Atradius
Collections

International Debt Collection Handbook

Sixteenth Edition

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Atradius Collections

Introduction

Welcome

We're extremely proud to present you with the 16th edition of the International Debt Collection Handbook. This edition includes three new countries: Bosnia and Herzegovina, North Macedonia, and Serbia.

Since its launch in 2008, the International Debt Collection Handbook has quickly established itself as a critical support tool for collection decisions in foreign countries. International debt collections and country-specific legal systems create challenges that affect every business. The International Debt Collection Handbook is an invaluable and reliable tool that helps decision-makers all over the world select the right approaches to debt collections. It outlines the diversity and complexity of debt collection approaches for each country included in the handbook, often with an immense amount of details. The International Debt Collection Handbook draws from the expertise of Atradius Collections' local offices and explains the different stages of amicable settlements, regulations, legal proceedings, and insolvency procedures in each country.

No business is immune to the risks associated with international trade or poor payment behaviour. Maintaining and protecting your cash flow are absolutely crucial. Having knowledge of amicable collections and the country-specific legal phases surrounding collections is vital for survival in a global economy. By relying on our local expertise as detailed in the International Debt Collection Handbook, you can ensure that you are following a professional and successful approach.

I'm sure that you will find the International Debt Collection Handbook a highly useful, in-depth resource for all your business decisions relating to debt collections.

And if you need help with international debt collections, we are there.

Kind regards,

Rudi De Greve
Global Operations Officer, Atradius Collections

About Atradius Collections

Atradius was originally founded as NCM in the Netherlands in 1925 and was created with the goal of improving trade for companies in the Netherlands. In Germany, Atradius' roots stemmed from Gerling Credit, which was established in 1954 and operated solely out of Germany until 1962, when it opened its first international office in Switzerland. In Spain, Crédito y Caución was founded in 1929 and focused on growing steadily to become the dominant credit insurance and surety company on the Iberian Peninsula.

The heritage, knowledge, and exemplary service standards of these three companies are now combined within the Atradius Group, creating as part of its activities Atradius Collections - a global leader in business-to-business (B2B) debt collections.

With such a pedigree and global reach, we're equipped to not only leverage successful debt collections on behalf of our clients, but also set out to maintain high standards in the market. We've become a key player in the B2B collection market.

As a result of being a separate division within the Atradius Group, we hold a strong position, sharing history, knowledge, and reputation, which help ensure that we deliver when it comes to collecting outstanding debts, managing clients' accounts receivable, or guiding them along the route to growth. We provide leading B2B collection services, plus a range of solutions that cover receivables management's needs. Our integrated worldwide network and operations are unique in the market. Our online collection management system allows our clients to place and manage debt cases 24 hours a day, 365 days a year.

With a presence in 40+ countries and an extensive network worldwide, we serve over 16,000 businesses and collect more than EUR 350 million per year. As part of the Atradius Group, we look back on over 90 years of global credit management industry experience, positioning our business as a leading international trade invoice collection company.

Atradius Collections

1. Argentina

Industries

Chemicals

Consumer durables

Food

Minerals

Textiles

Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

1.1 Amicable collections

1.1.1. General information

We provide debt collection services with extensive local expertise in order to meet your needs. We contact debtors verbally and in writing with a proactive and objective approach, aiming to maintain the relationships between you and your debtors at all times.

1.1.2. Local agents

We work with a range of selected partners to supplement our local knowledge and expertise. They complement our global presence and help us meet your needs wherever you are located in the world.

Our local partners in Argentina are located in Buenos Aires. If necessary, we can visit debtors at their own local addresses. However, travel costs must be covered by you.

1.1.3. Interest

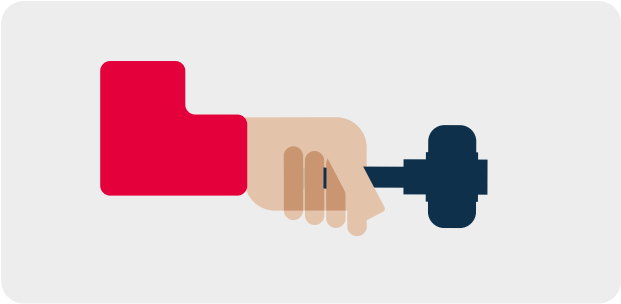
Usually, during the amicable phase, debtors are charged at a rate not exceeding 1% per month. Meanwhile, in order to have the interest paid, you're obliged to provide an official document, such as a debit note.

1.1.4. Debt collection costs

During the amicable phase, this is a matter of negotiation. However, collection costs can't be added to a case unless a signed contractual agreement exists between you and your debtor.

From a cultural point of view, Argentinian debtors aren't used to paying debt collection costs.

1.2. Legal collections



1.2.1. General information

We take legal action when all options have been exhausted during the amicable phase. Debtors are considered being in default through a registered letter, which, although is mandatory to proceed to the legal route, is a formal notice recognised by law as evidence.

1.2.2. Required documents

The documents required to proceed with legal proceedings are:

- A notarised power of attorney with an apostille
- The original invoices or promissory notes
- The bills of lading
- Other original documentation, like the contracts between you and your debtor

The power of attorney, which represents you, must be written or translated by a public translator into the local language (Spanish), granted before a notary, and legalised with an apostille.

1.2.3. Legal dunning procedures

Regarding commercial law in Argentina, a shorter process than an ordinary lawsuit can be started only when there is an executive title – a title or negotiable instrument that implies its execution. These are promissory notes, cheques, and agreements, in which the debtor recognises their debt before a notary or judicial warrants that order the debtor to pay the debt.

1.2.4. Lawsuits

Argentina follows the civil law system, which is divided into:

- Federal courts, which are organised by the federal government
- Provincial courts, which are organised by the provinces
- Courts of the City of Buenos Aires, which, although being called "national courts", have jurisdiction in the city only

Prior to this instance, the law requires compulsory mediation. If the mediation isn't successful, a trial begins and legal fees are to be paid in advance. Typically, the trial goes through a long evidentiary stage.

1.2.5. Expected time frame

In the event that it's feasible to initiate an executive action, the process may run until its completion during a period of no longer than three years. When it's necessary to appeal to an ordinary trial with a long evidentiary phase, it usually takes more than three years.

1.2.6. Costs and interest in the legal phase

Initially, the costs of the formal presentation of a judicial action, whether executive or ordinary, range from 3% to 5% of the total amount to be claimed. If this action must be initiated in a jurisdiction other than Buenos Aires, the initial costs may reach up to 5%.

Interest and extrajudicial costs may be charged as part of the legal claim. Extrajudicial costs must be clearly established. Although interest rates agreed by the parties are usually accepted, the judge has the power to modify them if there is evidence of disproportion or unjustified enrichment.

1.3. Insolvency proceedings

1.3.1. General information

Under Argentinian law, debtors are generally able to start insolvency proceedings when they're no longer able to pay their debts as they're due.

The debtor may file for both liquidation and reorganisation through insolvency proceedings or reorganisation proceedings. They need to submit an offer or proposal for payment, which generally consists of debt settlements, to the approval of the majority of the creditors. It should be noted that the filing for insolvency proceedings interrupts the course of credit interest.

If the debtor's proposal isn't approved and they simply can't continue to operate, then their bankruptcy is declared. The intention is to liquidate the debtor's assets and distribute the revenue among the creditors. In this procedure, creditors rarely receive dividends.

1.3.2. Proceedings

Along with the start of reorganisation proceedings, a controlling trustee authority is appointed to the proceedings, and deadlines are set for the filing of credits. The creditors whose credits have been admitted to the debtor's liability must then approve or reject the debtor's proposed payment, which will be extended to all the creditors. In the event of not obtaining the legal majority, the debtor will be declared bankrupt. The debtor's assets will be liquidated and dividends will be distributed among the creditors.

1.3.3. Required documents

The required documentation is advised to be originals, such as invoices, bills of lading, promissory notes, and powers of attorney.

The power of attorney, which represents you, must be written in or translated by a public translator into the local language (Spanish), granted before a notary, and legalised with an apostille.

1.3.4. Expected time frame

The deadline for submitting credits is usually between two and six months after the insolvency requirements.

The duration of insolvency proceedings is usually between four and 10 years, starting with a payment procedure.

The law doesn't set limits on either payment plans or debt settlements.

Atradius Collections

2. Australia

Industries

Chemicals

Food

Machines

Minerals

Transport

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

2.1. Amicable collections

2.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to federal and state law.

When there is a case of dispute, we aim to reach an amicable solution between you and your debtor. We do this by analysing the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as all standard terms that have been agreed to).

2.1.2. Local agents

Although it isn't common practice in Australia, we can employ local agents to make site visits to debtors in all areas of the country..

2.1.3. Interest

Depending on the specific legislation in each state and territory, you may be able to charge debtors for interest once proceedings are commenced. However, prior to the commencement of legal action, we aren't allowed to automatically charge your debtors for interest, unless your terms and conditions and/or contracts specifically outline a penalty for overdue payment.

2.1.4. Debt collection costs

In Australia, debt collection costs aren't chargeable to your debtors, unless your terms and conditions and/or contracts specifically outline exactly which collection costs become the responsibility of the debtors and when.

2.1.5. Prescription

The general prescriptive period in Australia for simple contract debts is generally six years, starting from the original due dates of the debts. This means that the courts won't hear action for payment if the debts are outstanding for more than six years. Legal action for such debts is statute barred.

2.1.6. Payment methods

The most common Payment methods is bank transfers. We don't offer direct debiting from debtors' accounts.

2.1.7. Types of companies

Sole trader

- An individual trading on their own
- The sole trader owns all the business assets and is responsible for the liability of the business
- Liability is unlimited and includes all of the sole trader's personal assets, including any assets they share with other persons

Partnership

- An association of people or corporations running a business together, but not as a joint venture
- It can be a normal partnership, a limited partnership, or an incorporated limited partnership
- Apart from the partners with limited liability, all the other partners are liable for financial obligations. This applies even if one partner incurs debts without the other partners' knowledge or consent

Trust

- A business structure where a trustee holds the property or income for the benefit of others called beneficiaries
- Trusts have various complex structures, each with its own set of financial and legal obligations
- A trust can't operate without its trustee

Proprietary limited company

- A legal entity separate from its shareholders
- Regulated under the Corporations Law, which sets out substantial obligations for the company's directors
- The company has limited liability, but the directors can be personally liable under the Corporations Act 2001 if they're found to be fraudulent, negligent, or reckless

2.1.8. Sources of information

In Australia, we contract very experienced reporting agencies to assist with assessments of debtors' financial situations. Depending on the debtors' legal structures, we can also find out further information, such as whether they own any property, to determine the best courses of action against the debtors.

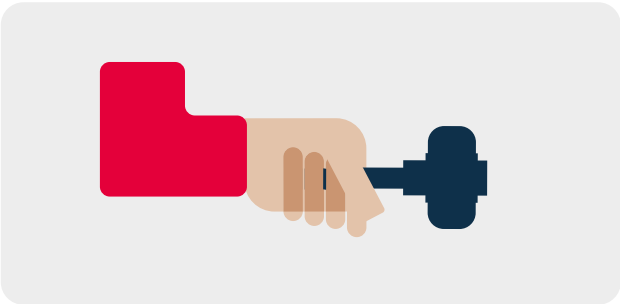
2.2. Retention of title

Under the Personal Property Securities Act 2009 (Cth), sellers can register their interest with the Personal Property Securities Register in order to protect that interest and the right to repossess their goods, should their buyers fail to pay. For situations of continuous supply of goods, the sellers need to register only once for each buyer and not for every supply of goods.

2.3. Safeguard measures

In case your debtor isn't able to settle your claim, we can request that the debtor secure the debt in favour of you – the creditor. This can be done amicably and cost-effectively by providing a deed of an acknowledgement of debt drafted by our solicitors. This allows for the deed being used as evidence of the debt if any legal action in the courts is disputed. We can also request that the directors of the debtor company sign personal guarantees that allow them a suitable long-term repayment plan (over three months). The debtor can also offer other means of security, such as mortgages, assignments of debt or assets.

2.4. Legal collections



2.4.1. Required documents

In order to begin legal proceedings, we need:

- Copies of the invoices
- A clear statement of account indicating the payments and credit notes that have been made for the outstanding invoices
- Any contracts and terms and conditions binding both parties, even when a contract wasn't entered into but the terms were issued

As the lawsuit proceeds further, we may require additional documentation, such as copies of the contracts, orders, confirmations, delivery notes, and invoices.

In case of dispute, all the notes of the conversations between you and your debtor via letter and email that may assist our lawyers should be kept.

2.4.2. Legal dunning procedures

It's considered best practice to issue a form of a pre-legal step before taking legal action to give the debtor a chance to pay before incurring costs.

2.4.3. Lawsuits

To commence court proceedings, you need to file a statement of claim. This document sets out the basic details of the debt and informs the debtor that they need to pay the debt or defend the matter within the time frame provided for in each jurisdiction after the service of the statement of claim. If the debtor doesn't mount a defence or pay within that time frame, then a judgment application can be filed with the court for a judgment to be rendered against them.

The full legal court scale costs and disbursements can be claimed in the statement of claim. They become payable upon the issuance of the statement of claim, not its service.

If the debtor hasn't paid the amount claimed or mounted a defence within the required time frame of the service of the statement of claim, you're entitled to apply for a default judgment against the debtor. This is only relevant in New South Wales.

2.4.4. Appeals

Appeals from the Local Court are taken to the Supreme Court, thus making any application very expensive. Appeals must be lodged within 28 days from the date of the decision or such other time as allowed by the court.

It's also possible for the judgment debtor to make an application for setting aside a default judgment. To do so, they have to provide evidence to prove two things:

- There is a reasonable explanation for why no defence was mounted within the time allowed, and more importantly
- There is an arguable defence to the claim

2.4.5. Expected time frame

The average duration of normal standard legal proceedings is between 10 and 16 weeks, whereas a defended court procedure can take 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on both sides.

2.4.6. Costs and interest in the legal phase

The costs of civil law procedures are determined by each state's legislation and regulations and all differ slightly. All costs depend on the outstanding principal amount, which also determines which court the matter is started in.

Issuing a summons costs approximately AUD 400 – AUD 1,800 in court filing fees and AUD 500 – AUD 1,700 in

solicitors' costs, depending on the debt's value. Then obtaining a default judgment will cost another AUD 300 – AUD 750 in solicitors' costs. Enforcement options will cost approximately AUD 500 – AUD 1,000 for a garnishee order, an examination notice, or a writ for a levy on property. Bankruptcy and winding-up applications are significantly more expensive, with the total proceedings at times costing AUD 8,000 – AUD 10,000.

Under Australian law, no automatic costs or interest can be added to the debts collected by commercial debt collectors. When legal action is taken through a court (a statement of claim), the legislation allows for a prescribed amount being added to the debt to cover the court filing fees, solicitors' drafting costs, and prescribed interest. These are referred to as scale costs and are legally added to the amount of debt upon the filing of the statement of claim.

2.5. Enforcement

2.5.1. Enforcement in debt

You can enforce a court-awarded judgment in the following ways.

Garnishee order

A garnishee order is an order made by the court to allow the creditors to recover the judgment debts from the debtor's bank accounts, wages, or even the people who owe money to the debtor. The person who the order is addressed to (the bank or person who owes money to the judgment debtor) is known as the garnishee. The most common garnishee order is for the judgment debtor's wages or salaries.

Examination notice

If the creditors are unsure about the judgment debtor's financial position, the judgment debtor can be asked to provide information about their income and assets. This is done with an examination notice or an examination order and it can help determine whether to take further enforcement actions and what forms those actions should take. The filing fee is approximately AUD 600 for a corporation, and the service fee varies depending on the debtor's location.

Bankruptcy

If the debtor has a debt of more than AUD 10,000, bankruptcy proceedings can be brought by the creditors. When the debtor is declared bankrupt, then all of the debtor's property (with the exception of basic necessities) comes under the control of a trustee. The creditors may then lodge proof of their debts (the judgment debts) with the trustee to receive shares of the profits from the sale of the debtor's property.

The first step in bankruptcy proceedings is usually serving the debtor with a bankruptcy notice. The bankruptcy notice is a form requiring the debtor to pay their debts within 21 days. Once 21 days have elapsed since the service of the bankruptcy notice on the debtor, a creditor's petition must be filed with the Federal Magistrates Court. The costs of bankrupting the debtor should be carefully considered as it may cost over AUD 8,000.

Winding up

Winding up is similar to bankruptcy. To wind up the debtor company, the creditors must prove that it's insolvent (unable to pay its debts) by issuing a statutory demand. If the judgment debtor doesn't respond to the statutory demand within 21 days, the creditors can file an application for a winding-up order.

2.5.2. Enforcement in movable property

Writ for a levy on property

A writ for a levy on property is an order for the sheriff to seize and sell at auction the personal property (not land) belonging to the debtor. The money from the sale of the goods is used to pay the judgment debts owed to the creditors.

In many cases, the arrival of the sheriff with a writ will encourage the judgment debtor to avoid the sale of their property by making arrangements to pay the creditors. At this stage, the debtor can either request to set aside the judgment and make an instalment application to the court, or disagree with the outstanding amounts of the judgment debts.

The sheriff charges AUD 100 for each address visited and for each time an address is visited. The cost of the sheriff auctioning the seized goods is usually a flat fee of approximately AUD 75, but it can be more in some areas due to advertising and auction expenses. If the sheriff needs to tow a car, the creditors will need to pay a deposit of around AUD 500, which won't be refunded. The sheriff also charges a levy of 3% on any monies made from auctioning the seized goods, payable after the auction. Any payable amount will be added to the judgment debts.

2.5.3. Enforcement in immovable property

If the debtor owns real estate, the only possible way to access this asset is through either the bankruptcy of the debtor or the liquidation of the debtor company. This is discussed further in "Insolvency proceedings".

2.6. Insolvency proceedings

2.6.1. General information

Insolvency is determined on the basis of the debtor's cash flow or their ability to pay debts. This corresponds with the definition contained in the Corporations Act that states that an entity is insolvent if it can't pay its debts as they fall due.

The aim of insolvency proceedings is to pay out all the creditors equally by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

2.6.2. Proceedings

A notice of the winding-up application is issued to the registered office of the debtor company when a creditor has filed in court an application for winding up the debtor company. This normally takes place after the creditor obtains a judgment debt, or following the failure of the debtor company to comply with a statutory demand within 21 days.

If the winding-up application's hearing takes place and the court is convinced that the debtor company should be wound up, the court will make an order for the debtor company to be wound up and appoint an official liquidator.

If the winding-up action isn't dismissed and heard before the court, the question of insolvency is usually taken into consideration. The creditors can then lodge their claims with the liquidator and attempt to take back any goods delivered under retention of title clauses. After the procedure starts, lodging claims is possible, provided that it occurs before the liquidation is finalised. The liquidator can either accept or dispute the lodged debts. If your claim is disputed, you may file the claim in court to prove the justification of the claim, when further documentation doesn't convince the liquidator to confirm the debt.

At the end of the proceedings, all the creditors with confirmed debts may receive dividends if there are any funds to be divided. Please note that the legal costs incurred by the creditor who filed the creditor's petition that placed the debtor company in liquidation will be considered a priority. That creditor will be paid back first before any dividends are shared.

2.6.3. Required documents

In order to lodge a claim, we need:

- Copies of the invoices
- Copies of the contracts
- Copies of the orders, order confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim

2.6.4. Expected time frame

The whole duration of insolvency proceedings can't be predicted in Australia. They can take from a few days to many years, depending on the complexity of the debtor company and the liquidation.

2.6.5. Unlimited companies

Unlimited companies aren't very common in Australia and don't make a difference in insolvency proceedings. They can be liquidated and the members can be bankrupted in pursuit of debt recovery. The creditors are notified of the bankruptcy, and unsecured creditors must stop pursuing the debtor company for payment of their debts. A trustee will then be appointed and in order to pay the creditors, this trustee will:

- Sell any assets of the debtor (although the debtor is able to keep certain types of assets)
- Mandate the contributions from the debtor's income once the debtor earns over a certain amount, currently AUD 57,866.90
- Investigate the debtor's financial affairs and may recover the property or monies that the debtor has transferred to someone else for inadequate considerations

2.6.6. Rescission

The general time frame in which payments may be classified as preferential payments is six months prior to the date of bankruptcy or liquidation. Please note that the time frame is a guide and contains specific provisions that may alter the period in which preferential payments may be recovered, depending on several circumstances of each bankruptcy estate or liquidation.

In addition, related party transactions may be void for a period of anywhere up to four years prior to the date of bankruptcy or liquidation. If the liquidator disputes these payments, the creditors may be forced to refund the liquidator and can only lodge the corresponding debts instead.

2.7. Arbitration and mediation

If you and your debtor agree to an alternative dispute solution, you can use arbitration and mediation service. They're private tribunals that serve the community, commerce, and industries by facilitating efficient dispute resolution methods, including arbitration, mediation, conciliation, and adjudication.

Atradius Collections

3. Austria

Industries

Chemicals
Construction
Construction materials
Electronics
Food
Machines
Minerals
Paper
Services
Transport

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

3.1. Amicable collections

3.1.1. General information

We maintain a professional collection process, focusing on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to federal and state law.

3.1.2. Local agents

At the present time, we don't offer field service to visit debtors in Austria. However, if debtors wish to visit our premises, we'll gladly arrange face-to-face meetings to discuss the situations.

3.1.3. Interest

We always charge debtors for interest, calculated from the base rate set by the Oesterreichische Nationalbank, plus 9.2% on a daily basis (see the European Directive 2011/7/EU in conjunction with the Austrian trade law paragraph 456).

From a cultural point of view, Austrian debtors are used to paying late payment interest, although the actual amounts of interest payment are considered a matter of negotiation between debtors and collectors.

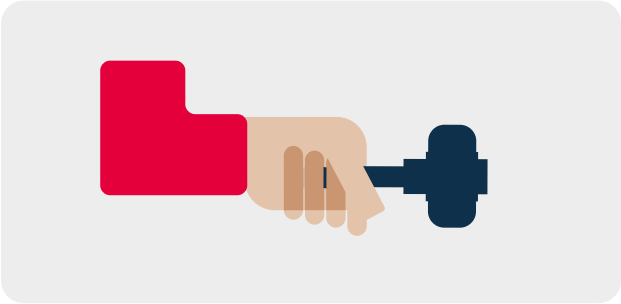
3.1.4. Debt collection costs

Collection costs ("Inkassokosten") can be charged according to §1333 "Allgemeines bürgerliches Gesetzbuch" (ABGB) – the Civil Code of Austria – as damages for delay.

Austrian cases are dealt with by our German subsidiary, so we apply the same debt collection costs that are charged to German debtors, calculated on the basis of the "Rechtsanwaltsvergütungsgesetz" (RVG) – German statutory lawyers' fees.

We'll forward all the recovered debt collection costs to you to reduce your claim, retain the costs, or add them to our success fees. This will depend on the contractual agreement between you and Atradius Collections.

3.2. Legal collections



3.2.1. General information

Entering into legal proceedings is possible without a prior warning to the debtor. However, in Austria, the courts prefer to seek settlements between the creditor and debtor.

3.2.2. Required documents

In order to apply legal dunning procedures, we require copies of the contracts, invoices, and statements indicating the payments and credit notes that have been made for the outstanding monies.

In the case of a regular lawsuit procedure, copies of all the contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, and invoices. Every part of the relationship between both parties should be provable by documentation.

In case of dispute, all the notes of the conversations between you and your debtor should be kept and given to our lawyers.

In the case of verbal negotiations, we require the visit or negotiation reports and the names of any witnesses.

3.2.3. Legal dunning procedures

Austrian legal dunning procedures are often a one-step procedure for payment claims up to EUR 75,000. The outcome is a payment order ("Zahlungsbefehl"). For claims up to EUR 15,000, a local court will be the competent court. And for claims exceeding EUR 15,000, a district court will be the competent one.

The court will issue a limited payment order ("bedingter Zahlungsbefehl") to be served on the debtor. They can object to it within four weeks after the delivery, or pay the principal amount plus interest within 14 days. If no objections are filed, the limited payment order becomes valid as a final payment order, and execution can be started. If an objection is filed within the four-week deadline, the process will be transferred to a normal court procedure.

3.2.4. Lawsuits

A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the debtor, or following the legal dunning procedure after the debtor has appealed.

Usually, a written pre-procedure is issued. Both the plaintiff and defendant exchange opinions and proof by letter until the judge is confident of having all the relevant information needed in order to judge. In this case, a hearing is scheduled where both parties have to be present. After the oral hearing, the judge sets a date to issue the final judgment. The parties will be informed about the outcome in writing by the responsible court.

3.2.5. Expected time frame

The average duration of a legal dunning process is between eight and 12 weeks, whereas a court procedure can take up to 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on all sides.

3.2.6. Costs and interest in the legal phase

All costs are dependent on the outstanding principal amount and are calculated while taking into account the amount kept by each party. There are different fees that can apply during the proceedings, which make it difficult to predict the total cost. In addition to this, costs of witnesses and/or experts might also arise. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

Extrajudicial interest and costs can be claimed as part of the outstanding amount during legal proceedings. Court costs and lawyers' costs are also chargeable to the debtor when the judgment is made in favour of the creditor.

In the case of a legal settlement, the parties bear the costs of the corresponding proceedings in proportion to their prevailing or failing.

3.3. Insolvency proceedings

3.3.1. General information

There is the Insolvency Code ("Insolvenzordnung"). The German version of this law can be found here: www.ris.bka.gv.at

3.3.2. Proceedings

The central procedure is still the "Zwangsausgleich", or the reorganisation plan. This is a special procedure where the debtor has to offer a minimum dividend of 20% to their creditors, which must be paid within two years. More than half of the creditors must agree to the reorganisation plan. The majority of the creditors must settle on a minimum of 50% of the total outstanding amount. Both conditions (the majority of the creditors and the majority of the outstanding amount) must apply, and the court finally decides on it.

Insolvency proceedings take from two to 12 months. Dividend payment can take up to two years. The average dividend in Austria is about 10%.

Insolvency proceedings can be managed by a lawyer, three privileged creditors' associations – KSV, AKV, and Creditreform – or the creditors themselves.

3.3.3. Required documents

In order to lodge a claim, we need:

- An original power of attorney
- Copies of the invoices
- Copies of the contracts
- Copies of the orders, order confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim

3.3.4. Expected time frame

The deadline for lodging claims is usually around one to three months, depending on the complexity of the procedure, and starts from the adjudication order ("Insolvenzeröffnungsbeschluss").

Atradius Collections

4. Belgium

Industries

Chemicals

Food

Machines

Minerals

Textiles

Transport

Source: Central Intelligence Agency World Factbook

Chance of collecting

75%–100%

4.1. Amicable collections

4.1.1. General information

We maintain a professional collection process. We always try to safeguard the relationships between you and your debtors. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to applicable Belgian law.

We also have a network of external partners who can visit debtors' premises. Their objective is collecting the debts and providing summaries of the local situations.

4.1.2. Interest

In the amicable phase, we always charge debtors for interest. The applied default rate is 12%.

4.1.3. Debt collection costs

In the amicable phase, we charge two types of collection costs per debt collection case.

- A fixed amount of EUR 40 according to section 6, paragraph 1 of the statute of 2 August 2002 on late payment, regardless of the amount of the debt
- A penalty clause of 15% of the principal amount of the claim submitted to us. The interest and cost rates we're using are in line with the average rates applied by our clients

At your request, we can adapt the rates we're using according to your terms and conditions.

From a cultural point of view, recovery of late payment interest and collection costs is quite difficult. Penalties for late payment can be considered a matter of negotiation between you and your debtors.

4.1.4. Statute of limitations

The general statute of limitations for unpaid invoices in Belgium is 10 years and depends on the nature of the invoices. Some elements (e.g. a legal summons) can interrupt a prescriptive period.

4.1.5. Payment methods

The most common payment method is bank transfers. We also accept drafts. We don't offer direct debiting from debtors' bank accounts.

4.1.6. Types of companies

All participants in the economic field (business to business or B2B) are considered by Belgian law as "enterprises", no matter what form they take: natural persons, companies, associations, or licensed professionals (like doctors, lawyers, architects, and accountants).

Each enterprise is subject to insolvency law, has to have mandatory inscriptions in the Crossroads Bank for Enterprises, and has to comply with bookkeeping rules.

A. Natural persons

A natural person trades in their own name (sole trader) and is the sole owner of their business (sole proprietorship). They're liable towards their creditors with their business and private funds.

B. Companies

There are four forms of companies:

- Private limited liability company (BV/SRL)
- Public limited liability company (NV/SA)
- Cooperative limited liability company (CV/SC)
- Simple partnership ("maatschap"/SS)

Liability of the founders of a company

Generally, the founders of a company can't be held personally liable for the debts of the company.

Liability of the managers of a company

Managers act on behalf of a company and engage the company but not themselves. Therefore – as a rule – they usually can't be held personally liable for the debts of the company.

C. Associations

If an association (VZW/ASBL) undertakes a commercial activity and makes a profit, it's now considered an enterprise and subject to the Code on Companies and Associations. As long as it doesn't distribute the profit to its own members or managers, it can continue operating as an association.

All the points regarding the liability of managers also apply to associations.

D. Licensed professionals

A licensed professional (e.g. a doctor, lawyer, architect,

or accountant) can either trade in their own name as a natural person (see A above), or reorganise their individual professional activities as a company (see B above) or an association (see C above).

4.1.7. Sources of information

In Belgium, we have several sources of information at our disposal to obtain information on debtors:

- External information providers
- Agents' reports
- Bailiffs' reports
- Public registers

4.2. Retention of title

Normally, in the case of a purchase agreement, the ownership of the sold goods is in principle transferred to the buyer as soon as the seller and the buyer have reached an agreement on the goods and their price, even when the goods haven't been delivered yet and/or the price hasn't been paid yet. Inserting a retention of title clause in a contract is a technique to deviate from this principle, and to postpone the transfer of ownership between the parties until the entire price has been paid. In this situation, the seller can, in the event of insolvency of the buyer, claim and recover the goods that are still their property. Retention of title clauses thus offer good security to sellers against the risk of not being paid by their buyers.

Since 2018, retention of title clauses have been recognised by Belgian law as a general principle (previously retention of title was only applicable in case of bankruptcies), which is laid down in sections 69 to 72 of chapter 2 of Title XVII of Book III of the Belgian Civil Code.

The conditions that must be met if you want to use a retention of title clause:

- The retention of title clause must be notified to your debtor and established in a written document at the latest on the date of the delivery of the goods
- The retention of title clause has to be accepted by the debtor. Moreover, you have to be able to prove this, if necessary, with (written) documentation (orders, proof of delivery, or other documents) with dates prior to or equal to the effective date of the delivery, mentioning the clause and ideally being signed by the debtor
- The goods have to be in the debtor's possession or under their control at the moment of requesting for retention
- At the moment of requesting for retention, the goods can but do not have to be identifiable and assignable to you anymore, and they don't have to be present in kind anymore

4.3. Safeguard measures

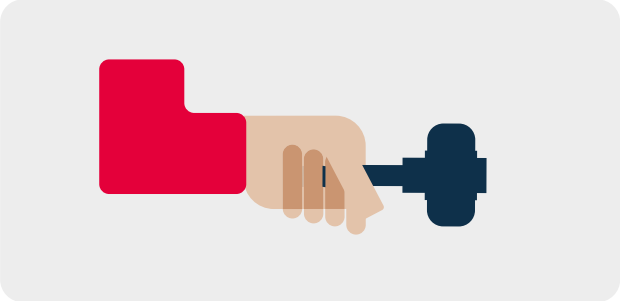
4.3.1. General principles

The goal of the measures is to maintain, as much as possible, the condition of the debtor's estate (movable property and/or real estate).

4.3.2. Protective seizure

If you want to protectively seize the debtor's funds in the hands of a third party (e.g. a bank when seizing the debtor's bank accounts, or a third party owing money to the debtor), you can simply instruct the bailiff to seize the debtor's bank accounts (with agreement from the banks), or proceed with the protective seizure of the funds owed to the debtor by a third party, provided that you deliver the correct paperwork (copies of the invoices and a statement of account) to the bailiff.

4.4. Legal collections



4.4.1. General information

Legal action to recover receivables is based on the general principles of the Civil Code, ("Code civil" / "Burgerlijk Wetboek"), Commercial Code ("Code de commerce" / "Wetboek van Koophandel"), Judicial Code ("Code judiciaire" / "Gerechtelijk Wetboek"), and particular regulations in special circumstances or cases.

We use our own network of lawyers and bailiffs.

4.4.2. Legal systems

The type of courts that will deal with your claim depends on the total amount of the claim, including interest and collection costs.

According to the rules of the Judicial Code, action against a debtor regarding the payment of a claim is taken before a competent court in the judicial district of the debtor's official place of residence or their registered address if the debtor is a company.

4.4.3. Required documents

The mandatory documents required to initiate legal action in Belgium are:

- Copies of the invoices
- Copies of the terms and conditions
- A power of attorney signed by the creditor (this has to be signed by your legal representative and drafted in the language of the legal proceedings (e.g. French, Dutch, or German)
- Any correspondence between the creditor and debtor

4.4.4. Summary orders for payment

In Belgium, sections 1338 to 1344 of the Judicial Code provide a summary order for payment procedure to get payment from debtors. While the cost of initiating this procedure is rather low in comparison with a normal lawsuit, we don't use this procedure for recovering receivables because of various disadvantages.

4.4.5. Recovery of undisputed B2B monetary debts (RNDMD)

General information

This procedure is established in the Judicial Code in sections 1394/20 to 1394/27. As an administrative and out-of-court procedure, it aims to reduce the workloads of Commercial Courts. It's faster than a lawsuit before the court but the costs the creditor can claim are lower.

This procedure can only be used if:

- You have an overdue monetary debt that you can claim
- The debt is based on a commercial transaction in the context of commercial activities
- The debtor is registered with the Crossroads Bank for Enterprises
- The creditor is registered with the trade register of one of the following countries: Austria, Belgium, France, Germany, Italy, Luxembourg, Spain, and the Netherlands
- The debt isn't disputed

Intervention of a lawyer

A lawyer is required in an RNDMD procedure even if their role is limited.

Intervention of a bailiff

A bailiff is a key player in an RNDMD procedure. The bailiff enters on a centralised online platform specially created for this procedure the following data: the identities of the parties, lawyers, bailiff, and all the details of the debt (the date of the invoice, due date, invoice number, and amount).

Summons to pay

The first important step is a summons to pay that is notified by the bailiff to the debtor in person at their registered address.

The day after this notification commences a period of 30 days, during which the bailiff has to suspend all the actions from their side and has to wait for a reaction from the debtor.

Report of non-disagreement

If within 38 days after the summons to pay, the debt isn't fully paid or isn't paid at all and the debtor doesn't notify the bailiff of a dispute, the bailiff produces a report of non-disagreement.

Request for an enforcement title

After producing a report of non-disagreement, the bailiff sends this report to the magistrate on the supervisory committee of the National Bank of Belgium to get an enforcement title.

Having received an enforcement title, the bailiff prepares the case for enforcement (read more below).

4.4.6. Lawsuits

If the amicable collection route fails and the solvency of the debtor is sufficient, we can initiate legal proceedings by bringing in your name a lawsuit before a competent court against the debtor.

A summons is delivered by the bailiff to the debtor. With this document, the debtor is officially notified of the lawsuit.

The lawyer entrusted with the legal case represents you - the creditor - at the introductory hearing.

Depending on the defence of the debtor, the court can deliberate on rendering a judgment, postponing the hearing to another date, or fixing a calendar of hearings.

Usually, the court gives at the last hearing of a case an indication of when it'll render its judgment. If not, it's usually a month after the hearing.

4.4.7. Appeals

In Belgium, you can bring an appeal before a competent court. The type of courts depends on the amount of the claim and the nature of the debtor.

4.4.8. Expected time frame

On average, the time frame for obtaining a judgment (enforcement not included) is four months. If there is a dispute and/or appeal, it can take from one to several years to obtain a judgment.

4.4.9. Costs and interest in the legal phase

Here are the costs of this type of legal action:

- A summons and registration on the docket of the court: approximately from EUR 300 to EUR 400
- An indemnity for the proceedings is granted by the court to the party obtaining the judgment. The court determines the exact sum. This indemnity is charged back to the debtor unless the court decides otherwise
- Costs and fees for legal representation are set depending on the importance, complexity, and duration of a case, as well as the tasks performed by the lawyer. These costs aren't charged back to the debtor
- Potential document translation costs. The translation costs aren't charged back to the debtor
- Any costs of witnesses and/or experts might also arise

The applied interest rate is the rate agreed to by the parties in the contracts, terms and conditions, or particular agreements. However, the court can reduce or cancel this agreed interest rate if the rate is considered excessive.

We can also claim collection costs if they're stated in the contract (in Belgium, they're commonly referred to as penalty clauses).

4.5. Enforcement

4.5.1. Enforcement of an enforcement title

It's the bailiff's mission to notify the debtor of the judgment and handle the enforcement phase. In Belgium, we use our own bailiff network to enforce judgments. Each bailiff is linked to a district.

The enforcement phase starts as soon as:

- The judgment is final (it's considered final if the debtor doesn't pursue a legal remedy within 30 days from the date of the notification of the judgment to the debtor)
- The debtor doesn't pay after having received from the bailiff a final order to pay that gives them a final deadline for executing the judgment

Our bailiffs have three options to enforce an enforcement title:

- Enforcement in movable property
- Enforcement in immovable property (real estate)
- Seizure by third parties if possible

4.5.2. Enforcement proceedings of foreign judgments

Foreign judgment from an EU member state to be enforced in Belgium

The proceedings are substantially simplified by the EU regulation 1215/2012.

Before applying for enforceability in Belgium, you have to notify the debtor of the judgment via bailiff in order to make it final (meaning appealing is no longer possible). Once the judgment is final, you have to provide a competent Belgian enforcement authority with:

- A copy of the judgment that fulfils the conditions that establish its authenticity
- A certificate certifying that the judgment is enforceable
- An extract of the judgment, as well as, where appropriate, relevant information on the recoverable costs of the proceedings and a calculation of the interest

The debtor can still submit a request to the competent court to refuse the enforcement of the foreign judgment on the grounds of article 46 of the regulation.

Foreign judgment from a non-EU member state to be enforced in Belgium

If you wish to enforce a judgment obtained in a non-EU member state, you have to initiate a special exequatur procedure before a competent Belgian court to obtain its permission. Once obtained, the decision on enforceability has to be notified to the debtor. If the debtor doesn't appeal, the permission for enforceability is final and the foreign judgment can be enforced in Belgium.

This is a long and costly process. It also involves translation of the judgment and other documents. The costs of translation aren't chargeable to the debtor.

4.6. Insolvency proceedings

4.6.1. General information

In Belgium, we have three main types of insolvency:

- Bankruptcy
- Liquidation
- Temporary composition (statute on the continuity of companies)

Insolvency is validated by the court, and the goal of the proceedings is either to face non-payment situations, or to allow and facilitate the continuation of debtor companies. With the start of insolvency proceedings, all individual enforcement is suspended.

4.6.2. Proceedings

Bankruptcy

In Belgium, only debtors with the status of merchants can be declared bankrupt. Such a request can be submitted to a competent Commercial Court by:

- The debtor
- A public prosecutor, who receives information from the enquiry chamber of a Commercial Court about the situation of the debtor fulfilling the conditions for bankruptcy
- One of the debtor's creditors if:
  - You have already obtained a judgment on payment against the debtor
  - Following the (partial) enforcement of the above-mentioned judicial decision, you haven't got paid
  - The necessary factual elements are present to comply with the conditions for bankruptcy

The competent Commercial Court of bankruptcy is the court in the district where the debtor resides or has their address registered.

A trustee is appointed by the court.

The claims of the creditors must be submitted to the court before the date indicated in the decision declaring the bankruptcy. Usually, the deadline for submitting claims is one month after the bankruptcy.

Claims have to be lodged for a fee electronically via the Register of Solvency by using a special website. There are three types of declarations.

- Unsecured creditors
- Secured creditors
- Retention of title clauses if you want to take some goods back

After verification by the trustee, the claims are accepted or not in the bankruptcy proceedings. The Commercial Court will decide in case of dispute.

As soon as the trustee has clarified the debtor's assets versus debts, the trustee will be able to confirm whether dividends can be expected and issue certificates advising the creditors on the recoverability of the debts. In the case of bankruptcy, it's very rare in Belgium to receive dividends for unsecured debts.

Liquidation

Liquidation is also considered one of the insolvency proceedings when sought by a debtor wishing to stop their commercial activities. The main difference between liquidation and bankruptcy is that liquidation is always requested by the debtor. The creditors can't request that the debtor go into liquidation.

A liquidator is appointed by the Commercial Court. Claims have to be lodged with the liquidator within the period noted by the court, which may vary from case to case.

Temporary composition

The former judicial composition was replaced by the judicial reorganisation based on the statute of 31 January 2009 on the continuation of companies. Retention of title clauses can't be referred to by the creditors in the case of this procedure.

In Belgium, there are three types of temporary compositions.

- Amicable agreement (sections XX.64 - XX.66)
- Collective agreement (sections XX.67 - XX.83)
- Transfer under the court's authority (sections XX.84 - XX.97)

The most used option is collective agreement.

To undergo a judicial reorganisation, the debtor has to submit a request to the court. If the reorganisation

procedure is started, the duration of the moratorium will usually be three months with a possible extension from six to 12 additional months in some specific cases.

At the end of the moratorium, in the case of collective agreement, the debtor is expected to propose a reorganisation plan with a payment plan to all their creditors (minimum 15% of the principal amount in maximum five years). If the plan is approved, it can be enforced against all the creditors. If the debtor doesn't follow the plan or if the creditors can prove that the debtor won't be able to follow the plan, any of the creditors can initiate legal proceedings to cancel the plan.

4.6.3. Required documents

To lodge a claim in insolvency proceedings, the following documents are required.

- An original power of attorney
- Copies of the invoices
- Copies of the terms and conditions of sale

4.6.4. Expected time frame and outcome

Bankruptcy and liquidation proceedings can take several years, depending on the complexity of the debtor company and its situation. We close a case as soon as we receive news from the trustee or liquidator regarding the acceptance of the claim and our chances of receiving a dividend. For 95% of insolvency cases in Belgium, we don't recover any dividend after bankruptcy and liquidation proceedings.

As for judicial reorganisation with collective agreement, the debtor proposes mostly the bare legal minimum and nothing more. We also observe that a lot of debtors never execute the plans, and if they do, the payments are very irregular. Given the vulnerable financial positions of the debtors, the reimbursement efforts of a lot of debtors don't last very long, and, after a while, they file for bankruptcy.

4.7. Arbitration and mediation

To resolve conflicts between the parties, creditors in Belgium have four different options.

- Amicable negotiation
- Judicial options (legal proceedings)
- Mediation
- Arbitration

Atradius Collections

5. Bosnia and Herzegovina

Industries

Chemicals

Consumer durables

Machines

Minerals

Textiles

Transport

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

5.1. Amicable collections

5.1.1. General information

As professionals in collections, we can provide first-class services, special treatment, and analyses of each debt collection case in order to successfully recover overdue debts.

Our activities are based on checking debtors and taking appropriate action regarding their existing financial situations and ability to pay.

Our debt collection activities consist of:

- Checking debtors' circumstances
- Delivering written reminders
- Making telephone calls
- Sending lawyer's letters
- Making personal visits

It's widely known that, regarding late payment, the efficiency of debt collections depends on timely and appropriate actions. The longer you wait before deciding to act, the lower the chance that the debts will be recovered.

5.1.2. Interest

The Bosnian business culture is to not pay interest, so it's difficult to obtain the payment using amicable processes.

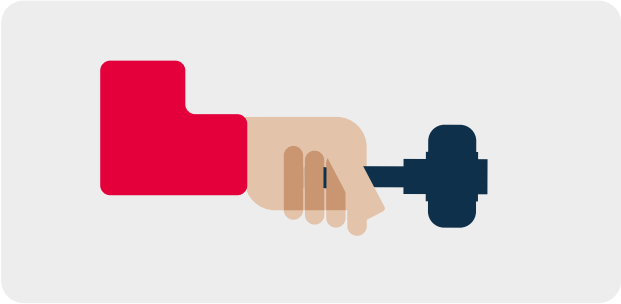
The interest rate is 10%.

5.1.3. Debt collection costs

The potential for requesting payment of debt collection costs varies from case to case. We, as an agency, always quote debt collection costs in the first reminders, but usually we collect only the claim amounts. There are some cases where the costs are collected, but the number of such cases is very low.

When a client insists on receiving payment of such costs, we're asked by the debtor to provide an invoice regarding the issue by the client. Based on that invoice, the payment should be received.

5.2. Legal collections



5.2.1. General information

The legal system of Bosnia and Herzegovina is complex, where the State is divided into two entities and one district:

- The entity of the Republic of Srpska
- The entity of the Federation of Bosnia and Herzegovina (hereinafter referred to as "FBH")
- The Brčko District of Bosnia and Herzegovina (hereinafter referred to as "the Brčko District")

The FBH is further divided into 10 cantons and each canton is composed of one or more municipalities. The capital town of the FBH is Sarajevo, which is also the country's capital.

The Republic of Srpska is further divided into municipalities.

The Brčko District is an independent administrative unit, the status of which was determined through an arbitration award in 1999 stating that this part of the country will fall under neither of the jurisdictions but will have autonomy regarding the competence of the central institutions of Bosnia and Herzegovina.

Generally, both entities have parliaments with the authority to pass laws and other regulations that fall under their jurisdiction according to the Constitution of Bosnia and Herzegovina (Annex 4 of the Dayton Agreement of 1995).

The Brčko District has an Assembly with the corresponding powers to pass laws and other regulations to be implemented in this part of the country, while Bosnia and Herzegovina has its own parliament operating on a central level, thus enacting laws and other regulations applicable in both entities and the Brčko District.

Although some of their laws are similar or even identical, such as the Obligatory Relations Act, which practically constitutes a Civil Code, they mainly operate as separate laws adopted in each entity or the district. All the regulations on the organisation and business of companies, banks, funds, as well as many others, including games of chance and promotions, are passed on the entity level only.

Entering into legal proceedings is possible without a warning to the debtor. A letter about the possibility of legal action can be sent to the debtor as the last and final reminder at the end of the amicable collection phase, and this letter can be used to prove that all the pre-court efforts are fruitless. However, the presence of such a letter doesn't guarantee that a court decision will be received quicker.

5.2.2. Required documents

Here is a list of the necessary documents for legal action.

- The contracts signed by the parties with all the appendices
- All the unpaid invoices
- The statements of account indicating the payments and credit notes
- The transport documents with the debtor's signature proving the goods' receipt and customs declarations
- All the correspondence and other documents relating to the debt
- An extract from the trade register of your company - the plaintiff. It isn't always obligatory but the court may request it to have evidence of the authorised person(s)
- A power of attorney for our lawyers to represent your company - the plaintiff

All the documents have to be provided as copies or original documents because it's necessary to translate all the papers into Bosnian. The original documents must also be shown to the court in case the debtor denies the validity of the documents in any way.

5.2.3. Lawsuits

A regular lawsuit procedure is started directly after the amicable collections has failed due to dispute by the debtor.

After you pay the court tax in time and present a lawsuit, supported by the documentation of the case, the court will set a date for the examination of the case. All the documents must be legally translated into Bosnian.

When the claim is served on the defendant, the legal proceedings are fully initiated. The defendant must send an answer supported by proof within one month or 30 days; otherwise, the court will issue a default judgment. When the court receives an answer to the complaint from the defendant, it sets a date for a preliminary court hearing.

At the preliminary court hearing, both parties present their proof, statements, and evidence. If necessary, we must propose a hearing of a witness or court expert (experts will need to be paid additionally). If the court decides in your favour and the debtor doesn't pay, you can start an enforcement procedure on the grounds of the final judgment.

5.2.4. Expected time frame

The average duration of a court procedure can take up to 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on all sides.

5.2.5. Costs and interest in the legal phase

The costs of an execution procedure and civil law procedure (public notary costs, court costs and fees) are determined by the provisions of the attorney tariffs and public notary tariffs and aren't subject to any negotiation.

All costs depend on the outstanding amount. There are different fees that can apply during a procedure. Legal translation of documents is minimum EUR 25 per page (depending on the language). It's difficult to declare the exact sum of litigation costs. Final cost estimations will be provided on a case-by-case basis when legal action becomes necessary.

The legal or arranged interest and costs can be claimed as part of the outstanding amount during legal proceedings. Usually, the court awards interest in the claim amount if it was requested. The defendant must pay the court fees for the legal proceedings in accordance with the Law on Civil Procedure. Other expenses (e.g. experts' fees) can be requested from the debtor. However, the decision on whether those are awarded depends on the court.

5.3. Enforcement

5.3.1. Enforcement in debt

After the final and enforceable judgment is obtained, an enforcement procedure must be started and a writ of execution is obtained. After the writ of execution becomes final and enforceable, the court sends it to the banks to seize the debtor's bank accounts or to the bailiff to seize the debtor's other property, e.g. shares in businesses, corporate shares, and any other claims the debtor may have against any third party.

5.3.2. Enforcement in movable property

This is a standard procedure where the bailiff visits the debtor to take away movable property that can be sold. In the case of vehicles, the attachment is done by registering the pledge in a public register. The bailiff isn't allowed to seize the goods that are necessary for the debtor's basic daily life or that enable them to maintain their business activities.

5.3.3. Enforcement in immovable property

If the debtor owns real estate, it's possible to receive a record of their claim in the land registry, and then force the attachment and/or sale of the property. The seizure of the

debtor's real estate is performed by the court and registered with the land registry.

All these processes are more expensive than those mentioned previously, especially because of the costs of evaluating the value of the property, and it can be a long process to get a copy of the record. Afterwards, it can also take time to sell or sequestrate the land and real estate. In some cases, the real estate can't be sold because a buyer can't be found.

5.4. Insolvency proceedings

5.4.1. General information

The aim of insolvency proceedings is to pay all the creditors with the same quotas by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

5.4.2. Proceedings

After the debtor or a creditor files for the debtor's insolvency, a preliminary liquidator is appointed to check whether sufficient assets are available to cover the costs of the proceedings (court costs and costs of liquidators). If these costs are deemed to be covered, the insolvency proceedings start, and a liquidator will be appointed – usually this is the preliminary liquidator. If these costs aren't covered, the court will reject the declaration of bankruptcy due to insufficient assets.

After the proceedings start, lodging claims is possible within a given deadline. The liquidator can either accept a lodged debt or dispute it. If your claim is disputed, you may only file the claim in court to prove the justification of the claim when further documentation doesn't convince the liquidator to confirm the debt.

5.4.3. Required documents

In order to lodge a claim, we need:

- An original power of attorney
- Copies of the invoices
- Copies of the contracts
- Copies of the orders, order confirmations, and delivery notes
- Copies of the general conditions of sale, if there are any
- Copies of any other correspondence that may verify the claim

5.4.4. Expected time frame and outcome

The deadline for lodging claims is one to three months, depending on the complexity of the procedures and starting from the adjudication order.

The whole duration of insolvency proceedings is at least one to three years.

Atradius Collections

6. Brazil

Industries

Chemicals

Construction materials

Machines

Minerals

Textiles

Transport

Source: Central Intelligence Agency World Factbook

Chance of collecting

up to 50%

6.1. Amicable collections

6.1.1. General information

Our focus is primarily on establishing healthy and amicable relationships between the clients we represent and the debtors that our clients pursue. This is done by our in-house team of collection specialists, who are uniquely able to carry out the entire collection process. Our team of professional collection staff will pursue debtors both verbally and in writing and carry out the collections by using specific techniques and strategies for each case. They adhere strictly to Brazil's federal law, as well as the law governing each of the country's individual states.

It's always advisable to attempt amicable collections prior to any legal action to maximise the chances of successful recovery and to avoid legal costs and delays.

6.1.2. Local agents

Through our local partner, we offer field service to visit debtors throughout Brazil. They use business and legal practices for this purpose. The travel costs are to be covered by you, and we always keep travel costs as low as possible. If the debtors wish to visit our office, we'll gladly meet them to discuss practical solutions for your cases face-to-face.

In accordance with the current legislation, our agent contacts the debtor in advance by telephone, and, depending on the case, our agent goes to the location to negotiate directly with the debtor. In some cases, the agent's presence at the debtor company's address forces a negotiation or even part payment of the debt.

Note: This type of diligence only works in specific cases and extreme caution is required.

6.1.3. Interest

This is permissible under Brazilian law. The interest rate uses the current applicable rate charged for Brazilian debts, plus an additional amount not exceeding 2% of the total debt amount. Currently, Brazilian regulations allow for charging a maximum of 1% interest on a debt, plus our 2% fee that will be compounded on top of that amount.

Culturally, debtors throughout Brazil are accustomed to paying interest because of overdue payment. The amount of that interest, however, is commonly considered a matter of negotiation that can be used to encourage the debtors to settle the debts and fulfil their financial obligations to our clients.

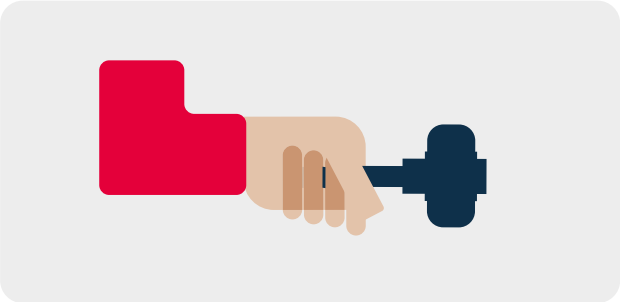
For cases abroad, it's extraordinarily complex to charge interest. The debtor must submit documentation, including proof of the remittance to the Central Bank of Brazil, unless you have official documents, such as invoices or debit notes, to support the transaction.

6.1.4. Debt collection costs

Debtors in Brazil can be charged the full costs of collecting their debts. This amount is equal to a claim for overdue payment damage made by a creditor. There are no current limits on how much may be charged to compensate for collection costs, but judges typically set an amount of between 1% and 20% of the outstanding debt as being sufficient to cover the creditor's expenses for our services.

From a cultural point of view, Brazilian debtors aren't used to paying debt collection costs.

6.2. Legal collections



6.2.1. General information

Brazil has a complex legal system that can be intimidating or prohibitive when seeking to collect debts through litigation.

Our services are carried out by duly qualified and technically skilled professionals, who diligently comply with all guidelines and recommendations.

Before initiating legal proceedings against the debtor, asset evaluation is extremely important as it allows for verifying whether the company is still active and what the chances are. Furthermore, it's essential to be aware of the debtor's solvency status. If insolvency proceedings have been started, it becomes impossible to collect the debt.

Finding the debtor can be difficult and slow down the process, as far as trial can only begin after notification to the debtor through service of process.

This is a method where legal rights are enforced, including

the rules of evidence and the rules of the civil procedure. These include filing complaints and answers, serving documents on the opposition, and the law governing those processes. Furthermore, each of Brazil's states and municipalities runs its own judicial system with its own laws, regulations, and codified statutes. Decisions from state and municipal courts may be appealed through a federal court.

6.2.2. Required documents

Brazil requires a large number of documents before legal proceedings can begin at the municipal, state, or federal level:

- Copies of the contracts stipulating payment or repayment
- Copies of any invoices pertaining to the debt
- The statements of account that are used to verify the payments made, as well as any credit placed on the account by the creditor
- Any available purchase orders
- A power of attorney that has been signed by the creditor
- Proof of the contractual relationship between all the involved parties should be made available, if relevant, by the creditor

Documents that aren't in Portuguese will need to be translated into the local language and verified by a proper official before they can be used.

The power of attorney, which represents your business, must be written or translated by a public translator into the local language, granted before a notary, and legalised with an apostille.

6.2.3. Legal dunning procedures

A legal dunning procedure in Brazil is common and can only be initiated when the debtor has been traced and located. The country's state or municipal courts handle this process. In most cases, the legal dunning procedure is initiated by the Justice of the Peace or magistrate located nearest to the debtor's current address.

A court order must be obtained during the legal dunning process if you wish to eventually obtain an enforceable judgment against the debtor that will help you collect the amount you are owed. This court order must be served on the debtor, and it must be served within the time frame stipulated by Brazil's Civil Procedure Code. This is why locating and tracing the debtor are so important. Upon being served with the court order, the debtor has the right to appeal during both stages of the process. This would turn the legal dunning process into a standard lawsuit for you.

6.2.4 Lawsuits

A lawsuit procedure can begin if the amicable collections has stalled or failed completely. The process of filing a lawsuit can also begin if the debtor has disputed the validity of any action taken against them or believes that the debt is inaccurate.

Brazil's lawsuits can proceed in three distinct ways under the country's existing legal code. The proper procedure will depend on any supporting documents offered by both the debtor and creditor who is attempting to collect the debt. The proper action depends on all the available supporting documents.

The plaintiff begins a civil process by submitting a complaint, which is referred to as the initial petition. The defendant can answer the initial petition with one of three different responses: a traditional answer, a counterclaim, or an exception. After the judge has reviewed the initial petition and answer upon the conclusion of the evidentiary stage, the court is brought to a hearing. The initial purpose of the hearing is to make one final attempt to resolve the case between the parties.

The deadline for the creditor to file a lawsuit against the debtor is five years. There are no "statutes of limitations" for debts, but the five-year period determines the time limit for filing a lawsuit.

6.2.5. Expected time frame

The duration of legal action will depend on the complexity of the case and the availability of the judges and lawyers involved. In general, it can be expected to take at least a few months, with the most complex legal cases taking several years, to complete.

6.2.6. Costs and interest in the legal phase

In Brazil, any costs associated with a civil law procedure are charged to the party who is deemed to have lost the case. The judge who decides the outcome of the lawsuit will also be responsible for determining the amount of court costs that should be charged to the losing party. Typically, this amount ranges from 10% to 20% of the amount of the debt that was decided by the lawsuit.

The witnesses and any experts who are called during the lawsuit will represent an additional expense, and the costs of these essential parts of the legal procedure will be estimated when they are required. The costs and usage of witnesses or experts are decided on a case-by-case basis.

Any interest accrued out of court, as well as any fees added to the debt before or during the lawsuit, can be claimed by the creditor as an outstanding balance during the legal process. Brazil regulates a legal interest rate of 1% per month

that can be applied to the debt while it remains outstanding. There are no legal limits that regulate how much can be charged in order to compensate for any legal costs incurred by either party.

During the case, the judge will decide how much of the total debt amount can be used to claim the legal costs. This amount can be determined as low as 1% or as high as 20% of the debtor's outstanding balance on completion of the case.

If a settlement is reached, both the debtor and creditor will bear the costs of any legal fees incurred, regardless of the actual outcome of the settlement itself.

6.3. Insolvency proceedings

6.3.1. General information

The goal of filing for insolvency in Brazil is to create a situation where the creditors can be paid an equal percentage of the outstanding debt. This is typically done by liquidating the debtor's assets, including the assets of the company if the company is insolvent. It can also be done by collecting any enforceable income of the individual debtor who has been declared bankrupt by the proceedings.

Brazil usually has three types of insolvency proceedings:

- Preventive reorganisation
- Suspending reorganisation
- Bankruptcy

6.3.2. Proceedings

After the debtor or a creditor has filed for the insolvency of the debtor, Brazil's insolvency code mandates that a preliminary liquidator be appointed to the case. The job of the preliminary liquidator is to determine whether or not sufficient assets exist to cover the full costs of the proceedings, including court costs and the costs associated with the liquidator handling the matter. If the liquidator has determined that there are sufficient assets to cover these costs, the insolvency proceedings begin immediately, and a new preliminary liquidator will be appointed to handle the case. The court reserves the right to reject the declaration of bankruptcy if this procedure isn't followed as prescribed.

Once the insolvency proceedings begin, the creditors are able to lodge claims against the debtor's assets and reclaim any goods that were delivered to the debtor but not paid for. The liquidators will decide whether the goods in stock should be paid for using their original prices. If not, they'll be returned. A deadline for lodging claims is set when the insolvency proceedings begin. The appointed preliminary liquidator can accept a debt or dispute its accuracy. If a claim is disputed, the creditor will need to file the claim in court to prove its validity.

The debtor, or the debtor company, will be required to pay the preferential creditors first, with the deadline of two years typically set by Brazilian law. In accordance with the Bankruptcy Law number 11,101/2005, the established order of preference in receipt of credit that is due to creditors is:

1. Labour claims
2. Credit of real guarantees
3. Tax credit
4. Special privilege credit (this credit will be defined as special according to the law to which they refer)
5. General privilege credit (also defined by law)
6. Unsecured creditors – the sellers
7. Pecuniary penalties

6.3.3. Required documents

Brazilian courts require the following documents to be provided before any claim can be filed.

- A true copy of a power of attorney declaration
- Copies of the contracts
- Copies of the invoices
- Copies of any orders, deliveries, or other confirmations, if relevant
- Copies of any correspondence relating to the claim that might help verify its validity

6.3.4. Expected time frame

The deadline for lodging claims in Brazil is typically between one and three months. The deadline is related to the specific type of the insolvency case that is being pursued by the debtor and relevant legal authorities.

Atradius Collections

7. Bulgaria

Industries

- Business services
- Chemicals
- Food
- Machines
- Minerals
- Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

7.1. Amicable collections

7.1.1. General information

We and our local agents have a professional approach to each debt collection case. We aim to build up a relationship of confidence with each debtor and retain the relationships between you and your debtors whenever possible.

Our scope of actions includes (but isn't limited to) calling, sending reminder letters, and establishing personal contact with the responsible persons within the debtor companies.

7.1.2. Local agents

Our local agents are located in Sofia. At present, we don't offer field service to visit debtors across the whole country, but we can make exceptions for high-value cases. The agents can visit the debtors whose addresses are in Sofia if phone calls aren't sufficient to clarify the situations.

7.1.3. Interest

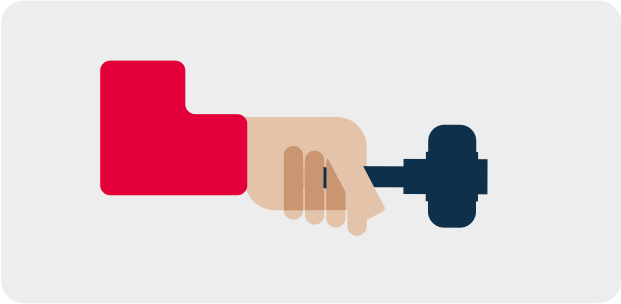
In Bulgaria, the legal interest charged to debtors can be calculated from the base rate set by the Bulgarian National Bank on 1 January (for the first half of the year) and 1 July (for the second half of the year), plus 10% on a yearly basis. It's possible to include interest, which will be calculated differently if this was agreed to in the contracts between the parties. Usually, our clients also include interest calculated by them when submitting debt collection cases to us. We include this in the debt amounts in our reminders. But in the majority of the cases, debtors don't pay this interest.

From a cultural point of view, Bulgarian debtors aren't used to paying late payment interest. Often the actual amounts of interest payment are considered a matter of negotiation between debtors and collectors.

7.1.4. Debt collection costs

Bulgaria has officially accepted the recovery of debt collection costs according to the EU Directive 2011/7/EU, but in reality, this isn't applied yet. The principal rule is adapted from the directive, and creditors may ask for an additional payment of EUR 40 for each invoice.

7.2. Legal collections



7.2.1. General information

Entering into legal proceedings is possible without a prior warning to the debtor. When it concerns commercial claims, the statute of limitations in Bulgaria is five years, calculated from the day after the due date of each invoice.

As a creditor with a claim concerning late payment, you have two options for initiating legal proceedings against the debtor: via ordinary court procedure, or through simplified legal proceedings by submitting an application (proposal) for enforcement by the court.

7.2.2. Required documents

Here is a list of the documents we need from you to start court proceedings:

- A power of attorney (POA), verified by a notary and with an apostille
- An extract from the trade register of your company with the name(s) of the responsible person(s) with the right to sign company documents. The same person(s) should sign the POA. This document should also be verified by a notary and with an apostille
- A statement of account from your accounting department, with a list of the invoices and payments showing the final debt amount. The document should be signed and stamped
- Copies of the CMR documents, verified with signatures and stamps
- Copies of the SWIFT bank documents with part payments (if any), verified with signatures and stamps

7.2.3. Legal dunning procedures

Simplified legal proceedings can be an option for small claims up to EUR 12,500.

The proposal for enforcement can be submitted based only on a statement of account or open invoices, directly by you or via attorney-at-law. After receiving the proposal for enforcement, the court issues a decision, which is sent to the debtor.

If the debtor doesn't object to the enforcement decision within two weeks after the document is delivered, the court decision will become final. The court can issue a writ of enforcement, and the procedure continues with a receiver (bailiff). The actions of the bailiff can incur additional costs.

The most common enforcement measure is blocking the debtor's bank accounts and transfers of the balances by the debtor's banks. If there is no possibility of collecting from the debtor's bank accounts, other enforcement measures can be proposed, such as selling the debtor's property.

The debtor can appeal in both stages of the simplified proceedings. Such an appeal will transfer the dunning procedures into a regular lawsuit procedure.

7.2.4. Lawsuits

A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the debtor, or following the legal dunning procedure after the debtor's appeal in the simplified proceedings.

After you pay the court tax in time and present a lawsuit, supported by the documentation of the case, the court will set a date for the examination of the case. All the documents have to be legally translated into Bulgarian.

When the claim is served on the defendant, the legal proceedings are fully initiated. The defendant has to send an answer supported by proof within one month; otherwise, the court will issue a default judgment. When the court receives an answer to the complaint from the defendant, it sets a date for a court hearing.

At the court hearing, both parties present their proof and statements. If necessary, the judge can demand a hearing of a witness or court expert (the experts will need to be paid additionally). If the court decides in your favour and the debtor doesn't pay, you can start an enforcement procedure on the grounds of the final judgment.

7.2.5. Expected time frame

The average duration of a legal dunning process is about 12 weeks, whereas a court procedure can take up to 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on all sides.

7.2.6. Costs and interest in the legal phase

All court fees have to be paid in advance and depend on the amount of the claim. In Bulgaria, there is a fixed percentage of court fees.

- For ordinary court procedures: 4% of the claim
- For simplified court procedures: 2% of the claim

Lawyers' fees are also paid in advance according to the official minimum lawyers' tariffs and also depend on the amount of the debt.

Legal translation of documents is minimum EUR 25 per page (depending on the language).

Final cost estimations will be provided on a case-by-case basis when legal action becomes necessary.

Extrajudicial interest and costs can be claimed as part of the outstanding amount during legal proceedings. Usually, courts acknowledge additional claims, but the outcome is highly dependent on the court and the judge. In all cases, the losing party has to bear the costs of the legal proceedings.

7.3. Insolvency proceedings

7.3.1. General information

The aim of insolvency proceedings is to pay all the creditors with the same quotas by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

7.3.2. Proceedings

After the debtor or a creditor files for the debtor's insolvency, a preliminary liquidator is appointed to check whether sufficient assets are available to cover the costs of the proceedings (court costs and costs of liquidators).
If these costs are deemed to be covered, the insolvency proceedings start and a liquidator will be appointed – usually this is the preliminary liquidator. If these costs aren't covered, the court will reject the declaration of bankruptcy due to insufficient assets. The creditors can

then lodge their claims and take back any goods delivered under retention of title clauses. For goods in stock, the liquidator can choose either to pay the original prices to the creditors or to return the goods.

After the proceedings start, lodging claims is possible within a given deadline. The liquidator can either accept a lodged debt or dispute it. If your claim is disputed, you may only file the claim in court to prove the justification of the claim when further documentation doesn't convince the liquidator to confirm the debt.

7.3.3. Required documents

In order to lodge a claim, we need:

- An original POA
- Copies of the invoices
- Copies of the contracts
- Copies of the orders, order confirmations, and delivery notes
- Copies of the general conditions of sale, if there are any
- Copies of any other correspondence that may verify the claim

7.3.4. Expected time frame

The deadline for lodging claims is one to three months, depending on the complexity of the procedures and starting from the adjudication order.

The whole duration of insolvency proceedings is at least two to three years.

Atradius Collections

8. Canada

Industries

- Chemicals
- Construction materials
- Food
- Minerals
- Paper
- Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

8.1. Amicable collections

8.1.1. General information

In the amicable phase, we follow a professional collection process with the objective of retaining the relationships between you and your debtors whenever possible. Our staff of collection professionals carry out the first collection tier in-house. We pursue debtors verbally and in writing within the bounds of federal and provincial law.

8.1.2. Local agents

We maintain direct contact with you and your debtors whenever possible. However, if required, we have local debt collection agency contacts throughout Canada to assist your collection needs. At the present time, we don't offer field service to visit debtors in Canada.

8.1.3. Interest

The collections of interest is permissible under Canadian law. If the terms and conditions of the contractual agreements between you and your debtors contain a clause that permits the collections of interest costs, then they may be added to the overall debts. Canada's Criminal Code makes it a crime to set an interest rate above 60%.

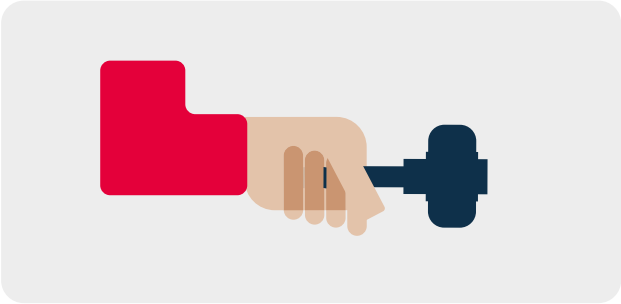
8.1.4. Debt collection costs

The addition of collection costs (success fees) is not permissible under Canadian law. However, if the terms and conditions of the contractual agreements between you and your debtors contain a clause that permits the collection costs, then they may be added to the overall debts.

8.1.5. Prescription

The general limitation of action for the collections of past due debts varies from two to six years. Most areas of Canada apply the two-year limitation, but some provinces or territories with limited exposure apply six years.

8.2. Legal collections



8.2.1. General information

Under the Canadian constitution, commercial law is generally within provincial jurisdiction. Certain exceptions exist, such as interest, currency, bankruptcy, and insolvency, which are governed under federal law. Canada has 10 provinces and three territories that utilise British common law (a system originated in the United Kingdom). Quebec is the only exception that utilises a civil law system based on French law.

The general statute of limitations is two years less a day. This is based on the date of the last recognised invoice or payment, unless there has been a written acknowledgement of debt.

Courts in the provinces or territories vary, and cases can be heard based on the balances due. As a general rule, debts with balances less than CAD 25,000 are heard in the Small Claims Court, and debts with balances greater than CAD 25,000 are heard in the Superior Court of Justice.

8.2.2. Required documents

In order to start legal proceedings, we require certified copies of the documents that support your claim, including any documents relevant to any dispute. These documents must be in English or French and must bear authentication by a notary or an affidavit by an expert if they have been translated from another language. Security costs may be required to cover any costs should the debtor be successful or if you - the plaintiff - do not reside in the specified provinces. If witnesses are required, phone or video conferencing services may be provided. These are basic requirements and may vary from province to province and from territory to territory.

8.2.3. Legal dunning procedures

To assist you in reducing additional costs, the local attorney assigned to the debtor will attempt to collect the monies prior to commencing any legal action. The attorney will use verbal and written communication within the bounds of

federal and provincial law, which may include negotiations over payment and/or settlement opportunities. The attorney will also complete due diligence to determine any further action. If the legal dunning phase fails, the attorney will provide recommendations for the next steps.

8.2.4. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections has failed due to disputes by the debtor, or after the legal dunning procedures where the debtor has appealed.

Legal proceedings can take anywhere from a few months to a few years to complete.

There are 10 provinces and three territories with different legal proceedings and rules for carrying out the proceedings. In some provinces, extensive pre-trial procedures, such as examinations for discovery, are common. These procedures provide opportunities to uncover detrimental information about the debtor. Other provinces offer the ability to request settlement conferences at any stage of legal proceedings.

8.2.5. Expected time frame

The average duration of a legal dunning process is between eight and 12 weeks, whereas a court procedure can take 12 months or longer, depending on the complexity of the case and the availability of the judge and lawyers on both sides.

8.2.6. Costs and interest in the legal phase

Due to the different provinces and territories throughout Canada, it's difficult to predict the total cost. Legal costs generally depend on the amount of the outstanding principal debt and the location of the debtor. Legal costs vary in each of the provinces and territories from CAD 450 to CAD 6,000. Costs of witnesses or other experts might also arise. On average, you may expect to pay CAD 1,700 to begin legal proceedings.

Cost estimations will be provided on a case-by-case basis should legal action become necessary, and actions will not commence without your prior consent. In our experience, legal action in Canada can become very costly for our clients.

All or a portion of the costs is usually awarded to the successful party at the trial. Court fees, expert costs, witness fees, and copying costs are recoverable in some provinces. Unfortunately, travel costs of the council to the trial's place are generally not recoverable. However, the necessary travel costs of witnesses, including the parties, may be recoverable in specific provinces. Certain provinces also allow attorneys' fees and administrative charges to be claimed only if the contract makes acceptable provisions.

8.3. Insolvency proceedings

8.3.1. General information

The insolvency process is legal proceedings that are dealt with under the provisions of the Bankruptcy and Insolvency Act. This act is administered by the Office of the Superintendent of Bankruptcy at the federal level. Only a trustee licenced in bankruptcy by the Superintendent of Bankruptcy can handle the process of proposals and bankruptcies.

8.3.2. Proceedings

There are four main insolvency options:

Proposal

A proposal, formal or informal, is made to all the creditors who are owed money in an effort to settle the debts.

Bankruptcy

The assets of the debtor company are liquidated. Depending on the provinces, some assets are exempt from liquidation. Secured creditors are paid first, followed by unsecured creditors, who may be paid with the remaining funds and, if there is one, a dividend. In order to receive a dividend, proof of claim must be filed by the creditors within the timeline given by the trustee.

Receivership

A secured creditor represented by a receiver takes control of the assets of the debtor company. Once an audit is completed, the company may operate under receivership, or the receiver can petition the company for bankruptcy.

Companies' Creditors Arrangement Act

A compromise or an arrangement is proposed between the debtor company and its unsecured creditors. Meetings between the creditors, trustees, and shareholders may be ordered by the courts, and the whole process can last for many years.

8.3.3. Required documents

In order to complete the proof of claim on your behalf, we need:

- An original power of attorney
- Cop ies of the invoices
- Copies of the contracts
- Copies of the orders, confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim

Regarding the proof of claim, our preference would be to have you complete this yourself to ensure accuracy.

8.3.4. Expected time frame

The deadline to lodge claims varies between provinces. The whole duration of insolvency proceedings is between one and three years.

Atradius Collections

9. Chile

Industries

Construction materials

Food

Minerals

Textiles

Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

9.1. Amicable collections

9.1.1. General information

We provide debt collection services that follow a rigorous selection process in order to meet your needs. Our local partners carry out the collection process in-house, adhering to federal and state law.

9.1.2. Local agents

We offer strategic and competitive services and we work with a range of selected partners to supplement our local knowledge and expertise. Our local partners are located in Santiago. They don't usually offer field service to visit debtors' premises. In case debtors wish to visit our office, we'll gladly meet them to discuss solutions for their cases face-to-face.

Concerning payment methods, cheques are still very useful in Chile for paying debts, because they allow debtor companies to schedule payments in 30, 60, and 90 days.

9.1.3. Interest

Generally, in the amicable phase, interest is charged to debtors. However, the percentage can be negotiated.

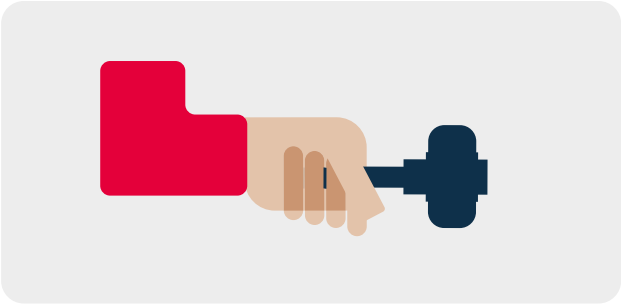
Interest is daily and can vary according to the table that comes from the Superintendency of Banks and Financial Institutions.

9.1.4. Debt collection costs

In Chile, debt collection costs are charged to debtors at the end of the collection process, especially in the last instalment.

From a cultural perspective, Chilean debtors are used to paying debt collection costs, though often the actual amounts of these costs are considered a matter of negotiation.

9.2. Legal collections



9.2.1 General information

Legal action is taken when all options have been exhausted in the amicable phase. This legal process starts after the debt's expiration.

The first phase of the legal procedure is negotiation and it's generally short. The lawyer negotiates with the debtor in order to try to reach an agreement. In case an agreement isn't reached, the lawyer verifies whether the debtor has property on their behalf, in order to confirm whether there are any conditions for the property to be taken legally on behalf of the other party.

9.2.2. Required documents

In order to start the legal collection process, the required documents are:

- The original invoices or promissory notes
- The original contracts
- The actual and clear statements of account, indicating the payments and credit notes
- The original bills of lading
- A power of attorney with an apostille

As soon as the debt is paid with interest and extra costs, the legal proceedings are ended.

9.2.3. Legal dunning procedures

Legal dunning procedures come before lawsuits. However, there are no costs involved, and they become more profitable and attractive to both parties. Regarding the Civil Procedure Code, this procedure is only applicable to monetary debts.

Precautionary measures can be granted by the court, either before the trial begins or during the trial, when there are grave and qualified motives for believing that the defendant may face the serious risk of being unable to fulfil their obligations if they're defeated.

9.2.4. Lawsuits

Chile follows the civil law system and there are two debt collection court proceedings:

- Ordinary debt collections
- Executive legal suit

The executive legal suit is supported by an expedient claim title – an executive title – which means that the documents need to follow certain formalities. In the absence of such a title, you'll need to resort to ordinary proceedings.

9.2.5. Expected time frame

The average duration of legal proceedings depends on the complexity of the case. But we can estimate five years for ordinary debt collections, and between one and three years for an executive legal suit.

9.2.6. Costs and interest in the legal phase

All costs depend on the outstanding principal amount and are calculated proportionally. There are different fees depending on the applicable procedures. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

Interest and costs in the legal phase follow the same parameters as those established for amicable collections, such as 7% to 8% of the claim, and can be claimed as part of the outstanding debt during legal proceedings.

The general rule states that the losing party is liable for lawyers' fees and costs. Nevertheless, in practice, the courts determine the amount that the losing party must pay, which is just a fraction of the actual legal fees and costs.

9.3. Insolvency proceedings

9.3.1. General information

The Bankruptcy Act allows the debtor and their creditors to come to a formal rescue agreement to avoid potential bankruptcy. This agreement can provide for either a bankruptcy pre-emption process or a bankruptcy release process.

Under Chilean rules, there is a possibility for the debtor to conduct negotiations in order to evaluate their behaviour. The debtor can also make suggestions for partnership before the insolvency declaration, since they aren't considered being blamed for criminal actions.

9.3.2. Proceedings

As soon as the bankruptcy is declared, individual debt collection actions and all pending legal action are suspended.

In exceptional cases, certain secured creditors may follow individual debt collection procedures even after the bankruptcy declaration. In particular, for mortgage or pledge creditors, individual debt collection actions may continue or be implemented under certain conditions in order to liquidate the assets in question and to get payment from the liquidation proceeds.

In general, within a bankruptcy, the following sequence of events takes place.

- A bankruptcy petition (voluntary or involuntary) is filed
- The court declares the bankruptcy
- The automatic stay takes effect (individual collection actions are stopped)
- The creditors of the bankruptcy are notified
- An interim trustee or receiver is appointed
- The debtor files schedules of assets and debts
- The creditors hold the first meeting and confirm or elect the permanent trustee or receiver

- The creditors file their claims for verification
- The trustee or receiver determines which property is subject to liquidation
- The trustee or receiver liquidates the assets included in the bankruptcy
- The trustee or receiver distributes the proceeds of the liquidation. The receiver must apply the funds available to pay the creditors in accordance with the applicable statutory priorities according to the five categories of claims specifically listed in the Civil Code
- The court closes the case after two years since the approval of the trustee's final account, provided that the debtor has acted in good faith

9.3.3. Required documents

In order to lodge a claim, we need:

- An original power of attorney (with an apostille if granted outside of Chile)
- The original invoices
- The original contracts, or copies of the orders, order confirmations, and delivery notes
- The original general conditions of sale, if there are any

The power of attorney that represents your company must be written in or translated by a public translator into the local language (Spanish), granted before a notary, and legalised with an apostille.

9.3.4 Expected time frame

The deadline for lodging claims ranges from one to two months, depending on the complexity of the procedures, and starts from the bankruptcy petition (voluntary or involuntary).

The average duration of liquidation is between two and three years.

The whole duration of insolvency proceedings is between three and six years.

Atradius Collections

10. China

Industries

- Chemicals
- Construction materials
- Consumer durables
- Electronics
- Food
- Machines
- Minerals
- Textiles
- Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

10.1. Amicable collections

10.1.1. General information

China has had a rich history of debt collections. The practice was prohibited by the Chinese government in the late 19th century and is still restricted by law today. Therefore, the debt collection industry is still officially restricted, but there are companies that provide debt collection services through specialised legal firms that are authorised to collect Chinese debts. China has shown more interest in outsourcing their outstanding receivables to debt collection agencies and law offices.

We collaborate with local law firms to provide amicable and legal collection services in China. Our team has experienced collectors with a legal background, which is essential for collecting debts in China.

10.1.2. Local agents

We have local offices in Shanghai and Guangzhou - two major cities in China, covering our collection services across the whole nation.

10.1.3. Interest

From a cultural point of view, Chinese debtors aren't used to paying late payment interest charges. So during the first steps of negotiation, we usually don't claim this part. When a case enters into litigation or arbitration, we charge interest calculated from the loan prime rate set by the People's Bank of China, plus 30% to 50% (the Reply from the Supreme People's Court on the Calculation Standard of Late Payment Penalties).

10.1.4. Debt collection costs

From the point of view of Chinese law, we have the right to charge the costs arising from the collections of debts, but Chinese debtors won't expect to pay them if the debts are paid in the negotiation phase.

10.1.5. Prescription

The general limitation of action regarding applications to a people's court for protection for civil rights is three years, unless otherwise stipulated (the General Principles of the Civil Law of the People's Republic of China (PRC), Article 135).

The limitation of action is one year for cases concerning the sales of substandard goods without proper notice of the effect.

For disputes arising from contracts for international sales of goods or technology imports or export contracts, the time limit for bringing a suit or applying for arbitration is four years, calculated from the date on which the party knows or ought to know the infringement of its rights.

The limitation period for claims against carriers with regard to carriage of goods by sea is one year, starting from the day on which the goods were delivered or should have been delivered by the carriers.

The limitation period for claims against carriage by rail is 180 days.

There is no such stipulation regarding outstanding invoices.

Any of the following circumstances will have the effect of interruption to statutes of limitations.

- A party directly serves a document of claim on the opposite party, and the opposite party affixes their signature or seal to the document. Or it may be otherwise proved that the document reached the opposite party, who failed to affix their signature or seal to the document
- A party makes a claim by correspondence or data message, and the letter or data message reached or should have reached the opposite party
- A party, which is also a financial institution, deducts and collects the owed principal and interest from the accounts of the opposite party
- The whereabouts of a party is unknown, and the opposite party publishes an announcement of claim through a national medium or an influential local medium near the last known location of the party whose whereabouts is unknown

These are only a few of the situations that may interrupt a limitation period, and there are many other stipulations that have the same effect detailed in the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Statutes of Limitations during Trials of Civil Cases, which came into force as of 1 September 2008.

10.1.6. Payment methods

The most common Payment methods are bank transfers and bank acceptance drafts for local businesses. The drafts normally have future honour dates and bank acceptance stamps on them.

10.1.7. Types of companies

Limited liability company

- The company has liability for its debts with all its property
- The amount of capital contributions subscribed for by all its shareholders is in compliance with the company's by-laws

Joint-stock limited company

- The company has liability for its debts with all its property
- The shareholders are responsible for the company to the extent of the shares they've subscribed for
- The company can be established by floatation on a stock exchange

10.1.8. Sources of information

In China, there are public local credit information platforms as well as credit information companies. However, financial data are restricted except for public listed companies. Other information includes the contact details of debtors' shareholders or legal representatives, debtors' bank accounts, records of litigation and the like.

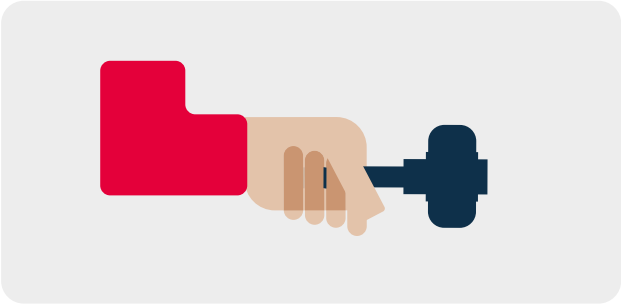
10.2. Retention of title

Under the Contract Law of the PRC, a seller retains the ownership of their goods before the buyer has paid in full only when both parties have agreed to this in the contracts. If there is no such stipulation, the ownership of the goods transfers to the buyer upon delivery.

The Contract Law of the PRC:

- Article 133. The ownership of a targeted matter is transferred upon the delivery of the targeted matter, unless the law allows otherwise or the parties stipulate otherwise
- Article 134. The parties may stipulate in a purchase and sales contract that the seller retains the ownership of the targeted matter if the buyer fails to pay the price or fulfil other obligations

10.3. Legal collections



10.3.1. General information

In China, the law regulates the relationships between people or companies. There is no need to give a warning prior to filing a lawsuit. When a case is sent to court, there may be a pre-court procedure, which can be skipped before the normal proceedings start.

10.3.2. Legal systems

In China, courts are divided into the Supreme People's Court, high people's courts, intermediate people's courts, and primary people's courts. Generally, the primary people's courts have jurisdiction as courts of first instance for civil cases. The intermediate people's courts have jurisdiction as courts of first instance for civil cases that have a major impact on the areas under their jurisdiction. The high people's courts have jurisdiction as courts of first instance for civil cases that have a major impact on the areas under their jurisdiction. The Supreme People's Court has the right to give interpretations of questions concerning specific application of laws and decrees in judicial proceedings.

Supreme People's Court

- The highest independent court
- Final judicial judgments

High people's courts

- Of provinces
- Of autonomous regions
- Of municipalities directly under the central government
- Supervised and guided by the Supreme People's Court

Intermediate people's courts

- Established in the prefectures of a province or an autonomous region
- Established in municipalities directly under the central government
- Of autonomous prefectures
- Of municipalities directly under the jurisdiction of a province or an autonomous region
- Supervised and guided by high people's courts

Primary people's courts

- County people's courts and municipal people's courts
- People's courts of autonomous counties
- People's courts of municipal districts
- Supervised and guided by intermediate people's courts

10.3.3. Required documents

The following conditions must be fulfilled when a lawsuit is filed.

- The plaintiff must be a citizen, a legal person, or any organisation that has a direct interest in the case
- There must be a definite defendant
- There must be a specific claim or claims, facts, and cause for the suit
- The names, genders, ages, ethnic status, occupations, work units, and home addresses of the parties must be provided. If the parties are legal persons or any other organisations, their names, addresses, and the names and posts of the legal representatives or principals must be provided
- The evidence and its sources, as well as the names and home addresses of the witnesses, must be provided
- The original documents will be provided and checked during the trial

When a lawsuit is filed, copies of the statements as well as other evidence will be provided depending on the number of defendants in court.

10.3.4. Legal dunning procedures

When a creditor requests payment of a debt or recovery of negotiable instalments from a debtor, they may, if the following requirements are met, apply to a primary people's court that has jurisdiction over orders for payment.

- No other debt disputes exist between the creditor and debtor
- An order for payment can be served on the debtor

China is the most credit-averse country with fewer than 40% of business-to-business transactions made on credit.

The debtor will, within 15 days after their receipt of the order for payment, clear their debt or submit to the people's court their dissent in writing. If the debtor has neither dissented from nor complied with the order for payment within 15 days, the creditor may apply to the people's court for execution. The order for payment is effective only when the debtor has failed to submit their dissent in writing within 15 days. Once such dissent is submitted, the order for payment will be terminated and the creditor will need to take further legal action.

10.3.5. Lawsuits

Lawsuits can only be filed by creditors.

Generally, a civil lawsuit brought against a citizen will be under the jurisdiction of the people's court in the area where the defendant lives. If the place of the defendant's address is different from that of the defendant's usual residence, the lawsuit will be under the jurisdiction of the people's court in the area of the defendant's habitual residence (one year).

A civil lawsuit brought against a legal person or any organisation will be under the jurisdiction of the people's court in the area where the defendant has their domicile or is subject to the contract stipulations.

A lawsuit brought in a contract dispute will be under the jurisdiction of the people's court in the area where the defendant has their domicile, or where the contract is executed.

Not all stipulations about jurisdiction are listed (see the Civil Procedure Law of the PRC).

10.3.6. Appeals

If a party disagrees with a judgment issued by a local people's court of first instance, the party has the right to lodge an appeal with an immediate superior people's court within 15 days from the date when the written judgment was issued.

When lodging an appeal, a petition for the purpose will be submitted. The content of the appeal petition will include the names of the parties, the names of the legal persons and their legal representatives or the names of other organisations and their principals, the name of the people's court where the case was originally tried, the file number of the case, the cause of action, the claims of the appeal, and the reasons.

10.3.7. Expected time frame

When a case is tried according to a summary procedure (one judge), the people's court will conclude the trial within three months from the date it's entered on its trial docket.

When a case is handled according to an ordinary procedure (three judges), the people's court will conclude the case within six months from the date it's accepted.

When an extension to a period is necessary under special circumstances, a six-month extension may be allowed, subject to the approval of the president of the court.

Further extensions, if needed, will be reported to a people's court at a higher level for approval.

A case on appeal will be concluded within three months after being docketed by the people's court.

However, the period for the people's court to try a foreign-related civil case won't be limited by the above-mentioned provisions.

10.3.8. Costs and interest in the legal phase

The costs and interest in the legal phase can be claimed with the loan prime rate set by the People's Bank of China, plus 30% to 50% (the Reply from the Supreme People's Court on the Calculation Standard of Late Payment Penalties).

10.4. Enforcement

10.4.1. Enforcement in debt

The concerned parties must comply with legally effective judgments or written orders in civil cases. If a party refuses to do so, the other party may apply to the people's court for execution, or the judge may refer the matter to an execution officer for enforcement.

All the fees arising from the enforcement will be paid by the debtor, and the applicant doesn't have to pay such fees.

10.4.2. Enforcement in movable property and immovable property

If the debtor subjected to execution fails to fulfil the obligations according to the execution notice and the obligations specified in the legal documents, the people's court will be empowered to make enquiries to the banks, credit co-operatives, or other units that deal with saving to the accounts of the debtor, and will be empowered to freeze or transfer deposits.

If the debtor subjected to execution fails to fulfil the obligations specified in the legal documents, the people's court will be empowered to seal, freeze, sell by public auction, or sell off part of the property of the debtor for the fulfilment of their obligations.

10.4.3. Expected time frame

The time frame for enforcement is usually less than six months, but it can be extended when necessary after being approved by the president of the court.

10.5. Insolvency proceedings

10.5.1. General information

With the start of preliminary proceedings, all individual enforcement is suspended. Only when the insolvency proceedings aren't started, will individual enforcement be continued.

The purpose of insolvency proceedings is to pay out all the creditors by liquidating the assets of the debtor company.

10.5.2. Proceedings

When the debtor is unable to pay off the debts due, their creditors may file an application for reorganisation or liquidation by bankruptcy to the people's court.

The people's court will designate an administrator when ruling on accepting the application for bankruptcy. The people's court will inform the creditors who have definite addresses about the ruling within 25 days after making the ruling whether it accepts the application for bankruptcy and makes a public announcement.

After the people's court accepts the bankruptcy application, the debtor can't pay off the debts to specific creditors. The civil litigation or arbitration concerning the debtor that has started but hasn't ended yet will be suspended after the people's court accepts the application for bankruptcy, and the litigation or arbitration will proceed after the administrator takes over the debtor's property. Civil litigation concerning the debtor after the people's court accepts the application for bankruptcy may only be filed with the people's court that has accepted the application for bankruptcy.

10. 5.3. Expected time frame and outcome

The people's court will confirm the time limit for the creditors to declare credits after accepting the application. The time limit for declaring credits won't be fewer than 30

days or exceed three months since the date of the public announcement of the application for bankruptcy by the people's court.

The debtor or administrator will, within six months since the date of the ruling by the people's court on the reorganisation of the debtor, submit a draft of the reorganisation plan to the people's court and creditors' meetings simultaneously. At the request of the debtor or administrator with justified reasons upon the expiration of the term above, the people's court may rule on an extension to such a term for another three months.

The whole duration of insolvency proceedings usually takes between two and four years, but it could be more.

10.5.4. Limited companies

The administrator will, within 10 days since the conclusion of the bankruptcy proceedings, handle the procedure for the revocation of the registration of the bankrupt person at the registration authority by giving the ruling of the people's court on the conclusion of the bankruptcy proceedings.

The directors, supervisors, or officers of the bankrupt company that have neglected their duties of loyalty and due diligence and contributed to the bankruptcy of the company will bear relevant civil liability. The persons involved in the mentioned circumstances won't act as directors, supervisors, or officers at any company within three years since the date of the conclusion of the bankruptcy proceedings.

10.5.5. Unlimited companies

Unlimited companies can't declare insolvency. They should bear the debts until they're paid off or cancelled by the creditors.

10.5.6. Rescission

When the debtor and creditors have objections against the credits contained in the credit form, lawsuits may be instituted in the people's court that has accepted the application for bankruptcy.

The salaries, medical and disability allowances, pension expenses due to the employees by the debtor, basic pension insurance, basic medical insurance expenses owed to the individual accounts of the employees, and compensation that will be paid to the employees as prescribed by administrative law and regulations aren't required to be declared. These will be listed and posted to the public by the administrator after investigation. In case of objections to the records on the list, the employees may require that the administrator make corrections. If the administrator has made no corrections, the employees may file lawsuits in the people's court.

10.6. Arbitration and mediation

Contracts relating to foreign investments in China usually stipulate that any disputes arising between the parties should be settled by amicable negotiation, followed by arbitration in case of failure of agreement. Resolutions to disputes by arbitration are also recognised in foreign-related laws in China. Foreign-related arbitration in China is now mainly administered by the China International Economic and Trade Arbitration Commission (CIETAC).

According to the Arbitration Law of China, an arbitration agreement (which is usually set out as one of the clauses in the contracts) must be in writing and contain the following particulars.

- An indication of intention to apply for arbitration
- The arbitration matter
- The selected arbitration commission

Mediation isn't usually used to resolve disputes in China.

Atradius Collections

11. Colombia

Industries

Chemicals

Construction materials

Food

Minerals

Textiles

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

11.1. Amicable collections

11.1.1. General information

We provide debt collection services with extensive local expertise in order to meet your needs. We focus on the relationships between you and your debtors at all times.

11.1.2. Local agents

We work with a range of selected partners to supplement our local knowledge and expertise. They complement our global presence and help us meet your needs wherever you are located in the world.

Our local partners are located in Bogota. They consist of experienced teams of professionals specialising in business advice and problem solving, taking advantage of the capacity and knowledge of each team member. They also have a worldwide network of correspondent firms.

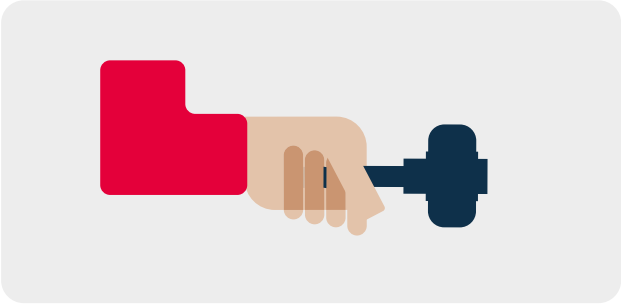
11.1.3. Interest

Usually, during the amicable phase, debtors are charged at an interest rate not exceeding 1% per month. Meanwhile, in order to have the interest paid, you're obliged to provide an official document, such as a debit note.

11.1.4. Debt collection costs

During the amicable phase, this is a matter of negotiation. From a cultural point of view, Colombian debtors aren't used to paying debt collection costs.

11.2. Legal collections



11.2.1. General information

We take legal action when all options have been exhausted in the amicable phase. The legal action will be carried out verbally, publicly, and in hearings, except for those who are expressly authorised in writing or are protected by reservation.

11.2.2. Required documents

The documents required to proceed with legal procedures are:

- A notarised power of attorney with an apostille
- Proof of the existence and legal representation of your company (constitutive acts)
- The invoices or promissory notes
- The bills of lading
- The purchase orders
- Other original documentation, such as contracts

The copies of the documents that are intended to be used as an executive title will need proof of their requirements.

The power of attorney that represents you must be written or translated by a public translator into the local language (Spanish), granted before a notary, and legalised with an apostille.

11.2.3. Legal dunning procedures

A legal dunning procedure is a formal act designed to prove the default of a particular person when they have formal debts. This procedure is only applicable to monetary debts (bills of exchange).

The official documentation will be delivered to the debtor so that they can consider and stamp the original documentation with the expression "Protest". The debtor can appeal in the legal phase, which would then transfer the dunning procedure into a regular lawsuit procedure.

11.2.4. Lawsuits

A lawsuit must fulfil some requirements, such as the designation of a judge, what is intended in the legal proceedings – expressed with precision and clarity, the fundamentals of the law, among others.

At the moment of presentation, the secretary will verify the accuracy of the documents. If they aren't in accordance with the originals, they will be returned to be corrected. The judge will admit demands that meet the requirements of the law, and will approve procedures that legally correspond.

11.2.5. Expected time frame

The average duration of legal proceedings depends on the complexity of the case, as well as the availability of the judges and lawyers on all sides. But it can last anywhere from several months up to a few years in execution proceedings.

11.2.6. Costs and interest in the legal phase

Initially, the costs of the formal presentation of a judicial action, whether executive or ordinary, are around 2% (it'll be reviewed in each case) of the total amount to be claimed. If this action must be initiated in a jurisdiction other than Bogota, the initial costs can be increased.

Interest and extrajudicial costs may be charged as part of the legal claim. Judicial costs must be clearly established. Although interest rates agreed by the parties are usually accepted, the judge has the power to modify them if there is evidence of disproportion or unjustified enrichment.

11.3. Insolvency proceedings

11.3.1. General information

Under Colombian law, debtors are generally able to start insolvency proceedings when they're no longer able to pay their debts as they're due.

The debtor may file for both liquidation and reorganisation, through insolvency proceedings or reorganisation proceedings. The objective of the proceedings is to preserve the debtor company, protect the credits, and conserve the debtor company as an economic exploitation unit.

11.3.2. Proceedings

To start reorganisation proceedings, there should be indications of the existence of cessation of payments older than 90 days, any obligations in favour of two or more creditors or the debtor, and at least two legal suits filed by two or more creditors for the payment of the obligations.

Once the request for reorganisation proceedings has been received, the judge will verify the legal requirements and see whether everything is in accordance with the law.

The insolvency proceedings will end in the case of any of the following events.

- The fulfilment of the obligations agreed
- Failure to comply with the obligations that aren't resolved in the hearing where the judge declares the bankruptcy

11.3.3. Required documents

The required documentation is advised to be originals, such as invoices (90 days overdue), bills of lading, promissory notes, and powers of attorney.

The power of attorney that represents your company must be written in or translated by a public translator into the local language (Spanish), granted before a notary, and legalised with an apostille.

11.3.4. Expected time frame

The deadline for submitting credits is usually between two and six months after the insolvency requirements.

The duration of insolvency proceedings is usually between four and 10 years, starting with a payment procedure.

The law doesn't set limits on either payment plans or debt settlements.

Atradius Collections

12. Croatia

Industries

Chemicals
Construction materials
Electronics
Food
Machines
Minerals
Paper
Services
Textiles
Transport

Source: Central Intelligence Agency World Factbook

Chance of collecting

up to 50%

12.1. Amicable collections

12.1.1. General information

As professionals in collections, we're in a position to provide first-class services, special treatment, and analyses of each debt collection case in order to successfully recover overdue debts.

Our activities are based on checking debtors and taking appropriate action with regard to their existing financial situations and ability to pay.

Our debt collection activities consist of:

- Checking debtors' circumstances
- Delivering written reminders
- Making telephone calls
- Making personal visits

It's widely known that, with regard to late payment, the efficiency of debt collections depends on timely and appropriate actions. The longer you wait before deciding to act, the lower the chance that the debts will be recovered.

12.1.2. Interest

The Croatian business culture is to not pay interest, so it's difficult to obtain the payment using amicable processes.

The interest rates are:

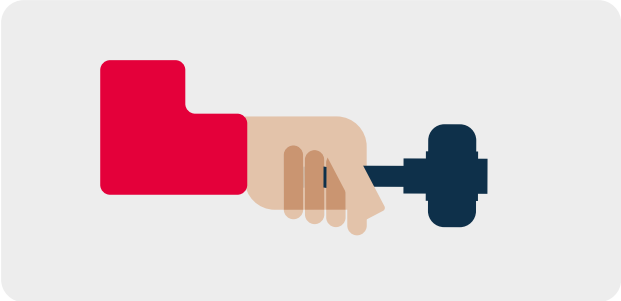
- 12.5% for Q1 and Q2 2024 (commerce, business-to-business)
- 7.5% for Q1 and Q2 2024 (retail)

12.1.3. Debt collection costs

The potential for requesting payment of debt collection costs varies from case to case. We, as an agency, always quote debt collection costs in the first reminders, but usually we collect only the claim amounts. There are some cases where the costs are collected, but the number of such cases is very low.

When a client insists on receiving the payment of such costs, we're asked by the debtor to provide an invoice regarding the issue by the client. Based on that invoice, the payment should be received.

12.2. Legal collections



12.2.1. General information

The Croatian legal systems are composed of civil law, which regulates the relationships between two people or companies, and execution procedure law, which regulates forced collections of debts.

Entering into legal proceedings is possible without a prior warning to the debtor. A letter about the possibility of legal action can be sent to the debtor as the last and final reminder at the end of the amicable collection phase, and this letter can be used to prove that all the pre-court efforts are fruitless. However, the presence of such a letter doesn't guarantee that a court decision will be received quicker.

12.2.2. Required documents

Here is a list of the necessary documents for legal action.

- The contracts signed by the parties with all the appendices
- All the unpaid invoices
- The statements of account indicating the payments and credit notes
- The transport documents with the debtor's signature proving the goods' receipt and customs declarations
- All the correspondence and other documents relating to the debt
- An extract from the trade register of your company
- A power of attorney (POA) for our lawyers to represent your company
- According to the amendments to the Distraint Law, which came into force on 3 August 2017, motions for execution have to include the personal identification numbers (PIN or OIB) of the legal representatives (e.g. directors) of your company and of the person signing the POA

Here is a list of the necessary documentation for each representative.

- A verified copy of their passport or a verified copy of their European identity card
- A signed POA, in which it's necessary to add information such as their address and place and date of birth

All the documents have to be provided as copies assured by a notary, or as original documents because it's necessary to translate all the papers into Croatian. The original documents have to also be shown to the court in case the debtor denies the validity of the documents in any way.

Also, it's necessary to obtain information about the parents of the legal representatives signing the POA, because that information should be stated in the request for the PIN, such as their names, surnames, birth surnames, and dates of birth.

If some documents are missing, it's necessary to provide explanations for this fact.

12.2.3. Lawsuits / Motions for execution

A regular execution procedure is started directly after the amicable collection process has failed due to dispute by the debtor. A motion for execution is submitted to a public notary based on the unpaid invoices or statements of account, on the grounds of which the public notary issues a writ of execution. If the debtor doesn't lodge an appeal, the writ of execution becomes valid, and it's possible to block the debtor's bank accounts on the grounds of the valid and enforceable writ of execution until the collections is done. If the debtor has no capital, it's possible to continue the procedure with other possible movable property and/or real estate of the debtor.

A regular lawsuit procedure is started directly after the execution procedure has failed due to dispute by the debtor, or if the debtor lodges an appeal against the writ of execution. The claim is submitted by the public notary to the court, which checks the documents and the grounds for the claim. If the claim is prepared and submitted correctly, the court announces a date for a session, during which both parties have to be present. If it's necessary, the court may postpone the session and announce a date for another hearing. The parties will be informed about the outcome in writing by the responsible court.

12.2.4. Expected time frame

The average duration of an execution procedure before a public notary can take up to one month, and a court procedure can take from six months to three years, depending on the complexity of the case and the availability of the judges.

12.2.5. Costs and interest in the legal phase

The costs of an execution procedure and civil law procedure (public notary costs, court costs and fees) are determined by the provisions of the attorney tariffs and public notary tariffs and aren't subject to any negotiation.

All costs depend on the outstanding amount. There are different fees that can apply during a procedure. It's difficult to declare an exact sum of litigation costs. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

The legal or arranged interest and costs can be claimed as part of the outstanding amount during legal proceedings. Usually, the court awards interest in the claim amount if it was requested. The defendant has to pay the court fees for the legal proceedings in accordance with the law on civil procedure. Other expenses (e.g. experts' fees) can be requested from the debtor. However, the decision on whether those are awarded depends on the court.

12.3. Insolvency proceedings

12.3.1. General information

There are two kinds of insolvency:

Pre-bankruptcy proceedings for so-called financial restructuring

The debtor company has to provide a debt repayment plan. If the plan is fulfilled, the debtor company continues to operate. The purpose of pre-bankruptcy proceedings is to enable financial restructuring of the debtor company threatened by insolvency, based on an approved and accepted restructuring plan, to allow the debtor to continue their business operations.

A pre-bankruptcy agreement is an enforceable document for the creditors. It means that if the debtor doesn't fulfil their obligations according to the agreement, the creditors are entitled to commence an execution procedure against the debtor.

Bankruptcy proceedings

In cases of illiquidity and/or insolvency of the debtor, the court will start bankruptcy proceedings, with which the

debtor should be finally liquidated. The court appoints an administrator and a bankruptcy trustee to prepare a list of the creditors and receive the documents. The debtor company is liquidated once the proceedings are over.

12.3.2. Proceedings

Claims have to be submitted within 15 days since the court decision to begin pre-bankruptcy proceedings and within 60 days since the court decision to begin bankruptcy proceedings.

If your claim is not submitted within these terms:

- If pre-bankruptcy proceedings are initiated: your claim is still considered lodged if the debtor stated the claim in their proposal for the commencement of the pre-bankruptcy proceedings and no contestation was made over the amount stated in the proposal. Otherwise, the court will reject the lodging submitted after the term and the claim won't be taken into account
- If bankruptcy proceedings are initiated: your claim won't be taken into account

12.3.3. Required documents

In order to lodge a claim on your behalf, we need:

- The unpaid invoices
- The statements of account that indicate the payments and credit notes
- An extract from the trade register of your company
- A POA for our lawyers to represent you

12.3.4. Expected time frame and outcome

The deadline for lodging claims is 15 days since the court decision to begin pre-bankruptcy proceedings, and 60 days from the date that the information about the court decision is published in official sources.

The whole duration of pre-bankruptcy proceedings is 120 days since the submission of the proposal for initiating the proceedings.

The whole duration of bankruptcy proceedings can't be predicted exactly.

The outcome can't be predicted exactly either. It depends on the debtor company's state at the moment the insolvency starts.

Atradius Collections

13. Czechia

Industries

Machines

Minerals

Transport

Chance of collecting

75%–100%

Source: Central Intelligence Agency World Factbook

13.1. Amicable collections

13.1.1. General information

We maintain a professional collection process and focus at all times on the relationships between you and your debtors. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to the law.

When there is a dispute, we aim to reach an amicable solution between you and your debtor. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as all standard terms that have been agreed to). All our investigations are completed with the assistance and agreement of our legal team.

13.1.2. Local agents

We offer direct collections activities managed by a network of selected local agents who visit debtors all over Czechia. In our experience, this solution is particularly successful in specific debtor categories, such as individual sole traders, shops, and small companies.

13.1.3. Interest

Interest rates should be specified in the contracts between you and your debtors. If they aren't, you can charge an interest rate on late payment based on law. This interest rate is the same for all business relationships and is prescribed by civil law. It's calculated as the amount of the repo rate set by the Czech National Bank applicable on the first day of the relevant half-year delay, plus 8%.

We charge debtors for interest, both in the amicable phase and legal phase. In legal proceedings, the interest rate will be based on law if it isn't contracted by the parties.

13.1.4. Debt collection costs

Since July 2013, creditors can demand a lump sum of collection costs of at least CZK 1,200.

13.1.5. Prescription

The general prescriptive periods in Czechia are:

- For contracts concluded before 31 December 2013: Four years after the due date set by the original invoice for business-to-business (B2B) claims
- For contracts concluded after 1 January 2014: Three years after the due date set by the original invoice regardless of the nature of the claim. The parties may agree to a shorter or longer limitation period calculated from the date on which the right could be exercised for the first time, but not shorter than one year and not more than 15 years
- If the debtor has acknowledged their debt or if a claim has been granted by a court decision or an arbitration award, the limitation period is 10 years from the acknowledgement of debt, respective from the date on which the rights under the acknowledgement of debt or under the court decision or arbitration award are to be exercised

The prescriptive periods can be interrupted if a creditor starts legal or execution proceedings, and also during an out-of-court negotiation between a creditor and the debtor over the rights or the circumstances the rights are based on.

13.1.6. Types of companies

Sole trader

- Unlimited liability of the owner with their business and private assets
- In order to pursue such debtors, we need their first names and surnames, plus their business registration numbers

Public company ("verejna obchodni spolecnost", v.o.s.)

- No minimum capital
- Unlimited liability of the company and its partners

Limited partnership ("komanditni spolecnost", k.s.)

- The value of the registered capital is set according to the partnership contracts
- At least one partner has unlimited liability with their business and private assets
- The limited partners are only liable with the company's assets

Limited company ("spolecnost s rucenim omezenym", s.r.o.)

- The minimum capital requirement is CZK 1
- Liability is limited up to the amount of the company's assets

Joint-stock company ("akciova spolecnost", a.s.)

- The minimum capital requirement is CZK 2 million or EUR 80,000
- Liability is limited to the company's capital

13.1.7. Sources of information

In Czechia, we contact credit-reporting agencies to assess the financial situations of debtors. We combine this with our own phone calls to get an accurate impression of the debtors' financial situations and to advise you on the next steps.

All companies have to be registered with the trade register with information about the types of companies, the owners, the statutory bodies of the companies, and the registered capital. All information is available free of charge on the internet. Sole traders are registered with the sole trader register, which is also available free of charge on the internet. All companies are also obliged to publish their financial statements in the trade register. But unfortunately, most of them don't do it.

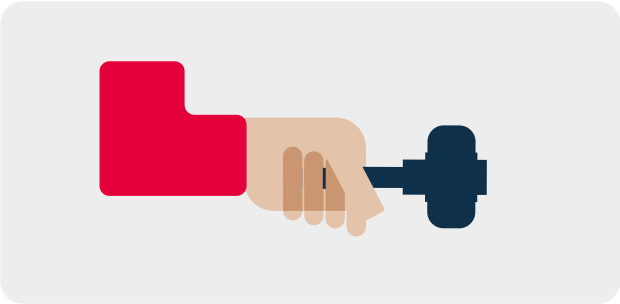
13.2. Retention of title

Retention of title clauses must be agreed to explicitly prior to delivery. It must be in the form of a public instrument made by a notary or at least in written form with officially authenticated signatures.

13.3. Safeguard measures

If your debtor isn't able to settle your claim in a speedy manner, we can request that the debtor secure the debt in favour of you – the creditor. This can be done amicably and cost-effectively by providing an acknowledgement of debt in writing, which is authenticated by a notary and immediately enforceable in case the agreed payment terms aren't fulfilled.

13.4. Legal collections



13.4.1. General information

Reminders about payment are usually sent to debtors before court proceedings start but aren't necessary according to the law. However, without sending reminders, you aren't entitled to obtain legal costs from your debtor. Reminders also increase the chance of collecting money in an amicable way. If the claim isn't settled, legal action may be taken.

The contracting parties are also allowed to negotiate an arbitration clause or a particular court's jurisdiction clause (the latter is only applicable to B2B contracts). If these clauses aren't agreed to, legal action will be handled by the district court of the debtor.

13.4.2. Legal systems

The quickest way to process legal action is to take legal action demanding that the court issue a payment order ("platební rozkaz") or an electronic payment order (if the claim amount is up to CZK 1 million). They can be issued without a court hearing and may be executed on the condition that the debtor doesn't file a complaint within 15 days from the delivery of the payment order to the debtor. If the debtor files a complaint against the payment order or the payment order can't be delivered to the debtor, the proceedings continue as an action of fulfilment of obligations (you can request the court to issue a judgment). The court usually schedules a hearing, which means that the court proceedings will take longer.

13.4.3. Required documents

In order to begin legal action, we need the following documents.

- An original power of attorney
- An extract from the trade register
- Copies of any unpaid invoices, contracts, relevant orders, confirmations, and transport documents (CMR) signed by the debtor
- The general terms and conditions
- The current statements of account

These documents are also required for any supporting claims arising from the purchase contracts.

Optional documents are:

- Copies of the credit notes
- Any other correspondence that may verify the claim
- The contract of the debt's assignment if the debt is claimed on behalf of a third party that isn't the original seller of the unpaid goods

13.4.4. Legal dunning procedures

This type of procedure is only applicable to monetary debts where the debtors are traceable and the court is able to deliver payment orders to the debtors in Czechia. Your debtor may file a complaint within 15 days after the payment order was delivered to them; that will transfer the dunning procedure into a regular lawsuit procedure.

13.4.5. Lawsuits

A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the debtor, or after the legal dunning procedures if the debtor files a complaint against the payment order or if the payment order can't be delivered to the debtor.

13.4.6. Appeals
Appealing against a judgment is possible within 15 days from the delivery of the judgment.

13.4.7. Expected time frame
The average duration of a legal dunning process is between three and six months, whereas a lawsuit can take 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on both sides.

13.4.8. Costs and interest in the legal phase
Court fees are 5% of the claim amount or 4% in the case of electronic payment orders – that equal at least CZK 1,000 and CZK 400 respectively. The fees are based on the principal, not including interest.

Arbitration fees are set by a special arbitration rule.

The courts always award either the interest that you and your debtor agree to, or the statutory interest and a lump sum of collection costs. The losing party also has to pay court fees and lawyers' costs.

13.5. Enforcement

13.5.1. Enforcement of court decisions
A legitimate court decision (e.g. a payment order, electronic payment order, or court judgment) or an arbitration award may be executed by an executor in execution proceedings if the debtor doesn't fulfil the obligations imposed by the court decision or arbitration award.

Execution proceedings are comprised of two parts. The first part starts by filing a motion with an executor and determining the questions of the formal requirements. After the motion is filed with the executor, the court will authorise the executor to start execution proceedings.

Execution can only be ordered if the motion is submitted by the entitled party or by any other party who can prove that the entitlement is transferred to them. The execution proceedings end when all the claims are fully paid, including all the charges, or when the debtor has no property left.

13.5.2. Methods of execution
Enforcement of decisions that impose payment of a sum of money can be carried out by means of deduction of the debtor's wages or salaries and other income, assignment of their receivables, sale of their movable property, or sale of their business. The choice of the particular means of execution depends on the executor.

In the case of a secured claim, the court decision can be enforced by the sale of the movable property, bulk assets, groups of assets, and residential or non-residential premises under the ownership that has been given as security in accordance with specific legislation.

The court decision can also be enforced by compulsorily debiting the money claims that were given as security, or by recovering other property rights given as security.

The enforcement of decisions can be carried out by the sale of the debtor's immovable property as well.

13.5.3. Expected time frame
Enforcement generally takes several months, sometimes several years, depending on the method of enforcement and the complexity of the case.

13.6. Insolvency proceedings

13.6.1. General information
Insolvency proceedings can only start following an insolvency motion submitted by the debtor or by one of the creditors.

In the first phase of insolvency proceedings, the court has to decide whether the debtor is insolvent. A debtor is classed as insolvent if they have more than one creditor, unpaid invoices of more than 30 days overdue, and the debtor is unable to pay their debts; or when there are more creditors and the amount of debt is higher than the debtor's assets.

In the second phase of the proceedings, the court decides which is the most suitable way to resolve the insolvency of the debtor, whether it's bankruptcy, reorganisation, or discharges of debts. These proceedings may last several years.

13. 6.2. Proceedings
After the debtor or a creditor of the debtor submits an insolvency motion, the court inspects the debtor's financial situation and decides whether the debtor is insolvent or not.

If the court declares that the debtor is insolvent, then it also has to decide how the insolvency will be resolved (bankruptcy, reorganisation, or discharges of debts). It also needs to invite all the creditors to lodge their claims within two months from the issuance of the declaration of insolvency. The decisions and documents are published in the insolvency register, which is available for public viewing on the internet. All the execution proceedings are suspended. The insolvency court also has to inform all the known foreign creditors about the debtor's insolvency and invite the creditors to lodge claims within two months. If the creditors miss the deadlines for lodging claims, their claims won't be added to the insolvency proceedings.

The insolvency proceedings of business subjects can be solved in three ways.

Bankruptcy
Bankruptcy can be used if the debtor's assets are used to discharge the claims and the debtor closes their business.

Reorganisation
The debtor must propose changes in their business, enabling them to pay their debts and run the business. Reorganisation can be used only for larger companies (with an annual turnover above CZK 50 million or with at least 50 employees).

Discharge of debts
In some cases, discharges of debts are possible if the debtor has business debts.

There are two forms of discharges of debts: a payment plan with sale of assets, or just sale of assets.

The unsecured creditors can decide on the form of discharges of debts by voting. If the unsecured creditors don't decide, the court will decide that the form of discharges of debts will be a payment plan with sale of assets.

If the debtor duly and timely fulfils all the obligations associated with the approved form of discharges of debts, the insolvency court will release the debtor from the payment of receivables with an unsatisfied amount.

Preventive restructuring
Czechia implemented the Act on Preventive Restructuring, which came into effect from 23 September 2023, which offers companies with financial problems a chance to restructure their assets, capital structures, and liabilities.

The debtor company prepares a restructuring plan and informs its creditors and shareholders, which are divided into groups, about voting on the plan. If some of the groups disagree with the plan, the court may approve it nonetheless.

A tool in preventive restructuring proceedings is moratoria, which provide the debtor with temporary protection from the effects of insolvency proceedings and enforcement proceedings. Moratoria last three months and may be extended for an additional three months.

In comparison with reorganisation according to the Insolvency Act, preventive restructuring is a private process.

13.6.3. Required documents
In order to lodge a claim, we need:
- An original power of attorney
- Copies of the invoices
- Copies of the delivery notes
- The statements of account
- An extract from the trade register
- Copies of the contracts
- Copies of the orders, confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim

13.6.4. Expected time frame
The duration of insolvency proceedings is often more than a year, especially in the more difficult cases.

All updates and steps undertaken in insolvency proceedings may be found in the insolvency register.

13.6.5. Limited companies
A limited company must file an insolvency motion if the company is insolvent (see "General information" under "Insolvency proceedings"). Insolvency law also defines imminent bankruptcy as expected inability to pay, which means that the management already knows that within a certain time span, the company will be unable to pay its due debts.

13.6.6. Unlimited companies
For unlimited companies or individual debtors (sole traders), the law is applied in the same way as described above for limited companies.

13.6.7. Creditors' committee
If there are more than 50 creditors who lodge claims in the insolvency proceedings, then the creditors are obliged to set up a creditors' committee. The purpose of the creditors' committee is to protect the creditors' rights in cooperation with the insolvency administrator.

13.6.8. Rescission

The insolvency administrator in bankruptcy proceedings can contest a favourable legal act or a legal act without reasonable consideration performed by the debtor up to one year prior to the commencement of the insolvency proceedings, or three years if such a legal act was performed for the benefit of a person close to the debtor or a person forming a group with the debtor.

The insolvency administrator in bankruptcy proceedings can also contest a legal act by which the debtor intentionally reduced the payment to the creditors, if this intention was or had to be known to the other party, performed by the debtor five years prior to the commencement of the insolvency proceedings.

13.7. Arbitration and mediation

A quicker and more confidential form of resolving disputes is arbitration, where the parties in an arbitration contract agree that their dispute will be resolved by a designated and independent arbitrator.

The decision of the arbitrator (arbitration award) is final, and the parties in an arbitration contract or clause, in general, can't appeal against the arbitration award.

Atradius Collections

14. Denmark

Industries

Chemicals
Construction
Construction materials
Electronics
Food
Machines
Minerals
Textiles
Transport

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

14.1. Amicable collections

14.1.1. General information

We maintain a professional collection process, focusing on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house, contacting debtors both verbally and in writing while adhering to all appropriate laws and legal requirements.

When there is a dispute, we aim to reach an amicable solution between you and the debtor. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as standard terms previously agreed to). All of our investigations are completed with the assistance and agreement of our legal team.

14.1.2. Local agents

At the present time, we don't offer field service to visit debtors. However, if debtors wish to visit our office, we'll gladly meet them to discuss solutions for their cases face-to-face.

14.1.3. Interest

We always charge debtors for interest, according to the Act of Consolidated Law on Interest on Overdue Payment 743 of 4 September 2002.

There are two alternatives:

- To calculate the interest rate as agreed between you and your debtor
- To calculate the interest rate according to the Danish regulations based on the reference rate fixed by the Danmarks Nationalbank (plus 8% per year). This rate is fixed twice a year on 1 January and 1 July

The second alternative will always occur if the interest rate isn't agreed to between you and your debtor.

From a cultural point of view, Danish debtors are used to paying late payment interest fees.

14.1.4. Debt collection costs

In Denmark, debt collection costs are chargeable to debtors, representing the creditors' claims for late payment based on the Act of Consolidated Law Extrajudicial Collection Costs 601 of 12 July 2002.

From a cultural point of view, Danish debtors are used to paying debt collection costs.

We either pass all the recovered debt collection costs to you to reduce your claim, or add them to our success fees, depending on the contractual agreement between you and Atradius Collections.

14.1.5. Prescription

The general prescriptive period in Denmark is three years, starting from the due dates of the invoices.

Transport claims become prescribed within one year starting from the delivery according to the CMR Convention of Geneva.

A limitation period is suspended or recommenced according to the law number 522 of 6 June 2007 if:

- Negotiations between the obligor and obligee are in progress in respect of a claim or the circumstances giving rise to a claim, and one party refuses to continue the negotiations
- The right to refuse performance occurs
- There is force majeure
- The obligor acknowledges a claim to the obligee by part payment, payment of interest, provision of security, or by any other means
- A judicial or official act of execution is taken or applied for

14.1.6. Payment methods

The most common payment methods are bank transfers and cheque payments. We don't offer direct debiting from debtors' accounts, unless it's done through our Danish lawyers.

14.1.7. Types of companies

Sole trader / sole proprietorship ("Enkeltmandsvirksomhed")	■ Unlimited liability of the owner with their business and private funds ■ In order to pursue such a debtor, we must have both their first name and surname
Partnership ("Interessentskab")	■ Unlimited liability of the owners with their business and private funds ■ In order to pursue such a debtor, we must have both their first name and surname
Private limited company (Limited liability) ("Anpartselskab ApS")	■ The minimum capital requirement is DKK 40,000 divided into shares ■ Liability is limited to the company's capital
Joint-stock company (Limited liability) ("Aktieselskab A/S")	■ The minimum capital requirement is DKK 400,000 divided into shares ■ Liability is limited to the company's capital

14.1.8. Sources of information

In Denmark, we contact credit-reporting agencies to assess the financial situations of debtors, including real estate and other enforceable assets. We combine this with our own phone contacts to get an accurate impression of the debtors' financial situations and to advise you on the next steps.

It depends on the legal forms of debtors whether we're also able to request information from public registers. All traders have to be registered with the Municipal Trade Office.

A debtor with an unknown address can be traced via the Registration of Address office. Private persons are legally obliged to officially de-register when moving from one town to another and re-register in their new town. Occasionally, some debtors don't follow this procedure and can't be traced, despite this being a punishable offence. Even when a debtor is untraceable, we're still able to obtain a judgment through the official gazette.

14.2. Retention of title

Retention of title clauses are rarely used – although they might have been agreed to between you and your debtors – because they are rarely enforceable in Denmark. The goods in question have to be specified in detail. The use of individual numbers as general description isn't sufficient.

14.3. Acknowledgements of debt ("frivilligt forlig" / "skyldnererklæring")

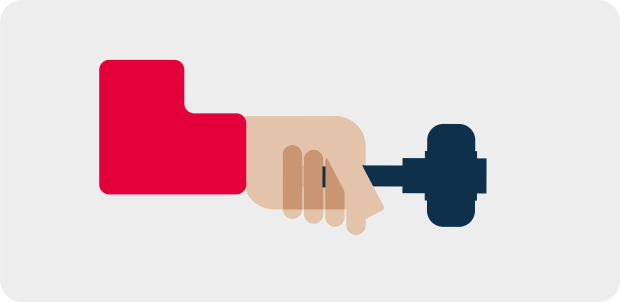
If the debtor isn't able to settle the claim quickly, we'll request that they secure their debt in favour of you – the creditor. This can be done amicably and cost-effectively by providing an acknowledgement of debt.

In general, we arrange for a written payment arrangement to be drawn up, followed by a special juridical document ("frivilligt forlig"), which allows us to instruct a bailiff if the debtor doesn't fulfil their obligations according to the payment arrangement.

We prefer to spend time on finding an amicable solution. However, if the debtor is uncooperative, we'll begin legal action immediately.

On the whole, we accept a period of up to 10 months for a payment arrangement, as this is also the period most often granted to debtors by bailiffs; but of course, we try to shorten this period as much as possible.

14.4. Legal collections



14.4.1. General information

The Danish court system is governed by the Administration of Justice Act. The ordinary courts are organised in a three-tier hierarchy, consisting of 82 local courts, two district courts, and the Supreme Court.

Entering into legal proceedings is only possible with a warning to the debtor that must include:

- 10 days' notice
- Your name as the creditor
- The specifics of the debt (interest rate, date, amount, etc.)
- A warning that non-payment will lead to legal action and further costs

14.4.2. Legal systems

Debts below DKK 100,000
We can go directly to the bailiff's court. If the debt is undisputed, the bailiff will issue a payment order, which equals a judgment. This procedure is the cheapest method of legal action as the court costs will be DKK 750, plus lawyers' fees. It's also the quickest procedure, taking between six and 12 months on average. If the debtor disputes the debt, the file is always assigned to trial handling, regardless of how serious the dispute is.

Debts above DKK 100,000
A debt of this size always requires an external lawyer to file a claim form in court. A judgment has to be obtained before enforcement proceedings can be carried out. The cost of obtaining a judgment depends on the size of the debt. It'll cost DKK 1,500, plus lawyers' fees. The time frame is up to six or 12 months on average. If a judgment is obtained and the debtor doesn't pay accordingly, the file will be handed over to the bailiff's court for execution.

14.4.3. Required documents
In order to apply legal proceedings, we need copies of the contracts, invoices, and a clear statement of account indicating the payments and credit notes that have been made for the outstanding invoices.

In the case of a regular lawsuit procedure, copies of the complete contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, and invoices. Every part of the trading relationship between all the parties should be provable by documentation.

All the notes and conversations between you and your debtor should be kept and provided to our lawyers in case of dispute.

In the case of verbal negotiations, we'll need copies of any of the reports and the names of any of the witnesses.

14.4.4. Lawsuits
A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the debtor, or after the legal dunning procedure where the debtor has appealed.

A written pre-procedure is usually issued. Both the plaintiff and defendant must exchange opinions and proof by letter until the judge believes that all the relevant information needed to make a judgment has been received. In that case, a hearing is scheduled, during which both parties must be present. After the hearing, the judge sets a date to issue the final judgment, and both parties will be informed about the outcome in writing by the court.

14.4.5. Appeals
Appealing against a judgment is possible, which will trigger a second verdict by the court of second instance (local court to district court, district court to high court).

In the case of third instance, the review will be restricted to a check on whether or not the statutes were applied correctly.

14.4.6. Expected time frame
The average duration of a legal court procedure can take up to 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on both sides.

14.4.7. Costs and interest in the legal phase
The costs of civil law procedures (court costs and lawyers' fees) are determined by the Ministry of Justice. All costs depend on the outstanding amount. There are different fees that can apply during a procedure, making it difficult to predict the total cost. In addition to this, costs of witnesses and/or experts might also arise. Cost estimations will be provided on a case-by-case basis should legal action be taken.

14.5. Enforcement

14.5.1. Enforcement in debt
Enforcement proceedings are handled by the bailiff's court and can only take place when there is a judgment or a written acknowledgement of the due debt from the debtor. The bailiff will investigate whether the debtor has any assets that can be taken as security for the debts and can be sold by the creditors following specific rules. The bailiff will try to establish a payment arrangement with the debtor.

Debtors will often try to delay the process by not attending the meetings in the bailiff's court. In such cases, we have to wait until the police have traced the debtor and a new bailiff's court meeting is held.

The cost of enforcement proceedings depends on the size of the debt. It'll cost between DKK 600 and DKK 2,000 if the lawyers have to physically appear in court.

14.5.2. Expected time frame
The time frame is between six and 12 months on average.

14.6. Insolvency proceedings

14.6.1. General information

The aim of insolvency proceedings is to pay out all the creditors with the same quotas by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

There are four insolvency proceedings in Denmark:

- Enforced dissolution
- Reconstruction
- Bankruptcy
- Debt restructuring (personal liability)

14.6.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check whether sufficient assets are available to cover the costs of the proceedings (court costs and costs of liquidators). If these costs are deemed to be covered, then the insolvency proceedings start and a liquidator will be appointed – usually, this is the preliminary liquidator. If any other process is followed, the court will reject the declaration of bankruptcy due to insufficient assets.

The creditors can then lodge their claims and take back any goods delivered under retention of title clauses. For the goods in stock, the liquidator can choose either to pay the original prices to the creditors or to return the goods. After the proceedings start, lodging claims is possible within a given deadline. The liquidator can either accept a lodged debt or dispute it. If your claim is disputed, you may only file the claim in court to prove the justification of the claim when further documentation doesn't convince the liquidator to confirm the debt.

At the end of the proceedings, all the creditors with confirmed debts will receive dividends if there are enough assets in the estate. Often there will be no dividends paid at all.

14.6.3. Required documents

In order to lodge a claim on your behalf in undisputed claims, we only need copies of the invoices.

14.6.4. Expected time frame

The expected time frame for insolvent estates in Denmark is one to three years.

14.7. Arbitration and mediation

Both arbitration and mediation are used in Denmark in disputed files.

Arbitration in Denmark is based on the rules of the United Nations Commission on International Trade Law's Model Law. In disputes where the parties agree to settle in accordance with the arbitration rules, the Danish Institute of Arbitration decides on each dispute at an arbitration tribunal.

Another way of solving disputes is mediation. When the parties have agreed to mediation taking place under the rules of mediation or arbitration, the mediator will make a judgment regarding the dispute that both parties must agree to.

Atradius Collections

15. Finland

Industries

Chemicals
Electronics
Food
Machines
Minerals
Paper
Textiles
Transport

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

15.1. Amicable collections

15.1.1. General information

We follow a collection process that is professional at all times with the objective of retaining the relationships between you and your debtors whenever possible. Our staff of collection professionals carry out the first collection tier in-house. We relentlessly pursue debtors verbally and in writing within the bounds of federal and state law.

15.1.2. Local agents

At the present time, we don't offer field service to visit debtors in Finland. However, if debtors wish to visit our office, we'll gladly meet them to discuss solutions for their cases face-to-face.

15.1.3. Interest

We always charge debtors for interest. It's calculated from the base rate set by the Bank of Finland, plus 7% per year.

There are two alternatives:
To calculate the interest rate as agreed between you and your debtor

- To calculate the interest rate according to the Finnish regulations based on the reference rate fixed by the Bank of Finland (plus 7% per year). This rate is fixed twice a year on 1 January and 1 July

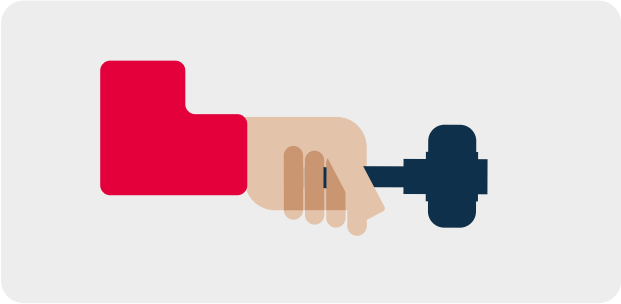
The second alternative will always occur if the interest rate isn't agreed to between you and your debtor.

From a cultural point of view, Finnish debtors are used to paying late payment interest.

15.1.4. Debt collection costs

In Finland, debt collection costs are chargeable to debtors, representing the creditors' claims for late payment.

15.2. Legal collections



15.2.1. General information

Entering into legal proceedings is only possible with an eight-day notice to the debtor, including:

- Your name as the creditor
- The specifics of the debt (e.g. interest rate, date, amount)
- A warning that non-payment will lead to legal action and further costs

The debt needs to be proved to be enforceable. If the debt is undisputed, the bailiff will issue a payment order; this equals a judgment. If the debtor disputes the debt, regardless of the reason or the seriousness of the dispute, the file is assigned to trial handling.

If a judgment is obtained and the debtor doesn't pay accordingly, the file will be handed over to the bailiff's court for execution.

15.2.2. Required documents

In order to apply legal proceedings, we need copies of the contracts, invoices, and a clear statement of account indicating the payments and credit notes that have been made regarding the outstanding invoices.

In the case of a regular lawsuit procedure, copies of the complete contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, and invoices. Basically, every part of the trading relationship should be provable by documentation.

In case of dispute, proof of the conversations between you and your debtor should also be kept and provided to our lawyers.

In the case of verbal negotiations, we require the visit or negotiation reports and the names of the witnesses.

15.2.3. Lawsuits

A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the

debtor, or following the legal proceedings after the debtor has appealed.

Usually, a written pre-procedure is issued. Both the plaintiff and the defendant exchange opinions and proof by letter until the judge has the impression that they have all the relevant information needed in order to judge. In this case, a hearing is scheduled, during which both parties must be present. After the oral hearing, the judge sets a date to issue the final judgment. The parties will be informed about the outcome in writing by the responsible court.

15.2.4. Expected time frame

The average duration of legal proceedings is up to 18 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on all sides.

15.2.5. Costs and interest in the legal phase

There are different fees that can apply during legal proceedings, making it difficult to predict the total cost. In addition to this, costs of witnesses and/or experts might also arise. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

Extrajudicial interest and costs can be claimed as part of the outstanding amount during legal proceedings. Normally, the losing party has to bear the costs of the legal proceedings if the file goes to trial.

In the case of a legal settlement, the parties normally bear their own costs of court fees and lawyers' fees.

15.3. Insolvency proceedings

15.3.1. General information

The aim of insolvency proceedings is to pay out all the creditors with the same quotas by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

There are two insolvency proceedings in Finland:

- Reorganisation
- Bankruptcy

15.3.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check whether sufficient assets are available to cover the costs of the proceedings (court costs and costs of liquidators). If these costs are deemed to be covered, the insolvency proceedings start and a liquidator will be appointed – usually this is the preliminary liquidator. Otherwise, the court will reject the declaration of bankruptcy due to insufficient assets.

The creditors can then lodge their claims and take back any goods delivered under retention of title clauses. After the proceedings start, lodging claims is possible within a given deadline. The liquidator can either accept a lodged debt or dispute it. If your claim is disputed, you may only file the claim in court to prove the justification of the claim when further documentation doesn't convince the liquidator to confirm the debt.

At the end of the proceedings, all the creditors with confirmed debts will receive dividends if enough assets are in the estate. Often insolvent estates are closed with very small or no dividends at all.

15.3.3. Required documents

In order to lodge a claim on your behalf in undisputed claims, we need:

- Copies of the outstanding invoices
- A signed original power of attorney

15.3.4. Expected time frame

The expected time frame for insolvency proceedings in Finland is one to five years.

Atradius Collections

16. France

Industries

Chemicals
Electronics
Food
Machines
Minerals
Services
Textiles
Transport

Source: Central Intelligence Agency World Factbook

Chance of collecting

50%–75%

16.1. Amicable collections

16.1.1. General information

We maintain a professional collection process, focusing on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house, contacting debtors both verbally and in writing while adhering to state law.

When there is a case of dispute, we aim to reach an amicable solution between you and the debtor. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as all standard terms that have been agreed to). All of our investigations are completed with the assistance and agreement of our legal team.

16.1.2. Local agents

If our in-house collection efforts don't lead to positive results, we will employ our agent network. They contact the debtors in order to provide us with information regarding their financial situations and solvency. The agents we use will report on any meetings they have with the debtors and provide summaries of the debtors' business operations. The agents are also able to collect money. If the agents negotiate payment plans or final statements with the debtors, they should ask us for approval.

16.1.3. Interest

We always charge debtors for interest. The interest rate is set by the government and multiplied by three in accordance with French law on payment terms.

16.1.4. Debt collection costs

We charge a fixed fee of EUR 40 per case in accordance with European Union directives, and a penalty clause of 10% for collection costs. If you have a special contractual agreement, this can be taken into account as long as your debtor actually agreed to the terms.

From a cultural point of view, French debtors aren't used to paying debt collection costs, and often collection costs are used as a matter of negotiation between debtors and collectors.

16.1.5. Prescription

In commercial matters, the prescriptive period is five years, which may be interrupted by the undertaking of legal proceedings.

16.1.6. Payment methods

The most common Payment methods are cheque payments and bank transfers. We don't offer direct debiting from debtors' accounts.

16.1.7. Types of companies

"Entreprise individuelle"	■ Sole proprietorship with unlimited liability of the owner with their business and private funds
EURL ("Entreprise Uniperson-nelle à Responsabilité Limitée")	■ Sole proprietorship with no minimum capital ■ Liability is limited to the company's capital
SASU ("Société par Actions Simplifiées Unipersonnelle")	■ Sole proprietorship with no minimum capital ■ Liability is limited to the company's capital
SARL ("Société à Responsabilité Limitée")	■ A company with two to 100 partners ■ No minimum capital ■ Liability is limited to the company's capital
SNC ("Société en Nom Collectif")	■ A general partnership company with a minimum of two partners ■ No minimum capital ■ Unlimited liability of the partners
SA ("Société Anonyme")	■ A public limited liability company with a minimum of seven partners ■ The minimum capital requirement is EUR 37,000 ■ Liability is limited to the company's capital
SAS ("Société par Actions Simplifiée")	■ A simplified joint-stock company with no minimum capital ■ Liability is limited to the company's capital

16.1.8. Sources of information

In France, we contract very experienced reporting agencies to assist us with the assessment of the financial situations of debtors. Depending on a debtor's legal form, we can also find further information, such as details on any property owned by the debtor, to determine the best courses of action.

We also have numerous tracing agents who employ investigators when necessary to locate debtors and their assets.

16.2. Retention of title

France has very comprehensive, seller-focused regulations on retention of title (ROT) clauses, which must be explicitly agreed to prior to delivery. Most importantly, the debtor must acknowledge the ROT clauses before receiving the first invoice.

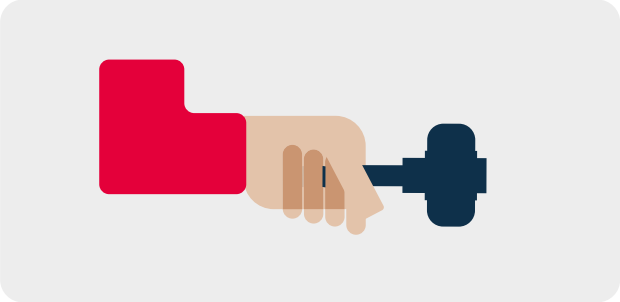
Most companies include ROT provisions in their general trading conditions. In this case, the debtor must sign these conditions in advance, or you have to advise the debtor explicitly (e.g. with a note in the order confirmation) that the general trading conditions apply before the first invoice is sent. It's vital to get proof that the trading conditions have been agreed to. Otherwise, the benefits of the more complex version of French ROT clauses can't be used to reduce the outstanding amount.

ROT clauses are used in most cases before insolvency proceedings arise. We should be able to prove the existence of the goods in the inventory of the debtor on the date of the insolvency judgment, which can prove beneficial during a judicial procedure.

16.3. Safeguard measures

In case your debtor isn't able to settle your claim in a speedy manner, we can request that the debtor secure the debt in favour of you – the creditor. This can be done by providing a written acknowledgement of debt or by asking a special judge to allow us to take conservative measures, such as seizure of the debtor's bank accounts.

16.4. Legal collections



16.4.1. General information

If the amicable phase fails to deliver results, we will send a letter advising the debtor of our decision to start legal proceedings. Our legal team will decide the best procedure to be undertaken, depending on the documents available for the case and the position of the debtor (e.g. acknowledgements of debt, disputes, litigation).

16.4.2. Legal systems

For disputes between traders or businesses, the commercial court ("Tribunal de Commerce") is used. The judges are business people elected by their peers, and evidence may be adduced by any appropriate means.

For claim amounts greater than EUR 4,000, it's possible to appeal the decision of the court of first instance.

16.4.3. Required documents

In order to apply a legal dunning procedure, we need copies of the contracts, invoices, and a clear statement of account indicating the payments and credit notes that have been paid for the outstanding invoices.

In the case of a regular lawsuit procedure, copies of the complete contractual documentation should be available, starting with the contracts, orders, confirmations, delivery notes, and invoices. Every part of the trading relationship between you and your debtor should be provable by documentation.

16.4.4. Legal dunning procedures

This type of procedure is used when the debt amount is fairly modest and not disputed. It allows us to obtain an injunction against the debtor ("injonction de payer") without the presence of the debtor before the court. It's a very simple, quick, and inexpensive procedure that doesn't require a lawyer, unless the debtor disputes the debt after the bailiff's notification. It also allows us to obtain an interim order ("référé provision") with or without the presence of the debtor before the court. If the debtor is present and disputes the case, the judge may decide to close the case and ask you to start a common procedure ("assignation au fond"). It's a very quick procedure but does require a lawyer to represent you in court.

16.4.5. Lawsuits

A regular lawsuit procedure is started directly after the amicable collections has failed due to dispute by the debtor, or because the debtor has ignored the payment demands.

The main goals of legal action ("assignation au fond") are to determine the existence and the amount of the debt, and to define the relationship between you and your debtor. It will also decide whether the outstanding amount is owed, and whether the debtor must pay it immediately or with a payment plan. It's usual practice to issue a pre-procedure notice.

Both the plaintiff and defendant exchange opinions and proof by letter until the judge is happy that all the relevant information needed to come to a decision has been received. A hearing will then be scheduled and both parties must be present. Postponing hearings is a common habit when the defendant's lawyer asks for it. After multiple hearings (with no time limits), the judge sets a date to issue the final judgment. Both parties will be informed about the outcome in writing by the relevant court.

16.4.6. Appeals

The plaintiff or defendant can appeal the judgment if they're unhappy with it. A party can appeal a judgment within one month from the notification of the original judgment. The judges at the court of appeal will then re-hear the case within two years.

16.4.7. Expected time frame

A simple commercial case will take approximately eight to 10 months to be heard, which can be doubled for complex commercial cases, technical disputes, or in the case of appeals.

Some jurisdictions, where the judicial systems have been rated below the average performance in France, may take longer to judge cases.

The expected time frame for an appeal is almost two years.

16.4.8. Costs and interest in the legal phase

Costs of civil law procedures are determined by court fees and lawyers' fees, which are fixed by each lawyer. As the costs don't depend on the outstanding principal amount but on the complexity of the case, we have negotiated preferential tariffs with our lawyer network. Cost estimations will be provided on a case-by-case basis should legal action become necessary. The cost of a legal dunning procedure is only 30% of a full court procedure.

Next to that, there are two kinds of collection costs in legal cases. The first kind is the charged-back costs that the debtor has to pay, which are often liquidated by the judge, and, in most cases, the costs derive from the judicial procedure and the notifications' costs. The second kind is the costs that can't be charged back to the debtor, such as lawyers' fees. Each party has to pay their own lawyers' fees, but the winning party could ask the judge to obtain an indemnity to compensate for their expenses. In practice, the amount approved by the court constitutes only a minor share of the expenses, and this indemnity is charged to the debtor. In addition, costs of experts might also arise.

16.5. Enforcement

16.5.1. Enforcement in debt

After the judgment is notified to the debtor, the debtor has one month to appeal. After that, the judgment becomes executive, meaning that the bailiff can start forced execution. In France, only bailiffs have the authority to handle enforcement of judicial decisions. At this stage, the debtor has no choice. They have to either pay or become bankrupt.

16.5.2. Enforcement in movable property

This is a standard procedure where the bailiff visits the debtor to take away movable property for liquidation in favour of you – the creditor. The bailiff can't seize the property that is necessary for the debtor's basic daily life or that enables them to maintain their business activities. The bailiff will always ask our opinion on seizing and selling the debtor's property.

16.5.3. Enforcement in immovable property

If the debtor owns real estate, the bailiff can issue an order of attachment of real estate ("saisie immobilière"). In France, very few companies own any real estate, so the enforcement in immovable property is very rarely used.

16.5.4. Expected time frame

The enforcement time frames depend on the financial situation of the debtor.

16.6. Insolvency proceedings

16.6.1. General information

The legal definition of insolvency is when a debtor is not able to pay their due debts considering their available assets.

The two main insolvency procedures are:

- Receivership
- Bankruptcy

Receivership can be converted into bankruptcy, and, in fact, almost 90% of receivership ends up in bankruptcy.

16.6.2. Proceedings

Receivership allows the debtor's business activity to be saved due to a continuation plan, meaning that the creditors can expect dividends. Bankruptcy means liquidation of the debtor's assets when the situation is totally compromised, meaning that the creditors can't expect any dividends.

The delay in lodging claims is two months for the French creditors and four months for the foreign creditors from the date of the debtor's bankruptcy's publication in the BODACC (official journal). The debts may also be disputed and a convocation from the court is planned to justify the debts.

16.6.3. Required documents

In order to lodge a claim on your behalf, we need:

- An original power of attorney. We need to have a specific power of attorney. It must be in French, signed by your legal representative, sealed with a commercial stamp, and it must mention the name of your debtor
- Copies of the complete contractual documentation, starting with the contracts, orders, confirmations, delivery notes, and invoices

16.6.4. Expected time frame

The duration can be important, because it's mandatory to check the debts of all the creditors who lodge claims before making a proposition of a payment plan (in general, in 10 years by annual payment).

16.6.5. Limited and unlimited companies

Consequences in insolvency proceedings for limited and unlimited companies are the same as consequences in receivership and bankruptcy proceedings for both kinds of companies.

16.6.6. Pools of creditors

There are two creditors' pools that the court may decide to build. The first is made up of the committees of the credit institutions, and the second contains the main sellers of the goods or services. These committees are invited to comment on a draft recovery plan. The creditors' representatives inform the creditors of the opening of the proceedings, receive their declarations of claims, and ask the bankruptcy judge to accept or reject these claims. They alone are empowered to take action in the collective interest of the creditors.

16.6.7. Rescission

The suspect period starts on the date of the cessation of payments, and all acts of payment during this period may be declared void if the contracting parties were aware of the cessation of payments.

16.7. Arbitration and mediation

Arbitration and mediation are allowed by law in France, but it's very unusual for either party to request them.

Atradius Collections

17. Germany

Industries

- Chemicals
- Construction materials
- Electronics
- Food
- Machines
- Minerals
- Textiles
- Transport

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

17. 1. Amicable collections

17.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to federal and state law.

When there is a dispute, we aim to reach an amicable solution between you and your debtor. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as all standard terms previously agreed to). All of our investigations are completed with the assistance and agreement of our legal team. Debtors are allowed to ask for a signed original power of attorney to be presented to them.

17.1.2. Local agents

Currently, we don't offer field service to visit debtors in Germany.

17.1.3. Interest

We always charge debtors for interest. It's calculated from the base rate set by the Deutsche Bundesbank plus 9% on a daily basis (see the European Directive 2011/35/CEE Article 3 in conjunction with paragraph 288, section 2 of the German Civil Code).

From a cultural point of view, German debtors are used to paying late payment charges, although the actual amounts of interest payment are considered a matter of negotiation between debtors and collectors.

17.1.4. Debt collection costs

In Germany, under the German Civil Code paragraph 280, section 2 and 3, and paragraph 286, debt collection costs are chargeable to debtors, representing the creditors' claims for late payment. If you have a special contractual agreement, this can be taken into account as long as the debtor has previously agreed to the terms.

From a cultural point of view, German debtors are used to paying debt collection costs, though often the actual amounts of these costs are considered a matter of negotiation.

17.1.5. Prescription

The general prescriptive period in Germany is three years, starting at the end of the year a claim becomes due. Transport claims become prescribed within one year, starting from the delivery under the Convention on the Contract for the International Carriage of Goods by Road (CMR) of Geneva.

17.1.6. Sources of information

In Germany, we contact credit-reporting agencies to assess the financial situations of debtors, including their real estate and other enforceable assets. We combine this with our own phone contacts to get accurate impressions of the debtors' financial situations and to advise on the next steps. Other public registers are available as well.

17.2. Retention of title

Germany has very comprehensive, seller-focused regulations on retention of title (ROT), which must be explicitly agreed to prior to delivery. Most importantly, the debtor must acknowledge the ROT clauses before receiving the first invoice.

Most companies include ROT provisions in their general trading conditions. In this case, either the debtor must sign these conditions in advance, or you have to advise the debtor explicitly (e.g. with a note in the order confirmation) that the general trading conditions apply before the first invoice is sent. It's vital to get proof that the trading conditions have been agreed to. Otherwise, the benefits of the more complex version of German ROT clauses can't be used to reduce the outstanding amount.

There are three different kinds of ROT.

Basic ROT

The goods supplied remain the legal property of the seller until full payment. The seller can or must get the goods back.

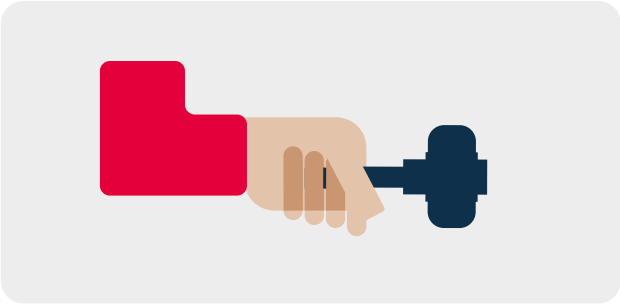
Increased ROT

This is retention of open accounts. In the course of an ongoing business relationship, the supplied goods remain the legal property of the seller until all the outstanding amounts from the open account or business relationship have been fully paid.

Extended ROT

This is assigned to sellers in advance. In accordance with §354a of the Commercial Code, advance assignments are effective despite non-assignment agreements between the buyer and any third party.

17.3. Legal collections



17.3.1. General information

The modern German legal system is composed of public law, which regulates the relationships between citizens and the state, and civil law, which regulates the relationships between two people or companies.

Entering into legal proceedings is possible without a prior warning to the debtor. However, all courts try to mediate between the creditor and debtor, and, in order to shorten the amicable phase of legal proceedings, they may ask for proof that all the pre-court efforts didn't reach a conclusion and will ask to see all the prior correspondence in order to give a quick and final judgment.

17.3.2. Required documents

In order to apply a legal dunning procedure, we require copies of the contracts, invoices, and statements indicating the payments and credit notes that have been made for the outstanding monies.

In the case of a regular lawsuit procedure, copies of all the contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, and invoices. Every part of the trading relationship between both parties should be provable by documentation.

In case of dispute, all the notes of the conversations between you and your debtor should be kept and given to our lawyers.

In the case of verbal negotiations, we require the visit or negotiation reports and the names of any witnesses.

17.3.3. Legal dunning procedures

This type of proceedings is only applicable to monetary debts where the debtors are traceable. It's a quite short and cost-effective measure.

17.3.4. Lawsuits

A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the debtor, or after the legal dunning procedure if the debtor has appealed.

A written pre-procedure is usually issued. Both the plaintiff and defendant must exchange opinions and proof by letter until the judge believes all the relevant information needed to render a judgment has been received. In this case, a hearing is scheduled, during which both parties must be present. After the hearing, the judge sets a date to issue the final judgment, and both parties will be informed about the outcome in writing by the court.

17.3.5. Appeals

Appealing against a judgment (the threshold is EUR 600) is possible. That will trigger a second verdict by the court of second instance (local court to district court, district court to higher regional court).

In the case of third instance, the review will be restricted to a check on whether or not the statutes were applied correctly. Any later amendment of facts or proof isn't permissible.

17.3.6. Expected time frame

The average duration of a legal dunning process is between eight and 12 weeks, whereas a court procedure can take 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on both sides.

17.3.7. Costs and interest in the legal phase

Any costs incurred during a civil law procedure (court fees and lawyers' fees) are determined by the provisions of the RVG (law on lawyers' fees) and the GKG (law on court fees) and aren't subject to any negotiation.

All costs are dependent on the outstanding principal amount. There are different fees that can apply during the proceedings, making it difficult to predict the total cost. In addition to this, costs of witnesses and/or experts might also arise.

Extrajudicial interest and costs can be claimed as part of the outstanding monies during legal proceedings. Approximately 60% of German courts allow this additional claim, but the outcome depends on the court and judge. In all cases, the losing party has to bear the costs of the legal proceedings according to paragraph 91ff. of the German Code of Civil Procedure.

In the case of a legal settlement, the parties bear the costs of the corresponding proceedings in proportion to their prevailing or failing.

17.4. Enforcement

17.4 .1. Enforcement in debt

You can block the bank accounts of the debtor or block the debtor's claims against tax offices, life insurance, shares in businesses, corporate shares, or any possible claim the debtor may have against any third party. This usually proves very effective and can save costs when enforced as part of the judgment. Very specific information, such as the debtor's bank account details and any information about their corporate shares or shares in businesses, is required for this kind of enforcement.

In all cases, the court where the debtor (the garnishee) resides is responsible for single enforcement actions.

17.4.2. Expected time frame

Enforcement in debt generally takes only four to eight weeks.

Enforcement in movable property, however, often needs six to nine months or longer, due to a lack of bailiffs and large backlogs.

17.5. Insolvency proceedings

17.5.1. General information

Insolvency proceedings – whether regular insolvency, insolvency plans, or individual insolvency – are a kind of collective enforcement by all the creditors against the debtor. With the start of preliminary proceedings, all the individual enforcement is suspended, and only when the insolvency proceedings don't start will the individual enforcement continue.

The aim of insolvency proceedings is to pay out all the creditors with the same quotas by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

17.5.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check whether sufficient assets are available to cover the costs of the proceedings (court costs and costs of liquidators). If these costs are deemed to be covered, then the insolvency proceedings start and a liquidator will be appointed; usually, this is the preliminary liquidator. If any other route is followed, the court will reject the declaration of bankruptcy due to insufficient assets.

If the proceedings start, the creditors have to lodge their claims before the announced deadline and apply for ROT. All the lodged claims are checked before the filing hearing, usually within three months after the start of the proceedings. If the lodging is done after the deadline, the claim can't be checked before the filing hearing, and a second hearing near the end of the proceedings (in general, after two to four years) has to be announced. For late claim lodging, an additional cost of EUR 22 is incurred, and the confirmation of the debt will be delayed.

The liquidator can either accept a lodged debt or dispute it. If your claim is disputed, you may only file the claim in court to prove the justification of the claim when further documentation doesn't convince the liquidator to confirm the debt.

At the end of the proceedings, all the creditors with confirmed debts will receive dividends.

ROT is handled separately according to what was agreed to.

17.5.3. Required documents

In order to lodge a claim, we need:

- An original power of attorney
- Copies of the invoices
- Copies of the contracts
- Copies of the orders, order confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim

17.5.4. Expected time frame

The deadline for lodging claims is one to three months, depending on the complexity of the proceedings, which start from the adjudication order ("Insolvenzeröffnungsbeschluss").

The checks on the lodged claims take place one to three months after the deadline for lodging claims.

The total duration of insolvency proceedings is between four and seven years – sometimes even more than 10 years.

17.5.5. Pools of creditors

If a bigger company goes bankrupt, the actual insolvency proceedings will often be accompanied by a second set of proceedings called pools of creditors. In this case, the creditors join in a pooling agreement usually founded by credit insurance companies or banks.

The aim of the pool is to accumulate all the claims of the creditors who delivered goods under ROT clauses. The creditors have to prove that the ROT clauses were agreed to. They then transfer their rights to the pooling arrangement and participate in the refunds of the sale of all the debtor's secured goods with the quotas of their confirmed credits.

17.5.6. Rescission

The liquidator can dispute payments made by the debtor within three months prior to the declaration of bankruptcy. A longer period – up to 10 years – is possible for some special forms of payment (practical experience shows an increasing number). If the liquidator disputes these payments, the creditors have to refund the liquidator plus interest and can only lodge the corresponding debts instead.

17.6. Arbitration and mediation

If you and your debtor agree to an alternative dispute solution, there are two options available: arbitration and mediation or conciliation.

Agreeing to a private tribunal has a number of advantages compared to regular legal proceedings. It's quicker as the courts are less occupied, there are no appeals, and the hearing and process are confirmed. However, agreeing to arbitration also means excluding the jurisdiction of ordinary courts. Arbitration in Germany is based on the rules of the United Nations Commission on International Trade Law's Model Law on International Commercial Arbitration and is run by the ordinary courts, the German Chamber of Commerce and Industry, or a professional arbitrator. The choice belongs to both parties agreeing to arbitration.

The second way of solving a dispute is by mediation or conciliation proceeding, which focuses on finding the root cause of the dispute in order to reach constructive agreements and solutions for both you and your debtor. Mediation or conciliation is carried out by professional organisations like the German Chamber of Commerce and Industry or by professional mediators. There are now increasingly more attorneys who specialise in mediation. The new agreement isn't a judgment, but a kind of contract.

Atradius Collections

18. Greece

Industries

Chemicals

Food

Minerals

Services

Textiles

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

18.1. Amicable collections

18.1.1. General information

Services are delivered from our office in Germany. In the amicable phase, our collectors get in contact with debtors. A typical collection process commences with an automatic letter sent to the debtor's email address (if any), followed by an initial telephone call.

Investigations are also conducted via internet source and local contact. It's important to have relevant documentation from the beginning of each case and to know the debtor company's VAT number in order to check whether the company is active in the Greek General Commercial Registry (www.businessregistry.gr).

Note: Commercial claims have a time limit of five years, starting from the original due dates.

18.1.2. Local agents

We have several attorneys and debt collection partners act on our behalf in Greek territories and collect our clients' claims either in court or out of court.

All our attorneys and agents in Greece are in a position to check debtors' financial status.

As the last amicable step before proceeding with legal action, our agents can instruct local bailiffs to serve an Extra Judicial Declaration (EJD), or an out-of-court notice, or a Letter Before Action (LBA) on debtors.

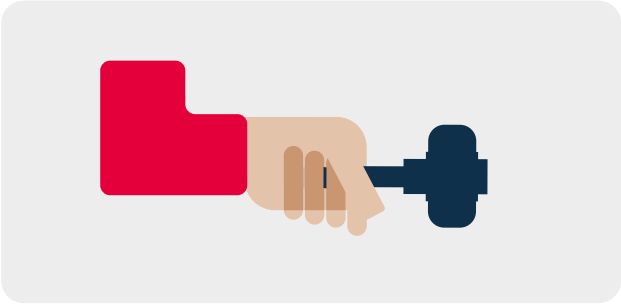
18.1.3. Interest

Late payment interest may be charged to the debtor on the first overdue day. Despite that, Greek debtors rarely pay interest.

18.1.4. Debt collection costs

Since we're handling Greek cases from Germany, we can't ask for debt collection costs.

18.2. Legal collections



18.2.1. General information

Depending on the available documents and whether the outstanding debts are disputed by the debtor, it's possible to apply for a payment order in court or to start court proceedings, such as lawsuits, preliminary measures.

Before taking a case to court, mediation has to take place and be done by a lawyer.

18.2.2. Required documents

In order to apply for a payment order, we need at least one of the following.

- A notarised acknowledgement of debt
- A private acknowledgement of debt with tax stamps
- The original bills of exchange, promissory notes, bounced cheques
- Copies of the invoices and proof of delivery (originals are also possible), signed and stamped by the debtor upon receipt of the goods, or any documents from the debtor or transporters proving the receipt of the goods (e.g. ex-works)

In case of regular lawsuit procedures, copies of the complete contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, invoices and the like.

18.2.3. Payment order

As soon as a payment order is applied for, the court will examine the documents and issue a payment order, which is immediately enforceable if the debtor doesn't oppose it. The debtor has 15 days after the notification of the payment order to file their objections. In case of objection, the proceedings will be transferred to ordinary legal proceedings.

In the case of bounced cheques, a payment order should be filed within six months from the date that a cheque was bounced.

In the case of bills of exchange, there is a time frame of three years.

18.2.4. Penal proceedings

This procedure addresses the felony of the debtor issuing bounced cheques. In this case, we have the possibility to proceed against the person who signed the cheques in penal courts. The time frame is three months after a cheque was bounced. This procedure aims to further press the debtor who now faces imprisonment (redeemable) in case they don't pay.

18.2.5. Lawsuits

If sufficient documentation as described above can't be provided or the payment order can't be issued, the ordinary legal proceedings have to be applied in court.

18.2.6. Expected time frame

Legal proceedings in Greece are often very long-lasting. Depending on the workload of the court and the reactions of the debtor, they can take several years.

18.2.7. Costs and interest in the legal phase

Depending on the decision of the court, the judgment will include interest and costs.

18.3. Insolvency proceedings

18.3.1. General information

Proceedings take place according to the law 4738/2020 named "Debt settlement and second-chance arrangement".

18.3.2. Out-of-court proceedings

A relevant petition for out-of-court settlement is filed. A settlement agreement will be confirmed and signed within two months, and will provide the writing off of the capital, interest, or payments of the total debt until 240 instalments. However, the conditions are very strict and the debtor will be deprived of any assets.

18.3.3. Pre-bankruptcy proceedings

The creditors representing 50% of the total debt, including 50% of the privileged claims, file a relevant petition with a conciliation agreement before the Multi-Member Courts. According to the law, the judgment that verifies the conciliation agreement is final and no appeals are permitted against it.

18.3.4. Bankruptcy

The insolvent debtor company must file a bankruptcy petition within 30 days following their cessation of payments. The creditors are then invited to file their claims within 30 days.

The lodging of claims in insolvency proceedings is done by our local lawyers, as the proceedings are quite complex in Greece and the lodging has to be done in Greek.

The bankruptcy process is quite lengthy.

18.3.5. Required documents

- Copies of the invoices signed by you and authenticated by a notary, certifying the signature and confirming that the copies are true copies of the original outstanding amount according to your company's official books. The documents should bear the apostille of The Hague Convention. However, certified copies of the invoices aren't required if the debtor has accepted a bill of exchange or signed a promissory note duly stamped
- A power of attorney notarised and stamped with the apostille of The Hague Convention

Furthermore, a witness from your company might need to testify before the court.

18.3.6. Expected time frame and outcome

Bankruptcy proceedings are in most cases very long-lasting and not resulting in payments.

Atradius Collections

19. Hong Kong

Industries

- Business services
- Consumer durables
- Electronics
- Financial services
- Machines
- Services
- Textiles

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

19.1. Amicable collections

19.1.1. General information

We deal directly with the collection processes through our experienced and professional debt collectors. Hong Kong is a cosmopolitan city with a mix of foreign and local capital companies from large multinationals to small and medium enterprises. Our collectors are proficient at determining the best strategy to pursue payment from many different types of debtors.

The legal languages are Chinese and English, with Cantonese being the region's most widely spoken language, and traditional Chinese being the most common written language. All our written correspondence is sent to debtors in English.

Hong Kong has a small geographical area, and our collectors can conduct site visits to debtors if the situations require it.

19.1.2. Local agents

We can use local agents or local debt collection agencies (LDC) to trace debtors' status and conduct site visits if appropriate. Tracing reports are used to find out all the information about debtors, such as whether they're still trading and the number of staff they have in their offices. Next to producing tracing reports, the LDC can also help collect monies.

19.1.3. Interest

There are no statutes or regulations that govern interest charges. They are freely negotiable between creditors and debtors, and should be clearly stipulated in the contracts.

It isn't common practice to charge late payment interest during the amicable phase of collections, as debtors usually refuse to pay.

19.1.4. Debt collection costs

In Hong Kong, debt collection costs aren't chargeable to debtors, unless stipulated in contracts or obtained by judgment from courts.

19.1.5. Prescription

The general prescriptive period in Hong Kong is six years, starting from the date of the last payment chasing action.

19.1.6. Payment methods

The most common Payment methods are bank transfers and cheques.

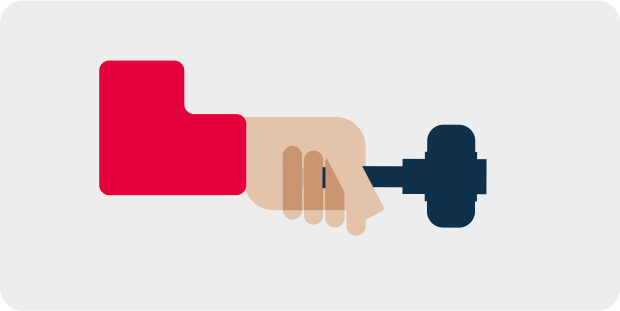
19.1.7. Sources of information

In Hong Kong, only company registration information is made public. No financial information is available. Credit information agencies can provide company credit reports with more information. As this information is from their own sources or can be gathered during interviews with companies, the accuracy of the details can't be guaranteed.

19.2. Retention of title

The use of retention of title (ROT) isn't common in Hong Kong, especially for small and medium enterprises. ROT clauses must be stipulated in contracts; otherwise, it's difficult to enforce.

19.3. Legal collections



19.3.1. General information

Hong Kong's legal system uses British common law, inherited from the United Kingdom when Hong Kong was still a British colony. Once the amicable collections is proved to be unsuccessful, we'll evaluate the situation thoroughly in order to determine whether legal action is recommended.

Legal action in Hong Kong is considered effective and inexpensive. Once our solicitor receives the case, the solicitor will serve legal demand letters on the debtor, while also contacting the debtor to establish whether there is any chance of settling the matter without taking legal action. If the debtor still fails to settle the debt at this stage, legal action will begin.

19.3.2. Legal systems

There are three types of courts in Hong Kong: Small Claims Tribunal, District Court, and High Court.

Small Claims Tribunal

- Deals quickly, informally, and inexpensively with claims not exceeding HKD 75,000
- Although the Tribunal is a court, the rules and procedures are less strict than in most other courts, and no legal representation is allowed
- The filing fee is less than HKD 120 and depends on the claim amount

District Court

- Deals with claims not exceeding HKD 3 million

High Court

- Deals with claim amounts above HKD 3 million

The Small Claims Tribunal isn't allowed by law to employ any third party as representatives, including solicitors, meaning you should attend court hearings yourself.

For other courts, legal proceedings are commenced by serving a writ of summons on the debtor, who will normally have 14 days to file a defence. A notarised statement of claim is required. If the debtor files a defence or a request for a payment plan due to financial difficulties, you have 14 days to reply. If both parties couldn't enter into an agreement, the judge may call for court hearings before issuing a judgment. If the debtor doesn't respond to the summons before the deadline, you may apply for a default judgment. However, if the debtor makes an appeal against the default judgment after it has been served with a satisfactory explanation, the court may allow the setting aside of the judgment and reactivate the procedures as stated above.

On 1 January 2010, a Practice Direction for mediation came into effect. It applies to all the civil proceedings in the Court of First Instance and District Court. Mediation is a voluntary process, in which a trained, impartial third person or mediator helps the parties in dispute reach an amicable settlement that is responsive to their needs and acceptable to all sides. Parties are strongly encouraged to explore the possibility of mediation before taking their disputes to court.

Once a court judgment is obtained in favour of the claimant, we'll carefully evaluate what type of enforcement is most effective and favourable to you.

19.3.3. Required documents

For the legal proceedings, we need copies of the contracts, invoices, and a clear statement of account indicating the payments and credit notes, as well as all the correspondence between you and your debtor.

19.3.4. Costs and interest in the legal phase

Legal costs and interest are chargeable to the debtor and also depend on the court judgment.

19.4. Enforcement

19.4.1. Enforcement in debt

The most common types of enforcement include:

Writ of Fieri Facias

- Bailiffs are appointed to attend the debtor's registered premises to seize their goods for sale
- The proceeds from the sale of the goods will be used for the part payment of the judgment debt
- If a third party claims to own the goods, then the third party may bring an action claiming the ownership of the same goods

Examination order

- A verbal interview is conducted with the directors of the debtor company in order to obtain further information on the financial status of the company

Garnishee order

- To seize any monies in the debtor's bank accounts
- We have to prove that the debtor's bank accounts have credit balances. This stage of enforcement is always completed after the examination order has finished

Prohibition order

- If we suspect that the directors of the debtor company may leave the country, we may apply for a prohibition order to prevent them from leaving Hong Kong. The immigration officer will detain the targeted individuals once we know they intend to depart Hong Kong
- Sufficient evidence should be provided in order to obtain a prohibition order by the court
- As it can be regarded as a contradiction of the law of human rights, a prohibition order is very difficult to obtain

Statutory demand

- If a lawyer sends a demand letter but receives no responses from the debtor, the lawyer can put pressure on the debtor by issuing a statutory demand to commence the procedure for winding up the debtor company
- The debtor must reply within 21 days; otherwise, the creditor can apply winding up against the debtor company

Bankruptcy/winding-up petition

- To wind up (a limited liability company) or bankrupt (an unlimited liability company) the debtor company
- This is a relatively costly procedure
- If you're an unsecured creditor, we should carefully evaluate the chance of getting any dividend

19.4.2. Expected time frame

It generally takes three to four months in Hong Kong. For liquidation procedures, it normally takes about one to two years.

19.5. Insolvency proceedings

There is only one type of insolvency proceedings and no bankruptcy protection in Hong Kong.

19.6. Arbitration and mediation

Arbitration and mediation aren't very common in Hong Kong. Only large companies will include this requirement in their business contracts.

Atradius Collections

20. Hungary

Industries

- Chemicals
- Construction materials
- Food
- Machines
- Minerals
- Textiles
- Transport

Chance of collecting

75%–100%

Source: Central Intelligence Agency World Factbook

20.1. Amicable collections

20.1.1. General information

We maintain a professional collection process, focusing on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house, contacting debtors both verbally and in writing while adhering to federal and state law.

In case of any dispute, we aim to reach an amicable solution between you and your debtor. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as all standard terms that have been agreed to). All of our investigations are completed with the assistance and agreement of our legal team.

We may decide during a collection process that a personal visit to the debtor would add value, and we're able to do this ourselves in the Budapest area.

20.1.2. Interest

We always charge debtors for interest that is set by the Act IV of 1959 on the Civil Code of the Republic of Hungary. According to the law, interest on late payment will be calculated by the central bank's base rate of the issuing country of the currency in effect on the first day of the calendar, pertaining to every half year, plus 8%. If you enquire about a higher interest rate, we can only offer it if it has been confirmed by contractual documents.

From a cultural point of view, Hungarian debtors often use the actual amounts of their interest payment as a matter of negotiation.

20.1.3. Debt collection costs

The Directive 2011/7/EU of the European Parliament and the Council has been incorporated into the Civil Code of the Republic of Hungary. The Act IX of 2016 on the law on collection costs regulates that we can charge EUR 40 as the collection cost to debtors. Further collection costs are chargeable, but there are no regulations made by the local law. The basis of any charge must be proved by contractual documents signed by the debtors.

From a cultural point of view, Hungarian debtors aren't used to paying debt collection costs. And these costs are considered a matter of negotiation.

20.1.4. Prescription

The general prescriptive period in Hungary is five years, starting from the due date of a claim.

Transport claims become prescribed within one year, starting from the delivery according to the CMR Convention.

After the changes in the Civil Code of the Republic of Hungary coming into force on 15 March 2014, only legal proceedings can stop prescription.

20.1.5. Payment methods

The most common payment methods are bank transfers and cash payments.

20.1.6. Types of companies

Private company ("Egyéni cég")	■ No minimum capital ■ Only one owner with unlimited liability or limited liability for the company's capital ■ Without a legal entity
Limited partnership (Bt. ("Betéti Társaság"))	■ No minimum capital ■ At least one partner has unlimited liability with their business and private funds ■ The limited partners are only liable with the company's capital ■ Without a legal entity
Company with limited liability (Kft. ("Korlátolt Felelősségű Társaság"))	■ The minimum capital requirement is HUF 3 million, which can be in the form of monies or assets, such as cars or company equipment ■ Liability is limited to the company's capital
Corporation (Rt. ("Részvénytársaság"))	■ The minimum capital requirement is HUF 5 million for close corporations ■ The minimum capital requirement is HUF 20 million for public corporations, divided into shares ■ Liability is limited to the company's capital ■ With its own legal entity

20.1.7. Sources of information

In Hungary, we contact credit-reporting agencies to assess the financial situations of debtors, including their real estate and other enforceable assets. We combine this with our own phone contacts to get an accurate impression of the debtors' financial situations and to advise you on the next steps.

It depends on the legal form of a debtor as to whether we're also able to request their information from public registers. All companies have to register with the trade register in a company court, which can be accessed online. We have direct access to this and other company databases that can provide us with additional information on shareholders, historical developments, balance sheets, associated companies, and payment experience.

We continuously monitor the solvency of debtors so that in case of any insolvency, we can immediately take action to meet the legal deadlines for lodging claims.

20.2. Retention of title

Retention of title clauses are a safeguard measure. To be used to any sellers' advantage, they must be agreed to prior to the delivery in written form. A retention of title clause has to be explicitly written in a contract and signed by both parties before any delivery.

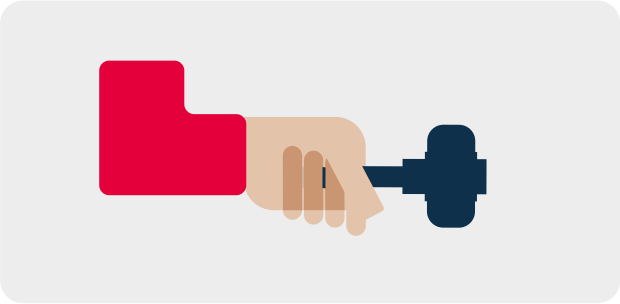
The Civil Code of the Republic of Hungary imposes regulations concerning retention of title clauses. For retention of title clauses of real estate, you have to register the facts of the retention of title clauses and the names of the buyers with the real estate register. For retention of title clauses of movable property, you have to register the facts of the retention of title clauses and the names of the buyers with the security register, as well as in an appropriate catalogue. The Civil Code also regulates the legal consequences of missing registrations.

20.3. Safeguard measures

In case your debtor isn't able to settle your claim in a speedy manner, we can request that the debtor secure the debt in favour of you – the creditor. In Hungary, the following guarantees have the highest importance in business practice.

- An acknowledgement of debt, authenticated by a notary and immediately enforceable in case the agreed payment terms aren't honoured
- Mortgages or assignments of debt or assets
- An absolute guarantee by the debtor's shareholders and/or associated companies
- An assignment of the debtor's claims with the debtor's absolute guarantee

20.4. Legal collections



20.4.1. General information

The Hungarian legal system is composed of public law, which regulates the relationships between citizens and the state, and civil law, which regulates the relationships between two people or companies.

Entering into legal proceedings is sometimes possible without a prior warning to the debtor. However, all courts are trying to mediate between creditors and debtors, and, in order to shorten the amicable phase of legal proceedings, they may ask for proof that all the pre-court efforts haven't been successful. They'll also ask to see all the prior correspondence in order to reach a quick and final judgment.

20.4.2. Legal systems

The responsibility of jurisdiction is divided by the matter, the addresses of the parties, and/or the amount of the case.

20.4.3. Required documents

In order to apply legal proceedings, we need copies of the contracts, invoices, and statements indicating the payments and credit notes that have been made for the outstanding monies.

In the case of a regular lawsuit procedure, copies of all the contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, and invoices. Every part of the trading relationship between both parties should be provable by documentation.

In case of dispute, all the notes of the conversations between you and your debtor should be kept and given to our lawyers.

In the case of verbal negotiations, we require the visit or negotiation reports and the names of any witnesses.

20.4.4. Payment order procedure

This procedure has to be submitted to a notary, who then gives notice to the debtor.

A payment order is enforceable if the debtor doesn't appeal within 15 days after receiving the payment order. If the debtor appeals a payment order procedure, it'll then become a regular lawsuit procedure.

If the debt is disputed and the amount is less than HUF 3 million, then you have to start first with a payment order procedure. The data that needs to be provided to a notary in order to start a payment order procedure is private entrepreneurs' data, such as the date and place of birth, and the mother's name. It'll be already recorded at the start of the procedure; otherwise, the petition might be rejected.

20.4.5. Lawsuits

A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the debtor, or after the legal dunning procedure if the debtor has appealed.

A written pre-procedure is usually issued. Both the plaintiff and defendant must exchange opinions and proof by letter until the judge believes all the information needed to render a judgment has been received. In this case, a hearing is scheduled, during which both parties must be present. After the hearing, the judge sets a date to issue the final judgment, and both parties will be informed about the outcome in writing by the court.

According to the Code of Civil Procedure, as of 1 January 2018, the maximum time frame for suspension of a lawsuit procedure can be four months, and it can only be requested up to three times.

20.4.6. Appeals

Appealing against a judgment is possible, which will trigger a verdict by the court of second instance.

20.4.7. Expected time frame

The average duration of a legal dunning process is between one and three months (in cases without appeals from the debtors), whereas a court procedure can take one to three years or longer, depending on the complexity of the case and the availability of the judges and lawyers on both sides.

20.4.8. Costs and interest in the legal phase

The court costs of a payment order procedure are generally 3% of the claim amount (minimum HUF 8,000 and maximum HUF 300,000) and 6% of the lawsuit debt (minimum HUF 15,000 and maximum HUF 1.5 million).

The court costs of an appeal against a court judgment are generally 8% of the debt (minimum HUF 15,000 and maximum HUF 2.5 million).

The minimum and maximum amounts of court and enforcement costs are determined by law.

Lawyers' costs are a matter of negotiation, based on the court process and its complexity. We can provide you with competitive offers from our external partners. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

Extrajudicial interest and costs can be claimed as part of the outstanding monies during legal proceedings. The successful claiming of the costs is highly dependent on the court and the judge. In all cases, the losing party has to bear the costs of the legal proceedings.

In the case of a legal settlement, the parties bear the costs of the corresponding proceedings in proportion to their prevailing or failing.

20.5. Enforcement

20.5.1. Enforcement in debt

The enforcement procedure is executed progressively. The creditors or executor can block the bank accounts of the debtor. This type of enforcement requires very specific information, such as bank account details.

20.5.2. Enforcement in movable property

This is a standard procedure where the bailiff visits the debtor to take away movable property that can be liquidated in favour of you – the creditor. The bailiff can't seize the property that is necessary for the debtor's basic daily life or that enables them to maintain their business activities.

20.5.3. Enforcement in immovable property

This is the standard procedure if enforcement isn't successful in debt or in movable property. If the debtor owns real estate, it's possible to receive a record of their claim in the land registry, and then either force the attachment and sale, or, if there are tenants, force the sequestration of the real estate by court order.

20.5.4. Expected time frame

Enforcement in monies is usually the quickest procedure if the debt is covered and all the necessary information is available. The expected time frame is between three and nine months.

The time frame for enforcement in movable property and real estate is difficult to estimate, as it depends on the course of the case, the available property, the court, possible banks, and, of course, possible buyers.

20.6. Insolvency proceedings

20.6.1. General information

Insolvency proceedings – whether regular insolvency, insolvency plans, or individual insolvency – are a kind of collective enforcement by all the creditors against one debtor. With the start of preliminary proceedings, all individual enforcement is suspended, and only when the insolvency proceedings don't start will individual enforcement continue.

The chance of receiving a dividend in liquidation for unsecured creditors – without any special guarantees – is really low.

Bankruptcy proceedings (with the aim of reorganisation via settlement with the creditors) can still not reach a significant number in Hungary.

20.6.2. Proceedings

Bankruptcy procedure

The aim of a bankruptcy procedure is to reorganise the debtor company under strict law control via repayment agreement with all the creditors who lodge their claims within the 30-day period after the official notification.

Liquidation procedure

A liquidation procedure can be initiated by the debtor company itself or by a single creditor. It's mainly administrative legal proceedings that aim for the liquidation of the debtor company. Therefore, the initiation of this procedure has strict legal requirements and is only applicable to claims without any prior dispute.

A petition has to be filed for with the court, along with the documents proving the legal base of the claim. If the petition is judged as valid, the court will send an official notice to the debtor to pay the creditor's claim. Otherwise, the insolvency will be declared. In case the debtor acknowledges the debt, the court can grant a further payment extension of 45 days. If the debtor fails to meet the deadline set by the court or the parties couldn't agree to any settlement to suspend the liquidation procedure, the insolvency will be officially published.

In debt collection practice, a liquidation procedure can be an effective tool to exert final pressure on the debtor for payment when their company is still solvent.

According to the Code of Civil Procedure, as of 1 January 2018, the maximum time frame for suspension is three months and it can be requested only up to three times.

After the insolvency is published, the aim of regular insolvency proceedings is to pay out the creditors by liquidating the assets of the debtor company. At the end of the process, the debtor company will be removed from the company register.

After the official publication of the insolvency proceedings, the creditors can then lodge their claims within a given deadline and take back any goods delivered under valid retention of title clauses. For goods in stock, the liquidator can choose either to pay the original prices to the creditors or to return the goods. The insolvency practitioner can either accept a lodged debt or dispute it. If your claim is disputed, you may only file the claim in court to prove the justification of the claim when further documentation doesn't convince the insolvency practitioner to confirm the debt.

The registration fee for lodging any claim in liquidation (payable to the competent court) is 1% of the claim amount, with a minimum of HUF 20,000 and a maximum of HUF 400,000, and a flat fee that needs to be paid to the liquidator, which is 0.5% of the claim amount, with a minimum of HUF 5,000 and a maximum of HUF 40,000. If you don't want to lodge a claim within the insolvency proceedings and pay the 1% registration fee, you can request that the insolvency practitioner issue a declaration of irrecoverability, which is required by the tax office to write off the claim. The fee for the declaration is HUF 2,000 plus VAT (27%).

We can provide you with the monitoring of any potential insolvency in order to be able to lodge claims within the required terms and to represent you in the processes.

20.6.3. Required documents

In order to lodge a claim, we need:

- An original power of attorney
- Copies of the invoices

In case of any dispute raised by the liquidator:

- Copies of the contracts
- Copies of the orders, confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim

20.6.4. Expected time frame and outcome

The deadline for lodging claims in insolvency proceedings is 40 days, calculated from the publication date of the process. The liquidator will confirm the registration of the claims after receiving all the relevant documentation – closing balance sheets, analytics, inventory lists and the like – from the management of the debtor company.

In Hungary, all creditors are ranked in categories from A to H. Unsecured creditors are ranked in category F, and all the categories between A and E (e.g. banks, employees, and authorities) have to be paid out in full before the unsecured creditors can get any dividend, unless a full and final settlement has been agreed to by the creditors. Within 75 days after the publication of the procedure, the insolvency practitioner has to arrange a creditors' meeting.

The whole duration of a liquidation procedure is between three and seven years. Simplified insolvency proceedings take approximately one to two years. In this case, there are no assets or documents that enable the insolvency practitioner to carry out the insolvency proceedings in a regular way.

20.6.5. Limited companies

The liability is generally limited to the company's capital. However, in special lawsuit procedures, the liability of the (even previous) shareholders and management can be judged by the court if any malice can be proved. In the case of such a final court decision, the (previous) shareholders and management are liable to the insolvency losses with their personal assets. An additional consequence of such a court decision is a ban on holding a shareholder or management position in another company for five years.

20.6.6. Unlimited companies

For unlimited companies, the liability isn't limited. Any unlimited shareholder is liable to the insolvency losses with their own assets.

20.6.7. Pools of creditors

In insolvency and bankruptcy proceedings, the creditors can join in a pooling agreement with the aim of representing and protecting the interest of the creditors during the proceedings, and controlling the activities of the insolvency practitioner.

20.6.8. Rescission

The insolvency practitioner can dispute and claim back the payments made by the debtor prior to the publication of their insolvency. If the insolvency practitioner disputes these payments with success in a lawsuit procedure, the creditors have to refund the insolvency practitioner and can only lodge their corresponding debts instead.

20.7. Arbitration and mediation

If you and your debtor agree to an alternative dispute resolution, there are two options available: arbitration or mediation.

Arbitration in Hungary is organised by the Hungarian Chamber of Commerce and Industry ("Kereskedelmi és Iparkamara"). Agreeing to arbitration has advantages compared to regular legal proceedings. It's quicker, as the courts are less occupied, and there are no appeals. It's also more cost-effective, and the hearings and processes are confidential. The decision of the arbitration can be enforced as a final court decision.

The other way of solving a dispute is by mediation or conciliation proceedings, which focus on finding the root cause of the dispute in order to reach constructive agreements and solutions for both you and your debtor. Mediation or conciliation is carried out by professional mediators. There are now increasingly more attorneys who specialise in mediation. The new agreement isn't a judgment but a kind of contract. Mediation activities are regulated by the Act LV of 2002.

Atradius Collections

21. India

Industries

- Chemicals
- Construction materials
- Food
- Machines
- Minerals
- Textiles
- Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

21.1. Amicable collections

21.1.1. General information

We have been actively involved in amicable debt collections for the last 20 years. We now have a local team to collect in India. We follow proven principles of negotiation. By being in close contact with debtors, we're able to evaluate genuine cash flow problems and stalling excuses for non-payment. Site visits from time to time and face-to-face meetings with debtors are an integral part of our collection initiatives.

21.1.2. Local agents

We have local agents in almost all major cities in India and also in neighbouring countries, such as Pakistan, Sri Lanka, and Bangladesh. Our local agents are fully equipped to make site visits and face-to-face meetings with debtors. If necessary, they also offer skiptracing services.

21.1.3. Interest

Indian courts generally award interest from 8% to 9% per year, unless another rate of interest is agreed to between the creditor and debtor in an agreement or arrangement that clearly specifies the rate of interest to be charged for the overdue amount.

It isn't customary for debtors in India to pay interest on the debt amounts, especially in the amicable phase. Thus, in pre-legal recovery, interest isn't recoverable.

21.1.4. Debt collection costs

It isn't customary for debtors in India to pay collection costs, especially in the amicable phase. Thus, in pre-legal recovery, collection costs aren't payable by debtors. However, while passing judgments, Indian courts may order the debtors to reimburse the creditors for the legal or collection costs.

21.1.5. Prescription

The Limitation Act, 1963, governs the periods of prescription. The limitation period is three years from the due date of an invoice. However, this gets extended for another period of three years if there is an acknowledgement of debt by the debtor.

21.1.6. Payment methods

The most common payment methods include Payment methods by wire transfer and payment by draft or banker's cheque.

21.1.7. Types of companies

The following is the most common forms of business entities in India.

Sole proprietorship

This type of entity is owned by a sole proprietor. The proprietor of a sole proprietorship entity has unlimited liability for its debts.

Partnership firm

A partnership firm in India is governed by the Partnership Act, 1932. Two or more persons can form a partnership, and it's subject to a maximum of 20 members. The partners of a partnership firm have unlimited business liability. Partnerships can also be Limited Liability Partnerships. In this case, the liability of the partners is limited to the extent of the assets of the partnership firm and its capital.

Private limited company

A private limited company is considered a separate legal entity from its shareholders. A private limited company can be formed with the help of a minimum of two members. The liability of a shareholder is limited to the unpaid value of their share capital.

Public limited company

A public limited company can be formed with the help of a minimum of seven members. The liability of a shareholder is limited to the unpaid value of their share capital.

21.1.8. Sources of information

Our tools to investigate debtors' financial situations include physical searches, enquiries at the locations of the debtors, public registers, local sources, news, and enquiries from the court.

21.2. Retention of title

The principle of retention of title clauses is retaining negative liens at times, which prohibit the debtors from disposing or dealing with the plant and machinery or goods for which full payment hasn't been made. The restrictions are also imposed on the creation of charges on

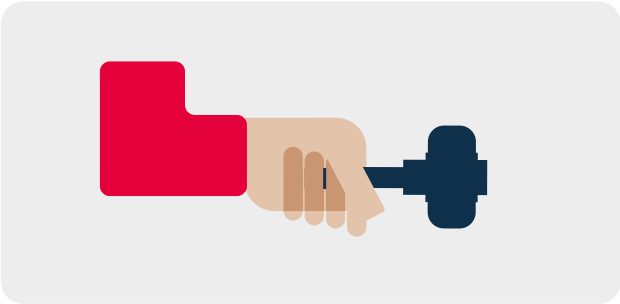
the plant and machinery or goods delivered when payment hasn't been made for such items. Charges on plant and machinery or goods are created and filed with the Registrar of Companies.

It's also recommended that retention of title clauses are specifically stipulated by contract. The local circumstances make it extremely difficult to recover the possession of the delivered goods for the unpaid prices. Consequently, most creditors insist on advance payments, letters of credit, or other negotiable instruments.

21.3. Safeguard measures

Safeguard measures include acknowledgements of debt from the debtors and promises to pay (they don't require notarisation). Furthermore, liens or charges on the goods supplied or other assets are ways to safeguard the interest of the sellers. Likewise, bank guarantees (from reputable banks) may also be obtained.

21.4. Legal collections



21.4.1. General information

While we maintain a high success rate with amicable collections, if necessary, we have the ability to initiate legal action and bring about successful conclusions via court. Whether or not to initiate legal action and which particular type of proceedings should be initiated depend on the facts of each individual case. In India, legal proceedings are generally protracted by nature and can be initiated immediately after the amicable collections fails.

The Insolvency and Bankruptcy Code, 2016 (IBC) is a complete code on its own and has the force of law. Debt recovery against corporates can be adopted under the IBC. Cases are filed with the National Company Law Tribunal (NCLT) within the jurisdiction of the location of the debtor company's registered office.

21.4.2. Legal systems

India's judicial systems have the Supreme Court of India at the top, which is also the highest court of India. It's followed by the High Courts of the respective states, the District Judges sitting in the District Courts, the Magistrates of Second Class, and the Civil Judges (Junior Division) at the bottom of the judicial systems' hierarchy. For corporate insolvency cases, we also have the NCLT.

21.4.3. Required documents

For proper understanding of your case and initiating legal action, all the supporting documents pertaining to the case are required. We need a power of attorney in our favour, duly signed and notarised by you with an apostille or legalised, depending on the jurisdiction where the power of attorney is signed. Other documents, such as the sales contracts, purchase orders, pro forma invoices, commercial invoices, bills of lading or air waybills, statements of account, entire correspondence exchanged between you and your debtor (letters or emails), and any other documents that may be relevant to your claim are required.

On further consideration of the facts of your case, our lawyers may ask for other relevant documentation. In addition, all of the supporting documents must be filed as originals.

21.4.4. Legal dunning procedures

Recovery proceedings are instituted before the court. A recovery suit is filed against the debtor (both in the case of a company or an unincorporated entity) in the territorial jurisdiction of the court where the debtor runs their business. The prime objective of filing the recovery suit is to recover the debt amount.

The proceedings are considered to be protracted (generally taking between four and eight years to reach a conclusion). In the recovery suit, your representative has to appear before the court a few times for depositions.

Furthermore, recovery proceedings are more costly than winding-up proceedings as they involve a high amount of court fees, which are deposited before the court. Different courts have different rates of court fees that are calculated on the basis of the claim amounts.

21.4.5. Appeals

The party of the suit adversely affected by the decree or order of the court can lodge an appeal against that order or judgment in an appellate court. It's the amount determined by the first court that determines the forum of the appeal. If the forum of the appeal is a High Court, then the appeal is to be lodged within 90 days from the date of the decree or order. If the forum of the appeal is another court, then the appeal is to be lodged within 30 days from the date of the decree or order.

21.4.6. Expected time frame

Recovery suits are protracted by nature and generally take between two and five years to come to a conclusion.

Winding-up proceedings generally conclude in two years.

21.4.7. Costs and interest in the legal phase

It isn't feasible to give estimations of the legal costs as they depend on many factors, including the complexity of the case.

Generally, legal costs involve, inter alia, the following.

Court fees
Different courts have different rates of court fees that are calculated on the basis of the claim amounts.

Attorney's fees
There are fees paid to lawyers for handling matters and appearing before the courts.

Process serving
A nominal fee is paid for the delivery of the courts' summonses, notices, and other documents to the concerned parties.

Drafting
There are fees paid to lawyers for drafting plaints, petitions, applications, written statements or objections, replies, rejoinders, and other miscellaneous documents.

Publication costs
There are costs of the publication of notices in newspapers as directed by the courts.

Miscellaneous
There are other miscellaneous expenses, such as costs of a notary, photocopying, and stamping fees.

It's up to the discretion of the judge whether or not to award interest and costs to you as the creditor. But courts in India, while passing judgments, are empowered to award interest and may also direct the debtors to reimburse the creditors for the legal or collection costs.

21.5. Enforcement

A decree can be enforced by the delivery of any property specified in the decree: by attachment and sale or by sale without attachment of any property, by arrest and detention in a civil prison of the judgment debtor, or by similar means as the nature of the relief may require.

A decree can be executed by the court that passed it or by the court to which it was forwarded for execution. A decree can be executed by filing an execution petition before the court.

Furthermore, the limitation period of filing an execution petition is 12 years from the date of the decree. The estimated time frame for concluding an execution petition is two to four years.

When the decree holder files an application for the attachment of the movable property belonging to the judgment debtor, the decree holder has to also add to the application an inventory of the property to be attached, containing reasonably accurate descriptions of the property.

When an application is filed for the attachment of any immovable property of the judgment debtor, it should contain accurate descriptions of such property.

21.6. Insolvency proceedings

21.6.1. General information

Bankruptcy law in India, especially in case of "sick" companies (companies whose accumulated losses are equal to or exceed their net worth), is predominantly remedial and ameliorating. It empowers a quasi-judicial body for this very purpose to take appropriate measures for the revival and rehabilitation of potentially viable yet sick industrial companies and for the liquidation of unviable companies.

21.6.2. Proceedings

Companies in India are governed by the following insolvency and restructuring regime:

- Insolvency proceedings are under the IBC. This is a composite code that involves the restructuring of companies as well as their liquidation
- Schemes of arrangement or compromise are under the Companies Act
- Winding up or liquidation is used to realise the debtor's

assets for distribution to their creditors and members. Although the other two methods can be categorised as corporate rescue mechanisms, schemes of arrangement or compromise are primarily designed for the internal restructuring and reorganisation of the debtor. While winding up and schemes of arrangement are carried out under the aegis of the courts, the Board for Industrial and Financial Reconstruction has been set up for the restructuring or rescue of sick companies

21.6.3. Required documents

For proper understanding of your case and initiating legal action, all the supporting documents pertaining to the case are required. We need a power of attorney in our favour, duly signed and notarised by you. Other documents, such as the sales contracts, purchase orders, pro forma invoices, commercial invoices, bills of lading or air waybills, statements of account, entire correspondence exchanged between you and your debtor (letters or emails), and any other documents that may be relevant to your claim are required.

21.6.4. Expected time frame and outcome

Winding-up proceedings generally conclude in two years.

The outcome of the proceedings generally depends on the assets held by the debtor company and its overall liability.

21.6.5. Unlimited companies

The Provincial Insolvency Act governs insolvency proceedings of unincorporated entities, which are more prolonged by nature.

21.7. Arbitration and mediation

If the contract between you and your debtor contains an arbitration clause, then arbitration proceedings are to be initiated. Arbitration proceedings are very similar to court proceedings. The only difference is that there are no hurdles like strict rules of the proceedings or law of evidence, yet arbitration proceedings are legally binding. After a claim is filed by you and the debtor files a reply, the arbitrator may ask both parties to present evidence or their witnesses, and then, after hearing both parties, they decide on the case and make an award. Thereafter, the award needs to be enforced against the debtor.

Mediation proceedings are another form of alternative dispute resolution. They're a way of resolving disputes between two or more parties with a concrete outcome. Typically, a third party - a mediator, assists the parties in negotiating a settlement. Generally, the courts also refer matters to mediators these days.

Atradius Collections

22. Indonesia

Industries

Chemicals
Construction materials
Consumer durables
Electronics
Food
Machines
Services
Textiles
Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

22.1. Amicable collections

22.1.1. General information

We carry out the collection process in-house, contacting debtors both verbally and in writing while adhering to federal and state law.

Indonesia is one of the most difficult and costly countries to collect money in Asia. Legal action is a lengthy and tedious process with various options for appealing, giving debtors more opportunities to delay payment.

22.1.2. Local agents

Most foreign creditors rely on local debt collectors to assist in debt recovery as speaking the local language "Bahasa Indonesia" is critical for recovery efforts. Indonesia is an archipelago consisting of 18,307 islands with various local collection agencies spread around the country.

Creditors are expected to prepare a power of attorney (POA) to enable local debt collectors to contact their customers.

22.1.3. Interest

Payment terms aren't regulated by Indonesian law, although the Civil Code regulates late payment interest, which is paid by the defendant (the debtor) at the request of the plaintiff (the creditor) before a court.

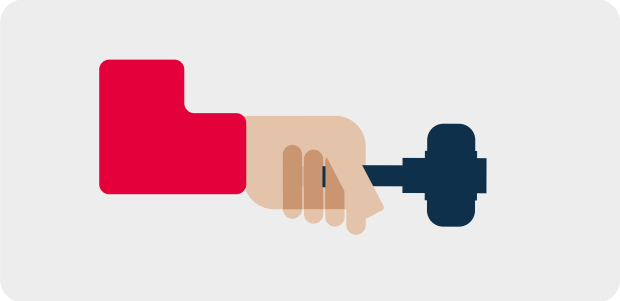
There are two types of interest: conventional interest rate ("bunga konvensional"), which can be contractually agreed to by the parties through a contract and apply in the case of late payment; and in case there are no contractual agreements, a 6% per annum legal interest rate ("bunga moratoir") is set by law.

22.1.4. Debt collection costs

There is no law or regulation in Indonesia that regulates collection costs in particular or debt collection activities in general. However, within Indonesian law, there is a split between material and non-material losses. Material losses are direct losses caused by debts, e.g. principal debts and/or costs of shipping. Non-material losses are indirect losses resulting from debts.

Legal costs will be included as an indirect loss. Although legal costs may be included as an indirect loss, please note that in Indonesia, legal costs are never awarded. Plaintiffs do frequently make outlandish claims for non-material losses, but often these are refused at the Supreme Court level.

22.2. Legal collections



22.2.1. General information

Legal action in Indonesia is usually lengthy and costly, and decisions may be inconsistent although there seems to be some improvements over the past few years. Therefore, it's always advisable to consider amicable settlement opportunities as a serious alternative to formal proceedings, which overall should only be commenced when the debt is very significant (in excess of USD 500,000).

22.2.2. Required documents

According to article 164 of the "Herziene Inlands Reglement", there is evidence that the courts accept in terms of proving the existence of the debt, among which is "letter-based evidence" or documents. Therefore, we are expected to provide the local courts with the following supporting documentation, among others.

- The invoices
- The delivery and purchase orders
- The sales contracts
- The credit applications
- The bills of lading

In other instances, the court also accepts third-party witnesses, affidavits, and occasionally statements made under oath. For the case to be examined by the court, any representation by legal attorneys must be accompanied by a POA.

22.2.3. Legal dunning procedures

The composition of a typical civil trial in Indonesia is as follows.

The process first begins with a hearing to confirm the identities of the parties. Then it continues with the judge requesting that the parties engage in mediation or conciliation. However, if the mediation is deemed to be unsuccessful, the court will proceed to the next stage (the time frame for mediation is 30 days and could be extended by another 30 days if agreed to by both parties). On the other hand, if mediation is deemed to be successful, the result must be set out in a conciliation agreement which will be signed by the parties. It'll be ratified by the court and the trial is completed.

In the second session, the defendant (the debtor) is required to respond to the registered claim of the plaintiff (the creditor). The response is prepared in three documents for the plaintiff, judge, and defendant's own copy.

The third session is a further hearing to review the defendant's response. The plaintiff has an opportunity to respond in writing (the document is officially called "Replik") to the court after having a chance to review the defendant's position on the claim.

The fourth session is the submission of a rejoinder in writing (the document is officially called "Duplik"). A rejoinder is a response to the plaintiff's reply.

The fifth session is to provide evidence and/or witnesses by the plaintiff, supporting their arguments previously submitted to strengthen their lawsuit.

The sixth session consists of the evidence and/or witnesses by the defendant to amplify or reinforce their answer.

The seventh session is to submit conclusions by the parties as a final step to strengthen their arguments before the judge issues a verdict.

The eighth session consists of the judge's decision.

22.2.4. Lawsuits

Below are the tasks to be prepared in a lawsuit.

- Prepare a POA. It should be signed by an authorised representative of your company. That person has the authority based on your articles of association (AoA) to represent your company in court. If your company isn't based in Indonesia, the POA should be signed before a public notary and then legalised by the Indonesian consulate in your country of origin. A notarised and legalised copy of the AoA is required to be shown to the court as evidence that the person who signs the POA has the authority to represent your company in court, thus is authorised to grant the POA
- Prepare a primary opinion and advice regarding the case
- Prepare and submit a draft lawsuit, any response, surrejoinder, testimony, and conclusion relating to the civil lawsuit
- Attend the court's mediation process. Usually, the mediation judge will advise the principals to also attend the mediation (if possible)
- Attend any scheduled court hearings
- Apply for execution of confiscation in court (if any). You must provide the court with sufficient or proper evidence of the debtor's proof of ownership relating to the proposed confiscated assets; otherwise, the confiscation petition will be rejected
- Brief and propose any witnesses in court
- Submit any supporting documents or evidence. Please note that all documents in foreign languages should be translated into Indonesian by sworn local translators

22.2.5. Expected time frame

For the civil court, the court must be completed within a maximum of six months after the case is registered.

However, the time frame for civil court proceedings is subject to each matter and depends on the number of sessions required. It's common for legal cases to span a number of years, varying anywhere from one to three years until the Supreme Court level.

22.2.6. Costs in the legal phase

The costs of legal action are from USD 10,000 to USD 40,000, depending on the complexity of the case.

22.3. Insolvency proceedings

22.3.1. General information

For insolvency proceedings, there are two types of proceedings.

The first type is bankruptcy proceedings. The aim of bankruptcy proceedings is to pay out all the creditors with the same pro rata rate by liquidating the assets of the debtor company, or by collecting the trade receivables of the individual who is declared bankrupt.

The other type is called suspension of payment (also known as "Penundaan Kewajiban Pembayaran Utang" or PKPU). The aim of PKPU proceedings is to "forcefully" restructure all the debtor's debts, hoping the debtor and all or the majority of the creditors could reach a peaceful settlement to resolve the debts. A PKPU process must be completed within 270 days maximum.

Filing for a PKPU petition

The procedure for applying for a PKPU petition will be addressed to the appointed chairman of the Commercial Court, whose jurisdiction covers the legal position of the debtor. The application must be signed by the debtor and advocate. If the applicant is you, the creditor, the court will summon the debtor via bailiff by registered express mail no later than seven days before the hearing in the PKPU court. The period of proceeding in the court is 20 days. However, due to COVID-19, the time limit is relaxed but usually will not exceed 30 days.

In PKPU, there are three types of creditors in order to categorise what type of creditors you are and where you stand in terms of repayment hierarchy. The first is preferred creditors, who have special rights conferred by the law. The second is secured creditors or also known as separatist creditors, who hold specific assets or property from the debtor as guarantee for the repayment of the debtor's debts. Lastly are unsecured creditors, who have no security of any of the debtor's assets for their debts.

Filing for PKPU can be done by all the classes of creditors (including secured creditors). In the PKPU process, the court will grant a suspension period in respect of the debtor (including a moratorium on security enforcement). It enables the debtor and their creditors to reach an agreement on payment, including through debt restructuring, avoiding a value destructive bankruptcy filing.

PKPU is normally used as a legal tool to bring debtors to the negotiation table. The PKPU process tends to be significantly shorter than a civil lawsuit and is more cost-effective. Registration for PKPU will also be announced in local newspapers, which also triggers the debtor companies to pay as they would like to avoid this kind of media attention. Another reason why PKPU proceedings are considerable is because PKPU is a court mandate for debtors to restructure their debts and court-mandated restructuring may give the debtors more pressure and certainty, given the limited restructuring time frame and being supervised by the administrator and the supervisory judge.

Filing for a bankruptcy petition

The procedure for applying for a bankruptcy petition is largely the same as a PKPU petition. The few differences are the time limit for court proceedings, which is 60 days, and unlike in a PKPU process where no appeals are recognised, bankruptcy proceedings could be appealed to the Supreme Court for a time limit of another 60 days.

Bankruptcy proceedings are usually used when the business of the debtor is no longer sustainable but has substantial non-liquid assets. Pragmatically speaking, bankruptcy proceedings are more difficult as bankruptcy will result in the ceasing of the debtor's business, unlike a PKPU process.

22.3.2. Proceedings

Insolvency in Indonesia isn't a matter of cash flow or balance sheets. A debtor having two or more creditors failing to pay at least one debt that has matured and become payable may be declared in bankruptcy status or in PKPU status, depending on the type of petition, by the decision of the Indonesian Commercial Court, either by the debtor's own petition or at the request of minimum two or more of the debtor's creditors. The term "failing to pay" is interpreted broadly and doesn't necessarily mean that the debtor doesn't have sufficient cash flow to pay their debts. A debtor would be declared insolvent by the Indonesian Commercial Court when, following suspension of payment

procedures or bankruptcy procedures, a composition plan isn't submitted or is submitted but not approved by the creditors and court alike. However, on the other hand, if the composition plan is accepted by the creditors, it'll be reinforced by a court-ratified composition plan. Otherwise, if the debtor fails to fulfil their obligations stipulated in the composition plan, the creditors may request cancellation of the settlement where the debtor will be declared in bankruptcy and insolvent, as well as will undergo an asset liquidation procedure.

In PKPU or bankruptcy proceedings, the judges will appoint a supervisory judge who will supervise the process and monitor the performance of the administrator (in PKPU) or receiver (in bankruptcy).

The Insolvency Law No 4/1998 (the Law 4/1998) was replaced in 2004 by the Law on Insolvency and Suspension of Payment No 37/2004 (the Insolvency Law) which was further amended by the Law Number 4 Year 2023 concerning the Development and Reinforcement of the Financial Sector, which governs bankruptcy and suspension of payment procedures in Indonesia. This framework has reduced the number of inconsistent decisions that used to be rendered, but in practice, the insolvency system is still to be tested.

22.3.3. Required documents

- A composition plan for rescheduling the payments of the debt
- The shipping or packing lists
- An original POA
- Copies of the invoices
- Copies of the contracts
- Copies of the orders, order confirmations, and delivery notes
- Copies of the general conditions of sale, if there are any
- Copies of any other correspondence that may verify the claim

22.3.4. Expected time frame

For PKPU proceedings, from an application filed by the creditors to the Commercial Court until obtaining the approval or rejection decision from the judges, they must be resolved within 20 calendar days at most, depending on the circumstances.

Apart from that, after a PKPU application is granted, there are two periods of suspension of payment which are set out under the Insolvency Law as follows.

- Temporary PKPU is valid for 45 days after the decision's readout
- Permanent PKPU is 270 days maximum, including a period of temporary PKPU

For bankruptcy proceedings, there are no time limits and they'll only end when:

- All of the debtor's assets are successfully sold and the proceeds are distributed pro rata to all the creditors
- No assets exist to be sold
- The Commercial Court lifts the bankruptcy status.

Atradius Collections

23. Ireland

Industries

Chemicals

Electronics

Food

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

23.1. Amicable collections

23.1.1. General information

Our collectors initially try to collect debts with a cycle of telephone calls and letters without recourse to legal action. We always try to get payment of debts in full, but if required, we can negotiate to agree to a payment plan or a settlement figure.

In the event that we consider it's necessary to escalate beyond amicable collections, we must support this process in Ireland by the issuance of a Letter Before Action (LBA), which is the start of legal proceedings. This is not used in all cases – only in those where our collectors consider the debtors have the ability to pay and need some strong evidence of our intention.

If there are no positive responses to the LBA and we consider it cost-effective to do so, we will recommend that we start proceedings in a local court. This has to be done in Ireland by one of our legal partners, although we will continue to be the point of contact for you. In Ireland, it's necessary for the solicitor to issue an affidavit of debt to be completed by you as the claimant and returned on headed paper.

Once the proceedings are started, the court will decide whether to uphold the claim, and in doing so, we're able to apply for a judgment against the debtor. This judgment is published in the StubbsGazette to make the judgment public for those who wish to view it. Once the judgment has been awarded, the case will be passed to the enforcement officer to pursue.

It's worth noting that the court process in Ireland and particularly the enforcement process are not speedy and can be costly. We will advise on a case-by-case basis on whether we consider it cost-effective to pursue this course of action.

Tracing debtors in Ireland can also present problems due to a lack of availability of census-type information.

When there are disputes, we aim to reach amicable solutions between the creditors and debtors. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as standard terms previously agreed to).

23.1.2. Interest

Late Payment in Commercial Transactions Regulations 2012

The purpose of the regulations is to give legal effect to the Directive 2011/7/EC of the European Parliament and of the Council of 16 February 2011 on combatting late payment in commercial transactions. That directive repeals, with effect from 16 March 2013, an earlier directive from 2000 (Directive 2000/35/EC) on combatting late payment in commercial transactions in the European Communities.

Applicable interest rate

The regulations, which apply equally to public and private sectors, provide an entitlement to interest if payment of commercial transactions is late. The regulations provide that, unless otherwise specified in agreed contracts, the interest rate will be the European Central Bank (ECB)'s main refinancing rate (as on 1 January and 1 July each year) plus 8%. 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 each late payment – that is the rate in force on the payment date.

The ECB rates can be checked on the Central Bank of Ireland website: www.centralbank.ie

The main provisions of the revised legislation are:

- Public authorities must pay for the goods and services that they procure within 30 days or, in very exceptional circumstances, within 60 days
- Enterprises should pay their invoices within 60 days, unless they expressly agree otherwise, and if it's not grossly unfair to the sellers
- Enterprises are automatically entitled, without the necessity of reminders, to interest on late payments plus compensation costs
- The statutory interest rate for late payment is increased
- Enterprises can challenge grossly unfair terms and practices

23.1.3. Debt collection costs

As well as interest, you as the creditor may charge an amount to compensate for the costs of collecting the late payment. The

amount of compensation that can be claimed is determined by the outstanding amount as follows:

Amount owed	Compensation
Up to EUR 999	EUR 40
From EUR 1,000 to EUR 9,999	EUR 70
From EUR 10,000 and over	EUR 100

23.1.4. Prescription

Statute of Limitations 1957
This outlines the time limits within which creditors can chase debtors for outstanding debts. Creditors are given a fixed period of six years to chase their debtors. This is outlined in the Statute of Limitations 1957. After this period, it's no longer allowed to pursue the debtors.

23.1.5. Payment methods

Ireland still operates on Payment methods by cheque, although the preferred method is by bank transfer.

If possible, for long-running payment plans, we will seek standing orders or direct debits, but there is natural resistance to these by debtors.

23.1.6. Types of companies

There are a number of company types, and each has its own particular requirements, which are listed below. One of the primary reasons why legal action fails is because the creditors don't know the trading styles of their debtors. An account opening form is highly recommended in order to support any legal action required at a future date.

Sole trader	This type of business is run by one individual. That person is personally liable for the business's debts. But in order to commence legal proceedings, we must first be sure of the identity of the individual and require information such as their name and, if possible, date of birth.
Partnership	This type of business is run by at least two individuals who have joint and several liability. Again, we need to be sure of the correct identities of the individuals in order to pursue them legally. In this type of business, each partner is responsible for debts and can be pursued for the totality.
Limited company	This type of business is run by directorship. We can only pursue the company and not the individuals themselves.

23.1.7. Sources of information

Limited companies must register with the official Companies Registration Office. Sole traders and partnerships are not required to do so.

We're able to use several credit reference agencies in order to find out commercial details on limited companies. In the case of individuals, we are primarily reliant on tracing agents to undertake personal online searches and qualify this information by calling their neighbours or other businesses.

23.2. Retention of title

There are two types of retention of title (ROT) clauses:

Simple
The title to the goods only passes to the buyer in respect of the payment for each invoice relating to the goods.

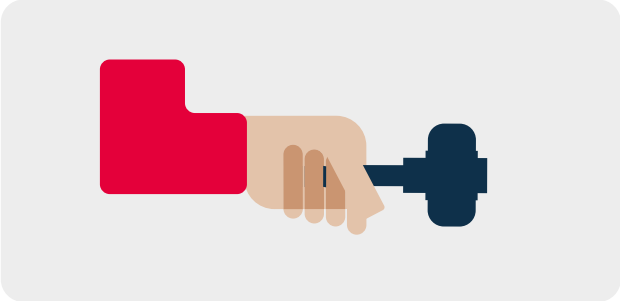
All monies
Title to the goods only passes to the buyer when they have paid for all the goods supplied.

We advise you to enforce your ROT clauses. In the case of all monies, the goods must be identifiable. For this reason, it isn't possible for us to enforce ROT on your behalf; however, we will assist in any way we can.

23.3. Safeguard measures

Occasionally, debtors will offer personal guarantees on the debts. But it's important to note that these must be legally enforceable.

23.4. Legal collections



23.4.1. General information

The process of litigation in Ireland is very similar to that of the United Kingdom (UK). However, it's sometimes lengthier and costlier to take legal action in Ireland.

Whether the debt is insured or uninsured will affect the initial stages of legal action. If the debt is insured and all the obligations in the policy have been fulfilled, then in most cases, the credit insurance will contribute towards the legal costs. You will still be consulted about the legal action; but if the claim has been paid, then the credit insurance will direct such action. If the credit insurance doesn't cover the debt, then we will require an agreement on legal action and costs in writing prior to the initiation of litigation. We will also ask for payment on account for legal action, particularly if the case is defended.

23.4.2. Legal systems

The process begins with the issuance of two seven-day letters, each of which seeks payment from the debtor prior to formal litigation.

There are three levels of courts depending on the value of the debt:

- District Court – up to EUR 15,000
- Circuit Court – up to EUR 75,000
- High Court – over EUR 75,000

Should the debtor fail to respond to the seven-day letters, then the solicitor will issue a Civil Bill to the court for service on the debtor. This process can take up to six or eight weeks, depending on the location of the court in proximity to the solicitor and the volume of court cases. Once the Civil Bill has been served on the debtor, the debtor can return a notice of intention to defend. This means that the solicitor will seek details of the defence, and the case will be referred to the Master for a hearing.

The exact route, like the UK's court systems, depends on the nature and severity of the defence. The debtor is allowed a period of 21 days to respond to the Bill. If there are no responses, then an affidavit of debt is issued to you.

Some other formats and requirements have been introduced with regard to the issuance of proceedings in the District Court. We now need to issue a claim notice instead of a civil summons.

Affidavit of debt

This is a compulsory document in Ireland and must be signed by an official of your company who has sufficient awareness of the debt. At this stage, it's also necessary to confirm the exact amount of the debt.

The sworn affidavit is returned to the court by the solicitor, and a return date is set by the court, which could be up to three months from the submission of the affidavit. The solicitor will then seek judgment, and the enforcement procedure will begin once this is issued.

23.4.3. Required documents

- The credit application form or signed contracts
- An up-to-date statement of account showing how the balance due is computed
- The invoices or credit notes
- The proof of delivery dockets
- A guarantee
- The demand or call-up letters
- The full disclosure or copies of any correspondence between the parties prior to the referral, pertaining to any possible contentious issues or disputes that may or have arisen

If the court doesn't receive the above documentation, it can't commence proceedings on your behalf. This may in turn render the case statute barred and prevent future litigation.

23.4.4. Expected time frame

On average, pre-legal actions, such as the LBA, take 14 days after their issuance.

Litigation actions take approximately 12 weeks for a standard case to obtain a judgment.

Sheriffs' coverage in Ireland is limited, and enforcement is often a very prolonged procedure that takes as long as six to 12 months.

23.4.5. Costs and interest in the legal phase

Costs will differ greatly, depending on the type of necessary legal action. In any case, our experienced collectors will have a full discussion with you regarding costs and timescales before legal action is taken.

Certain legal costs, such as some of the court costs, can be charged to the debtor. The decision to allocate costs lies with the judge. But in most cases, approximately 60% to

70% of the legal costs are charged to the debtors' accounts after successful judgments. We offer a highly competitive, fixed tariff for standard cases.

Should the case become defended at any time, then the solicitor's costs for dealing are charged at an hourly rate. This depends entirely on the nature of the case and the seniority and experience of the legal advice needed. These costs can range from EUR 150 to EUR 500 per hour. It isn't possible at the start of a case to make an exact estimation of its costs. But it's clear to see that heavily defending costs can easily equal or exceed the value of the debt itself. For this reason, we will advise on some forms of negation or mediation.

The solicitor will continue to add the statutory interest and costs to the debt.

23.5. Enforcement

23.5.1. Enforcement in debt

A judgment doesn't necessarily lead to successful collections. The enforcement officer will visit the debtor's premises to try to collect the monies. The normal enforcement procedure is via collections by the sheriff, but the judgment itself is also published in StubbsGazette – a publication that is readily available to all and contains the details of all the judgments issued.

23.5.2. Enforcement in movable property

If the debtor isn't able to make any payments, then the sheriff can seize the property relating to the debtor's business as payment for the debt through a notice of seizure, followed by the seizure itself. The property is sold by the sheriff to realise funds. However, any costs involved in making the sale are deducted from the monies recovered.

23.5.3. Enforcement in immovable property

If the debtor owns immovable property, then we can apply for a judgment mortgage. This means that the property can't be sold without first discharging the debt. There can be several judgment mortgages against one property, so it's advisable to check the likelihood of success before incurring additional costs.

23.6. Insolvency proceedings

23.6.1. General information

There are varieties of insolvency types in Ireland, ranging from a voluntary arrangement – offering a fixed percentage of payouts to the creditors, to administration – where an administrator is appointed to try to trade out the debtor company, to liquidation – where all of the debtor's assets are liquidated. The debtor company can move between these types, and we can best advise on a case-by-case basis.

If we ascertain that the debtor has become insolvent, we're able to register the debt with the insolvency practitioner. If it's judged that there will be dividends at some point in the future, we can monitor the debtor to claim the dividends when appropriate. However, there is a procedure that operates only in Ireland called an examinership. It runs for a period of 100 days under the protection of the court. An insolvency practitioner or liquidator is appointed to review the failing business and make proposals for the creditors' consideration. Any proposals agreed by the creditors must then be ratified by the court, and the court issues a report agreeing to the same and detailing the amount of any payable dividend.

23.6.2. Required documents

- Copies of the invoices
- Copies of the orders, order confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any

23.6.3. Expected time frame

Claims usually need to be lodged in formal insolvency within six months. The insolvency practitioner will write directly to you in the first instance.

Insolvency proceedings can last up to five years.

Atradius Collections

24. Israel

Industries

Chemicals
Construction
Construction materials
Electronics
Food
Machines
Minerals
Paper
Textiles

Source: Central Intelligence Agency World Factbook

Chance of collecting

up to 50%

24.1. Amicable collections

24.1.1. General information

We follow a collection process that is always professional with the objective of retaining the relationships between you and your debtors whenever possible. Our staff of collection professionals carry out the first collection tier in-house within the bounds of Israeli law. Only when it doesn't yield results, will we consider using local lawyers for amicable and legal collections.

24.1.2. Local agents

At the present time, we don't offer field service to visit debtors in Israel, but we have local law firms that handle amicable debt collections. Our local lawyers will contact debtors if their locations are in their surrounding areas. The goal is to collect debts directly by mutual agreement after negotiating payment plans or by settlement to save costs and time of legal action.

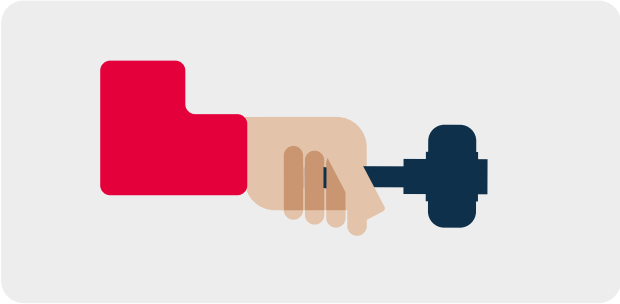
24.1.3. Interest

In Israel, we can charge debtors for late payment interest according to the Interest and Linkage award Act 1961.

24.1.4. Debt collection costs

Israeli debtors are not used to paying collection costs. Usually, claims in court already include requests for covering the plaintiffs' expenses.

24.2. Legal collections



24.2.1. General information

Entering into legal proceedings usually requires a prior demand letter, informing the debtor that in the case of no payment, legal proceedings will be started.

The handling of claims in court is governed by the Civil Procedure Regulations, 5779-2018. Courts always try to mediate between the creditors and debtors. For claims with an amount exceeding ILS 40,000, it's required to have at least one mediation meeting between the parties and a quasi-mediator appointed by the court. If the parties refuse to mediate or the mediation fails, then the hearings are conducted in front of the judge.

24.2.2. Required documents

Copies of the contracts, invoices, delivery notes, and any security or guarantee given by the debtor.

In case of dispute, also the "side conversations" between you and your debtor should be provided to our lawyers.

In the case of verbal negotiations, we need the visit or negotiation reports and the names of the witnesses.

24.2.3. Regular lawsuits and appeals

A regular lawsuit procedure is often initiated after amicable collections fails. After 60 days from the day the plaintiff's claim form is filed, a defence form should be filed (sometimes a counterclaim from the defendant is also lodged). Then after 14 days, a reply form addressing the defence form may be filed by the plaintiff. Both the plaintiff and defendant will exchange opinions and proof by affidavit during a pre-hearing. Then a hearing will be scheduled, during which both parties have to be present.

There is a right to appeal against the judgments of the court of first instance. A court's permission is required to appeal against the judgments of the court of second instance.

24.2.4. Special legal measures

There are special lawsuit procedures that may shorten the debt collection procedure significantly.

Quick hearing

This can be lodged with claim amounts up to ILS 75,000 (approximately EUR 18,500). In a quick hearing procedure, a defence form should be filed after 45 days from the day the plaintiff's claim form is filed.

Execution request

This can be done at the Execution Office – according to the Execution Law 1967 (based on the unpaid cheques and promissory notes, inter alia, that can be collected).

24.2.5. Expected time frame and prescription

Court procedures can take up to 12 months (for a quick hearing) or longer (some years), depending on the complexity of the case and the availability of the court.

Creditors are given a fixed period of seven years to file lawsuits for payment of their monetary debts. This is outlined in the Limitation Act 1953.

24.2.6. Costs and interest in the legal phase

Court costs of civil law procedures are determined by the provisions of the Court Regulations (Fees), 5767-2007, while lawyers' fees are determined by the court on a case-by-case basis.

Court fees depend on the claim amount and they are fixed at 2.5%. Half of the court fees should be paid when the lawsuit is filed, and the other half should be paid before the hearings' commencement. In addition to this, costs of witnesses and/or experts might also arise.

Execution Office's fees are determined by the provisions of the Execution Office (fees, lawyers' fees, and costs) 5728 -1968, and are 1% of the claim amount. The lawyers' fees for these proceedings, to be supported by the debtor, are also determined by the provisions.

Requests for interest and costs are added to the claim form, and the outcome depends on the court and judge. In the case of a legal settlement, usually each of the parties bears its own legal costs.

24.2.7. Enforcement

In case a judgment doesn't lead to successful collections, enforcement will be done through the Execution Office. Cheques and debt notes (e.g. promissory notes) are enforced directly through the Execution Office as they are equivalent to a judgment.

24.3. Insolvency proceedings

24.3.1. General information

The aim of insolvency proceedings is to pay out all the creditors by liquidating the assets and collecting the enforceable income of the debtor.

24.3.2. Proceedings

A liquidation or bankruptcy procedure is initiated in court according to the Companies Ordinance (new version), 5743-1983. It can be initiated by a creditor or at the request of the debtor themselves, provided that the debtor must be going through actual financial distress or bankruptcy. Sometimes, a preliminary liquidator or receiver is appointed by the court to collect the debtor's assets and prevent their escape, or to manage them temporarily until the permanent liquidator or trustee is appointed.

After the proceedings start, it's possible to lodge claims within a given deadline set by the court. The liquidator can either accept a lodged debt or dispute it. If your claim is disputed, you may appeal in court to prove the justification of the claim.

The creditors are divided into preferential creditors like tax authorities and those with registered pledges (e.g. banks), and non-preferential creditors. At the end of the proceedings, if there are assets for distribution, the creditors with confirmed debts will receive dividends according to their priority as mentioned, and they are subject to court orders after all the creditors' meetings have been held according to the law.

24.3.3. Required documents

In order to lodge a claim on your behalf, we need:

- A power of attorney (usually verified by a notary or sealed with an apostille)
- The invoices
- The contracts

- The orders, order confirmations, and delivery notes
- The general conditions of sale, if there are any
- Any other correspondence that may verify the claim

24.3.4. Expected time frame

The deadline to lodge claims is up to six months starting from the adjudication court order. The whole duration of insolvency proceedings is usually between four and seven years.

Atradius Collections

25. Italy

Industries

Chemicals

Food

Machines

Minerals

Services

Textiles

Transport

Source: Central Intelligence Agency World Factbook

Chance of collecting

50%–75%

25.1. Amicable collections

25.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to federal and state law.

When there is a case of dispute, we aim to reach an amicable solution between you and your debtor. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as all standard terms that have been agreed to). All of our investigations are completed with the assistance and agreement of our legal team.

25.1.2. Interest

We always charge debtors for interest. The percentage is reviewed every six months as set out by the Legislative Decree on 9 November 2012, n. 192. Interest is always requested during both the amicable phase and judicial phase.

From a cultural point of view, Italian debtors very rarely agree to pay late payment interest. It's often used as a negotiation tool between debtors and collectors. Often, they tolerate some delay in invoices' payment (particularly in sectors such as clothes, shoes, and food).

25.1.3. Debt collection costs

Due to the Contract Law, the collection convention between you and Atradius Collections must be signed, so that another person can't be linked to the tariff. The law allows us to request collection costs, but if we do so without specifying the amounts, including the legal tariff on lawyers, they aren't seen as valid. There are strong cultural obstacles to paying collection costs, and we can't claim them back in court as there is no jurisprudence for us to do so.

25.1.4. Prescription

The prescriptive period for credit is 10 years (Article 2946 of the Civil Code). It can be interrupted when a creditor notifies the debtor of the interruption of the prescription and asks for payment. Once this has been received, the prescriptive period would be calculated again.

For shipping contracts or contracts of carriage, the prescriptive period is one year.

For transport contracts from non-European countries, the prescriptive period is 18 months.

25.1.5. Payment methods

The most common Payment methods are bank transfers and cheques. We'll also accept drafts issued directly by debtors, but not from a third party.

25.1.6 Types of companies

In Italy, there are two main types of companies: partnerships and capital companies.

The partnerships are:

"Società in nome collettivo" (S.n.c)
- Unlimited liability of the partners
- Has to be registered in the ordinary section of the "Registro delle Imprese"

"Società Semplice" (S.s.)
- Unlimited liability of the partners
- Has to be registered in the special section of the "Registro delle Imprese"

"Società in accomandita semplice" (S.a.s)
- Unlimited liability of only the declared unlimited partners ("socio accomandatario")
- Has to be registered in the ordinary section of the "Registro delle Imprese"

The capital companies are:

"Società a responsabilità limitata" (S.r.l)
- The minimum capital requirement is EUR 10,000
- Has to be registered with the "Registro delle Imprese"
- Limited liability of the partners

"Società di capitali" (S.p.a)
- The subscribed minimum capital requirement is EUR 50,000
- Has to be registered with the "Registro delle Imprese"
- Limited liability of the partners

"Società in accomandita per azioni" (S.a.p.a)
- The minimum capital requirement is EUR 50,000
- Has to be registered with the "Registro delle Imprese"

- Limited liability of some of the partners ("soci accomandanti")
- Unlimited liability of some of the partners ("soci accomandatari")

For an individual company, the owner is the person that has unlimited liability for the debts incurred and is a minor entrepreneur, craftsman, or farmer.

25.1.7. Sources of information

We can evaluate the solvency of debtors and the financial situations of debtor companies. To investigate in a more accurate way, we can add some extra services for you, such as bank account research, officially booked goods research (e.g. vehicles and crafts), estate research, and estimations in public registers. All these elements can help create a clear picture of each debtor's situation and help us advise on the best way to collect the money.

In order to trace debtors, we check the information registered with the Chambers of Commerce and we can ask for certificates at town councils. We can also entrust the local agents in our network with investigating locally. At the Chambers of Commerce, we can obtain all the information referring to a company, such as the legal form, legal address, names of the shareholders, and status of insolvency.

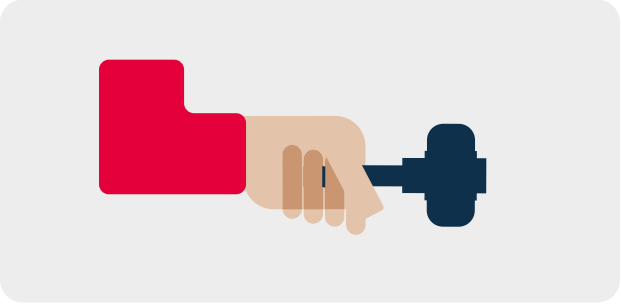
25.2. Safeguard measures

During the amicable phase, it's very important that we have an acknowledgement of debt signed by the debtor. Because this allows you to obtain an injunction decree with provisional enforcement.

Another possibility is to ask the debtor to issue a title (cheque or draft) when we agree to a payment plan. If the title is protested, we can take legal action and avoid the first phase of legal action (injunction decree), thus reducing time and costs.

We can also obtain the debtor's mortgages registered through a contract with a notary, if we have found out about the debtor's real estate.

25.3. Legal collections



25.3.1. General information

We can supply a professional network of experienced law firms in Italy to perform judicial credit collection activities. This network covers the whole country and is able to manage legal action in all district courts.

Our lawyer will first send a warning letter ("Lettera Monitoria") to the debtor via registered post so that there is proof of delivery, or via certified email address ("posta elettronica certificata"). If the debtor doesn't pay or reply, thereby disputing the debt, the judicial phase will start with an injunction decree ("Decreto ingiuntivo").

25.3.2. Legal systems

The Italian judicial system adheres to the civil law system. For credit collections, we refer to the Italian Civil Code ("Codice Civile"), which contains and implements all the rules of the commercial law, and the Civil Action Code ("Codice di procedura Civile"), which governs civil trials in Italy.

The judicial organisation provides several kinds of judges, according to the amount of credit involved.

- Justice of the Peace (for amounts below EUR 10,000)
- Tribunal (for amounts above EUR 10,000)

Traditionally, any legal action starts in the district court of the debtor or in the district court provided in an agreement signed by both parties.

Ordinary civil actions are rarely used to collect credit founded on written documents such as invoices. Civil actions are very long and can last for several years. They're also expensive due to lawyers' fees, witness examinations, and evidence analyses involved in the case. The main purpose of ordinary civil actions is to determine the existence of the credit that is due and the relationship between the parties.

If the credit is based on written documents, the law allows us to use a quicker and less expensive procedure called a

summary judgment ("Decreto ingiuntivo"), which requires only limited intervention from the judge unless the debtor opposes the petition.

These are the most common ways of collecting credit in court.

25.3.3. Required documents

In order to begin legal action, the documents we need are:

- Readable copies of the unpaid invoices
- Readable copies of the transport documents (CMR) signed by the debtor
- If there are no CMR documents signed by the debtor, we need an abstract of your books of accounts authenticated by a notary
- An original power of attorney, enclosed in the petition and signed by the legal representative of your company

25.3.4. Lawsuits

The law decree ("Decreto-legge") n. 90/2014, converted into law n. 114/2014, determines that from 30 June 2014, it's mandatory to begin legal action by filing all documents online, including the petition for an injunction decree ("Decreto ingiuntivo telematico"). So our lawyer will have to send the documents (copies of the unpaid invoices, copies of the delivery notes, a power of attorney signed by the legal representative of your company) to the court from a certified email address to the certified email address of the Chancery. In this way, the lawyer can send the documents at any time because there are no office opening hours online and the system is always working.

The advantages of this new procedure are:

- A reduction in the waiting time for the issuance of a decree (from four to five months to from 15 to 30 days)
- A reduction in activities undertaken by the associated law firms
- A reduction in legal costs

The judge examines the petition, and, if in agreement, they issue an injunction decree. The duration of the issuance is from 15 to 30 days. When the injunction decree is issued, it has to be notified to the debtor's last known address within 60 days from the issuance of the decree. Upon receiving the decree, the debtor has 40 days to oppose it or to pay.

If the debtor files for opposition, a civil trial starts. The summary judgment is suspended and an ordinary civil action takes place. You have to answer the opposition with a proper statement of defence ("comparsa di costituzione e risposta"). During the first hearing, the judge will evaluate the statements of both parties and the documents. The judge can decide to declare temporary execution of the injunction opposed ("provvisoria esecuzione"), and the summary judgment process will resume with the next steps (e.g. writ of execution and attachment), while the civil action takes place in parallel. When you receive the temporary execution from the judge, you have almost won the legal action, and the ordinary civil action will end shortly afterwards.

When no opposition is mounted, the decree becomes executive, and you can claim an attachment of goods from the debtor. An executive seal is added to the decree and the Chancery will issue a writ of execution ("Precetto") to notify the debtor. If the debtor doesn't pay or oppose the debt within 10 days from the notification, the lawyer will send the injunction order to pay and proof of the notification to the bailiff. If you have unpaid cheques or promissory notes, you can start directly with the writ of execution.

25.3.5. Appeals

An appeal against an ordinary civil action can be filed with the court in the area of the jurisdiction where the judge issuing the judgment resides, or with the Supreme Court.

In the case of notification of the judgment, it's possible to lodge an appeal within 30 days from the notification (short term). If there is no notification of the judgment, the term is six months from the issue date of the judgment (long term).

25.3.6. Expected time frame

The average duration of legal action in Italy is from 10 to 12 months, whereas an ordinary civil action can take two to three years, depending on the complexity of the case.

25.3.7. Costs and interest in the legal phase

All costs are dependent on the outstanding principal amount and are calculated taking into account the amount kept by each party. There are different fees that can apply during the proceedings that make it difficult to predict the total cost. In addition to this, costs of witnesses and/or experts might also arise.

An injunction decree has to mention the amount of credit to be collected, the interest (calculated on the basis of the Legislative Decree on 9 October 2002, n. 231), and the legal fees (calculated on the basis of different ranges). When the petition is notified to the debtor, the debtor is ordered to pay the total amount mentioned.

During an ordinary civil action, the party who loses the judgment is condemned to pay the costs of the legal proceedings (Article 91 of the Civil Action Code).

25.4. Enforcement

25.4.1. Enforcement in debt

Enforcement in debt requires an action by you as the creditor to be signed by the bailiff, who will notify the debtor and any third party. This document has to confirm the details of your company and credit, a list of the goods or monies subject to the enforcement (the debtor can't dispose of them), and the domicile election of your company in the city of the court.

The enforcement can refer to different types of credit, such as bank accounts, goods located at a third party, and, on the basis of the limits set by law, any salaries and retirement pensions.

25.4.2. Enforcement in movable property

The bailiff visits the debtor's address to find out whether any property can be seized. It's provided by law that:

- The execution can't be made against certain property (unseizable goods)
- The bailiff can only visit the debtor during the time periods set by law, e.g. between 7 a.m. and 9 p.m.
- The bailiff can't proceed during the holiday periods
- The property that can be taken by the bailiff and given to the registrar (the clerk of the court) is money, jewellery, and credit. Other goods must be given to the official receiver
- The costs are fixed and depend on the value of the goods found by the bailiff

25.4.3. Enforcement in immovable property

Before proceeding with enforcement in immovable property, the debtor's real estate should be valued, because this procedure is very long and expensive.

The enforcement in immovable property consists of a notification and a record sent to the debtor that contains a document detailing the immovable property and the rights submitted to the execution. After the notification, the bailiff gives an original copy of the document to the land registrar for registration. After 10 days from the execution, the creditor can ask for the sale of the immovable property.

25.5. Insolvency proceedings

25.5.1. General information

On the basis of the elements required by law, insolvency proceedings can be started in the court nearest to the head office of the debtor, following a request filed by the debtor, the debtor's creditors, or a public prosecutor ("ex officio").

The main types of insolvency proceedings in Italy are judicial liquidation ("Liquidazione Giudiziale") and judicial composition with creditors ("concordato preventivo").

25.5.2. Proceedings

We can analyse in detail the two main types of insolvency proceedings.

Judicial liquidation (previously known as bankruptcy)

In Italy, not all debtors can be declared bankrupt. According to Italian law, small debtors such as individual shops and small-scale farmers can't be declared bankrupt. Neither can small owner-manager firms be declared bankrupt where the personal work outweighs the value of the goods involved.

You can ask for the judicial liquidation of your debtor if your credit is more than EUR 30,000 and the debtor has a minimum turnover of EUR 200,000. The debtor should also not have been removed from the Chambers of Commerce for more than one year. After all the petitions filed with the court within the term fixed are checked, the debt situation will be fixed with the judge's sentence, and a very long procedure of the liquidation of the bankrupt debtor's assets can take place.

Judicial composition with creditors

To avoid judicial liquidation, the debtor can ask the court directly to be admitted to this insolvency procedure. The debtor's petition must include how much they can pay their creditors with the respective percentages of their debts. On the basis of the law decree ("Decreto-legge") n. 83/2015, in

the case of a judicial composition with creditors ("non in continuità aziendale"), it's provided that the debtor has to offer at least 20% to the unsecured creditors. This offer has to be approved by the majority of the creditors (considering the amount of each creditor's credit) and should then be validated by the court. After that, the insolvency practitioner starts to liquidate the assets according to the payment plan.

25.5.3. Required documents

In order to lodge a bankruptcy claim, we need:

- Readable copies of the unpaid invoices
- Readable copies of the transport documents (CMR) signed by the debtor
- If there are no CMR documents signed by the debtor, then an abstract of your books of accounts authenticated by a notary is required

For a judicial composition with creditors, we have to communicate to the insolvency practitioner the amount of credit and file the copies of any documents that prove the credit (e.g. invoices).

25.5.4. Expected time frame

For a judicial liquidation procedure, a petition for lodging claims can be:

- On time ("tempestiva"): It's filed with the court at least 30 days before the first hearing held by the court, and it's checked during this hearing
- Late ("tardiva"): It's filed with the court after the first fixed term but still within 12 months since the filing of an enforcement decree on the statement of liability

The average duration of a judicial liquidation procedure is from six to seven years.

Regarding a judicial composition with creditors, it's necessary to first communicate the amount of credit to the insolvency practitioner. Before a hearing is held for all the creditors, each creditor has to vote (positive or negative) on the proposal after their hearing. After the validation by the court, the insolvency practitioner can start with liquidation that will usually take from two to three years.

Atradius Collections

26. Latvia

Industries

Chemicals

Construction materials

Electronics

Food

Machines

Minerals

Textiles

Source: Central Intelligence Agency World Factbook

Chance of collecting

50%–75%

26.1. Amicable collections

26.1.1. General information

We follow a professional collection process at all times with the objective of retaining the relationships between you and your debtors whenever possible. Our staff of collection professionals carry out the first collection tier in-house. We relentlessly pursue debtors verbally and in writing within the bounds of federal and state law.

26.1.2. Local agents

At the present time, we don't offer field service to visit debtors in Latvia. However, if debtors wish to visit our office, we'll gladly meet them to discuss solutions for their cases face-to-face.

26.1.3. Interest

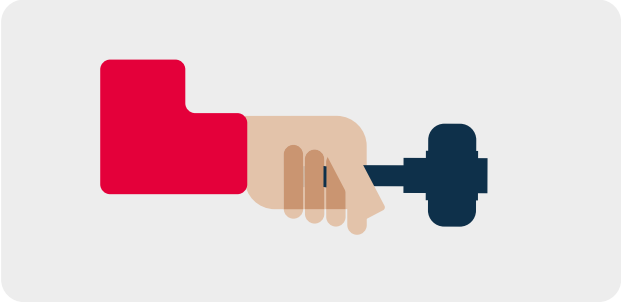
We always charge debtors for interest that is calculated from the base rate set by the Bank of Latvia plus 8% per year. This rate is fixed twice a year on 1 January and 1 July.

From a cultural point of view, Latvian debtors are only used to paying late payment interest if this is agreed in writing between them and their creditors.

26.1.4. Debt collection costs

In Latvia, the European compensation fee of EUR 40 is chargeable to debtors, representing the creditors' claims for late payment.

26.2. Legal collections



26.2.1. General information

Entering into legal proceedings is only possible with a written notice to your debtor before assigning the file to court.

26.2.2. Required documents

In order to apply legal proceedings, we need copies of the contracts, invoices, and a clear statement of account indicating the payments and credit notes that have been made regarding the outstanding invoices.

In the case of a regular lawsuit procedure, copies of the complete contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, and invoices. Basically, every part of the trading relationship should be provable by documentation.

In case of dispute, proof of the conversations between you and your debtor should also be kept and provided to our lawyers.

26.2.3. Lawsuits

A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the debtor, or following the legal dunning procedure after the debtor has appealed.

Usually, a written pre-procedure is issued. Both the plaintiff and defendant exchange opinions and proof by letter until the judge has the impression of having all the relevant information needed in order to judge. In this case, a hearing is scheduled, during which both parties have to be present. After the oral hearing, the judge sets a date to issue the final judgment. The parties will be informed about the outcome in writing by the responsible court.

26.2.4. Expected time frame

The average duration of a simple legal process is between three and four months, whereas a court procedure can take up to 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on all sides.

26.2.5. Costs and interest in the legal phase

The costs of a civil law procedure depend on the outstanding principal amount and are calculated proportionally. There are different fees that can apply during the proceedings, so there is not only a range regarding the outstanding amount, but also a range regarding the possible fees for each action, making it difficult to predict the total cost. In addition to this, costs of witnesses and/or experts might also arise. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

Extrajudicial interest and costs can be claimed as part of the outstanding balance during legal proceedings. Normally, the losing party has to bear the costs, or at least part of the costs of the legal proceedings if the case goes to trial. The judge will make decisions based on the circumstances of the case.

In the case of a legal settlement, the parties normally bear their own costs of court fees and lawyers' fees.

26.3. Insolvency proceedings

26.3.1. General information

The aim of insolvency proceedings is to pay out all the creditors with the same quotas by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

26.3.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check whether sufficient assets are available to cover the costs of the proceedings (court costs and costs of liquidators). If these costs are deemed to be covered, the insolvency proceedings start and a liquidator will be appointed; usually, this is the preliminary liquidator. Otherwise, the court will reject the declaration of bankruptcy due to insufficient assets.

After the proceedings start, lodging claims is possible within a given deadline. The liquidator can either accept a lodged debt or dispute it. If your claim is disputed, you may only file the claim in court to prove the justification of the claim when further documentation doesn't convince the liquidator to confirm the debt.

At the end of the proceedings, all the creditors with confirmed debts will receive dividends if there are enough assets in the estate. Often insolvent estates are closed with very small or no dividends at all.

26.3.3. Required documents

In order to lodge a claim in undisputed claims, we need:

- Copies of the invoices
- A signed original power of attorney

26.3.4. Expected time frame and outcome

The deadline for lodging claims is one month from the moment the insolvency announcement has been issued.

The whole duration of insolvency proceedings is between six and 12 months at a minimum.

Atradius Collections

27. Lithuania

Industries

- Agriculture
- Chemicals
- Consumer durables
- Electronics
- Food
- Machines
- Textiles
- Transport

Chance of collecting

75%–100%

Source: Central Intelligence Agency World Factbook

27.1. Amicable collections

27.1.1. General information

We follow a professional collection process at all times with the objective of retaining the relationships between you and your debtors whenever possible. Our staff of collection professionals carry out the first collection tier in-house. We relentlessly pursue debtors verbally and in writing within the bounds of federal and state law.

27.1.2. Local agents

We offer field service to visit debtors in Lithuania. The purpose is to collect monies, negotiate settlements, get acknowledgements of debt, and gather information about the debtors' financial situations, residence, and places of business. You'll receive reports with all the information about the visits and recommendations for the next steps for your cases. The price for visiting debtors in Lithuania is between EUR 90 and EUR 350.

27.1.3. Interest

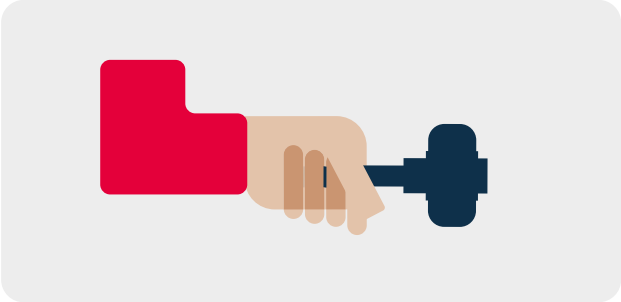
We always charge debtors for interest that is calculated from the base rate set by the Bank of Lithuania plus 8% per year. This rate is fixed twice a year on 1 January and 1 July.

From a cultural point of view, Lithuanian debtors are only used to paying late payment interest if this is agreed in writing between them and their creditors.

27.1.4. Debt collection costs

In Lithuania, the European compensation fee of EUR 40 is chargeable to debtors, representing the creditors' claims for late payment.

27.2. Legal collections



27.2.1. General information

Entering into legal proceedings is only possible with a written notice to your debtor before assigning the file to court.

27.2.2. Required documents

In order to apply legal proceedings, we need copies of the contracts, invoices, and a clear statement of account indicating the payments and credit notes that have been made regarding the outstanding invoices.

In the case of a regular lawsuit procedure, copies of the complete contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, and invoices. Basically, every part of the trading relationship should be provable by documentation.

In case of dispute, proof of the conversations between you and your debtor should also be kept and provided to our lawyers.

27.2.3. Lawsuits

A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the debtor, or following the legal dunning procedure after the debtor has appealed.

Usually, a written pre-procedure is issued. Both the plaintiff and defendant exchange opinions and proof by letter until the judge has the impression of having all the relevant information needed in order to judge. In this case, a hearing is scheduled, during which both parties have to be present. After the oral hearing, the judge sets a date to issue the final judgment. The parties will be informed about the outcome in writing by the responsible court.

27.2.4. Expected time frame

The average duration of a simple legal process is between three and four months, whereas a court procedure can take up to 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on all sides.

27.2.5. Costs and interest in the legal phase

The costs of a civil law procedure depend on the outstanding principal amount and are calculated proportionally. There are different fees that can apply during the proceedings, so there is not only a range regarding the outstanding amount, but also a range regarding the possible fees for each action, making it difficult to predict the total cost. In addition to this, costs of witnesses and/or experts might also arise. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

Extrajudicial interest and costs can be claimed as part of the outstanding balance during legal proceedings. Normally, the losing party has to bear the costs, or at least part of the costs of the legal proceedings if the case goes to trial. The judge will make decisions based on the circumstances of the case.

In the case of a legal settlement, the parties normally bear their own costs of court fees and lawyers' fees.

27.3. Insolvency proceedings

27.3.1. General information

The aim of insolvency proceedings is to pay out all the creditors with the same quotas by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

27.3.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check whether sufficient assets are available to cover the costs of the proceedings (court costs and costs of liquidators). If these costs are deemed to be covered, the insolvency proceedings start and a liquidator will be appointed; usually this is the preliminary liquidator. Otherwise, the court will reject the declaration of bankruptcy due to insufficient assets.

After the proceedings start, lodging claims is possible within a given deadline. The liquidator can either accept a lodged debt or dispute it. If your claim is disputed, you may only file the claim in court to prove the justification of the claim when further documentation doesn't convince the liquidator to confirm the debt.

At the end of the proceedings, all the creditors with confirmed debts will receive dividends if there are enough assets in the estate. Often insolvent estates are closed with very small or no dividends at all.

27.3.3. Required documents

In order to lodge a claim in undisputed claims, we need:

- Copies of the invoices
- A signed original power of attorney

27.3.4. Expected time frame

The deadline for lodging claims is one month from the moment the insolvency announcement is issued.

The whole duration of insolvency proceedings is between six and 12 months at a minimum.

Atradius Collections

28. Luxembourg

Industries

Chemicals

Construction

Electronics

Financial services

Machines

Minerals

Services

Transport

Source: Central Intelligence Agency World Factbook

Chance of collecting

75%–100%

28.1. Amicable collections

28.1.1. General information

We maintain a professional collection process, focusing on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house, contacting debtors both verbally and in writing while adhering to state law.

28.1.2. Local agents

At the present time, we don't offer field service to visit debtors in Luxembourg.

28.1.3. Interest

We always charge debtors for interest. The applied default rate is 12%, except that the interest rates provided in most of our clients' conditions of sale are higher. In that specific case, we apply the clients' interest rates.

From a cultural point of view, recovery of late payment interest in Luxembourg is quite difficult, and it's often used as a negotiation tool between debtors and collectors.

28.1.4. Debt collection costs

In Luxembourg, we charge two types of collection costs.

- A collection cost of a fixed amount of EUR 40 (regardless of the amount of the debt)
- A penalty clause of 15% of the principal amount introduced

28.2. Safeguard measures

The goal of safeguard measures is to maintain, as much as possible, the condition of the debtor's estate (movable property and/or real estate).

A bailiff needs an authorisation from the court before they can take such measures. This means you, as the creditor, must ask your lawyer to submit a request to the court to be authorised to put in place a protective safeguard measure. Once the court grants this request, your lawyer asks the bailiff to take the appropriate protective safeguard measure.

However, these proceedings have a cost: lawyers' fees (about EUR 1,000) and bailiffs' costs (about EUR 1,000). These costs must be advanced by you as the creditor.

The debtor has the right to oppose this authorisation given by the court and submit recourse.

The protective safeguard measure makes it possible to render the goods or sums belonging to your debtor temporarily unavailable until an enforceable final title on payment against the debtor is obtained, after which the protective measure can be transformed by the bailiff into an enforceable act of seizure. On this basis, they can seize and sell the debtor's goods or sums previously seized as a protective measure.

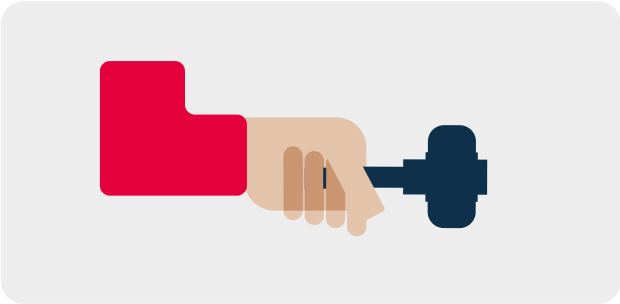
Being exclusively carried out by the bailiff, the protective seizure is adapted to all types of goods that may be in your debtor's possession. They can thus include:

- Tangible assets, such as furniture, goods, and tools
- Vehicles, such as cars and vans
- Receivables, such as bank accounts and sums due from the debtor's customers
- Shareholder rights and securities
- Assets placed in safes

After obtaining an enforceable final title on payment in court, the protective measure can be transformed into an enforceable seizure, in order to obtain the payment of the sums due to you based on the judgment.

Given the costs involved, this option should be well considered beforehand, and there is no guarantee of success.

28.3. Legal collections



28.3.1. General information

Legal action to recover receivables is based on the general principles of the Civil Code ("Code civil"), Commercial Code ("Code de commerce"), and Judicial Code ("Code de procédure civile").

There are different courts in Luxembourg, and the competence of each court depends on:

- The amount of the claim
- The debtor's place of residence

28.3.2. Required documents

The mandatory documents for legal action are:

- Copies of the invoices
- A copy of the terms and conditions of sale
- A power of attorney signed by you

It's also best practice to produce copies of the contracts, proof of orders and delivery of goods, any formal notices and reminders sent to the debtor, together with other written documents signed by the debtor acknowledging the claim.

In case of dispute, the notes of all the conversations between you and your debtor should be kept and provided to our lawyers.

28.3.3. Legal dunning procedures

A summary procedure in Luxembourg has to be commenced by a Justice of the Peace. This procedure isn't always appropriate for recovery of receivables for the following reasons.

- The claim must be undisputed
- The whole claim can't exceed EUR 15,000
- You can only claim the interest and collection cost (EUR 40)
- This procedure can be initiated by you or you can be represented by a lawyer. If you aren't represented by a lawyer, the person signing the request form must supply necessary documentation proving that they're authorised to sign on your behalf. To avoid practical and organisational issues and disputes about signatures, we favour the representation of you as the creditor by a lawyer

28.3.4. Lawsuits

Normally, we initiate legal proceedings before a competent Luxembourg court at the place of residence of the debtor. However, we see more and more that the Luxembourg courts control very strictly whether they're competent to hear a case or not. If your contracts, invoices, or terms and conditions provide exclusive jurisdiction of another court other than the Luxembourg courts, the Luxembourg courts will refuse to handle the case.

There are two options for a regular lawsuit in Luxembourg.

A summary procedure

This is meant for simple and undisputed cases. There is no written intervention from the lawyers. This procedure is supposed to be quick, but as it's rather popular, not every case can be handled at the provided hearing, and this can cause a longer time frame to obtain a judgment.

Every time the debtor raises an incident that needs to be verified (e.g. a payment isn't mentioned in the statement of account) or a dispute, the case is postponed to a new hearing, leading possibly to multiple postponements before obtaining a judgment. In this way, this procedure can sometimes lose its initial processing speed.

A substantive procedure

Exchanges between the parties happen via written intervention. These proceedings take more time to obtain a judgment and are therefore indicated for complicated or disputed cases.

Even in undisputed cases, nowadays creditors can very often obtain judgments more quickly by using this procedure than using the above-mentioned summary procedure.

28.3.5. Expected time frame

The average duration of legal proceedings and enforcement is about six months, but it can take longer in the case of a dispute or an appeal.

28.3.6. Costs and interest in the legal phase

- Summonses and inscriptions in the court's calendar cost approximately EUR 350
- Indemnities for procedures are fixed by the court and may vary from case to case. These costs are chargeable to the debtor unless the court decides otherwise

- Costs and fees for legal representation depend on the importance of the case and its complexity. They aren't chargeable to the debtor
- Costs of enforcement depend on the number of actions the bailiff must take and are charged to the debtor

A general cost estimation of cases in Luxembourg is difficult to make but can be provided on a case-by-case basis, should legal action become necessary.

Once legal action has begun, the applied interest rate is the rate stated in your terms and conditions. However, the court can reduce the interest rate in the absence of convincing proof that the debtor accepted this interest rate.

A penalty clause, as stated in the agreed terms and conditions, can also be claimed. However, the court can reduce or cancel this penalty clause in the absence of convincing proof that the debtor accepted the clause. Instead of a penalty clause, you can also claim a collection cost of EUR 40, regardless of the size of the debt. We see more and more that the Luxembourg courts dismiss the penalty clause and only accept the lump sum of EUR 40.

28.4. Insolvency proceedings

28.4.1. General information

In Luxembourg, there are three types of insolvency proceedings.

- Bankruptcy
- Temporary composition
- Controlled administration

The commercial court accepts the debtor's insolvency with the goal of either facing a non-payment situation (bankruptcy) or allowing and facilitating the continuation of the debtor's ability to trade.

At the start of insolvency proceedings, all the individual enforcement measures from the creditors are suspended.

28.4.2. Proceedings

Bankruptcy
Only debtors with the status of merchants can be declared bankrupt in Luxembourg.

The commercial chamber of the District Court assigns a trustee, and each creditor must lodge their claim with the clerk of the court within the time frame set out in the judgment declaring the bankruptcy.

After the verification by the trustee, all the lodged claims are either accepted or rejected, and the commercial chamber of the District Court will decide on the admission or refusal of the claims.

Temporary composition
This procedure is more used nowadays in Luxembourg. Only debtors with the status of merchants can be granted temporary compositions in Luxembourg.

The debtor will need to present a request for this effect to the commercial court. The request includes a list of all the creditors.
After reviewing the case, the court will either accept or reject the temporary stay. If the request is accepted, the court will appoint a practitioner, and all the creditors will be invited to a hearing before the court to give their opinions about the request. A detailed report is then drafted, and the court can only grant a definitive stay to the debtor if the majority of the creditors have agreed. The court determines the duration of the definitive stay.

Controlled administration
Any debtor whose credit is weakened can ask the court to grant controlled administration in order to reorganise their business or help liquidate their assets.

The debtor's request is presented to the commercial court. Once it's accepted, a judge is appointed to draft a report within a court-agreed time frame. After the submission of this report by the judge, the court hears the debtor and rejects or accepts their request.

If the court grants controlled administration to the debtor, all their assets will be put under the control of a court-appointed judge, who has to finalise within the time frame fixed by the court a detailed plan for the reorganisation or liquidation of the debtor's assets. This plan is communicated to all the creditors, who should notify within 15 days whether they agree or disagree. It'll be approved by the court if most of the creditors agree to it.

28.4.3. Required documents

To lodge a claim on your behalf, we need:

- Copies of the invoices
- A copy of the terms and conditions of sale
- A statement of account
- A signed power of attorney (if required by the trustee)

28.4.4. Expected time frame and outcome

The expected time frame for insolvency proceedings varies from case to case, depending on the decision of the court and the complexity of each debtor company. One year is a strict minimum.

As far as the outcome is concerned, the chances of recovering dividends in bankruptcy proceedings are very poor (5%). The recovery rates are higher with the temporary composition and controlled administration options, as a plan is usually proposed by the debtor to all the creditors. The amount proposed by the debtor will vary in each case.

Atradius Collections

29. Malaysia

Industries

- Agriculture
- Chemicals
- Construction materials
- Consumer durables
- Electronics
- Food

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

29.1. Amicable collections

29.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your customers at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to federal and state law.

29.1.2. Local agents

We employ local agents to make visits to debtors in all areas of West Malaysia and some selected states of Sabah and Sarawak in East Malaysia, primarily to assess their business operations and financial status. Through the visits, the agents would then engage in negotiations with the debtors on the repayment of debts.

Due to the different geographical areas within Malaysia, the costs of site visits will depend on the locations of the debtors.

29.1.3. Interest

You can have a stricter payment policy by specifying late payment interest in writing early in the business relationships. Late payment interest should be discussed as part of the original contracts to make it relevant.

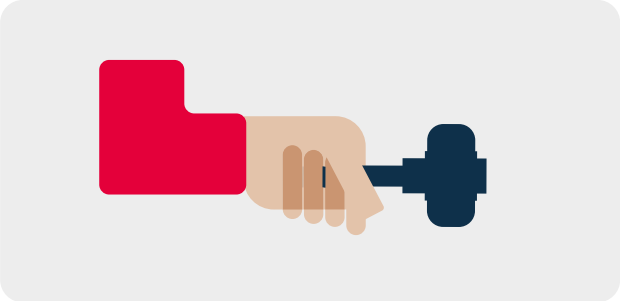
We use the clauses in the agreements made between the parties in the credit applications, or the terms and conditions as stated in the invoices as the legal basis for any interest charges. The range is from 1.5% to 2% per month according to the invoices. In the absence of an agreement stating late payment interest, the creditor is entitled to 5% per annum from the payment's due date until full payment.

In practice, such interest is occasionally paid by the debtors but it's also common for them to object to the imposition of interest even though it was clearly stated in the agreements. Instead, it's commonly used as a negotiation tool between debtors and collectors where the collectors are willing to waive the late payment interest provided that a substantial principal sum has been paid.

29.1.4. Debt collection costs

Charging debtors for debt collection costs isn't common in Malaysia. Often, late payment interest is used as a negotiation tool between the debtors and collectors if such clauses are imposed by the creditors as stated in the contracts.

29.2. Legal collections



29.2.1. General information

This process usually starts by doing a company/bankruptcy/winding-up search on the debtor to have a pre-assessment of the company's background and status and to determine whether it might be worth taking legal action.

Our solicitors will issue a letter of demand for payment and accumulate evidence of indebtedness. It's practical to prove to the court that all the pre-court efforts to collect yielded no results by revealing all the prior correspondence with the debtor.

The statutory limitation period in Malaysia for beginning legal action is six years from the date when a cause of action accrues, i.e. the oldest date of an invoice that is due for payment.

29.2.2. Required documents

In order to start any legal procedure, we require copies of any contracts between the parties (including agreements on arbitration and jurisdiction), the invoices, a clear statement of account indicating the payments and credit notes that have been made for the outstanding invoices, as well as any contracts or terms and conditions binding both parties.

As the lawsuit proceeds further, we may require further documentation, such as copies of the contracts, purchase orders, confirmations, delivery notes, and invoices. These will be requested when needed.

In case of dispute, all the notes of the conversations between the creditor and debtor via letter and email that may assist our lawyers should be kept.

In the case of verbal negotiations, we may require the meeting or system notes to document what has been agreed to.

29.2.3. Legal dunning procedures

In Malaysia, our solicitors or local agents will always send a formal letter of demand to the debtor.

29.2.4. Lawsuits

If the letter of demand is ignored by the debtor, a civil action will be initiated through the filing and service of a writ of summons with a statement of claim. The defendant then has 14 days to make an appearance to dispute the action. Failure to do so entitles the claimant to obtain a judgment in default of appearance or defend against the defendant.

Upon obtaining a judgment against the debtor, we would then have the option of enforcing the judgment such as filing for winding-up proceedings, which is subject to monetary limits and garnishee proceedings. We may also file an application to the court for the debtor to appear before the court for an examination of their financial status. If the debtor fails to appear before the court, they may be arrested.

29.2.5. Expected time frame

The courts generally conclude cases in which there are default judgments within three months and trial matters between 12 and 18 months.

29.2.6. Costs and interest in the legal phase

Costs of proceedings are considered reasonable in Malaysia.

A letter of demand is usually between MYR 100 and MYR 300 per letter.

Costs will range from MYR 4,000 to MYR 12,000 to obtain a default judgment, excluding 8% tax and disbursements.

The costs will also depend on the quantum of the claim, and whether it's in the Magistrate Court, Sessions Court, High Court, or arbitration.

It's difficult to predict the total cost of a contested case in Malaysia, as interlocutory applications may be filed by the parties that require more work and extra hearings may need to be scheduled during the procedures. There may be extra costs that arise for witnesses and experts if the debtor disputes the case.

The interest rate is currently fixed at 5% per annum and is calculated from the pre-judgment date (the date of payment accruing until the date of the judgment provided that the interest rate hasn't been agreed to between the parties) to post-judgment date, i.e. from the date of a judgment until the judgment debt is settled. The court may award costs to the winning party (subject to the court's discretion).

In case of a judgment in default of appearance, there is usually a range of fees.

29.3. Insolvency proceedings

29.3.1. General information

Winding up is a process of formally ending the existence of a company. It's when the assets of the company are collected and realised. The collected proceeds will be used to discharge the company's debts and liabilities, and the remaining balance (if any) will be distributed among the contributors according to their entitlements.

Under the Companies Act 2016, a creditor could issue a winding-up notice, known as a statutory demand, for a sum of MYR 50,000 or more. The statutory demand would provide the debtor company with 21 days to pay. If the debtor company fails to do this, the creditor could file a winding-up petition against the debtor company.

29.3.2. Proceedings

The four main corporate insolvency processes or restructuring processes in Malaysia are as follows.

Scheme of arrangement

A company can start a scheme of arrangement if there is approval of 75% in value of each class of the creditors and members, respectively.

Corporate voluntary arrangement

This is a consensual statutory restructuring tool that is only available to private companies. Being similar to schemes of arrangement, a corporate voluntary arrangement permits a proposed voluntary arrangement to be imposed on the debtor that binds all the creditors if the statutory voting threshold is reached.

Judicial management
An application for the appointment of a judicial manager may be filed by:
- A company under a resolution of the members of its board of directors; or
- A creditor, including any contingent or prospective creditor

Liquidation
This includes voluntary winding up and compulsory winding up by the court.

A voluntary winding up may be affected by a resolution, either:
- By a member's voluntary winding up. This is where the company is solvent, and a liquidator is appointed by the members in a members' meeting; or
- By a creditor's voluntary winding up. This is where the company is insolvent

A compulsory winding up by the court is where a petition is presented to the court by one or more petitioners. The petitioners can include the creditors, liquidator, and registrar.

29.3.3. Required documents
To lodge a claim on your behalf, we need:
- An original power of attorney
- Copies of the invoices
- Copies of the contracts
- Copies of the quotations, purchase orders, orders, confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim

29.3.4. Expected time frame
There are no clear guidelines on the expected time frames.

Based on our experience, the whole duration of insolvency proceedings can take anywhere between 12 and 24 months. It depends on how each case develops and others can take longer than expected.

Atradius Collections

30. Mexico

Industries

Chemicals

Consumer durables

Food

Minerals

Services

Textiles

Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

30.1. Amicable collections

30.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to federal and state law. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, and standard terms that have been agreed to). All of our investigations are completed with the assistance and agreement of our legal team.

30.1.2. Local agents

Site visits in Mexico City are conducted by our professional collectors and local partners who can currently visit all 31 states.

30.1.3. Interest

From a cultural point of view, Mexican debtors aren't used to paying moratorium interest on an amicable basis. Often the actual amounts of interest are used as a matter of negotiation between debtors and collectors. Payment of interest can only be enforced through legal proceedings.

30.1.4. Debt collection costs

In Mexico, debt collection costs can be charged to debtors, but there are no specific rates or amounts set for this. If you have a special contractual agreement, this can be taken into account as long as your debtor actually agreed to the terms.

From a cultural point of view, Mexican debtors aren't used to paying collection costs on an amicable basis. Often collection costs are used as a matter of negotiation between debtors and collectors.

From a legal point of view, payment of collection costs can only be enforced through formal legal proceedings.

30.1.5. Prescription

The Mexican statute of limitations states that the time limit for enforcing commercial transactions in Mexico is one year for retail sales and 10 years for wholesale, starting at the end of the year a claim becomes due.

Prescription also depends on the documents to be enforced. The time frame for enforcing bounced cheques is six months once a cheque has been rejected by the debtor's bank due to insufficient funds. Cheques should be presented for payment (at a bank) no later than 15 days from the cheques' payment dates, so that an additional penalty of 20% can be claimed.

For promissory notes, the statute of limitations' timescale is generally three years after the accounts are overdue, and can increase to four years for international promissory notes in accordance with the United Nations Convention on International Bills of Exchange and International Promissory Notes.

30.1.6. Payment methods

The most common payment methods are bank transfers and cheque payments.

30.1.7. Types of companies

Limited liability stock corporation ("Sociedad Anónima", S.A.)

- This is the most common type of business entity in Mexico
- It may usually adopt the form of a fixed capital company (S.A.) or a variable capital company (S.A. de C.V.). The principal difference between the two is that the latter can increase or decrease its capital within the limits established by the by-laws
- The shareholders' liability is limited to their stock interest in the company, and the directors are fully liable for the diligent administration of the company
- There must be at least two shareholders and the minimum capital requirement is MXN 50,000, 20% of which must be paid at the time of incorporation
- The shares, which represent the capital stock of the company, are freely transferable and can be traded publicly after the corresponding filing has taken place

Limited liability company ("Sociedad de Responsabilidad Limitada", S. de R.L.)

- This type of company has the same limited liability as an S.A.
- This type of company must have at least two and no more than 50 partners
- The minimum capital requirement is only MXN 3,000, 50% of which needs to be paid at the time of incorporation, and the option of variable capital can be established

Civil enterprise ("Sociedad Civil", S.C.)

- This type of company is used by professional service providers, such as lawyers and accountants
- There are no minimum capital requirements
- There are no limits on the number of partners in a civil enterprise, but each partner is jointly and personally liable for the company's obligations and debts

Branch ("Sucursal")

- Instead of incorporating an entity in Mexico, some companies choose to register their existing foreign company as a branch in Mexico
- The branch must register with the Public Registry of Commerce
- The foreign company will also be responsible, along with all of its assets, for any liability that it incurs in Mexico

Subsidiary ("Subsidiario")

- Unlike a branch, a subsidiary is actually a separate legal entity from a parent company
- Establishing a Mexican subsidiary shields the parent company from liability

30.1.8. Sources of information

In Mexico, it's very complicated to monitor debtors' financial situations, as private companies aren't obliged to publish their financial statements.

We're able to request information from various public registers. All traders have to be registered with the Public Registry of Commerce in the states where they're incorporated. The information from this office carries an administration fee, which may vary from town to town. At the Public Registry of Commerce, it's possible to get a company's incorporation details as well as details on its real estate and other enforceable assets.

30.2. Retention of title

Mexico has very comprehensive, seller-focused regulations on retention of title (ROT), which must be explicitly agreed to prior to delivery. Most importantly, the debtor must acknowledge the ROT clauses before receiving the first invoice. Not many companies include ROT provisions in their general trading conditions.

Not many companies include ROT provisions in their general trading conditions. There are two different kinds of ROT:

Basic ROT

The goods supplied remain the legal property of the seller until full payment. The seller can or must get the goods back.

Increased ROT

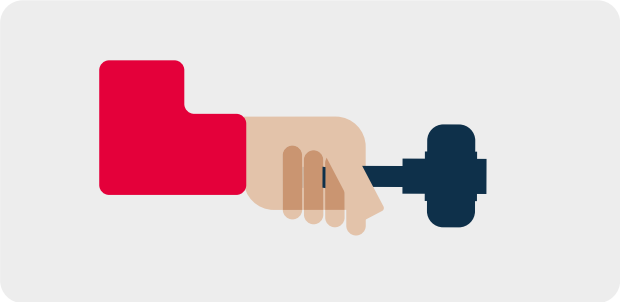
This is retention of open accounts. In the course of an ongoing business relationship, the supplied goods remain the legal property of the seller until all the outstanding amounts from the open account or business relationship have been fully paid.

30.3. Safeguard measures

In case your debtor isn't able to settle your claim in a speedy manner, we can request that the debtor secure the debt in favour of you – the creditor. This can be done amicably and cost-effectively by providing an acknowledgement of debt authenticated by a notary. It's immediately enforceable in case the agreed payment terms aren't honoured. The corresponding notary costs have to be covered by you in the first instance and can be charged to the debtor later on. Approaches like this have to be evaluated on a case-by-case basis and are dependent on the outstanding principal amount.

The debtor can also offer other means of security, such as mortgages, assignments of debt or assets. Contracts must be drawn up for assignments of debt or assets, while mortgages have to be registered by a notary.

30.4. Legal collections



30.4.1. General information

The modern Mexican legal systems are composed of public law, which regulates the relationships between citizens and the state, and civil law, which regulates the relationships between two people or companies.

Mexico has adopted the use of codes, like the Federal Civil Code and the Commercial Code. Although each state has adopted its own codes, each area is aligned with federal law. In case of any discrepancy, federal law will override civil law.

30.4.2. Legal systems

The structure of the court system in Mexico distinguishes between courts of ordinary jurisdiction (including civil,

commercial, and criminal jurisdiction) and administrative courts or courts of special jurisdiction.

Courts of ordinary jurisdiction include federal courts and state courts. At the federal level, the Mexican Supreme Court is the highest court and it decides the most important cases in the country. Next in authority and significance are circuit courts, which take up cases of appeal and "amparo" cases. District courts have jurisdiction over "amparo" cases in the first instance and function as courts of ordinary jurisdiction in matters of federal law, such as commercial law cases.

State law establishes the structure and function of the courts in each state of Mexico. In general, state courts are organised in the following manner: the highest appellate court is known as the Supreme Court of Justice, followed by courts of first instance that deal with civil hearings and criminal and commercial cases, then there are minor courts of special jurisdiction, such as family courts and bankruptcy courts (unlike the United States where bankruptcy matters fall under the jurisdiction of federal bankruptcy courts).

Jurisdiction is divided by the matter of each case and the amount of money it's dealing with. Usually, a collection lawsuit should be started at a state court nearest to the debtor's address, unless both parties have agreed to a specific jurisdiction or it was left to you as the creditor to choose.

30.4.3. Required documents

In order to start an ordinary legal procedure, each part of the relationship between you and your debtor should be provable by documentation.

Therefore, we need the following original documents:

- The invoices
- The delivery notes and/or bills of lading
- A clear statement of account indicating the payments
- The credit notes that have been paid for the outstanding monies
- A notarised power of attorney with an apostille

It's worth mentioning that courts in Mexico don't allow simple or scanned copies in lawsuits. So original documents are needed. If the documents aren't written in Spanish, proper and certified translation of all the documents will be required.

The originals or certified copies of the following documents may be asked for, but aren't compulsory:

- The contracts
- The purchase orders
- The bills of lading
- The relevant correspondence between you and your debtor

In order to start an executive legal procedure, we need either the original promissory notes or bounced cheques with special endorsement wording. No notarised power of attorney with an apostille is needed if the lawsuit can be supported with either a promissory note or a bounced cheque.

30.4.4. Legal dunning procedures

In Mexico, legal dunning procedures don't exist. However, to make a stronger payment request, it's acceptable to issue a formal payment request through a notary. Notary fees should be covered by you and may vary from town to town.

30.4.5. Lawsuits

A regular lawsuit procedure is started directly after the amicable collections has failed due to dispute by the debtor, or after the debtor has ignored the payment demands. In Mexico, mediation or arbitration procedures aren't used for collection purposes, and a lawsuit can be filed directly.

30.4.6. Appeals

Appealing against a judgment is possible, which will trigger a verdict by the court of second instance (circuit courts). Only cases of over MXN 240,000 can be appealed.

In the case of third instance ("amparo"), a review request should be made to the district courts or even the Supreme Court, depending on the case's jurisdiction and amount.

30.4.7. Expected time frame

The average duration of legal proceedings is between one and three years, depending on the complexity of the case and the availability of the judges and lawyers on all sides.

Legal proceedings that are started using a promissory note or bounced cheque as the main support can be shorter compared to proceedings supported by overdue invoices.

30.4.8. Costs and interest in the legal phase

All costs are dependent on the outstanding principal amount and are calculated while taking into account the amount kept by each party. There are different fees that can apply during the proceedings, making it difficult to predict the total cost. In addition to this, costs of witnesses and/or experts might also arise. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

Extrajudicial interest and costs can be claimed as part of the outstanding monies during legal proceedings. If the parties agreed to no specific interest rates, then the annual rate of 6% will be applicable.

In all cases, the losing party has to bear the costs of the legal proceedings that have been calculated by the plaintiff. These costs must be based on the provisions of the Code of Civil Procedure and can't be higher than 20% of the claim amount.

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30.5. Enforcement

30.5.1. Enforcement in debt

The creditors can block the bank accounts of the debtor only if it can be proved in court that there is a risk of misappropriation of the funds. However, the difficulty of blocking the debtor's bank accounts lies in being able to obtain the debtor's bank information, as it isn't public in Mexico, and banks aren't obliged to provide it.

30.5.2. Enforcement in movable property

Enforcement can be made once the final judgment is obtained.

However, through an executive collection procedure, the movable property to secure payment of the debt can already be selected at the moment the debtor is served. It's also possible to take the property away to avoid the debtor's misuse, but it can't be sold or liquidated until the final judgment is issued.

For ordinary procedures, enforcement can't be made until a judgment is obtained.

30.5.3. Enforcement in immovable property

This is the standard and most common procedure in Mexico. If the debtor owns real estate, it's possible to receive a record of their claim in the land registry, and then force:

- The attachment
- The attachment and sale
- In case there are tenants, the sequestration of the real estate by court order

All of these processes are more expensive than those previously mentioned, especially the records of claims in the land registry. However, it's the most efficient way to secure payment.

30.5.4. Expected time frame

Enforcement in monies usually takes several months. However, once the debtor's bank accounts are enforced (blocked), this usually forces the debtor to make a payment offer.

The time frame for enforcement in real estate depends very much on the course of the case, the court, possible banks, and, of course, possible buyers.

30.6. Insolvency proceedings

30.6.1. General information

As per the Commercial Bankruptcy Law (Ley de Concursos Mecantiles "LCM"), insolvency proceedings will consider both reorganisation and liquidation. Reorganisation is requested if the debtor company is declared commercially insolvent.

The aim of insolvency proceedings is to pay out all the creditors with the same percentages of their debts by liquidating the debtor company's assets or collecting its enforceable income.

30.6.2. Proceedings

After the debtor or a creditor files for the debtor's reorganisation or liquidation, we'll be permitted to use the lender's collateral, as agreed to in the corresponding security agreements.

If the debtor company is declared commercially insolvent, the conciliation stage is activated in order to acknowledge the creditors' attempts to reach a reorganisation agreement.

During this stage, the conciliator must prepare a list of the creditors and determine the amounts, order, and levels of preference of their credits. At this stage, the conciliator (appointed by the Federal Institute of Insolvency Specialists) should also coordinate the execution of the reorganisation agreement between the debtor company and its creditors.

During the conciliation stage, the debtor may seek financing as usual, but any new credits and security agreements must be approved by the conciliator. Administrative enforcement proceedings of tax credits will be suspended, but the competent tax authorities may be willing to take safeguard measures to secure tax credit payment. The suspension lasts until the conciliation stage is terminated. This is usually within 180 calendar days, which may be extended by an additional 180 days under certain circumstances.

Also during the conciliation stage, the management of the debtor company will remain, although the conciliator will supervise the books and all the operations and will decide on the termination of pending contracts. The conciliator will also approve, with prior input from the inspectors (appointed by the creditors with oversight capacity), the contracting of new credits, the establishment or substitution of guarantees, and the sale of assets when those aren't inherent in the day-to-day running of the debtor company.

The acknowledged creditors are classified in rank according to the nature of their credits. The LCM considers that payments of these credits are made based on their levels of preference. No payments may be made to the credits of lower ranks without first having liquidated those of higher ranks, according to the credits' established priority.

With regard to the credits with collateral (secured credits), only the following credits against the estate will receive preference:

- Preferential labour credits – the wages or salaries and accrued benefits within two years prior to the date of the declaration of the debtor's commercial insolvency
- Legal fees incurred during the defence or recovery of the property subject to guarantees or on which privileges fall
- Necessary expenses for the replacement, conservation, and sale of such property subject to guarantees
- Credits against the estate

Retroactive date

This law refers to a concept called retroactive date (also commonly known as the suspect period). It exists to determine whether, during a previous period, acts that might have defrauded the creditors were performed or are presumed to have been performed.

As a general rule, the retroactive date will be 270 calendar days prior to the date of the declaration of the debtor's commercial insolvency. However, the judge at the request of the conciliator, inspectors, or any creditors may set a prior date as the retroactive date.

30.6.3. Required documents

In order to lodge a claim, we need:

- An original power of attorney, properly notarised with an apostille
- The original invoices
- The original contracts (if they exist)
- Clear copies of the orders, confirmations, and delivery notes
- Clear copies of the general conditions of sale, should there be any
- Clear copies of any other correspondence that may verify the claim

30.6.4. Expected time frame

The deadline for lodging claims is 180 days and is activated once the debtor files a reorganisation or liquidation request.

The whole duration of insolvency proceedings is between five and 10 years.

30.6.5. Limited companies

A limited company will file for insolvency for three main reasons.

The first reason is its inability to pay. This doesn't automatically mean that its assets don't cover all its debts. Under special circumstances, it could be that only the actual liquidity doesn't cover the due debts, but in general, the company's expected liquidity would.

The second reason is the company's expected inability to pay. This means the management already knows that within a certain time span, the company will be unable to pay the due debts.

The third reason is accounting insolvency. This means the company's assets don't cover its debts.

30.7. Arbitration and mediation

If you and your debtor agree to an alternative dispute solution, there are two options available: arbitration or mediation.

In mediation, an unbiased third party known as the mediator will assist both parties by conducting private interviews and negotiations to discuss settlement opportunities and facilitate an agreeable solution.

In arbitration, disputes are brought before a neutral third party known as the arbitrator. After carefully reviewing all the relevant information, they'll reach a final decision in favour of one of the parties.

Both arbitration and mediation must employ a neutral third party, and both agreements can be seen as binding. Mediation and/or arbitration fees and expenses should be covered by both parties.

The Mexican Commercial Code contains a provision that regulates arbitration. Mediation is done by professional organisations, such as the Mexico City National Chamber of Commerce. The new agreements aren't judgments, but they're a kind of contract.

Atradius Collections

31. Morocco

Industries

Construction

Food

Machines

Minerals

Services

Textiles

Transport

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

31.1. Amicable collections

31.1.1. General information

We follow a professional collection process with the objective of retaining the relationships between you and your debtors whenever possible. Our staff of collection professionals carry out the first collection tier in-house. We relentlessly pursue debtors verbally and in writing within the bounds of Moroccan law.

31.1.2. Local agents

We offer field service and can visit debtors regularly when necessary. Depending on the specific details of each case, our local partners – who could be lawyers – will try to reach a settlement without the need for a court case.

31.1.3. Interest

We always charge debtors for interest. It's calculated according to the base rate set at 6% by the Bank Al-Maghrib, plus two points.

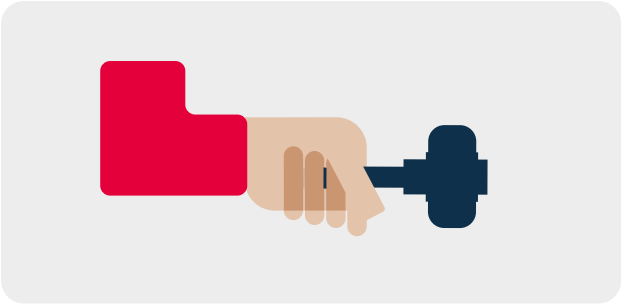
Moroccan debtors are used to paying late payment interest, though often the actual amounts of interest payment are considered a matter of negotiation between debtors and collectors. In this case, we talk about conventional interest.

31.1.4. Debt collection costs

In Morocco, debt collection costs are chargeable to debtors, provided that you have entered into special contractual agreements. This can be taken into account as long as the debtors actually agreed to the terms.

From a cultural point of view, Moroccan debtors are used to paying debt collection costs, though often the actual amounts of these costs are considered a matter of negotiation.

31.2. Legal collections



31.2.1. General information

Entering into legal proceedings is possible without a prior warning to the debtor. However, the courts prefer that mediation takes place between the creditor and the debtor. In order to shorten the amicable phase of legal proceedings, it's practical to prove to the courts that all pre-court efforts were fruitless by pointing out the prior correspondence.

31.2.2. Required documents

In order to apply a legal dunning procedure, we need the original contracts, invoices, and a clear statement of account indicating the payments and credit notes that have been booked regarding the outstanding invoices.

In the case of a regular lawsuit procedure, the complete original contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, and invoices. Basically, every part of the trading relationship should be provable by documentation.

In case of dispute, proof of the conversations between you and your debtor should also be kept and provided to our lawyers.

In the case of verbal negotiations, we need the visit or negotiation reports and the names of the witnesses.

31.2.3. Legal dunning procedures

This type of procedure is only applicable to monetary debts and only if the debtor is traceable. However, if the debtor is made unknown on the basis of a report drawn up by the bailiff, they may be subject to a curator's procedure in order to obtain a default judgment.

In order to obtain an enforceable judgment by legal dunning procedure, first, the court orders and, second, the enforcement order need to be applied one after another and served on the debtor within the time frames stipulated in Moroccan civil process law. The debtor can appeal in both stages, which would transfer the dunning procedure into a regular lawsuit procedure.

31.2.4. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections has failed due to dispute by the debtor, or after the legal dunning procedure if the debtor has appealed.

31.2.5. Expected time frame

The average duration of a legal dunning process is between eight and 12 weeks, whereas a court procedure can take up to 12 months or longer, depending on the complexity of the case. Hearings are often postponed when being scheduled by a judge.

31.2.6. Costs and interest in the legal phase

In Morocco, only court costs are determined by the provisions of the law, which are calculated on the basis of a fixed rate or proportionally and are not subject to any negotiation.

In addition, experts' fees may also incur. The amounts are set by a judge and may be increased or decreased by either the designated experts or the party claiming that the costs are exaggerated.

Lawyers' fees are freely negotiated between you and your lawyers and depend on the value and complexity of the case.

Interest (at the legal interest rate) can be claimed in Morocco. However, the losing party has to bear the costs of the legal proceedings according to Moroccan civil process law.

31.3. Insolvency proceedings

31.3.1. General information

The aim of insolvency proceedings, called judicial liquidation in Morocco, is to pay out all the creditors by liquidating the assets of the debtor company.

Creditors who hold mortgage guarantees (preferential creditors), tax authorities, and employees are paid with higher priority.

Creditors who do not have collateral (non-preferential creditors) will be paid in the event of a balance.

31.3.2. Proceedings

In Morocco, judicial liquidation is regulated by articles 619 to 636 of the Commercial Code. It's the result of the failure of judicial redress. It's opened when the situation of the debtor company is irremediably compromised. This is the solution that the court adopts when there is no longer any realistic chance of survival for the debtor company. The court will, at that time, declare the liquidation, and a judge-commissioner will deal with the liquidation of the debtor's property in concert with a trustee acting in the name and in the interest of the creditors. A judge will appoint the trustee to handle the judicial liquidation proceedings under the supervision of the judge-commissioner.

The judicial liquidation will ipso jure disqualify the debtor from the administration and disposition of their property, including the property that the debtor has acquired in any capacity while the liquidation has not been closed. The rights and actions of the debtor in respect of the debtor's estate will be exercised throughout the period of liquidation by the trustee.

At any time, the court may decide, even by its own motion, after hearing the head of the debtor company and on the basis of the report from the judge-commissioner, to close the judicial liquidation when:

- There is no longer any outstanding liability, or the trustee has sufficient sums to satisfy the creditors
- The continuation of the liquidation proceedings is rendered impossible by reason of an insufficiency of assets

The judicial liquidation has two stages:

- Realisation of assets: This is the sale of the assets of the debtor. The judge-commissioner fixes the prices for the auction based on the report from an expert appraisal
- Clearance of liabilities: This involves payments to the creditors and the closing of liquidation transactions. The trustee will pay the creditors with the money obtained from the auction. Here the receivables contracted by the debtor company during the period of judicial redress will have priority. In the same manner, it's at this stage that the liens of the creditors come into play

At the end of the liquidation, the trustee makes the accounts. In other words, the trustee is required to keep

accounting books that justify the trustee's action on the assets of the debtor company.

The common thread among liquidation and judicial redress is the interest given to the creditors. This is for the court to help the debtor company clear their liabilities and continue their business.

31.3.3. Required documents

In order to lodge a claim on your behalf, we need:

- An original power of attorney
- Copies of the invoices
- Copies of the contracts
- Copies of the orders, order confirmations, and delivery notes
- Copies of the general conditions of sale, if there are any
- Copies of any other correspondence that may verify the claim

31.3.4. Expected time frame

The deadline to lodge claims is two months and dependent on the complexity of the procedures. If you are located outside of Morocco, the deadline is extended by two additional months.

The total duration of judicial liquidation proceedings is not quantifiable, but is between five and 10 years.

Atradius Collections

32. The Netherlands

Industries

Agriculture

Chemicals

Construction

Electronics

Machines

Minerals

Chance of collecting

75%–100%

Source: Central Intelligence Agency World Factbook

32.1. Amicable collections

32.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to applicable law.

When there is a case of dispute, our experienced team of Dutch collectors can deal with this. They mainly play a consultative role and can also mediate. In the event that mediation by the collectors might not lead to an agreement and legal proceedings are indicated, the case will be handed over to the lawyers and bailiffs we work with.

There is new law called "De Wet kwaliteit incasso-dienstverlening" (Wki). This law is effective on 1 April 2024 (however, from 1 April 2024 to 1 April 2025 is a transition year). It sets out requirements for the quality and reliability of out-of-court debt collection service providers. Existing debt collection service providers must register with the register of debt collection services within one year from 1 April 2024. Although the law is aimed at protecting consumers, companies with a sole owner ("eenmanszaak") and companies with several natural persons or partners involved ("vennootschap onder firma" or VOF) are also covered by this law. Besides requirements such as professional competence, transparency, and handling requirements among others, this law also affects the amounts of interest and collection costs to be claimed for companies with a sole owner ("eenmanszaak") and companies with several natural persons or partners involved ("vennootschap onder firma" or VOF).

Instead of 12% interest and 15% collection costs, we can claim the legal interest and collection costs in accordance with the law on collection costs. This means with regard to collection costs:

- Over the first EUR 2,500 of a claim: 15% of the principal amount with a minimum of EUR 40
- Over the next EUR 2,500 of the claim: 10% of the principal amount
- Over the next EUR 5,000 of the claim: 5% of the principal amount
- Over the next EUR 190,000 of the claim: 1% of the principal amount

32.1.2. Local agents

We offer field service to visit debtors through local agents. If debtors wish to visit our premises, we'll gladly arrange face-to-face meetings to discuss the situations.

We can provide you with a high-quality professional network of experienced lawyers and/or law firms and bailiffs (LDCs) in the Netherlands at very competitive rates. Our LDC network covers the whole Dutch territory, and the LDCs are able to take legal action in all the district courts.

32.1.3. Interest

Apart from companies with a sole owner ("eenmanszaak") and companies with several natural persons or partners involved ("vennootschap onder firma" or VOF), we always charge debtors for interest calculated at 12% per annum on a daily basis. This percentage is higher than the one embodied in the European Directive concerning legal business interest. But it's in accordance with the clauses on the majority of purchase conditions or other business conditions.

Interest will always be claimed in both the amicable phase and judicial phase.

In the Netherlands, it's common practice to receive interest on overdue invoices, and there are rarely any discussions regarding the liability of the debtors when paying interest. In court, interest payment is considered a justified demand in relation to the overdue accounts. If you're able to prove that the business or purchase conditions are applicable, the interest can be charged at 12% per annum. In the event that no specific conditions were agreed to, it's possible to request interest according to the European Directive and the so-called legal business interest rate in the Netherlands. The latter is variable.

32.1.4. Debt collection costs

In the amicable phase, we're able to collect your invoices and interest to a certain extent with collection costs. The debtor is charged an extra 15% in collection costs on the principal amount, and we fully focus on collecting the costs within the bounds of law and jurisprudence. With regard to companies with a sole owner ("eenmanszaak") and companies with several natural persons or partners involved ("vennootschap onder firma" or VOF) we can't charge this 15%.

From a legal point of view, collection costs can only be recovered from the debtor on a scale relating to the principal amount that has been entrusted to collections. If we're successful in collecting the principal amount, it's possible to recover a certain amount of the collection costs from the debtor through legal proceedings. The court uses a tariff schedule relating to legal proceedings in order to identify what amount of collection costs can be recovered from the debtor. It's a complicated issue in jurisprudence, and there are usually only small amounts granted, despite existing clauses in written agreements and/or purchase conditions. In fact, the judge is free to condemn the debtor to pay the collection costs as long as they're considered reasonable, but the granted costs are normally part of the provision agreed with you.

32.1.5. Prescription

Dutch law has several terms for prescription of debts, the most common of which relate to commercial (business) claims (e.g. purchasing, rendering services, and contracting). For these transactions, the general prescriptive term is five years and is calculated from the due dates of the invoices.

Prescription can be opposed by registered mail and/or written announcement through a bailiff, with the effect that a new term of five years will commence. It must be noted that you have to prove that the debtor receives the announcement.

Exceptions are possible; for example, in the transportation sector, shorter terms for prescription of debts are used, according to the Convention on the contract for the international carriage of goods by road (CMR).

32.1.6. Types of companies

Like most other countries, the Netherlands has two major groups of companies.

The first group consists of so-called person companies:

Company with a sole owner ("eenmanszaak")

- The owner is fully liable for the company's debts, also with their private assets

Company with several natural persons or partners involved ("vennootschap onder firma", or VOF)

- The partners are fully liable with their business funds and private assets

Company with a managing partner and a silent partner ("commanditaire vennootschap", or CV)

- The managing partner is fully liable with their business funds and private assets
- The silent partner is only liable with the company's capital

Company as a professional partnership

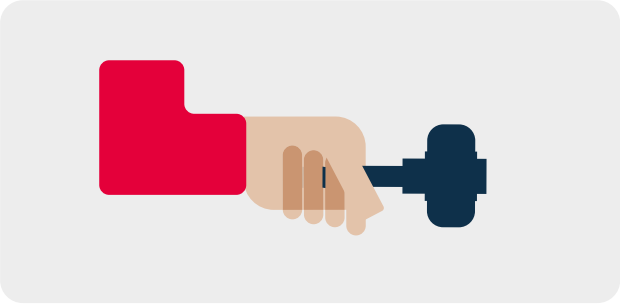
- The partners are natural persons practising professions (e.g. lawyers, doctors, and architects)
- The partners are together fully liable for the company's total debts with their private funds or assets

The second group includes limited companies, legal persons, or legal entities, of which the most common are:

- "Besloten vennootschap", or B.V.
- "Naamloze vennootschap", or N.V.

For these companies, the (managing) directors aren't liable with their private assets, unless there is documented proof of mismanagement.

32.2. Legal collections



32.2.1. Legal systems

The Dutch judicial organisation recognises several kinds of courts, whereas competence relates to the amount or the level of each claim. The systems include the following courts.

- County court, one judge tribunal ("kantongerecht")
- Tribunal or district court ("rechtbank")
- Court of appeal ("gerechtshof")
- Supreme Court ("Hoge Raad")

32.2.2. Required documents

In order to apply a legal dunning procedure or file a petition for bankruptcy, we need copies of the contracts, invoices, and a clear statement of account.

In the case of a regular lawsuit procedure that normally relates to disputed cases, copies of the complete contractual documentation or proof of the trading relationship have to be supplied.

In case of dispute, all the notes of the conversations

between you and your debtor via letter and email that may assist our lawyers should be kept.

Every document supporting the claim or the argument to be defended has to be submitted to the court with a writ of summons, the same as with the names and places of residence of the witnesses.

32.2.3. Legal dunning procedures

The Netherlands doesn't have legal dunning procedures, but, if the debt is undisputed, it's possible to take very specific legal action in order to press the debtor to pay on a short-term basis.

The most effective and least costly procedure is filing a petition for bankruptcy. For this procedure, we need to hand over the file to one of our LDCs, as it must be done by a lawyer. The petition is designed to put so much pressure on the debtor that if there are any monies, they'll be paid with preference to you – the creditor who files the petition.

As an alternative, it might be possible to agree to a payment plan, as this is also a very efficient action. We usually know within a month whether any monies can be collected.

32.2.4. Lawsuits

Legal proceedings in the Netherlands always relate to disputed matters. For legal proceedings, written approval from you will be sufficient, so a formal power of attorney isn't necessary.

Before we suggest taking legal action, our collectors investigate the debtor's financial situation. If it's considered that there are assets (as far as we can judge this), then we suggest that our client takes legal action.

The collectors will also study the case and give advice on which legal action to take. If the documents are missing or additional evidence needs to be supplied, the collectors will ask you to provide the relevant information.

The bailiffs in our network will handle proceedings for claims up to EUR 25,000, and for larger claims, the fully documented files will be sent to the LDCs in our network in the Netherlands.

Once the summons is completed, the debtor will be notified by the bailiff (obligatory) and be immediately presented to the court. In proceedings before a county court, the debtor can defend themselves, whereas in proceedings before a district court and beyond, the debtor must be represented by a lawyer.

Once a writ of defence has been presented, it's usual practice for the court to request a personal appearance of all the parties and their legal representatives to gather further information about the facts and to try to come to an agreement between them.

If no settlements can be reached, the proceedings will continue, usually with further written documents, witness statements, appointments of experts and the like, until the court has a clear view of all the details and can render the final judgment.

32.2.5. Appeals

Appealing against a judgment (the threshold is EUR 1,750) is possible. That will trigger a second verdict by the court of second instance (local court to district court, district court to court of appeal).

In the case of third instance, the review will be restricted to a check on whether or not the statutes were applied correctly. Any later amendment of facts or proof isn't permissible.

32.2.6. Costs and interest in the legal phase

The costs of legal proceedings relate to the amount of the outstanding debt and are determined by the court. They also follow a complex legislative tariff schedule using a wide range of calculations.

The losing party will be liable to the court costs and legislative fees for procedural assistance according to the tariff schedule. The fees relate to the amount of legal handling in the proceedings and don't take into account the real legal fees. The way the legislative fees are calculated makes it difficult to predict the total cost, besides the complexity of the case, the number of court appearances, the eventual hearings of the witnesses, and the appointments of experts. Whenever legal action is necessary, cost estimations will be provided on a case-by-case basis.

The difference between the legislative fees determined by the court and the legal fees for the LDCs and/or our legal collectors will be collected from your account and can't be recovered from the debtor.

The cost of filing a petition for bankruptcy is approximately EUR 1,400.

Any interest calculated from the date of the writ of summons, court costs, and legal fees can all be claimed as part of the outstanding monies during legal proceedings.

In all cases, the losing party has to bear the costs of the legal proceedings. If the claim is granted partly, the court can decide that both parties have to bear the costs in proportion to their prevailing or failing in the case. In the case of a legal settlement, it's common that the parties bear their own costs (e.g. lawyers' and court fees) of the proceedings.

32.3. Enforcement

In the Netherlands, only bailiffs are authorised to take care of enforcement of judgments within the boundaries of the law. We have a network of professional and experienced bailiffs covering the whole of the Netherlands.

Based on the judgment, the bailiff can seize part of the debtor's salaries, block their bank accounts or their claims against tax offices, life insurance, shares in businesses, corporate shares, or any possible claim the debtor may have against any third party. Very specific information, such as the debtor's bank account details and any information about their corporate shares or shares in businesses, is required for this kind of enforcement.

32.4. Insolvency proceedings

32.4.1. General information

Bankruptcy
A debtor can be declared bankrupt at their own request or at the request of just one of their creditors, provided that evidence is provided to the court that more than one debt is left unpaid by the debtor.

Insolvency proceedings – whether regular insolvency, insolvency plans, or individual insolvency – are a kind of collective enforcement by all the creditors against the debtor. With a verdict from the court, the bankruptcy is established with the result that all the proceedings and enforcement (also the preservative kind) will be suspended.

The aim of insolvency proceedings is to pay out all the creditors with the same percentages of their debts by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

Besides bankruptcy, there are two other types of insolvency:

Suspension of payment
A company or a natural person who is temporarily in a position where they aren't able to pay their debts might file a petition for suspension of payment. The court often allows provisional suspension for a certain period (from two to six months), after which the debtor has to submit all the records on their financial situation, as well as a plan towards the future, and how they'll meet the obligations to the creditors.

Law-enforced composition with creditors on a natural person's debts (WSNP)
This insolvency procedure relates to natural persons (owners of small shops, farmers and the like) who are personally liable for debts. Dutch law provides such a debtor with the possibility to request the court that they be allowed to enter into a WSNP. By fulfilling certain obligations in good faith, such a debtor is allowed by the court to enter into a WSNP. The court will appoint an official receiver who is monitored by a member of the court.

The Homologation Private Agreement ("Wet Homologatie Onderhands Akkoord" or WHOA) introduces a regulation in the Netherlands that results in what is also referred to as compulsory agreement. The proposed arrangement provides for the possibility to have a private agreement between the debtor company and its creditors and shareholders on the restructuring recognised and approved by the court (homologated). The court approval ensures that all the involved creditors and shareholders are attached to the content, as well as those voting against the content of the agreement. They can therefore still be held to the content if the agreement meets the requirements. The scheme is embedded in the Bankruptcy Act.

32.4.2. Proceedings

Bankruptcy
The court declaring the debtor bankrupt will appoint an official receiver as well as a member of the court who will monitor the official receiver. The official receiver will act on behalf of the creditors and can implement several (business) actions, with the approval of the member of the court, to liquidate the assets in favour of the creditors.

All the creditors must lodge their claims with the official receiver and take back any goods delivered under retention of title clauses.

Suspension of payment
Like with bankruptcy, the creditors have to lodge their claims with the official receiver.

If it's judged that there is a possibility of achieving a positive outcome in the future, including a payment plan for the debts, the suspension will become definitive.

It's also possible to come to an agreement with the creditors. The agreement has to be approved by the court and the majority of the creditors regarding each debt.

With the payment plan or composition approved by the court, the suspension will end. However, often suspension becomes bankruptcy.

Law-enforced composition with creditors on a natural person's debts (WSNP)
The creditors have to lodge their claims as described above. The official receiver has to determine in which capacity the debtor has to pay in instalments over a period of three years. After this period and provided that the debtor meets their obligations as agreed with the official receiver, the total reserved amount will be divided among the creditors in a full and final settlement.

It should be noted that if a natural person has been declared bankrupt, it often comes – at the request of the debtor – to transfer to a WSNP. Most of the time, the creditors will receive only a small percentage of their debts (varying from 1% to 10%).

32.5. Arbitration and mediation

If you and your debtor agree to an alternative dispute solution, there are two options: arbitration and mediation or conciliation.

Atradius Collections

33. North Macedonia

Industries

- Chemicals
- Construction materials
- Food
- Machines
- Minerals
- Textiles
- Transport

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

33.1. Amicable collections

33.1.1. General information

As professionals in collections, we're in a position to provide first-class services, special treatment, and analyses of each debt collection case in order to successfully recover overdue debts.

Our activities are based on checking debtors and taking appropriate action with regard to their existing financial situations and ability to pay.

Our debt collection activities consist of:

- Checking debtors' circumstances
- Delivering written reminders
- Making telephone calls
- Making personal visits

It's widely known that, with regard to late payment, the efficiency of debt collections depends on timely and appropriate actions. The longer you wait before deciding to act, the lower the chance that the debts will be recovered.

33.1.2. Interest

The North Macedonian business culture is to not pay interest, so it's difficult to obtain the payment using amicable processes.

The interest rates are:

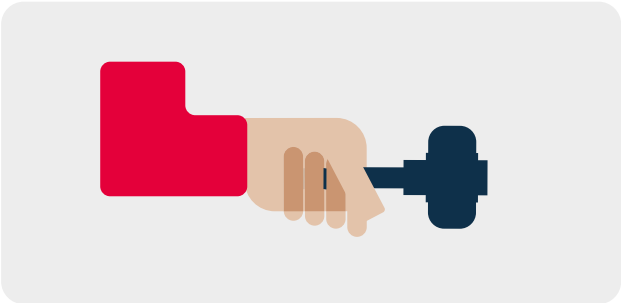
- 7.75% as of 1 January 2021
- 7.89% from 1 July 2020 to 31 December 2020
- 8.11% from 1 January 2020 to 30 June 2020

33.1.3. Debt collection costs

The potential for requesting payment of debt collection costs varies from case to case. We, as an agency, always quote debt collection costs in the first reminders, but usually we collect only the claim amounts. There are some cases where the costs are collected, but the number of such cases is very low.

When a client insists on receiving the payment of such costs, we're asked by the debtor to provide an invoice regarding the issue by the client. Based on that invoice, the payment should be received.

33.2. Legal collections



33.2.1. General information

The North Macedonian legal systems are composed of civil law, which regulates the relationships between two people or companies, and execution procedure law, which regulates forced collections of debts.

Entering into legal proceedings is possible without a prior warning to the debtor. A letter about the possibility of legal action can be sent to the debtor as the last and final reminder at the end of the amicable collection phase, and this letter can be used to prove that all the pre-court efforts are fruitless. However, the presence of such a letter doesn't guarantee that a court decision will be received quicker.

33.2.2. Required documents

Here is a list of the necessary documents for legal action.

- The contracts signed by the parties with all the appendices
- All the unpaid invoices
- The statements of account indicating the payments and credit notes
- The transport documents with the debtor's signature proving the goods' receipt and customs declarations
- All the correspondence and other documents relating to the debt
- An extract from the trade register of your company
- A power of attorney (POA) for our lawyers to represent your company

Here is a list of the necessary documentation for each representative.

- A verified copy of their passport or a verified copy of their identity card
- A signed POA, in which it's necessary to add information such as their address and place and date of birth

All the documents have to be provided as copies assured by a notary, or as original documents because it's necessary to translate all the papers into Macedonian. The original documents have to also be shown to the court in case the debtor denies the validity of the documents in any way.

If some documents are missing, it's necessary to provide explanations for this fact.

33.2.3. Lawsuits / Motions for execution

A regular execution procedure is started directly after the amicable collection process has failed due to dispute by the debtor. A motion for execution is submitted to a public notary based on the unpaid invoices or statements of account, on the grounds of which the public notary issues a writ of execution. If the debtor doesn't lodge an appeal, the writ of execution becomes valid, and it's possible to block the debtor's bank accounts on the grounds of the valid and enforceable writ of execution until the collections is done. If the debtor has no capital, it's possible to continue the procedure with other possible movable property and/or real estate of the debtor.

A regular lawsuit procedure is started directly after the execution procedure has failed due to dispute by the debtor, or if the debtor lodges an appeal against the writ of execution. The claim is submitted by the public notary to the court, which checks the documents and the grounds for the claim. If the claim is prepared and submitted correctly, the court announces a date for a session, during which both parties have to be present. If it's necessary, the court may postpone the session and announce a date for another hearing. The parties will be informed about the outcome in writing by the responsible court.

33.2.4. Expected time frame

The average duration of an execution procedure before a public notary can take up to one month, and a court procedure can take from six months to three or four years, depending on the complexity of the case and the availability of the judges.

33.2.5. Costs and interest in the legal phase

The costs of an execution procedure and civil law procedure (public notary costs, court costs and fees) are determined by the provisions of the attorney tariffs and public notary tariffs and aren't subject to any negotiation.

All costs depend on the outstanding amount. There are different fees that can apply during a procedure. It's difficult to declare an exact sum of litigation costs. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

The legal or arranged interest and costs can be claimed as part of the outstanding amount during legal proceedings. Usually, the court awards interest in the claim amount if it was requested. The defendant has to pay the court fees for the legal proceedings in accordance with the law on civil procedure. Other expenses (e.g. experts' fees) can be requested from the debtor. However, the decision on whether those are awarded depends on the court.

33.3. Insolvency proceedings

33.3.1. General information

There are two kinds of insolvency proceedings.

Pre-bankruptcy proceedings for so-called financial restructuring

The debtor company has to provide a debt repayment plan. If the plan is fulfilled, the debtor company continues to operate. The purpose of pre-bankruptcy proceedings is to enable financial restructuring of the debtor company threatened by insolvency, based on an approved and accepted restructuring plan, to allow the debtor to continue their business operations.

A pre-bankruptcy agreement is an enforceable document for the creditors. It means that if the debtor doesn't fulfil their obligations according to the agreement, the creditors are entitled to commence an execution procedure against the debtor.

Bankruptcy proceedings

In cases of illiquidity and/or insolvency of the debtor, the court will start bankruptcy proceedings, with which the debtor should be finally liquidated. The court appoints an administrator and a bankruptcy trustee to prepare a list of the creditors and receive the documents. The debtor company is liquidated once the proceedings are over.

33.3.2. Proceedings

Claims have to be submitted within 15 days since the court decision to begin pre-bankruptcy proceedings and within 60 days since the court decision to begin bankruptcy proceedings.

If your claim isn't submitted within these terms:

- If pre-bankruptcy proceedings are initiated: your claim is still considered lodged if the debtor stated the claim in their proposal for the commencement of the pre-

bankruptcy proceedings and no contestation was made over the amount stated in the proposal. Otherwise, the court will reject the lodging submitted after the term and the claim won't be taken into account
- If bankruptcy proceedings are initiated: your claim won't be taken into account

33.3.3. Required documents

In order to lodge a claim on your behalf, we need:
- The unpaid invoices
- The statements of account that indicate the payments and credit notes
- An extract from the trade register of your company
- A POA for our lawyers to represent you

33.3.4. Expected time frame

The deadline for lodging claims is 15 days since the court decision to begin pre-bankruptcy proceedings, and 60 days from the date that the information about the court decision is published in official sources.

The whole duration of bankruptcy proceedings can't be predicted exactly.

The outcome can't be predicted exactly either. It depends on the debtor company's state at the moment the insolvency proceedings start.

Atradius Collections

34. Norway

Industries

Agriculture
Chemicals
Construction materials
Food
Machines
Minerals
Paper
Textiles
Transport

Chance of collecting

75%–100%

Source: Central Intelligence Agency World Factbook

34.1. Amicable collections

34.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to federal and state law.

34.1.2. Local agents

At present, we don't offer field service to visit debtors in Norway. However, if debtors wish to visit our premises, we'll gladly arrange face-to-face meetings to discuss the situations.

34.1.3. Interest

We always charge debtors for interest. It's calculated from the base rate set by the Norges Bank, plus 8% on a daily basis.

There are two alternatives:

- To calculate the interest rate as agreed between you and your debtor
- To calculate the interest rate according to the Norwegian regulations based on the rate fixed by the Norges Bank (plus 8% per year). This rate is fixed twice a year on 1 January and 1 July

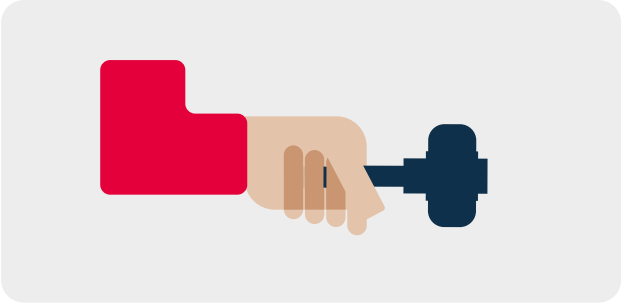
The second alternative will always occur if the interest rate isn't agreed to between you and your debtor.

From a cultural point of view, Norwegian debtors are used to paying late payment interest.

34.1.4. Debt collection costs

In Norway, debt collection costs are chargeable to debtors, representing the creditors' claims for late payment. All costs depend on the amounts of the outstanding debts.

34.2. Legal collections



34.2.1. General information

Entering into legal proceedings is only possible with a written notice to the debtor that must include:

- A 14-day notice period
- The name of you as the creditor
- The specifics of the debt (e.g. interest rate, date, amount)
- A warning that non-payment will lead to legal action and further costs

The debt needs to be proved to be enforceable. If the debt is undisputed, the bailiff will issue a payment order, which equals a judgment. If the debtor disputes the debt, the file is assigned to trial handling regardless of the reason or the seriousness of the dispute.

If a judgment is obtained and the debtor doesn't pay accordingly, the file will be handed over to the bailiff's court for execution.

34.2.2. Required documents

In order to apply legal proceedings, we need copies of the contracts, invoices, and a clear statement of account indicating the payments and credit notes that have been made for the outstanding invoices.

In the case of a regular lawsuit procedure, copies of the complete contractual documentation should be available, starting with the contracts, orders, confirmations, delivery notes, and invoices. Every part of the trading relationship must be provable by documentation.

In case of dispute, all the notes of the conversations between you and your debtor via letter and email that may assist our lawyers should be kept.

In the case of verbal negotiations, we need the visit reports and the names of the witnesses.

34.2.3. Lawsuits

A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the

debtor, or after the legal dunning procedure if the debtor has appealed.

A written pre-procedure is usually issued. Both the plaintiff and defendant must exchange opinions and proof by letter until the judge believes that all the relevant information needed to make a judgment has been received. In this case, a hearing is scheduled, during which both parties must be present. After the hearing, the judge sets a date to issue the final judgment, and both parties will be informed about the outcome in writing by the court.

34.2.4. Expected time frame

The average duration of legal proceedings is up to 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on all sides.

34.2.5. Costs and interest in the legal phase

All costs depend on the amount of the outstanding debt. There are different fees that can apply during legal proceedings, making it difficult to predict the total cost. In addition to this, costs of witnesses and/or experts might also arise. Cost estimations can be provided on a case-by-case basis should legal action become necessary.

Extrajudicial interest and costs can be claimed as part of the outstanding monies during legal proceedings. Normally, the losing party has to bear the costs of the legal proceedings if they go to trial.

In the case of a legal settlement, the parties normally bear their own costs of court and lawyers' fees.

34.3. Insolvency proceedings

34.3.1. General information

The aim of insolvency proceedings is to pay out all the creditors with the same percentages of their debts by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

There are three insolvency proceedings in Norway:

- Enforced dissolution
- Reorganisation
- Bankruptcy

34.3.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check whether sufficient assets are available to cover the costs of the proceedings (court costs and costs of liquidators). If these costs are deemed to be covered, then the insolvency proceedings start and a liquidator will be appointed (usually, this is the preliminary liquidator). Otherwise, the court will reject the declaration of bankruptcy due to insufficient assets.

The creditors can then lodge their claims and take back any goods delivered under retention of title clauses. For the goods in stock, the liquidator can choose either to pay the original prices to the creditors or to return the goods. After the proceedings start, lodging claims is possible within a given deadline. The liquidator can either accept a lodged debt or dispute it. If your claim is disputed, you may only file the claim in court to prove the justification of the claim when further documentation doesn't convince the liquidator to confirm the debt.

At the end of the proceedings, all the creditors with confirmed debts will receive dividends if there are enough assets in the estate. Often there are no dividends at all.

34.3.3. Required documents

In order to lodge a claim on your behalf in undisputed claims, we only need copies of the invoices.

34.3.4. Expected time frame and outcome

The expected time frame for insolvent estates in Norway is one to three years. Often insolvent estates are closed with no dividends at all.

Atradius Collections

35. Poland

Industries

Chemicals

Food

Machines

Minerals

Textiles

Transport

Chance of collecting

75%–100%

Source: Central Intelligence Agency World Factbook

35.1. Amicable collections

35.1.1. General information

Our collection process is a professional and meticulous process that involves a team of specialists who maintain strong relationships with debtors, ensuring compliance with federal and state law through both verbal and written communication.

In dispute cases, our goal is to find an amicable resolution by analysing all the contractual documents, including the signed contracts, orders, confirmations, invoices, delivery notes, and standard terms, with the help of our legal team and their agreement.

35.1.2. Local agents

We offer direct collection activities managed by a network of selected local agents who visit debtors all over Poland. They can visit debtors at their places of business and report back on their financial situations. The local agents' network can also help investigate and find untraceable debtors.

35.1.3. Interest

Interest is charged to debtors in both amicable and judicial phases, calculated at 9.5% or 7% or 5% depending on contract stipulations. Approval is required for collecting interest and an interest note may be requested. It's best practice to not add interest after full principal payments.

35.1.4. Debt collection costs

In Poland, a debt collection cost of EUR 40 can be added for invoices issued after 28 April 2013. For invoices issued after 1 January 2020, the collection cost is EUR 40 (for debts under PLN 5,000), EUR 70 (for debts between PLN 5,000 and PLN 50,000), and EUR 100 (for debts over PLN 50,000).

During legal proceedings, you may also ask for other costs relating to debt recovery (e.g. your debt collection company's invoices).

35.1.5. Prescription

In general, creditors and debt collectors give up their right to collect debts after three years from the due dates of the debts although the end of the limitation period falls on the last day of a calendar year, unless the limitation period is less than two years.

With regard to debts relating to sales agreements, the limitation period may be little more than two years (if the debts begin on 31 December) or almost three years (if the beginning dates were 1 January).

The Polish Civil Code outlines specific terms of statutes of limitations on debts, depending on the type of contract. Sales contracts have a two-year limitation period, while transport invoices have a one-year period. For periodic invoicing services, the limitation period is three years.

After statutes of limitations expire, the creditors can file against the debtors, but the debtors can request dismissal.

Prescriptive periods can be interrupted by legal proceedings or written acknowledgements of debt.

35.1.6. Payment methods

The most common payment method is bank transfers. We don't offer direct debiting from debtors' accounts.

35.1.7. Types of companies

Sole trader / sole proprietorship ("Jednoosobowa działalność gospodarcza")

- Unlimited liability of the owner with their business and private funds

Civil law partnership (SC ("Spółka cywilna"))

- No minimum capital
- Unlimited liability of the partners
- Usually non-commercial or small-business activities

General partnership (SP.J. ("Spółka jawna"))

- No minimum capital
- Unlimited liability of the partners

Limited partnership (SP.K ("Spółka komandytowa"))

- No minimum capital
- At least one partner has unlimited liability with their business and private funds
- The limited partners are only liable with the company's capital

Private unlimited company with share capital (S.K.A. ("Spółka komandytowo-akcyjna"))

- The minimum capital requirement is PLN 50,000
- At least one partner has unlimited liability with their business and private funds

Professional (service) partnership (SP.P. ("Spółka partnerska"))

- No minimum capital
- The partners are independent professionals, such as lawyers, doctors, or architects

Company with limited liability (SP. Z O.O. ("Spółka z ograniczoną odpowied- zialnością"))

- The minimum capital requirement is PLN 5,000
- The partners are only liable with the company's capital

Company on shares (S.A. ("Spółka akcyjna"))

- The minimum capital requirement is PLN 100,000, which is divided into shares
- Liability is limited to the company's capital

35.1.8. Sources of information

In Poland, credit-reporting agencies assess debtors' financial situations, including their real estate and enforceable assets. They combine this with phone contacts to get accurate impressions and advise on next steps.

Public registers, such as the municipal trade offices, are used to obtain information on debtors' legal forms. Private entrepreneurs and limited liability companies must register with the trade register in a competent court. The registration of address office can trace debtors with unknown addresses, and some debtors may not follow the procedure, making it difficult to trace them.

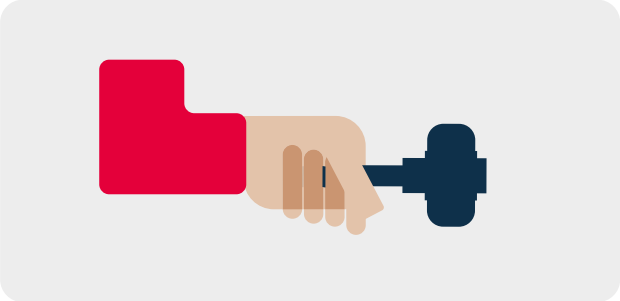
35.2. Retention of title

In Poland, retention of title clauses are used to protect instalment sale agreements and are only applicable to movable property. These clauses must be written and notarised with certified dates to prevent insolvency and prevent goods from becoming part of bankruptcy estates. However, they offer limited protection against third-party acquisition. Obtaining valid retention of title clauses is challenging due to the requirement for documents signed by a notary or public servant, which is impractical in daily sales transactions.

35.3. Safeguard measures

If your debtor can't settle your claim quickly, we can secure the debt for you by providing an acknowledgement of debt, which is authenticated by a notary and immediately enforceable if the payment terms aren't honoured. The debtor can also offer other security methods like mortgages or assignments of debt or assets, which require notary registration and must be drawn up.

35.4. Legal collections



35.4.1. General information

Before initiating legal action, a written request for payment should be sent to the debtor. The commercial courts review cases involving business activities. The debtor can opt out of this process by statement.

Simplified legal proceedings can be run by the e-court in Lublin.

Poland is a signatory of the European Council Regulation, allowing creditors to enforce the European Enforcement Order (EEO). We assist in obtaining EEO enforcement in the debtor's country.

35.4.2. Legal systems

The Polish legal system consists of private arbitration courts and public common courts, with an option to proceed electronically through the e-court.

If amicable collections isn't possible, a pre-judicial reminder is sent to the debtor, as proof of attempts at resolving dispute is required by the court.

Private arbitration courts

An arbitration court requires a contract with an arbitration clause, which is more expensive but quicker. After a judgment is issued, an enforcement clause must be applied for before execution can begin.

Public common courts

There are two types of proceedings that go before a common court:

Injunction proceedings ("postępowanie nakazowe")

According to the Code of Civil Procedure, creditors can file actions for writs of payment. Attached agreements, signed invoices, and proof of delivery from the post office can be used to issue a writ of payment without a court hearing.

The documents include the acknowledgements of debt, the invoices accepted by the debtor, and the proof of delivery

from the post office. The court can also grant a writ of payment with these documents.

The court usually issues a writ of payment within one to three months, unless the debtor objects. If objections are lodged, the case will proceed with an ordinary court procedure. This procedure is cheaper, as the court fee is 1.25% of the claim's value, and if objections are filed, the debtor must pay the remaining 3.75%.

Writ proceedings ("postępowanie upominawcze")
If you provide the invoices, proof of delivery or transport documents (CMR), debtor's address, statements of account, and an extract from the trade register, but no debt is recognised and the debtor hasn't signed the invoices, we can proceed with writ proceedings. The court can issue a writ of payment without a hearing after checking all the documents.

This procedure is more expensive (5% court fee), but the debtor doesn't have to pay if they object, and the case is transferred to a common court for an ordinary procedure.

35.4.3. Required documents

- The signed invoices with the proof of delivery for the sales transactions (not older than two years from the due dates). The documents confirming the delivery to the debtor must be provided by post, ensuring timely payment
- A confirmation of the debt signed by the debtor (if there is one)
- The contracts between the parties with the terms and conditions of the contracts signed by the parties
- The orders made by the debtor in writing
- The order confirmations by you
- The documents confirming the dispute
- The correspondence between the parties
- A signed power of attorney (always as an attachment). This needs to be signed by the individuals duly authorised to represent your company
- A current extract from the trade register of your company that states the individuals having the right to represent your company and sign the power of attorney
- The transport documents (CMR)

In Poland, legal action can be initiated with copies of the documents with lawyers signing them. The signatures in the power of attorney must match those in the trade register, as without this, the court can reject the legal action for formal reasons.

35.4.4. Legal dunning procedures

To obtain an enforceable judgment, a court order or verdict must be obtained first, followed by applying an enforcement clause. The debtor can object to the order. This transforms the dunning procedure into a standard lawsuit and requires a trial where a verdict is issued.

35.4.5. Mediation

In January 2016, a new law introduced an obligation in lawsuits to present whether the parties have attempted to settle the debt amicably before referring to court. If the attempts were unsuccessful, the plaintiff must present the reasons.

The obligation also clarifies that debt negotiations may be referred to as mediation processes.

The court has the authority to direct the parties to attend an information meeting for mediation, and may invite them to mediation at any stage of a lawsuit and multiple times during legal proceedings.

35.4.6. Lawsuits

A lawsuit procedure is started after the amicable collections fails due to dispute by the debtor or after the legal dunning procedure. A pre-procedure is issued, and both parties exchange opinions and evidence until the judge receives all the necessary information. A hearing is scheduled, with both parties present and the potential witnesses and experts heard. An in-court settlement may be signed during the hearing. After the hearing, the judge sets a date to issue the final judgment, and both parties are informed in writing unless they're present in the pronouncement.

35.4.7. Appeals

Appealing against a judgment is possible, which will trigger a second verdict by the court of second instance (local court to district court, district court to higher regional court).

35.4.8. Expected time frame

Legal dunning procedures typically last between two weeks and four months, while court procedures can last up to a year or more, depending on the complexity of the case and any objections from the debtor.

35.4.9. Costs and interest in the legal phase

Court fees for the creditors include proportional and flat-rate fees, depending on the action's object. Proportional fees are 5% for suits exceeding PLN 20,000, while flat-rate fees apply for claims of lower value, depending on the claims' value.

Court fees must be paid in advance and proof of the payment must be attached to the action's statements.

Lawyers' fees depend on the claim amount and the type of proceedings initiated (principal amount without interest).

35.5. Enforcement

35.5.1. Enforcement in debt

The bailiffs can seize the debtor's bank accounts and request claims against various entities, saving costs when being enforced as part of the judgment. They require specific information for the enforcement. Bailiffs' fees have been standardised to 10%, reducing costs and ensuring more efficient enforcement.

35.5.2. Enforcement in movable property

A standard procedure involves a bailiff visiting the debtor to seize movable property for the creditors' sale. This procedure is standard, excluding the goods essential for daily life or business activities. The bailiff may also seize non-material rights, such as patents or copyrights, for monetisation.

35.5.3. Enforcement in immovable property

A court order can enforce the debtor's claims by providing a record and force the attachment, sale, or sequestration of their property. However, the pandemic has hampered enforcement due to costly and time-consuming processes. Obtaining a copy of the record can be lengthy, and it may take time to sell or sequestrate the land and real estate.

35.5.4. Expected time frame

Enforcement in monies typically takes two to three months, while enforcement in movable property typically takes five to 10 months, depending on the case, court, banks, and potential buyers.

Real estate financing for farmers faces challenges due to changes in execution, causing difficulties in selling during auctions. The banking sector's restrictive approach to financing farmers has resulted in increased court costs for debtors.

35.6. Insolvency proceedings

35.6.1. General information

Restructuring law was partially extracted from insolvency law. It amended the insolvency law to include new institution of restructuring proceedings, removing them from bankruptcy proceedings.

The new regulations apply to legal entities, regulating recovery activities for companies losing liquidity. The main goal is to prevent insolvency and help entrepreneurs recover financial liquidity.

35.6.2. Proceedings

Apart from regular insolvency proceedings, which will remain to be regulated by the insolvency law, the new amended regulations introduce five new types of restructuring proceedings: proceedings for approval of an agreement ("postępowanie o zatwierdzenie układu"), accelerated arrangement proceedings ("przyspieszone postępowanie układowe"), arrangement proceedings ("postępowanie układowe"), remedial proceedings ("postępowanie sanacyjne"), and simplified restructuring proceedings.

Proceedings for approval of an arrangement ("postępowanie o zatwierdzenie układu")

The insolvent debtor undergoes the proceedings to establish an arrangement with the creditors, aiming for approval without the court's involvement. The court remains active until a final arrangement is made, with its role limited to approving the arrangement or not.

Accelerated arrangement proceedings ("przyspieszone postępowanie układowe")

The insolvent debtor is involved in accelerated proceedings, where the court examines the application for an arrangement within a week. The arrangement is then voted on by the creditors, and if it's approved, the proceedings

close. The court examines the application in a closed session, ensuring the debtor's financial stability.

Arrangement proceedings ("postępowanie układowe")
The proceedings, unlike accelerated arrangement proceedings, may require a court hearing, resulting in a longer examination period of two to six weeks, indicating the potential necessity of such a schedule.

Remedial proceedings ("postępowanie sanacyjne")
The proceedings involve extensive restructuring activities aimed at improving the financial situation of the insolvent debtor, ensuring a smoother transition.

The new regulations in Poland introduce a public insolvency register, simplifying the process of obtaining public funds for bankrupt companies. This change is aimed at addressing the low percentage of companies that successfully recover and rejoin the market after declaring insolvency, thereby enhancing the efficiency of insolvency proceedings and facilitating successful market recovery.

Insolvency or risk of insolvency can be addressed through restructuring proceedings, which is governed by the restructuring law. A restructuring court or a district commercial court recognises the cases involving the insolvent debtor and ensures that their rights are protected.

The debtor's inventory outlines the liabilities they owe to their creditors, outlining the amounts that the creditors can claim from the debtor.

Simplified restructuring proceedings
The Polish legal system introduced the Anti-Crisis Shield 4.0 Act, allowing debtors to initiate simplified restructuring proceedings individually. The debtor is then notified by the Court and Commercial Gazette ("Monitor Sądowy i Gospodarczy"), giving them four months to finalise an arrangement with the creditors and submit a motion for the court's approval.

These proceedings are entirely out of court and can only be initiated once.

The debtor's existing enforcement proceedings are suspended, preventing the initiation of new ones.

35.6.3. Required documents

In order to lodge a claim, we need:

- An original power of attorney
- Copies of the invoices
- Copies of the contracts
- Copies of the orders, confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim
- An extract from the trade register of your company

35.6.4. Expected time frame

Restructuring proceedings were designed to be efficient, aiming for new institution to last no longer than 12 months as deadlines are rarely met.

Insolvency proceedings can take up to five years.

35.6.5. Limited companies

Limited companies are required to file for restructuring or insolvency proceedings if they can't meet their creditors' obligations for more than three months or if their liabilities exceed their assets for more than 24 months.

The debtor can file an appropriate application for restructuring proceedings even if they aren't yet required by the circumstances, which are likely to occur in the near future.

35.6.6. Rescission

The liquidator can dispute the payments made by the debtor generally within one year prior to their declaration of bankruptcy.

35.7. Arbitration and mediation

If you and your debtor agree to an alternative dispute solution, there are two options available: arbitration and mediation or conciliation.
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Atradius Collections

36. Portugal

Industries

Agriculture
Chemicals
Construction materials
Electronics
Financial services
Machines
Minerals
Paper
Services
Textiles
Transport

Source: Central Intelligence Agency World Factbook

Chance of collecting

50%–75%

36.1. Amicable collections

36.1.1. General information

If we've tried all amicable recovery actions (e.g. sending letters by mail to debtors along with making phone calls and sending emails) and it is still not possible to collect the debts within 30 to 48 days, we'll analyse whether it would be viable to file lawsuits. In that event, the cases will be sent to lawyers.

36.1.2. Local agents

At the present time, we use our external lawyers' service to visit debtors in Portugal. The lawyers' fees depend on the recovered amounts, with a percentage fixed by the contracts applied. We always need prior approval from you to entrust your cases to the lawyers.

36.1.3. Interest

For amicable recovery, it's difficult to collect costs and interest from debtors. Should these costs be established in your general conditions of sale, we'll have a better chance of claiming them.

In the amicable phase, we can conclude agreements with or without interest, depending on the payment plans in place. In legal proceedings, there is always interest to claim. The interest rate in 2024 is set at 12.5%.

36.1.4. Debt collection costs

Regarding the cost that you can charge your debtor, it's an indemnity no lower than EUR 25 for internal administrative collection costs regardless of the right to prove other reasonable costs.

36.1.5. Prescription

According to Portuguese law, there are two prescriptive periods regarding the invoices covering the supply of goods.

- An ordinary delay, which is 20 years (article 309 of the Civil Code)
- A delay of two years, which only applies to traders' credit resulting from goods sold to non-traders (article 317 of the Civil Code)

36.1.6. Payment methods

The main payment method is bank transfers to our bank account or your bank account. A less used method is cheques addressed to us or you.

36.1.7. Types of companies

ENI or "Empresário em Nome Individual"
A single person who can carry out activities.

"Estabelecimento Individual de Responsabilidade Limitada"
A single person. The minimum share capital of the establishment is EUR 5,000. The entity is constituted by the name of the person, with or without the addition of a reference to the object, and will always include the addition "Est. Ind. Resp. Limitada" or the acronym E.I.R.L.

"Sociedade em Nome Coletivo"
It's made up of at least two partners. There is no minimum value of the share capital and it's represented by shares.

"Sociedade Civil"
It consists of two or more people who undertake to contribute goods or services to the common exercise of a certain economic activity, other than mere enjoyment, in order to share the profits resulting from this activity. The firm must have the name or names of the partners, followed by the addition "E Associates"; or by an acronym, which is made up or composed and added by expressions that make the corporate purpose and the word "Society" known.

"Sociedade por Quotas"
At least two partners. The minimum share capital is EUR 5,000. It's represented by quotas and the minimum value of each share is EUR 100. The amount of each quota and the identification of the respective holder must be detailed.

"Sociedade Unipessoal por Quotas/Ações"
A single natural or legal person, who is the holder of the entire capital Social. The minimum share capital is EUR 5,000 and is represented by shares. The firm must be formed by the expressions "unipersonal company" or "unipersonal" before the word "Lda".

"Sociedade Anónima"
It's made up of at least five partners. Except for companies in which the state holds the majority of the capital, they can be formed with just two partners. The minimum share capital is EUR 50,000.

"Cooperativa"
Its composition, as a general rule, can't be fewer than five members. Besides the first degree and two members in

higher-grade cooperatives, the complementary legislation relating to each branch may require, as a minimum, a higher number of members. The share capital, as a general rule, can't be less than EUR 2,500 (each branch has complementary legislation, so the value may also be different) and is carried out by title.

"Empresa Pública"
This includes public companies and affiliated companies. Public companies are governed by private law.

"Empresas Municipais, Intermunicipais e Regionais"
Municipalities, associations of municipalities, and administrative regions can create companies with their own capital: municipal, intermunicipal, or regional. The names of these companies must be accompanied by an indication of their nature municipal, intermunicipal, or regional: EM, EIM or ER.

36.1.8. Sources of information

In Portugal, we have access to the database of Atradius Crédito y Caución (ACYC), the credit insurance company of the Atradius group, and that of our business information partner, IBERINFORM. They include financial reports and risk evaluations of Spanish and Portuguese companies. Using the information from these reports, together with our own information (e.g. credit reports), we can get accurate views of debtors' financial situations and advise you on the next steps of the process. The information contained in these reports includes the official accounts in recent years (P&L) that companies have to present annually, including sales volume, income and the like.

After checking all the information, we advise you on the next steps and write a final report with a summary of all our efforts. At this moment, if the traced debtors have solvent companies, assets, and are still open and trading, we'll study the viability of legal action as a last resort.

36.2. Retention of title

According to the Portuguese Civil Code (article 409 – "Reserva de Propriedade"), it's possible to reserve the legal ownership of the goods for the seller if the ownership is associated with a particular service or goods – usually the full payment of the goods in question – by incorporating in the contract a retention of title clause.

To be valid, such a clause has to be in writing and expressly accepted by the debtor. If the debtor hasn't definitively accepted it, the clause may be disputed by the debtor, even at the legal level.

However, if the contract's purpose is something subject to registration (e.g. land or real estate), the retention of title clause will also have to be registered to be effectively enforceable against third parties.

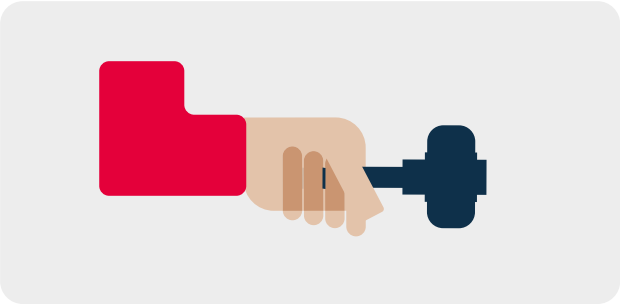
Legally, the seller, having sold goods with a retention of title clause, is protected against legal measures that may come to affect them. Such is the case in executive or insolvency proceedings.

36.3. Safeguard measures

Within the scope of negotiation, we'll always try to obtain private documents signed by the debtors recognising their debts. The documents can be signed by a notary, but normally, this isn't done due to high costs for both parties – though this could be carried out in cases of high debt amounts or at your request. The main advantage of documents signed by debtors is that they can be used in future legal claims as proof.

Debtors can also offer other forms of security, such as mortgages, assignments of debt, or bank guarantees.

36.4. Legal collections



36.4.1. General information

Through our lawyers' network, we can conclude whether it's advisable or not to start legal proceedings. It'll be evaluated whether the costs are effective given the amount of the debt, compared to the amount of costs and time. We'll assess the debtor's solvency and activities. If the debtor isn't trading and has no assets, it isn't recommended to proceed to legal action.

36.4.2. Required documents

In order to apply legal proceedings, we need:

- A power of attorney
- Copies of the invoices
- The transport documents (CMR) or any other documents that prove the merchandise or service delivery to the debtor
- The original cheques or bills of exchange issued by the debtor
- Any documents signed by the debtor, in which the debtor acknowledges the debt
- Any other documentation shared between the parties

36.4.3. Lawsuits

Once it's decided to start legal proceedings, we'll determine what kind of legal proceedings it should be to claim the debt adequately.

There are two types:

- Simple claim ("Injunção"): This kind of legal proceedings is used for undisputed debts, as it's quicker and less expensive. "Injunções" are for claims up to a maximum of EUR 15,000
- Claim ("Acção Declarativa"): We use this kind of legal proceedings when we expect strong opposition from the debtor, and, if the court issues a favourable judgment, we can execute with collection costs

In order to begin legal action, a draft of a power of attorney will be prepared to be signed by you. A notary's involvement isn't required in Portugal, but the document needs to be signed by you and printed on headed paper.

36.4.4. Appeals

If a party disagrees with a judgment, they have the right to lodge an appeal with an immediate superior court.

The most common appeal in Portugal is "Recurso de Apelação" (676 Code of Civil Procedure), which must be lodged within 10 days from the notification of the original judgment.

36.4.5. Expected time frame

The average duration of legal proceedings depends on the kind of procedure and whether the case is in the first instance or second instance.

"Injunção" proceedings take about three months.

"Acção Declarativa" proceedings can take more than a year to obtain a court judgment.

36.4.6. Costs and interest in the legal phase

The costs of a civil law procedure (court costs) are determined by the court and aren't subject to any negotiation.

All costs depend on the outstanding principal amount and are calculated based on percentages. There is a range of different fees that can apply during the proceedings, depending on the outstanding amount and other ranges of fees for each action. This makes it difficult to predict the total cost. Costs of witnesses and experts may also arise, especially when there is a dispute. Cost estimations can be provided on a case-by-case basis should legal action become necessary.

In legal proceedings, interest will always be claimed.

36.5. Insolvency proceedings

36.5.1. General information

Whoever has credit against the debtor (including their own debtors), may file for their insolvency, provided that the debtor is in a situation that doesn't allow them to pay their overdue obligations (relevant proof needs to be provided afterwards). To prove credit against the debtor, the applicant may provide defaulted invoices, unpaid bills of exchange or cheques.

The aim of insolvency proceedings is to pay out all the creditors with the same percentages of their debts' value by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

36.5.2. Proceedings

Once the debtor has applied for insolvency and we know the insolvency proceedings' data, we usually prepare a draft of a writ that you must complete, sign, and send to the practitioner or the court. We send this writ by mail to you with instructions on how to lodge your credit. In the event that you want us to lodge your credit, a specific power will have to be issued to enable us to act on your behalf in the insolvency proceedings.

In Portugal, there are 30 days after the official publication in the official gazette to lodge credit. It'll be included in a general list of the creditors in a time frame established by law. Once the practitioner receives all the claimed credit, they must present a payment plan that should establish a renegotiation of the principal amounts with the unsecured creditors, the period over which payments will be made, the support requests from the unsecured creditors, among other matters.

After that, a creditors' meeting will deliberate on keeping the debtor company in business, suspending the liquidation, keeping the debtor company's present

management in office, and demanding the debtor to put forward an insolvency plan.

Proceedings take a long time, and normally, creditors don't get paid from this kind of proceedings (it could be 40% for approximately seven to eight years). Of course, the proposal offered to the creditors won't start to be paid until two years after the termination of the legal proceedings. That means the total time span could be 10 years.

"Processo de Revitalização" (PER)
PER is a special refinancing process to help companies with financial problems.

After its official publication by the court, the creditors will have 20 days to communicate their credit.

A two-month (extendable to three) period will be open for the parties to negotiate an agreement to help the debtor company's financial restructuring. During this period, all the other processes (lawsuits or insolvency requests) will be paralysed. They'll be activated again when the PER ends.

The negotiation can conclude with or without approval of a recovery plan. The process can also end because the debtor isn't able to reach an agreement, or because the three months of negotiation exceed without an agreement. In the last two situations, the closure of the PER will imply the debtor's insolvency declaration within three days after the communication of the end of the negotiation.

36.5.3. Required documents

In order to lodge a claim on your behalf, we need:

- A power of attorney
- Copies of the invoices
- An updated statement of account of the debt
- Any documents signed by the debtor, in which the debtor acknowledges the debt

36.5.4. Expected time frame

The deadline for lodging claims after the publication in the official gazette is one month.

The whole duration of insolvency proceedings is between two and 10 years.

Atradius Collections

37. Romania

Industries

Chemicals

Construction materials

Electronics

Food

Machines

Minerals

Textiles

Transport

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

37.1. Amicable collections

37.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to federal and state law.

37.1.2. Local agents

We can employ local agents to make visits to debtors in all areas of Romania, primarily to assess their business operations and locations. Our local agents can also negotiate during meetings with debtors, assess their solvency, conduct financial investigations, and obtain credit reports. Our agents are based in our Bucharest office and, if necessary, will make personal visits at your request.

37.1.3. Interest

According to Romanian law, the rate for international contracts is 6%. If a contract has been drawn up between you and your debtor, we can charge the interest that is stated in the contract.

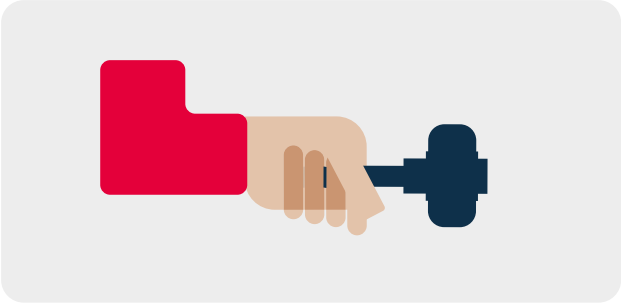
37.1.4. Debt collection costs

In Romania, the chances of receiving collection costs are very low.

37.2. Retention of title

Romanian law provides retention of title (ROT) clauses as a possible security tool. In order for you to exercise an ROT clause, it must be provided in the contract and registered with the electronic archive for movable property. The procedure is usually done by authorised agents in Romania and can be done by our agents upon receipt of a proper power of attorney.

37.3. Legal collections



37.3.1. General information

We apply simplified proceedings if the debt is acknowledged by the debtor through signed and stamped invoices and contracts. A normal court procedure starts after we've implemented a conciliation procedure. It requires more time and incurs higher costs.

There are two or three jurisdictional levels, depending on the value of the debt and the contesting procedures. All parties can appeal once or twice, requiring one judge in the court of first instance and two or three judges in the case of appeal.

37.3.2. Required documents

We require the original versions or certified copies of all the documents that must be, in special cases, authorised by a notary

The documents include:

- A legal consulting agreement – it can be signed electronically
- Copies of the invoices
- Copies of the contracts
- Copies of the orders, confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim

37.3.3. Legal dunning procedures

A legal dunning procedure is only required by law in a payment injunction procedure before filing the application. It's used as the last approach before starting the procedure.

37.3.4. Lawsuits

These are used for urgent procedures and have lower costs.

The debt must be acknowledged by the debtor through signed and stamped invoices and contracts. A normal procedure begins after we've started a conciliation procedure, and it takes more time and incurs higher costs.

In 2012, the Civil Procedure Code was changed to allow the simplification and shortening of legal proceedings.

37.3.5. Appeals

The losing party can appeal the entire decision or part of it and will have to pay half of the court of first instance's fees. The appeal is then made in the next level court.

37.3.6. Expected time frame

Most cases last between one and a few months, depending on their locations.

Common law procedures last several months.

A payment injunction lasts from 45 days to 60 days.

Insolvency proceedings take anywhere from one to four years.

A preventive concordat procedure will take 18 months.

37.3.7. Costs and interest in the legal phase

The initial legal collection fee, as well as court, translation, and transport fees are included in the court suit. The court fees are usually adjudged. The possibility of recovering lawyers' fees and translation costs is very low. The majority of courts reject such requests.

In the case that interest is mentioned in the contracts or is acknowledged by the debtor, it'll be enforced. Otherwise, the legal interest rate of 6% per annum will apply. We always ask for legal costs to be added to the debtors' costs.

37.4. Enforcement

An enforcement bailiff costs from EUR 200 to EUR 1,000. If the debtor doesn't pay voluntarily after receiving the judgment from the court, our lawyers will have to file for new legal proceedings. Forced execution or enforcement proceedings are needed to search the debtor's assets or bank accounts. They're only performed by a legal executor, who can be an individual person or a specialised office.

37.4.1. Enforcement in movable property and immovable property

This can be done after the bailiff's evaluation with the help of a local expert.

37.4.2. Expected time frame

Most proceedings last for a few months, depending on the assets.

37.5. Insolvency proceedings

37.5.1. General information

Insolvency proceedings are initiated at the request of either the debtor or the creditors. A judicial administrator is appointed to control the debtor's activities. The administrator is guided by the judge.

37.5.2. Proceedings

A creditor can ask for insolvency proceedings to start, or they can lodge a claim with already opened insolvency proceedings.

The insolvency proceedings will be closely monitored by our lawyers and may require that you be present at the hearings and creditors' meetings.

37.5.3. Required documents

We require the original versions or certified copies of the documents as in legal proceedings.

37.5.4. Expected time frame

Insolvency proceedings usually last about three years. If the debtor's debts are reorganised, then payments can be made to the creditors. If the debtor becomes bankrupt, then their assets are sold and the creditors are paid from the proceeds.

37.5.5. Limited companies

They are subject to reorganisation or liquidation.

37.5.6. Rescission

Only the transfers of the debts made with the intention of defrauding the creditors within three years before the insolvency can be cancelled.

37.6. Arbitration and mediation

This process is becoming more popular and must be done through a lawyer or mediator. Arbitration is usually heard by the Court of International Commercial Arbitration under the Chamber of Commerce and Industry of Romania. The Mediation Council was created in 2007, and mediators are authorised to work, but it's still in its early stages in Romania. Arbitration court procedures are quite expensive.

Atradius Collections

38. Saudi Arabia

Industries

- Chemicals
- Construction
- Construction materials
- Machines
- Minerals

Chance of collecting

up to 50% ✔

Source: Central Intelligence Agency World Factbook

38.1. Amicable collections

38.1.1. General information

Saudi Arabia is one of the most challenging countries in the world to do collections. Constant follow-ups and reliance on personal relationships are required to manage debt collections; harassment will stop the communication and reduce the chances of collecting.

We follow a collection process that is professional at all times with the objective of retaining the relationships between you and your debtors whenever possible. Our team of collection specialists carry out the collection process in-house. We relentlessly pursue debtors verbally and in writing within the bounds of federal and state law.

38.1.2. Local agents

We offer field service to visit debtors located in Jeddah, Riyadh, or any other cities in Saudi Arabia.

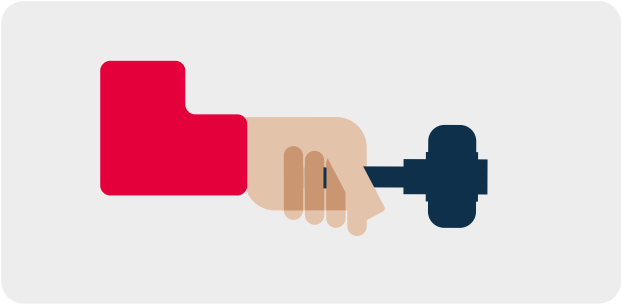
38.1.3. Interest

From a cultural point of view, Saudi Arabian debtors are not used to paying late payment interest. Under traditional Islamic law (Shariah), late payment interest clauses make contracts void or invalid on account of the fact that Islam regards interest as a form of excessive remuneration (usury).

38.1.4. Debt collection costs

From a cultural point of view, Saudi Arabian debtors are not used to paying collection costs. Under traditional Islamic law (Shariah), collection costs clauses make contracts void or invalid on account of the fact that Islam regards collection costs as a form of excessive remuneration (usury).

38.2. Legal collections



38.2.1. General information

Entering into legal proceedings isn't possible without a prior warning to the debtor sent via public notary. The courts may try to mediate between you and your debtor, or even allow both parties to conciliate each other.

A court order may take up to one year to be issued in the first instance, and you may have to wait up to three years in order to have a final and irrevocable judgment.

38.2.2. Required documents

In order to file a claim against the debtor, we need:

- A notarised power of attorney, signed, stamped, and legalised up to the Saudi Arabian embassy
- Copies of the contracts
- Copies of the invoices
- A clear statement of account (signed and stamped) indicating the payments and credit notes that have been made regarding the outstanding invoices

We also need the orders, order confirmations, delivery notes, invoices and the like. Basically, every part of your trading relationship should be provable by documentation. Also note that the court could request the originals of all the copies. We would also like to receive all the emails exchanged between you and your debtor, as this would facilitate the tasks of our lawyers, who may find many relevant and enforceable statements therein.

38.2.3. Legal enforcement procedures

The collections of trading instruments (e.g. cheques, promissory notes, and enforcing judgments) can be performed through the enforcement court. Unlike regular courts, the enforcement court doesn't set hearing dates. The judge directly issues an order against the debtor that requests payment within 21 days from the date of the filing of the case, and a summons is either sent by post or published in a daily newspaper.

The enforcement court is very aggressive, and the absence or refusal to pay by the debtor could result in one or more of the following:

1. The seizure of the debtor's commercial registration certificate, halting the business operations of the debtor
2. The issuance of an arrest warrant against the debtor and the general managers of the debtor company
3. The freezing of the debtor's bank accounts
4. Travel bans on the debtor
5. A notification to the labour office to stop its services for the debtor company
6. The impounding of the movable and immovable property of the debtor
7. An order to liquidate the debtor company to recover the claim amount

38.2.4. Lawsuits

A regular lawsuit procedure commences directly either after the debtor has refused to pay, or after they have received a legal notice via public notary. Depending on the case, a summons can be served on the debtor by a lawyer, police, or court within five days from the date the case is filed. Each hearing is usually scheduled from four to six weeks after that, but delays will invariably occur. Either party can appeal the judgment within 30 days from the date the judgment is issued.

38.2.5. Expected time frame

The average duration of legal enforcement procedures is between eight and 12 weeks, whereas a court procedure for first instance can take up to 12 months or longer, depending on the complexity of the case as well as the availability of the judges and lawyers on all sides. Sometimes, a final irrevocable court order can take up to 36 months.

38.2.6. Costs and interest in the legal phase

All costs depend on the amount of the outstanding principal and are calculated according to pre-established rates. There are different fees that can apply during the proceedings, so there is not only a range regarding the outstanding amount but also a range regarding the possible fees for each action. This makes it difficult to predict the total cost. In addition, costs of witnesses and/or experts might also arise. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

The local Saudi Arabian courts may use their discretion to charge the losing party in order to compensate for the costs incurred by the losing party. The amount is based on the total amount of the claim. Interest rates will not be charged by the local courts in any case whatsoever as this would be against the Shariah Islamic law.

38.3. Insolvency proceedings

38.3.1. General information

The aim of insolvency proceedings is to pay out all the creditors with the same quotas by liquidating the assets of the debtor company.

38.3.2. Proceedings

The sophisticated bankruptcy law No. M/05 dated 28/05/1439H (corresponding to 13/02/2018G) became effective from June 2018.

Liquidation can be initiated at the request of the debtor themselves, the creditors, or any other competent government authorities, provided that the debtor must be going through actual financial distress or bankruptcy.

The creditors' debts will be subject to certain conditions in order to be accepted by the court as follows:

- The debt must be due with certain value, causes, and warranties (if any)
- The debt's value or the total of the creditors' debts must not be less than the value determined by the committee, which is an independent administrative and financial legal body that oversees all bankruptcy matters
- The debt must be due based on an enforcement note or any other note, provided that the creditor can prove that they have requested the debtor to fulfil the amount within 28 days prior to submitting the liquidation request to the relevant court

The relevant court will have the right to impose any preventative procedures at their discretion or at the request of any concerned party. Moreover, a bankruptcy licenced trustee will be appointed to carry out the liquidation procedures. The debtor of the entity in liquidation will be prohibited from managing their business operations upon the commencement of the liquidation.

38.3.3. Required documents

In order to lodge a claim on your behalf, we need:

- A notarised power of attorney, signed, stamped, and legalised up to the Saudi Arabian embassy
- Copies of the invoices
- Copies of the contracts
- Copies of the orders, order confirmations, and delivery notes
- Copies of the general conditions of sale, if there are any
- Copies of any other correspondence that may verify the claim

38.3.4. Expected time frame and outcome

After the proceedings start, lodging claims is possible within a given deadline. The liquidator can either accept a lodged debt or dispute it. If your claim is disputed, you may only file the claim in court to prove the justification of the claim when further documentation doesn't convince the liquidator to confirm the debt.

At the end of the proceedings, all the creditors with confirmed debts will receive dividends if enough assets are in the estate. Often insolvent estates are closed with very small or no dividends at all.

Atradius Collections

39. Serbia

Industries

Chemicals

Food

Machines

Minerals

Textiles

Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

39.1. Amicable collections

39.1.1. General information

As professionals in collections, we're in a position to provide first-class services, special treatment, and analyses of each debt collection case in order to successfully recover overdue debts.

Our activities are based on checking debtors and taking appropriate action with regard to their existing financial situations and ability to pay.

Our debt collection activities consist of:

- Checking debtors' circumstances (e.g. blockades of bank accounts, ongoing insolvency or liquidation proceedings, or recently changes in shareholders)
- Delivering written reminders (by post or email)
- Making telephone calls
- Making personal visits and arranging meetings

It's widely known that, with regard to late payment, the efficiency of debt collections depends on timely and appropriate actions. The longer you wait before deciding to act, the lower the chance that the debts will be recovered.

39.1.2. Interest

Generally, the Serbian business culture is to not pay interest, so it's difficult to obtain the payment using amicable processes. In our experience, we can say that despite the fact that creditors have the right to demand interest, insisting on it is usually not accepted by debtors as normal, reasonable, and fair business interest of their creditors (especially in cases of long-term cooperation).

In practice, in situations where the debtors agree to pay the interest, the creditors need to provide written calculations of the interest to the debtors.

The reference interest rate is 6.5% on an annual basis, according to the decision of the National Bank of Serbia.

The default interest rate applied to a debt amount denominated in euros will be an annual rate and equal the key interest rate of the European Central Bank for main refinancing operations plus eight percentage points.

The interest rates are:

- 14.5% as of 14 July 2023 for claims in RSD
- 12.5% as of 20 September 2023 for claims in EUR
- 9.5% as of 22 March 2024 for claims in CHF

39.1.3. Debt collection costs

The potential for requesting payment of debt collection costs varies from case to case. We, as an agency, may request (on behalf of our client - the creditor) the debt collection costs (from the debtor) by written reminder, but usually we collect only the principal claim amounts. There are some cases where the costs are collected, but the number of such cases is very low.

Warning the debtor that we'll require debt collection costs (aside from the principal debt) is more common as a manner of exerting (additional) pressure.

From a legal point of view, it would be very difficult to collect debt collection costs (in terms of commission of a debt collection agency) through a court procedure.

When a client insists on receiving payment of such costs, we're asked by the debtor to provide a calculation or document regarding the issue by the client.

39.1.4. Prescription

Unenforceability due to a statute of limitations will begin to apply on the first day following the day the creditor was entitled to request the fulfilment of the obligation.

Mutual contractual claims of legal persons (corporate bodies) within the sphere of sale of goods and services, as well as claims relating to the reimbursement of expenses made in connection with such contracts, will expire due to the statute of limitations after a three-year period.

Claims that are subject to the Convention on the Limitation Period in the International Sale of Goods become prescribed within four years. Serbia is a member of this convention.

All claims determined by a final court decision or by settlement in court or any other competent body, will expire after a 10-year period.

Prescriptive periods can be interrupted if the creditor starts legal proceedings or receives a written acknowledgement of debt or if part payments are made by the debtor.

The court won't consider the fact of an obligation being

time-barred should the debtor fail to invoke it. So, even after the expiration of a statute of limitations, the creditor can still take legal action against the debtor.

39.1.5. Payment methods

The most common payment method is bank transfers. The SWIFT system of payment is dominant between the parties from different states.

39.2. Retention of title

Retention of title clauses are applicable to movable property only. Sellers retain the ownership of the goods delivered to the buyers until the full purchase prices have been paid.

39.3. Safeguard measures

In case that the debtor isn't able to settle the claim (especially a high-value claim) in a speedy manner, we can request them to sign a repayment agreement, which will include the provision of some security (e.g. pledge or mortgages). This can be done amicably and cost-effectively by creating the contract in a special form, which is authenticated by a notary and immediately enforceable in case the agreed payment terms aren't honoured.

39.4. Legal collections

39.4.1. General information

Like the legal systems of most European countries, the Serbian legal system belongs to the European continental law tradition or the civil law tradition.

We can say that there are four main court procedures that can lead to the collections of claims. These are:

- Enforcement proceedings
- Litigation
- Insolvency proceedings
- Arbitration proceedings (if both parties agree to this)

Enforcement proceedings are the only one that can enable the creditor to collect their claim in a compulsory manner. On the other hand, litigation and arbitration proceedings are aimed at resolving disputes.

Generally, entering into legal proceedings is possible without a prior warning to the debtor, but we always recommend sending a prior warning letter (it could be an attorney's warning letter) accompanied by documents. These are the legal grounds for the claim. This is a kind of final reminder and the last chance to find an out-of-court solution. This letter can be used to prove that all the pre-court efforts are fruitless.

39.4.2. Required documents

Here is a list of the necessary documents for legal action.

- The contracts signed by the parties with all the appendices
- All the unpaid invoices, accompanied by the proof of delivery to the debtor
- A statement of account
- The transport/shipping documents with the debtor's signature proving the goods' receipt and customs declarations
- The correspondence and other documents relating to the debt
- A power of attorney (POA) signed by a registered representative of the creditor and sealed with an official company seal. If the creditor is a foreign company, then the signature for the POA must be certified by a public notary, and in some situations, it would be necessary to obtain an apostille seal as well

All the documents have to be provided as copies assured by a notary, or as original documents because it's necessary to translate all the papers into Serbian. The original documents have to also be shown to the court in case the debtor denies the validity of the documents in any way.

39.4.3. Enforcement proceedings

Courts and public enforcement officers conduct compulsory collections of creditors' claims based on executive titles (e.g. judgments) and credible documents (e.g. invoices and bills of exchange), as well as a procedure for putting liens on the claims.

Non-resident bank accounts

In accordance with Serbian legal regulations and before starting enforcement proceedings, a foreign creditor needs to first obtain a non-residential tax number and open a bank account in Serbia ("non-resident account").

All the funds that would be collected through enforcement proceedings will be transferred to the foreign creditor's non-resident account (in dinars).

After providing the Serbian bank (where they opened their account) with a certificate issued by the tax authority confirming there are no tax obligations in Serbia, the creditor will be able to make money transfers to their bank account in the state of theirs.

The procedure for opening a non-resident bank account requires:

- A lot of documents (e.g. an excerpt from the official register of companies, the articles of association, and the passports of the general manager and shareholders)
- Costs that depend on the bank. The bank's fee could be between EUR 800 and EUR 2,000. In addition, the creditor needs to bear the costs of translation and attorney's fees in order to be represented in these processes

Motions for enforcement
Enforcement proceedings and security interest proceedings are initiated by a creditor filing a motion for enforcement (based on enforceable or credible documents) or a motion for security interest with the court.

The court decides on the motion for enforcement and enforcement proceedings are started upon the adoption of a writ of execution.

If the motion for enforcement (accompanied by the necessary documents) is properly prepared and submitted, the court renders a writ of execution within eight days.

When we talk about enforcement proceedings initiated by a motion for enforcement based on credible documents (e.g. invoices), the debtor has the right to file an objection against the writ of execution. If the court would accept the objection, further procedures will be commenced, such as litigation. Otherwise, the writ of execution becomes final and the enforcement proceedings will be continued.

Instruments and subjects of enforcement
Compulsory collections will be conducted by public enforcement officers.

The subjects of enforcement are the objects and rights of the debtor against which the enforcement is carried out. The subjects of enforcement may not be objects that can't be legally traded.

The most common instruments of enforcement for collecting monetary claims are: transfers of the monetary funds from the debtor's bank accounts, and sale of the debtor's immovable and movable property.

Expected time frame
The average duration of an execution procedure before a court depends on the debtor's reaction - whether they would file an objection or appeal or not. If the debtor would miss filing an objection, the procedure before the court will take up to 30 days. If the debtor would file an objection and until the moment when the court issues a decision on that, the whole procedure could usually take two months.

The duration of compulsory collections conducted by public enforcement officers depends on several factors, especially the subjects and instruments of enforcement. So it could take a few days (if the debtor has enough money on their accounts), several months, or even one year.

39.4.4. Litigation

Before the creditor decides to file a lawsuit, it's extremely important to check whether the parties agreed to the jurisdiction of any court or arbitration (especially when we talk about the claims of foreign clients against Serbian debtors).

Lawsuits
The creditor initiates litigation by filing a lawsuit, but the creditor's claim could also be the subject of litigation in case the court would accept the debtor's objection against the writ of execution in previously started enforcement proceedings.

Whether a lawsuit in a commercial legal case would be served on the debtor (the respondent) for an answer (the response) depends on the value of the claim. Upon receipt of the lawsuit, the debtor has the right to give a response to the claim and further procedures commence, such as hearings and submissions.

Court settlements
The parties can reach a court settlement before the court during the entire procedure until its final conclusion. A final court settlement can only be challenged by a lawsuit.

The parties may lodge appeals against the first instance judgment as a regular legal remedy, but also in some situations, the parties have the right to pursue extraordinary legal remedies.

Expected time frame
Depending on the complexity of the case and the reaction of the debtor, the first instance procedure can last between a

few months and up to 16 months. The bigger problem is the appeal procedure. If one or both parties lodge appeals, such a procedure (until the moment of issuing the second instance decision) could take from four to eight months.

39.4.5. Costs and interest in the legal phase

The rule is that each party bears the costs caused by its own actions. The party that loses the litigation in its entirety will bear the costs of the other party.

The costs of an execution procedure and civil law procedure (e.g. court stamp duty, public enforcement officers' fees and costs, and attorney's fees and costs) are determined by the provisions of the law and public enforcement officers' tariffs and aren't subject to any negotiation.

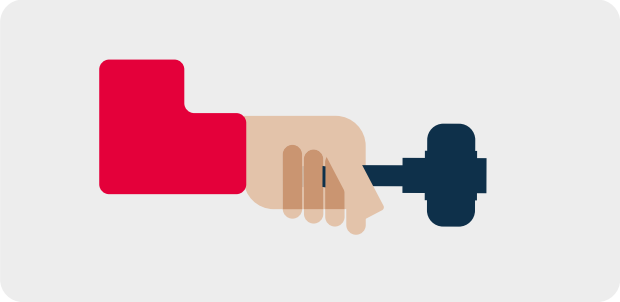
All costs depend on the outstanding amount. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

Litigation costs are expenses incurred during or on the occasion of the proceedings. Litigation costs include remuneration for the work of the lawyers and other persons whose right to remuneration is recognised by the law.

The legal or arranged interest and costs can be claimed as part of the outstanding amount during legal proceedings.

Generally, in case the final judgment or writ of execution is issued in the creditor's favour, the creditor will have the right to the principal amount, accrued interest, and most of the costs of the procedure.

39.5. Insolvency proceedings



39.5.1. General information

There are two types of bankruptcy proceedings: (compulsory) liquidation and reorganisation.

Liquidation means the creditors settle for the value of the entire assets of the debtor, or the sale of the debtor as a legal entity.

Reorganisation means the creditors settle for a plan of reorganisation by redefining the relationships between the debtor and creditors or in another manner provided for in the plan.

Grounds for bankruptcy

Bankruptcy proceedings will be initiated when the existence of at least one of the following conditions is established.

- Permanent insolvency
- Pending insolvency
- Over-indebtedness
- Failure to comply with the reorganisation plan or if the reorganisation plan was put into effect in a fraudulent or unlawful manner

39.5.2. Proceedings

Bankruptcy proceedings could be initiated by a petition of a creditor, the bankruptcy debtor, or the liquidator. The bankruptcy judge will start bankruptcy proceedings by issuing the decision to start bankruptcy proceedings and accept the petition.

The bankruptcy estate will comprise all the assets of the bankruptcy debtor in Serbia and abroad on the day of the declaration of bankruptcy.

Lodging claims

The creditors will lodge their claims with the court in writing. The submissions may be made upon the expiry of the term set by the decision of the bankruptcy judge, but not later than 120 days from the day of issuing the announcement in the Official Gazette.

A final list of all the filed claims will be compiled at the investigation hearing.

All unsecured commercial claims will always be categorised as the third payment rank.

Reorganisation
Reorganisation will be conducted if this ensures more favourable settlement of the creditors in relation to compulsory liquidation.

A reorganisation plan and prepackaged reorganisation plan (UPPR) specially contain:

- A repayment plan and list of the estimated measures and means for the realisation of the plan
- A detailed list of the creditors divided into classes
- The amount of pecuniary funds or assets that will serve the total or partial settlement of each class of the creditors, as well as the manner of settlement
- The deadlines for the realisation of the reorganisation plan

Voting
Generally, there is no necessity for lodging claims due to the fact that the debtor already predicts all the claims in their UPPR. All the creditors will be eligible to vote on the plan (at the hearing) in proportion to the amounts of their claims.

The reorganisation plan will have the enforceability of an executive title and will be considered a new contract for the settlement of the claims presented therein.

39.5.3. Required documents
In order to lodge a claim on your behalf, we need almost the same documents as for litigation.

39.5.4. Expected time frame and outcome
It's always hard to predict. Bankruptcy proceedings which are conducted as compulsory liquidation can take several years. On the other hand, each reorganisation plan contains a deadline for its realisation. In our experience, that's also a period of two to five years.

The chance for collections in case of compulsory liquidation of the debtor depends on the value of the debtor's bankruptcy estate (i.e. monetary funds, collected claims against third parties, and the value of the debtor's assets and real estate), but also depends on the total value of all the lodged and verified claims.

The rule is that the creditors of a lower rank can only be settled after the creditors of a higher rank. The bankruptcy creditors of the same rank will be settled in proportion to the amounts of their claims. So the creditors of commercial unsecured claims (categorised as the third payment rank) will have some chances for at least partial collections only if all the claims from the first and second payment rank are duly settled.

In case that our client's claim is settled by reorganisation plan, the same should be collected in accordance with the manner proposed in that plan.

Atradius Collections

40. Singapore

Industries

Chemicals

Construction

Electronics

Financial services

Food

Machines

Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

40.1. Amicable collections

40.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to federal and state law. Our activities are in compliance with local law and regulations and will be conducted in a non-aggressive yet efficient manner.

By outsourcing the collections of your internal debts to a third party, you and your team will be able to make use of the saved time to engage in other productive tasks for your business. As we adopt the no-collection-no-fee method, this is essentially a free service for your company as no charges will be incurred if we fail to collect. Finally, it sends a clear message to your debtors of your intent to collect the payment.

The amicable phase starts by conducting due diligence checks on the background of the debtor through our networks and partners such as credit report providers. Reminder letters will be sent via post and email in the dunning phases, and negotiations will be conducted via call and face-to-face meeting if necessary. Visits to the debtor's registered office address may be made to assess the operational status of the company. Visits to the debtor company's directors' residences are strictly prohibited.

40.1.2. Interest

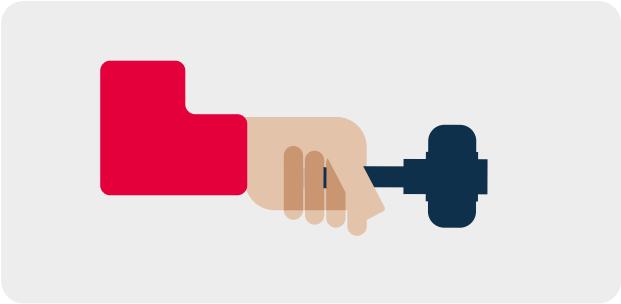
We use the clauses or agreements already made between the parties in a credit application or the terms and conditions as the legal basis for any interest charges. Otherwise, from a cultural point of view, Singaporean debtors very rarely agree to pay late payment interest. It's often used as a negotiation tool between debtors and collectors.

After the commencement of court action, the debtor will have to pay interest at 5.33% per annum from the date of the filing of the writ of summons.

40.1.3. Debt collection costs

Charging debtors for debt collection costs isn't common in Singapore. Often, late payment interest is used as a negotiation tool between the debtors and collectors if such clauses are imposed by the creditors and stated in the contracts.

40.2. Legal collections



40.2.1. General information

Our solicitors will issue a statutory letter of demand for payment to the debtor. It's practical to prove to the court that all the pre-court efforts to collect yielded no results by revealing all the prior correspondence with the debtor.

40.2.2. Required documents

In order to begin legal proceedings, we need:

- Copies of any contracts between the parties (including agreements on arbitration and jurisdiction)
- The invoices
- A clear statement of account indicating the payments and credit notes that have been made for the outstanding invoices
- Any contracts or terms and conditions binding both parties

As the lawsuit proceeds further, we may require more documentation, such as copies of the contracts, orders, confirmations, delivery notes, and invoices. They can be requested when needed.

In case of dispute, all the notes of the conversations between you and your debtor via letter and email that may assist our lawyers should be kept.

In the case of verbal negotiations, we may require the meeting or system notes on what was agreed to.

40.2.3. Legal dunning procedures

In Singapore, our solicitors or local agents will always send a formal letter of demand with attached documentation when taking action on a file.

40.2.4. Lawsuits

Once the regular lawsuit procedure has commenced, our solicitors will serve a statement of claim for the value of the debt on the debtor. The debtor may formally defend these proceedings within 14 days, which will have an impact on the costs and timelines involved. Once the hearings are scheduled, our solicitors will rely on affidavits from you to support the case, although you may be required to attend directly at some point during the case.

Cases in Singapore are expensive and will often require multiple hearings before the court makes a judgment and decision on costs.

40.2.5. Expected time frame

The courts generally conclude cases with default judgments within three months and trial matters between 12 and 18 months.

40.2.6. Costs and interest in the legal phase

Costs of proceedings are high in Singapore. Individual costs can be estimated on a case-by-case basis should legal action become necessary. All the previous communication between you and your debtor and the amount, size, and age of the debt will influence the quote.

A letter of demand isn't expensive in Singapore. It's usually between SGD 200 and SGD 500. In Singapore, debtors will be given 14 days to comply with letters of demand.

It'll cost a minimum of SGD 4,000 to obtain a default judgment. That includes a statutory letter of demand, a writ of summons, followed by a default judgment. The costs will also depend on the quantum of the claim, and whether it's in the Magistrate's Court, District Court, High Court, or arbitration.

It's difficult to predict the total cost in Singapore, as extra hearings may be scheduled. There may be extra costs that arise for witnesses and experts if the debtor disputes the case.

The decision to award costs and court interest will be in the hands of the courts, and specific details should be given to our solicitors, who can then offer their expert opinions.

In the case of a legal settlement, both parties bear the costs of the corresponding proceedings in proportion to their prevailing or failing in the case. Typically, the successful party in a court action may be awarded between 60% and 70% of the legal costs incurred, with the remainder to be borne out of pocket.

If the matter is settled out of court, it's common for both parties to bear their own costs.

40.3. Insolvency proceedings

40.3.1. General information

Singapore's primary insolvency law relating to corporations appears in the Insolvency, Restructuring and Dissolution Act 2018. This law is based on the principles found under British and Australian law. Debtors can be liquidated through court-ordered compulsory liquidation.

40.3.2. Proceedings

The insolvency regime in Singapore includes a number of creditor-focused features that are common to the British insolvency regime, including the taking of security by floating charges on all – or substantially all – of the debtor's assets and out-of-court foreclosure procedures known as receivership.

In Singapore, security may be given for all types of corporate assets and can be enforced both outside and within insolvency proceedings. Provided that the creditors have registered their security with the Registrar of Companies within the requisite period, the security will be enforceable during the debtor's insolvency.

The overriding objectives of Singapore's insolvency law are to restore the debtor company to profitable trading when practicable, and to maximise the returns for the creditors as a whole if the company itself can't be restored to profitable trading. The debtor company may apply for a scheme of arrangement, which outlines a plan for repayment to the creditors. This plan would then be put to a vote by the creditors.

Debtor's restructuring scheme
A scheme is a compromise between a company facing financial difficulties and its creditors. It gives the management of the company respite through a court-sanctioned moratorium to restrain any debt-enforcement actions, thus assisting the company in fulfilling its debt obligations. A scheme of arrangement works by restructuring the company's debts and varying the creditors' rights.

Court application for a scheme
The application should disclose all the material information, e.g. the classification of the debtor and the outstanding amounts.

Notice of meetings
The company sends out notices of meetings and statements explaining the proposed scheme to the creditors.

Review of creditors' proof of debt
The chairman of the meetings of the creditors reviews proof of debt sent in by the prospective scheme creditors and chooses which ones to admit.

Creditors voting on the scheme
The creditors vote on the scheme during the meetings and the approval threshold must be met based on the majority of the creditors in favour of the scheme. These creditors must represent a minimum of 75% of the total value of the debt amount claimed.

Court approval
A copy of the court's order must be lodged with the Accounting and Corporate Regulatory Authority once the court approves the proposed scheme.

Moratorium

Pre-application moratorium
To give the distressed company breathing room to put forward a restructuring proposal for its creditors, the company may apply for a moratorium where it proposes, or intends to propose, a scheme. Such pre-application moratoria were previously only available under the common law.

Automatic moratorium
A 30-day moratorium will automatically apply upon the filing of an application for a moratorium order with the court or until the application is decided by the court – whichever comes first.

Worldwide moratorium
The court may now grant a moratorium extending to creditor action outside of Singapore if the creditor is in Singapore or within the jurisdiction of the Singaporean courts.

Related entities
Where a moratorium is granted in relation to a company, the related entities such as the subsidiaries or holding companies may, if necessary for the scheme, also apply for a moratorium.

Pursuant to section 238 of the Insolvency, Restructuring and Dissolution Act 2018, the creditors may file an application to the court to hold the directors of the debtor company personally liable for the debts in the event that the directors know that the company is insolvent and/or incapable of paying the creditors, and yet still have the company continue trading.

The proceedings will also establish a fair and equitable system for claim ranking and asset distributing among the creditors and provide a way to hold any persons guilty of mismanagement or misconduct within the debtor company responsible for their acts.

After all the assets of the debtor company have been assessed and realised, the liquidator will adjudicate all the claims lodged against the debtor company and admit or reject them accordingly. Any leftover surplus after paying the creditors and the costs of the liquidation will be returned to the shareholders. The expert legal opinions by our solicitors are highly recommended.

40.3.3. Required documents
In order to lodge a claim on your behalf, we need:
- An original power of attorney
- Copies of the invoices
- Copies of the contracts
- Copies of the quotations, purchase orders, orders, confirmations, delivery notes, and invoices
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim

40.3.4. Expected time frame and outcome
The whole duration of insolvency proceedings can take anywhere between 12 and 18 months.

Singaporean insolvency law protects the priority of the secured creditors, who have priority over virtually all the other claims against the debtor. Extranational consideration regarding asset location can also affect the recovery prospects. We would recommend getting our solicitors' professional opinions regarding the liquidation of the debtor company.

Atradius Collections

41. Slovakia

Industries

- Chemicals
- Construction materials
- Electronics
- Food
- Machines
- Minerals
- Paper
- Textiles
- Transport

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

41.1. Amicable collections

41.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to state law.

When there is a dispute, we aim to reach an amicable solution between you and your debtor. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as all standard terms that have been agreed to). All of our investigations are completed with the assistance and agreement of our legal team.

41.1.2. Local agents

We offer direct collection activities managed by a network of selected local agents who visit debtors all over Slovakia. In our experience, this solution is particularly successful in specific debtor categories, such as individual sole traders, shops, and small companies. The local agents' network can also help investigate and find untraceable debtors.

41.1.3. Interest

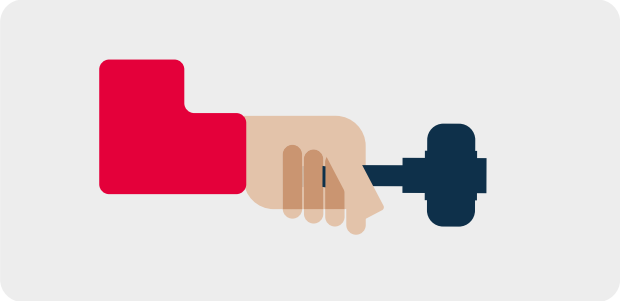
Interest rates for late payment should be specified in the contracts between you and your debtors. If this isn't the case, you can charge the statutory interest on late payment that is based on law. This interest rate is the same for all business relationships. For contracts concluded before 31 January 2013, it's calculated as the main refinancing operations rate (fixed rate) of the European Central Bank (ECB), plus 8%. For contracts concluded after 31 January 2013, it's calculated as the fixed rate of the ECB applicable on the first day of the relevant half year plus 8%, and this rate is used for the whole half year of delay; or as the fixed rate of the ECB applicable on the first day of the delay plus 9%, and this rate is used for the whole delay.

We charge debtors for interest, both in the amicable phase and judicial phase. In judicial proceedings, the interest rate is based on law if it isn't contracted by the parties, and the court awards the interest that is required on the condition that the principal is granted.

41.1.4. Debt collection costs

You can also demand a lump sum of collection costs of EUR 40.

41.2. Legal collections



41.2.1. General information

Reminder letters about payment are usually sent to the debtor before court proceedings start. Reminders increase the chance of collecting money in an amicable way.

If the debt isn't settled within the period stated in the reminder letters, legal action is taken. The contracting parties may also negotiate an arbitration clause or a particular court's jurisdiction clause (the latter applies only to international contracts). If these clauses aren't agreed to, legal action will be handled by the district court of the debtor.

41.2.2. Required documents

In order to begin legal action, we need the following documents.

- An original power of attorney
- An extract from the trade register of your company
- Copies of any unpaid invoices, contracts, relevant orders, order confirmations, and transport documents (CMR) signed by the debtor
- The general terms and conditions
- The current statements of account

These documents are also required for supporting the claims arising from the purchase contracts.

Optional documents are:

- Copies of the credit notes
- Any other correspondence that may verify the claim
- The contract of the debt's assignment if the debt is claimed on behalf of a third company who isn't the original seller of the unpaid goods

The documents required for legal action are determined by the type of your claim and its nature. It's helpful if you have some security, such as an acknowledgement of debt or a bill of exchange. In the amicable collection process, we'll try to obtain some security from the debtor that can be helpful during legal proceedings.

41.2.3. Legal dunning procedures

Legal dunning procedures are only applicable to monetary debts where the debtors are traceable and the court is able to deliver payment orders to the debtors.

There are two ways of legal dunning procedures: The classic way of legal dunning procedures conducted in a competent court (usually according to the debtor's residence or registered office) and the so-called reminder proceedings conducted in the district court of Banská Bystrica by electronic means. In both ways of legal dunning procedures, your debtor may file a complaint within 15 days after the payment order was delivered to them. That will either automatically transfer the dunning procedure into a regular lawsuit procedure (in case of the classic way of legal dunning procedures), or continue the proceedings on the basis of your motion (in case of the reminder proceedings).

41.2.4. Lawsuits

A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the debtor, or after the legal dunning procedures if the debtor files a complaint against the payment order or if the payment order can't be delivered to the debtor.

In case of the reminder proceedings, a regular lawsuit procedure is started only on the basis of your motion to continue the proceedings. The regular lawsuit procedure is then conducted in a competent court according to the debtor's residence or registered office.

41.2.5. Expected time frame

The average duration of a legal dunning process is between three and six months, whereas a court procedure can take 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on both sides.

41.2.6. Costs and interest in the legal phase

Court fees are 6% of the claim amount or 3% in the case of reminder proceedings (at least EUR 25 and with a maximum of EUR 33,193.50). The fees are calculated on the basis of the principal, not including interest, but including a contractual penalty if demanded by you – the creditor.

Arbitration fees are set by a special arbitration rule.

Lawyers' fees depend on the form of legal action and the claim amount in dispute and can vary from 2% to 4% of the claim.

Other costs can be accumulated from the translation of documents.

The courts always award either the interest that you and your debtor agreed to, or the statutory interest, and also a lump sum of collection costs. The losing party also has to pay court fees and lawyers' costs.

41.3. Enforcement

41.3.1. Enforcement of court decisions

A legitimate payment order or court judgment or arbitration award may be executed by an executor in execution proceedings if the debtor doesn't fulfil the obligations imposed by the payment order or court judgment or arbitration award.

Execution proceedings are comprised of two parts. The first part starts by filing a motion with a competent court (the district court of Banská Bystrica) and determining the questions of the formal requirements. The court fee for a motion is EUR 16.50. After the motion is filed, the court will authorise a local executor according to the debtor's residence or registered office to start execution. In the second part, the authorised executor carries out the execution.

Execution can only be ordered if the motion is submitted by the entitled party or by any other party who can prove that the entitlement is transferred to them. The execution proceedings end when all the claims are fully paid, including all the charges, or if the debtor has no property left.

41.3.2. Methods of execution

Enforcement of decisions that impose payment of a sum of money can be carried out by means of deduction of the debtor's wages or salaries and other income, assignment of their receivables, sale of their movable property, or sale of their business. The choice of the particular means of execution depends on the executor.

In the case of a secured claim, the court decision can be enforced by the sale of the movable property, bulk assets, groups of assets, and residential or non-residential premises under the ownership that has been given as security in accordance with specific legislation.

The court decision can also be enforced by compulsorily debiting the money claims that were given as security, or by recovering other property rights given as security.

The enforcement of decisions can be carried out by the sale of the debtor's immovable property as well.

The execution is automatically stopped when it isn't possible to identify the assets or income that could be affected by the execution and would be sufficient to cover the costs of the executor within 30 months (in the case of a legal entity) from the commencement of the execution or from the last disposal of the asset.

41.4. Insolvency proceedings

41.4.1. General information

Insolvency proceedings may only start following a bankruptcy or restructuring motion submitted by the debtor themselves or by one of the creditors. If the court decides that the debtor is insolvent, the debtor is declared bankrupt or restructuring is permitted.

A legal entity is insolvent if it's unable to settle at least two monetary debts from more than one creditor within 30 days after the due dates. A debtor who is obliged to keep accounts is also insolvent if they have more than one creditor and the amount of debt is greater than the assets of the debtor.

These proceedings may last several years.

41.4.2. Proceedings

Bankruptcy

After the debtor or a creditor of the debtor submits a bankruptcy motion, the court checks the debtor's financial situation and decides whether the debtor is insolvent or not.

If the court finds that the debtor is insolvent, it declares bankruptcy. The decision is published in the Business Journal, which is available for public viewing on the internet. All the enforcement procedures have to be stopped at that point, and all the court and arbitration proceedings are suspended. An administrator is appointed to supervise and inspect the bankruptcy proceedings. The administrator has to inform all the known foreign creditors about the debtor's bankruptcy and invite them to lodge their claims within 45 days since the publication of the declaration of bankruptcy. If this deadline is missed, the creditors may still lodge their claims, but they can't exercise their rights as creditors.

Bankruptcy can be used if the assets of the debtor are used to discharge the claims and the debtor closes their business.

Restructuring

Restructuring is possible after the debtor or a creditor of the debtor submits a restructuring motion and the court checks the debtor's financial situation. If all the formalities and legal preconditions are met, the court will approve the restructuring.

All the major decisions are published in the Business Journal. All the enforcement procedures have to be stopped at that point, and all the court and arbitration proceedings are suspended. An administrator is appointed to supervise and inspect the restructuring proceedings, and the court also supervises the proceedings and administrator. The administrator has to inform all the known foreign creditors and invite them to lodge their claims. The creditors may lodge their claims within 30 days after the approval of the restructuring is published. If this deadline is missed, no claims will be added to the insolvency proceedings, and claims that weren't lodged can no longer be enforced.

This procedure is usually used for larger companies.

The debtor must submit a restructuring plan, usually within 90 days after the approval of the restructuring. In the restructuring plan, the debtor must propose changes in their business that enable the debtor to pay the debts and keep the business while restructuring. The plan must provide the unsecured creditors with payment of their claims of at least 20% higher than what they would have achieved with bankruptcy, and also provide them with payment of at least 50% of their unsecured claims, unless the relevant creditors agree to lower the payment.

The restructuring plan will first be assessed by the creditors' committee. If the creditors' committee rejects the plan, the insolvency administrator will immediately file for bankruptcy. If the creditors' committee approves the plan, the insolvency administrator will convene a creditors' approval meeting, in which all the creditors will vote on the approval of the restructuring plan.

If the creditors approve the restructuring plan, the court will confirm it. In some cases, the court may confirm the restructuring plan even if one of the groups of the creditors (or even all the creditors) doesn't agree to the plan.

If the court doesn't confirm the plan, it'll decide to reject it and the bankruptcy is subsequently declared. The court

will reject the plan in particular if the creditors don't approve the plan, or the procedural provisions have been breached, or the plan is substantially against the common interest of the creditors, or the unsecured claim rate is less than 50% (unless the relevant creditors agree in writing to lower the payment).

After the confirmation of the plan by the court, the debtor will fulfil the registered receivables according to the restructuring plan, and the unregistered receivables or security rights will expire. If the debtor fails to duly and timely settle the claims according to the plan within 30 days after receiving the call, the plan thus becomes ineffective for the creditors in relation to the claims in question and the debtor is obliged to settle the creditors' original claims with the usual commercial interest since the commencement of the restructuring proceedings.

Discharge of debts

Discharges of debts are only available for individuals, in case the debtors are insolvent and have execution that lasts more than one year. Discharges of debts can be conducted in two forms: as bankruptcy by selling the debtor's property or as a payment plan by paying regular instalments to pay at least 30% of the unsecured debts in five years.

Some receivables are excluded from the payment in discharges of debts, such as an accessory of receivables that exceeds 5% of the principal amount per year, a receivable from a bill of exchange – if it was signed by the debtor before the decision of insolvency, or contractual penalties and other private or public pecuniary sanctions where the obligations establishing the rights to apply or impose such penalties or sanctions were breached before the decision of insolvency.

In case of bankruptcy, the creditors can lodge their claims within 45 days since the publication of the declaration of bankruptcy. If this deadline is missed, the creditors may still lodge their claims, but they can't exercise their rights as creditors.

In case of a payment plan, the creditors don't have to lodge their claims, as the debtor's proposal to determine the payment plan must contain a list of their obligations. The insolvency administrator will, within 45 days from when the debtor pays an advance on the costs of the proceedings, examine the debtor's circumstances and draw up a draft of the payment plan accordingly. Any creditor who may be affected by the payment plan may file an objection with the insolvency administrator within 90 days from the publication of the notice of the draft of the payment plan in the Business Journal. After the expiry of the objection period, the court will determine the payment plan based on the administrator's draft and the rules on compiling payment plans, while taking into account the creditors' objections and other known circumstances.

Discharges of debts in the form of bankruptcy are used much more often than in the form of a payment plan, as the debtors often no longer have any assets and they can receive the discharges of debts immediately, without having to pay anything or without having to pay regular instalments for five years as in the case of a payment plan. In the case of bankruptcy, the unsecured creditors are usually not paid even with a minimum amount.

Preventive restructuring

Slovakia implemented the Act No. 111/2022 Coll. on resolving imminent insolvency, which came into effect from 17 July 2022, which offers companies with financial problems a chance to restructure their assets, liabilities, and capital structures.

The Act differentiates court preventive restructuring plans from non-public preventive restructuring proceedings.

A new tool is moratoria, which provide the debtors with temporary protection from the effects of insolvency proceedings and enforcement proceedings. Moratoria last three months and may be extended for an additional three months.

41.4.3. Required documents

In order to lodge a claim on your behalf, we need:

- An original power of attorney
- Copies of the invoices
- Copies of the delivery notes
- The statements of account
- An extract from the trade register
- Copies of the contracts
- Copies of the orders, confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim

41.4.4. Expected time frame

The whole duration of bankruptcy proceedings often takes more than a year, especially in the more difficult cases.

Important updates and steps undertaken in bankruptcy or restructuring proceedings may be found in the Business Journal.

Atradius Collections

42. Slovenia

Industries

Chemicals

Construction materials

Electronics

Machines

Minerals

Textiles

Transport

Source: Central Intelligence Agency World Factbook

Chance of collecting

50%–75%

42.1. Amicable collections

42.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors personally via phone call and in writing while adhering to federal and state law.

When there is a case of dispute, we aim to reach an amicable solution between you and your debtor. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, and standard terms that have been agreed to). All of our investigations are completed with the assistance and agreement of our legal team.

42.1.2. Local agents

We offer on-site visits to debtors at their places of business and report back on their financial situations. Our local agents' network can also help investigate and find sometimes untraceable debtors. We provide credit reports with the latest publicly available balance sheets.

42.1.3. Interest

We always charge debtors for interest if requested by the creditors. Interest is difficult to collect in the amicable phase. It's often best practice to not ask for interest to be added after the principal amount has been paid in full.

42.1.4. Debt collection costs

In Slovenia, a debt collection cost of EUR 40 can be added. In the amicable phase, debt collection costs are very rarely paid.

42.1.5. Prescription

The end of a limitation period falls on the due date of each invoice separately.

Debts under sales contracts become prescribed within three years.

Transport invoices become prescribed within one year.

For services that require periodic invoicing, such as rental, telephone, and internet agreements, the limitation period is one year.

Claims that are subject to the Convention on the Limitation Period in the International Sale of Goods become prescribed within four years.

According to the Rome I Regulation (Regulation (EC) No 593/2008), the duration of a prescriptive period is governed by the law of the country where the creditor has their habitual residence, if not agreed to otherwise.

Even after the expiration of a statute of limitations, the creditor can still take legal action against the debtor. But the debtor can ask the judge to dismiss the suit on the grounds that the statute of limitations has expired. If the debtor doesn't object in time that the claim has become prescribed, the payment order will become final and enforceable.

Prescriptive periods can be interrupted if the creditor starts legal proceedings or receives a written acknowledgement of debt. Part payments are considered acknowledgements of the claim and interrupt the limitation periods.

42.1.6. Payment methods

The most common Payment methods is bank transfers.

42.2. Retention of title

Retention of title (ROT) clauses are applicable to movable property only. Sellers retain the ownership of the goods delivered to the buyers until the full purchase prices have been paid. ROT clauses are mainly used for safeguarding instalment sale agreements.

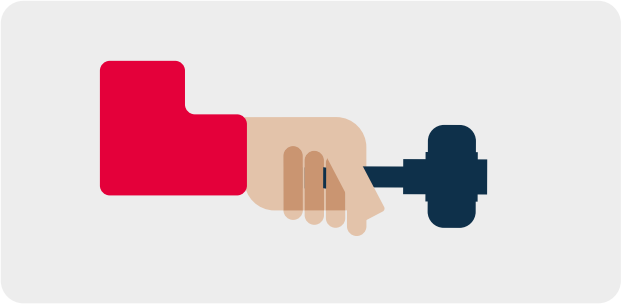
ROT clauses must be stipulated in writing and notarised with certified dates in order to make them insolvency-resistant, so that the goods that the clauses apply to don't become part of the bankruptcy estate. However, they provide limited practical protection against acquisition by third parties.

42.3. Safeguard measures

In case your debtor isn't able to settle your claim in a speedy manner, we can request that the debtor provide security. This can be done amicably and cost-effectively by providing an acknowledgement of debt, which is authenticated by a notary and immediately enforceable in

case the agreed payment terms aren't honoured. The corresponding notary costs have to be covered by the debtor. The debtor can also offer other means of security, such as mortgages, assignments of debt or assets, enforcement drafts, or bills of exchange. Contracts must be drawn up for assignments of debt or assets, while mortgages have to be registered by a notary.

42.4. Legal collections



42.4.1. General information

It isn't obligatory to send a written request for payment before taking any legal action in court. Some simplified legal proceedings can also be run by the e-court.

Slovenia is a signatory of the European Council Regulation (EC) No 805/2004, which allows creditors to enforce the European Enforcement Order (EEO). We provide service in obtaining in your country the enforcement of the EEO in your debtor's country.

42.4.2. Legal systems

The Slovenian legal systems have two types of courts: arbitration courts and common courts. We can also proceed electronically through the e-court.

Arbitration courts

To proceed in front of an arbitration court, it's necessary to have a contract or an agreement with an arbitration clause mentioned. This procedure is expensive but quicker. When a judgment is issued, you must apply for an enforcement clause before any execution can be started.

Common courts

There are two types of proceedings that go before a common court: summary legal action and lawsuits.

E-Summary legal action
("elektronska izvršba na podlagi verodostojne listine")

The creditor can file for a payment order, mostly based on invoices or statements of account. A duly signed power of attorney (POA) is also requested. The court can issue a writ of payment without the need for a court hearing. If the debtor doesn't object in eight days, such a payment order becomes a writ of execution, which is final and enforceable. In case of objections, the legal action continues as a lawsuit. The court fees for the lawsuit must be paid and the full documentation of the claim with translation must be submitted to the court.

In Slovenia, it's possible to start legal proceedings with copies of the documents. The originals must be provided if the court requests them. All documents must be translated into the official language – Slovenian. In some courts, Italian and Hungarian are allowed.

A crucial point is that the signature(s) of the individual(s) in the POA should be the same as the one(s) in your extract from the trade register. Without this, the court can reject our legal action (for formal reasons).

Lawsuits

A regular lawsuit procedure starts by a complaint being filed in court. The documentation must be translated. Both the plaintiff and defendant must exchange opinions and proof by letter, including the proposed witnesses, until the judge believes all the relevant information needed to deliver a judgment has been received. In this case, a hearing is scheduled, during which both parties may be present. After the hearing, the judge sets a date to issue the final judgment. Both parties will be informed about the outcome in writing by the court unless they're present in the pronouncement of the judgment.

Required documents:

- A scanned POA (the original must be provided at the court's request)
- An extract from the trade register of your company, showing the name of the responsible person who signs the POA
- The latest statement of account, including the amount of the legal interest if claimed
- A calculation of the legal interest
- Copies of the invoices, signed by the creditor's authorised person and stamped with the company seal if in use
- Copies of the contracts
- Copies of the orders, confirmations, and delivery notes signed by the debtor (e.g. transport documents (CMR))
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim
- The correspondence about reclaiming defects if it exists
- The name and address of the person who can be appointed as a witness

The court may invite the parties to mediation at any stage of a lawsuit. The creditor can also request mediation when filing legal action.

42.4.3. Appeals

Appealing against a judgment is possible. It'll trigger a second verdict by the court of second instance.

42.4.4. Expected time frame

The average duration of a legal dunning process by summary legal action is between two weeks and four months, whereas a lawsuit can take up to one year or even longer, depending on the complexity of the case and whether the debtor raises any objections.

42.4.5. Costs and interest in the legal phase

The creditor filing action in court is obliged to pay court fees. Court fees aren't paid in advance, but only based on the court's order for payment of court fees. Court fees depend on the value of the claim.

Lawyers' fees depend on the claim amount (the principal amount without interest) and the type of the proceedings being initiated.

42.5. Enforcement

42.5.1. Enforcement in debt

After the final and enforceable judgment is obtained, an enforcement procedure must be started and a writ of execution is obtained. The writ of execution can also be obtained in the process of summary legal action, on the condition that the debtor doesn't object against the payment order.

After the writ of execution becomes final and enforceable, the court sends it to the banks to seize the debtor's bank accounts or to the bailiff to seize the debtor's other property, e.g. the debtor's claims against tax offices, life insurance, salaries, shares in businesses, corporate shares, and any other claims the debtor may have against any third party. The seizure of the debtor's real estate is performed by the court and registered with the land registry.

42.5.2. Enforcement in movable property

This is a standard procedure where the bailiff visits the debtor to take away movable property that can be sold. In the case of vehicles, the attachment is done by registering the pledge in a public register. The bailiff isn't allowed to seize the goods that are necessary for the debtor's basic daily life or that enable them to maintain their business activities.

Bailiffs' fees depend on the value of the seized property and are prescribed by a tariff.

42.5.3. Enforcement in immovable property

If the debtor owns real estate, it's possible to receive a record of their claim in the land registry, and then force the attachment and/or sale of the property, or, in cases where there are tenants, the sequestration of the real estate by court order.

All of these processes are more expensive than those mentioned previously, especially because of the costs of evaluating the value of the property, and it can be a long process to get a copy of the record. Afterwards, it can also take time to sell or sequestrate the land and real estate. In some cases, the real estate can't be sold because a buyer can't be found.

42.5.4. Expected time frame

Enforcement in monies generally takes two to three months.

Enforcement in movable property, however, often needs from five to 10 months.

The time frame for enforcement in real estate depends very much on the course of the case, the court, possible banks, and, of course, possible buyers.

The debtor is always charged back with all the court costs in the sentence or judgment.

42.6. Insolvency proceedings

42.6.1. General information

The main insolvency proceedings in Slovenia are bankruptcy procedures, reorganisation procedures, and simplified reorganisation procedures.

The main aim of bankruptcy procedures is to liquidate all of the debtor's property by selling it and liquidate all of the debtor's claims. All the unsecured creditors are entitled to an equal percentage of payment.

The purpose of reorganisation procedures is to reorganise the debtor's finances by allowing the debtor to cover their liabilities partially or with delay, e.g. paying 30% in four-month instalments.

42.6.2. Proceedings

Bankruptcy procedure ("Stečaj")
A bankruptcy procedure can be proposed by the debtor or their creditors.

The claims must be lodged within three months, otherwise they'll be regarded as prescribed. A list of the lodged claims is published within one to three months.

The bankruptcy procedure is handled by a bankruptcy administrator or liquidator, who liquidates the debtor's property and collects the debtor's claims.

The bankruptcy dividends are usually paid to all the creditors with unsecured claims when a substantial part of the debtor's bankruptcy estate has been liquidated. A list of the bankruptcy dividends, all the other relevant court decisions, and the reports by the bankruptcy administrator are published in the online company register.

The liquidator has one year to dispute the payments made by the debtor generally within one year prior to the declaration of bankruptcy.

Simplified reorganisation procedure ("Poenostavljena prisilna poravnava") / Proceedings for approval of an arrangement
These proceedings allow the insolvent debtor to minimise costs and reach an agreement with the creditors by getting enough votes from the creditors without the court's assistance or the insolvency administrator's assistance.

A list of claims is provided by the debtor and published online in the company register. The court isn't active in this type of proceedings until a final arrangement is made by the parties. It limits its role to approving the arrangement or not. The creditors must provide sufficient votes in four months. There is no lodgement of claims, only voting. The debtor sends a draft of the agreement to the creditors or invites them to sign the agreement in front of a public notary. If a sufficient number of the creditors support the simplified reorganisation, the court confirms it as being effective.

Reorganisation procedure ("Prisilna poravnava") / Arrangement proceedings
A reorganisation procedure can be applied to a debtor who is insolvent or in danger of insolvency. All cases conducted on the grounds of the restructuring law are recognised by a restructuring court, which is in fact a district commercial court that is competent regarding the insolvent debtor.

The start of a reorganisation procedure is published in the online company register. An insolvency administrator is appointed by the court. The creditors must lodge their claims within one month from the start of the insolvency and not later. By lodging their claims in the insolvency proceedings, the limitation periods are interrupted and the creditors obtain the right to vote for or against the debtor's payment and reorganisation proposal. The creditors who didn't lodge their claims are still entitled to payment under the terms of the reorganisation procedure, but they risk the limitation periods.

A list of the lodged receivables is usually published within two to three months from the start of the reorganisation procedure. After the voting ballot is published by the court, the creditors have one month to cast their votes personally or with the assistance of attorneys.

It usually takes two to three months for the court to examine the ballot and decide. If a sufficient number of the creditors support the reorganisation, the court confirms it.

Such a court decision becomes an enforceable title. If the reorganisation isn't confirmed, a bankruptcy procedure can be declared, unlike in the simplified reorganisation procedure.

All the court decisions and reports by the insolvency administrator are public and published in the online court registry.

42.6.3. Required documents

In order to lodge a claim, we need:

- A scanned POA
- A calculation of the legal interest until the date of the start of the insolvency proceedings if claimed
- Copies of the invoices
- The latest statement of account, including the amount of the legal interest if claimed
- Copies of the contracts
- Copies of the orders, confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any
- Copies of any other correspondence that may verify the claim
- An extract from the trade register of your company

42.7. Arbitration and mediation

In Slovenia, two options of alternative dispute solutions are available: arbitration and mediation. Mediation is more cost-effective.

Mediation has a number of advantages compared to regular legal proceedings. It's more cost-effective, and the hearings and processes are confidential. The mediator can't be asked to be a witness in court. Although it can shorten the duration of disputes in court, mediation is still not very popular. The mediator's fees for court mediation is calculated on an hourly basis. In case of success, the mediator is entitled to an award. The court can approve the agreement resulting from the mediation proceedings as an enforcement title.

Arbitration is conducted on the basis of the arbitration clauses in the contracts, terms and conditions, or agreements between you and your debtor. Unless any special regulations state otherwise, the parties may submit any dispute for settlement in arbitration. The submission of a dispute for arbitration requires an agreement between the parties specifying the subject of the dispute or the legal relationship triggering the dispute. The settlement concluded by the arbitration court has to be approved by a commercial court, and then, after being granted an enforcement clause, can be treated as an enforcement title.

Atradius Collections

43. South Africa

Industries

Chemicals

Food

Machines

Minerals

Textiles

Transport

Source: Central Intelligence Agency World Factbook

Chance of collecting

up to 50%

43.1. Amicable collections

43.1.1. General information

South African law has Roman-Dutch origins, and the debt collection process is well entrenched in the system.

The South African prescriptive period (statute of limitations) is normally three years from the date the debt becomes due and payable. However, the fact that South Africa experiences corruption, fraud, and a weak currency can greatly affect debtors' ability and/or willingness to pay.

43.1.2. Local agents

Our local strategic partner specialises in amicable and legal recovery. They are based in Gauteng and are experienced in dealing with debt recovery. Our local agents' network is well connected across South Africa, with colleagues, tracing agencies, and investigators in most urban areas. Upon receipt of our instructions, they will carry out brief background investigations into the debtors' situations. Then they will make informal telephone calls and/or send formal letters of demand. Should the replies not be forthcoming, we normally recommend site visits if required.

43.1.3. Interest

Interest can be charged according to the National Credit Act. It defines invoices as "incidental credit" because the charged interest becomes due only if the debtor fails to pay for the goods and services after a certain period of time. In accordance with the prevailing act, the interest allowed is 2% per month (annually at 24%).

From a cultural point of view, recovery of late payment interest in South Africa is quite difficult in the amicable collection phase due to interest payment being considered a matter of negotiation between debtors and collectors.

Once court action begins, the legal interest is 2% per month if the interest is claimed on incidental credit transactions; alternatively, the mora interest rate per annum (11.75%) can be charged from the date of the service of the summons to the date of the final payment of the debt.

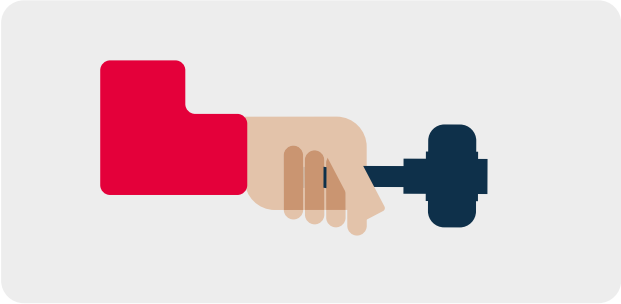
South Africa applies the *in duplum* rule, whereby the interest and costs (including legal costs) charged may never exceed the original debt amount, i.e. the amount claimed can't exceed the capital debt amount. Interest is, however, allowed to again accumulate towards the "in duplum" amount after payments of the interest were made.

In general, payments made will always be first allocated to the oldest outstanding debts.

43.1.4. Debt collection costs

We don't charge debtors for collection costs in South Africa.

43.2. Legal collections



43.2.1. General information

Depending on the outcome of the amicable debt collections procedure, the documents available, the debt amount, and the debtor's solvency, a recommendation will be offered as to whether or not it appears economically viable to move to legal action.

43.2.2. Required documents

The original invoices and orders are obviously always the most valuable, but copies will, in most instances, also suffice. In some instances, the documents will be required to be notarised and legalised, and they will have to comply with the requirements of The Hague Convention (for member countries) and/or the requirements of both South Africa and the country involved (for non-member countries). A power of attorney isn't a requirement, but the debtor's attorney may request it. In that case, it will have to be provided.

43.2.3. Legal dunning procedures

A letter of demand is sent to the debtor, to which they can respond in any way. Should the debtor be in agreement that the debt is due and payable, a settlement agreement or acknowledgement of debt agreement can be entered into, whereby the debtor can settle the debt either in a lump sum or by monthly instalments with agreed terms. This agreement will then form the basis of court action, should it be necessary.

43.2.4. Lawsuits

A lawsuit commences with the issuance of a summons, which is served on the debtor (defendant) by the sheriff (bailiff) of the court. Upon receipt of the summons, the debtor chooses whether or not to defend the action.

Should the debtor not defend, application for a default judgment will be made by the creditor (plaintiff) to obtain judgment on the debt.

In the event that the defendant does defend the lawsuit, the debtor has to deliver their defence (plea) within 20 court days.

If the plaintiff has the view that the debtor doesn't have a defence in law, application for a summary judgment can be applied for by the plaintiff within 15 days from the date of the receipt of the defendant's plea. This is an application based on affidavits. The summary judgment can, however, only be applied when the claim is for a liquidated amount, i.e. in respect of an unpaid invoice. In this application, the plaintiff can state the belief that the defendant only defended the lawsuit (made an appearance to defend) with the intention of causing delay, and that the defendant doesn't have a defence in law. The plaintiff will be required to briefly state why the defendant's defence won't succeed in law in the form of an affidavit. If the defendant can show that they have even minimal grounds for defending, the court won't grant the summary judgment. In that event, the matter will have to proceed to trial.

After the plea is filed (or the summary judgment wasn't successful) and pleadings have closed, there are various legal processes taking place before the matter can be enrolled for trial, including discovery whereby all the parties must file all the documents, which will prove their claim or defence, already not forming part of the lawsuit. In certain matters, pre-trial conferences will be held between the parties' legal representatives.

Thereafter the plaintiff will apply for a trial date.

43.2.5. Expected time frame

A trial (not taking appeals into account) normally takes between three and five years as the court rolls in South Africa are heavily congested. But a summary judgment or default judgment normally takes between six and nine months at most (this depends on the courts and jurisdictions) and may be finalised sooner.

43.2.6. Costs and interest in the legal phase

Litigation costs in South Africa are quite high. And a prospective plaintiff should keep in mind that should the litigation be unsuccessful, the plaintiff will also be liable for the costs of the defendant, in the same way that the defendant would be liable for the costs of the plaintiff should the defendant be unsuccessful in defence.

It must be noted that if the plaintiff kept to their initial agreement on supplying products or services to the defendant for which the plaintiff wasn't paid, the plaintiff will have a good chance of success in the lawsuit.

It's, however, important to (as referred to previously) perform proper due diligence on the debtor before allowing credit, to have the best chance of recuperating payments and costs.

Lawsuits in South Africa by foreign companies not owning property in South Africa (known as peregrini) allows the defendant to require the plaintiff to provide security for their costs should the plaintiff be unsuccessful in litigation. When the court exercises its discretion to order security for costs, each matter will be considered based on particular circumstances. Some of the circumstances that the court takes into consideration are the financial status of the plaintiff, and whether security for costs may effectively preclude the plaintiff from proceeding with their case. Furthermore, failure to provide security for costs within a reasonable time frame can result in the court dismissing any proceedings instituted, or striking out any pleadings filed by the plaintiff, or making another order the court deems appropriate.

It's extremely difficult to provide an estimation of court fees, as much depends on factors such as whether experts and/or witnesses will have to be called to give evidence at the trial and what counsel's seniority is. However, it can normally be assumed that EUR 7,500 will be sufficient to take the matter up to the opposed summary judgment stage.

After that, the plaintiff's position may be reviewed and a decision may be made on which next action is to be taken. The EUR 7,500 doesn't include execution costs, which may vary considerably.

43.3. Insolvency proceedings

43.3.1. General information

In South Africa, there are different acts of insolvency. Non-payment of an account or an admission that the company isn't able to settle its debts is considered to constitute such an act. In these circumstances, the creditors may apply to the court to have the debtor liquidated.

Alternatively, the creditors can proceed to serve a Section 345 Companies Act notice via sheriff on the debtor company's registered address. If the debt isn't paid within three weeks, it's deemed to be an act of insolvency.

In South Africa, there are secured and unsecured creditors. Secured creditors are normally banks or creditors who have secured debts. They are paid first, and only in the event that there is something left, will the remainder of the estate be split proportionally between the unsecured creditors. Should the estate not be enough to settle the secured creditors, then the unsecured creditors who proceed with proving claims will be required to contribute to the claims of the secured creditors. Accordingly, it's important to ensure that no chance of contribution exists at the time of proving claims.

If the ownership of the goods remains vested in you as the creditor until payment has been received, then the goods will be sold and you will be paid from the proceeds. Any remaining proceeds will vest in the estate. Such vesting of ownership must be proved by contract, and all the necessary claim documents (to be supplied by the liquidator) will have to be completed.

Liquidators are appointed by the Master of the High Court, who is from that point on in control of the liquidated company.

43.3.2. Proceedings

Voluntary liquidation

This is done by the debtor through the passing of a special resolution, which is registered with the Companies and Intellectual Property Commission, which forwards the same content to the Master of the High Court, which in turn appoints a liquidator, who will attend to the winding up of the entity. The winding-up process may take some time.

Hostile liquidation

In this instance, the creditors apply to the court to have the debtor liquidated. This is done by means of a motion, which must be served on all the known creditors, the South African Revenue Service, the Master of the High Court, the Companies and Intellectual Property Commission, and/or any other interested parties. The court will then issue an interim order, which must be published in the government's gazette and local newspapers. On the return date of the interim order, any party who wishes to oppose the application must advise the court accordingly; after that, the matter will be postponed for argument. Once the court has heard the arguments, it will either grant the liquidation or not.

This process, depending on whether or not it's opposed, can take anywhere between six months and two years. This is also dependent on the court hearing the application. Only after the liquidation is confirmed will the Master appoint a liquidator, who will then wind up the estate.

43.3.3. Required documents

The invoices and/or correspondence proving the debtor's inability to settle the debt are required. Once the application is granted and a liquidator is appointed, a claim form will have to be completed and lodged. If proof of ownership exists, this will have to be provided together with the claim form.

Atradius Collections

44. South Korea

Industries

Chemicals

Electronics

Machines

Minerals

Source: Central Intelligence Agency World Factbook

Chance of collecting

up to 50%

44.1. Amicable collections

44.1.1. General information

Debt collection activities in South Korea are strictly regulated and have been under the supervision of laws called (1) "Credit Information Use and Protection Act (since 1995)" and (2) "Fair Debt Collection Practices Act (since 2009)". Debt collection services can be performed by (1) law offices and (2) licensed collection agencies who are allowed to collect debts via amicable means. Debt recovery via legal means is only allowed for law offices.

44.1.2. Local agents

We can use local agents to trace debtors' status and conduct site visits if appropriate. Tracing reports are used to find out all the information about debtors, such as operational status, payment default records, credit standing, and sizes of capital.

44.1.3. Interest

In debt collections via amicable means, it isn't practically feasible to recover the interest in addition to the principal debt unless the interest is clearly stated in the contract. Interest payment depends on the debtor's financial status.

44.1.4. Debt collection costs

In South Korea, it isn't common to charge debtors for debt collection costs, as there are no grounds for adding collection costs according to the law.

44.1.5. Prescription

The general prescriptive period (for business-to-business (B2B) claims) follows the period stated in the law of the creditor's country. Because the governing law follows the law of the manufacturer (or service provider)'s country unless agreed otherwise in a written agreement.

If the Korean law (Commercial Act) is agreed as the applicable law, the prescriptive period could be three years (if the creditor is the manufacturer or service provider), or five years (if the creditor isn't the manufacturer or service provider (e.g. exporting company)) , starting from the last invoice's due date or the last payment date.

44.1.6. Payment methods

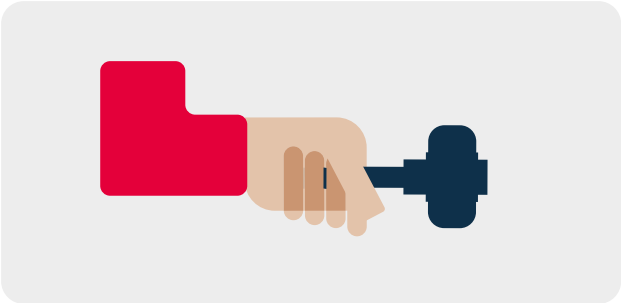
The most common Payment methods is bank transfers.

44.1.7. Sources of information

In South Korea, anyone can pull company registration information from the government's online company registry. Registration information includes dates of establishment, addresses, capital, and management. Financial information can be obtained publicly via governmental source if the subject's sales exceed USD 9 million per year.

Credit-reporting agencies can provide company credit reports with more information, including financials and credit ratings, but the information doesn't usually reflect the recent status of the companies.

44.2. Retention of title



Continental law influenced South Korea's civil law system. The principal is that until the fulfilment of the obligations by the buyer, the title to the goods delivered still remains with the seller as in the case of German law.

In reality, however, exercising the right to retention of title isn't feasible in South Korea due to some complicated reasons. When the buyer already sold the goods to a new buyer, the title to the goods will be handed over to the third party in good faith and the original seller isn't entitled to make claims against this third party.

In case of return requests, it's practically not feasible to expect the buyer to cooperate in returning the goods, especially when the goods were sold to a third party. Even if they're in the buyer's possession, returning the goods isn't possible without the consent of the buyer.

44.3. Legal collections

44.3.1. General information

South Korea's legal system uses continental law. Legal collections is considered an effective recovery method as the time frame is much shorter than that of the United States and Japan. Legal collections is, however, recommended only when the following criteria are met, considering the debt is a B2B claim: the debtor has assets, and there is a possibility of winning in full or in part.

44.3.2. Legal systems

The judicial system of South Korea is composed of three instances as follows.

- First instance: District / Branch of District / Municipal / County Court
- Second instance: District (department of appeal) / High Court
- Third instance: Supreme Court

For a B2B claim, filing is submitted to a District Court and a single judge issues a verdict after hearing the case. If the case's value is over KRW 500,000,000, the case will be handled by a department with three judges.

One can appeal to the High Court (or the district court department of the court of appeal) as the second court to continue the argument, and may even bring it to the Supreme Court. The statistics of appeal are as follows.

- Cases under KRW 30,000,000 = 4.8% of the losing parties appeal
- Cases over KRW 30,000,000 and under KRW 500,000,000 = 18.7% of the losing parties appeal
- Cases over KRW 500,000,000 = 44.1% of the losing parties appeal

For the First instance of small claims (cases under KRW 30,000,000), the court may order the defendant to pay the claim amount before the first hearing is held. If the defendant doesn't file any opposition to this order, the court's order is fixed and can be executed like fixed judgments. Small claim isn't always recommendable. However, it could be recommended as an effective way for recovery, especially when the debtor's reason for non-payment is that the debt amount is too small for a lawsuit.

44.3.3. Required documents

For legal proceedings, a power of attorney (POA) with an apostille or a legalised and authenticated POA, and a Certificate of Corporate Nationality should be prepared as those are required by the local courts when a foreign creditor files against a local debtor via local court.

We also need copies of the contracts, invoices, bills of lading, as well as all the correspondence proving the indebtedness if there is any.

44.3.4. Costs and interest in the legal phase

There is a guideline on lawyers' upfront fees and legal costs, which are set according to the size of the debt, as those are to be paid in full or in part by the losing party of the suit.

Late payment interest can be collected only if the case is brought to court and wins. The interest of the rate as per the governing law can be added to the principal until a judgment is issued, and it'll be 12% per annum (regardless of the governing law, this 12% per annum interest (post-judgment) is applicable, as it's procedural law applicable to all the cases handled in Korean courts) after the judgment date until the full payment is completed.

44.4. Enforcement

44.4.1. Enforcement in debt

After a judgment is issued via litigation, the following is the applicable types of enforcement.

Examination order

- The creditor can submit an examination order to the court to require the debtor to list their assets, and the debtor should respond to the court with the list
- In case the creditor knows the debtor's assets' status, the creditor can proceed with a garnishee order in the first place as well as an attachment and foreclosure

Garnishee order

- This is the most convenient and effective means of enforcement
- This is to seize any monies in the debtor's bank accounts
- Once a garnishee order application is submitted to the court, the court will order the banks to freeze the balances of the debtor's accounts, and the creditor will learn how much they can take out of the balances

Attachment and foreclosure

- When the debtor has assets such as lands or buildings, but still doesn't pay after the judgment is issued, the creditor can bring the attached assets to foreclosure. (The debtor's assets are usually put under a provisional attachment by the creditor until a judgment is issued)
- A foreclosure requires the bidders to auction off, and the proceeds from the auction will be used for the part or full payment of the judgment debt
- A foreclosure process usually finishes within a year, but this period can be longer or shorter according to the types of assets

Writ of Fieri Facias regarding other tangible assets

- Bailiffs are appointed to attend the debtor's registered premises to seize their goods for sale
- The proceeds from the sale of the goods will be used for the part payment of the judgment debt
- This method is, however, not common as the proceeds from this action are usually small from a cost perspective

Bankruptcy/winding-up petition

- This method is seldom used in South Korea because it requires a judgment (including any executive rights granted by the court) in order to initiate this action
- If you're an unsecured creditor, we should carefully evaluate the chance of getting any dividend

44.4.2. Expected time frame

After filing with the court, it takes a few months until the first court hearing session is held, and about one year until the first instance judgment is issued on most occasions.

The time for enforcement varies according to the types of the assets and the related enforcement.

44.5. Insolvency proceedings

44.5.1. General information

Insolvency proceedings are becoming more and more common to debtors with a lack of payment capability. The proceedings are a way to sustain their businesses and repay their debts via debt restructuring for their creditors.

In insolvency proceedings, a debt is restructured in the form of debt-for-equity swaps and cash payment. Usually, 20% to 40% of the debt is offered by the debtor as cash payment until 10 years from the approval, while the rest of the debt will be converted into shares.

For unsecured creditors in the B2B claim category, there remains a hope of at least partial recovery of the debts in insolvency proceedings, because there will usually be no dividends left for unsecured creditors in case of the debtor's liquidation. In general, unsecured creditors (creditors without priority, including most B2B creditors in cross-border transactions) may expect approximately 0% to 20% of the outstanding balances in insolvency proceedings.

44.5.2. Proceedings

Insolvency proceedings go as follows.

Evaluation of the applicant's going concern value versus liquidation value

- Upon the application for insolvency proceedings, due diligence is conducted by an accounting firm to evaluate and compare the going concern value and liquidation value while the assets are protected by the law from the creditor's legal action
- In case the due diligence results show the going concern value is higher than the liquidation value, the insolvency proceedings will start with an appointed administrator
- This process can take about one month until the announcement of a decision

Debt registration and creditors' committee

- The creditors need to register the debts, and the debtor needs to check those before acceptance. The debts will be finalised before the debtor comes up with a repayment plan
- A creditors' committee will be formed to discuss efficient processing
- The first creditors' meeting will be held to discuss the debtor's repayment plan. It'll take about a few months until the first creditors' meeting is held
- After up to a couple of creditors' meetings, the debtor's repayment plan will finally be approved through revision and betterment. To reach this point, it takes about one year or more

44.6. Arbitration and mediation

Arbitration or mediation isn't a common method of debt recovery in South Korea because the related costs are very high.

Atradius Collections

45. Spain

Industries

Chemicals

Construction materials

Food

Machines

Minerals

Services

Textiles

Transport

Source: Central Intelligence Agency World Factbook

Chance of collecting

up to 50%

45.1. Amicable collections

45.1.1. General information

We maintain a professional collection process and focus on maintaining the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both by phone and in writing.

When there is a dispute, we aim to reach an amicable solution between you and your debtor. All the contractual documents are analysed. Our investigations are completed with the assistance and agreement of our legal team.

45.1.2. Local agents

In cases where we aren't able to locate the debtor or our actions in the amicable phase don't yield satisfactory results, provided that we don't have proof that the debtors have ceased their activities or if you request it, we can transfer the files tom our agents, who will make face-to-face visits and verify these aspects. The agents will also submit payment requests to the debtors on our behalf. The agents will issue final reports. This service is provided throughout Spain and a fee will be charged to you with your prior approval.

45.1.3. Interest

We always charge debtors for accrued interest or any other amounts that have been agreed to by contract between the parties. In 2023, the official accrued interest rate is 3.25%.

From a cultural point of view, Spanish debtors aren't used to paying late payment interest during the amicable phase, and the actual amounts of interest payment are considered a matter of negotiation.

45.1.4. Debt collection costs

In Spain, debt collection costs are chargeable to debtors, representing the creditors' claims for late payment damage based on the Spanish Civil Code and Commercial Code. If you have a special contractual agreement, this can be taken into account as long as the debtor has agreed to the terms.

From a cultural point of view, Spanish debtors aren't used to paying debt collection costs, though often the actual amounts of these costs can be considered a matter of negotiation. We always include these costs in the claims and we try to recover them in the amicable phase.

45.1.5. Prescription

A general prescriptive period is five years, starting from the day after an invoice is due.

Transport claims become prescribed within one year for land transport and maritime transport, starting from the dates of the payment obligations.

A prescriptive period is suspended when:

- You as the creditor claim payment judicially
- You as the creditor make an extrajudicial claim by fax or per a notary's requirements
- The debtor performs an action for acknowledgement of the debt

Prescription has to be claimed by the debtor in legal proceedings and can't be declared officially by the court.

45.1.6. Payment methods

The most common payment method is bank transfers to either our own or your bank account.

We also accept cheques, but in this case, we try to ensure that they're issued directly to you.

45.1.7. Types of companies

The most common types of companies in Spain are:

"Sociedad Limitada", or SL

- The minimum corporate capital requirement is EUR 3,000
- The shareholders' assets aren't affected by the company's debts
- If applicable, it's necessary to prove in the presence of a judge that the administrators are following bad practice

"Sociedad Anónima", or SA

- The minimum corporate capital requirement is EUR 60,000
- The shareholders' assets aren't affected by the company's debts
- If applicable, it's necessary to prove in the presence of a judge that the administrators are following bad practice

Community of Goods

- This is a more popular type
- The co-owners' assets are affected by the company's debts if the company doesn't have enough assets to pay all its debts

45.1.8. Sources of information

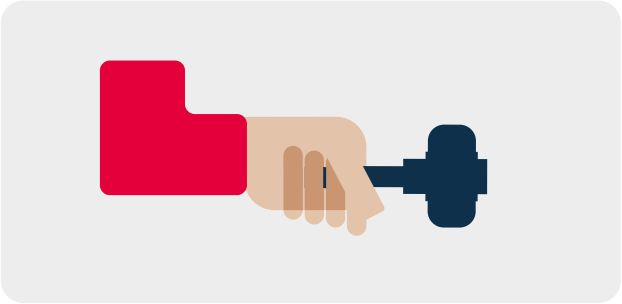
In Spain, we have access to the database of Atradius Crédito y Caución (ACYC) – the credit insurance company of the Atradius Group – and that of our business information partner, IBERINFORM. They include financial reports and risk evaluations of Spanish companies. Using the information from these reports, together with our own information, we can get accurate impressions of debtors' financial situations and advise on the next steps of the process. The information contained in these reports comes from the official accounts (P&L) that companies have to present annually.

45.2. Safeguard measures

We'll always try to obtain documents signed by debtors in order to get the debts recognised. In the case of obtaining signatures from debtors, they can be used in any future legal claims as proof.

Debtors can also offer other forms of security, such as mortgages, assignments of debt or assets against debts. Assignments of debt or assets can be done via contract, while mortgages have to be registered by a notary.

45.3. Legal collections



45.3.1. General information

The modern Spanish legal system is composed of public law, which regulates the relationships between citizens and the state or two bodies of the state, and civil law, which regulates the relationships between two people or companies.

Entering into legal proceedings is possible without a prior warning to the debtor. However, it's advisable to exhaust the amicable options before beginning legal action, considering its expensive costs, especially when there is a dispute.

In cases where the debtor is traceable but our amicable actions are unsuccessful, our lawyers' network will advance with pre-legal action: paying a visit to the debtor to make use of all collection chances. If the lawyer's actions are favourable, a fee will be chargeable to you according to the final collected amount. If the actions taken by the lawyer are unsuccessful, we'll assess whether further legal action is viable or not.

45.3.2. Legal systems

In Spain, jurisdiction is divided by the matter and nature of each case. For cases regarding outstanding monies, the section in charge is the civil one.

In the first instance, presided by one judge, we'll obtain a final decision that could be appealed in the second instance in the presence of the regional court called "Tribunal Superior de Justicia".

In all cases, we have to take into account that the address considered for designating competence will be the debtor's address unless both parties agree to another one.

The third instance "Recurso de Casación" in Spain is based on restricted reasons, and any claims that don't meet the criteria will be rejected.

It's also necessary to pay a legal tax that depends on the type of proceedings.

45.3.3. Required documents

In order to apply a legal dunning procedure, we need copies of the contracts, invoices, and a clear statement of account indicating the payments and credit notes that have been made for the outstanding invoices.

In the case of a regular lawsuit procedure, the original versions of the complete contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, and invoices, although it's true that more and more judges are accepting documentation in digital format. Every stage of the trading relationship between you and your debtor should be provable by documentation.

In case of dispute, all the notes of the conversations between you and your debtor should be kept and provided to our lawyers.

It's also necessary to obtain a power of attorney on behalf of us and our lawyers and attorneys, including the apostille of The Hague Convention if you aren't from Spain.

45.3.4. Legal dunning procedures

A legal dunning procedure, named "Monitorio" in Spain, is only applicable to monetary debts (less than EUR 250,000),

and only when the debts are due and payable and not disputed. The responsible court is the local court of first instance. The court only declares your right as the creditor and urges the debtor to pay the principal amount and interest.

If the debtor doesn't agree, they can mount opposition and ordinary proceedings will have to start (either "Ordinario" or "Verbal", depending on the amount). This is also performed in the first instance. In the event that the debtor pays the debt, the procedure will end. In the event that the debtor doesn't pay the debt, an enforcement procedure will start.

45.3.5. Lawsuits

A regular lawsuit ("Ordinario" procedure or "Verbal" procedure) is initiated directly either after the amicable collections has failed, or when the solvency of the debtor is satisfactory, or in the event that there is a prior dispute between the parties.

Both the plaintiff and defendant will submit allegations with evidence that will be assessed and discussed during a hearing. The evidence may include the documentation, witnesses, and experts. After the oral hearing, the judge sets a date to issue the final judgment, and both parties will be informed about the outcome in writing by the responsible court.

45.3.6. Appeals

Appealing against a judgment is possible within 20 days since the notification of that resolution. It'll trigger a verdict by the court of second instance (local court to district court, district court to higher regional court).

In the case of third instance, the review will be restricted to a check on whether or not the statutes were applied correctly. Any amendment of facts or proof isn't possible, unless the evidence wasn't known in the first instance hearing.

45.3.7. Legal taxes

Taxes have to be paid at the same time that we take legal action. Otherwise, the lawsuit won't be accepted by the court.

The costs of the taxes will be fixed, depending on the judicial procedure. The most common procedure in our experience is the "Monitorio" procedure, which costs EUR 100, and the "Ordinario" procedure, which costs EUR 300. We also have to consider the costs of enforcement – EUR 200.

These taxes aren't chargeable to the debtor and can't be reimbursed in any case.

Other additional local charges might be charged.

45.3.8. Expected time frame

The average duration of a legal process depends on the kind of procedures and whether the case is in the first instance or second instance. A "Monitorio" procedure takes about three months. An "Ordinario" or "Verbal" procedure can take more than a year to obtain a court judgment.

45.3.9. Costs and interest in the legal phase

There are different types of costs to consider.

- Fixed costs like court costs and solicitors' fees. These are official rates
- Lawyers' fees. In this case, we have to consider a minimum fee relating to the proceedings' type and a maximum fee relating to the collected amount
- Extra costs like witnesses, experts' reports, translation

Cost estimations can be provided on a case-by-case basis should legal action become necessary.

Efforts are made to keep costs low, at least when the debtor simply doesn't react, thereby accepting the claim.

It isn't possible to start legal proceedings only for interest or costs, but these will always be included in any final collected amounts.

When the debtor is condemned to pay the principal monies, the legal interest fees are normally included in the judgment. The Spanish Civil Code allows the judge to condemn the losing party to bear the costs of the legal proceedings and include them in all the claims, but this often depends on the judge's determination of whether or not the debtor has acted in bad faith.

In the case of a legal settlement, the parties bear the costs of the corresponding proceedings in proportion to their prevailing or failing.

45.4. Enforcement

45.4.1. Enforcement in debt

Once a judgment is issued by the court and the parties don't appeal in the legal period, the judgment becomes definitive. The condemned debtor will have to serve the judgment within 20 days following its publication.

45.4.2. Provisional enforcement

Spanish law allows provisional enforcement of a judgment when the condemned debtor presents an appellation and this is admitted. A warrant is used to obtain a statutory declaration from the debtor.

45.4.3. Enforcement of definitive judgments

Should the condemned debtor not pay within the 20-day period following the issuance of the judgment,

the executing party can submit an execution claim to the court, designating the debtor's assets known to them, without further requirements for payment. Or the executing party can ask the court to locate them or indicate the banks, public organisations, or companies that could help locate the assets.

Once the assets have been located, they'll be auctioned and the due amount will be delivered, returning the balance to the condemned party.

The costs of this phase will be paid by the condemned party after the assets have been liquidated. Until then, the executing party has to bear its costs.

45.4.4. Expected time frame

The time frame for enforcement is difficult to estimate, as it depends on the course of the case, the court, the locations of the assets, possible banks, and, of course, possible buyers. It usually takes longer than principal proceedings.

45.5. Insolvency proceedings

45.5.1. General information

The aim of insolvency proceedings is to create a restructuring of the debtor company in order to pay out all its creditors according to their credit's classification and with the same percentages of their debts' value by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

Restructuring plans

In 2022, Spanish law was amended to bring it into line with European legislation. Restructuring plans are created as a pre-insolvency instrument aimed at overcoming or avoiding insolvency. The aim is to encourage early actions and favour the continuation of activities. This process speeds up procedures and facilitates the approval of an agreement in cases where the company is viable, promoting the sale of production units, or, in the case of liquidation, it simplifies the procedures.

During this phase, a restructuring plan will be negotiated with the different classes of the creditors. It'll have to be approved by two thirds of each class' liabilities. The deadline for reaching an agreement is three months, which may be extended if there is justification for doing so.

The law requires a restructuring plan to be formalised via a public instrument by those who have signed it. This action is of great importance as it determines the date of the calculation of the claims.

During the whole proceedings, the debtor company won't be considered insolvent, so all the legal procedures and actions will be open and active.

45.5.2. Proceedings

Insolvency proceedings seek to reach a solution to the debtor's outstanding obligations, either through an agreement or through forced liquidation of their assets, when there is insufficient liquidity or money to meet such obligations, even if they have assets that can be realised.

The judge will study the documents and confirm the insolvency situation. Once the insolvency situation is confirmed by the court, the trustees of the bankruptcy will be appointed. They'll act as the administrators of the debtor company during the proceedings.

The insolvency will be published in the Official State Gazette. The date of the publication is very important because the creditors will have one month to lodge their credit claims.

Once the period for lodging credit ends, the trustees of the bankruptcy will prepare a financial report with a list of all the credit and a balance sheet, including the active and passive claims against the debtor company. If any creditors think that their rights aren't recognised in full, they can present their cases before the trustees. Only when all the cases are solved and the trustees prepare a definitive report, including the results of the cases, will the proceedings continue.

If the debtor company has enough assets for a payment plan, they'll present an agreement to the creditors that normally includes discount and a payment plan in the balance sheet. The creditors can accept or reject the plan, and present their decisions to the court. If the debtor gets approval from more than 50% of all the creditors,

the agreement will be accepted by the court and will affect all the creditors (not only those who signed it). However, if the debtor doesn't have enough assets or doesn't get 50% of favourable votes, the debtor company will be liquidated and the creditors will recover their debts depending on the total amount recognised and the qualification of their credit.

45.5.3. Required documents

In order to lodge a claim, we need:

- Copies of the invoices
- An updated statement of account

45.5.4. Expected time frame

The deadline for lodging claims is 30 days, and it starts from the publication of the insolvency in the Spanish Official State Gazette.

The review of the claims lodged can take three to six months, and the trustees have to check all of them before issuing a final report with a list of the credit.

The whole duration of insolvency proceedings depends on the payment plan agreed to or the time needed to liquidate the debtor company. It should be between five and 10 years.

In Spain, a case is open until all the payments have been received, or we verify that we have no options for recovery.

45.6. Arbitration and mediation

Should the parties have agreed to them previously, there are two available options for solving a dispute: arbitration and mediation or conciliation.

Agreeing to a private arbitration tribunal has three advantages compared to regular legal proceedings. It's quicker, as arbitration tribunals are less busy, and there are no appeals. It's also more cost-effective, and the hearings and processes are confidential. However, agreeing to arbitration also means excluding the jurisdiction of the ordinary courts.

The second way of solving a dispute is by mediation or conciliation proceedings, which focus on finding the root cause of the dispute in order to reach constructive agreements and solutions and create a win-win situation for both you and your debtor. Mediation or conciliation is done by professional organisations like the Spanish Chambers of Commerce or by professional mediators. The resulting agreement isn't a judgment, and the parties can ignore the mediator's advice if they wish.

Atradius Collections

46. Sweden

Industries

Electronics

Food

Machines

Minerals

Paper

Transport

Source: Central Intelligence Agency World Factbook

Chance of collecting

75%–100%

46.1. Amicable collections

46.1.1. General information

We maintain a professional collection process in Sweden, focusing on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to federal and state law.

46.1.2. Local agents

Currently we don't offer field service to visit debtors in Sweden. However, if debtors wish to visit our premises, we'll gladly arrange face-to-face meetings to discuss the situations.

46.1.3. Interest

We always charge debtors for interest. It's calculated from the base rate set by the Sveriges Riksbank, plus 8% on a daily basis.

There are two alternatives:

- To calculate the interest rate as agreed between you and your debtor
- To calculate the interest rate according to the Swedish regulations based on the reference rate fixed by the Sveriges Riksbank (plus 8% per year). This rate is fixed twice a year on 1 January and 1 July

The second alternative will always occur if the interest rate isn't agreed to between you and your debtor.

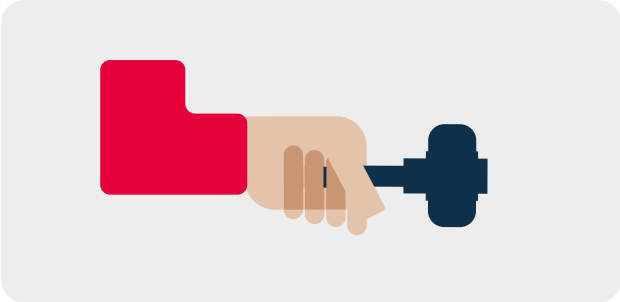
From a cultural point of view, Swedish debtors are used to paying late payment interest.

46.1.4. Debt collection costs

In Sweden, debt collection costs are chargeable to debtors, representing the creditors' claims for late payment.

From a cultural point of view, Swedish debtors are used to paying debt collection costs.

46.2. Legal collections



46.2.1. General information

Entering into legal proceedings is only possible with a four-day notice to the debtor that must include:

- Your name as the creditor
- The specifics of the debt (e.g. interest rate, date, and amount)
- A warning that non-payment will lead to legal action and further costs

The debt needs to be proved to be enforceable. If the debt is undisputed, the bailiff will issue a payment order, which equals a judgment. If the debtor disputes the debt, the file is assigned to trial handling, regardless of the reason or the seriousness of the dispute.

If a judgment is obtained and the debtor doesn't pay accordingly, the file will be handed over to the bailiff's court for execution.

46.2.2. Required documents

In order to apply legal proceedings, we need copies of the contracts, invoices, and a clear statement of account indicating the payments and credit notes that have been made for the outstanding invoices.

In the case of a regular lawsuit procedure, copies of the complete contractual documentation between you and your debtor should be available, including the contracts, original power of attorney, orders, order confirmations, delivery notes, and invoices. Every part of the trading relationship should be provable by documentation.

In case of dispute, all the notes of the conversations between you and your debtor should be kept and given to our lawyers.

In the case of verbal negotiations, we need the visit or negotiation reports and the names of any witnesses.

46.2.3. Lawsuits

A regular lawsuit procedure is started directly either after the amicable collections has failed due to dispute by the debtor, or following the legal dunning procedure after the debtor has appealed.

Usually, a written pre-procedure is issued. Both the plaintiff and defendant exchange opinions and proof by letter until the judge is confident that all the relevant information needed to judge has been received. In this case, a hearing is scheduled, during which both parties have to be present. After the oral hearing, the judge sets a date to issue the final judgment. The parties will be informed about the outcome in writing by the responsible court.

46.2.4. Expected time frame

The average duration of legal proceedings can be 12 months or longer, depending on the complexity of the case and the availability of the judges and lawyers on both sides.

46.2.5. Costs and interest in the legal phase

SEK 450 can be charged for a collection file and further costs will be added if the file is assigned to a court. There are different fees that can apply during legal proceedings, depending on the outstanding amount. There is also a range of possible fees for each legal action, making it difficult to predict the total cost. In addition to this, costs of witnesses and/or experts might also arise. Cost estimations can be provided on a case-by-case basis should legal action become necessary.

Extrajudicial interest and costs can be claimed as part of the outstanding debt during legal proceedings. Normally, the losing party has to bear the costs of the legal proceedings.

If there is a legal settlement, the parties normally bear their own costs of court fees and lawyers' fees.

46.3. Insolvency proceedings

46.3.1. General information

The aim of insolvency proceedings is to pay out all the creditors with the same percentages of their debts by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

There are three insolvency proceedings in Sweden:

- Enforced dissolution
- Reorganisation
- Bankruptcy

46.3.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check whether sufficient assets are available to cover the costs of the proceedings and liquidators. If these costs are deemed to be covered, then the insolvency proceedings will start and a liquidator will be appointed. If this procedure isn't followed, the court will reject the declaration of bankruptcy due to insufficient assets.

The creditors can then lodge their claims and take back any goods delivered under retention of title clauses. After the proceedings start, lodging claims is possible within a given deadline. The liquidator can either accept a lodged debt or dispute it. If your claim is disputed, you may only file the claim in court to prove the justification of the claim when further documentation received doesn't convince the liquidator to confirm the debt.

At the end of the proceedings, all the creditors with confirmed debts will receive dividends, provided that there are enough assets in the estate. Often with insolvent estates, no dividends are paid.

46.3.3. Required documents

In order to lodge a claim on your behalf in undisputed claims, we only need copies of the invoices.

46.3.4. Expected time frame

The expected time frame for insolvency proceedings in Sweden is one to three years.

Atradius Collections

47. Switzerland

Industries

- Chemicals
- Consumer durables
- Electronics
- Financial services
- Machines
- Services
- Textiles

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

47.1. Amicable collections

47.1.1. General information

We follow a collection process that is professional at all times with the objective of retaining the relationships between you and your debtors whenever possible. Our staff of collection professionals carry out the first collection tier in-house. We relentlessly pursue debtors verbally and in writing within the bounds of federal and state law.

47.1.2. Local agents

At the present time, we don't offer field service to visit debtors in Switzerland. Services are delivered from our office in Germany.

47.1.3. Interest

We always charge debtors for interest. It's calculated based on either the contractual agreements between you and your debtors, or the legal interest rate of 5% per year.

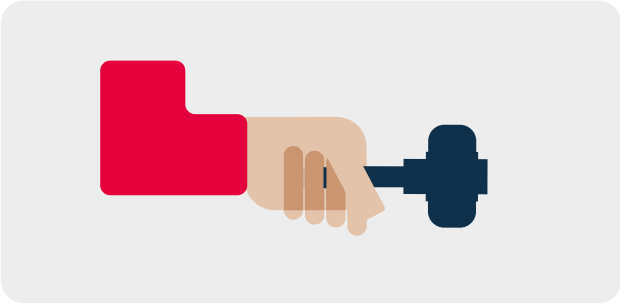
From a cultural point of view, Swiss debtors consider paying interest a matter of negotiation.

47.1.4. Debt collection costs

Debt collection costs are charged to debtors. They're calculated on the basis of the recommendations of the Swiss Debt Collection Union.

Swiss debtors aren't used to paying those costs.

47.2. Legal collections



47.2.1. General information

It must be noted that Swiss law demands a pre-legal summons to the debtor in order to be able to pursue them in regular legal proceedings. More details can be found under "Legal dunning procedures".

47.2.2. Required documents

In order to apply a legal dunning procedure, we need copies of the contracts, invoices, and a clear statement of account indicating the payments and credit notes that have been made regarding the outstanding invoices.

In the case of a regular lawsuit procedure, copies of the complete contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, and invoices. Basically, every part of the trading relationship should be provable by documentation.

In case of dispute, proof of the conversations between you and your debtor should also be kept and provided to our lawyers.

In the case of verbal negotiations, we need the visit or negotiation reports and the names of the witnesses.

47.2.3. Legal dunning procedures

Before you can sue your debtor, mandatory pre-legal action has to be taken before the official administrative debt collection authority, called "Office des Poursuites" or "Betreibungsamt". The office notifies the debtor of a summons ("Zahlungsbefehl") to pay within 20 days or to mount opposition ("Rechtsvorschlag") within 10 days. If no payment is made or there is no opposition, you can request the debt collection office to attach the debtor's assets, or a bankruptcy petition can be filed if the debtor is a legal person or a merchant.

The costs of this part of the legal proceedings can't be charged to the debtor.

47.2.4. Lawsuits

A regular lawsuit is started either after the opposition to the legal dunning procedure, or directly if the case is complex. In this situation, a summons is served on the plaintiff and a conciliation hearing is scheduled where actions can be requested. After this, written submissions to court are exchanged between the parties. A further hearing is scheduled, after which a judgment is issued based on the evidence gathered during the whole procedure.

47.2.5. Expected time frame

Four to six months are required before the execution of the proceedings before the debt collection office, provided that no opposition is mounted.

Execution takes another three to six months or more.

A summary procedure to lift opposition can last more than six months plus execution.

Ordinary proceedings can last from one to three years or even longer, depending on the case.

47.2.6. Costs and interest in the legal phase

In Switzerland, lawyers' fees are quite high and generally calculated on an hourly basis, with the fees being dependent on the seniority of the lawyer handling the case.

Court costs can also represent a substantial percentage of the claim – between 5% and 10% or more – depending on the case.

Costs may vary from canton to canton. This means that the cost aspect should be seriously taken into consideration before starting an ordinary procedure in Switzerland. Cost estimations will be provided for each individual case should legal action become necessary.

Court costs are generally chargeable to the debtor if the case is won, but not the attorney's fees. These depend on the judge's decision as to whether the debtor pays them in full, partially, or not at all.

47.3. Insolvency proceedings

47.3.1. General information

The aim of insolvency proceedings is to pay out all the creditors with the same quotas by liquidating the assets of the debtor company, or by collecting the enforceable income of the individual who is declared bankrupt.

47.3.2. Proceedings

All of the debtor's assets are liquidated and the proceeds are distributed to the creditors according to their ranking.

The creditors are invited to lodge their proof of debt with the Bankruptcy Office ("Konkursamt"), generally within 30 days from the bankruptcy declaration. Late lodging isn't possible. A trustee in bankruptcy is appointed by an assembly of the creditors that decides whether it'll be a particular person or a specialised officer belonging to the Bankruptcy Office. The creditors receive a certificate of loss ("Verlustschein") if their claims aren't satisfactory in the bankruptcy.

In case the debtor has requested a moratorium and a composition ("Sursis concordataire" or "Nachlaßstundung"), the judge will grant the moratorium after examining their reorganisation plan, balance sheet, trading account, and state of bookkeeping. An officer or trustee will be appointed to control the activities and an inventory will be made. The creditors will have to lodge their claims. A moratorium is granted for four to six months, but it's possible to extend this up to two years. During the moratorium period, a payment plan or a composition proposal is worked out. The proposal is accepted if the majority of the creditors representing at least two-thirds of the claims, or a quarter of the creditors representing at least three-quarters of the claims, have voted in favour of the proposal. After the acceptance of the proposal by the creditors, it'll have to be ratified by the court.

47.3.3. Required documents

In order to lodge a claim, the following documents are needed.

- An original power of attorney
- Copies of the invoices
- Copies of the contracts
- Copies of the orders, order confirmations, and delivery notes
- Copies of the general conditions of sale, if there are any
- Copies of any other correspondence that may verify the claim

47.3.4. Expected time frame and outcome

The whole duration of insolvency proceedings is between one and five years.

In the case of moratoria, dividends of around 20% to 25% can be expected.

Atradius Collections

48. Tunisia

Industries

Agriculture

Chemicals

Food

Minerals

Services

Textiles

Source: Central Intelligence Agency World Factbook

Chance of collecting

75%–100%

48.1. Amicable collections

48.1.1. General information

As with all Maghreb countries, Tunisia is not an easy place to collect debts. Many Tunisian debtors try to avoid paying with a range of delaying tactics that debt collectors have to deal with. The judges, legal systems, and court organisation are inefficient, much to the detriment of the creditors. Since the Arab Spring in 2011, collection opportunities have become worse.

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to federal and state law

When trading with Tunisian companies, it's highly recommended to demand bills of exchange covering the whole debts prior to delivering the goods. This would avoid any future discussions and allow you to file for payment orders in case of non-payment. They're much quicker than ordinary lawsuits.

48.1.2. Local agents

Our collectors may take decisions to heighten pressure through local agents out of court, if in-house debt collection attempts fail. These agents may appoint a bailiff, who will send an out-of-court formal notice of payment to the debtor and will organise a visit if appropriate. Depending on the specific details of each case, the local agents may appoint a lawyer, who will continue to try to reach a settlement without the need for a court case

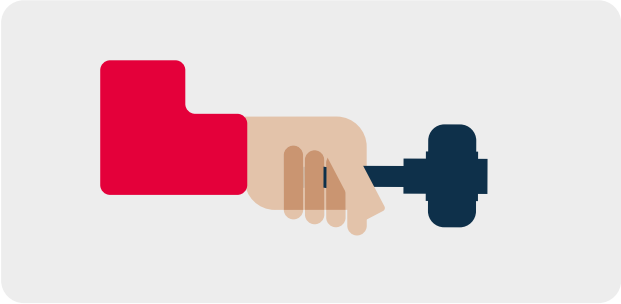
48.1.3. Interest

During the amicable phase, transferring any amount of interest or costs that doesn't correspond to those mentioned in the sales and customs documents is prohibited, even when both parties agreed to it. The only transferable sums are limited to the value of the goods indicated in the invoices. Consequently, interest and costs are not transferable to you, even when agreed to by both parties.

It only becomes possible to transfer the interest and contractual indemnities resulted from an agreement between the parties in the form of legal proceedings.

In commercial dealings, the parties may agree to commonly used interest (used in their businesses), on the condition that it doesn't reach a level that can be considered usurious. The date from which this interest rate begins to be applied can be fixed by the parties in their agreement. In commercial business, the interest rate varies generally between 6% and 10% and can't be capitalised.

48.2. Legal collections



48.2.1. General information

Depending on the outcome of the amicable debt collection procedure, the documents available, and the debtor's solvency, we will always make the most sensible recommendations as to whether or not it's worthwhile and economical to start legal proceedings.

Lawyers of debtors have recently started resorting to a new legal remedy to counter actions for payment brought against their clients. In a commercial relationship that is subject to Private International Law, it's the characteristic performance that determines the rules of the jurisdictions.

Under Tunisian law, it's the rules of the country of the seller that govern this relationship in cases where the parties fail to designate applicable law by mutual agreement. As such, in the majority of cases, Tunisian law is more favourable when it comes to the time limit for appeals and the means of evidence in commercial matters. The time limit for lodging appeals is 15 years between traders and starts from the transaction dates. In terms of providing proof of contract performance, it's the freedom-of-evidence rule that applies in commercial matters.

It, therefore, seems wise to obviate this legal remedy by designating Tunisian law as the sole applicable law and designating the Tunisian courts as the sole courts of competent territorial jurisdiction in the event of appeals.

This will give you the benefit of a long time limit for lodging appeals (15 years), thereby preventing the case from becoming time-barred, given the fact that the institutions of court proceedings are greatly delayed.

On the other hand, opting for the courts of Tunisia prevents your court actions from being instigated to be dispersed. In some cases, it will allow you to speed up the time it takes to obtain certified copies of the rulings compared to other courts in the country.

48.2.2. Required documents

Tunisian law requires originals of the invoices, orders, and shipping documents. However, the judge can accept certified true copies of the documents made by a third authority (e.g. notary, municipality), which can be problematic.

All the documents must be in French or Arabic; otherwise, translation costs will be invoiced.

48.2.3. Legal dunning procedures

A payment order is the quickest procedure but it can only be used if your claim can't be disputed. To be able to use this procedure, we need to view documents such as bills of exchange, a written acknowledgement of debt, and unpaid cheques.

48.2.4. Lawsuits

An ordinary lawsuit is the most frequently used legal proceedings in the absence of indisputable documents. The proceedings can be very long and complex, and are frequently adjourned for a range of reasons, including lawyers' delaying tactics, extreme formality, bureaucracy of the legal systems and judges, and missing documentation.

Enforcement of the final judgment is often very problematic if the debtor doesn't pay voluntarily to avoid the attachment of their movable or immovable property or the seizure of their bank accounts.

Most of the time, legal proceedings are so long that debtors have enough time to organise their insolvency.

48.2.5. Expected time frame

A judgment usually takes two years or more, depending on the specific details of the case. The debtor can still appeal the decision, which can add to the case's time.

48.2.6. Costs and interest in the legal phase

Court costs are not particularly high in Tunisia. There is very little difference if we proceed with a payment order or a writ of summons. You have to pay the costs of the bailiff plus EUR 50. You also have to settle the registration fees and judgment stamps, which are fixed fees of EUR 100 for a writ and EUR 50 for a payment order.

The party that appeals the judgment has to pay a EUR 20 appeal fee and EUR 50 to summon the adversary.

Once the judgment is successfully executed, you have to pay a registration fee of 5% of the amount mentioned in the judgment.

Lawyers' fees depend on each specific case, varying from EUR 400 to EUR 1,500, plus from EUR 500 to EUR 2,000 extra for an appeal.

Execution costs and fees vary considerably depending on the execution methods used.

The legal interest rate, which is currently 6% in commercial matters, is fixed by the central bank according to economic and financial situations. The interest can be granted by the court without being the object of a precondition, but this interest will apply only from the date of the summons up to the moment of full payment.

Attorneys' fees might not be charged in full to the debtor. In the case that the judgment is rendered in favour of you as the claimant, the court usually condemns the debtor as the losing party to pay between TND 300 and TND 500 to the opposing party to cover part of the attorneys' fees.

48.3. Insolvency proceedings

48.3.1. General information

The aim of insolvency proceedings is to pay out all the creditors equally by liquidating the assets of the debtor company.

48.3.2. Proceedings

Bankruptcy
Bankruptcy can be declared either upon a written declaration by the debtor or upon a summons by the debtor's creditors. The court can also take the initiative to declare the bankruptcy of the debtor.

Since the declaration of bankruptcy, the creditors lodge their claims with the receiver ("syndic") with a recapitulating listing of attached documents with evidence of the debts. The creditors who don't lodge their claims within eight days from the decree of bankruptcy are warned by message in newspapers and by letter by the receiver that they have 15 days left to lodge their claims. If the creditors are located outside of the Tunisian territory, the deadline for declaring debts is increased by 30 days.

If the debts are disputed by the receiver, the creditors will be informed by registered post. The creditors then have a deadline of eight days to supply a written or verbal explanation. Once the checking of the claims by the receiver has ended, which must be within three months from the declaration of bankruptcy, the receiver sends to the clerk's office a statement of debt. The clerk's office then warns the creditors of the deposits in this statement by letter, indicating the sums for which their claims appear there. The clerk's office informs the creditors whose claims are disputed by registered post.

Act on the Recovery of Companies in Economic Difficulties
The Act on the Recovery of Companies in Economic Difficulties aims to provide relief for companies facing difficulties in continuing their activity. It allows all the managing directors of the companies to apply to the president of the Court of First Instance, which has the territorial jurisdiction to be awarded the benefit of the regimes set out under the act.

The act sets out two settlement mechanisms: amicable and court-ordered settlement.

- **Amicable settlement**
  An amicable settlement is set in motion in response to a petition from a managing director of the company concerned, addressed to the president of the court, based on a statement of the financial position of the company, detailing the debts and their maturity dates, along with a recovery plan. If deemed expedient by the president of the court, the procedure will be initiated and a mediator will be appointed with a remit to help the debtor and creditors reach an agreement within three months, which may be extended for another month.

  The launch of the procedure causes all the lawsuits and enforcement of recovery of all the prior claims to be suspended. There are no restrictions on the ways the parties reach an agreement (e.g. payment of the debts by instalment, cancellation of the debts, halting the accrual of interest).

  If the terms are agreed to, the agreement is ratified by the president of the court. If the debtor defaults on their obligations, any of the parties concerned are free to petition the court to annul the agreement. If no agreement is reached within the time limit set out under the act, the mediator informs the court, which will dismiss the petition for an amicable settlement.

- **Court-ordered settlement**
  Companies that become insolvent and are no longer able to service their debts may call on this procedure.

  A court-ordered settlement procedure is initiated in response to a written petition for that effect, addressed to the president of the court, by a managing director of the company concerned or by any of its creditors. To this end, the debtor is to make a statement specifying the names of the creditors and a list of their employees.

  If deemed expedient by the president of the court, the procedure is initiated and an official receiver and a certified public accountant are appointed. The official receiver draws up a list of the creditors, announces the merit of the receivership petition, and puts together a report for the court, in which a settlement plan is suggested or a decision is made that a plan is inexpedient.

  The court will rule on the application for a court-ordered settlement after hearing all the parties. The court may declare the debtor bankrupt or impose court-ordered liquidation. The court may ratify the proposed settlement plan or decide to initiate an observation period. In that case, the court will appoint a court-ordered administrator who will put together a recovery plan. During the course of the observation period, all the individual legal action and enforcement proceedings of the prior claims are suspended.

  You need to make sure that your debt, which dates from before the date on which the ruling is returned, is duly registered within 30 days from the date of the publication in the official journal. All claims submitted after this period will not be registered.

Atradius Collections

49. Türkiye

Industries

Chemicals
Construction
Electronics
Food
Machines
Minerals
Paper
Textiles
Transport

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

49.1. Amicable collections

49.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. Our team of collection specialists carry out the collection process in-house. We contact debtors both verbally and in writing while adhering to state law.

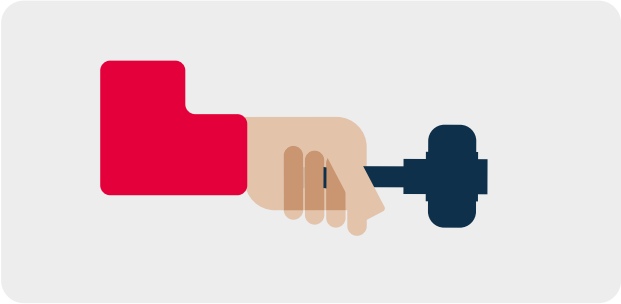
49.1.2. Interest

Contractual interest can usually be claimed. If no interest rates have been agreed to contractually, the legal and default interest rate is set as the maximum interest rate applied to foreign exchange accounts set by Turkish public banks. This rate fluctuates daily.

49.1.3. Debt collection costs

Collection costs can't be demanded from debtors.

49.2. Legal collections



49.2.1. General information

The Turkish judicial system is divided into branches as judicial judiciary (first instance courts, regional courts of justice, and the Supreme Court of Appeals), administrative judiciary (first instance courts, regional administrative courts, and the Council of State), constitutional judiciary (the Constitutional Court), and dispute judiciary (the Court of Jurisdictional Disputes).

Even though the Turkish legal systems are well organised and efficient, it can still be a slow process as debtors usually appeal and appoint experts to represent them.

49.2.2. Required documents

In order to proceed with a payment order, a power of attorney is required that must be notarised and legalised by a local Turkish consulate. It's also possible to have the power of attorney notarised, and then have the apostille of The Hague Convention applied. The originals or certified copies of all the commercial documents, such as invoices, are required.

In the case of a regular lawsuit procedure, copies of the complete contractual documentation should be available, starting with the contracts, orders, order confirmations, delivery notes, invoices, as well as the exchange of correspondence.

In the case of verbal negotiations, we require the visit and negotiation reports, together with the names of the witnesses.

49.2.3. Legal dunning procedures

The first step is to get a payment order issued through the bailiff's office nearest to where the debtor is located. The debtor is summoned to pay or raise their objections within seven days from the serving of the payment order. If the debtor fails to do so, the debtor takes the risk that all their assets will be attached.

The debtor has three options:

- Pay the amount due and disbursements
- File an objection
- Keep silent

If the debtor stays silent, you can apply to the bailiff's office and attach the debtor's movable and immovable property, including their bank accounts.

49.2.4. Lawsuits

In the case that the debtor files an objection, a mandatory mediation process must be resorted to before pressing charges to cancel the objection. The mediation period is a total of two months. If the parties can't come to an agreement within this period of time, a lawsuit is filed with a non-agreement minute. It's also possible for you to apply for a lawsuit directly without applying for a payment order first.

Fines can be imposed on the debtor who has objected in bad faith, provided that you can prove the bad faith. Both parties will submit their petitions and replies, and, in most cases, the court will send the files to the experts. The parties can then submit their objections to the experts' report.

The court will render its judgment after considering and examining all the written petitions relating to the objections and allegations by the parties, which can take a considerable amount of time. If the court decides that the objection made by the debtor isn't justified and the debtor appeals the decision, it's possible to pick up enforcement. The appeal doesn't stop the enforcement unless the debtor submits a bank guarantee for your claim amount to the bailiff's office.

49.2.5. Expected time frame

The average duration of a legal dunning process is approximately eight months, whereas a court procedure can take three to five years, depending on the case and the circumstances.

49.2.6. Costs and interest in the legal phase

We generally expect a fee from 15% to 20% of the claim to be paid to our attorneys, and a further 6% for the court costs and administrative expenses for the collected amount only. If there is no collections, we just pay 5% of the claim amount for court costs, administrative expenses, and research.

Court costs are determined by the provisions of the "Harçlar Kanunu" - Turkish Law number 492 (law on Turkish fees).

In the case of legal action, the Turkish judge may decide to dismiss any interest claim, depending on the circumstances surrounding the case, any dispute, or the debtor's financial situation.

Expenses incurred by the court or enforcement office, such as official fees, notification costs, mediators' fees, experts' fees, are requested from the debtor. However, not all collection costs can be claimed from the debtor.

In all cases, the losing party has to bear the costs of the legal proceedings.

In the case of partially winning, the costs will be divided between parties according to the acceptance/rejection rate of the case.

49.3. Insolvency proceedings

49.3.1. General information

The creditors will be seeking to get all the assets of the debtor liquidated in order to pay off all the debts. If the assets won't be sufficient to settle all the debts, the creditors will be paid a percentage of the monies owed to them on a pro-rata basis.

However, because bankruptcy would mean that the debtor no longer has any control of their company, the strategic implications of bankruptcy are much more important than the practical results. The unsecured creditors are mainly forced to act as renegade creditors to get their money paid, and therefore, bankruptcy is usually engaged in order to make the debtor yield to the threats of bankruptcy, rather than for the sake of the bankruptcy itself.

A bankruptcy action will be initiated as an individual action by the creditor and will remain an individual action right up to the moment the court declares the debtor

bankrupt. This enables the initiating creditor to stall or stop the bankruptcy procedure in return for payments or settlements.

49.3.2. Proceedings

A bankruptcy order for payment is served on the debtor. Regardless of the debtor's response to the order for payment, you must take the matter to court, and it has to be the court that decides whether bankruptcy will be declared against the debtor.

The court procedures will be between you (the claimant) and the debtor (the defendant). However, any other third-party creditors (other creditors) who believe that the outcome of the case will have effect on them can ask the judge to accept them in the proceedings as parties with limited participation capacity.

You (the claimant) have full control of the case and can decide to continue alone or abort the case right until the moment the court declares the debtor bankrupt. Once this happens, you'll no longer have sole control of the matter and all the creditors will have to decide together. It'll be the liquidators who have the power to make decisions from the moment of bankruptcy onwards.

As soon as the debtor is declared bankrupt, all the creditors will be informed of the decision and are now able to lodge their claims within a deadline of one month.

In any event, if there is a dispute between the debtor and creditors, the court must first resolve this dispute completely. The bankruptcy can only be declared after all the disputes have been resolved by the court (as an integrated phase of the bankruptcy case).

49.3.3. Required documents

Copies of the invoices are required, signed by you and authenticated by a notary, who certifies the signature and confirms that the copies are true copies of the remaining original unpaid invoices according to the company's official books. The documents should bear the apostille of The Hague Convention. However, certified copies of the invoices aren't required if the debtor has accepted a bill of exchange or signed a promissory note duly stamped.

A power of attorney that has been notarised and stamped with the apostille of The Hague Convention is also required.

49.3.4. Expected time frame and outcome

A bankruptcy claim will typically take about one year from the start of the bankruptcy declaration if the debtor doesn't fight against it. If the debtor defends, it'll take closer to 18 months, with the actual liquidation taking anywhere from a few months to many years.

The shorter the period, the less likely it'll be for an ordinary creditor to get any dividend paid. If the estate is complex and rich in assets, it may then take many years to be liquidated; but in such cases, the chances of receiving a dividend would be much higher for an ordinary creditor.

Atradius Collections

50. Ukraine

Industries

Chemicals

Construction

Electronics

Machines

Minerals

Textiles

Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

50.1. Amicable collections

50.1.1. General information

As professionals in collections, we're in a position to provide first-class services, special treatment, and analyses of each debt collection case in order to successfully recover overdue debts.

50.1.2. Local agents

We offer field service to visit debtors at their offices, where you'll be represented by our local lawyers, who will conduct the negotiations of your cases.

Taking into account the size of Ukraine, it should be noted that the fee for each visit will include transportation and accommodation costs.

In case debtors wish to visit our office, we'll gladly meet them to discuss solutions for your cases face-to-face.

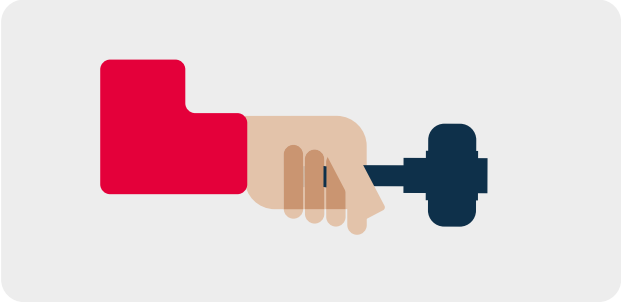
50.1.3. Interest

The Ukrainian business culture is to not pay interest fees, so it's difficult to achieve an amicable solution and obtain the payment.

50.1.4. Debt collection costs

Debt collection costs aren't chargeable to debtors in Ukraine, as there is no such law at present. So payment of the debt collection costs depends only on the contractual agreements between you and your debtors.

50.2. Legal collections



50.2.1. General information

It's mandatory to send a pre-legal warning to the debtor within 30 days before legal action is taken. If this order isn't followed, your claim will be rejected by the court.

50.2.2. Required documents

Here is a list of the necessary documents for legal action.

- The contracts signed by the parties with all the appendices
- All the unpaid invoices
- A statement of account indicating the payments and credit notes that have been made regarding the outstanding invoices
- The transport documents with the debtor's mark proving the goods' receipt and customs declarations
- The correspondence and other documents relating to the debt
- An extract from the trade register of your company
- A power of attorney

50.2.3. Lawsuits

Your claim is submitted to the court and the court checks the documents and the grounds for the claim. If the claim is prepared and submitted correctly, the court announces a date for a session, during which both parties have to be present (the attendance in a court session can be in person or remotely). If it's necessary, the court may postpone the session and announce a date for another hearing. The parties will be informed about the outcome in writing by the responsible court. In case the Commercial Court solves the dispute, the parties have to select a judge from each side.

50.2.4. Expected time frame

The average duration of a court procedure can take from four to six months or longer.

50.2.5. Costs and interest in the legal phase

The costs of the proceedings (court costs and fees) are determined by the provisions of the Civil Procedure Code and aren't subject to any negotiation.

All costs depend on the outstanding amount. There are different fees that can apply during the proceedings. It's difficult to declare an exact sum of litigation costs. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

Out-of-court interest and costs can be claimed as part of the outstanding amount during legal proceedings, although the outcome is highly dependent on the court and judge. There isn't a 100% guarantee that interest will be awarded. Requests for interest will increase the amount of court fees.

The debtor has to cover the court fees if a decision is made in favour of you as the claimant. Other expenses (e.g. experts' fees) can be requested from the debtor. However, the decision on whether they're awarded from the debtor depends on the court.

50.3. Insolvency proceedings

50.3.1. General information

There are two stages of insolvency proceedings in Ukraine.

Reorganisation procedure

The debtor company tries to recover from their financial situation and to settle debts in accordance with their reorganisation plan.

Liquidation procedure

The court appoints an administrator who will prepare a list of the creditors, receive the documents, recover the debts, and sell the assets. The debtor company is liquidated once the procedure is finished.

50.3.2. Proceedings

Your claim has to be submitted within one month to the court making the decision to start insolvency proceedings. If your claim isn't submitted within this term, it can still be accepted by the court, but the claim will be last in the order of creditors.

50.3.3. Required documents

Your claim has to be lodged with the court and the decision is made by the court; therefore, the documents needed to lodge the claim are the same as those for legal action.

50.3.4. Expected time frame and outcome

The deadline for lodging claims is one month and it starts from the date when the information about the court decision is published in official sources.

The whole duration of insolvency proceedings can't be predicted exactly.

The outcome can't be predicted either, as it depends on the debtor company's state at the moment their insolvency starts.

Atradius Collections

51. The United Arab Emirates

Industries

Chemicals

Construction materials

Machines

Minerals

Textiles

Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

51.1. Amicable collections

51.1.1. General information

We recognise that every client has different needs, and therefore our services are tailored to our clients' specific requirements. We follow proven principles of negotiation. By being in close contact with debtors, we're able to evaluate genuine cash flow problems and stalling excuses for non-payment, and to persuade the debtors to pay the debts in an amicable manner. Site visits and face-to-face meetings with debtors are an integral part of our collection initiatives.

51.1.2. Local agents

We have a physical presence in the United Arab Emirates (UAE). We offer field service in certain emirates and we visit debtors regularly when the need arises.

In order to initiate legal action in the UAE, your claim will have to be filed with the Court of First Instance.

51.1.3. Interest

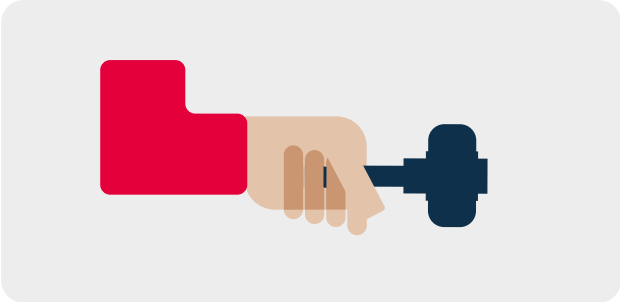
Although the Chief Justice of the Supreme Court in suits filed by banks for recovery ruled that ordering debtors to pay interest on late payment can be considered some sort of damage, it's compliant with both UAE law and traditional Islamic law (Shariah).

From a cultural point of view and in practice, debtors in the UAE don't pay interest on delayed payment.

51.1.4. Debt collection costs

From a cultural point of view and in practice, debtors in the UAE don't pay collection costs.

51.2. Legal collections



51.2.1. General information

There is a three-tier legal system, including the Court of First Instance, the Court of Appeal, and the Court of Cassation.

The civil court (or the Court of First Instance) hears all claims ranging from commercial matters (including debt recovery cases) to maritime disputes.

After a judgment has been delivered, the parties have the right to appeal to the civil court on factual and/or legal grounds within 30 days since the date of the judgment. Thereafter, the parties may appeal on legal grounds alone to the Court of Cassation, which is usually composed of five judges. All decisions of the Court of Cassation are final and aren't subject to appeal.

51.2.2. Required documents

Litigation in the Middle East tends to be almost completely document-focused. There is little verbal advocacy, and it's vital that your case can be proved on paper.

In order to substantiate your claim, each stage of the contracts must be proved (i.e. with the purchase orders, sales confirmations, packing lists, bills of lading, delivery notes, invoices, sales contracts, and correspondence). In addition, the documents must be original, as copies carry far less weight in the court, and, if they're denied by the debtor, can be ignored by the court.

Any documents submitted to the court will need to be translated into Arabic by a court-approved translator, for whom there will be translation costs. These costs are generally not recoverable in the proceedings.

51.2.3. Lawsuits

In order to initiate legal action in the UAE, your claim will have to be filed with a relevant court (i.e. a court that has the jurisdiction to hear the dispute). The claim needs to set out the bases for the dispute and the remedies sought.

Court fees will also need to be paid, which are between 7.5% and 10% of the value of the claim, varying from emirate to emirate, and capped at a maximum of AED 40,000. The court bailiff's office will then serve the claim on the debtor and the first hearing date will be set.

All the documents filed in court and the claim itself will need to be in Arabic or translated into Arabic by an official translator.

51.2.4. Expected time frame

The average duration of legal action before the Court of First Instance is between 12 and 16 months, depending on the complexity of the case and the availability of the judges and lawyers on both sides.

51.2.5. Costs and interest in the legal phase

Legal costs depend on many factors. Therefore, it's not feasible to give an estimation of the legal costs without examining the facts of each case individually. It's important to consider that legal costs in the UAE represent a relevant percentage of the debts. Cost estimations will be provided on a case-by-case basis should legal action become necessary.

The court awards interest and costs to the party in whose favour the court passes the final judgment. However, the amounts awarded are generally fairly nominal, covering only the court fees, experts' fees, and a nominal fee for advocacy.

51.3. Insolvency proceedings

51.3.1. General information

The UAE's federal law provides frameworks for the reorganisation, liquidation, and bankruptcy of insolvent companies and individuals. The UAE's bankruptcy regime is set out in Book Five of the Commercial Transaction Law (Federal Law No. 18 of 1993). The UAE government has issued the Federal Decree Law No. 9 of 2016 on Bankruptcy (the New Law). The New Law was published in the official gazette with the publication date of 29 September 2016 and came into force on 29 December 2016.

Key changes under the New Law:

Repeal of the current regime

Chapter V of the Commercial Transaction Law, which sets out the UAE's current bankruptcy regime, will be expressly repealed, together with various bankruptcy-related crimes set out in the Penal Code.

Wider application

The New Law applies more widely than the current Commercial Transaction Law's provisions, covering companies governed by the UAE's Commercial Companies Law (CCL), most free-zone companies, sole establishments, and civil companies conducting professional business, not just commercial traders.

Government-owned companies aren't established under the CCL. For example, companies formed by Emiri decrees may opt in to the provisions of the New Law by express provisions in their constitutional documents.

There are still some carve-outs, in particular for companies in financial free zones (Dubai International Financial Centre and Abu Dhabi Global Market) that have their own insolvency provisions.

Administration

A Financial Restructuring Committee is to be formed by a Cabinet resolution under the authority of the Ministry of Finance. The committee will maintain an approved list of insolvency experts and a register of insolvencies.

New insolvency test

The Commercial Transaction Law's provisions apply to businesses that can't pay their debts (essentially, a cash flow test). The New Law introduces an alternative balance sheet test to assess whether the assets of a business are insufficient to cover its liabilities.

Processes and procedures

The New Law sets out three main procedures for businesses in financial difficulties.

1. Protective composition: This is a debtor-led, court-sponsored process, designed to facilitate the rescue of the debtor company that is in financial difficulties but not yet insolvent. The scheme requires the approval of both the majority in number and two-thirds in value of the unsecured creditors. The scheme must be implemented within three years since the court's

approval, which may be extended for another three years with the creditors' approval.
2. Insolvency with reorganisation: When the debtor is insolvent but the court determines that the business can be rescued, they may approve a reorganisation scheme. Such a scheme is similar to the protective composition described above, requiring the same level of the creditors' approval. But a longer period of five years (extendable by another three years) is allowed for implementation.
3. Insolvency with liquidation: When a protective composition or reorganisation scheme is not appropriate, not approved, terminated, or the debtor is acting in bad faith to evade their financial obligations, the court will order the insolvent winding up of the business.

In each case, a trustee, who must be independent of the debtor, is appointed to manage the process. The New Law includes strict time limits for filing and lodging objections, and it expressly requires that the relevant process continue while the court considers any objections. This is important, as time-consuming proceedings may otherwise prove to be a practical obstacle to using the procedures under the New Law.

Although the drafting is more modern and streamlined, the procedures under the New Law aren't substantially different from those currently available under the Commercial Transaction Law. In particular, unlike the 2011 Draft, the New Law doesn't include provisions for an out-of-court financial restructuring procedure. It's possible that this may be addressed by the Financial Restructuring Committee in the future.

Removal of offence (bankruptcy by default)
Under the current regime, a trader who is unable to pay their debts must request to be declared bankrupt within 30 days. Failure to do so constitutes a criminal offence of bankruptcy by default and may result in fines and potential imprisonment. Although it's not actively prosecuted, the risk of imprisonment may encourage a business owner in financial difficulties to abscond (or even expedite the bankruptcy) rather than attempt to restructure the business.

One of the key changes under the New Law is to decriminalise this behaviour. If a debtor fails to pay their due debts for over 30 business days, or is insolvent on a balance-sheet basis, they're required to initiate insolvency proceedings. Failure to do so may result in a disqualification order against the debtor under certain circumstances – but it isn't a criminal offence.

Bounced cheques
In early 2022, the UAE introduced an amended version of the law that obliges banks to make part payments by releasing any available funds in bank accounts unless the holders disagree.

The previous law deemed the signatories of bounced cheques potential criminal offenders and allowed the beneficiaries of bounced cheques to file police reports against the signatories. However, with the New Law, criminal offences are only possible for fraudulent cheques and no longer for insufficient funds. The New Law enables the signatories to directly approach the court's execution judge to order payment of the full or remaining amounts (Expedited Payment Order).

Creditors
Under the Commercial Transaction Law, any creditor, regardless of their claim amount, may request to have their debtor declared bankrupt. The New Law introduces some new specific requirements in this regard. Before bringing insolvency proceedings against the debtor, the creditor or the group of creditors must now have debt(s) of at least AED 100,000 and must first notify the debtor in writing of discharging the debt(s), allowing 30 consecutive business days for repayment.

New financing
The included provisions give priority to new financing, following the commencement of a protective composition or reorganisation scheme, with safeguards for the existing secured creditors.

51.3.2. Proceedings
The creditors of the debtor company acting on their own initiative may seek a declaration of bankruptcy in respect of the debtor company. In order for a creditor's petition to succeed, the court must be convinced that the debtor company has ceased to pay their debts as a result of financial difficulties.

After a bankruptcy application is submitted, the court must take steps to preserve the debtor company's assets. The court will conduct investigations into the financial affairs of the debtor company and the reasons behind their failure to pay the debts. After concluding its investigations and resolving any preliminary disputes, the court will set a date for a bankruptcy hearing. The court will order that all the creditors must notify the court of any debts prior to the hearing.

At the hearing, the court may declare the debtor company bankrupt and it may appoint a trustee to assume control of

the debtor company's assets for distribution among the approved creditors. The creditors are prohibited from pursuing claims against the debtor company after the declaration of bankruptcy, with the exception of the secured creditors who may be permitted to enforce their security interests notwithstanding the declaration of bankruptcy.

51.3.3. Required documents

While initiating bankruptcy proceedings, we need the following original documents.

- The invoices
- The contracts
- The purchase orders
- The bills of lading
- A statement of account
- A power of attorney in favour of our lawyer

Furthermore, all the correspondence exchanged between you and your debtor through emails or letters is to be filed. It's important to note that the documents are to be translated into Arabic before they can be filed before the court.

51.3.4. Expected time frame

The average duration of bankruptcy proceedings is between two and three years, and varies on a case-by-case basis.

Atradius Collections

52. The United Kingdom

Industries

Chemicals
Consumer durables
Electronics
Food
Machines
Minerals
Paper
Textiles
Transport

Chance of collecting

50%–75%

Source: Central Intelligence Agency World Factbook

52.A. The United Kingdom

52.A.1.Amicable collections

52.A.1.1. General information

Our collectors try to collect debts without recourse to legal action by telephone and letter. We always try to get payment of debts in full, but will negotiate to agree on payment plans or settlement figures. In order to support this process in the UK, we must issue a letter before claim (LBC), which is the start of legal proceedings. This is not used in all cases, only in those where the collectors consider that the debtors have the ability to pay and need some strong evidence of our intention. In England and Wales, we can issue a copy of the proceedings that will be sent to the court in the event that the debtor fails to make payment.

When there is a dispute, we aim to reach an amicable solution between you and your debtor. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as standard terms previously agreed to). All of our investigations are completed with the assistance and agreement of our legal team.

52.A.1.2. Local agents

We currently use a field agent partner to visit debtors to ascertain whether they have any assets or means to make payment.

52.A.1.3. Interest

Late Payment of Interest Act

This act sets out to assist businesses faced with late payment problems. It does this by adding a number of rules to contracts between businesses. Both parties should be businesses, commercial entities, or public sector organisations.

Interest is claimed at the prevailing Bank of England rate. The rate is listed as the UK's clearing bank base lending rate in the Financial Times, and is also known as the repo rate. The rate that applies is the rate in force at the end of the day that the payment was due.

52.A.1.4. Debt collection costs

As well as interest, you may also charge an amount to compensate for the costs of collecting the late payment. The amount of compensation that can be claimed is determined by the outstanding amount as follows:

Amount owed	Compensation
Up to GBP 999	GBP 40
From GBP 1,000 to GBP 9,999	GBP 70
From GBP 10,000 and over	GBP 100

52.A.1.5. Prescription

Limitation Act 1980

This outlines the time limit in which you can chase your debtor to collect the outstanding debt. This act only applies when no contact has been made between you and your debtor within the given time limit, and only applies to the residents of England and Wales. You are given a fixed period of six years to chase your debtor, which is outlined in the Limitation Act 1980. After this period, it's no longer possible to pursue your debt.

52.A.1.6. Payment methods

The UK still operates on Payment methods by cheque, although the preferred method is by bank transfer.

If possible, for long-running payment plans, we will seek standing orders or direct debits, but there is natural resistance to these by debtors.

52.A.1.7. Types of companies

There are a number of company types and each has its own particular requirements, which are listed below. One of the primary reasons why legal action fails is because the creditors don't know the trading styles of their debtors. An account opening form is highly recommended in order to support any legal action required at a future date.

Sole trader	This type of company is run by one individual. This individual is personally liable for the business's debts. But in order to commence legal proceedings, we must first be sure of the identity of the individual, such as their name and, if possible, date of birth.
Partnership	This type of company is run by at least two individuals who have joint liability. Again, we need to be sure of the correct identities of the individuals in order to pursue them legally. In such a business, each partner is responsible for the business's debts and can be pursued for the totality.
Limited company	This type of company is run by directorship. We can only pursue the company and not the individuals themselves

52.A.1.8. Sources of information

Limited companies must register with the official Companies House register. Sole traders and partnerships are not required to do so.

We're able to use several credit reference agencies in order to find out commercial details on limited companies. In the case of individuals, we are primarily reliant on tracing agents to undertake personal online searches and qualify this information by calling the individuals' neighbours or other businesses. In the UK, using a debt collection agency is the most preferred method when outsourcing debt recovery.

52.A.2. Retention of title

There are two types of retention of title (ROT) clauses:

Simple
The title to the goods only passes to the buyer in respect of the payment for each invoice relating to the goods.

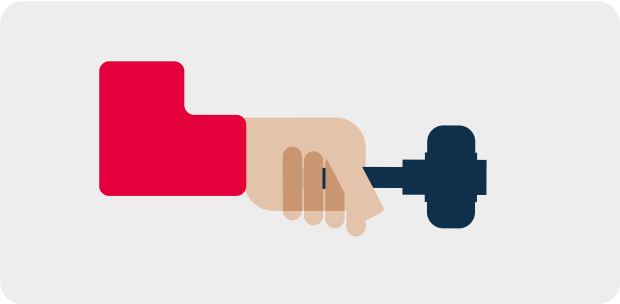
All monies
The title to the goods only passes to the buyer when they have paid for all the goods supplied.

We advise you to enforce your ROT clauses. In the case of all monies, the goods must be identifiable. For this reason, it isn't possible for us to enforce ROT clauses on your behalf; however, we will assist in any way we can.

52.A.3. Safeguard measures

Occasionally, debtors will offer personal guarantees on the debts, but it's important to note that these must be legally enforceable.

52.A.4. Legal collections



52.A.4.1. General information

Within the UK, there are several different and separate legal jurisdictions: England and Wales, Scotland and Northern Ireland. While in general, creditors can take the same actions in each country, there are differences in:

- Solicitors
- Timescales
- Costs

Generally speaking, the first stage of legal action in every jurisdiction is the issuance of an LBC. This is a letter sent to the debtor from the solicitor, informing them that should they not make payment in full, legal proceedings will be commenced.

If the LBC isn't successful, there are three main options:

- County court judgment
- Full court proceedings, generally a trial
- Making the debtor company insolvent, often called winding up

However, in the last option, there is no guarantee that making the debtor company insolvent will recoup any monies. There are two steps to successfully recover monies in the UK by taking legal action. The first step is obtaining a judgment, and the second step is enforcing that judgment.

Whether your debt is insured or uninsured will affect the initial stages of legal action. If the debt is insured and you have complied with all the obligations in the policy, then in most cases, any credit insurance in place will contribute

towards the legal costs. You will still be consulted about the legal action; but, if your claim has been paid, the credit insurance will direct such action. If the credit insurance doesn't cover the debt, then we will need you to agree to legal action and its costs in writing prior to initiating litigation. We will also ask you to make payment on account for legal action, particularly if the case is defended.

52.A.4.2. Expected time frame

On average, pre-legal actions like the LBC take 14 days after their issuance.

Litigation actions take approximately 12 weeks for a standard case to obtain a judgment. The case is then transferred to the High Court to obtain the relevant documentation to proceed to enforcement. This can take another three to four weeks.

Enforcement can take up to an additional 12 weeks, but it depends entirely on the sheriff's ability to make contact.

52.A.4.3.Costs and interest in the legal phase

Costs will differ greatly, depending on the type of necessary legal action and the jurisdiction where we take legal action. In any case, our experienced collectors will have a full discussion with you regarding costs and timescales before legal action is taken. You can find more details on the court fees in England and Wales at www.gov.uk/make-court-claim-for-money/court-fees.

Certain legal costs, such as some of the court costs, can be charged to the debtor. The decision to allocate costs lies with the judge, but in most cases, approximately 60% to 70% of all the costs are charged to the debtors' accounts after successful judgments.

We offer a highly competitive, fixed tariff for standard cases. Legal costs for defended cases are charged at an hourly rate. This depends entirely on the nature of the case and the seniority and experience of the legal advice needed. These costs can range from GBP 150 to GBP 500 per hour. It isn't possible at the start of a case to make an exact estimation of its costs, but it's clear to see that heavily defending costs can easily equal or exceed the value of the debt itself. For this reason, we will advise on some forms of negotiation and/or mediation. Indeed, the UK government has ruled that all cases must partake in some forms of mediation before going to litigation, and, at the very least, be able to show the attempts to resolve the disputed issues between the parties.

The solicitor will continue to add the statutory interest and costs to the debt.

52.A.5. Enforcement

52.A.5.1. Enforcement in debt

There are two steps to successfully recover monies in the UK, the first of which is obtaining a judgment, followed by the enforcement of that judgment. There are several options for enforcement, but the most common one is via enforcement officer or sheriff. Once the judgment is obtained, then enforcement actions can be taken. The judgment doesn't necessarily lead to successful collections. The enforcement officer will visit the debtor's premises to try to collect the monies. This can be a lengthy process lasting several months.

52.A.5.2. Enforcement in movable property

If the debtor isn't able to make any payments, then the sheriff can seize the goods relating to the debtor's business as payment for the debt through a notice of seizure, followed by the seizure itself. The goods are then sold by the sheriff to realise funds. However, any costs involved in making the sale are deducted from the monies recovered.

52.A.5.3. Enforcement in immovable property

If the debtor owns property, then we can apply for a judgment mortgage. This means that the property can't be sold without first discharging the debt. There can be several judgment mortgages against one property, so it's advisable to check the likelihood of success before incurring additional costs.

52.A.6. Insolvency proceedings

52.A.6.1. General information

There are varieties of insolvency types within the UK, ranging from a voluntary arrangement – offering a fixed percentage of payouts to the creditors, to administration – where an administrator is appointed to try and trade out the debtor company, to liquidation – where all of the debtor's assets are liquidated. The debtor company can move between these types, and we can best advise on a case-by-case basis.

If we ascertain that the debtor has become insolvent, we will advise you whether there is any hope of payment from the debtor. We will also register the debt with the insolvency practitioner, and, if it's judged that there will be dividends at some point in the future, we can monitor the debtor to claim the dividends when appropriate.

52.A.6.2. Required documents

- Copies of the invoices
- Copies of the orders, order confirmations, and delivery notes
- Copies of the general conditions of sale, should there be any

52.A.6.3. Expected time frame

Claims usually need to be lodged in formal insolvency within six months. The insolvency practitioner will write directly to you in the first instance.

In the UK, insolvency proceedings can last up to five years.

52.B. Scotland

Generally, all straightforward debt actions will be taken in the Sheriff Court of the debtor's residence or the court where the debtor trades.

52.B.1. Summary cause actions

A court action can be taken by you (the claimant) by preparing a summons on a pre-printed form. The supporting invoices or statement of account should be provided to the court along with the summons. A copy of the summons must be served (issued) on the debtor (the defender). This is done by the claimant's lawyer – usually by recorded delivery – and thereafter by the sheriff officer if the postal service is unsuccessful.

For any summons, there will be two critical dates – the return date and the calling date. Generally, the return date is the day when the defender must return any document to the court, while the calling date (always seven days after the return date) is the day the case will call in court for a hearing.

If in response to the summons the defender does nothing, the claimant can ask for a judgment (known as a minute for decree) by completing a pre-printed form. The judgment will be issued at the calling date. The court takes about three weeks to send the judgment to the claimant's lawyer.

However, when appropriate (in cases where the defender is a small trader), the defender may admit liability and offer to make payment of the debt by instalments or by a deferred lump sum – known as a time to pay direction or time to pay order.

52.B.1.1. Ordinary actions

Unlike summary cause actions, there are no pre-printed forms for ordinary actions. A writ will be drafted and forwarded to the court. The defender has 21 days after the service of the writ to decide which action to take.

52.B.1.2. Defender's responses

There are various ways the defender can respond to the served writ.

The defender can do nothing, meaning that the claimant can, on expiry of 21 days, apply for a minute for decree.

If the defender accepts the claim and makes a payment offer, the claimant completes the appropriate form and sends it to the court. If the offer is unacceptable, the case will call in court, and the court will decide whether the application should be granted. The court takes about three weeks to send the judgment to the claimant's lawyer.

52.B.2. Enforcement of decrees

The responsibility for enforcing sheriff court decrees falls on sheriff officers. The generic term for Scottish enforcement is known as diligence. Different measures are employed, depending on the defender's movable property being situated either out or in a dwelling house. The effectiveness of diligence can be described best as a filtering process, with slow payers settling earlier on under the enforcement regime.

Judgment enforcement in Scotland was radically reformed by the Debt Arrangement and Attachment (Scotland) Act 2002 and has been enhanced following the implementation of the Bankruptcy and Diligence (Scotland) Act 2007. The legislation gives commercial debtors less protection.

52.B.3. Debt Arrangement Scheme

A central feature of the 2002 Act is the Debt Arrangement Scheme (DAS), available to sole traders, giving them an opportunity to pay their debts in a managed way over a given period of time without threats of enforcement. They should have surplus income to pay their debts by instalments.

During the existence of a DAS judgment, enforcement and applications for the debtor's bankruptcy will be prohibited. It will also be considered incompetent to carry out judgment enforcement while the application is being considered.

52.B.4. Charge for payment

Before commencing judgment enforcement, the sheriff officer serves a charge, which is a formal written request, on the defender. It requests payment of the principal debt, interest, and charges, and requires that they be paid within 14 days.

52.B.5. Attachment orders

Attachment orders will most often be used for business-to-business debts, and the objective is to enforce against the assets and property of the debtor. The process is similar to that in England and Wales, though the terms used are different.

Atradius Collections

53. The United States

Industries

Chemicals

Construction materials

Consumer durables

Electronics

Food

Machines

Minerals

Transport

Chance of collecting

up to 50%

Source: Central Intelligence Agency World Factbook

53.1. Amicable collections

53.1.1. General information

We maintain a professional collection process and focus on the relationships between you and your debtors at all times. We pursue debtors within the bounds of federal and state law and liaise with you and our relationship management team to ensure that we serve you efficiently and effectively.

Our collectors work to ensure that if the initial collection phase isn't productive, the file is adequately documented to fully utilise the second tier of our collection process – the legal phase.

When there is a dispute, we aim to reach an amicable solution between you and your debtor. We do this by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as standard terms previously agreed to). All of our investigations are completed with the assistance and agreement of our legal team.

53.1.2. Local agents

We have a network of local attorneys to assist with collections if necessary.

53.1.3. Interest

In most states, if you don't have any signed contractual agreement that states interest will be owed, then we can't pursue interest or add it. It will only be charged if you have a contract validating it. If the contractual interest is greater than 4%, then the interest we charge will match that of the agreed amount.

53.1.4. Debt collection costs

Collection costs can't be added to your case unless a signed contractual agreement exists between you and your debtor. However, even when the contractual agreement includes collection costs, they are often used as a negotiation tool between the debtor and collector.

53.1.5. Prescription

A statute of limitations governs the period within which a lawsuit must be filed. Statutes of limitations vary from state to state, but are generally between two and 10 years for an open account or sale of goods, and between three and 15 years for a written contract.

The limitation period is suspended or recommenced if the debtor acknowledges the balance by part payment, or if legal action is taken prior to the expiration of the statute.

53.1.6. Payment methods

The most common Payment methods are bank transfers, wire transfers, cheque payments, and payments via our debtor portal by credit or debit card.

53.1.7. Types of companies

Sole proprietorship (sole trader / proprietorship)	■ No legal distinction between the owner and the company ■ The owner has unlimited responsibility for all the company's losses and debts
Limited liability company (LLC)	■ This legal form of company provides limited liability to its owners ■ The owners of an LLC, called members, are protected from some or all liability for the acts and debts of the LLC depending on each state's shield law ■ The principals of an LLC can use many different titles (e.g. member, manager, managing member, managing director, chief executive officer, president, or partner). As such, it can be difficult to determine who actually has the authority to enter into a contract on the LLC's behalf
Corporation	■ A corporation is created under the law of each state as a separate legal entity that has privileges and liability that are distinct from those of its members ■ The shareholders of a business corporation have limited liability for the corporation's debts and obligations ■ Several different types of corporations exist (e.g. C corporation, S corporation, LLC)

53.1.8. Sources of information

In the U.S., we have the ability to assess the status of debtors' businesses, including real estate and other assets, through business reports and in-house skip tracing. In combination with our own phone contacts, we can obtain accurate impressions of debtors' financial situations, and we're able to recommend the next steps.

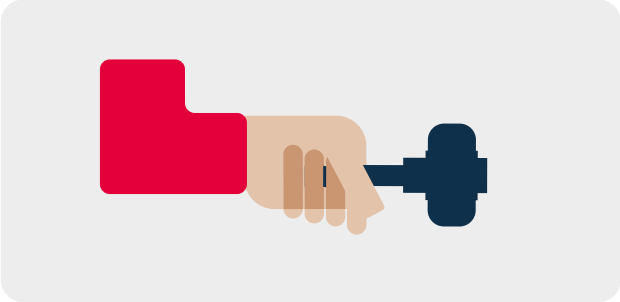
In most of the 50 states, companies register with the Secretary of State, which can be accessed online. We have direct access to these websites and can obtain additional information on shareholders, status, and some corporate developments, which may be published.

A debtor with an unknown address can be traced by our in-house skip tracing efforts. We're able to access many different websites to assist in locating the debtor, including business financial reports and insolvency websites. We also have the ability to employ external skip tracing agencies for additional information for an additional fee.

53.2. Safeguard measures

You can safeguard debts against U.S.-based debtors by having signed personal guarantees in place upon the sale of goods or services. A signed personal guarantee gives you the right to pursue personal assets if the debtor company defaults.

53.3. Legal collections



53.3.1. General information

The judicial system of the U.S. is unique, as it's made up of two different court systems: the federal court system and state court system. While each court system is responsible for hearing certain types of cases, neither is completely independent of the other and the systems often interact. Solving legal disputes and maintaining legal rights are the key goals of both systems.

53.3.2. Legal systems

The U.S.'s legal system is comprised of 51 separate legal systems: the federal court system and the court systems of the 50 states. A vast majority of commercial collection matters are handled through the state and county courts.

53.3.3. Required documents

In order to apply a legal dunning procedure, we need a clear statement of account, indicating the payments and credit notes that have been booked regarding the outstanding invoices.

In the case of a lawsuit procedure, the assigned attorney will require copies of the complete contracts, orders, order confirmations, delivery notes, invoices, and the likes. Every part of the trading relationship should be provable by documentation.

In case of dispute, proof of the conversations or emails between you and your debtor should also be kept and provided to the assigned attorney.

53.3.4. Legal dunning procedures

This is most commonly known as initial legal proceedings. The attorney assigned to the case is required to make efforts to collect or settle the outstanding debt prior to beginning any legal action.

If the debtor fails to respond or pay the outstanding debt in the initial phase, then the attorney will provide recommendations and suggestions for further actions and their costs. Once an attorney is involved, they will charge a commission fee on any collected amount.

53.3.5. Lawsuits

Once the attorney receives a suit's requirements and any necessary documentation, they will prepare a summons and complaint and file both with the clerk of the court. It's advisable that the lawsuit is filed nearest to the debtor's location. All the courts require personal service of process on the debtor, and most courts require that the debtor be served with a summons and complaint within 90 to 180 days after the lawsuit is filed. The courts will frequently dismiss the lawsuit if the debtor isn't served within the state's statutory period for service of process.

53.3.6. Appeals

Appeals are limited to cases in which there are legal disputes as to how the laws are applied to the facts of the cases. Factual issues can't be appealed.

53.3.7. Expected time frame

The average duration of a legal dunning process is between seven and 30 days, whereas a court procedure can take up to two years or longer, depending on the complexity of the case and the backlog of the courts in that jurisdiction.

53.3.8. Costs and interest in the legal phase

Legal collections in the U.S. is handled by local attorneys on a contingency fee basis. Our attorney will submit to us recommendations and the suit's requirements. The suit's requirements consist of court costs and a non-contingent suit fee, where the latter can be up to 5% of the balance placed for collections. That amount is credited to an overall contingent suit fee of 10%, plus the previously mentioned commission fee charged on any collected amount.

The only exception to the contingency fee arrangement is when the account is heavily disputed or when the debtor files a counterclaim against you. The attorney must then defend you against the counterclaim, and in those cases, the attorney will require compensation at an hourly rate.

Unless you have signed a contractual agreement allowing interest, interest is only allowed by the courts once a judgment has been issued. All the other fees and collection costs are at the discretion of the presiding judge, and, in most cases, never allowed.

53.4. Enforcement

53.4.1. Enforcement in debt

After the court issues a judgment order, our attorney records the judgment in the public record. The recording makes the judgment a lien against the debtor's current or after-acquired property. A judgment lien will remain valid and enforceable from five to 25 years after the date of the entry, depending on the jurisdiction.

Post-judgment interest accrues from the date the judgment is issued at the state's statutory rate, if the court includes post-judgment interest in the judgment order.

Our attorney will engage in post-judgment discovery if the attachable assets of the judgment debtor can't be located. Post-judgment discovery can include interrogations, requests to produce financial documents, and depositions by the debtor's principals, in order to learn the nature, extent, and locations of the debtor's assets. If the debtor doesn't respond to post-judgment discovery requests, the court can issue a body attachment of the judgment debtor's principals. If that becomes necessary, the principals will be held in jail until the debtor gives a sworn testimony in court about their assets.

53.4.2. Enforcement in movable property

The judgment must be served on the debtor through service of process, after which the court will issue a writ of execution. The writ of execution allows you as the judgment creditor, through the court and the local sheriff or bailiff, to garnish the debtor's bank accounts, seize and sell their property, and in some states, place a keeper in the debtor's business to seize all the monies received on the days that the keeper is present.

All out-of-pocket costs to execute the judgment are chargeable to the judgment debtor. The costs may include garnishment fees, sheriffs' or bailiffs' fees, keepers' fees, and any fees involved in seizing and selling the judgment debtor's property.

53.4.3. Enforcement in immovable property

If the debtor owns real estate, it's possible to receive a record of their claim in the land register, and then, if attachable, force the attachment, the attachment and sale, or, in case there are tenants, the sequestration of the real estate by court order.

All of these processes are more expensive than the others and require patience. The record of the claim could take several weeks to one month, and afterwards, having the land or real estate from being ready for sequestration or sale to finally being sold could take several months to several years.

53.4.4. Expected time frame

Enforcement in movable property has a long time frame. It could take four to six weeks to receive funds for the placement of a keeper, and up to six months or longer to seize and eventually sell any assets. This time frame will vary within the 50 states.

The time frame for enforcement in real estate is the most difficult to estimate. In most cases, there are other creditors, such as financial institutions, ahead of us. The most difficult phase of this process is finding a buyer willing to pay the market value of the real estate. In many cases, the property could go unsold for months, if not years.

53.5. Insolvency proceedings

53.5.1. General information

Bankruptcy is controlled by federal law, which prevents any collection effort or litigation from proceeding as long as bankruptcy petitions are pending. There are more bankruptcies filed as no-asset bankruptcies, in which the debtors give sworn statements that there are no assets to satisfy the creditors. The creditors aren't allowed to file proof of claim in a no-asset bankruptcy, unless the bankruptcy trustee locates the assets. In that case, the bankruptcy court will notify the creditors of submitting the proof of claim. In bankruptcy filings where there are assets and the creditors file proof of claim, it can take from 12 to 24 months to learn whether the creditors will receive distributions from the bankruptcy estate.

53.5.2. Proceedings

There are two different types of bankruptcy proceedings:

Chapter 7 – Liquidation

A chapter 7 filing is the most common form of bankruptcy. Liquidation involves the appointment of a trustee, who collects the non-exempt property of the debtor, sells it, and distributes the proceeds to the creditors.

Because each state allows debtors to keep essential property, most chapter 7 cases are no-asset cases, meaning there are insufficient non-exempt assets to fund the distributions to the creditors.

When there are assets available for liquidation, proof of claim may be filed. Proof of claim must normally be filed within 90 days since the original filing date of a bankruptcy.

Chapter 11, 12, and 13 – Reorganisation

Bankruptcy under chapter 11, 12, or 13 is more complex reorganisation, allowing the debtor to keep some or all of their property and use future earnings to pay the creditors. Proof of claim is required to be filed for consideration of any payout or dividend.

Chapter 7 or chapter 13 is usually filed by personal guarantors, and chapter 11 is normally filed by companies or corporations. Chapter 12 is similar to chapter 13 but available only to farmers and fishermen in certain situations; and chapter 12 generally has more generous terms for debtors.

53.5.3. Required documents

In order to file a claim on your behalf, we need:

- Copies of the invoices
- Copies of the contracts
- Copies of a statement of account
- The original claim form signed by the original creditor

53.5.4. Expected time frame

The deadline for filing claims is normally within 90 days since the original filing date of the proceedings. It may take from 12 to 24 months to find out whether any dividends are available for distribution.

The duration of bankruptcy proceedings is between six months and five years.

53.5.5. Rescission

In the preference period or 90 days prior to the filing date of a bankruptcy, the trustee can dispute payments made by the debtor to the original creditors. If the trustee disputes these payments, the creditors have to refund them and can only file claims for the corresponding debts instead.

53.6. Arbitration and mediation

It would be rare, unless included in signed contractual agreements, to use arbitration or mediation prior to filing a lawsuit against the debtor. The U.S. courts have an increasingly huge backlog. More courts are requiring that parties in a lawsuit submit to non-binding mediation or arbitration before the case is allowed to proceed to trial.

Mediation or arbitration is an informal process, in which an arbitrator or mediator meets with the parties' attorneys and one or two witnesses from each side. Each party presents their documentary evidence and one or two witnesses. The mediator or arbitrator will discuss the strengths and weaknesses of each party's case, and make a recommendation about a probable outcome at the trial. If both parties agree to the recommendation, a settlement agreement is submitted to the court.

The recommendation of the mediator or arbitrator is non-binding, and either party can choose to not accept the recommendation. Nevertheless, there is one important consideration for the party that chooses to not accept the recommendation. If that party receives lesser results at the trial than what the mediator or arbitrator recommended, that party must pay the opposing party's attorney's fees.

Case study

HP Inc.

At a glance

HP Inc. creates technology that makes life better for everyone, everywhere.

- **Industry:** Information technology and services
- **Market:** Global
- **Challenge:** Recovering invoices from difficult, resource-intensive cases
- **Solution:** Amicable collections by Atradius Collections
- **Result:** HP Inc.'s number of recovered invoices increased significantly. The collected amount was maximised while its internal collection workload was minimised. HP Inc. has been in partnership with Atradius Collections for over 10 years

Debt collection approach

Collecting unpaid invoices from commercial customers took an unwanted heavy toll on HP Inc.'s resources. The customers remained unresponsive and the recovery rate was disappointing.

That's when HP Inc. decided to use our amicable debt collection service.

Amicable collections to recover ageing and difficult cases

"Atradius Collections has both the global and local know-how," says Alex Gasca, Global Default and Recovery Manager of HP Inc. "There were lots of cases and the success rate of Atradius Collections was very high. For some cases, we were simply unable to collect the debts. But right away, Atradius Collections achieved impressive results."

HP Inc.'s accounts receivable became more efficient then. The next step is to set up a monthly challenge where we discussed HP Inc.'s most difficult collection cases and took over from there. Because of this close cooperation, we've gained deep-seated knowledge of HP Inc. and that makes for favourable outcomes.

"Atradius Collections continues to get results – even with the toughest cases," says Gasca.

Tailored processes to increase recoveries with minimal internal efforts

These days HP Inc. has shifted focus to the most time- and effort-consuming debt cases. It has developed a hybrid approach that includes us as part of its internal strategy. "From the point we hand over cases to Atradius Collections, the work and man-hours put into them drop to close to zero. Because Atradius Collections follows up for us – from providing incentive payment plans to handling situations. We get to keep internal efforts to a minimum while also getting recoveries," says Gasca.

Result

"Atradius Collections gives us peace of mind," says Gasca. "It also gives our senior executives comfort that we are not just writing off. We are now moving cases to someone who can help with recovery."

Looking back on the long-lasting partnership, Gasca says, "We are pleased that from the outset, Atradius Collections has been open, transparent, and constructive – even on a personal level. I believe that the relationship we have is truly excellent and HP Inc. is very happy with it."

And the key to this fruitful collaboration? "We share the same mission: making HP Inc. more profitable," says Gasca. "Collecting debts – the big challenge – has worked out very well from the earliest cases to today's. I'm really impressed with Atradius Collections. Yes, I am."

If you need to recover commercial debts worldwide like HP Inc., please contact our office closest to you. Our local offices' contact details are at the end of this handbook. We will follow up with the most suitable solutions to collect your commercial debts.

Atradius Collections

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