January 1979	Yes	Debtor gives evidence of remunerations, pensions or incomes.	Yes	A separate agreement drafted at the same time as the main guarantee and in many copies as parties. (Formalities to ensure validity). The special assignment must be notified by the creditor (the assignor) to the debtor's employer and the pension or unemployment fund respectively (the assignee).	

Mortgage	Civil Code, articles 2114 to 2203.	Yes	The mortgage may be contractual or court-ordered.	Yes for a contractual mortgage. No in case of judiciary mortgage.	A contractual mortgage must: 1) relate to a specific property; 2) be drawn up in the form of an authentic instrument (notarial deed); 3) be registered (registration may not exceed 10 years but can be renewed). A judicial mortgage requires an action at law including: 1) a formal notice to pay, 2) a seizure of a property, 3) a sale by tender.	
Retention of title clause	Commercial Code, articles 567 and 567-1 (relating to bankruptcy).	Yes	A written agreement drawn up no later than the date of delivery or first delivery in case of successive deliveries.	Yes	Retention of title is limited to sale agreements for tangible, personal and not fungible goods (goods must be clearly identified and individualised). In case of bankruptcy : The creditor must act within a three months period from the date of publication of the adjudication in bankruptcy. The recovering of the good must be conceivable without damage. In case of resale of the good, the beneficiary is allowed to recover the price directly to the new purchaser.	
Credit insurance (ex: COFACE)						
<u>Question:</u> What are the different kinds of existing coverage?						
Office du Ducroire	The Office du Ducroire is a public institution that insures business risks relating to international transactions and investments abroad.		Export credit insurance covers Luxembourg businesses against the risks of non-payment by their customers, for risks of political origin or related to insolvent or defaulting customers.		Ducroire insurances apply mainly to markets outside the OECD. Transactions insured by Ducroire are generally guaranteed by the Luxembourg Government. Only the risks related to ordinary trade transactions in OECD countries are not covered by the Government.	www.ducroire.lu

Advanced payments						
Question: May the Creditor request an advance payment to the Debtor (payment before delivery and not at the end of the fiscal month) in case of bad financial situation of the Debtor?						
Yes, but an advanced payment is null when request during the “cessation of payment period” and 10 days before (Commercial Code, Article 445).						
The “cessation of payments period” is fixed by the court with a maximum of 6 months prior to the bankruptcy declaration (Commercial Code, Article 442). In the case of bankruptcy the debtor suspends his payments and is no longer creditworthy. (Commercial Code, Article 437).						
Financial Deposit :						
Question: May the creditor request a financial deposit in case of bad financial situation of the debtor?						
Yes. The “zero-hour rule” is implemented by the 5.08.2005 Law: Article 21 of this law allows Financial Guarantees from the very day of the bankruptcy declaration.						
Transfer of ownership as collateral	Law of 5 August 2005 on financial collateral arrangements (transposing Directive 2002/47/E C)	Yes	In order to guarantee the financial obligations of the assignor. The assignee is committed to transfer the property back unless the financial obligations covered are not met (in whole or in part).		No formal requirement but: The assignee must be the creditor. The assignor is either the debtor or a third party.	
Compensation after bankruptcy	Law of 5 August 2005 on financial collateral arrangements (transposing Directive 2002/47/E C)	Yes	No prior formal notification (unless otherwise is agreed).		The parties must specify that Luxembourg law applies to the contract. Quasi-automatic application by the judge if the compensation does not affect a real right abroad (Regulation 1346/2000/EC).	
Payment of legal interest Question: May the Creditor request payment of legal interest where the debtor does not pay the creditor in time?						
Legal interest in transaction between professionals and consumers	Law of 18 April 2004 Law on late payment and late-payment interest, transposing Directive 2003/35/E C	Yes	The Law of 2004 enacts a 90 days’ time line for payment after reception of goods, or the completion of works or services.	Yes	A special mention in the invoice stating that the professional intends to benefit of the provisions of the 18.04.2004 Law, article 12. The invoice must be sent within one month after delivery of goods or the end of the works or services and a formal notice is needed. (Article 1153, Civil Code). The rate of late-payment interest against non-merchant debtor is provided each year by Grand-ducal Statutory Order. (For 2010, this rate was 3.50%).	Ministry of Justice website www.mj.lu (citizens’ service – statutory interest rate).

Legal interest in commercial transactions	Law of 18 April 2004 on late payment and late-payment interest transposing Directive 2003/35/E C	Yes	Unless otherwise specified under contract, statutory interest runs from the final date of payment.	No	If nothing is contractually provided, the time limit for payment is 30 days after the invoice reception / respectively after the completion of work or service. The legal rate is published at the start of each half-year in the <i>mémorial A</i> (Official Journal) and is equal to the ECB prime rate plus 7%. (For the second quarter of 2010, and first quarter of 2011, this rate was 8%).	Ministry of Justice website www.mj.lu (citizens' service – statutory interest rate).
Late-payment interest clauses in commercial transactions and surety	Civil Code, Article 1153	Yes	This clause allows an agreed rate higher than the statutory interest rate for B2B agreements.	Yes	A formal notice is needed unless contrary legal rule. An action to restrain is possible if the rate is usurious regarding good trading practices and customs. (Article 1152 Civil Code).	
Penalty clause	Civil Code, Articles 1226 to 1233	Yes	A contractual amount of damages is foreseen.	Yes	This clause is often included in some pre-established general agreement terms. A tacit consent with these terms is needed. A tacit consent is legally realised when “signing the contract and (...) depending on the circumstances” the creditor can be “regarded as having accepted them.” (Article 1135-1 of the Civil Code). The judge is empowered to mitigate or increase it but not to cancel it (Article 1152 Civil Code).	
Retention of goods (+ pledge)						
Questions: May the Creditor retain the debtor's goods if the debtor does not pay the creditor in time? May the Creditor sell the debtor's goods in case the debtor does not pay the creditor in time?						
Lien of goods	Lien of goods is legally provided only for sale (Civil Code, Article 1612) and deposit (Civil Code, Article 1948). Nevertheless lien of goods is often allowed by precedents each time a related physical custody is realised.	Yes	1) A movable thing physically held. 2) A thing related to the debt: a connected detention. 3) An unquestionable, liquidated and payable claim.	No	The creditor may retain the property until he is been paid in full, even if : Another creditor has a guarantee on it (e.g. retention of title) The purchaser is declared bankrupt (Civil Code, Article 1613). Restrictions: 1) Lien of goods is only a “psychological pressure” (no right to dispose the property). 2) In B2C agreements the value of the detention must be proportionate to the value of debt (Law of 25.08.1983, Article 10).	

Privilege on movable property of the vendor	It is a legal privilege provided by the Civil Code, Article 2102(4) Precedents enlarge this privilege to intangible property (e.g. assignment of debt, sale of stock-in-trade)	Yes	The vendor of a movable thing is entitled to be paid in a prior rank on the result of the sale of that thing.	No	This privilege allows the vendor to engage a seizure under a lien. The seizure must be judicially validated in order to sale the good by compulsory auction. This privilege is lost in the following cases: Resale of the good by the purchaser. Bankruptcy of the purchaser. (Commercial Code, Article 546). As an exception, lien is allowed in case of bankruptcy if: the goods delivered were new machinery/appliances not used or owned before, and the privilege is initiated within two years of the delivery.	
Civil pledge with dispossession	Civil Code, Articles 2071-2093	Yes	The debtor pledges a good to secure a debt. Differences with the lien of goods: The secured creditor has a property right to the good. The good is not necessarily connected to the debt.	Yes	1) A contract between the creditor and the person pledging the property (the debtor or a third party). A private agreement (or official document) signed by the owner of the pledged property is needed. Since 1994 the registration of the pledge is not compulsory in Luxembourg. 2) The secure creditor becomes responsible for the good: he must conserve it, but may not use it. (The good is "frozen"). In order to sell out the pledge the creditor can legally ask to sale the good at a public auction or to apply for full ownership.	
Commercial pledge with dispossession	Commercial Code, Articles 110-119 and Articles 542-547.	Yes	The pledge is commercial when it secures a trade debt, regardless of the status of the parties.	No	As a commercial document, no written document is necessary. (Articles 109, 110 and 111 of the Commercial Code). The pledged property needs to be "at the disposal of the creditor" (the creditor does not have to actually hand over the property pledged). In order to sell out the pledge, the creditor must notify the debtor by registered letter (unless otherwise agreed) and respect an eight days delay. (Commercial Code, Article 116).	
Pledge on stock-in-trade and goods, without dispossession	Grand-ducal Statutory Order, 27 May 1937.	Yes	This pledge covers all assets of the stock-in-trade but : Real estate (land,	Yes	The creditor must complete some formalities otherwise the registration of the pledge will be null and void: The pledge must be set down by private agreement/ respectively	

			buildings) is not traditionally included. Stocks can be included for only half of their value (Article 2, Order of 1937) The parties may decide to exclude or include certain goods/properties.		official document. A registration must be done every ten years (Register of Mortgages). In order to sell out the pledge : An official notification of the debtor must be done and immediate seizure of the items as provided in the agreement. The President of the Commercial Court must approve the seizure and rule on the public sale.	
Pledge of receivables and financial assets	Law of 5 August 2005 on financial collateral arrangements (transposing Directive 2002/47/EC)	Yes	A debtor owed a debt by a third party (the debtor of the debtor) offers it as security to his creditor.	No	The debtor of the debtor must be informed (notification or acceptance). The pledgee may be entitled by agreement to use the receivables/financial assets pledged in its favour (a true right of disposal) (Article 10 of the Law of 2005). A pledge of 100% of the shares in a Luxembourg SARL is now possible without the approval of the partners. The pledgee may exercise the voting rights of the pledged stocks. The guarantee is exercised automatically. Prior notification is no longer necessary (unless otherwise agreed). (Article 11 of the Law of 2005). If an event occurs that entails the exercise of the guarantee the beneficiary has several options under the law: to appropriate the assets, have them sold (private sale, public auction, etc.) or arrange a set-off.	
Pledges on financial instruments or assets located in Luxembourg have been observed to increase. "Introduced in 2008, the exercise of financial collateral agreements has brought pledgees an assurance of the quality and effectiveness of their lien in situations such as early or forced termination of a credit operation in the context of the world financial crisis. (See Maîtres H Wagner & A Djazayeri in "La réalisation du gage en temps de crise: aspects juridiques" (exercising a pledge in times of crisis: legal aspects), ALJB No 45, 2010).						
Repurchase agreements	Law of 5 August 2005 on financial collateral arrangements		An assignor assigns property to an assignee for		When the repurchase agreement expires: The assignor must take back the property covered by the	

	(transposing Directive 2002/47/E C)		payment of a price. A provision for an option to subsequently repurchase the same or equivalent property at a price agreed in advance is prescribed.		agreement or equivalent property. The assignee must return the same or an equivalent property.	
Suspension of Contractual obligations <u>Question:</u> May the Creditor suspend his /her obligations (to carry out transport) where the debtor does not pay the creditor in time?						
<u>Answer:</u> Yes (Civil Code, Article 1134-2)						
Termination of the Contract						
Judicial rescission	Civil Code: - Article 1184 (in bilateral contracts), - Articles 1610 & 1654 (in sale contracts).	Yes	The right to rescind is not accepted in the event of bankruptcy of the debtor. (Commercial Code Article 546).	No	The creditor must institute legal proceedings but the judge has wide power of discretion to decide, depending on the seriousness of the debtor's default, to grant a new deadline rather than terminate the contract.	
Termination clause	Civil Code Article 1134	Yes	Failure of the debtor to pay the price within the agreed deadline(s).	Yes	Retroactive annulment of the contract. The creditor must give the debtor a formal notice (with certain exceptions).	
Cancellation clause	Civil Code Article 1134	Yes	Failure of the debtor to pay the price within the agreed deadline(s).	Yes	Cancellation of the contract in the future. The creditor must give the debtor a formal notice (with certain exceptions).	
Default clause	Civil Code Article 1134	Yes	Failure of the debtor to pay the price within the agreed deadline(s).	Yes	Immediate enforceability for all outstanding debts. The creditor must give the debtor a formal notice (with certain exceptions).	

Payment through a third party						
Payment of a subcontractor through a third party, the contracting authority	23 July 1991 Law regulating subcontracting activities.	No	The subcontractor is paid by the contracting authority.	Yes	The contracting authority must have accepted the subcontractor and approved its terms of payment (Law of 1991, Article 4).	
Surety	Civil Code, Articles 2011-2043.	Yes	<p>The guarantor gives an undertaking to pay towards the creditor of another person (the debtor) if this debtor does not fulfil his contractual commitment.</p> <p>If surety is given by a company, requirement for a “common interest” with the principal debtor (Law of 10.08.1915, Article 171-1).</p>	Yes	<p>Formalities provided by the Civil Code (Articles 1325 and 1326): a separate contract from the main contract, drawn up in duplicate and bearing the signature and the handwritten amount of the surety in full.</p> <p>These formalities are :</p> <p>For civil surety but not for commercial surety (Commercial Code, Article 109)</p> <p>For evidence rather than to ensure validity.</p> <p>The creditor may call the surety at any time and the guarantor is subrogated to the creditor’s rights (Articles 1251(3) and 2029 of the Civil Code). Even before paying, the guarantor may claim the debtor for indemnity. (Article 2032, Civil Code).</p>	

THE NETHERLANDS

Means to be implemented in case of non-payment	Legal Basis (civil/commercial code, ...)	Mandatory - “public order” (Yes/No)	Legal procedures	Implementation of one clause/provision in the Contract if “means” is non-mandatory (Yes/No)	Modalities	Useful contacts
Guarantees:						
Questions: Are these kinds of guarantees used in your country? Which is the most used?						
Guarantees: Bank guarantee First request guarantee Mortgage Stock guarantee	Freedom to contract	No			To be negotiated with the banks	
Credit insurance (ex: COFACE)						
Question: What are the different kinds of existing coverage?						
	Freedom to contract	No			To be negotiated with the banks	
Advance payments						
Question: May the Creditor request an advance payment to the Debtor (payment before carrying out transport rather than at the end of the worked month) in case of bad financial situation of the Debtor?						
		No				
Financial deposit						
Question: May the Creditor request a financial deposit (paid to the Creditor before the start of the services – 1 shot – OR put in a bank account a sum which guarantees the payment) in case of bad financial situation of the Debtor?						
		No				

Payment of legal interest						
Question: May the Creditor request payment of legal interest if the debtor does not pay the creditor in time?						
	Article 119/6 of the Civil Code	Yes	Court order for payment	Possible (even when it is a matter of public order)	European order for payment / enforceable title	
Retention of the goods						
Questions: May the Creditor retain the debtor's goods if the debtor does not pay the creditor in time? May the Creditor sell the debtor's goods where the debtor does not pay the creditor in time?						
		No				
Suspension of Contractual obligations Question: May the Creditor suspend his/her obligations (to carry out transport) where the debtor does not pay the creditor in time?						
		No		Possible		
Termination of the Contract						
		No				
Payment through a third party)						
		No				

POLAND

Means to be implemented in case of non-payment	Legal Basis (civil/commercial code, ...)	Mandatory - « Ordre Public » (Yes/No)	Legal procedures / Competent court / bailiff intervention ?	Implementation of one clause/provision in the Contract if “Mean” is non mandatory (Yes/No)	Modalities	Useful contacts
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Guarantees:

Questions: Are these kinds of guarantees used in your country? Which is the most used?

Guarantees:		No		Yes		
Bank guarantee – not practicable	-		Contractual issues, established by contractual terms or banking acts;		In case of non payment a formal notice by private letter shall be sent by registered letter or registered with the acknowledgement of receipt to defendant to ask to execute in the additional time period; in case of third party guarantee also to guarantor;	Legal text: http://isip.sejm.gov.pl www.polskieustawy.com
First request bank guarantee (more used as guarantee)	- no legal acts					In case of mortgage : notarial office
Akredytywa (used as payment instrument)	- Banking legal acts (prawo bankowe)				Legal proceeding and execution defined in legal act: Kodeks Postepowania Cywilnego (KPC)	Warsaw chamber: www.notariusze.pl
Mortgage/hypothèque (used as guarantee of payment)	- Legal act: Ustawa o księgach wieczystych i hipotece		4. Mortgage (hypothèque) :established only by notaries act; and unregistered after in the special competent court who		Competent court: generally the court of defendant Procedure simplifies de mediation art. 184 kpc	In case of legal proceeding – participation of legal attorney is recommended but mandatory in not all cases
Blocked sum on a bank account	- bank practice				Special proceeding between professional entity art. 479 kpc, Special proceeding concerning mortgage, competent court for real-estate place	Site of Polish embassy: www.paris.polemb.net Listing of polish courts
Stock guarantee (contractual pledge on goods or rights)	- civil code art. 306 and next				General proceedings court's cost: 5% [mini 30 PLN (8€) maxi 100 000 PLN (25k€)]; in case of special proceedings partial cost of fixed amount.	http://bip.ms.gov.pl/organizacja/sady.php#sec4 Warsaw – legal councils office
	- art.306 and next of civil code + legal act Ustawa o zastawie					

<p>Registered pledge (nantissement)</p> <p>Mother company guarantee (391 – 393 civil code)</p>	<p>rejestrwym i rejestrze zastawow</p>		<p>keep the register Ksiega wieczysta (Sad wieczystoksi egowy)</p> <p>7. establish by special contract on the identified goods (as vehicle p.ex.) and registered in the special register (ustawa o zastawie rejestrwym I rejestrze zastawow)</p>		<p>Time to make the proceedings depend on the locality of the court</p>	<p>speaking English and French</p> <p>www.polanska.impleo.pl</p> <p>www.nws.com.pl</p> <p>Cracow:</p> <p>www.adamczyk-law.pl</p>
<p>Credit insurance (ex: COFACE) Question: What are the different kinds of existing coverage?</p>						
<p>Credit insurance Factoring</p>	<p>Civil code And insurance regulations Civil code</p>	<p>No</p>		<p>NO because external contract</p>		<p>www.kuke.com.pl www.coface.pl/</p>
<p>Advanced payments Question: May the Creditor request an advance payment to the Debtor (payment before carry out transport and not at the end of the worked month) in case of bad financial situation of the Debtor?</p>						
<p>Arrhes</p>	<p>Yes, defined for the case of non-execution of one of the party or bad financial situation for reciprocal obligations</p> <p>Art. 490 of civil code</p> <p>Defined in 394 civil code</p>	<p>No</p>	<p>Arrhes: Shall be expressly defined in the contract, if not - payment considered as advance payment</p>	<p>Yes</p>	<p>In case of the non-execution of a contract, the advance payment shall be returned.</p> <p>In case of the non-execution of the contract, the other party can keep the arhes given at the moment of the conclusion of the contract or if this party gave it, he can claim a double amount from the second contracting party</p>	

Financial deposit

Question: May the Creditor request a financial deposit (paid to the Creditor before starting of the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor? YES

<p>Financial deposit (caution)</p> <p>Blocked sum on a bank account</p>	<p>Possible</p> <p>Possible</p> <p>Civil law +</p> <p>Banking legcts</p>	<p>No</p>	<p>Defined in the contract</p> <p>Established by the contract between the debtor and his bank, bak establish a document and engage to make the payment to the Creditor</p>		<p>Different modalities for each individual case</p>	
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Payment of legal interests

Question: May the Creditor request payment of legal interests if the debtor does not pay the creditor in time? YES

	<p>Polish regulation: Civil code art. 481</p> <p>The amount defined periodically by governmental regulation</p> <p>(from 2008 13% in annual aggregate)</p> <p>Possibility to match with additional indemnity if prejudice proved</p>	<p>NO – applicable in each case of obligation of payment in money, even if not defined but can be excluded</p> <p>If the amount of the interests is not established in another way / agreement, the amount due is fixed by the law (legal interest); Automatically in each case of pecuniary allowances; can be excluded; the amount can be modified</p>		<p><u>Yes</u> if we wish a higher amount</p> <p><u>No</u> if we decide to comply with the law</p>	<p>If the amount of the interests is not established in another way, the amount due is fixed by the law (legal interest). There is a maximum amount set up every year by decree.</p> <p>In case of non payment a formal notice by private letter shall be sent by registered letter or registered with the acknowledgement of receipt with the amount of interest calculated, with an additional time period defined;</p> <p>Same proceeding as for pecuniary allowances</p>	
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Retention of goods – transport regulation Legal right of lien/ legal pledge

Questions: May the Creditor retain the debtor's goods if the debtor does not pay the creditor in time?

May the Creditor sell the debtor's goods if the debtor does not pay the creditor in time?

	Civil code Art .790, 326 Transport law art. 57	YES	Exist by law Transport: can be used only for guarantying of payment linked with the same contract/ transport	No because the existence of the law	A person obliged to return an item belonging to another person has the right of retention until his claims relating to the expenses incurred on the item and to the redress of the damage are settled; In transport, in case of legal pledge, the carrier can retain the goods and refuse the delivery, the carrier has a priority to execution on the goods before any an others creditors and independently of the property of goods; for execution process application of the regulation of KPC (civil procedure code) same as for the execution of payment from goods (art. 844 – 879 kpc); carrier can sell the goods only if risk of damage or loss (perishable)	
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Suspension of Contractual obligations

Question: May the Creditor suspend its obligations (to carry out transport) in case the debtor does not pay the creditor in time? YES

	Civil code art. 490 (in case of delay in execution of reciprocal commitment)	NO		Not necessary because the existence of the law	Letter with information shall be sent	
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Termination of the Contract

Question: May the Creditor terminate the contract in case the debtor does not pay the creditor in time? YES

	Civil code art. 491(in case of non execution of reciprocal commitment)	No		-	Description of proceedings, As per article 491 of civil code: Notice with additional time to execute with clear intention to terminate the contract; After the additional time period, possibility to terminate the contract without court proceedings	
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Payment through a third party

Question: May the Creditor request direct payment to a third party in case of failure on payment of the Debtor? **NO**

		No		Yes Only on contractual basis	Acceptable unless a contract, law or the nature of the obligation claim otherwise. Creditor cannot refuse to accept the payment from a third party, even acting without a debtor's consent, if a cash obligation is due (art. 391 – 393 civil code)	
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PORTUGAL

Means to be implemented in case of non-payment	Legal Basis (civil/commercial code, ...)	Mandatory - « Ordre Public » (Yes/No)	Legal procedures / Competent court / bailiff intervention ?	Implementation of one clause/provision in the Contract if “Mean” is non mandatory (Yes/No)	Modalities	Useful contacts
Guarantees:						
Questions: Are these kinds of guarantees used in your country? Which is the more used?						
Guarantees: Bank guarantee First request guarantee Mortgage Stock guarantee 	<p>- The referred kinds of guarantees are used in Portugal.</p> <p>- Bank guarantees don't have legal grounds in Portuguese Civil Law. They are contractually stipulated.</p> <p>- Book II, Title I, Chapter VI of the Portuguese Civil Code provides the regime of special obligations' guarantees.</p>	<p>- Bank guarantee – No</p> <p>- Other Guaranties – No</p>	<p>- Book III, Title III of the Portuguese Civil Procedure Code provides the regulation of Enforcement Procedures (“Processo de Execução”).</p> <p>- The general rule in matters of Enforcement is that the competent court is the one of the debtor's or creditor's residence (Article 94 of the</p>	<p>Yes</p>	<p>- Portuguese Civil Law provides a considerable variety of guarantees. Following we will name a few examples:</p> <p>Bail/Deposit (“Caução”);</p> <p>Mortgage (“Hipoteca”);</p> <p>Personal Guarantee (“Fiança”);</p> <p>Attachment of movable assets (“Penhora de bens móveis”) – Articles 848 to 855 of the Portuguese Civil Procedure Code;</p> <p>Attachment of real estate (“Penhora de bens imóveis”) – Articles 838 to 847 of the Portuguese Civil Procedure Code;</p> <p>Attachment of rights (Penhora de Direitos”) – Articles 856 to 863 of the Portuguese Civil Procedure Code);</p> <p>Assignment of Rentals (“Consignação de</p>	<p>Depends on the situation's modality or procedure.</p>

	<p>- Article 821 of the Portuguese Civil Procedure Code regulates which assets can be object of Attachment ("Penhora") and the procedure to be adopted in each case. This procedure is the most common one in Portugal.</p>		<p>Portuguese Civil Procedure Code).</p> <p>- The bailiff is the main character in Portuguese Enforcement procedures.</p> <p>- The Attachment is pursued solely by the bailiff, without the Judge's intervention.</p>		<p>Rendimentos");</p> <p>Pledge ("Penhor").</p> <p>(...)</p>	
Credit insurance (ex: COFACE) Question: What are the different kinds of existing coverage?						
	<p>- Credit insurance has its legal grounds on DL nr. 183/88, from May 24th, in the recent version given by DL nr. 31/2007, from February 14th.</p> <p>- Credit insurance coverage depends on the Credit Insurance Companies' offers.</p>	No	<p>Usually Credit Insurance Companies provide a credit recovery service, through which it tries to negotiate a payment solution with the debtor. In case these negotiations do not present any results, the Company forwards the matter to its attorneys.</p>	Yes	<p>Credit insurance modalities depend on the Insurance Company's list of offers.</p>	<p>Credit Insurance Company (in case the process is forwarded to the attorneys, the Company will provide the attorney's contacts).</p>

Advanced payments

Question: May the Creditor request an advance payment to the Debtor (payment before carry out transport and not at the end of the worked month) in case of bad financial situation of the Debtor?

	<p>- Yes.</p> <p>- Article 440 of the Portuguese Civil Code foresees the possibility of anticipation of compliance.</p> <p>- Article 442 of the Portuguese Civil Code foresees the possibility of a previous deposit ("Sinal").</p>	<p>No</p> <p>(although regarding the possibility of anticipation of compliance, the law assumes that the handing-over of something by one of the parties that totally or partially corresponds to the instalment he is obliged to is considered as anticipation of compliance, except if the parties agree on considering that delivery as a deposit)</p>	<p>- This matter can be contractually forecasted.</p> <p>- The Portuguese Civil Procedure Code also provides a few rules that should be attended in case the contract doesn't regulate this matter.</p>	<p>Yes</p>	<p>- The parties can agree on the procedure that should take place in the concrete situation.</p> <p>- Concerning the possibility of anticipation of compliance, it can derive directly from the law.</p>	<p>The parties, their attorneys or, lastly, the Court of Law.</p>
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Financial deposit

Question: May the Creditor request a financial deposit (paid to the Creditor before starting of the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor?

	<p>- Yes.</p> <p>- In these cases it is common to agree on a Bank guarantee.</p> <p>- Articles 623 to 626 of the Portuguese Civil Code foresee the possibility of Bail/Deposit (“Caução”).</p>	No	<p>- Articles 981 to 990 of the Portuguese Civil Procedure Code regulate the procedure of the possible modalities of Bail/Deposit.</p>	Yes	<p>- Bail/Deposit can be requested by the party who has interest in it.</p> <p>- Bail/Deposit can also be requested by the party who is obliged to render it.</p> <p>- Bail/Deposit can take place when decided by the Court.</p>	The parties, their attorneys or, lastly, the Court of Law.
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Payment of legal interests

Question: May the Creditor request payment of legal interests if the debtor does not pay the creditor in time?

	<p>- Yes.</p> <p>- Articles 559-A, 806 and 1146 of the Portuguese Civil Code foresee a few aspects concerning the interest rate in civil matters, namely it's maximum ceiling.</p> <p>- Article 102 Portuguese Commercial Code foresees the commercial interest rate.</p>	No	<p>- Depends on what the parties agreed and contractually accepted.</p> <p>- Civil Law provides different regulation depending on the concrete situation.</p>	Yes	<p>- Legal Interests</p> <p>- Commercial Interests</p> <p>- Agreed Interests</p>	The parties, their attorneys or, lastly, the Court of Law.
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Retention of goods

Questions: May the Creditor retain the debtor's goods if the debtor does not pay the creditor in time?

May the Creditor sell the debtor's goods if the debtor does not pay the creditor in time?

	<ul style="list-style-type: none"> - According to Articles 754 to 761 of the Portuguese Civil Code, the creditor may retain the debtor's goods in case of non compliance - Lien ("Direito de Retenção"). - The creditor cannot sell the debtor's goods. 	No	<ul style="list-style-type: none"> - Articles 754 to 761 of the Portuguese Civil Code. 	Yes	<ul style="list-style-type: none"> - Can be contractually established. - The Law forecasts the possibility of this form of guarantee. 	The parties, their attorneys or, lastly, the Court of Law.
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Suspension of Contractual obligations

Question: May the Creditor suspend his/her obligations (to carry out transport) in case the debtor does not pay the creditor in time?

	<ul style="list-style-type: none"> - In general, the creditor should carry out his obligation.). In this case, should the debtor not comply with his obligation, the Creditor can call upon legal procedures, like the Enforcement. - In case we are before a bilateral contract with no different time limits for its compliance, 	No	<ul style="list-style-type: none"> - The applicable legal proceedings are forecasted in the Portuguese Civil Code and Civil Procedure Code. - The parties can also contractually establish their own set of rules on this matter. 	Yes	<ul style="list-style-type: none"> - Can be contractually established. - The Law forecasts the possibility of this form of guarantee. 	The parties, their attorneys or, lastly, the
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	<p>each party has the possibility to refuse to render his instalment whilst the other party does not comply with his instalment or does not offer its simultaneous compliance. This possibility is called “Excepção de não cumprimento do contrat” – Exception of non compliance. (Article 428 of the Portuguese Civil Code).</p>					
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Termination of the Contract

Question: May the Creditor terminate the contract if the debtor does not pay the creditor in time?

	<ul style="list-style-type: none"> - In general, the creditor should carry out his obligation.). In this case, should the debtor not comply with his obligation, the Creditor can call upon legal procedures, like the Enforcement. - According to article 801 of the Portuguese Civil Code, in case the debtor's instalment becomes impossible due to himself, the creditor can terminate the contract; if the creditor already complied with his 	No	<ul style="list-style-type: none"> - The contract can be terminated by declaration to the other party. - The applicable legal proceedings are forecasted in the Portuguese Civil Code and Civil Procedure Code - The parties can also contractually establish their own set of rules on this matter. 	Yes	<ul style="list-style-type: none"> - Portuguese Civil Law provides the main rules on this matter. - The parties can eventually agree on the modalities. 	The parties, their attorneys or, lastly, the Court of Law.
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	<p>instalment, he can demand its return. All this independently of the creditor's right to an indemnity.</p> <p>- On the other hand, in case of delay in the compliance ("mora"), should the creditor loose his interest on the debtor's instalment or should the instalment not be realized in a reasonable period of time established by the creditor, the law foresees that the obligation is considered as not fulfilled.</p> <p>- There are, however, a few exceptions regarding certain types of contract.</p>					
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Payment through a third party

Question: May the Creditor request direct payment to a third party in case of failure on payment of the Debtor?

	<p>- Yes, but only if there is a Personal Guarantee on the debtor's side and if, by this personal guarantee, the grantor hasn't the benefit of the previous execution ("Benefício da Excussão Prévia" – Article 638 of the Portuguese Civil Code).</p> <p>- Article 627 of the Portuguese Civil Code foresees the Personal Guarantee ("Fiança").</p> <p>- Article 101 of the Portuguese Commercial Code applicable to the Personal Guarantee in commercial matters.</p> <p>- Article 828 of the Portuguese Civil Procedure Code regarding the Enforcement procedure.</p>	No	<p>- This Personal Guarantee should be contractually established by the parties.</p>	Yes	<p>- The Personal Guarantee's general rules are foreseen in article 627 of the Portuguese Civil Code.</p> <p>- The possibility of more than one grantor is provided by article 649 of the Portuguese Civil Code.</p> <p>- The possibility of the debtor's grantor to have another grantor to guarantee the debtor's non compliance ("Subfiança") is forecasted in article 630 of the Portuguese Civil Code.</p> <p>- The Personal Guarantee on a future credit is foreseen in article 628, nr. 2 of the Portuguese Civil Code.</p> <p>- First Request Guarantee.</p>	<p>The parties, their attorneys or, lastly, the Court of Law.</p>
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Reservation of Title Clause						
	- Article 409 of the Portuguese Civil Code foresees the Retention of Title ("Reserva da propriedade").	No	- This clause can be contractually established by the parties. - In case of real estate or movable assets subject to registration, this clause is only effective against third parties when registered (Article 409, nr.2 of the Portuguese civil code	Yes	- The creditor can retain the title until the total or partial compliance of the obligation; - The creditor can retain the title until the occurrence of another event.	The parties, their attorneys or, lastly, the Court of Law.
Pledging of personal property						
	- Article 821 of the Portuguese Civil Procedure Code foresees the possibility of Attachment ("Penhora"). - Articles 848 to 855 of the Portuguese Civil Code foresee the Attachment of movable assets.	Yes, in the Enforcement Procedure.	The Enforcement procedure ("Processo de Execução") is foreseen in article 801 and following of the Portuguese Civil Procedure Code. - In general, the Competent Court is the court of the debtor's or creditor's residence. - The Bailiff is the main figure in the Portuguese Enforcement Procedure. -The Attachment is pursued solely by the Bailiff, without the Judge's intervention.	It is mandatory, but the parties are free to establish its occurrence in the contract.	Attachment of movable assets ("Penhora de bens móveis") is forecasted in article 848 and following of the Portuguese Civil Procedure Code.	The parties, their attorneys or, lastly, the Court of Law.

ROMANIA

Means to be implemented in case of non-payment	Legal Basis (civil/commercial code, ...)	Mandatory - « Ordre Public » (Yes/No)	Legal procedures	Implementation of one clause/provision in the Contract if “Mean” is non mandatory (Yes/No)	Modalities	Useful contacts
Guarantees:						
Questions: Are these kinds of guarantees used in your country? Which is the most used?						
Guarantees: Bank guarantee (not common) First request guarantee (common) Mortgage(common) Stock guarantee 	Civil Code; OUG (Governmental Emergency Regulation) 99/2006; OG (Governmental Regulation) 9/2004; Application Norms from 14 th of August 2009		Title XIV ON GUARANTOR (BAIL) – On Guarantor’s nature and limits art. 1652 and following of Civil Code Title XVIII ON PRIVILEGES AND MORTGAGES, art. 1718 and following of Civil Code The whole regulation is on Credit Institutions and Capital Adequacy, including mortgage loan banks. The regulation regards financial guarantee contracts for a group of entities (public entities, companies for financial services etc.)			National Bank of Romania Address: Lipscani no. 25, sector 3, Bucharest, 030031 Tel: +4021. - 313.04.10, - 315.27.50. Fax: +4 021 - 312.38.31 Web : www.bnro.ro

			for application of the Head V of Title II Part II of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy. Head V - Stimulating collective system of savings and lending for housing			
Credit insurance (ex: COFACE)						
<u>Question:</u> What are the different kinds of existing coverage?						
	Order No.1 from September 3 rd 2004 Gov. Decree No. 39/1996	Yes	the Statute of the Deposit Guarantee Fund in the Bank System		existing coverage: Deposit Guarantee Fund in banking sector. It has the purpose of ensuring the deposits created within the authorised credit institutions and it pays, as a form of compensation, the individuals, the legal entities or the entities with no legal entity.	National Fund for Credit Insurance for SMEs – Address: Iulian Stefan no.38, Sector 1, Bucharest, RO Tel:+4021-310.18.74, - 310.19.37 Fax: +4021-310.18.57, - 223.19.21 Web: www.fngcimm.ro Fund for Rural Credit Insurance Address: Occidentului no. 5, sector 1, Bucharest, RO ; Te l: +4021 - 312.54.03, - 312.54.05, - 312.54.63, ; Fax : +4021 - 312.54.19 ; E-mail : office@fgcr.ro ; Web: www.fgcr.ro ; Romanian Fund for Credit Insurance Address: Matasari no 46,

						sector 2, 021428 Bucharest Tel: +4021-252-3220 Fax: +4021-252-3318 E-mail: frgc@frgc.ro Web: www.frgc.ro
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Advanced payments

Question: May the Creditor request an advance payment to the Debtor (payment before carry out transport and not at the end of the worked month) in case of bad financial situation of the Debtor?

	Civil Code; L500/2002, Fiscal code	No	Art. 1297and following Art. 52		The Creditor can request an advance payment to the Debtor (payment before carry out transport and not at the end of the worked month) in case of bad financial situation of the Debtor, if there is a contractual clause (it applies in cases of Debtor guilt)	
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Financial deposit

Question: May the Creditor request a financial deposit (paid to the Creditor before starting of the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor?

	Civil Code; Order 1/2004; OG 39/ 1996 Governmental Emergency Order	Yes	Art. 1592 and following the Statute of the Deposit Guarantee Fund in the Bank System		The Creditor can request a financial deposit (paid to the Creditor before starting of the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor. In the case of public acquisitions, the contracting-party can claim a “good execution guarantee” from which it can profit in case of non-compliance with the contract by the debtor.	
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	No. 34/2006 Governmental Decision No. 925/2006		Performance bond for public procurement. Art. 89 and following			
Payment of legal interests						
<u>Question:</u> May the Creditor request payment of legal interests if the debtor does not pay the creditor in time?						
	Civil Code; OUG 50/2010; Fiscal code Law no. 190/1999	According to the Contract	Head 7 and following of Civil Code on credit agreements for consumers. Transposition into national law of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers on mortgage contracts for real estate investments		The Creditor can request payment of legal interests in case the debtor does not pay the creditor in time. The legal interests can be claimed if the contract stipulates it.	

Retention of the goods						
Questions: May the Creditor retain the debtor's goods if the debtor does not pay the creditor in time? May the Creditor sell the debtor's goods in case the debtor does not pay the creditor in time?						
	Civil Code; Civil Procedure Code Law 99/1999	According to the Contract	Art. 1592 and following Art. 372 and following Title VI The legal system of collateral guarantees		The Creditor can retain the debtor's goods in case the debtor does not pay the creditor in time (the retention right), as the law stipulates or in the cases of mobilier warranty contracts (gage). The Creditor can sell the debtor's goods in case the debtor does not pay the creditor in time.	
Suspension of Contractual obligations Question: May the Creditor suspend his/her obligations (to carry out transport) in case the debtor does not pay the creditor in time?						
Suspension of Contractual obligations	Civil Code	No	Title III Contracts and Agreements		The Creditor can suspend its obligations (to carry out transport) in case the debtor does not pay the creditor in time (exception of non-compliance with the contract) According with the contract, it can be stipulated as a measure of obligations suspension until the debtor fulfils its obligations.	
Termination of the Contract						
	Civil Code	Yes	Title III Contracts and Agreements		The Creditor can terminate the contract in case the debtor does not pay the creditor in time.	
Payment through a third party						
	Civil Code	No	Art. 1652 and following		The Creditor can request direct payment to a third party in case of failure on payment of the Debtor (if a warranty contract exists) – for example: the fidejussion.	
Deed-retention clause					Failure on payment of the Debtor (if a warranty contract exists for example the fidejussion)	

Notes :

Directives 2006/48/EC and 2006/49/EC relating to credit institutions were transposed into Romanian law by the following texts: OUG 99/2006, OG 9/2004 and the implementing regulations of 14 August 2009

			of the domicile of the debtor.			
Credit insurance (ex: COFACE)						
Question: What are the different kinds of existing coverage?						
	Subject to contract	NO			To be negotiated with the banks	
Advanced payments						
Question: May the Creditor request an advance payment to the Debtor (payment before carry out transport and not at the end of the worked month) in case of bad financial situation of the Debtor?						
	Subject to contract It could request it, but not common at all in transport contracts	NO		YES		
Financial deposit						
Question: May the Creditor request a financial deposit (paid to the Creditor before starting of the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor?						
	Subject to contract It could request it, but not common at all in transport contracts	NO		YES		
Payment of legal interests						
Question: May the Creditor request payment of legal interests in case the debtor does not pay the creditor in time?						
	Article 1108 civil Code (for the purchase of goods, art 341 of commercial Code) Article 41 of Law 15/2009 in	NON	Contract prevails but in the case that there is not any agreement, creditor	YES if we want to increase the legal rate	First agreed interest is paid, otherwise the statutory interest rate published every year-end in the Official Government Gazette (BOE). The interest to be applied is what we call « interés de demora » and depends on the rates of the European	

	connection with Law 3/2004.		could claim legal interest if payment is not made in 30 days (Article 41 of Law 15/2009 in connection with Law 3/2004)		Central Bank (currently is 8%)	
Retention of goods						
Questions: May the Creditor retain the debtor's goods in case the debtor does not pay the creditor in time?						
May the Creditor sell the debtor's goods in case the debtor does not pay the creditor in time?						
	Subject to contract But it can also be applied in transports « a porte debido » (that is, those to be paid by the consignee at the time of delivery), even if nothing is stated in the contract		Article 40 of Law 15/2009.	YES		
Suspension of Contractual obligations						
Question: May the Creditor suspend its obligations (to carry out transport) in case the debtor does not pay the creditor in time?						
	ART 1.124 Civil Code			NO	The non defaulting party may request execution and/or termination of the contract	
Termination of the Contract						
Question: May the Creditor terminate the contract in case the debtor does not pay the creditor in time?						

Termination of the Contract	Article 1124 of civil Code = possibility to terminate the contract when failure in execution of the obligations			NO	<p>The non defaulting party may request execution and/or termination of the contract</p> <p>The non defaulting party may request payment of damages</p> <p>What are the process ? Letter to be sent ? In front of a court? At a first step, a resolution letter should be sent. Under a normal course of events, this would end the process, unless the other party believe there is not reason form termination, in which case, the process would probably end before a court</p>	
Payment through a third party						
Question: May the Creditor request direct payment to a third party in case of failure on payment of the Debtor?						
	NO unless there is any guarantor			YES		
Reservation of Title Clause						
Pledging of personal properties						
	Quid art 374, 375 commercial code (These articles have been derogated by Law 15/2009)					

Notes:

The most common practice is first to negotiate an out-of-court settlement for late payment. The demand to pay interest is generally made only when it is clear that any negotiation has become impossible and that the commercial relationship can no longer be maintained.

For controversies under 6.000 Euros, transport litigations must be submitted to binding arbitration before “Junta Arbitral de Transporte”. This binding arbitration is compulsory for these amounts unless the parties have expressly refused to it

SWITZERLAND

Retention of goods

Questions: May the Creditor retain the debtor's goods when the debtor does not pay the creditor in time? May the Creditor sell the debtor's goods when the debtor does not pay the creditor in time?

	<p>Article 895 of the Swiss Civil Code</p> <p>droit de rétention (lien),</p> <p>condition (clauses)</p>				<p>Law on legal proceedings and bankruptcy</p> <ul style="list-style-type: none"> - debt collection for realisation of pledged property <p>Article 151 et seq.</p> <ul style="list-style-type: none"> - seizure <p>Article 271 et seq.</p> <ul style="list-style-type: none"> - legal proceedings and bankruptcy – Canton of Vaud <p>http://www.vd.ch/fr/themes/economie/poursuites-et-faillites</p> <ul style="list-style-type: none"> - legal proceedings and bankruptcy – Canton of Geneva <p>http://www.geneve.ch/opf/</p> <p>debtor bond (personal property)</p> <p>mortgage bond (real estate)</p> <p><u>Legal proceedings:</u></p> <p>It is highly recommended to seek the assistance of an attorney before starting legal proceedings.</p> <p>1. Documents to be prepared and sent:</p> <ul style="list-style-type: none"> - the requisition for debt collection on pledged property - for the debtor bond; specify the owner of the goods - for the mortgage bond; specify the owner of the building <p>The requisition form can be found in two previously mentioned websites</p> <p>2. Once notified, the debtor has 10 days to contest</p> <p>3. Once the procedure is accepted/justified, the judge may give the debtor a new final delay to enable him to pay his debt</p> <ul style="list-style-type: none"> - 1 month for a debtor bond 	<p>the Civil Code</p> <p>http://www.admin.ch/ch/f/rs/c210.html</p> <p>legal proceedings and bankruptcy law</p> <p>http://www.admin.ch/ch/f/rs/c281_1.html</p>
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					<ul style="list-style-type: none"> - 6 months for a mortgage bond <p>4. Then, as mentioned in article 154 of the Law on legal proceedings and bankruptcy- Requisition for sale of pledged property, a request to sell will have to be issued in order to execute the lien to cover the amount owed. The procedure can take</p> <ul style="list-style-type: none"> - debtor bond: 1 month to 1 year - mortgage bond: 6 months to 2 years 	
Debitor bond						
	Code of obligations Article 140				<p>the Civil Code</p> <ul style="list-style-type: none"> - Article 884: nantissement (security, pledge, cover) - Article 885: bétail (livestock) - Article 895: gage de créance (debt security) <p>Right of retention (lien): Article 37 Law of legal proceedings and bankruptcy and Article 895 of the Civil Code</p>	Code of obligations http://www.admin.ch/ch/f/rs/c220.html
Suspension of Contractual obligations						
Question: May the Creditor suspend his/her obligations (to carry out transport), when the debtor does not pay the creditor in time?						
	Code of obligations				<ul style="list-style-type: none"> - giving the debtor notice to pay Article 102 et seq. - effects of non-fulfillment of agreement Articles 97 and 101 - non-performance –penalty clause (non-performance of a contract) Article 160 et seq. - commercial sales Article 190 	Code of obligations http://www.admin.ch/ch/f/rs/c220.html
Termination of Contract						
	Code of obligations				<ul style="list-style-type: none"> - extinguishment of obligations pertaining to the performance of the contract Article 114- impossibility of performance Article 119 - cancellation of debt Article 115 - compensation 	Code of obligations http://www.admin.ch/ch/f/rs/c220.html

					Article 120 et seq.	
Payment through a third party						
(surety)	Code of obligations				<ul style="list-style-type: none"> - surety bond Article 492 et seq. written form, depending on the amount, this needs to be done in the presence of a notary - independent guarantee, security. Not dealt with in Swiss law. In general, this type of commitment is established through a bank 	Code of Obligations http://www.admin.ch/ch/f/rs/c220.html
Lien on property						
	Article 715 of the Swiss Civil Code				Needs to be registered in the Office of legal proceedings, prosecution office)	The Civil Code http://www.admin.ch/ch/f/rs/c210.html
Special Transport						
	Code of Obligations				<ul style="list-style-type: none"> - Code of obligations Article 440 et seq. - Swiss Road Haulers' Association http://www.astag.ch - Swiss Freight Forwarding and Logistics' Association http://www.spedlogswiss.com/ 	Code of Obligations http://www.admin.ch/ch/f/rs/c220.html

UNITED KINGDOM

Means to be implemented in case of non-payment	Legal Basis (civil/commercial code, ...)	Mandatory - « Ordre Public » (Yes/No)	Legal procedures / Competent court / bailiff intervention ?	Implementation of one clause/provision in the Contract if “Mean” is non mandatory (Yes/No)	Modalities	Useful contacts
Guarantees: Questions: Are these kinds of guarantees used in your country? Which is the most used?						
Guarantees: <ul style="list-style-type: none"> • Bank guarantee • First request guarantee (but not common) • Mortgage • Stock guarantee (If it applies it would usually be through the likes of a ‘retention of title’ clause by the supplier) • 	Contractual Bank Guarantee – potentially the option with least risk, but the bank will charge the customer to provide it, so unusual to be offered First Request – called a parent company guarantee, more usual, but only as good as the worth of the parent company Mortgage – most likely subject to the bank having one in place first, and will require registration to be effective Stock – Lien – dealt with below	Not Mandatory	All options would be enforced in the same way as any other contract	Will need to be detailed in the contract or another document to be effective	<ul style="list-style-type: none"> • <u>Commercial arrangements with banks</u> • <u>Guarantee of payment</u> can apply in the UK, and are more common for settlement to foreign suppliers of goods and services. They are more appropriate when issued by a UK bank, • A Standby Letter of Credit is issued by a UK bank on behalf of an importer to allow the importer to operate on open account terms. For the foreign exporter (supplier - provider of services) this provides them with a guarantee in the event that the importer does not pay. • A foreign supplier can request an Advanced Payment Guarantee if they wish to receive monies early (although not common between the UK and France). • Guarantees would normally have some of the following features; <ul style="list-style-type: none"> - They can have a reducing clause option which reduces the liability as payment/s are received - The Bank issuing the guarantee will mark it as a liability against the customer, they are issuing it on behalf of (usually taking a counter guarantee in the process) 	

					<ul style="list-style-type: none"> The governing law will be subject to negotiation, the buyer would 'expect' English or Scottish law <u>Mortgages and stock guarantees</u> are more commonly provided by customers to their bank as security, and less generally provided to suppliers. Even if they were provided to suppliers it may arise that they would be ranked behind a bank, who may have a 'first charge' on these items. This would result in a reduced level of security for the supplier. Additionally in the UK not all businesses own a property, a lot will lease/rent a property, and as a result will not be able to provide a mortgage. 	
Credit insurance (ex: COFACE)						
<u>Question:</u> What are the different kinds of existing coverage?						
	An internal arrangement	Not Mandatory		Does not need to be mentioned in the contract as it is an internal matter and not connected with the customer	<ul style="list-style-type: none"> Mainly from insurance companies It may be possible to take out credit insurance on a UK company. The ability to do will, however, depend on the credit standing of the debtor; credit insurers have been more reluctant to insure in the current economic environment. Invoices issued to large and well known UK businesses are more likely to be insured, although maybe not at 100% levels. The nature of the contract, and stock, may also be a factor. Insurers will prefer 'clean invoices' whereby the debtor has to pay the full sum, and is not able to hold monies back for a period, until for example the goods are onward sold, or after a performance/warranty period. Whilst it may be the case that insurers will insure the 'less creditworthy debtor' at a lower percentage of cover, if it is less creditworthy they may not be prepared to insure at all 	Coface Atradius Expatrian

Advanced payments

Question: May the Creditor request an advance payment to the Debtor (payment before carry out transport and not at the end of the worked month) in case of bad financial situation of the Debtor?

	Contractual	Not Mandatory	Treated in the same way as normal payments under the contract	Needs to form part of the commercial agreement with the customer and then be specified in the contract	<ul style="list-style-type: none"> • The Creditor can request an advance payment to the Debtor (payment before carry out transport and not at the end of the worked month) in case of bad financial situation of the Debtor. • This will be down to contract negotiations. Advanced payment does arise and will be subject to discussions on terms of trade. • The UK Company will naturally want to defer payment, and will argue this is common in the UK market. Where, however there are concerns about getting paid advanced payment OR part payment should be considered. • A supplier can also undertake credit checks on the debtor, through a credit reference agency. The information received here should be a key factor in determining the contract terms; <ul style="list-style-type: none"> -Credit Rating -An advice that the debtor is 'good for a certain sum of money' -Debtor payment history (is this is not available it is because the debtor has been reluctant to provide it) • Some advanced payments may be backed by an Advanced Payment Guarantee 	
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Financial deposit

Question: May the Creditor request a financial deposit (paid to the Creditor before starting of the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor?

	Contractual	Not Mandatory	Will depend on the terms attached to it	Care needs to be taken in drafting the provisions so that the money on deposit cannot be claimed by an Administrator	<ul style="list-style-type: none"> • The Creditor can request a financial deposit (paid to the Creditor before starting of the services – 1 shot – OR put in a bank account a sum which guarantee the payment) in case of bad financial situation of the Debtor. • A financial deposit may be requested, although some UK companies may not be 	
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					<p>familiar with this process, they understand the concept of Advanced Payments and Guarantees better.</p> <ul style="list-style-type: none"> Financial deposit could be in the form of an Escrow account, which is usually managed by a legal firm on behalf of the buyer and seller – with terms attached. The supplier should try and have the terms in their favour, for example they get paid as long as they perform under the contract. The place of domicile and covering law would also need to be discussed (ideally in the supplier's jurisdiction) 	
Payment of legal interests						
<p>Question: May the Creditor request payment of legal interests in case the debtor does not pay the creditor in time?</p>	<p>Late Payment of Commercial Debts Act 1998</p> <p>Also contractual</p> <p>Legal report</p>	<p>Mandatory</p>	<p>Treated as a contractual claim in the usual way</p>	<p>A rate is set in Statute but different contractual terms can be agreed between the parties</p>	<p>Can charge interest on outstanding payments.</p> <ul style="list-style-type: none"> The Creditor can request payment of legal interests in case the debtor does not pay the creditor in time. This would be subject to negotiation and would need to take place at the time of discussing contract terms. For very large contracts Legal Guarantees can be issued covering this issue <p><u>Note:</u> A Legal report would provide a more detailed response</p> <ul style="list-style-type: none"> Can charge interest on outstanding payments. Le montant des intérêts est fixé par décret. Il est égal au minimum au taux bancaire de base + 8%. <p>This statutory interest relates to commercial debts only. It may not therefore be claimed from a consumer.</p>	

Retention of goods						
<p>Questions: May the Creditor retain the debtor's goods in case the debtor does not pay the creditor in time? May the Creditor sell the debtor's goods in case the debtor does not pay the creditor in time?</p>	<p>Legal basis</p> <p>Retention of Title deals with goods which are supplied to another party. This would not apply to us except where we are buying goods for use within the business.</p> <p>The retention of goods by us would come under a Lien. A Lien exists under common law and can also exist under contract.</p>	<p>Not Mandatory</p>	<p>Treated as a contractual claim in the usual way</p>	<p>The contract can provide that no lien will exist</p> <p>A common law lien will not automatically include a right of sale</p> <p>A contractual lien may contain a right of sale. If no right of sale is included then the party holding the lien will not be able to sell the goods.</p>	<p>The seller of unpaid good scan retain them if they are still in his possession and have not been entrusted to a transporter.</p> <ul style="list-style-type: none"> • The Creditor can retain the debtor's goods in case the debtor does not pay the creditor in time • The Creditor can sell the debtor's goods in case the debtor does not pay the creditor in time. • This is very much subject to contract discussions between buyer and seller. The UK buyer will try to resist, but this is a valid means of reducing risk – notwithstanding the buyer may say that this is not commonly used. <p><u>Note:</u> A Legal report would provide a more detailed response</p>	
Reservation of Title Clause						
	<p>Aluminium Industrie Vassen c/ Romalpa Aluminium Ltd (1976)</p> <p>Not applicable to our supply of services</p>	<p>Not Mandatory</p>	<p>Enforced under the contract</p>	<p>We should resist its inclusion in any contract governing the supply of goods to us</p>	<p>A “Romalpa” or retention of title clause can be inserted into a contract.</p> <p>There is no entitlement to retention of goods without the clause.</p>	
Suspension of Contractual obligations						
Question: May the Creditor suspend his/her obligations (to carry out transport) in case the debtor does not pay the creditor in time?						
	<p>Contractual</p>	<p>Not Mandatory</p>	<p>Enforced under the contract</p>	<p>Must be included within the contractual terms to take effect. A suspension</p>	<ul style="list-style-type: none"> • The Creditor can suspend its obligations (to carry out transport) in case the debtor does not pay the creditor in time (<u>but</u> this is more a legal question). • If this were to apply it would need to be made very clear at the outset of contract 	

				without such a right would be a breach of contract	<p>negotiations, with it being specifically agreed of the circumstances on which this were to apply</p> <p>Note: A Legal opinion would be more appropriate to this question</p> <p>All commercial transactions in business are governed by contract therefore any claims would be via a court claim for failure to comply. It is possible for a <u>court</u> to make individual contract terms void while leaving the remaining terms in place to complete the contract.</p>	
Termination of the Contract						
<u>Question:</u> May the Creditor terminate the contract if the debtor does not pay the creditor in time?						
	Contractual	Not Mandatory	Treated as a contractual claim in the usual way	The contract will set out when termination is possible for non-payment. Termination outside of those provisions may be breach of contract	<ul style="list-style-type: none"> In the first instance discussions on this point should be clear at the time of contract negotiations. Must be mutual or could be a breach of contract can then sue either for specific performance or damages for breach. 	
Payment through a third party						
<u>Question:</u> May the Creditor request direct payment to a third party in case of failure on payment of the Debtor?						
	Contractual	Not Mandatory	Treated as a contractual claim in the usual way	This will only be possible if there is a contract in place with the third party allowing for a claim to be made	<ul style="list-style-type: none"> The Creditor can request direct payment to a third party in case of failure on payment of the Debtor. But it's not common. In all likelihood the Debtor will be unable to pay, and other parties may have a higher payment ranking which prevents the debtor making payment to the creditor or a third party. Clarification is required on the question here. But a third party is not common, unless the third party has a specific interest in the transaction 	

Notes :

SEPA direct debit is gathering pace amongst some banks, including the Business to Business (B2B) scheme – this may be a means of collecting across Europe to increase certainty.

E-invoicing is picking up amongst some larger companies e.g. Tesco's increasing payment processes

Invoice Finance is increasing further which takes out some of the risk of non-payment in the first place.