



# International Debt Collections Handbook

Thirteenth Edition

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# Introduction

## Welcome.

We're extremely proud to bring you the 13th edition of the International Debt Collections Handbook. This edition includes two new countries: Israel and Vietnam.

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

No business is immune to the risks associated with international trade or poor payment behaviour. Maintaining and protecting your cash flow is 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 Collections Handbook, you can ensure that you are following a professional and successful approach.

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

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 they opened their first international office in Switzerland. In Spain, Crédito y Caución was founded in 1929 and focused on growing steadily to become the dominant credit insurer 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 their 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 collections market.

As a consequence 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 collections 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 collections management system allows our clients to place and manage debt cases 24 hours a day, 365 days a year.

With a presence in 33 countries and an extensive network worldwide, we serve over 15,000 businesses and collect more than EUR 270 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 collections company.

# 1. Argentina

GDP  
**\$518** billion (2018)

Growth rate

GDP  
**-7.79%**  
 (2019 est.)

Export  
**10.23%**  
 (2019 est.)

Import  
**-8.88%**  
 (2019 est.)

Industries



Chemicals



Consumer durables



Food



Metals



Paper



Textiles



Transport

Success rate

**up to 50%**



## 1.1. Amicable collections



### 1.1.1. General information

We provide debt collections 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.

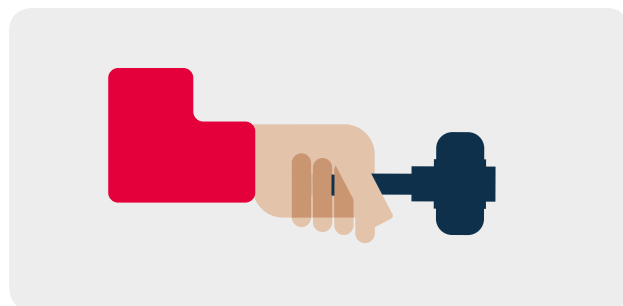
### 1.1.3. Interest

Usually during the amicable phase, debtors are charged with 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 collections costs

During the amicable phase, this is a matter of negotiation. However, collections 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 are not used to paying debt collections 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
- Original invoices or promissory notes
- 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 initiated 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 a civil law system, which is divided into:

- Federal courts, which are organised by the federal government
- Provincial courts, which are organised by each province
- 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, the 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 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 begin insolvency proceedings when they are no longer able to pay their debts as they are due.

The debtor may file for both liquidation and reorganisation through the insolvency proceedings or the 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 of insolvency proceedings interrupts the course of credit interest.

If the debtor's proposal is not 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 the reorganisation proceedings, a controlling trustee authority is appointed to the proceedings, and deadlines are established for the filing of credits. 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 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 original, such as invoices, bills of lading, promissory notes, and powers of attorney.

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 by an apostille.

#### 1.3.4. Expected time frame

The deadline for submitting credits is usually between two and six months after the insolvency requirement. The duration of insolvency proceedings is usually between four and 10 years, starting with the payment procedure. The law does not set limits on either the payment plan or the debt settlements.

## 2. Australia

GDP

# \$1,418

billion (2018)

### Growth rate

GDP

## -0.09%

(2019 est.)

Export

## 0.98%

(2019 est.)

Import

## 1.25%

(2019 est.)

### Industries



Chemicals



Food



Metals



Transport

### Success rate

# up to 50%



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 2.1. Amicable collections



### 2.1.1. General information

We maintain a professional collections process and focus on the relationships between you and your debtors at all times. Our team of collections specialists carry out the collections process in-house. We contact debtors both verbally and in writing whilst adhering to federal and state laws. 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 upon). All of our investigations are completed with the assistance and agreement of our legal team.

### 2.1.2. Local agents

Although not commonly used in Australia, we can employ local agents to make field visits to debtors in all areas of the country. However, due to the size of the country, it may not be economical in more remote regions. The agents we use will report back on any meetings they have with the debtors and provide summaries of the debtors' business operations.

### 2.1.3. Interest

We are not allowed to automatically charge interest to your debtors unless your terms and conditions and/or contracts specifically outline a penalty for overdue payments.

From a cultural point of view, Australian debtors very rarely agree to pay late payment interest, and it is often

used as a negotiation tool between debtors and collectors. However, if the matters become legal and we file proceedings in court for the debts' recovery, then our claims will include charges for the overdue interest as agreed under each state's laws and the court system. Again, debtors will always refuse to pay any interest in the first instance.

### 2.1.4. Debt collections costs

In Australia, debt collections costs are not chargeable to your debtors unless your terms and conditions and/or contracts specifically outline exactly which collections costs become the responsibility of the debtors and when.

Again, if the matters become legal and we file proceedings in court for the debts' recovery, then our claims will include court fees and solicitors' costs as agreed under each state's laws and the court system. These will be charged to the debtors.

### 2.1.5. Prescription

The general prescription 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 will not hear actions for payment if the debts are outstanding for more than six years. Legal action on such debts is barred by the statute. The prescription period may start again, however, if the debtors either make payments or acknowledge the debts in writing. To have the effect of restarting the clock, signed acknowledgements must be made by either the debtors or the properly authorised agents of the debtors, acknowledging that the debts exist and are unpaid. Whether the documents constitute sufficient acknowledgement of the debts to restart the prescription period must be determined on a case-by-case basis. The limitation period for enforcing a court judgment is 12 years.

### 2.1.6. Accepted and most common payment methods

The most common payment methods are bank transfers and cheque payments. We do not offer direct debit from debtors' accounts.

### 2.1.7. Types of companies

<b>Sole trader</b>	<ul style="list-style-type: none"> <li>■ An individual trading on their own</li> <li>■ The sole trader owns all the business assets and is responsible for the liability of the business</li> <li>■ Liability is unlimited and includes all of the sole trader's personal assets, including any assets they share with other persons</li> </ul>
<b>Partnership</b>	<ul style="list-style-type: none"> <li>■ An association of people or entities running a business together, but not as a company</li> <li>■ It can be a normal partnership, a limited partnership, or an incorporated limited partnership</li> <li>■ Apart from the partners with limited liability, all the partners are liable for financial obligations. This applies even if one partner incurs debts without the other partners' knowledge or consent</li> </ul>
<b>Trust</b>	<ul style="list-style-type: none"> <li>■ A business structure where a trustee holds the property or income for the benefit of others called beneficiaries</li> <li>■ Trusts have various complex structures, each with their own set of financial and legal obligations</li> </ul>
<b>Proprietary limited company</b>	<ul style="list-style-type: none"> <li>■ A legal entity separate from its shareholders</li> <li>■ Regulated under the Corporations Law, which sets out substantial obligations for company directors</li> <li>■ The company has limited liability, but the directors can be personally liable under the Corporations Act 2001 if they are found to be fraudulent, negligent, or reckless</li> </ul>

### 2.1.8. Sources of information

In Australia, we contract very experienced reporting agencies to assist with the assessment 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. We also have numerous tracing agents who employ investigators when necessary to locate debtors and their assets.

## 2.2. Retention of title

The commencement of the Personal Property Security Act 2009 (PPSA) on 30 January 2012 has changed the way in which businesses that regularly supply goods under retention of title (ROT) terms register their entitlement.

Previously, ROT clauses were recognised as law and did not require registration – indeed registration was not possible. Suppliers of goods that were supplied under effective ROT clauses were able to recover the goods not yet paid for upon the insolvency of the parties in possession of the ROT goods. Now, under the PPSA (Cth), suppliers can register their interest in the Personal Property Security Register in order to protect that interest and the right to repossess their goods, should their buyers fail to pay. For situations of continuous supplies of goods, the suppliers need to register only once for each buyer and not for every supply of goods.

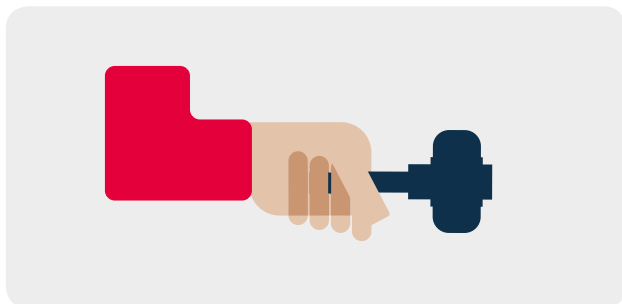
The security interest arising from an ROT arrangement is referred to, in PPSA terminology, as purchase money

security interest (PMSI). The importance of this type of security interest is that, if duly registered within the legislated time frame, it generally has higher priority over other interest in a variety of circumstances. For instance, a supplier who has duly registered PMSI can potentially have priority over even previously registered security interest. Failing to register an ROT arrangement as PMSI does not render it ineffective; however, it means that it will not enjoy higher priority over other interest. That is not to say that all ROT suppliers should necessarily try to register all of their ROT arrangements as PMSI. Instead, ROT suppliers will need to consider carefully the benefits of registration against the nature and magnitude of the risk that their ROT arrangements are intended to address and their relationships with the buyers, as well as the burdens and costs of registration.

## 2.3. Safeguarding measures

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

## 2.4. Legal collections



### 2.4.1. Legal systems

- Debts up to AUD 40,000 are recovered in the local court
- Debts up to AUD 750,000 can be recovered in the district court
- Debts exceeding AUD 750,000 are usually dealt with in the Supreme Court

### 2.4.2. 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 paid against the outstanding invoices
- Any contracts or terms and conditions binding both parties

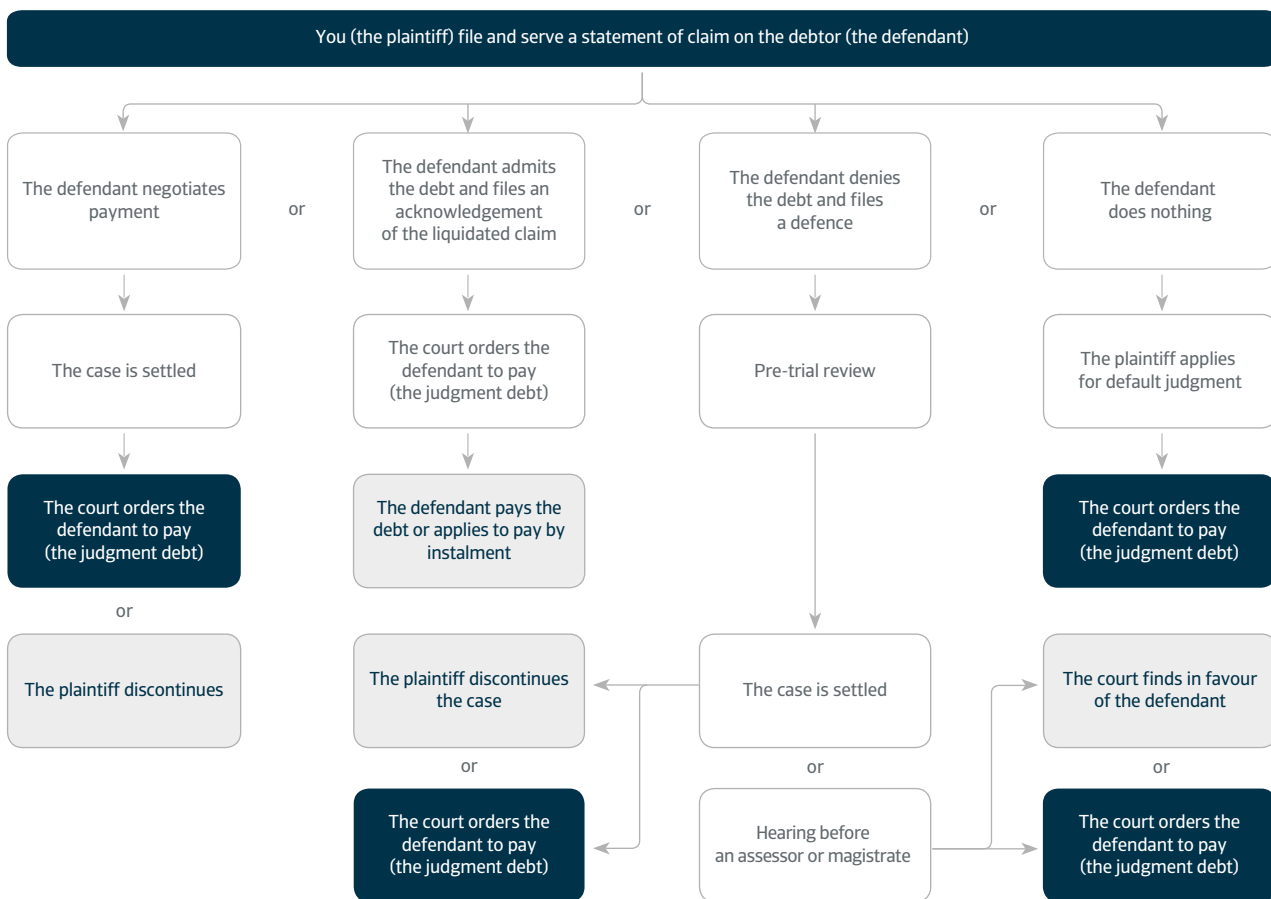
As the lawsuit proceeds further, we may require additional documentation, such as copies of contracts, orders, confirmations, delivery notes, and invoices. They can be requested when needed.

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 oral negotiations, we may require meetings or notes about what was agreed.

### 2.4.3. Legal dunning procedures

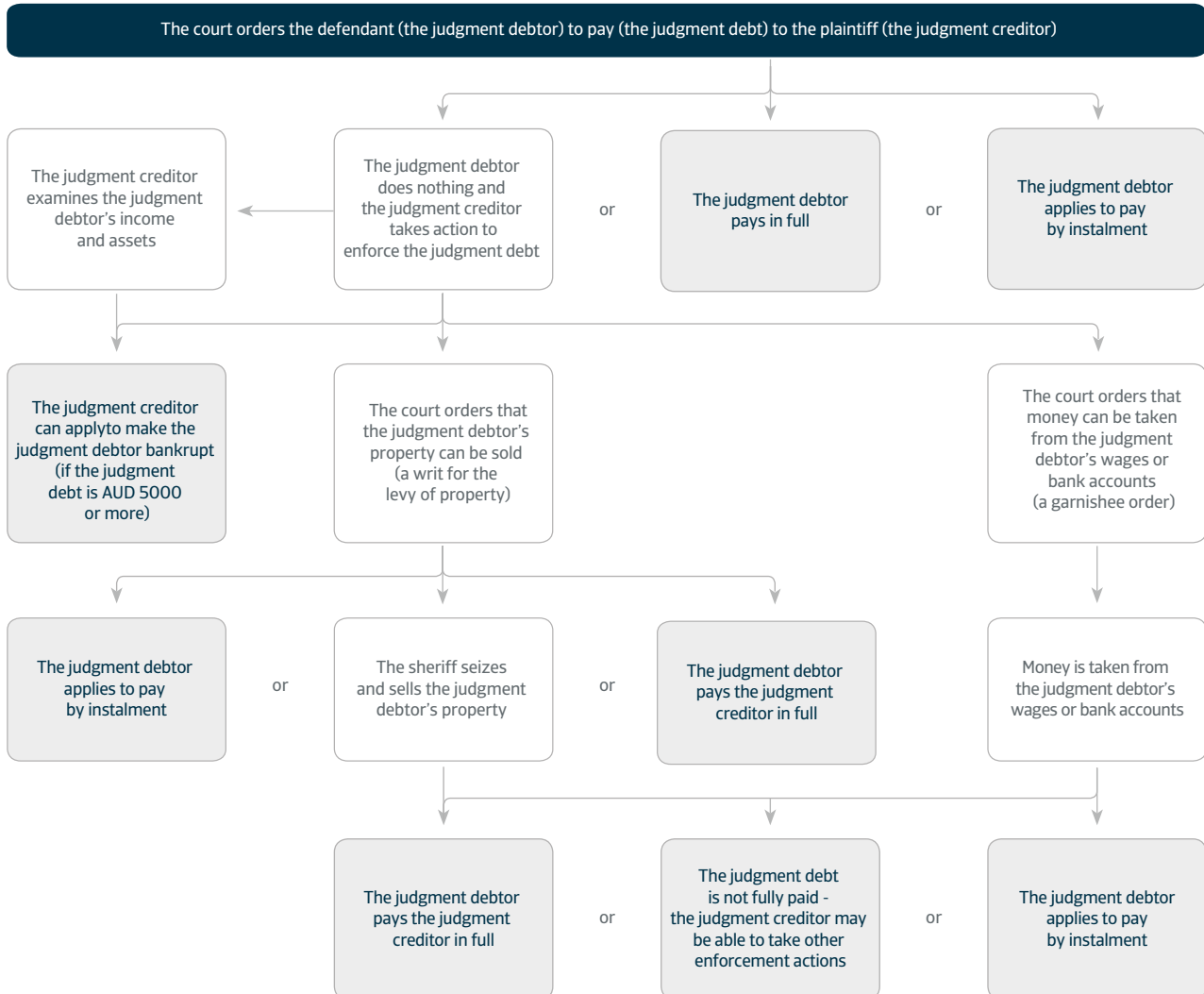
Unless required by the contract (or the personal guarantee), it isn't necessary to send any letter of demand, reminder notice, or other forms of correspondence requesting payment before taking legal action. However, it's considered best practice to issue a form of a pre-legal step before taking legal action to give the debtor a chance to pay before incurring costs. Many contracts require demands for payment of formal termination of the amounts to become due. It's best to comply but it isn't usually enforced by law.

### Flowchart of the legal proceedings





## Flowchart of the legal proceedings



### 2.4.4. 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 28 days after the service of the statement of claim. If the debtor does not file a defence or pay within that 28-day period, then a judgment will be entered against them.

You are free to commence the proceedings in any court. But if your action is commenced in an inappropriate court, the debtor may be able to transfer the proceedings to a more appropriate court. We always try to issue legal proceedings in the state where the debtor resides, taking away the debtor's ability to dispute the jurisdiction.

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

If the debtor has not paid the amount claimed or filed a defence within 28 days of service of the statement of claim, you are entitled to apply for a default judgment against the debtor. An application for a default judgment in a claim is made by filing a notice of motion. This must include an affidavit supported by an officer of your company and must take into account the indebtedness of the debtor. The affidavit in support of the notice of motion must be filed within 14 days of swearing, which can cause issues if you are located outside of Australia.

A judgment can be enforced for 12 years, with interest accruing from the day following the date of the judgment. Some debtors and their lawyers may want to delay the proceedings for as long as they can. This may be in the form of a request for particulars – a letter requesting the details of the claim – such as whether the contracts are written or verbal, copies of the invoices, and the details of the orders. Whilst it is often a delaying tactic, if it's straightforward to answer (and does not tactically damage the case), it's best to do so, because fighting over particulars can add unnecessary costs and delays to the proceedings.

#### 2.4.5. 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 of why no defence was filed within the time allowed, and more importantly
- There is an arguable defence to the claim

It's not sufficient to satisfy only one of the two factors, though more weight is definitely placed on whether or not there is an arguable defence. It doesn't have to be a defence that will succeed, but merely has to be arguable. It isn't sufficient to swear that the judgment debtor has an arguable defence. It's necessary to state some facts in their affidavit that show that the proposed defence is reasonably arguable under their circumstances.

#### 2.4.6. 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 judge and lawyers on both sides.

#### 2.4.7. Costs and interest in the legal phase

Costs of the civil law procedures are determined by each state's legislation and regulations and all differ slightly. All costs depend on the outstanding principal amounts, which also determine which courts the matters are 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 the levy of property. Bankruptcy and wind-up applications are significantly more expensive, with the total proceedings at times costing AUD 8,000–AUD 10,000.

Extrajudicial interest, costs, and charges can only be charged if they are included in the written agreements or contracts with the debtor before the transactions occurred, and they clearly outline the penalties for late payment. Even then, it's not common for debtors to agree to pay any of these extra costs. They are often used to negotiate quicker settlements of the accounts.

Under Australian law, no automatic costs or interest can be added to the debts collected by commercial debt collectors. When legal action is filed through the courts (a statement of claim), the legislation allows for a prescribed amount to be 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 debt amount upon the filing of the statement of claim. In practice, however, many debtors will only pay the invoiced debt amounts in the statements of claim and not the fees, costs, or interest portion. These amounts can be pursued further, but, in reality, it's often not worth spending further money chasing them.

## 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 the order is addressed to (the employer, 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. The order tells the judgment debtor's employer to take an amount of money from the judgment debtor's wages and pay it to the creditors until the whole judgment debts are paid off.

As an enforcement tool, garnishee orders are not very successful, as they have very strict requirements attached to them. And if all the information is not 100% correct, they will often be rejected.

**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 form those actions should take. First, a motion at court must be filed, and then the debtor (or their director) is served. The filing fee is approximately AUD 400 for an individual and 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 5,000, bankruptcy proceedings can be brought against the creditors. When the debtor is declared bankrupt, then all of the debtor's property (with some exemptions of basic living goods) 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.

Before commencing bankruptcy proceedings, the creditors should consider whether the debtor owns enough property to make declaring the debtor bankrupt worthwhile. If the debtor owns real estate (this can be checked at the Lands Titles Office) or has a position that could be lost if they're declared bankrupt, then the threat of bankruptcy may force payment of the debts.

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 lodged in the Federal Magistrates Court. The cost 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. This is an expensive and complex way of enforcing the debts and is usually considered as a last resort only.

**2.5.2. Enforcement in movable property****Writ for the levy of property**

A writ for the levy of property is an order for the sheriff to seize and sell at auction 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 apply 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 will not be refunded. If there are any special requirements, such as moving pianos, pool tables, or heavy machinery, the creditors may have to pay the sheriff extra. Any expenses that the sheriff incurs in enforcing the writ will be payable by the creditors. The sheriff also charges a levy of 3% of 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 cannot pay its debts as they fall due. The inability to pay debts is linked directly to the inability to obtain immediate cash and to the debts being due and payable. The aim of insolvency proceedings is to pay out all the creditors equally by liquidating the assets of the debtor company or 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 obtaining a judgment debt, or following the failure of the debtor company to comply with the statutory demand within 21 days. Once these events have started, the creditor may issue proceedings in the Federal Court or the Supreme Court to wind up the debtor company.

The process of issuing the proceedings is brought under Section 459P of the Corporations Act. If the winding-up application's hearing takes place and the court is satisfied 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. Normally, the appointed liquidator has consented to be appointed prior to the hearing upon the request of the creditors (or their lawyers) making the winding-up application.

It's important that directors of the debtor company are aware that once a winding-up application commences, it's normally based on an act of insolvency having taken place.

If the winding-up action is not dismissed and heard before a 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 a claim in court to prove the justification of the claim, if further documentation does not 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 creditors who lodged the creditor's petition that placed the debtor company into liquidation will be considered a priority. Those creditors 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 cannot 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. Limited companies

Proprietary limited debtor companies can go into either liquidation or company administration. Prior to being made insolvent, the debtor company's directors may be able to call a halt to the liquidation proceedings and appoint an administrator to relieve the pressure and stress they are under. If this isn't done and they don't respond to the statutory demand within 21 days, the creditors can file an application for a winding-up order and appoint a liquidator.

### 2.6.6. Unlimited companies / individuals

Unlimited companies are not very common in Australia and do not make a difference in the insolvency proceedings. They can be liquidated and the members can be bankrupted in the pursuit of debt recovery.

Bankruptcy generally lasts for a period of three years for individuals but can be extended in certain circumstances. There is a permanent record in the National Personal Insolvency Index (an electronic public register that can be accessed by anyone for a fee). The creditors are then 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 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 consideration

### 2.6.7. Rescission

Unfair preferences usually involve transactions that discriminate in favour of one creditor at the expense of others. The aim of the law is to ensure that all creditors are treated equally by preventing any unsecured creditors from receiving an advantage over others.

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 bankrupt's estate or liquidation. In addition, related party transactions may be void for a period 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 on an alternative dispute solution, you can attend arbitration and mediation service. They are private tribunals that look to serve the community, commerce, and industries by facilitating efficient dispute resolution methods, including arbitration, mediation, conciliation, and adjudication. However, these are not widely used for debt recovery in Australia.

## 3. Austria

GDP  
**\$458** billion (2018)

### Growth rate

GDP  
**0.43%**  
 (2019 est.)

Export  
**2.74%**  
 (2019 est.)

Import  
**2.29%**  
 (2019 est.)

### Industries



Chemicals



Construction



Construction materials



Electronics



Food



Metals



Paper



Services



Transport

### Success rate

**50%–75%**



## 3.1. Amicable collections



### 3.1.1. General information

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

### 3.1.2. Local agents

At this time, we do not offer field service to visit debtors in Austria. However, if the debtors wish to visit our premises, we will gladly arrange face-to-face meetings to discuss the situations.

### 3.1.3. Interest

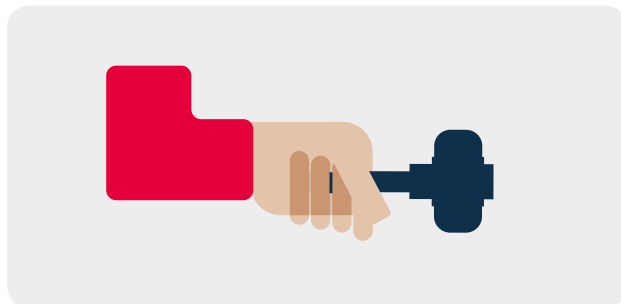
We always charge interest to debtors, calculated from the base rate set by the Austrian National Bank, plus 9.2% on a daily basis (see European Directive 2011/7/EU in conjunction with the Austrian trade law paragraph 456). From a cultural point of view, Austrian debtors are used to paying late payment interest, although the actual amounts of interest payment are considered a matter of negotiation between debtors and collectors.

### 3.1.4. Debt collections costs

Collections costs (“Inkassokosten”) can be charged according to §1333 “Allgemeines Bürgerliches Gesetzbuch” (ABGB) – the General Austrian Civil Code – as damage for delay.

Austrian cases are dealt with by our German subsidiary, so we apply the same debt collections costs that are charged to German debtors, calculated on the basis of the “Rechtsanwaltsvergütungsgesetz” (RVG) – the German statutory lawyers’ fees. We will forward all the recovered debt collections 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, courts prefer to find settlements between the creditor and the 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 paid against the outstanding monies.

In the case of a regular lawsuit procedure, copies of all contractual documentation should be available, starting with 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 case of verbal negotiations, we require visits or negotiation reports and 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 10,000, a local court will be the competent court. And for claims exceeding EUR 10,000, a district court will be the competent one.

The court will release 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 initiated directly either after the amicable collections have failed due to a 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 the 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 publish the final judgment. The parties will be informed about the outcome in writing by the responsible court.

### 3.2.5. Debt collections costs

All costs are dependent on the outstanding principal amount and are calculated while taking into account the amounts kept by each party. There are different fees that can apply during proceedings, which make it difficult to predict the total costs. 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 actions become necessary.

### 3.2.6. 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 judge and lawyers on all sides.

### 3.2.7. Costs and interest in the legal phase

Extrajudicial interest and costs can be claimed as part of the outstanding amount during the legal proceedings. Court costs and lawyers' costs are also chargeable to the debtor when a 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

The insolvency proceedings in Austria changed in 2010. The new law is called the Insolvency Code ("Insolvenzordnung"). The German version of this law can be found here: [www.ris.bka.gv.at](http://www.ris.bka.gv.at)

### 3.3.2. Proceedings

The central procedure is still the "Zwangsvergleich", 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 on 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 creditors and the majority of outstanding amounts) must apply, and the court finally decides upon it. The insolvency proceedings take from two to 12 months. The dividend payment can take up to two years. The average dividend in Austria is about 10%. An insolvency procedure can be managed by a lawyer, the three privileged creditor 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 to lodge claims is usually around one to three months, depending on the complexity of the procedure, and starts from the adjudication order (“Insolvenzeröffnungsbeschluss”).

## 4. Belgium

GDP  
**\$533** billion (2018)

### Growth rate

GDP  
**-0.25%**  
 (2019 est.)

Export  
**2.83%**  
 (2019 est.)

Import  
**2.90%**  
 (2019 est.)

### Industries



Chemicals



Construction materials



Electronics



Food



Machines



Metals



Textiles



Transport

### Success rate

**75%–100%**



## 4.1. Amicable collections



### 4.1.1. General information

We maintain a professional collections process. We always try to safeguard the relationships between you and your debtors. Our team of collections specialists carry out the collections process in-house. We contact debtors both verbally and in writing, whilst adhering to applicable Belgian laws. When there is a dispute, we aim to reach an amicable solution between you and your debtor by analysing all the contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as previously agreed terms and conditions). All of our investigations are completed with the assistance and agreement of our legal team.

### 4.1.2. Local agents

When our in-house actions do not lead to positive results, we will contact local agents from our network. Each agent is responsible for a specific region or area, where the agent's role is to contact debtors by visiting their addresses and provide us with regular information regarding the debtors' situations and solvency. The agents are also permitted to receive payments from the debtors. Their final reports will help us make decisions regarding the next actions to be taken.

### 4.1.3. Interest

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

### 4.1.4. Debt collections costs

In the amicable phase, we charge two types of collections costs per debt collections case:

- A fixed amount of EUR 40 according to section 6 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 are using are in line with the average rates applied by our clients

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

From a cultural point of view, recovery of late payment interest and collections costs is quite difficult. The penalties for late payment can be considered a matter of negotiation between you and your debtor.

### 4.1.5. Statute of limitations

The general statute of limitations period 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 the prescription period.

### 4.1.6. Accepted and most common payment methods

The most common payment method is bank transfers. We also accept drafts. We do not offer direct booking off from debtors' bank accounts.

### 4.1.7. Types of companies

All actors in the economic field (B2B) are considered by Belgian law as 'enterprises', whichever form they take: natural persons, companies, associations, or licensed professionals (like doctors, lawyers, architects, accountants).

Each enterprise is subject to insolvency law, has to have mandatory inscriptions in the Belgian Trade Register, and has to comply with bookkeeping rules. Any legal proceedings regarding enterprises will be heard by the locally competent Commercial court ("Enterprise Court").

## 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 funds and private funds. If they become insolvent, their business assets and private assets are merged into one estate.

## B. Companies

### New regulation

On 28 February 2019, the Belgian Parliament approved major modernisation of the Belgian company law. The new Code of Companies and Associations (CSA) will gradually apply from 1 May 2019 onwards.

Simplification and flexibility are the guiding principles of the new Code: users will find simple, ready-to-use rules whilst having considerable freedom to tailor any company or association to their specific needs.

### Four forms of companies

The new CSA reduces the number of corporate forms from 17 to four:

#### ■ Private limited liability company (BV/SRL)

The former corporate form (BVBA/SPRL) has been thoroughly restyled and should become the standard legal company form in Belgian company law for small and medium-sized businesses.

An SRL can now be incorporated by one person or one legal entity (instead of two earlier). A minimum starting capital is no longer mandatory. However, the founders must provide sufficient equity in view of the envisaged activities of the SRL, taking into account other financial parameters. The new Code foresees mandatory disposition of a solid and more extensive financial plan for the SRL form.

Creditor protection is assured by a new double test applicable to all types of distributions of the SRL form, including a net asset test and a liquidity test.

#### ■ Public limited liability company (NV/SA)

This form of company subsists and remains subject to European capital rules. It will probably remain the corporate form of choice for larger and listed companies. It can now be incorporated by one person or one legal entity (instead of two earlier). A minimum starting capital of EUR 61,500 is still required.

In comparison to the former rules, the NV/SA form has undergone a general overhaul with simplification of a lot of rules, combined with stricter rules to ensure equal treatment of the shareholders and enhanced transparency.

#### ■ Cooperative limited liability company (CV/SC)

This form of company subsists and will be reserved for true cooperative purposes. It requires three founders, but otherwise follows the rules of the SRL form.

#### ■ Simple partnership ("maatschap"/SS)

This form concerns at least two individuals or legal entities collaborating together, with the input of each party in the company, and with the sole aim of distributing the benefits of the company. Each partner of a simple partnership has unlimited liability for the debts of the partnership. As a general rule, the SS form has no separate legal personality, although its two variants (VOF/SNC and CommV/SComm) have a separate legal personality.

### Entry into force of the new Code

The new Code enters gradually into force from 1 May 2019 onwards.

For new companies founded as from 1 May 2019: The new Code will apply to companies created as of 1 May 2019.

For existing companies:

- They can voluntarily opt in to the new regime from 1 May 2019 onwards, after a formal amendment to bring their articles of association in line with the rules of the new Code
- As of 1 January 2020, they will be subject to the mandatory provisions of the new Code that apply immediately. For all other provisions, they can wait for the next amendment of their articles of association to adapt to the new Code, but this has to happen before 1 January 2024 the latest
- If the changes concern transformation of the BV/SRL form and the CV/SC form into companies without capital, this transformation takes place by force of law as of 1 January 2020
- If the existing legal entities that have company forms that the new Code abolishes do not take the necessary steps before 1 January 2024 to convert into one of the remaining company forms, they will be converted as of this date by force of law into the closest surviving company form

### Liability of the founders of a company

Generally, the founders of a company cannot be held personally liable for the debts of the company. But they have to keep enough capital at the disposal of the company to enable it to function normally for at least two years. If the company does not have enough capital to dispose of and goes bankrupt within three years, the trustee in charge of the bankruptcy can sue the founders in court, which may hold them liable for some of the debts of the company.

### Liability of the managers of a company

Managers act on behalf of the company and engage the company but not themselves. Therefore - as a general rule - they cannot be held personally liable for the debts of the company. However, they can be held liable if they make mistakes or errors in the exercise of their managerial functions or if they do not respect specific rules.

#### ■ Before 1 May 2019:

If the misconduct of the managers takes place before 1 May 2019, the old rules of the Belgian Code of Companies are applicable.

The company's creditors can act in liability against the managers in court, but they have to establish proof of:

- The misconduct (fault)
- The amount of damage
- The connection between the two above-mentioned elements

In the special case of bankruptcy, a special kind of managerial liability exists, but it still has to be proven by the trustee.

Gross negligence: If the trustee in charge of the bankruptcy or an unpaid creditor can establish the gross misconduct of the managers, and if this misconduct caused wholly or partially the bankruptcy, the managers can be held wholly or partially liable for the debts of the company. This kind of action is rarely successful because of the difficulty of the burden of proof in these matters.

#### ■ After 1 May 2019:

If the misconduct of the managers happens after 1 May 2019, the new rules are applicable. A distinction has to be made according to the nature of the misconduct.

### Fortuitous, light misconduct

The liability of the managers will be limited to a maximal amount, from a maximum of EUR 125,000 to EUR 12 million, depending on the turnover and the size of the company. The turnover and the total of the balance sheet are calculated on the average of the last three financial years.

Maximum amount (EUR)	Turnover (no VAT) (EUR)		Total on balance sheet (EUR)
125,000	0 – 350,000	and	0 – 175,000
250,000	350,000 – 750,000	and	175,000 – 350,000
1,000,000	750,000 – 9,000,000	or	350,000 – 4,500,000
3,000,000	9,000,000 – 50,000,000	or	4,500,000 – 43,000,000
12,000,000	> 50,000,000	or	> 43,000,000

### Other cases of misconduct

The above-mentioned limitation of liability does not apply:

- When the managers do not comply with the legal guarantees when liberating the capital of the company
- The misconduct concerns fiscal or social security debts
- For gross fiscal fraud
- For repetitive light misconduct
- For gross negligence with the intention to deceive or harm

### Wrongful trading

If the managers continue doing business via the company whilst the activity is clearly unprofitable, a special kind of liability for wrongful trading exists.

## C. Associations

If an association (VZW/ASBL) undertakes commercial activity and makes a profit, it is now considered as an enterprise and subject to the new CSA. As long as it does not distribute the profits to its own members or managers, it can continue operating as an association. If, however, it does not respect this rule, it will be converted into a company.

All the points regarding the entry into force of the CSA and the liability of managers also apply to associations.

## D. Licensed professionals

Licensed professionals (e.g. doctors, lawyers, architects, accountants) can either trade in their own names as natural persons (see A above), or reorganise their individual professional activities into a company (see B above) or an association (see C above).

### 4.1.8. Sources of information

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

#### External information providers

We have access to official databases that provide us with information on companies, such as their addresses, insolvency status, bank accounts, payment delays, fiscal and social authorities, and identities of their managers and shareholders. Every official modification of every company will be available in these databases.

#### Agents' reports

As explained previously, our agents constitute a source of information and provide us with details on debtors' situations at their official addresses, and their assets and reputation.

#### Bailiffs' reports

Our bailiffs can consult against a fee an official register and are able to inform us of existing seizures of the movable property and/or real estate registered against the debtors.

#### Public registers

We can contact public offices to know if debtors own real estate and if the real estate is mortgaged or not. Our collectors can then decide if actions regarding the debtors' real estate are useful or not.

#### Registration of Address office

A natural person with an unknown address can be traced in Belgium via the Registration of Address office. Private persons are legally obliged to officially de-register when moving from one place of residence to another and re-register in the new place of residence. These rules also apply to natural persons exercising merchant activity. Occasionally, some debtors do not follow this procedure and cannot be traced as they have no official places of residence.

## 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 supplier and the buyer have reached an agreement on the goods and their price, even when the goods have not yet been delivered and/or the price has not yet been paid. Inserting a retention of title clause in the 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 supplier can, in the event of insolvency of the buyer, claim and recover the goods that are still their property. Retention of title clauses offer thus good security to suppliers for the risk of not being paid by their buyers.

Until 31 December 2017, retention of title clauses were only allowed in Belgium in cases of bankruptcy. In all other situations in concourse with other creditors, they were not allowed.

Since 2018, retention of title clauses have been recognised by Belgian law as a general principle, which is laid down in sections 69 to 72 of chapter 2 of Title XVII of the third Book of the Belgian Civil Code.

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

- The retention of title clause must have been notified to your debtor and established in a written document at the latest on the date of the delivery of the goods. If the debtor is informed of the existence of this clause after the delivery of the goods (e.g. at the moment of invoicing by a special mention on the invoice or the terms and conditions on the back of the invoice), then this condition is not met
- 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 delivery, mentioning the clause and ideally being signed by the debtor
- The goods have to be in the possession of the debtor or under their control at the moment of the request for retention
- At the moment of the request for retention, the goods can but do not have to be identifiable and assignable to you any more, and they do not have to be present in kind any more

As long as the goods are still in the possession of the debtor or under their control, then:

#### 1. In the case of bulk goods

The goods can be mixed together. You will invoke the retention of title in concurrence with the other creditors pretending to have claims on the same goods. If there are several creditors with valid retention of title clauses, the profits of the mixed goods will be evenly split between them.

#### 2. In the case the goods are already sold or transformed by the debtor

You can still exercise the retention of title on the price of the newly created goods that substitute the original goods.

Given more flexible conditions since 2018, the use of retention of title clauses in Belgium might be more successful than in the past. When confronted with unpaid invoices, you can invoke the retention of title in the following situations (providing that they comply with the above-mentioned conditions):

#### Before you come into concurrence with the other creditors:

You can claim physical restitution of the delivered goods from the debtor by addressing such a request to the debtor preferably by registered letter. The debtor is entitled to examine this request and ask you to prove that the conditions of the retention of title are met. In case of dispute, this problem has to be resolved in court.

#### After the start of a situation in concurrence with the other creditors:

In case of bankruptcy, liquidation of the debtor company, or distribution of the debtor's funds (by a bailiff or a notary), you have to do the following:

- Lodge a claim
- Address a formal request for retention

The request to activate the retention of title has to be initiated by you in writing to the person in charge of the insolvency proceedings and within a certain time frame, preferably in a way easy to prove (e.g. by registered letter, fax, or email with electronic signatures). To whom and in which time frame vary in each situation:

- In the case of bankruptcy, the request has to be addressed to the trustee and has to be initiated before the deposit by the trustee of the first statement of verification of the claims. The date of the deposit is mentioned in the decision of bankruptcy. Usually, it is within one month after the bankruptcy, but it can vary. If you don't respect the deadline, your request for retention of title will be refused by the trustee

- In the case of liquidation, the request has to be addressed as soon as possible to the liquidator (preferably together with a declaration of claims to the liquidator)
- In the case of distribution of the debtor's funds, the request has to be addressed as soon as possible to the person in charge of the distribution (preferably together with a declaration of claims to this person)

## 4.3. Safeguarding 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). Normally, you have to obtain from the competent judge of seizures an authorisation for the safeguarding measures in question.

### 4.3.2. Protective seizure of the debtor's funds in the hands of a third party

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 agreements from the banks), or proceed to protective seizure of the funds owed to the debtor by a third party, providing that you deliver the correct paperwork (copies of the invoices and a statement of account) to the bailiff.

Naturally, it's impossible to know beforehand if the funds are still available in the debtor's bank accounts or in the hands of the third party owing money to the debtor. Therefore, this (very costly) option should be well considered beforehand, as it will cost around EUR 500 (or more).

### 4.3.3. Protective seizure of the debtor's funds in the hands of a notary at the impending sale of the debtor's real estate

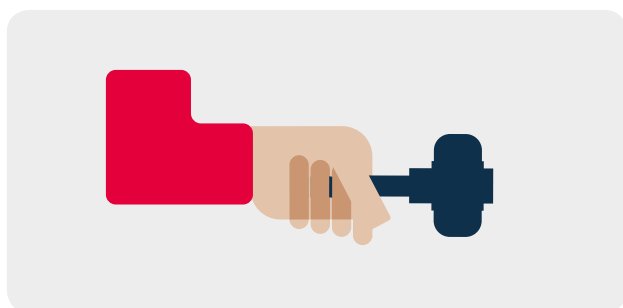
If you know that the debtor is going to sell all or part of their real estate and you can establish the urgency, you can request the competent judge of seizures to grant you permission to proceed to protective seizure of all or part of the debtor's real estate. This attachment is valid for three years and can be renewed in terms of three years (if necessary).

If you learn that a notary is selling all or part of the debtor's real estate, you can ask the bailiff to deliver special protective garnishment to the notary, notifying the notary of your claim and of your intention to receive a dividend from the profit of the sale. The notary proceeding to sell (part of) the debtor's real estate on the debtor's behalf must check a special register, in which all attachments of the

real estate of the debtor and seizures of the debtor's movable property are mentioned. The notary must ask every creditor mentioned in this register to notify them if they are still the debtor's creditors and, if so, the amounts of their claims.

The debtor can offer their creditors some means of security, such as mortgages or assignment of debts. Assignment of debts or assets can be done via a contract, whilst mortgages have to be registered by a notary.

## 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”), the Commercial Code (“Code de Commerce” / “Wetboek van Koophandel”), the Judicial Code (“Code Judiciaire” / “Gerechtelijk Wetboek”), and the particular regulations in special circumstances or special cases. We use our own network of lawyers.

### 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 collections costs.

- A claim of less than EUR 2,500 against a non-merchant debtor is handled by the justice of the peace
- A claim of greater than EUR 2,500 against a non-merchant debtor is handled by the court of first instance
- A claim of any amount against a merchant debtor is handled by the commercial court

According to the rules of the Judicial Code, an action against the debtor regarding the payment of a claim is brought 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. The creditor is not required to have representation by a registered attorney before any court, except in front of the constitutional court. However, we use a local network of lawyers to represent our clients in court.

### Judicial organisation in Belgium

Constitutional court		
Court of appeal		Work court
Court of first instance	Commercial court	District court
Justice of the peace		

### 4.4.3. Required documents

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

- Copies of invoices
- Copies of terms and conditions
- A power of attorney signed by the creditor

In Belgium, a power of attorney is needed for each file and has to be signed by your legal representative. The proxy must be drafted in the language of the legal proceedings (e.g. French, Dutch, or German).

In case of dispute, it's highly recommended to present copies of the formal notices and/or reminders sent to the debtor, proof of orders, contracts, proof of delivery of goods, and any other documents signed by the debtor in which the debtor acknowledges the claim or the dispute. You should also be able to provide any notes of the conversations between you and your debtor.

### 4.4.4. Summary order for payment

In Belgium, sections 1338 to 1344 of the Judicial Code provide a summary order for payment procedure to obtain payment from debtors. Whilst the cost of initiating this procedure is rather low in comparison with a normal lawsuit, we do not use this procedure for recovering receivables because of the following disadvantages:

- The necessity of a written and signed document by the debtor acknowledging and establishing the claim
- The whole claim cannot exceed EUR 1,860
- The claim has to be undisputed
- Before the introduction of the request by a lawyer, you have to send a special reminder to the debtor by registered letter, which has to meet very strict and formal conditions
- The request to the competent court has to be signed by a lawyer



#### 4.4.5. Recovery of undisputed B2B monetary debts (RNDMD)

##### General information

The recovery of undisputed B2B monetary debts procedure has been recently introduced in the Judicial Code in sections 1394/20 to 1394/27. As an administrative and out-of-court procedure, it aims to lower the workload of the commercial courts. At the moment, this procedure can only be used if both you and your debtor are registered in the Belgian trade register.

##### Amounts that can be claimed with the RNDMD procedure

Composition of the claim	Recovery of undisputed B2B debts	Lawsuit
Principal amount	- The outstanding principal amount - No limit in terms of amount	- The outstanding principal amount - No limit in terms of amount
Surcharges and legal fees	EUR 40	EUR 40
Interest and penalty clauses	The combined total of these items cannot be higher than 10% of the principal claim amount	- According to the contracts or terms and conditions - The court can reduce or cancel these items

##### Conditions

The RNDMD procedure can be used if:

- You have an expired and claimable monetary debt
- The debt is based on a commercial transaction in the context of commercial activities undertaken by you
- Both you and your debtor are registered in the Belgian trade register
- The debtor can also be a farmer, a liberal profession, or a non-profit organisation with a Belgian trade register number
- The debt has to be undisputed

The RNDMD procedure cannot be used if:

- You have a non-Belgian trade register number
- You want to take another measure against the debtor alongside the request to obtain payment of the monetary debt
- The debtor is a non-merchant natural person, a public authority, or a public institution
- The debtor is insolvent

- The debt does not concern the commercial activities of the debtor
- The nature of the debt is mixed (e.g. an invoice combining the sale of goods or the rendering of services with damages)

##### Intervention of a lawyer

A lawyer is required in the RNDMD procedure even if their role is limited. They will check if the case fulfils the different conditions and if the procedure can be used. If so, they will transfer all the documents to a bailiff with a request to initiate the recovery of the undisputed B2B monetary debt.

##### Intervention of a bailiff

The bailiff is the central player of the RNDMD procedure. The bailiff introduces on a centralised online platform specially created for this procedure the following data: the identities of the parties, lawyer, and 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 summons has to mention some mandatory elements and a detailed statement of account of the claim amount. Copies of the documents proving the debt and an answer form are added to the summons.

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

Reactions from the debtor within 30 days after the summons:

- Not dispute and pay the debt within 30 days: With the full payment, the RNDMD procedure ends
- Not dispute and request a payment plan: If you agree to the payment plan, the bailiff collects the payments. As long as the payment plan is respected, the RNDMD procedure is suspended. If the debtor pays everything before the 30th day, the RNDMD procedure ends. If the debtor does not pay any more and there is still an outstanding amount, the RNDMD procedure is reactivated and the bailiff continues with this amount (see further below)
- Dispute the claim: When the parties do not reach an agreement on the problem, the bailiff is obliged to establish a report of disagreement and the RNDMD procedure cannot be continued. If you still want to

pursue your claim further, you have to initiate a lawsuit against the debtor, knowing that they will probably dispute the claim

- Not react and not pay: The bailiff has to wait until the 38th day after the summons before establishing a report of non-disagreement

### Report of non-disagreement

If within 38 days after the summons to pay, the debt is not fully paid or is not paid at all and the debtor does not notify a dispute to the bailiff, the bailiff establishes a report of non-disagreement. In this report, they describe the history of the RNDMD procedure thus far and detail the unpaid amount of the claim.

### Request for an enforcement title

After establishing the report of non-disagreement, the bailiff sends this report via a telematic link to the magistrate residing at the supervisory committee at the National Bank of Belgium. After a check, the magistrate sends via the same way an enforcement title to the bailiff.

The enforcement title consists of a copy of the report of non-disagreement, whose front and back are added with necessary legal wordings of the enforceability's formulation.

Having received the enforcement title, the bailiff prepares the case for enforcement (see further below).

### Advantages

If the debtor does not react or pay after the summons, you can obtain, in general, one and a half months after the summons an enforcement title against the debtor. This is quicker than in the case of lawsuits. However, in comparison with lawsuits, you have to be content with a smaller amount of interest and collections costs.

### Costs

The cost of the intervention of a lawyer is subject to negotiation with the creditor and not rechargeable to the debtor. Each action of the bailiff is cost-wise subject to a legal tariff and depends also on the amount of the claim. These costs are rechargeable to the debtor. The bailiff includes these costs in their statement of account.

#### 4.4.6. Lawsuits

If the amicable collections route fails and the solvency of the debtor is satisfactory, we can, with your approval, initiate legal proceedings by bringing in your name a lawsuit before the 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 summons contains your identity, a summary of the reasons for the lawsuit, a detailed statement of account, the detailed amount to pay, as well as the date, time, and location of the introductory hearing.

The legal proceedings and summons are prepared in-house by our legal team. They give necessary instructions to the bailiff, who, after drafting the summons, delivers it to the debtor. After receiving instructions from our legal team, the lawyer entrusted with the legal case puts together a file for the court case and represents you at the introductory hearing.

### The debtor is not present or not represented by a lawyer at the hearing

After examination of the summons, the file, and all the necessary documents, the court hears the lawyer and, if everything is in order, closes the discussions and will deliberate in order to render a judgment. If necessary, the court can postpone the case to obtain answers from you or your debtor if it has further questions or raises an issue. Usually, the court gives an indication of the date of its judgment. If not, it's usually a month after the hearing.

### The debtor is present or represented by a lawyer at the hearing

If the debtor does not dispute the claim, they usually request the court to grant them a payment plan. After having heard you on this issue, the court closes the discussions.

If the debtor disputes the claim, the court sets, at the request of one party or both parties, an agenda to exchange written arguments and a hearing date on which both parties will plead their cases. The time frame for this agenda can vary from three to six months (or more). It can also be extended if necessary. After having heard the parties at the determined hearing, the court closes the discussions.

In each of these events, the court will deliberate in order to render a judgment. If the court has further questions or raises an issue, it will render a judgment to reopen the discussions, whilst detailing its questions or issues and setting a new agenda with a hearing to obtain answers from one party or both parties.

Usually, the court gives at the last hearing of the case an indication of when it will 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 the competent court. The type of courts depends on the amount of the claim and the nature of the debtor (merchant or not) as illustrated in the following table.

Debt amount (interest and collections costs included)	Decision of first degree	Court of appeal
Non-commercial debt ≤ EUR 1,860	Justice of the peace	No appeal possible
EUR 1,860 < Non-commercial debt < EUR 2,500	Justice of the peace	Court of first instance
Non-commercial debt < EUR 2,500	Court of first instance	No appeal possible
Commercial debt < EUR 2,500	Commercial court	No appeal possible
Non-commercial debt > EUR 2,500	Court of first instance	Court of appeal
Commercial debt > EUR 2,500	Commercial court	Court of appeal

#### 4.4.8. Expected time frame

On average, the time frame for getting 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 in the frame of our legal action:

- The summons and registration on the docket of the court: approximately from EUR 300 to EUR 400
- An indemnity for proceedings is granted by the court to the party obtaining the claim. The court determines the exact sum. This indemnity is charged back to the debtor unless the court decides otherwise
- The costs and fees of the legal representation are established depending on the importance, complexity, and duration of the case, as well as the tasks performed by the lawyer. These costs are not charged back to the debtor
- If a party uses a document that is not in the language of the legal proceedings, the other party and/or the court can ask for the translation of the document. The translation costs are not charged back to the debtor
- In addition to these costs, any costs of witnesses and/or experts might also arise

Before starting legal action against the debtor to obtain a judgment in payment of the principal amount and/or the interest and costs, we determine for each case if we can claim, alongside the principal amount, the interest and costs, at what rate and whether it is cost-effective to do so.

We take into account the following parameters:

- The factual characteristics of the case
- Are the interest and costs agreed between the parties (e.g. in the contracts, terms and conditions, or particular agreements)?
- What is the legal minimum?
- The case law of the court
- The legal costs involved. Especially if the principal is paid, we do not generally recommend such an action to you. However, on a case-by-case basis and after close consultation with you, legal action to recover only the interest and costs could be considered

The applied interest rate is the rate agreed on 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. The court may also decide to apply another type of interest to the case.

In Belgium, the court can apply the following rates:

- The normal ordinary legal interest rate. This rate is established every year and communicated in the Official Belgian Journal at the beginning of the year (for 2018: 2%)
- The interest rate according to the statute of 2 August 2002 regarding late payment (based on the European Directive on Late Payment 2011/7/11). This rate is established and communicated every six months in the Official Belgian Journal (for Q1 and Q2 2018: 8%)

You can also claim collections costs (in Belgium, they're commonly referred to as penalty clauses). Usually, a penalty clause is agreed on by the parties in a contract, terms and conditions, or a particular agreement. If this clause is questioned by the court and/or by the debtor, you must establish that the debtor knew this clause and agreed to it before reading it on the invoice. If the court considers this to not be proven, it can cancel the penalty clause. Even when the debtor's acceptance of the penalty clause is proven, the court can always reduce the percentage of the penalty clause.

Even with these guidelines, each court has developed its own practice and case law regarding the accepted interest rate and collections costs, so we can never predict which rates will be accepted by the court in individual cases.

## 4.5. Enforcement

### 4.5.1. Enforcement of an enforcement title

It is the bailiff's mission to notify 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 is considered final if the debtor does not lodge a legal remedy within 30 days from the date of the notification of the judgment to the debtor)
- The debtor does not pay after having received from the bailiff a final order to pay that gives them a final deadline to execute the judgment

Our bailiffs have three options to enforce an enforcement title:

- Enforcement in movable property
- Enforcement in immovable property (real estate)
- Seizure in the hands of third parties if possible

### 4.5.2. Enforcement in movable property

This is the standard procedure where the bailiff visits the debtor to seize their movable property that can be liquidated in favour of the creditors. The bailiff can't seize the movable property necessary for the debtor's basic daily needs. Movable property considered as luxury can be seized.

When the property is seized, the bailiff fixes a date of sale. If the debtor does not pay before this date or an agreed payment plan is not respected, the bailiff loads the seized property to an auction room and sells them in an auction on the date of sale.

Frequently in Belgium, debtors make partial payments or offer a payment plan in order to avoid the sale. During the

enforcement phase, the seizure is made once. However, if the debtor does not comply with the agreed payment plan, several consecutive dates of sale can be established by the bailiff on the basis of the seizure to put pressure on the debtor and to obtain payment.

### 4.5.3. Enforcement in immovable property

If the debtor owns real estate and the enforcement in movable property is not successful, the bailiff may seize the debtor's real estate and (try to) sell it. This process is very expensive and is not used very often. The debtor may be the owner of the real estate and may have other secured creditors with mortgages linked to the property and they take priority in the case of incoming payments.

In order to prepare the property for sale, gathering the necessary information (e.g. from the Registration Office) may take time.

### 4.5.4. Expected time frame

Ordinary enforcement procedures (based on movable property) generally take around 12 months. The time frame for enforcement in real estate depends very much on the course of the case, the court, and possible buyers.

### 4.5.5. Enforcement proceedings of foreign judgments

#### Foreign judgment of an EU member state to be enforced in Belgium

The proceedings are substantially simplified by the EU regulation 1215/2012, which abolishes the old system based on the EU regulation 44/2001. This new system has been in place since 10 January 2015.

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

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

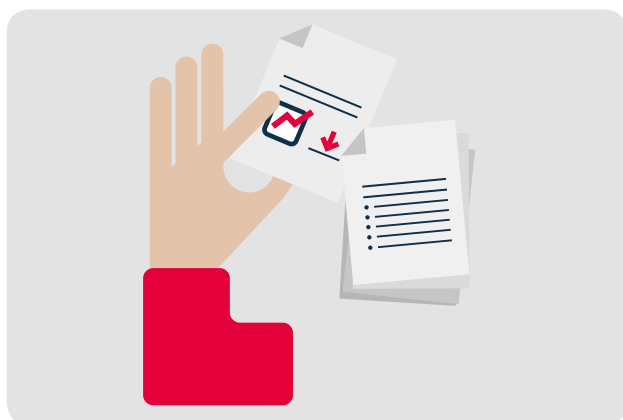
The debtor can still submit a request to the competent court to refuse the enforcement of the foreign judgment on the grounds stated by article 46 of the regulation.

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

Before applying for enforceability in Belgium, you have to notify the foreign judgment to the debtor via bailiff in order to make it final (meaning an appeal is no longer possible). Once the judgment is final and enforceable, you have to initiate a special exequatur procedure before the competent Belgian court to obtain permission to enforce the foreign judgment in Belgium. Once obtained, the decision of enforceability has to be notified to the debtor. If the debtor does not 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 the translation of the judgment and other documents. The costs of translation are not 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 continuity of debtor companies. With the start of the 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 the competent commercial court by:

- The debtor
- A public prosecutor, who received the information from the Enquiry Chamber of the commercial court about the situation of the debtor justifying the conditions of bankruptcy
- One of the debtor's creditors

In Belgium, you can only ask the court to declare the debtor bankrupt if:

- You have already obtained a judgment in payment against the debtor
- Following the (partial) enforcement of the above-mentioned judicial decision, you do not get paid
- The necessary factual elements are present to comply with the conditions of bankruptcy

Only after having gone through these mandatory steps can you launch a lawsuit to get the debtor declared bankrupt. If you skip the first two steps, your request for getting the debtor declared bankrupt will be considered unfounded.

The competent commercial court for bankruptcy is the court in the district where the debtor resides or has their address registered (in the case of a company). A trustee is appointed by the court.

Claims of the creditors have to 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. If you do not respect this deadline, you can submit a request to the commercial court to get your claim acknowledged. You have to do this within one year starting from the date of the bankruptcy. Afterwards, your right to lodge a claim is prescribed. If your claim is acknowledged, your right to a dividend is not retroactive. That means you cannot claim part of the funds that is already distributed before the acceptance of your claim.

From 1 April 2017, claims have to be lodged against a fee electronically via the register of solvency 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, 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 to the creditors whether dividends can be expected and deliver certificates advising the creditors on the

recoverability of the debts. In the case of bankruptcy, it's very rare in Belgium to obtain dividends for unsecured debts.

### Liquidation

Liquidation is also considered 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 asked for by the debtor. The creditors cannot request that the debtor goes into liquidation.

The liquidator is appointed by the commercial court. Claims have to be lodged to the liquidator within the delay period noted by the court, which may vary from case to case.

There are two types of declarations:

- Unsecured creditors
- Secured creditors

After verification by the liquidator, claims are accepted or not. The commercial court will decide in case of dispute. As soon as the liquidator has clarified the debtor's assets versus debts, the liquidator will be able to confirm to the creditors if dividends can be expected or not. In Belgium, it's very rare to obtain dividends for unsecured debts.

### Temporary composition

The former judicial composition has been replaced by the judicial reorganisation based on the statute of 31 January 2009 on the continuity of companies. Retention of title clauses cannot be referred to by the creditors in the case of this procedure.

In Belgium, there are three types of temporary compositions:

- Amicable agreement (section 43)
- Collective agreement (sections 44 to 58)
- Transfer under the court's authority (sections 59 to 70)

The most commonly used option is the collective agreement.

In order to obtain 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 (section 38) in some specific cases. At the end of the moratorium, in the case of a collective agreement, the debtor is expected to propose a reorganisation plan with a payment plan to all their creditors. The plan has to be approved by the majority of the creditors representing at least half of all the sums due in the principal amount. The debtor has to propose reimbursement of at least 15% of the principal amount to

each creditor. The maximum time frame for the plan is five years. The court cannot change the content of the plan, but can only verify that the formal conditions are met. After verification of the conditions, the court validates the plan (or not). If the plan is validated, it can be enforceable against all the creditors.

If the debtor does not follow the plan or if the creditors can prove that the debtor will not be able to respect the plan, any creditor can initiate legal proceedings to cancel the plan.

As for judicial reorganisation through a transfer under the court's authority, it must be requested by the debtor or the chief prosecutor summonsed, or by every person that holds an interest.

#### 4.6.3. Required documents

In order to lodge a claim in insolvency proceedings, the following documents are required:

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

#### 4.6.4. Expected time frame and outcome

Bankruptcy and liquidation can take several years, depending on the complexity of the debtor's company and 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 the insolvency cases in Belgium, we do not recover any dividend after bankruptcy and liquidation proceedings.

As for judicial reorganisation with a collective agreement, debtors propose mostly the bare legal minimum and nothing more. It's very rare to recover even this minimum amount. We also observe that a lot of debtors never execute the plans, or if they do, the payments are very irregular. Given the delicate financial positions of the debtors, the reimbursement efforts of a lot of debtors do not last very long and, after a while, they file for bankruptcy.

#### 4.6.5. Rescission

Prior to 1997, a judgment declaring the bankruptcy of a debtor would automatically fix the date of the cessation of payments by the bankrupt party to six months prior to the date of the judgment declaring the bankruptcy. In order to safeguard the interests of the creditors, the period between the cessation of payments and the declaration of bankruptcy is deemed the hardening period ("période suspecte"). Certain actions performed during this period that could be detrimental to the rights of the creditors are deemed null and void.

After 7 July 1997, the statute changed and the hardening period is no longer fixed automatically, but only exists under special circumstances. If the trustee in charge of the bankruptcy finds or suspects that payments made in the hardening period by the bankrupt party to any third parties are detrimental to the rights of the creditors, then this matter can be submitted to the court to have the payments declared null or void. If so, the third parties must refund any payments received to the trustee.

## 4.7. Arbitration and mediation

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

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

### 4.7.1. Mediation

The Belgian statute of 21 February 2005 provides a general minimal framework of rules and guarantees for all types and forms of mediation. The mediator is a neutral, independent, and impartial third party that tries to help the parties concerned find a definite solution to their conflict.

There are three types of mediation:

- **Judicial:** The judge appoints a mediator, who has to be officially recognised by the Federal Commission of Mediation. If an agreement is reached, the judge will recognise it. Afterwards, it can be executed voluntarily by the parties or, if necessary, can be enforced
- **Voluntary:** Both parties, who are or are not involved in legal proceedings, agree to try mediation following the rules and framework laid down in the Code of Civil Procedure. This means signing a protocol of mediation and using a recognised mediator. If an agreement is reached, both parties can ask the judge to make the agreement official
- **Free:** Both parties agree to try mediation without following the rules and framework laid down in the Code of Civil Procedure. If this leads to an agreement, it will have the same value as a contract between the parties

### 4.7.2. Arbitration

Arbitration is another way of resolving conflicts between parties. Both parties choose a private third party (the arbitrator), who is not a member of the judiciary and who must offer the same guarantees as a judge (impartiality, neutrality, and independence). Agreeing to a private arbitral tribunal has three advantages compared to regular legal proceedings:

- It's generally quicker as the courts are less occupied
- It's more cost-effective
- The hearing and processes are confidential

However, the costs and speed depend on the agreed procedure of arbitration between the parties and the attitudes of the parties during the arbitration. In general, the costs can become very high.

Agreeing to arbitration also means excluding the jurisdiction of the ordinary courts. Both parties voluntarily agree to pass the conflict to the arbitrator and agree to abide by the decision. All the parties concerned can provide frameworks and rules for the arbitration process in the commercial agreements between them, in the terms and conditions of sale (if applicable between the parties), or in any contractual documents agreed on by both parties.

Once the arbitrator has rendered a decision and after it has become final, the enforcing party must ask the president of the court of first instance to grant an exequatur to this decision. If the exequatur is granted and the other party does not appeal, the decision is enforceable. The same applies to enforcement in Belgium of decisions of non-Belgian arbitrators.

# 5. Brazil

GDP  
**\$1,868** billion (2018)

## Growth rate

GDP  
**4.92%**  
 (2019 est.)

Export  
**4.21%**  
 (2019 est.)

Import  
**12.73%**  
 (2019 est.)

## Industries



Chemicals



Construction materials



Electronics



Metals



Textiles



Transport

## Success rate

**up to 50%**





## 5.1. Amicable collections



### 5.1.1. General information

We maintain a professional collections process. We contact debtors verbally and in writing with a proactive and objective approach in order to mitigate risk to your business. Our team of collections specialists carry out the collections process in-house. We adhere to federal and state laws and focus on the relationships between you and your debtors.

### 5.1.2. Local agents

Through our local partners, we offer field service to visit debtors in the main cities of Brazil. 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 will gladly meet them to discuss possible solutions for your cases face-to-face.

### 5.1.3. Interest

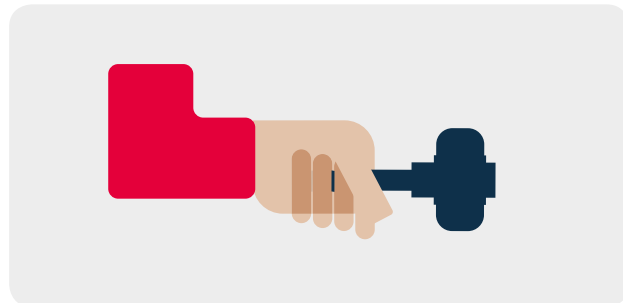
We charge debtors interest as determined by the legal interest rate allowed in Brazil, according to the amounts due and applicable for domestic cases. However, for cases abroad, it's very complex to charge interest. The debtors must submit documentation, including proof of money remittance to the Central Bank, unless you have official documents such as invoices or debit notes to support the transaction.

In accordance with the prevailing law, the interest allowed is 1% per month plus a payment default fine of 2%. From a cultural point of view, Brazilian debtors are willing to pay interest.

### 5.1.4. Debt collections costs

There are no legal restrictions in Brazil on charging debt collections costs. Meanwhile, such costs cannot be considered as being abusive. From a cultural point of view, Brazilian debtors are not used to paying debt collections costs.

## 5.2. Legal collections



### 5.2.1. General information

This is a method where legal rights are enforced, including rules of evidence and rules of Civil Procedure. These include filing complaints, answers, serving documents on the opposition, and the laws governing those processes. Each state and municipality has its own judicial system where magistrates deal with commercial and other civil cases in the first instance. Decisions from state and municipal courts may be appealed through a federal court.

### 5.2.2. Required documents

The mandatory original documents required to start legal action in Brazil are:

- Contracts
- Invoices
- A clear statement of account indicating the payments and credit notes that have been booked regarding the outstanding invoices
- Purchase orders
- Proof of delivery
- A notarised power of attorney with an apostille

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.

### 5.2.3. Legal dunning procedures

A legal dunning procedure is a formal act designed to prove the default of a particular person who has a formal debt. The procedure is only applicable for a monetary and local debt where the debtor can be traced. An official document will be delivered that orders the debtor to pay within 10 days. The debtor can appeal in the legal phase, which would then transfer the dunning procedure into a regular lawsuit procedure.

### 5.2.4. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections efforts have failed or after the debtor has disputed the debt. There are three different

types of processes - cognitive, executory, and provisional - that deal with unpaid debts according to Brazilian law. The proper action depends on all available supporting documents.

The plaintiff begins the civil process by submitting a complaint, referred to as the initial petition. The defendant can answer the initial petition with one of the three different responses: a tradition answer, a counterclaim, or an exception.

After the judge has reviewed the initial petition and the answer upon 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.

#### 5.2.5. Expected time frame

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

#### 5.2.6. Costs and interest in the legal phase

Costs of the civil law procedure (lawyers' fees) are generally charged to the losing party by the judge, who also determines the amount of attorneys' fees to be awarded to the winning party (from 10% to 20% of the claim). The court cost varies depending on the state and municipality and is generally calculated from 1% to 2% of the claim amount. 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 due during legal proceedings. A legal interest rate of 1% per month is applicable to the due amount, and there is no limit by law on how much it can be charged on legal costs. The judge will fix an amount between 1% and 20% depending on the circumstances of the procedure. In the case of a legal settlement, both parties bear the costs of the proceedings depending on whether they win or lose the action.

Costs of Pledge: For cases where you are abroad, there is an additional cost of 20%, based on the debt amount, to start the legal proceedings.

## 5.3. Insolvency proceedings



### 5.3.1. 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 collecting the enforceable income of the individual who is declared bankrupt. This type of procedure is determined by the law number 11.101/2005 and not by the common Civil Law.

Judicial reorganisation is the main procedure designed to save the indebted entity. The objective of the procedure is to overcome financial difficulties, preserve the company, and continue its business.

### 5.3.2. Proceedings

Once the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check if sufficient assets are available to cover the costs of the proceedings (court costs and costs of the liquidator). If these costs are deemed to be covered, the insolvency proceedings start and a preliminary liquidator will be appointed. If this procedure is not 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. The application for bankruptcy must be decreed by a competent court.

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 a claim in court to prove the justification of the claim when any further documentation produced fails to convince the liquidator to confirm the debt. The debtor company will pay priority creditors first, usually within two years from the plan's approval.

In accordance with Insolvency Law number 11.101/2005, the established order of preference in receipt of credits that are due to creditors is:

1. Labour claims
2. Credits of real guarantees
3. Tax credits
4. Special privilege credits (these credits will be defined as special according to the law to which it refers)
5. General privilege credits (also defined by the law)
6. Unsecured creditors – the suppliers
7. Pecuniary penalties

### **5.3.3. Required documents**

In order to lodge a claim, the following documents are required:

- An original notarised power of attorney with an apostille
- The invoices
- The contracts or general conditions of sale, should there be any
- The purchase orders, confirmations, and delivery notes
- Copies of any other correspondence that may verify the claim

### **5.3.4. Expected time frame**

The deadline to lodge claims is between one and three months, depending on the specific insolvency proceedings. The whole duration of insolvency proceedings is between seven and 10 years.

# 6. Bulgaria

GDP  
**\$65** billion (2018)

## Growth rate

GDP  
**3.20%**  
 (2019 est.)

Export  
**3.48%**  
 (2019 est.)

Import  
**5.81%**  
 (2019 est.)

## Industries



Chemicals



Food



Machines



Metals

## Success rate

**up to 50%**



## 6.1. Amicable collections



### 6.1.1. General information

We and our local agents have a professional approach to each debt collections 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 not limited to) calling, sending reminder letters, and attempting to establish personal contact with the responsible persons within the debtor companies.

### 6.1.2. Local agents

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

### 6.1.3. Interest

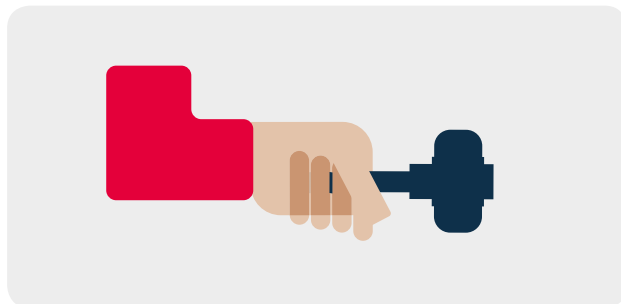
In Bulgaria, the legal interest charged to debtors can be calculated from the base rate set by the Bulgarian National Bank on 1 January (for the first half of the year) and 1 July (for the second half of the year), plus 10% on a yearly basis. It's possible to include interest, which will be calculated differently if this was agreed in the contracts between the parties.

Usually our clients also include interest calculated by them when submitting debt collections cases to us. We include this in the debt amounts in our reminders. But in the majority of the cases, debtors do not pay this interest. From a cultural point of view, Bulgarian debtors are not used to paying late payment interest. Often the actual amounts of interest payment are considered a matter of negotiation between debtors and collectors.

### 6.1.4. Debt collections costs

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

## 6.2. Legal collections



### 6.2.1. 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 claims concerning late payment, you have two options to initiate legal proceedings against the debtor: via an ordinary court procedure or through simplified legal proceedings by submitting an application (proposal) for enforcement by the court.

### 6.2.2. 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 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 invoices and payments showing the final debt amount. The document should be signed and stamped
- Copies of the CMRs, verified with signatures and stamps
- Copies of the SWIFT bank documents with partial payments (if any), verified with signatures and stamps

### 6.2.3. 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 an 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's decision will become final. Courts 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 for 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.

#### 6.2.4. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections have failed due to a dispute by the debtor, or following the legal dunning procedure after the debtor's appeal in the simplified proceedings. After you settle 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 documents have to be legally translated into Bulgarian.

When the claim is served upon the defendant, the legal proceedings are fully instituted. 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 the 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 a court expert (experts will need to be paid additionally). If the court decides in your favour and the debtor does not pay, you can start an enforcement procedure on the grounds of the final judgment.

#### 6.2.5. 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 judge and lawyers on all sides.

#### 6.2.6. 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 as follows:

- 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' Tariff 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 the 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.

## 6.3. Insolvency proceedings



### 6.3.1. General information

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

### 6.3.2. Proceedings

After the debtor or a creditor files for the debtor's insolvency, a preliminary liquidator is appointed to check if 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 are not 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 a claim in court to prove the justification of the claim when further documentation doesn't convince the liquidator to confirm the debt.

### **6.3.3. 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, if there are any
- Copies of any other correspondence that may verify the claim

### **6.3.4. 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.

# 7. Canada

GDP

**\$1,711** billion (2018)

Growth rate

GDP

**1.62%**

(2019 est.)

Export

**2.60%**

(2019 est.)

Import

**0.25%**

(2019 est.)

Industries



Agriculture



Chemicals



Construction  
materials



Food



Paper



Transport

Success rate

**up to 50%**



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook



## 7.1. Amicable collections



### 7.1.1. General information

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

### 7.1.2. Local agents

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

### 7.1.3. Interest

The collections of interest are 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%.

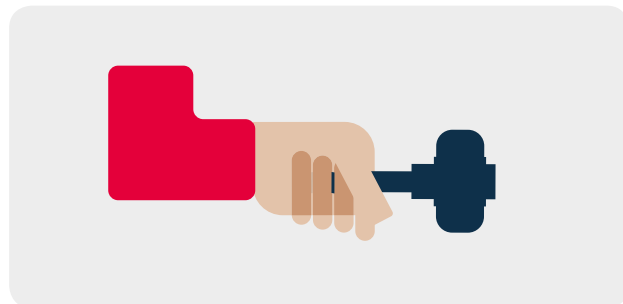
### 7.1.4. Debt collections costs

The addition of collections 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 collections of costs, then they may be added to the overall debts.

### 7.1.5. Prescription

The general limitation of action for 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.

## 7.2. Legal collections



### 7.2.1. 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 invoice or payment recognised, 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 small claims court, and debts with balances greater than CAD 25,000 are heard in superior court.

### 7.2.2. 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 the plaintiff does 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.

### 7.2.3. Legal dunning procedures

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

#### 7.2.4. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections have failed due to disputes by the debtor or after the legal dunning procedure 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.

#### 7.2.5. 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.

#### 7.2.6. Costs and interest in the legal phase

Due to the different provinces and territories throughout Canada, it's difficult to predict total costs. 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 the witnesses, including 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.

## 7.3. Insolvency proceedings



### 7.3.1. 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 federal level. Only a trustee licensed in bankruptcy by the Superintendent of Bankruptcy can handle the process of proposals and bankruptcies.

### 7.3.2. Proceedings

There are four main insolvency options:

#### Proposal

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

#### Bankruptcy

The assets of an individual or a 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 complete, the company may operate under the receivership, or the receiver can petition the company for bankruptcy.

#### Company Creditors' Arrangement Act

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

### **7.3.3. Required documents**

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

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

### **7.3.4. Expected time frame**

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

## 8. Chile

GDP  
**\$298** billion (2018)

### Growth rate

GDP  
**-0.86%**  
 (2019 est.)

Export  
**1.67%**  
 (2019 est.)

Import  
**1.61%**  
 (2019 est.)

### Industries



Agriculture



Construction materials



Food



Metals



Textiles



Transport

### Success rate

**up to 50%**



## 8.1. Amicable collections



### 8.1.1. General information

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

### 8.1.2. Local agents

We offer a strategic and competitive service 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 will gladly meet them to discuss solutions for your 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.

### 8.1.3. Interest

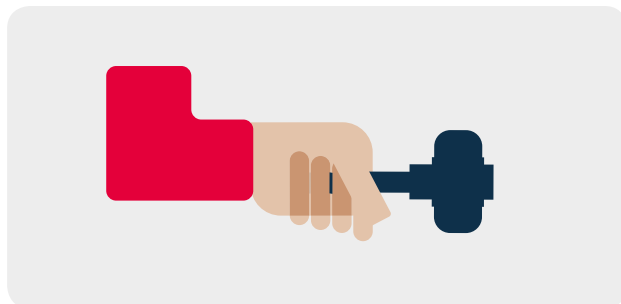
Generally, in the amicable phase, interest is charged to debtors. However, the percentage can be negotiated. Interest is daily and can vary according to the table that comes from the Superintendency of Banks and Financial Institutions (SBIF).

### 8.1.4. Debt collections costs

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

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

## 8.2. Legal collections



### 8.2.1. 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 if there are any conditions for the property to be taken legally on behalf of the other party.

### 8.2.2. Required documents

In order to start the legal collections 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 the interest and extra costs, the legal proceedings are ended.

### 8.2.3. Legal dunning procedures

Legal dunning procedures come before lawsuits. However, there are no costs involved, and they become more attractive and profitable to both parties.

Regarding the Civil Procedure Code, this procedure is only applicable for 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 to believe that the defendant may face a serious risk of being unable to fulfil their obligations if they're defeated.

### 8.2.4. Lawsuits

Chile follows a civil law system and there are two debt collections 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 will need to resort to ordinary proceedings.

#### 8.2.5. 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 executive legal suit.

#### 8.2.6. 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 the 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.

## 8.3. Insolvency proceedings



#### 8.3.1. 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.

Through Chilean rules, there is a possibility for the debtor to establish 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.

#### 8.3.2. Proceedings

As soon as the bankruptcy is declared, individual debt collections actions and all pending legal action are suspended. In exceptional cases, certain secured creditors may pursue individual debt collections procedures even after the bankruptcy declaration.

In particular, for mortgage or pledge creditors, individual debt collections actions may continue or be commenced under certain conditions in order to liquidate the assets in question and to obtain payments 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 bankruptcy
- The automatic stay takes effect (individual collections 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
- 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

#### 8.3.3. Required documents

In order to lodge a claim, we need:

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

#### **8.3.4. Expected time frame**

The deadline to lodge 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.

# 9. China

GDP  
**\$13,407** billion (2018)

## Growth rate

GDP	Export	Import
<b>6.03%</b> (2019 est.)	<b>3.30%</b> (2019 est.)	<b>4.14%</b> (2019 est.)

## Industries



Chemicals



Construction materials



Consumer durables



Electronics



Food



Machines



Metals



Textiles



Transport

## Success rate

**up to 50%**





## 9.1. Amicable collections



### 9.1.1. General information

China has had a vivid history of debt collections. The practice was prohibited by the Chinese government in the late 19th century and is still prohibited by law today. Therefore, debt collections do not exist officially, but there are companies that provide debt collections services through specialised legal firms that are authorised to collect Chinese debts. China has shown more interest in outsourcing their outstanding receivables to debt collections agencies and law offices. We collaborate with local law firms to provide amicable and legal collections services in China. Our team has experienced collectors with legal background, which are essential for collecting debts in China.

### 9.1.2. Local agents

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

### 9.1.3. Interest

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

### 9.1.4. Debt collections costs

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

### 9.1.5. Prescription

The general limitation of action regarding applications to a people's court for protection of civil rights is three years, unless otherwise stipulated (General Principles of the Civil Law of the PRC, Article 135). The limitation of action is one year for cases concerning the following:

1. Claims for compensation for bodily injuries
2. Sales of substandard goods without proper notice of the effect
3. Delays in paying rent or refusal to pay rent
4. Loss of or damage to property left in the care of another person

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 rail carriage is 180 days. There are no such stipulations regarding outstanding invoices.

The practice of selling debts has been a prerogative of companies in China.

Any of the following circumstances will have an effect of interruption on the statute of limitations:

- A party directly serves a document of claim on the opposite party, and the opposite party affixes their signature or seal on the document. Or it may be otherwise proved that the document reached the opposite party, who failed to affix their signature or seal on 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, that is also a financial institution, deducts and collects the owed principal and interest out of the account of the opposite party
- The whereabouts of a party is unknown, and the opposite party publishes an announcement of claim in a national medium or a local influential 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 Statute of Limitations during the Trial of Civil Cases, which came into force as of 1 September 2008.

### 9.1.6. Accepted and most common payment methods

The most common payment methods are bank transfers and bank drafts for local businesses.

### 9.1.7. Types of companies

#### Limited liability company

- The company bears the liability for their debts with all their property
- A minimum capital of RMB 30,000 that can be paid in currency, in kind, intellectual property, land-use, or other non-money property
- The amount of capital contributions in currency paid by all the shareholders shall be no less than 30% of the registered capital of the limited liability company

#### Joint-stock limited company

- The company bears the liability for their debts with all their property
- Usually a minimum capital of RMB 5 million
- The shareholders are responsible for the company to the extent of the shares they have subscribed to
- The company can be established by promotion or stock floatation

### 9.1.8. Sources of information

In China, lawyers can directly access financial data as well as other useful information of debtors from industrial and commercial authorities. The financial data includes the debtors' balance sheets and income statements every year. Other information includes contact details of the debtors' shareholders or legal representatives, the debtors' bank accounts, and the likes. In most cases, we can find the information we need by ourselves, so a private investigator is not necessary.

When a guarantee, pledge, or a mortgage is established, a written contract is necessary. When a mortgage is established on a) buildings and other objects fixed to land, b) the right to use construction land, or c) the right over contracted management of such land as barren land, the mortgage registration will be examined. The mortgage right will be established as of the date of registration.

## 9.2. Retention of title

In the Contract Law of the PRC, it's usual for a supplier to retain ownership of their goods before the buyer has paid in full only when both parties have agreed to this in the contract. If there are no such stipulations, the ownership of the goods transfers to the buyer upon delivery.

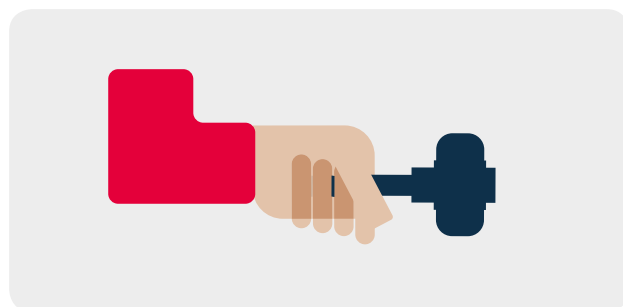
#### Contract Law of the PRC:

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

## 9.3. Safeguarding measures

If a debtor isn't able to pay off their debt according to the contract, we may ask them to make a written commitment to pay in instalments, or to offer a guarantee or a debt repayment plan. Such a commitment is valid and effective whether it's authenticated by a notary or not. The notarial procedure can reinforce the authority and legitimacy of commitments, but this is rarely practised in China.

## 9.4. Legal collections



### 9.4.1. General information

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

### 9.4.2. Legal systems

In China, the courts are divided into the Supreme People's Court, the High People's Courts, the Intermediate People's Courts, and the Basic People's Courts. Generally, the Basic People's Courts have jurisdiction as courts of first instance over civil cases. The Intermediate People's Courts have jurisdiction as courts of first instance over civil cases that have major impacts on the areas under their jurisdiction.

The High People's Courts have jurisdiction as courts of first instance over civil cases that have major impacts on the areas under their jurisdiction. The Supreme People's Court has the right to give interpretations of questions concerning specific applications of laws and decrees in judicial proceedings.

#### Supreme People's Court

- The highest independent court
- Final judicial judgement

#### 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 prefectures of a province or autonomous region
- Established in municipalities directly under the central government
- Of autonomous prefectures
- Of municipalities directly under the jurisdiction of a province or autonomous region
- Supervised and guided by High People's Court

#### Basic 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 Court

#### 9.4.3. Required documents

The following conditions must be provided 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 a cause or causes 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 the principal heads must be provided
- The evidence and its source, as well as the names and home addresses of the witnesses, must be provided. Original documents do not need to be provided

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.

#### 9.4.4. 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 Basic People's Court that has jurisdiction over orders of payment.

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

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

The debtor will, within 15 days after their receipt of the order of payment, clear off their debts or submit to the people's court their dissent in writing. If the debtor has neither dissented from nor complied with the order of payment within 15 days, the creditor may apply to the people's court for execution. The order of 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 of payment will be terminated and the creditor will need to take action.

#### 9.4.5. Lawsuits

A lawsuit can only be initiated 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.

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

#### 9.4.6. Appeals

If a party disagrees with a judgment made by a local people's court at first instance, the party has the right to lodge an appeal with the immediate superior people's court within 15 days from the date when the written judgment was served. When filing 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 principal heads,

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.

#### 9.4.7. Expected time frame

When a case is tried according to a summary procedure, 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, the people's court will conclude the case within six months from the date it's accepted.

When an extension of 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 extension, if needed, will be reported to the people's court at a higher level for approval. The case on appeal will be concluded within three months after being docketed by the people's court.

#### 9.4.8. Costs and interest in the legal phase

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

## 9.5. Enforcement

### 9.5.1. Enforcement in debt

The parties concerned 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 fees arising from the enforcement will be borne by the debtor, and the applicant does not have to pay such fees.

### 9.5.2. 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 document, the people's court will be empowered to make inquiries with the banks, credit cooperatives, or other units that deal with saving into 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 document, the people's court will be empowered to seal up, freeze, sell by public auction, or sell off part of the property of the debtor for the fulfilment of their obligations.

### 9.5.3. Costs

Any party filing a civil lawsuit will pay the court costs according to the rules. In most cases, litigation fees are borne by the losing party.

### 9.5.4. 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.

## 9.6. Insolvency proceedings



### 9.6.1. General information

With the start of preliminary proceedings, all individual enforcement is suspended. Only when insolvency proceedings are not 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.

### 9.6.2. Proceedings

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

When one of the creditors files an application for bankruptcy, the people's court will give a notice thereof to the debtor within five days after the receipt of the application. In case the debtor objects to such applications, this notice will be submitted to the people's court within seven days after the receipt of the notice from the people's court. The people's court will decide whether or not to accept the application within 10 days since the expiration of the objection term.

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 of the ruling within 25 days after making the ruling if 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 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. The civil litigation concerning the debtor after the people's court accepts the application for bankruptcy may only be instituted with the people's court that has accepted the application for bankruptcy.

### 9.6.3. Required documents

The applicant will submit a bankruptcy application form and relevant evidence to a people's court. The application form for bankruptcy will contain:

- The basic situation of the applicant and the party against whom the application is filed
- The purpose of the application
- The reasons and grounds of the application
- Other matters that the people's court thinks should be contained

When the application is filed by the debtor, the debtor will submit to the people's court a description of their financial conditions, a detailed list of their debts and credits, all relevant financial reports, settlement proposals, together with payment of salaries and social security expenses of the employees of the bankrupt company.

### 9.6.4. Expected time frame and outcome

Upon the acceptance of the application for bankruptcy by the people's court, the administrator is entitled to discharge or continue the performance of the contracts that have been established before the acceptance of the bankruptcy application.

When the administrator fails to give notice to the counterparts concerned within two months since the acceptance of the bankruptcy application or fails to reply to the counterparts concerned within 30 days since their requests for notifications, it will be deemed that the relevant contracts will be discharged. The people's court will confirm the time limits for the creditors to declare credits after accepting the application. The time limits for declaring credits will not be less 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 the 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 reorganisation plan to the people's court and the creditors' meetings simultaneously. At the request of the debtor or the administrator with justified reasons upon the expiration of the term above, the people's court may rule on an extension of such terms for another three months. The whole duration of insolvency proceedings usually takes between two and four years, but it could be more.

### 9.6.5. Limited companies

The administrator will, within 10 days since the conclusion of the bankruptcy proceedings, handle the procedures for the revocation of registration of the bankrupt person at the registration authority by producing 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 violated their duties of loyalty and due diligence and contributed to the bankruptcy of the company will bear the relevant civil liability. The persons involved in the mentioned circumstances will not act as the directors, supervisors, or officers at any company within three years since the date of the conclusion of the bankruptcy proceedings.

### 9.6.6. Unlimited companies / individuals

Unlimited companies or individual debtors cannot declare insolvency. They should bear the debts until they are paid off or released by the creditors.

### 9.6.7. Rescission

When the debtor and creditor have objections against the credits contained in a credit form, lawsuits may be instituted with the people's court that has accepted the application for bankruptcy. The salaries, medical and disability allowance, pension expenses due to 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 are not required to be declared. These will be listed and posted to the public by the administrator after an investigation. In case of objections to the records on the list, the employees may require the administrator to make corrections. If the administrator has made no corrections, the employees may initiate lawsuits with the people's court.

## 9.7. Arbitration and mediation

Contracts related to foreign investments in China usually stipulate that any disputes arising between the parties should be settled by amicable negotiations, followed by arbitration in case of failure of agreement. The resolution of disputes by arbitration is 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, the arbitration agreement (which is usually set out as one of the clauses in the contract) must be in writing and contain the following particulars:

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

Mediation is usually not used to resolve disputes in China.

# 10. Colombia

GDP  
**\$333** billion (2018)

## Growth rate

GDP  
**1.05%**  
 (2019 est.)

Export  
**4.15%**  
 (2019 est.)

Import  
**4.51%**  
 (2019 est.)

## Industries



Chemicals



Construction materials



Consumer durables



Food



Metals



Textiles

## Success rate

**up to 50%** 

Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 10.1. Amicable collections



### 10.1.1. General information

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

### 10.1.2. 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.

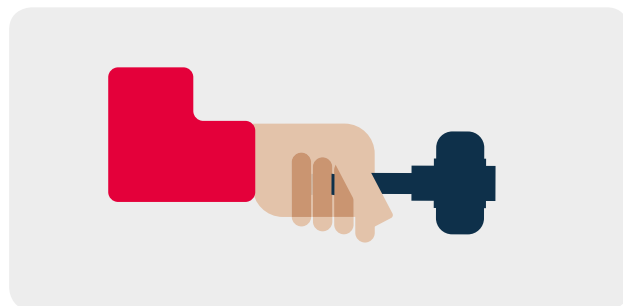
### 10.1.3. Interest

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

### 10.1.4. Debt collections costs

During the amicable phase, this is a matter of negotiation. From a cultural point of view, Colombian debtors are not used to paying debt collections costs.

## 10.2. Legal collections



### 10.2.1. 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.

### 10.2.2. 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)
- Invoices or promissory notes
- Bills of lading
- 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.

### 10.2.3. 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 for monetary debts (bills of exchange). 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.

### 10.2.4. 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 are not 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 the procedures that legally correspond.

#### 10.2.5. Expected time frame

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

#### 10.2.6. 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 will 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.

## 10.3. Insolvency proceedings



#### 10.3.1. General information

Under Colombian law, the debtor is generally able to begin insolvency proceedings when they are no longer able to pay their debts as they're due. The debtor may file for both liquidation and reorganisation, through the insolvency proceedings or the 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.

#### 10.3.2. Proceedings

To start the reorganisation proceedings, there should be indications of the existence of the cessation of payments older than ninety days, any obligations in favor 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 the reorganisation proceedings has been received, the judge will verify the legal requirements and see if everything is in accordance with the law.

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

- Accomplishment on the obligations agreed
- Failure to comply with the obligations that are not resolved in the hearing where the judge declares the bankruptcy

#### 10.3.3. Required documents

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

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.

#### 10.3.4. 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 the payment procedure. The law does not set limits on either the payment plan or debt settlements.

# 11. Croatia

GDP

# \$61

 billion (2018)

Growth rate

GDP

## 0.93%

(2019 est.)

Export

## 6.13%

(2019 est.)

Import

## 6.88%

(2019 est.)

Industries



Chemicals



Construction materials



Electronics



Food



Machines



Metals



Paper



Services



Transport

Success rate

# 50%–75%



## 11.1. Amicable collections



### 11.1.1. General information

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

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

Our debt collections activities consist of:

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

It's widely known that, with regard to late payments, 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.

### 11.1.2. Interest

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

The latest interest rates are:

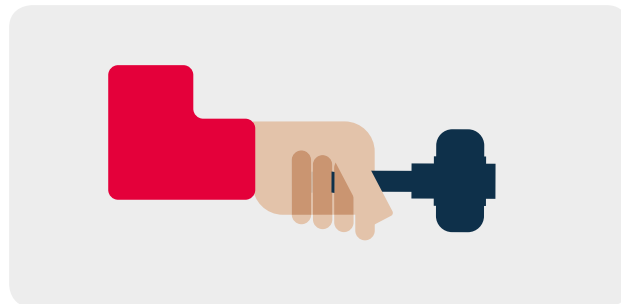
- 8.54% as of 1 January 2019
- 8.82% from 1 July 2018 to 31 December 2018
- 9.09% from 1 January 2018 to 30 June 2018

### 11.1.3. Debt collections costs

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

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

## 11.2. Legal collections



### 11.2.1. General information

The Croatian legal systems are composed of the civil law, which regulates the relations between two people or companies, and the 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 collections phase, and this letter can be used to prove that all pre-court efforts are fruitless. However, the presence of such a letter doesn't guarantee that a court decision will be received faster.

### 11.2.2. Required documents

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

- Contracts signed by the parties with all appendixes
- All unpaid invoices
- Statements of account indicating payments and credit notes
- Transportation documents with the debtor's signature proving the goods' receipt and customs declarations
- All correspondence and other documents related to the debts
- An extract from the trade register of your company
- A power of attorney (POA) for our lawyers to represent your company
- According to the new amendments to the Distraint Law, which entered into force on 3 August 2017, motions for execution have to include the PIN (OIB) of the legal representatives (e.g. directors) of your company and of the person signing the power of attorney

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 power of attorney, in which it's necessary to add information such as their address, place and date of birth

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

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

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

### 11.2.3. Motions for execution / Lawsuits

A regular execution procedure is initiated directly after the amicable collections process has failed due to a dispute by the debtor. A motion for execution is submitted to a public notary based on unpaid invoices or statements of account, on the grounds of which the public notary issues a writ of execution. If the debtor doesn't file an appeal, the writ of execution becomes valid, and it's possible to block the debtor's bank accounts on grounds of a valid and enforceable writ of execution until the collections are 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 initiated directly after the execution procedure has failed due to a dispute by the debtor, or if the debtor files 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 of 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.

### 11.2.4. Expected time frame

The average duration of the 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 judge.

### 11.2.5. Costs and interest in the legal phase

Costs of the execution procedure and civil law procedure (public notary, court costs and fees) are determined by the provisions of the attorney tariff and public notary tariff and are not 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 the 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 the legal proceedings. Usually the court awards interest in the claimed amount if it was requested. The defendant has to bear the court fees of the legal proceedings in accordance with the Civil Process Law. Other expenses (e.g. experts' fees) can be requested from the debtor. However, the decision on whether those are awarded depends on the court.

## 11.3. Insolvency proceedings



### 11.3.1. 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 the 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 operational business.

The 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 bankruptcy trustee to prepare the list of creditors and receive the documents. The debtor company is liquidated once the proceedings are over.

### **11.3.2. Proceedings**

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

If your claim is not submitted within these terms:

- If pre-bankruptcy proceedings are instituted: Your claim is still considered lodged if the debtor stated the claim in their proposal for the institution of pre-bankruptcy proceedings and no contestation was made over the amount stated in the proposal. Otherwise, the court will reject the lodge submitted after the term and the claim will not be taken into account
- If bankruptcy proceedings are instituted: Your claim will not be taken into account

### **11.3.3. 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 about your company
- A power of attorney for our lawyers to represent you

### **11.3.4. Expected time frame and outcome**

The deadlines to lodge claims is 15 days since the court decision to institute pre-bankruptcy proceedings, and 60 days from the date 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.

# 12. The Czech Republic

GDP  
**\$242** billion (2018)

Growth rate		
GDP	Export	Import
<b>1.70%</b>	<b>3.72%</b>	<b>5.19%</b>
(2019 est.)	(2019 est.)	(2019 est.)

Industries			
			
Construction materials	Machines	Metals	Transport

Success rate  
**up to 50%** 

Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 12.1. Amicable collections



### 12.1.1. General information

We maintain a professional collections process, focusing at all times on the relationships between you and your debtors. Our team of collections specialists carry out the collections process in-house. We contact debtors both verbally and in writing whilst adhering to the law. 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 all standard terms that have been agreed upon). All of our investigations are completed with the assistance and agreement of our legal team.

### 12.1.2. Local agents

We offer direct collections activities managed by a selected network of local agents who visit debtors all over the Czech Republic. 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.

### 12.1.6. Types of companies

<b>Sole trader</b>	<ul style="list-style-type: none"> <li>■ Unlimited liability of the owner with their business and private assets</li> <li>■ In order to pursue such debtors, we need their first names and surnames, plus their business registration numbers</li> </ul>
<b>Public company (“verejna obchodni spolecnost”, v.o.s.)</b>	<ul style="list-style-type: none"> <li>■ No minimum capital</li> <li>■ Unlimited liability of the company and its partners</li> </ul>
<b>Limited partnership (“komanditni spolecnost”, k.s.)</b>	<ul style="list-style-type: none"> <li>■ The value of the registered capital is set according to the partnership contract</li> <li>■ At least one partner has unlimited liability with their business and private assets</li> <li>■ The limited partners are only liable with the company's assets</li> </ul>
<b>Limited company (“spolenost s rucenim omezenym”, s.r.o.)</b>	<ul style="list-style-type: none"> <li>■ A minimum capital of CZK 1</li> <li>■ Liability is limited up to the amount of the company's assets</li> </ul>
<b>Joint-stock company (“akciová spolecnost”, a.s.)</b>	<ul style="list-style-type: none"> <li>■ A minimum capital of CZK 2 million</li> <li>■ Liability is limited to the company's capital</li> </ul>

### 12.1.3. Interest

Interest rates should be specified in the contracts between you and the buyers. If they are not, you can charge an interest rate on late payment based on the law. This interest rate is the same for all business relations and is prescribed by civil law. It's calculated as the amount of the repo rate set by the Czech National Bank, plus 8%.

We charge interest to debtors, both in the amicable phase and the legal phase. In legal proceedings, the interest rate will be based on the law if it is not contracted by the parties. The courts will always award the interest that is required under the condition that the principal is granted.

From a cultural point of view, it can be difficult to obtain the total amount of interest from debtors in the Czech Republic. Interest is often considered a matter of negotiation between debtors and collectors.

### 12.1.4. Debt collections costs

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

### 12.1.5. Prescription

The general prescription period in the Czech Republic is:

- 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 claims

The prescription period can be interrupted if a creditor starts legal proceedings based on a written acknowledgement of debt.

### 12.1.7. Sources of information

In the Czech Republic, we contact credit-reporting agencies to assess the financial situations of debtors. We combine this with our own phone contacts to get an accurate impression of a debtor's financial situation and to advise you on the next steps.

All companies have to be registered in 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 in 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.

We often use the services of our agent network to gain more information if we can't contact the debtors and need to investigate the companies. The agents will provide us with photos, information about the activities in the debtor companies, and new contacts.

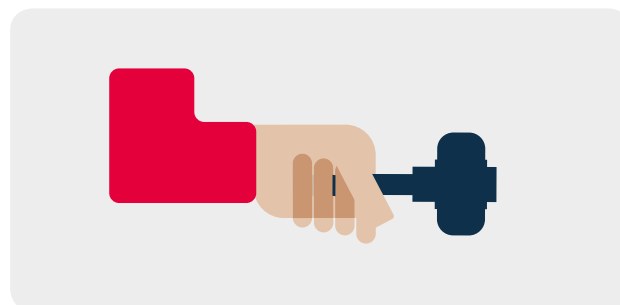
## 12.2. Retention of title

Retention of title clauses must be agreed upon 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.

## 12.3. Safeguarding measures

If your debtor isn't able to settle your claim in a speedy manner, we can request the debtor to 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 are not fulfilled. Related costs are carried by the debtor. The debtor may also provide other means of securing receivables of the creditors; for example, by lien, surety, or by assignment of debts.

## 12.4. Legal collections



### 12.4.1. General information

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

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

### 12.4.2. Legal systems

The quickest way to process legal action is to bring legal action demanding that the court issues 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 under the condition that the debtor does not 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 the obligation (you can request the court to issue a judgment). The court usually schedules a hearing, which means that the court proceedings will take longer.

### 12.4.3. Required documents

In order to start 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 (CMRs) signed by the buyer
- 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 is not the original seller of the unpaid goods

The documents required for legal action are determined by the type of the 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 collections process, we will try to obtain some security from the debtor that can be helpful later for legal action.

#### 12.4.4. Legal dunning procedures

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

#### 12.4.5. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections have failed due to a dispute by the debtor, or after the legal dunning procedure if the debtor files a complaint against the payment order, or the payment order cannot be delivered to the debtor.

#### 12.4.6. Appeals

An appeal against the judgment is possible within 15 days from the delivery of the judgment.

#### 12.4.7. 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 judge and lawyers on both sides.

#### 12.4.8. 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 established by a special arbitration rule. Lawyers' fees depend on the form of legal action and the amount of the claim in dispute and can vary from 2% to 6% of the claim. Other costs can be accumulated from the translation of documents.

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

## 12.5. Enforcement

### 12.5.1. Enforcement of court decisions

Legitimate court judgments and arbitration awards may be executed by executors in execution proceedings if the debtor does not fulfil the obligations imposed by the court judgments or arbitration awards.

Execution proceedings comprise two parts. The first part starts by filing a motion to an executor and determining the question of formal requirements. After the motion is filed to the executor, the court will authorise the executor to start execution proceedings. In the second part, the authorised executor carries out the execution proceedings.

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

### 12.5.2. Methods of execution

The enforcement of decisions imposing payment of a sum of monies can be carried out by means of deduction of wages or salaries and other incomes, assignment of the receivables of the debtor, sale of movable property, or sale of a business. The choice of particular means of execution depends on the executor.

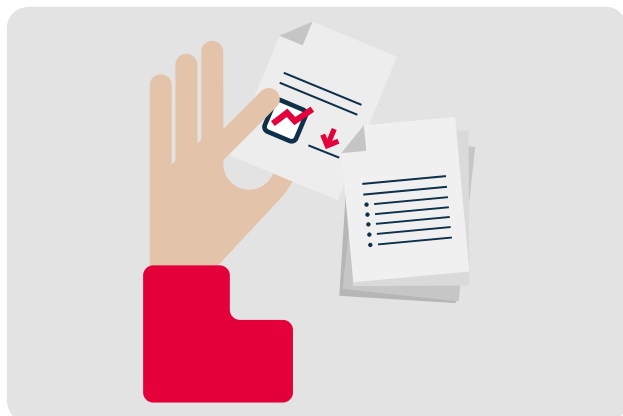
In the case of a secured claim, a court decision can be enforced by the sale of movable property, bulk assets, groups of assets, and residential or non-residential premises under the ownership that has been given as security in accordance with the specific legislation. The court decision can also be enforced by compulsorily debiting from a money claim that was given as security or by recovering against other property rights given as security.

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

### 12.5.3. Expected time frame

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

## 12.6. Insolvency proceedings



### 12.6.1. 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 if 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 debts 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 is bankruptcy, reorganisation, or discharge from debts. This procedure may last several years.

### 12.6.2. Proceedings

After the debtor or a creditor submits an insolvency motion, the court inspects the debtor's financial situation and decides if 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 discharge from debts – the last one is only for non-entrepreneurs). They also need to invite all the creditors to lodge their claims within two months from the issue of the declaration of insolvency, or within 30 days from the issue of the declaration of insolvency in the case of resolving the insolvency by discharge from debts.

The decisions and documents are published in the Insolvency Register, which is available for public viewing on the internet. All execution proceedings are suspended, and an insolvency administrator is appointed to supervise and inspect the proceedings.

The insolvency court or the insolvency administrator also has to inform all known foreign creditors about the debtor's insolvency and invite the creditors to lodge claims within two months or 30 days in cases where the insolvency is solved by discharge from debts (for each known foreign creditor, the period starts when the invitation is delivered to them). If the creditors miss the deadlines to lodge claims, their claims won't be added to the insolvency procedure.

The insolvency procedure of business subjects can be solved in two basic ways. Bankruptcy can be used if the debtor's assets are used to discharge claims and the debtor closes their business. This procedure is available for both individuals and legal entities. The second option is reorganisation where 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).

### 12.6.3. 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

### 12.6.4. Expected time frame

The duration of insolvency proceedings is often more than a year, especially in more difficult cases. All updates and steps undertaken in insolvency proceedings may be found in the Insolvency Register.

### 12.6.5. 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 an expected inability to pay, which means that the management already knows that within a certain time span, the company will be unable to pay their due debts.

### 12.6.6. Unlimited companies / individuals

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

### **12.6.7. Creditors' committee**

If there are more than 50 creditors who lodge claims in an insolvency procedure, 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.

### **12.6.8. Rescission**

The insolvency administrator in bankruptcy can contest legal action by the debtor carried out up to three years prior to the commencement of the insolvency proceedings.

## **12.7. Arbitration and mediation**

A faster and more confidential form of resolving disputes is arbitration, where the parties to an arbitration contract agree that their dispute will be resolved by designated and independent arbitrators.

In the Czech Republic, there is, for example, the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic. The decision of the arbitrators (arbitration awards) is final, and parties to an arbitration contract or clause in general cannot appeal against arbitration awards.

# 13. Denmark

GDP

# \$351

 billion (2018)

Growth rate

GDP

## -0.38%

  
(2019 est.)

Export

## 1.99%

  
(2019 est.)

Import

## 2.34%

  
(2019 est.)

Industries



Chemicals



Construction



Construction materials



Electronics



Food



Machines



Metals



Textiles



Transport

Success rate

# 75%–100%



## 13.1. Amicable collections



### 13.1.1. General information

We maintain a professional collections process, focusing on the relationships between you and your debtors at all times. Our team of collections specialists carry out the collections process in-house, contacting debtors both verbally and in writing whilst 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 upon). All of our investigations are completed with the assistance and agreement of our legal team.

### 13.1.2. Local agents

We offer field service to visit debtors in Denmark (except for Bornholm). The purpose is to collect monies, negotiate settlements, get acknowledgements of debt, and gather information about the debtors' financial situations, residences, and places of business. You will receive a report with all the information about the visits and recommendations for the next steps for your cases. The price for visiting debtors in Denmark is from DKK 850 to DKK 1,250.

### 13.1.3. Interest

We always charge interest to debtors, 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 Danish regulations, based on the reference rate fixed by the National Bank of Denmark (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 is not agreed upon between you and your debtor.

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

### 13.1.4. Debt collections costs

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

### 13.1.5. Prescription

The general prescription period in Denmark is three years, starting from the due dates of invoices. Transport claims prescribe within one year starting from the delivery according to the CMR Convention of Geneva.

The limitation period is suspended or recommenced according to Law number 522 of 6 June 2007 if:

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

### 13.1.6. Accepted and most common payment methods

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

### 13.1.7. Types of companies

<b>Sole trader / sole proprietorship (“Enkeltmandsvirksomhed”)</b>	<ul style="list-style-type: none"> <li>■ Unlimited liability of the owner with business and private funds</li> <li>■ In order to pursue such debtors, we must have both their first names and surnames</li> </ul>
<b>Partnership (“Interessentskab”)</b>	<ul style="list-style-type: none"> <li>■ Unlimited liability of the owners with their business and private funds</li> <li>■ In order to pursue such debtors, we must have both their first names and surnames</li> </ul>
<b>Private limited company (Limited liability) (“Anpartsselskab ApS”)</b>	<ul style="list-style-type: none"> <li>■ A minimum capital of DKK 50,000 divided into shares</li> <li>■ Liability is limited to the company’s capital</li> </ul>
<b>Joint-stock company (Limited liability) (“Aktieselskab A/S”)</b>	<ul style="list-style-type: none"> <li>■ A minimum capital of DKK 500,000 divided into shares</li> <li>■ Liability is limited to the company’s capital</li> </ul>

### 13.1.8. 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 the debtors whether we are also able to request information from public registers. All traders have to be registered at 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 deregister when moving from one town to another and re-register in their new town. Occasionally, some debtors do not follow this procedure and cannot be traced, despite this being a punishable offence. Even when a debtor is untraceable, we are still able to obtain a judgment through the official Gazette.

## 13.2. Retention of title

Retention of title clauses are rarely used - although it might have been agreed between you and your debtors - because it is rarely enforceable in Denmark. The goods in question have to be specified in detail. The use of individual numbers as a general description is not sufficient.

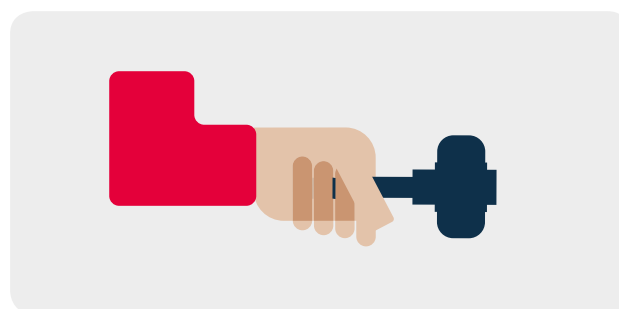
## 13.3. Acknowledgements of debt (“frivilligt forlig” / “skyldnererklæring”)

If a debtor is not able to settle a claim quickly, we will request that they secure their debt in favour of you - the creditor. This can be done amicably and cost-efficiently 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 finding an amicable solution. However, if the debtor is uncooperative, we will start 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.

## 13.4. Legal collections



### 13.4.1. 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 of notice
- The name of 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

### 13.4.2. 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 700 or DKK 1,350, plus lawyers' fees. It is also the quickest procedure, taking between six and 12 months on average. If the debtor disputes the debt, the file is always assigned for trial handling, no matter 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 with the 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 will cost DKK 1,350, plus 0.5% of the amount above DKK 100,000, plus lawyers' fees. The time frame is up to six or 12 months on average. If a judgment is obtained and the debtor does not pay accordingly, the file will be handed over to the bailiff's court for execution.

### 13.4.3. 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 booked against the outstanding invoices

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

### 13.4.4. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections have failed due to a dispute by the debtor, or after a legal dunning procedure where the debtor has appealed. A written pre-procedure is usually issued. Both the plaintiff and the defendant must exchange opinions and proof by letter until the judge believes that all 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 publish the final judgment, and both parties will be informed about the outcome in writing by the court.

### 13.4.5. Appeals

An appeal against the 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 of whether or not statutes were applied correctly.

### 13.4.6. 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 judge and lawyers on both sides.

### 13.4.7. Costs and interest in the legal phase

Costs of civil law procedure (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 arise.

## 13.5. Enforcement

### 13.5.1. 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 if the debtor has any assets that can be taken as security for the debt 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 meeting 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 will cost DKK 300, plus 0.5% of the amount above DKK 3,000, plus lawyers' fees.

### 13.5.2. Expected time frame

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

## 13.6. Insolvency proceedings



### 13.6.1. 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 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)

### 13.6.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check if 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 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 a 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 dividend paid at all.

### 13.6.3. Required documents

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

### 13.6.4. Expected time frame

The expected time frame for insolvency estate in Denmark is one to three years.

## 13.7. Arbitration and mediation

Both arbitration and mediation are used in Denmark in disputed files. Arbitration in Denmark is based on the rules of the UNCITRAL Model Law. In disputes where the parties agree to settle in accordance with the arbitration rules, the Institute of Arbitration decides in each dispute at an arbitral 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 on the dispute that both parties must agree to.



# 14. Finland

GDP  
**\$275** billion (2018)

## Growth rate

GDP  
**0.45%**  
 (2019 est.)

Export  
**3.27%**  
 (2019 est.)

Import  
**3%**  
 (2019 est.)

## Industries



Chemicals



Electronics



Food



Metals



Paper



Textiles



Transport

## Success rate

**50%–75%**



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 14.1. Amicable collections



### 14.1.1. General information

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

### 14.1.2. Local agents

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

### 14.1.3. Interest

We always charge interest to debtors, calculated from the base rate set by the Finnish National Bank, plus 7.5% 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 Finnish regulations, based on the reference rate fixed by the National Bank of Finland (plus 7.5% per year). This rate is fixed twice a year on 1 January and 1 July

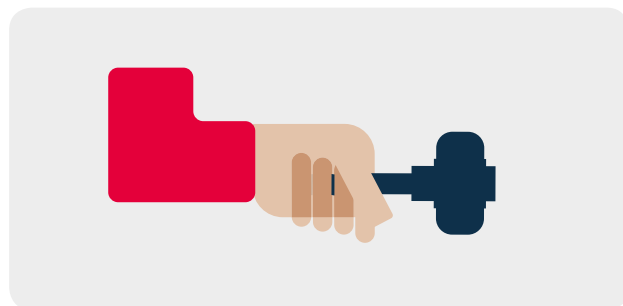
The second alternative will always occur if the interest rate is not agreed upon between you and your debtor.

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

### 14.1.4. Debt collections costs

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

## 14.2. Legal collections



### 14.2.1. General information

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

- The name of 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 determined to be enforceable. If the debt is undisputed, a bailiff will issue a payment order; this equals a judgment. If the debtor disputes the debt, no matter the reason or the seriousness of the dispute, the file is assigned for trial handling. If a judgment is obtained and the debtor does not pay accordingly, the file will be handed over to the bailiff's court for execution.

### 14.2.2. Required documents

In order to apply the legal proceedings, we need copies of the 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, copies of the complete contractual documentation should be available, starting with 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 oral negotiations, we require the visit or negotiation reports and the names of the witnesses.

### 14.2.3. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections have failed due to a 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 publish the final judgment. The parties will be informed about the outcome in writing by the responsible court.

#### 14.2.4. 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 judge and lawyers on all sides.

#### 14.2.5. 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.

## 14.3. Insolvency proceedings



#### 14.3.1. 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 collecting the enforceable income of the individual who is declared bankrupt.

There are two insolvency proceedings in Finland:

- Reorganisation
- Bankruptcy

#### 14.3.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check if sufficient assets are available to cover the cost 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 a 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 insolvency estate is closed with a very small or no dividend at all.

#### 14.3.3. Required documents

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

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

#### 14.3.4. Expected time frame

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

# 15. France

GDP  
**\$2,775** billion (2018)

## Growth rate

GDP  
**-0.49%**  
 (2019 est.)

Export  
**3.60%**  
 (2019 est.)

Import  
**2.53%**  
 (2019 est.)

## Industries



Chemicals



Electronics



Food



Metals



Paper



Services



Transport

## Success rate

**50%–75%**



## 15.1. Amicable collections



### 15.1.1. General Information

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

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 upon). All of our investigations are completed with the assistance and agreement of our legal team.

### 15.1.2. Local agents

If our in-house collections efforts do not lead to positive results, we will employ our agent network. They contact

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 a summary of the debtors' business operations. The agents are also able to collect money. If the agents negotiate a payment plan or a final statement with the debtors, they should ask us for approval.

### 15.1.3. Interest

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

### 15.1.4. Debt collections costs

We charge a fixed cost of EUR 40 per case in accordance with European Union directives and a penalty clause of 10% for collections 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 are not used to paying debt collections costs, and often collections costs are used as a matter of negotiation between debtors and collectors.

### 15.1.5. Prescription

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

### 15.1.6. Accepted and most common payment methods

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

### 15.1.7. Types of companies

<b>“Entreprise individuelle”</b>	<ul style="list-style-type: none"> <li>■ Sole proprietorship with unlimited liability of the owner with their business and private funds</li> </ul>
<b>EURL (“Entreprise Uniperson-nelle à Responsabilité Limitée”)</b>	<ul style="list-style-type: none"> <li>■ Sole proprietorship with no minimum capital</li> <li>■ Liability is limited to the company's capital</li> </ul>
<b>SASU (“Société par Actions Simplifiées Unipersonnelle”)</b>	<ul style="list-style-type: none"> <li>■ Sole proprietorship with no minimum capital</li> <li>■ Liability is limited to the company's capital</li> </ul>
<b>SARL (“Société à Responsabilité Limitée”)</b>	<ul style="list-style-type: none"> <li>■ A company with two to 100 partners</li> <li>■ No minimum capital</li> <li>■ Liability is limited to the company's capital</li> </ul>
<b>SNC (“Société en Nom Collectif”)</b>	<ul style="list-style-type: none"> <li>■ A general partnership company with a minimum of two partners</li> <li>■ No minimum capital</li> <li>■ Unlimited liability of the partners</li> </ul>
<b>SA (“Société Anonyme”)</b>	<ul style="list-style-type: none"> <li>■ A public limited liability company with a minimum of seven partners</li> <li>■ A minimum capital of EUR 37,000</li> <li>■ Liability is limited to the company's capital</li> </ul>
<b>SAS (“Société par Actions Simplifiée”)</b>	<ul style="list-style-type: none"> <li>■ A simplified joint-stock company with no minimum capital</li> <li>■ Liability is limited to the company's capital</li> </ul>

### 15.1.8. 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 about any property owned by the debtor, to determine the best course of action. We also have numerous tracing agents who employ investigators when necessary to locate debtors and their assets.

## 15.2. Retention of title

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

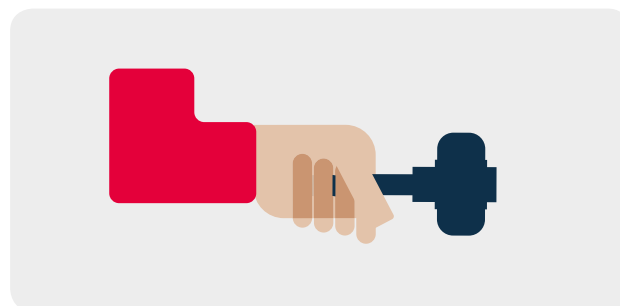
Most companies include retention of title provisions in their general trading conditions. In this case, the debtors must either sign these conditions in advance or the creditors have to advise the debtors explicitly that the general trading conditions apply before the first invoice is sent, e.g. with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

Retention of title 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 at the date of the insolvency judgment, which can prove beneficial during a judicial procedure.

## 15.3. Safeguarding measures

In case your debtor isn't able to settle your claim in a speedy manner, we can request the debtor to 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 conservatory measures, such as seizure of the debtor's bank accounts.

## 15.4. Legal collections



### 15.4.1. General information

If the amicable phase fails to bring 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).

### 15.4.2. 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.

### 15.4.3. Required documents

In order to apply the 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 booked against the outstanding invoices.

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

### 15.4.4. 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. They're very simple, quick, and inexpensive procedures that don't require a lawyer, unless the debtor disputes the debt after the bailiff's notification. They also allow 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 the common procedure ("assignation au fond"). It's a very quick procedure but does require a lawyer to represent you in court.

#### 15.4.5. Lawsuits

A regular lawsuit procedure is initiated directly after the amicable collections have failed due to a dispute by the debtor, or because the debtor has ignored 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 if the outstanding amount is owed and if 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 the 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 publish the final judgment. Both parties will be informed about the outcome in writing by the relevant court.

#### 15.4.6. Appeals

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

#### 15.4.7. 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, a technical dispute, or in the case of appeals.

Some jurisdictions, where the judicial system has been rated below the average performance of France, may take longer to judge cases.

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

#### 15.4.8. 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 collections 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 costs that can’t be charged back to the debtor, such as lawyers’ fees. Each party has to bear 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.

## 15.5. Enforcement

### 15.5.1. 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.

### 15.5.2. Enforcement in movable property

This is the standard procedure where the bailiff visits the debtor to take away movable property for liquidation in favour of the creditors. 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.

### 15.5.3. 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.

### 15.5.4. Expected time frame

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

## 15.6. Insolvency proceedings



### 15.6.1. 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 receiverships end up in bankruptcy.

### 15.6.2. 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 the liquidation of the debtor's assets when the situation is totally compromised, meaning that the creditors can't expect any dividends.

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

### 15.6.3. 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 contracts, orders, confirmations, delivery notes, and invoices

### 15.6.4. Expected time frame

The duration can be important, because it's mandatory to check the debts of all the creditors who lodged the claims

before making a proposition of a payment plan (in general in 10 years by annual payment).

### 15.6.5. Limited companies and unlimited companies/ individuals

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

### 15.6.6. Pools of creditors

There are two creditor pools that the court may decide to build. The first is made up of committees of credit institutions, and the second contains the main suppliers 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 interests of the creditors.

### 15.6.7. 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.

## 15.7. Arbitration and mediation

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



# 16. Germany

GDP

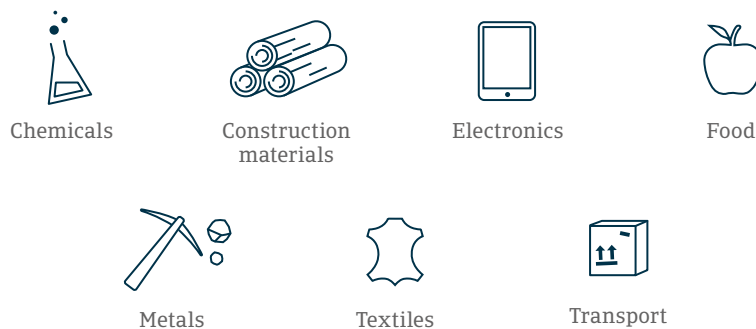
# \$4,000

billion (2018)

## Growth rate

GDP	Export	Import
<b>-0.91%</b>	<b>3.01%</b>	<b>3.89%</b>
(2019 est.)	(2019 est.)	(2019 est.)

## Industries



## Success rate

# 50%–75%



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 16.1. Amicable collections



### 16.1.1. General information

We maintain a professional collections process and focus on the relationships between you and your debtors at all times. Our team of collections specialists carry out the collections process in-house. We contact debtors both verbally and in writing whilst adhering to federal and state laws. 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 upon). All of our investigations are completed with the assistance and agreement of our legal team.

### 16.1.2. Local agents

Currently, we do not offer field service to visit debtors in Germany. However, if debtors wish to visit our premises, we will gladly arrange face-to-face meetings to discuss the situations.

### 16.1.3. Interest

We always charge interest to debtors. It's calculated from the base rate set by the German national bank 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). When you have to pay higher interest to your bank, we are able to ask for a higher rate. However, this rate needs to be confirmed by the bank in writing in case any legal action needs to be initiated.

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

### 16.1.4. Debt collections costs

In Germany, under the German Civil Code paragraph 280, sections 2 and 3, and paragraph 286, debt collections 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 collections costs, though often the actual amount of these costs is considered a matter of negotiation. We will forward all the recovered debt collections costs to you to reduce the claim, retain the costs, or add them to our success fees. This will depend on the contractual agreement between you and Atradius Collections.

### 16.1.5. Prescription

The general prescription period in Germany is three years, starting at the end of the year a claim becomes due under paragraph 195 in combination with paragraph 199, section 1 of the German Civil Code. Transport claims prescribe within one year, starting from the delivery under the Convention on the contract for the international carriage of goods by road (CMR) of Geneva.

The limitation period is suspended or recommenced under German Civil Law paragraph 203ff.:

- If negotiations are in progress between you and your debtor over a claim or the circumstances founding the claim, until one of the parties refuses to continue the negotiations
- In the case of the right to refuse performance
- In the case of force majeure
- Under special circumstances, the debtor (the obligor) acknowledges the claim towards you (the obligee) by partial payment, payment of interest, provision of security, or a judicial or official act of execution is undertaken or applied for in any other way

### 16.1.6. Accepted and most common payment methods

The most common payment method is bank transfers. Cheque payments are possible. We also accept bankers' drafts, although these are very rare in Germany. We neither offer direct booking off of debtors' accounts nor accept cash payment.

### 16.1.7. Types of companies

<b>Sole trader / Sole proprietorship</b> ("Einzelunternehmen")	<ul style="list-style-type: none"> <li>■ Unlimited liability of the owner with their business and private funds</li> <li>■ In order to pursue such a debtor, we need the first name and surname of the debtor</li> </ul>
<b>Civil law partnership</b> ("Gesellschaft bürgerlichen Rechts" or GbR)	<ul style="list-style-type: none"> <li>■ No minimum capital</li> <li>■ Unlimited liability of the partners</li> <li>■ Usually non-commercial or small-business activities</li> </ul>
<b>General partnership</b> ("offene Handelsgesellschaft" or OHG)	<ul style="list-style-type: none"> <li>■ No minimum capital</li> <li>■ Unlimited liability of the partners</li> </ul>
<b>Limited partnership</b> ("Kommanditgesellschaft" or KG)	<ul style="list-style-type: none"> <li>■ No minimum capital</li> <li>■ At least one of the partners is liable with their business and private funds</li> <li>■ The limited partners are only liable with the company's capital</li> </ul>
<b>Professional (service) partnership</b> ("Partnergesellschaft" or PartG)	<ul style="list-style-type: none"> <li>■ No minimum capital</li> <li>■ The partners have to be independent professionals (e.g. lawyers, doctors, architects)</li> </ul>
<b>Entrepreneurial company with limited liability</b> ("Unternehmergesellschaft" or UG)	<ul style="list-style-type: none"> <li>■ No minimum capital. However, 25% of yearly earnings must be accumulated until EUR 25,000 is reached</li> <li>■ Liability is limited to the company's capital</li> </ul>
<b>Company with limited liability</b> ("Gesellschaft mit beschränkter Haftung" or GmbH)	<ul style="list-style-type: none"> <li>■ A minimum capital of EUR 25,000 in the form of cash and also assets such as cars or company equipment</li> <li>■ The partners are only liable with the company's capital</li> </ul>
<b>Company on shares</b> ("Aktiengesellschaft" or AG)	<ul style="list-style-type: none"> <li>■ A minimum capital of EUR 50,000 divided into shares</li> <li>■ Liability is limited to the company's capital</li> </ul>

### 16.1.8. 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 advise on the next steps.

It depends on the legal forms of the debtors whether we are also able to request information from public registers. All traders have to be registered at the Municipal Trade office. Obtaining information from this office triggers an administrative fee, which varies from town to town. All companies with limited liability have to register with the trade register at a competent court, which can be accessed online. We have direct access and can obtain any additional information on shareholders, historical developments, and balance sheets published there.

Debtors with unknown addresses can be traced via the Registration of Address office. Private persons are legally obliged to officially deregister when moving from one town to another and to re-register in the new town. Occasionally, some debtors do not follow this procedure and cannot be traced, despite this being a punishable offence. Same as the

case with the Municipal Trade office, the cost of information from the Registration of Address office varies from town to town. In order to trace a non-registered debtor or in the case of potential fraud, we may engage the services of private investigators from an experienced agency with whom we contract.

## 16.2. Retention of title

Germany has very comprehensive, supplier-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, the debtor must either 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 supplier until full payment. The supplier can or must get the goods back.

**Increased ROT**

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

**Extended ROT**

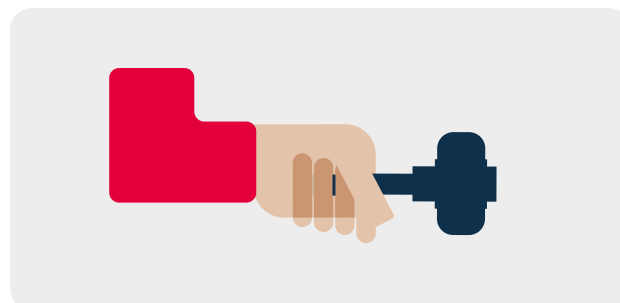
This is assigned to the suppliers in advance. In accordance with §354a of the Commercial Code, advance assignment is effective despite non-assignment agreements between the buyer and any third party.

## 16.3. Safeguarding 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, which is authenticated by a notary and is immediately enforceable in case the agreed payment terms are not honoured. The corresponding notary cost has to be carried by the debtor, and the notary will send the enforceable engrossment directly to us. In exceptional cases, the cost of obtaining such a title is advanced by us (e.g. if the debtor is not capable of doing so). The cost is then charged back to you. Approaches like this have to be evaluated on a case-by-case basis and are dependent on the outstanding principal amounts.

Debtors are also able to offer other means of security, such as mortgages, assignment of debts or assets. Contracts must be drawn up for assignment of debts or assets, whilst mortgages have to be registered by a notary.

## 16.4. Legal collections



**16.4.1. General information**

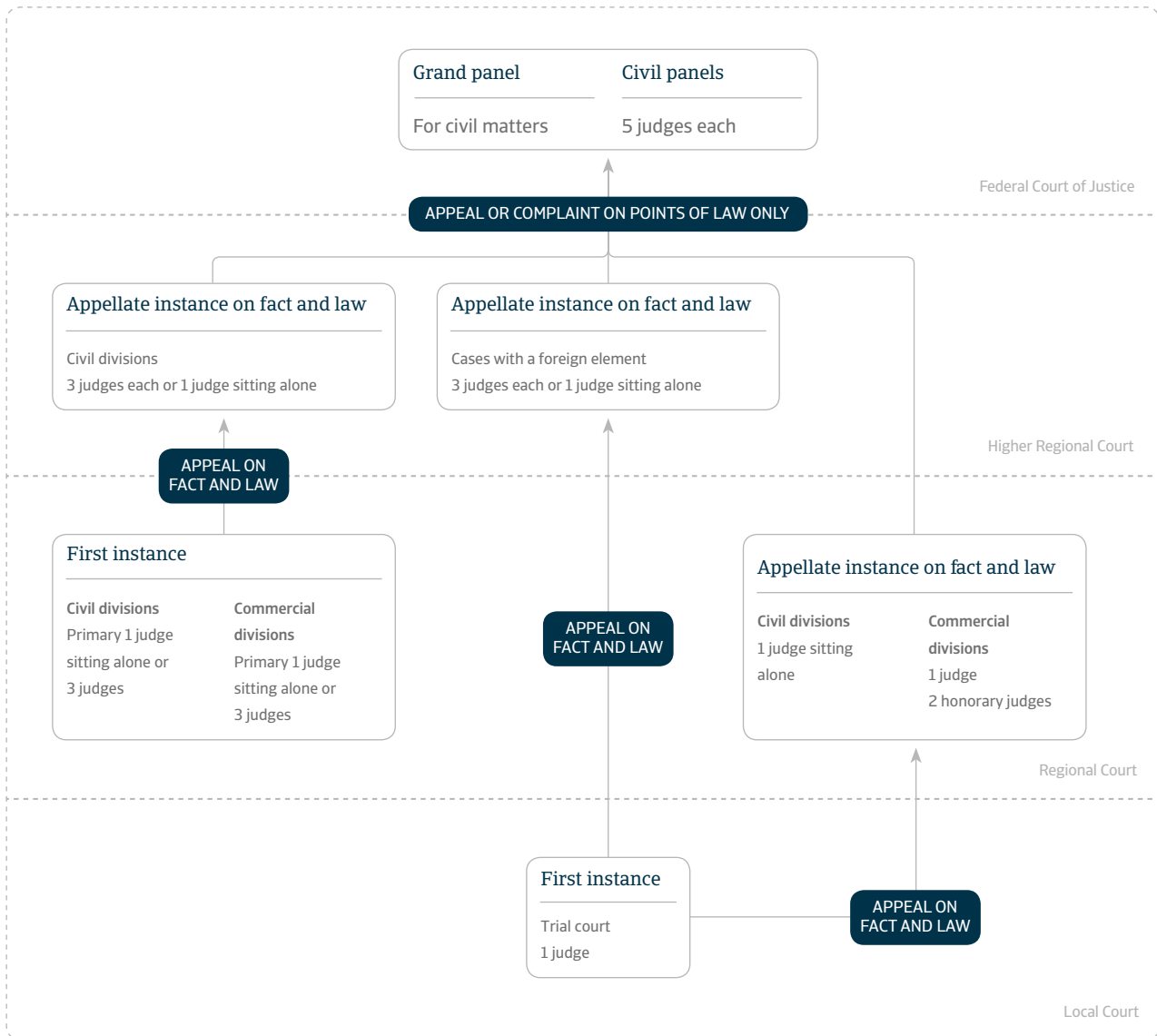
The modern German legal system is composed of public law, which regulates the relations between citizens and the state, and civil law, which regulates the relations between two people or companies.

Entering into legal proceedings is possible without a prior warning to the debtor. However, all the 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 pre-court efforts did not reach a conclusion and will ask to see all the prior correspondence in order to reach a quick and final judgment.

**16.4.2. Legal systems**

The nature of the cases and the amounts of monies owed divide court jurisdiction. The scheme below is a simplified extract of the German jurisdiction, usually applicable for cases regarding outstanding money. You (the plaintiff) are not required to be represented by a registered attorney before a local court (for claims up to EUR 5,000), although professional legal representation is mandatory before any other court.

### Extract of the German jurisdiction



#### 16.4.3. 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 paid against the outstanding monies.

In the case of a regular lawsuit procedure, copies of all the contractual documentation should be available, starting with 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 oral negotiations, we require the visit or negotiation reports and the names of any witnesses.

#### 16.4.4. Legal dunning procedures

This type of proceedings is only applicable for monetary debts where the debtors are traceable. The Berlin-Wedding court is responsible for non-German clients, whilst various competent local courts are responsible for German cases. In order to obtain an enforceable judgment by legal dunning procedure, first the court order (“Mahnbescheid”) and second the enforcement order (“Vollstreckungsbescheid”) need to be applied one after another and served on the debtor within the time frames stipulated in the German Civil Process Law. The debtor can appeal during both

stages. That would transfer the dunning procedure into a regular lawsuit procedure.

#### 16.4.5. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections have failed due to a 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 the defendant must exchange opinions and proof by letter until the judge believes 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 publish the final judgment, and both parties will be informed about the outcome in writing by the court.

#### 16.4.6. Appeals

Appealing the 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 the 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 is not permissible.

#### 16.4.7. 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.

#### 16.4.8. Costs and interest in the legal phase

Any costs incurred during the civil law procedure (court fees and lawyers' fees) are determined by the provisions of the RVG (law for lawyers' fees) and the GKG (law for court fees) and are not subject to any negotiation. All costs are dependent on the outstanding principal amount and are calculated taking into account the amounts kept by each party. There are different fees that can apply during the proceedings, making it difficult to predict the total costs. In addition to this, costs of witnesses and/or experts might also arise. The costs of a legal dunning procedure are usually from 20% to 40% of the costs of a full court procedure. Costs can be kept down if the debtor does not react to the court summons and accepts the claim.

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

the parties bear the costs of the corresponding proceedings in proportion to their prevailing or failing.

## 16.5. Enforcement

### 16.5.1. Enforcement in debt

You can block the bank accounts of the debtor or block the debtor's claims against tax offices, life insurance, the debtor's employer, 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, the name and address of their employer, 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 the single enforcement action.

### 16.5.2. Enforcement in movable property

This is the 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 necessary for the debtor's basic daily life or that enables them to maintain their business activities. If these types of property are not available, the bailiff will demand a statutory declaration from the debtor. If the debtor refuses and does not appear before the bailiff for the appointment set up for the affidavit, you need to file for an arrest warrant before court. The warrant will then be executed by the bailiff and supported by the police. The warrant is used to obtain the statutory declaration from the debtor and can only be obtained every three years.

### 16.5.3. Enforcement in immovable property

If the debtor owns real estate, it's possible to receive a record of their claim in the land register, and then force the attachment, the attachment and sale, or, if there are tenants, the sequestration of the real estate by court order. All of these processes are more expensive than those mentioned previously, and it can be a long process to get a copy of the record. Afterwards, it can also take time to sell or sequester the land and real estate.

### 16.5.4. Expected time frame

The enforcement in debt generally takes only four to eight weeks. The enforcement in movable property, however, often needs six to nine months in the western part of Germany and nine to 12 months in the eastern part of Germany, due to a lack of bailiffs and large backlogs. 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.

## 16.6. Insolvency proceedings



### 16.6.1. General information

Insolvency proceedings – whether regular insolvency, insolvency plan, or individual insolvency – are a kind of collective enforcement by all the creditors to the debtor. With the start of preliminary proceedings, all the individual enforcement is suspended, and only when the insolvency proceedings do not start will individual enforcement continue. The aim of the 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.

### 16.6.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check if 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.

The creditors can then lodge their claims and take back any goods delivered under ROT clauses. For goods in stock, the liquidator can choose either to pay the original prices to the creditors or to return the goods. For the extended ROT, the insolvency practitioner liquidates the goods or claims and pays out the creditors the retaining VAT and a commission of 9% of the revenue.

After the proceedings start, lodging claims is possible within a given deadline. All the claims lodged 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 cannot 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 20 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 a claim in court to prove the justification of the claim when further documentation does not convince the liquidator to confirm the debt.

At the end of the proceedings, all the creditors with confirmed debts will receive dividends - on average between 5% and 8% of the original claims. In fewer than 50% of the proceedings, dividends higher than 2% are distributed.

### 16.6.3. 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, 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

### 16.6.4. 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 check on the lodged claims takes place one to three months after the deadline for lodging claims. The total duration of insolvency proceedings is between four and seven years. In Germany, a case will be closed when the insolvency practitioner has accepted the claim after it has been lodged.

### 16.6.5. Limited companies

A limited company will file for insolvency for three main reasons:

- Inability to pay. This doesn't automatically mean that the company's assets do not cover all its debts. Under special circumstances, it could be the case that only the actual liquidity does not cover the due debts, but in general, the company's expected liquidity would
- Expected inability to pay. This means that the management already knows that within a certain time span, the company will be unable to pay the due debts
- Accounting insolvency. This means that the company's assets do not cover its debts

#### **16.6.6. Unlimited companies / individuals**

For unlimited companies or individual debtors, it's not obligatory to declare bankruptcy. Nevertheless, they can declare bankruptcy for the reason of inability to pay or expected inability to pay. The costs of the proceedings will be covered by the company's assets, or the liable persons may request respite of the costs. If the insolvency proceedings are confirmed, the debtor company has the right to claim annulment of all their pending debts after a period of six years.

#### **16.6.7. 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 pool 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 pool arrangement and participate in the refunds of the sale of all the debtor's secured goods with quotas of their confirmed credits.

#### **16.6.8. Rescission**

The liquidator can dispute payments carried out 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.

## **16.7. Arbitration and mediation**

If you and your debtor agree on 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 the ordinary courts. Arbitration in Germany is based on the rules of the UNCITRAL Model Law of International Commercial Arbitration and is run by the ordinary courts, Chambers of Commerce, 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 proceedings, which focus on finding the root cause of the dispute in order to find constructive

agreements and solutions for both you and your debtor. Mediation or conciliation is carried out by professional organisations like the Chambers of Industry and Commerce or by professional mediators. There are now increasingly more attorneys who specialise in mediation. The new agreement is not a judgment, but a kind of contract.



# 17. Greece

GDP  
**\$219** billion (2018)

## Growth rate

GDP  
**0.30%**  
 (2019 est.)

Export  
**5.68%**  
 (2019 est.)

Import  
**5.16%**  
 (2019 est.)

## Industries



Chemicals



Food



Metals



Services



Textiles

## Success rate

**up to 50%** 

Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 17.1. Amicable collections



### 17.1.1. General information

In the amicable phase, our collectors get in contact with debtors. A typical collections process commences with an automatic letter sent to a debtor's email address (if any) or their fax number from our system, followed by an initial telephone call. Investigations are also conducted via internet sources and local contacts. 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 if the company is active under the Greek General Commercial Registry ([www.businessregistry.gr/publicity/index](http://www.businessregistry.gr/publicity/index)).

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

### 17.1.2. Local agents

We have several attorneys and debt collections partners acting on our behalf in Greek territories and collecting 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, order credit reports (estimated cost: EUR 150), and examine court registries and the Bulletin of Judicial Publications ([deltio.tnomik.gr/decisions](http://deltio.tnomik.gr/decisions)) for court decisions and actions against the debtors. They can also check the Land Registry (estimated cost: from EUR 300 to EUR 350) for immovable property and solvency of the debtors (estimated cost: EUR 150) if this is not clear (bankruptcy, article 99).

Furthermore, personal visits to debtors can be organised in the areas of Athens and Thessaloniki for significant outstanding debts. As the last amicable step before proceeding with legal action, our agents can instruct local bailiffs to serve an Extra Judicial Declaration (EJD), an out-of-court notice, or a Letter Before Action (LBA) to debtors (estimated cost: from EUR 150 to EUR 250 depending on the distance).

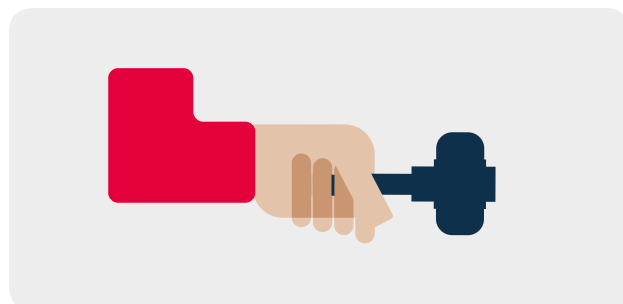
### 17.1.3. Interest

Late payment interest may be charged to debtors on the first overdue day. The Recast Directive 2011/7/EU, which stipulates that payments in the EU must be made within 60 days, was transposed to domestic law through the Law 4152/2013 (which retroactively entered into force on 16 March 2013). In contrast to the regulations set forth in most EU member states, late payment rules in Greece are very comprehensive. In general, payment terms in business-to-business transactions must not exceed 60 calendar days unless agreed otherwise by contract, providing that the delays are not grossly unfair to the creditors. Beyond this point, interest may be due as negotiated by the parties. But in any case, the law allows creditors to charge an automatic interest rate approximately from 7% to 8%.

### 17.1.4. Debt collections costs

In theory, the transposition of the Recast Directive 2011/7/EU to domestic law would entitle creditors to charge a flat EUR 40 collections fee when a payment is late. In practice, however, it's very uncommon to do so unless a claim is brought to court.

## 17.2. Legal collections



### 17.2.1. General information

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

### 17.2.2. 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, also possible in original, signed and stamped by the debtor upon receipt of the goods, or any documents from the debtor

or the transporters proving the receipt of the goods (e.g. ex works)

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

### 17.2.3. Payment order

In order to start the proceedings, a payment order needs to be applied at the court of first instance or by a justice of the peace according to the claim amount. After examining the documents, if the court is of the opinion that the debt is legally due for payment, it will issue a payment order within 50 to 60 days (more or less depending on the workload), which is immediately enforceable if unopposed by the debtor. The debtor has 15 days after the notification of the payment order to file their objection. In case of objection, the proceedings will be transferred to ordinary legal proceedings. In the case of bounced cheques, the payment order should be filed within six months from the date that the cheques were bounced. In the case of bills of exchange, there is a time frame of three years.

If the debtor has assets in other EU member states, a European Payment Order procedure (facilitating the recovery of undisputed debts under the Regulation EC No 1896/2006) may then be triggered. In this case, you may request a domestic court to issue an order to pay, which would then be enforceable in all EU countries (except for Denmark) without exequatur proceedings.

### 17.2.4. 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 at the Penal Court. The time frame is three months after the cheques were bounced. This procedure aims to further pressure the debtor who now faces imprisonment in case they do not pay.

### 17.2.5. Lawsuits

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

Greece has a civil law system inspired by the French and German legal framework. The law is therefore largely codified and the courts are not bound by precedents, even though consistent decisions tend to be used for guideline purposes.

Since a reform conducted in 2012, claims below EUR 20,000 fall under the jurisdiction of the Justices of the Peace Tribunals ("Eirinodikeio"), and claims up to EUR 250,000 are dealt with by Single-Member Courts of First Instance ("Monomeles Protodikeio"). Claims in excess of this amount are dealt with by Multi-Member Courts of First Instance ("Polymeles Protodikeio").

### Amendments to the Greek Civil Procedure Code, Law 4335/2015

The amendments came into effect from 1 January 2016. The basic scope of changes attempted through the new provisions relates to the ordinary proceedings before the courts of first instance, as well as to the compulsory enforcement procedure where the longest delays are observed.

The partially oral hearing process undertaken so far in the ordinary proceedings is replaced by a written procedure. In the exceptional case that the court considers that the case has not been sufficiently clear to proceed to the issuance of a decision and considers that there are special reasons for an examination of witnesses, the court may issue an act for summoning witnesses.

The pleadings are submitted within a term of 100 or 130 days (depending on the case) from the submission of the lawsuit, and the additional pleadings should be submitted within the following 15 days from the expiry of the above deadline. With the lapse of the said deadline, the file of the case is considered closed. Within a term of 15 days starting from the date that the file is closed, a judge or a court composition is appointed; while at the same time, a hearing for the discussion of the case is determined during a time period no longer than 30 days. It should be noted that at the said hearing, no witnesses are examined and the case may be discussed without the presence of the parties or their attorneys. Furthermore, since the oral debate on the hearing date has been abolished and replaced by a written procedure, the testimonies of the witnesses (five maximum from the submission of all evidence until the closure of the case) must be provided by an affidavit, usually stated before a public notary. In the case that the witnesses reside abroad, the procedure for receiving the affidavit takes place at the appropriate consulate, following all legitimate public procedures and deadlines.

**Note 1:** It should be noted that the amendments regard cases of the Peace Tribunals and the Courts of First Instance (claims greater than EUR 5,000). That means small cases (claims up to EUR 5,000) are still held according to the old procedure.

**Note 2:** It should be noted that given the fact that the new procedure is shorter than the old one, proceeding with preliminary or provisional measures is only advised when the debt is old (old invoices) and there is a matter of urgency to secure the claim (e.g. in the case we find out that the debtor has many departments and may apply for bankruptcy from one day to another).

#### 17.2.6. Expected time frame

The average duration of a payment order procedure is between three and four months, whereas ordinary proceedings can take up to six or eight months or longer, depending on the complexity of the case and the availability of the judge and lawyers on all sides. In our experience, the ordinary proceedings with one judge is faster.

#### 17.2.7. Costs and interest in the legal phase

All costs depend on the outstanding principal amount and are calculated proportionally. There are different fees that can apply during a procedure, 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 to this, costs of witnesses and/or experts might also arise. The courts normally award costs to the defeated party, naming the exact amount in its decision. Cost calculations are left to the court's discretion.

The legal interest in Greece is calculated via the lawyers' Bar Association platform by the lawyers and there are no standard formulas because the calculation depends on the amount and age of the debt. As far as the legal proceedings are concerned, any interest is claimed according to article 293 of the Greek Civil Code and the enforcement law number 166/2003, both of which define that the rate of interest is calculated according to the rate of interest applied by the European Central Bank accrued by eight points. The older the debt, the higher the interest. During the legal proceedings, according to article 423 of the Greek Civil Code, the debtor has the obligation to pay the legal expenses first, then the legal interest, and then the capital.

## 17.3. Insolvency proceedings



#### 17.3.1. General information

The initiation of bankruptcy proceedings is the long-term inability of the debtor company to meet their overdue financial obligations. The Greek Bankruptcy Code was enacted in 2007 (Law 3588/2007, as amended in 2010, 2011, 2012, 2015, and most recently in December 2016) to harmonise a fragmented legal framework. It introduces a debt reorganisation process as a means to avoid systematic liquidation of viable companies in temporary financial difficulties. In addition, the most recent amendments to the law aim at decreasing delays and ensuring that debtors would no longer be able to use insolvency proceedings to delay payments any further. Nonetheless, collecting money out of insolvency proceedings remains very difficult.

#### 17.3.2. Out-of-court proceedings

The Law 4469/2017, recently adopted by the Greek Parliament and published on 3 May 2017, introduces new proceedings of extrajudicial debt settlements for individuals and legal entities under specific conditions and with optional ratification by the court. The proceedings are initiated through an application by the debtor, including a proposal for the settlement of their debts, and aim to reach a debt settlement agreement with the mediation of a coordinator. The new law entered into force three months after its publication in August 2017 and covers debts that are overdue as of 31 December 2018.

#### 17.3.3. Pre-bankruptcy proceedings

The reorganisation process starts with the submission of a plan to the court made by specialists (auditors, banks, and the likes), who conduct a judicial review of the proposed plan while a court-appointed mediator assesses the creditors' expectations. The plan may only be validated upon approval by the creditors representing 60% of the total debt (within this amount, a percentage of 40% representing the privileged claims must be included). If no agreement is reached, the court may order a liquidation phase upon request.

#### **17.3.4. Bankruptcy**

As a general rule, the insolvent debtor company must file a bankruptcy petition within 30 days following their cessation of payments (voluntary liquidation), but the creditors may also bring a claim against the debtor (involuntary liquidation). The creditors are then invited to file their claims within 30 days.

The proceedings may commence under the supervision of an administrator (a syndicate appointed by the court) as soon as the debts are verified. In addition, a pool of creditors (i.e. three members representing each class of the creditors) would be given the responsibility of overseeing the proceedings, which would terminate once the proceeds of the sale of the debtor's assets are distributed.

The lodging of claims in the insolvency proceedings is done by our local lawyers, as the proceedings are quite complex in Greece and all lodgings have to be made in Greek. The bankruptcy process is quite lengthy.

#### **17.3.5. 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 are not 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 of your company might need to testify before the court.

#### **17.3.6. Expected time frame and outcome**

The time frame for the completion of the procedure of reorganisation can't be accurately estimated (more than three years on average), but it's likely to be similar to the time frame estimated for the procedure of mediation. The outcome of the procedures of mediation and bankruptcy is often very poor.

# 18. Hong Kong

GDP  
**\$363** billion (2018)

## Growth rate

GDP  
**5.15%**  
 (2019 est.)

Export  
**2.33%**  
 (2019 est.)

Import  
**2.47%**  
 (2019 est.)

## Industries



Consumer  
durables



Electronics



Services



Textiles

## Success rate

**up to 50%**



## 18.1. Amicable collections



### 18.1.1. General information

We deal directly with the collections 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 country's most widely spoken language, and Mandarin being the most common written language. All written correspondence is sent to debtors in English. Hong Kong has a small geographical area, and our collectors can perform site visits to debtors if the situation requires it.

### 18.1.2. Local agents

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

### 18.1.3. Interest

There are no statutes or regulations that govern interest charges. They are freely negotiable between the buyer and the seller and should be clearly stipulated in the contracts. It isn't common practice to charge late payment interest during the amicable phase, as debtors usually refuse to pay.

### 18.1.4. Debt collections costs

In Hong Kong, debt collections costs are not chargeable to debtors, unless stipulated in the contracts or obtained by judgments from courts.

### 18.1.5. Prescription

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

### 18.1.6. Accepted and most common payment methods

The most common payment methods are bank transfers and cheque payments.

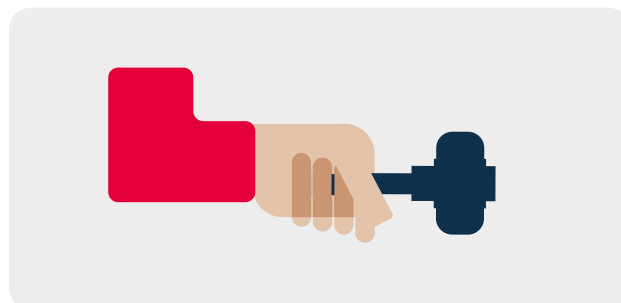
### 18.1.7. Sources of information

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.

## 18.2. Retention of title

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

## 18.3. Legal collections



### 18.3.1. 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 are proven to be unsuccessful, we will evaluate the situation thoroughly in order to determine if 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 to the debtor, while also contacting the debtor to establish if there is any chance of settling the matter without starting legal action. If the debtor still fails to settle the debt at this stage, legal action will commence.

### 18.3.2. 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 50,000
- 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 1 million

#### High Court

- Deals with claim amounts above HKD 1 million

Small claims tribunals are not allowed by law to employ any third party as representatives, including solicitors, meaning you should attend the court hearings yourself. For other courts, legal proceedings are commenced by serving a writ of summons to 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 could not enter into a consent agreement, the judge may call for court hearings before granting 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 files an opposition to 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 new Practice Direction on mediation came into effect. It applies to all civil proceedings in courts of first instance and district courts. 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 dispute to court. Once a court judgment is obtained in favour of the claimant, we will carefully evaluate what type of enforcement is most effective and favourable to you.

### 18.3.3. Required documents

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

### 18.3.4. Costs and interest in the legal phase

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

## 18.4. Enforcement

### 18.4.1. 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 partial payment of the judgment debt
- If a third party claims to own the goods, then the third party may raise an action claiming 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 grant a prohibition order by the court
- As it can be regarded as a contradiction to the Law of Human Rights, a prohibition order is very difficult to obtain

#### Bankruptcy/winding-up petition

- To wind up (limited liability company) or bankrupt (unlimited liability company or an individual) the debtor company
- This is a relatively costly procedure
- If you are an unsecured creditor, we should carefully evaluate the chance of getting any dividend

### 18.4.2. Expected time frame

It generally takes one to two months in Hong Kong.



## 18.5. Insolvency proceedings



There is only one type of insolvency proceedings in Hong Kong and no bankruptcy protection in Hong Kong.

## 18.6. Arbitration and mediation

Arbitration and mediation are not very common in Hong Kong. Only large companies will include this requirement in their business contracts.

# 19. Hungary

GDP  
**\$156** billion (2018)

## Growth rate

GDP  
**8.40%**  
 (2019 est.)

Export  
**3.96%**  
 (2019 est.)

Import  
**7.40%**  
 (2019 est.)

## Industries



Chemicals



Construction materials



Food



Metals



Textiles



Transport

## Success rate

**75%–100%**



## 19.1. Amicable collections



### 19.1.1. General information

We maintain a professional collections process, focusing on the relationships between you and your debtors at all times. Our team of collections specialists carry out the collections process in-house, contacting debtors both verbally and in writing whilst adhering to federal and state laws. In case of any dispute, we aim to reach an amicable solution between you and your debtors. 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 upon). All of our investigations are completed with the assistance and agreement of our legal team. We may decide during the collections process that a personal visit to a debtor would add value, and we're able to do this ourselves in the Budapest area.

### 19.1.2. Interest

We always charge interest to debtors that is fixed by the Act IV of 1959 in the Civil Code of the Republic of Hungary. From 15 March 2014, a new Civil Code Act V of 2013 came into effect. The regulations of interest remain the same. 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, half-year to which it pertains, plus 8%. If you enquire about a higher interest rate, we can only offer this if it has been confirmed by contractual documents.

From a cultural point of view, Hungarian debtors often use the actual amounts of their interest payments as a matter of negotiation.

### 19.1.3. Debt collections costs

Directive 2011/7/EU of the European Parliament and the Council has been incorporated into the Hungarian Civil Code since 15 March 2014. And from 13 February 2016, a new law, Act IX of 2016 Law of Collection costs, came into effect. According to these regulations, we can charge EUR 40 as collections costs to debtors. Further collections costs are chargeable, but there is no regulation fixed by local law. The basis of any charge must be proven by contractual documents signed by the debtors.

From a cultural point of view, Hungarian debtors are not used to paying debt collections costs. And these costs are considered a matter of negotiation.

### 19.1.4. Prescription

The general prescription period in Hungary is five years, starting from the due date of a claim. Transport claims prescribe within one year, starting from the delivery according to the Convention on the Contract for the International Carriage of Goods by Road (CMR). After the changes in the Hungarian Civil Code coming into force on 15 March 2014, only legal proceedings can stop the prescription.

### 19.1.5. Accepted and most common payment methods

The most common payment methods are bank transfers and cash payments.

### 19.1.6. Types of companies

<b>Private company</b> (“Egyéni cég”)	<ul style="list-style-type: none"> <li>■ No minimum capital</li> <li>■ Only one owner with unlimited liability or limited liability for the company’s capital</li> <li>■ A company without a legal entity</li> </ul>
<b>Limited partnership</b> (Bt. (“Betéti Társaság”))	<ul style="list-style-type: none"> <li>■ No minimum capital</li> <li>■ At least one partner has unlimited liability with their business and private funds</li> <li>■ The limited partners are only liable for the company’s capital</li> <li>■ A company without a legal entity</li> </ul>
<b>Company with limited liability</b> (Kft. (“Korlátolt Felelősségű Társaság”))	<ul style="list-style-type: none"> <li>■ According to the last modification in the Hungarian Civil Code, from 15 March 2014, the minimum capital is HUF 3 million, which can be in the form of monies or assets, such as cars or company equipment. Companies that were founded before 15 March 2014 need to increase their capital to the required minimum level by 15 March 2016 at the latest</li> <li>■ Liability is limited to the company’s capital</li> </ul>
<b>Corporation</b> (Rt. (“Részvénytársaság”))	<ul style="list-style-type: none"> <li>■ A minimum capital of HUF 5 million for close corporations</li> <li>■ HUF 20 million for public corporations, divided into shares</li> <li>■ Liability is limited to the company’s capital</li> <li>■ A company with its own legal entity</li> </ul>

### 19.1.7. 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 are also able to request their information from public registers. All companies have to register with the trade register at 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 deadline for lodging claims.

## 19.2. Retention of title

Retention of title clauses are a safeguarding measure. To be used to the advantage of any supplier, they must be agreed upon prior to 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 new Hungarian Civil Code implemented new regulations concerning retention of title clauses. For retention of title clauses of real estate, you have to register

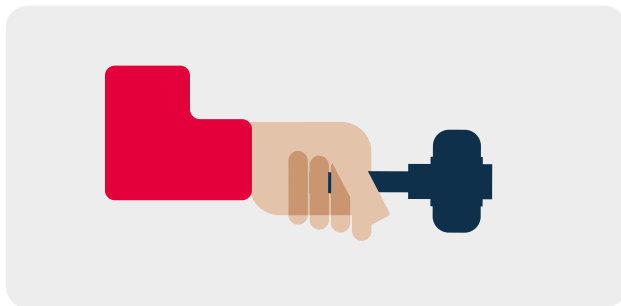
the facts of the retention of title clauses and the name of the buyer with the real estate register. For the retention of title clauses of movable property, you have to register the facts of the retention of title clauses and the name of the buyer with the security register, as well as in an appropriate catalogue. The Civil Code also regulates the legal consequences of missing registrations.

## 19.3. Safeguarding measures

In case your debtor isn't able to settle your claim in a speedy manner, we can request the debtor to 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 are not honoured
- Mortgages or assignment of debts or assets
- An absolute guarantee by the debtor's shareholders and/or associated companies
- Assignment of the debtor's claim with the debtor's absolute guarantee

## 19.4. Legal collections



### 19.4.1. General information

The modern Hungarian legal system is composed of public law, which regulates the relations between citizens and the state, and civil law, which regulates the relations 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 the legal proceedings, they may ask for proof that all pre-court efforts have not been successful. They will also ask to see all prior correspondence in order to reach a quick and final judgment.

### 19.4.2. Legal systems

The responsibility of jurisdiction is divided by the matter, by the addresses of the parties, and/or by the amount of the case. Significant changes in the legal system and court responsibilities are valid since 1 January 2012 based on Act CLXI 2011.

### 19.4.3. 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 paid against the outstanding monies.

In the case of a regular lawsuit procedure, copies of all the contractual documentation should be available, starting with 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 oral negotiations, we require visits or negotiation reports and names of any witnesses.

### 19.4.4. Payment order procedure

This procedure has to be submitted to a notary, who then sends it to the debtor. The payment order is enforceable if

the debtor doesn't appeal within 15 days after receiving the payment order. If the debtor appeals the payment order procedure, it will 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. From 1 January 2018, there have been some important changes concerning the data that needs to be provided to the notary in order to start the payment order procedure. Among others, private entrepreneurs' data such as dates of birth, places, and mothers' names will be recorded already at the start of the procedure; otherwise the petition might be rejected.

### 19.4.5. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections have failed due to a 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 the defendant must exchange opinions and proof by letter until the judge believes all the 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 publish the final judgment, and both parties will be informed about the outcome in writing by the court.

With changes in the Code of Civil procedure, as of 1 January 2018, the terms of suspending the legal proceedings have been changed. The maximum time frame for suspension of a lawsuit procedure can be four months, and it can be requested only up to three times.

### 19.4.6. Appeals

An appeal against the judgment is possible, which will trigger a verdict by the court of second instance.

### 19.4.7. Expected time frame

The average duration of the 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 judge and lawyers on both sides.

### 19.4.8. Costs and interest in the legal phase

Court costs of the payment order process are generally 3% of the claim amount (minimum HUF 5,000 and maximum HUF 300,000) and 6% of the lawsuit debt (minimum HUF 15,000 and maximum HUF 1.5 million).

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 costs are determined by law, and enforcement court costs are generally between 1% and 3% of the claim amount.

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 the 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.

## 19.5. Enforcement

### 19.5.1. Enforcement in debt

The enforcement procedure is executed progressively. The creditors or executor can block the bank accounts of the debtor, or request payments from the debtor's salary from their employer. This type of enforcement requires very specific information, such as bank account details and the name and address of the debtor's employer.

### 19.5.2. Enforcement in movable property

This is the standard procedure where a bailiff visits the debtor to take away movable property that can be liquidated in favour of the creditors. The bailiff cannot seize the property that is necessary for the debtor's basic daily life or that enables them to maintain their business activities.

### 19.5.3. Enforcement in immovable property

This is the standard procedure if enforcement is not 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 register and then either force the attachment and sale or, if there are tenants, force the sequestration of the real estate by court order.

### 19.5.4. 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.

## 19.6. Insolvency proceedings



### 19.6.1. General information

Insolvency proceedings – whether regular insolvency, insolvency plan, or individual insolvency – are a kind of collective enforcement by all creditors to one debtor. With the start of preliminary proceedings, all individual enforcement is suspended, and only when the insolvency proceedings do not start will individual enforcement continue.

In spite of numerous changes in the Insolvency Act XLIX of 1991, the Hungarian insolvency law still remains ineffective. The chance of receiving a dividend in liquidation for unsecured creditors – without any special guarantees – is less than 1%. Bankruptcy proceedings (with the aim of reorganisation via settlement with the creditors) can still not reach a significant number in Hungary.

### 19.6.2. Proceedings

#### Bankruptcy procedure

The aim of a bankruptcy procedure is to reorganise the debtor company under strict law control via repayment agreements with all the creditors who lodged their claims within the 30-day period after the official notification.

#### Liquidation procedure

A liquidation procedure can be initiated by the debtor company themselves 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 for claims without any prior dispute. A petition has to be filed to the court, along with documents proving the legal base of the claims. If the petition is judged as valid, the court will send an official notice to the debtor to pay the creditors' claims. Otherwise, insolvency will be declared. In case the debtor acknowledges the debts, 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 on any settlement to suspend the liquidation procedure, the insolvency will be officially published.

In debt collections practice, the liquidation procedure can be an effective tool to put a final pressure on the debtor for payment when their company is still solvent. With changes in the Code of Civil procedure, as of 1 January 2018, the terms of suspending legal proceedings have been changed. Previously, within the liquidation procedure, the maximum time frame for suspension was six months. This has been reduced to 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 a claim in court to prove the justification of the claim when further documentation does not convince the insolvency practitioner to confirm the debt. The registration fee to lodge any claim in liquidation (payable to the competent court) is 1% of the claim amount, with a minimum of HUF 5,000 and a maximum of HUF 200,000. If you don't want to lodge a claim within the insolvency procedure and pay the 1% registration fee, you can request the insolvency practitioner to 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 term and to represent you in the process.

### 19.6.3. 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

### 19.6.4. Expected time frame and outcome

The deadline to lodge a claim in the insolvency procedure is 40 days, calculated from the publishing date of the process. The liquidator will confirm the registration of the claim after receiving all the relevant documentation – closing balance sheets, analytics, inventory lists, and the likes – from the management of the debtor company.

In Hungary, all creditors are ranked into categories from A to H. Unsecured creditors are ranked in category F, and all categories between A and E (e.g. banks, employees, and authorities) have to be paid out in full before unsecured creditors can get any dividend, unless a full and final settlement has been agreed on by the creditors. Within 75 days after the publishing of the procedure, the insolvency practitioner has to arrange a creditors' meeting.

The whole duration of the 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 enables the insolvency practitioner to carry out the insolvency proceedings in a regular way.

### 19.6.5. Limited companies

Liability is generally limited to the company's capital. However, in special lawsuit procedures, the liability of (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, (previous) shareholders and management are liable for 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.

#### **19.6.6. Unlimited companies / individuals**

For unlimited companies, liability is not limited. Any unlimited shareholder is liable for the insolvency losses with their own assets. Individual insolvency does not exist in Hungarian legislation.

#### **19.6.7. Pools of creditors**

In insolvency and bankruptcy proceedings, creditors can join in a pool agreement with the aim of representing and protecting the interests of the creditors during the proceedings, and controlling the activities of the insolvency practitioner.

#### **19.6.8. Rescission**

The insolvency practitioner can dispute and claim back payments by the debtor, carried out prior to the publishing 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.

## **19.7. Arbitration and mediation**

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

Arbitration in Hungary is organised by the Chamber of Industry and Commerce (“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 hearing and process 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 find 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 is not a judgment but a kind of contract. Mediation activities are regulated by the Act LV of 2002.



# 20. India

GDP  
**\$2,717** billion (2018)

## Growth rate

GDP  
**9.40%**  
(2019 est.)

Export  
**8%**  
(2019 est.)

Import  
**9.95%**  
(2019 est.)

## Industries



Chemicals



Construction materials



Electronics



Food



Metals



Textiles



Transport

## Success rate

**up to 50%** 

Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 20.1. Amicable collections



### 20.1.1. 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 negotiations. By keeping in close contact with debtors, we are able to evaluate genuine cash flow problems and stalling excuses for non-payment. Field visits from time to time and face-to-face meetings with debtors are an integral part of our collections initiatives.

### 20.1.2. 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 field visits and face-to-face meetings with debtors. If necessary, they also offer skip trace services.

### 20.1.3. Interest

Indian courts generally award interest from 8% to 9% per year, unless another rate of interest is otherwise agreed 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's not customary for debtors in India to pay interest on the debt amounts, especially in the amicable phase. Thus, in pre-legal recovery, interest is not recoverable.

### 20.1.4. Debt collections costs

It's not customary for debtors in India to pay collections costs, especially in the amicable phase. Thus, in pre-legal recovery, collections costs are not payable by debtors. However, while passing a judgment, Indian courts may order the debtors to reimburse the legal or collections costs to the creditors.

### 20.1.5. Prescription

The Limitation Act, 1963, governs the period 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.

### 20.1.6. Accepted and most common payment methods

The most common payment methods include payment by wire transfer and payment by draft or banker's cheque.

### 20.1.7. Types of companies

#### Sole proprietorship

This type of entity is owned by a sole proprietor. The proprietor of a sole proprietorship entity has unlimited liability to their debtors.

#### 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. Partners of a 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 than 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.

### 20.1.8. 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.

## 20.2. Retention of title

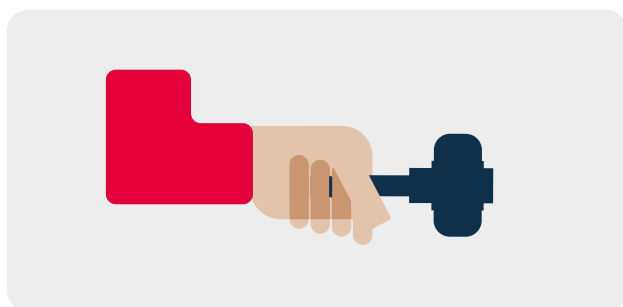
The principle of retention of title clauses is retaining negative liens at times, which prohibit the debtors from disposing or dealing with the plant and machinery or goods for which full payment has not been made. The restrictions are also imposed on the creation of charges on the plant and machinery or goods delivered when payment has not been made on such items. Charges on plant and machinery or goods are created and filed before 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 possession of delivered goods for the unpaid prices. Consequently, most creditors insist on advance payments, letters of credit, or other negotiable instruments.

## 20.3. Safeguarding measures

Safeguarding measures include taking acknowledgements of debt from debtors and promises to pay (they don't require notarisation). Furthermore, charges or liens on the goods supplied or other assets are ways to safeguard the interests of the suppliers. Likewise, bank guarantees (from reputable banks) may also be obtained.

## 20.4. Legal collections



### 20.4.1. General information

Whilst we maintain a high success rate with amicable collections, if necessary, we have the ability to initiate legal action and arrive at a successful conclusion 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 amicable collections fail. The latest law Insolvency and Bankruptcy Code 2016 (IBC) is a complete code in itself 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 locations of the debtor companies' registered offices.

### 20.4.2. 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 with district judges sitting in the district courts and magistrates of second class and civil judges (junior division) at the bottom of the judicial systems' hierarchy. Now for corporate insolvency cases, we also have the NCLT.

### 20.4.3. Required documents

For proper understanding of your case and for initiating legal action, all 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.

### 20.4.4. 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 a recovery suit is to recover the debt amount.

It's considered to be protracted proceedings (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 deposition.

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.

#### 20.4.5. Appeals

The party to the suit adversely affected by the decree or order of a court can file 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 appeal. If the forum of appeal is a high court, then the appeal is to be filed within 90 days from the date of the decree or order. If the forum of appeal is another court, then the appeal is to be filed within 30 days from the date of the decree or order.

#### 20.4.6. Expected time frame

Recovery suits are protracted by nature and generally take between two and five years to reach a conclusion. Winding-up proceedings generally conclude in two years.

#### 20.4.7. Costs and interest in the legal phase

It's not feasible to give an estimation 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.

##### Attorneys' fees

Fees paid to lawyers for handling matters and for appearing before the court.

##### Process serving

A nominal fee is paid for the delivery of the court's summonses, notices, and other documents to the concerned parties.

##### Drafting

Fees paid to lawyers for drafting plaints, petitions, applications, written statements or objections, replies, rejoinders, and other miscellaneous documents.

##### Publication costs

Costs of the publication of notices in newspapers as directed by the court.

##### Miscellaneous

There are other miscellaneous expenses, such as the 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 legal or collections costs to the creditors.

## 20.5. Enforcement

A decree can be enforced by 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 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 whom it was forwarded for execution. A decree can be executed by filing an execution petition before the court. Furthermore, the limitation period for filing an execution petition is 12 years from the date of the decree. The estimated time for concluding an execution petition is two to four years.

When a decree-holder makes an application for the attachment of the movable property belonging to the judgment-debtor, the decree-holder has to also annex to the application an inventory of the property to be attached, containing reasonably accurate descriptions of the property. When an application is made for the attachment of any immovable property of the judgment-debtor, it should contain accurate descriptions of such property.

## 20.6. Insolvency proceedings



### 20.6.1. General information

Bankruptcy laws in India, especially in cases of 'sick' companies (companies whose accumulated losses are equal to or exceed their net worth), are predominantly remedial and ameliorative. They empower 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 non-viable companies.

### 20.6.2. Proceedings

Companies in India are governed by the following insolvency and restructuring regimes:

- Insolvency proceedings are under the Insolvency and Bankruptcy Code 2016. 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

### 20.6.3. Required documents

For proper understanding of your case and for initiating legal action, all 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.

### 20.6.4. 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 their overall liability.

### 20.6.5. Unlimited companies / individuals

The Provincial and Presidential Insolvency Act governs the insolvency proceedings of unincorporated entities and is more prolonged by nature.

## 20.7. Arbitration and mediation

If a 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 of strict rules of proceedings or laws of evidence, yet they 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 of their witnesses, and then, after hearing both parties, they decide on the case and pass an award. Thereafter, the award needs to be enforced against the debtor.

Mediation proceedings are another form of alternative dispute resolution. They are a way of resolving disputes between two or more parties with a concrete outcome. Typically, a third party, the mediator, assists the parties to negotiate a settlement. Generally, courts also refer matters to mediators these days.

# 21. Indonesia

GDP  
**\$1,022** billion (2018)

## Growth rate

GDP  
**7.67%**  
 (2019 est.)

Export  
**6.26%**  
 (2019 est.)

Import  
**6.74%**  
 (2019 est.)

## Industries



Chemicals



Construction materials



Consumer durables



Electronics



Food



Metals



Services



Textiles



Transport

## Success rate

**up to 50%**



## 21.1. Amicable collections



### 21.1.1. General information

Recent political changes in Indonesia have improved the country's economic stability by reducing regulatory burdens and passing reforms in order to increase productivity and inflow of foreign direct investments. However, despite those efforts, economic productivity remains relatively low, hampered by poor infrastructure and a lack of a skilled labour force. 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 to appeal, giving debtors more opportunities to delay payment.

### 21.1.2. Local agents

Most foreign creditors rely on local debt collectors to assist with debt recovery, as speaking the local language "Bahasa" is critical for recovery efforts. Indonesia is an archipelago consisting of 18,307 islands with various local collections agencies spread around the country.

### 21.1.3. Interest

Payment terms are not 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.

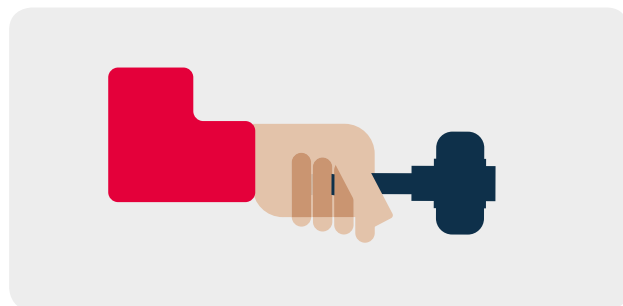
There are two types of interest: conventional interest rate ("bunga konvensional"), which can be contractually agreed by the parties through a contract and apply in the case of late payment; and in case there are no contractual agreements, a 6% per annum legal interest rate ("bunga moratoir") is set by law.

### 21.1.4. Debt collections costs

There is no law or regulation in Indonesia that regulates collections costs in particular or debt collections 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. the principal debts and/or the 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.

## 21.2. Legal collections



### 21.2.1. General information

Legal action in Indonesia is usually lengthy and costly, and decisions may be inconsistent although there seem 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).

### 21.2.2. Required documents

According to article 164 of "Herziene Inlands Reglement", 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 some instances, the court may require third party witnesses, affidavits, powers of attorney (POA), and occasionally statements made under oath.

### 21.2.3. 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. It continues with the judge requesting that the parties engage in mediation or conciliation. If mediation is not successful, the court will proceed to the next stage (the time frame for mediation is 30 days). However, if mediation is successful, it will be ratified by the court and the trial is completed

- At 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, the judge, and the defendant's own copy
- The third session is a further hearing to review the defendant's response. The plaintiff has an opportunity to respond to the court after having a chance to review the defendant's position to the claim
- The fourth session is the submission of the rejoinder. A rejoinder is a response to the plaintiff's reply
- The fifth session is to provide evidence and/or witnesses by the plaintiff against 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 the 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

#### 21.2.4. Lawsuits

Below are the tasks to prepare in a lawsuit:

- Prepare a POA. It should be signed by the authorised representative of your company. That person has the right based on your articles of association (AoA) to represent your company in court. If your company is not 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 signed the POA has the authority to represent your company in court
- Prepare the primary opinion and advice regarding the case
- Prepare and submit the draft lawsuit, any response, surrejoinder, testimony, and conclusion related 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 court hearings
- Apply for execution of confiscation at court (if any). You must provide the court with sufficient or proper evidence of the debtor's proof of ownership related 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

#### 21.2.5. Costs in the legal phase

Costs of legal action are from USD 20,000 to USD 40,000, depending on the complexity of the case.

#### 21.2.6. Expected time frame

The time period 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.

## 21.3. Insolvency proceedings



#### 21.3.1. General information

The aim of insolvency 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 proceedings are called the Postponement of Debt Payment Obligation (also known as "Penundaan Kewajiban Pembayaran Utang" or PKPU). A PKPU process must be completed within 270 days.

The procedure for applying for PKPU will be addressed to an appointed chairman of the commercial court, whose jurisdiction covers the legal position of the debtor. The application must be signed by the debtor and the 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 at the PKPU court. We aim to reach a fair settlement in the hope that the debtor proposes a satisfactory repayment plan, thus avoiding the final outcome of the PKPU (formal bankruptcy).

The 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 of PKPU will also be announced



in local newspapers, which also trigger debtor companies to pay as they would like to avoid this kind of media attention.

### **21.3.2. Proceedings**

Insolvency in Indonesia is not 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 insolvent by the decision of Indonesian Commercial Court, either at the debtor's own petition or at the request of one 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. Sometimes, a debtor would be declared insolvent by the Indonesian Commercial Court when, following a suspension of payment procedures, no composition plan has been approved by the creditors and the court alike.

The Insolvency Law No 4/1998 (Law 4/1998) was replaced in 2004 by the Law on Insolvency and Suspension of Payment No 37/2004 (the Insolvency Law), which governs insolvency 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.

### **21.3.3. Required documents**

- A composition plan for rescheduling payments of the debt
- The shipping or packing lists
- 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

### **21.3.4. Expected time frame**

There are two agendas:

- Temporary PKPU: 45 days
- Permanent PKPU: 270 days maximum

## 22. Ireland

GDP  
**\$373** billion (2018)

### Growth rate

GDP  
**2.38%**  
 (2019 est.)

Export  
**4.57%**  
 (2019 est.)

Import  
**4.45%**  
 (2019 est.)

### Industries



Chemicals



Electronics



Food

### Success rate

**50%–75%**



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 22.1. Amicable collections



### 22.1.1. 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 obtain payment of debts in full, but if required, we can negotiate to agree on a payment plan or a settlement figure.

In the event that we consider that it's necessary to escalate beyond amicable collections, we must support this process in Ireland by the issue of a Letter Before Action (LBA), which is the start of legal proceedings. This is not used in all cases - only those where our collectors consider that the debtors have the ability to pay and need some strong evidence of our intentions.

If there are no positive responses to the LBA and we consider it cost-effective to do so, we will recommend that we issue proceedings in the 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. It's necessary in Ireland 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 issued, 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 *Stubbs Gazette* 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 about 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 the 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 upon).

### 22.1.2. Interest

#### Late Payment in Commercial Transactions Regulations 2012

The purpose of the regulations is to give legal effect to 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 for 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 at 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 and Financial Services Authority of Ireland website: [www.centralbank.ie](http://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 suppliers
- 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

### 22.1.3. Debt collections costs

As well as interest, you as the supplier may charge an amount to compensate for the costs of collecting late payments. The

amount of compensation that can be claimed is determined by the outstanding amounts 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

#### 22.1.4. 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.

#### 22.1.5. Accepted and most common payment methods

Ireland still operates on payments 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.

#### 22.1.6. 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 time.

##### 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 issue legal proceedings, we must first be sure of the identity of the individual and require information such as their name and, if possible, their 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.

#### 22.1.7. Sources of information

Limited companies must register with the Official Register Companies House. Sole traders and partnerships are not required to do so. We are 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 means of calling their neighbours or other businesses.

## 22.2. Retention of title

There are two types of retention of title (ROT) clauses:

##### Simple

Title to the goods only passes to the buyer in respect of payment for each invoice relating to the goods.

##### All monies

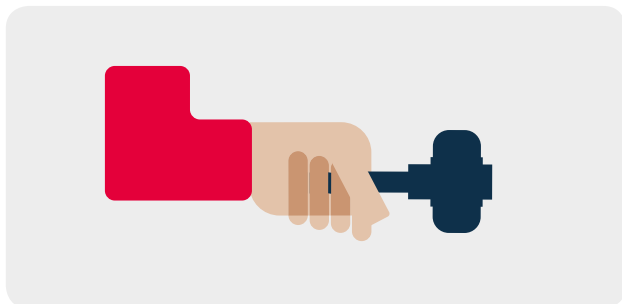
Title to the goods only passes to the buyer when they have paid for all the goods supplied.

We advise you to enforce your retention of title clauses. In the case of all monies, the goods must be identifiable. For this reason, it's not possible for us to enforce ROT on your behalf; however, we will assist in any way we can.

## 22.3. Safeguarding measures

Occasionally, debtors will offer personal guarantees for the debts. But it's important to note that this must be legally enforceable.

## 22.4. Legal collections



### 22.4.1. General information

The process of litigation in Ireland is very similar to that of the United Kingdom (UK). However, it is 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 under the policy have been followed, then in most cases, the credit insurance will contribute towards the legal costs. You will still be consulted on the legal action; but if the claim has been paid, then the credit insurance will direct such action. If the credit insurance does not cover the debt, then we will require an agreement on legal action and costs in writing prior to the commencement of litigation. We will also ask for payment on account for legal action, particularly if the case is defended.

### 22.4.2. Legal systems

The process begins with the issue 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 new formats and requirements have been introduced with regards 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.

### 22.4.3. 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 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 issue proceedings on your behalf. This may in turn render the case statute-barred and prevent future litigation.

### 22.4.4. Expected time frame

On average, pre-legal actions, such as the LBA, take 14 days after their issuance. Litigation action takes approximately 12 weeks for a standard case to reach judgment. Sheriffs' coverage in Ireland is limited, and enforcement is often a very prolonged procedure that takes as long as six to 12 months.

### 22.4.5. Costs and interest in the legal phase

Costs will differ greatly, depending on the type of legal action necessary. In any case, our experienced collectors will have a full discussion with you regarding costs and timescales before legal action is commenced.

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 judgment. 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's not possible at the start of a case to make an exact estimation of its costs. But it's clear to see that heavily defended costs can easily equal or exceed the value of the debt itself. For this reason, we will advise on some form of negotiation or mediation.

The solicitor will continue to add statutory interest and costs to the debt.

## 22.5. Enforcement

### 22.5.1. 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 *Stubbs* – a publication that is readily available to all and contains the details of all the judgments issued.

### 22.5.2. Enforcement in movable property

If the debtor is not able to make any payments, then the sheriff can seize the property relating to the debtor's business as payment towards 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.

### 22.5.3. Enforcement in immovable property

If the debtor owns immovable property, then we can apply for a judgment mortgage. This means that the property cannot 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.

## 22.6. Insolvency proceedings



### 22.6.1. General information

There are a variety of insolvency types in Ireland, ranging from a voluntary arrangement - offering a fixed percentage payout 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 states, and we can best advise on a case-by-case basis.

If we establish that the debtor has become insolvent, we are able to register the debt with the insolvency practitioner. If it is 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 consideration by the creditors. Any proposals agreed by the creditors must then be ratified by the court, and the court issues a report agreeing on the same and detailing the amount of any dividend payable.

### 22.6.2. 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

### 22.6.3. 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.

# 23. Israel

GDP  
**\$370** billion (2018)

## Growth rate

GDP  
**3.17%**  
 (2019 est.)

Export  
**3.38%**  
 (2019 est.)

Import  
**4.90%**  
 (2019 est.)

## Industries



Chemicals



Construction materials



Electronics



Food



Metals



Paper



Textiles

## Success rate

**up to 50%** 

Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 23.1. Amicable collections



### 23.1.1. General information

We follow a collections process that is always professional with the objective of retaining the relationships between you and your debtors whenever possible. Our staff of collections professionals carry out the first collections 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.

### 23.1.2. 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.

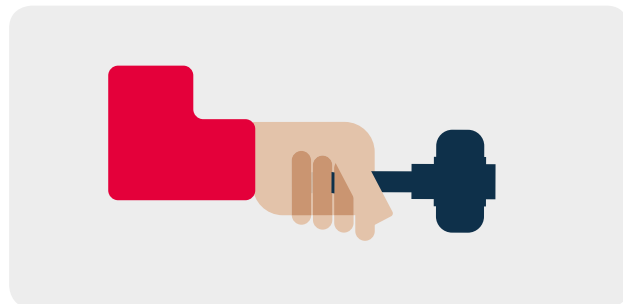
### 23.1.3. Interest

In Israel, we can charge debtors with late payment interest according to the Interest and Linkage award Act 1961.

### 23.1.4. Debt collections costs

Israeli debtors are not used to paying collections costs. Usually, claims at court already include requests for covering your (the plaintiff's) expenses.

## 23.2. Legal collections



### 23.2.1. General information

Entering into legal proceedings usually requires a prior demand letter, informing the debtor that in the case of no payments, legal proceedings will be issued.

The handling of claims at court is governed by the Civil Procedure Regulations, 5744-1984 (consolidated version of 2014). Courts always try to mediate between the creditor and debtor. Usually, it's required to have at least one mediation meeting between the parties with a quasi-mediator appointed by a court. If the parties refuse to mediate or the mediation fails, then the hearings are conducted in front of the judge.

### 23.2.2. 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 oral negotiations, we need visits or negotiation reports and names of witnesses.

### 23.2.3. Regular lawsuits and appeals

A regular lawsuit procedure is often initiated after amicable collections fail. After 30 days from the day the plaintiff's claim form is filed, a defence form should be filed (sometimes a counterclaim of the defendant is also lodged). Then after 15 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 judgment of the court of first instance. A court's permission is required to appeal against the judgment of the court of second instance.



#### 23.2.4. Special legal measures

There are special lawsuit procedures that may shorten the debt collections procedure meaningfully.

##### Quick hearing

This can be lodged with claim amounts up to ILS 75,000 (approximately EUR 18,500).

##### Summary procedure

This can be initiated without limitations on the claim amounts. But it should be based on written evidence, and the claim amounts can be simply calculated. In this case, the defendant (the debtor) should receive the court's permission to file their defence, and if the request is accepted, then further proceedings are the same as during ordinary hearings. If the court rejects the request, then the claim is accepted as a judgment.

##### 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).

#### 23.2.5. Expected time frame and prescription

Court procedures can take up to 12 months (for quick hearing, and sometimes, summary procedure) 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 Limitations Act 1953.

#### 23.2.6. 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 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.

#### 23.2.7. 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.

## 23.3. Insolvency proceedings



#### 23.3.1. 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.

#### 23.3.2. Proceedings

A liquidation or bankruptcy procedure is initiated at court according to the Bankruptcy Act (new version) 1980 (for individuals), or the Companies Ordinance (new version), 5743-1983 (for companies). It can be initiated by a creditor or upon the request of the debtor themselves, provided that the debtor must be going through an 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 ordered by the court. The liquidator can either accept the 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 creditors' meetings have been held according to the law.

### **23.3.3. 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

### **23.3.4. 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.

# 24. Italy

GDP

# \$2,072

billion (2018)

## Growth rate

GDP

# -2.24%

(2019 est.)

Export

# 2.62%

(2019 est.)

Import

# 1.99%

(2019 est.)

## Industries



Chemicals



Construction materials



Food



Machines



Metals



Services



Textiles



Transport

## Success rate

# up to 50%



## 24.1. Amicable collections



### 24.1.1. General information

We maintain a professional collections process and focus on the relationships between you and your debtors at all times. Our team of collections specialists carry out the collections process in-house. We contact debtors both verbally and in writing whilst adhering to federal and state laws. 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 upon). All of our investigations are completed with the assistance and agreement of our legal team.

### 24.1.2. Local agents

We can perform direct collections activities. They are managed by a selected network of local agents who can visit debtors across Italy in order to collect monies. This solution has proven to be successful for medium to small amounts, for individual sole traders, shops, and small companies, and particularly for sectors such as food, textiles, clothes, and shoes. The local agents' network can also investigate locally in order to search for untraceable debtors.

### 24.1.3. Interest

We always charge interest to debtors at 8% on a daily basis. The European Directive 2000/35/CE, implemented in Italy with D. Lgs on 9 October 2002, n. 231, has been updated by the European Directive 2011/7/EU on 16 February 2011 and implemented in Italy, modifying the previous D. Lgs 231/2002 by the D. Lgs 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 the invoices' payment (particularly in sectors such as clothes, shoes, and food).

### 24.1.4. Debt collections costs

Due to contract laws, the collections convention between you and Atradius Collections must be signed, so that another person cannot be linked to the tariff. The laws allow us to request collections costs, but if we do so without specifying the amount, including the legal tariff of lawyers, they are not seen as valid. There are strong cultural obstacles against paying for collections costs, and we cannot claim them back in court as there is no jurisprudence for us to do so.

### 24.1.5. Prescription

The prescription period for a credit is 10 years (article 2946 of the Civil Code), which can be interrupted when the creditor notifies the debtor of the interruption of the prescription and asks for payment. Once this has been received, the prescription period would be calculated again.

For shipping contracts or contracts of carriage, the prescription period is one year. For transport contracts from non-European countries, the prescription period is 18 months.

### 24.1.6. Accepted and most common payment methods

The most common payment methods are bank transfers and cheques. We will also accept drafts issued directly by the debtors, but not from a third party.

### 24.1.7. Types of companies

In Italy, there are two main types of companies: partnerships and capital companies.

The partnerships are:

<b>“Società in nome collettivo” (S.n.c)</b>	<ul style="list-style-type: none"> <li>■ Unlimited liability of the partners</li> <li>■ Has to be registered in the ordinary section of the “Registro delle Imprese”</li> </ul>
<b>“Società Semplice” (S.s.)</b>	<ul style="list-style-type: none"> <li>■ Unlimited liability of the partners</li> <li>■ Has to be registered in the special section of the “Registro delle Imprese”</li> </ul>
<b>“Società in accomandita semplice” (S.a.s)</b>	<ul style="list-style-type: none"> <li>■ Unlimited liability of only the declared unlimited partners (“socio accomandatario”)</li> <li>■ Has to be registered in the ordinary section of the “Registro delle Imprese”</li> </ul>

The capital companies are:

<b>“Società a responsabilità limitata” (S.r.l)</b>	<ul style="list-style-type: none"> <li>■ A minimum capital of EUR 10,000</li> <li>■ Registered at the “Registro delle Imprese”</li> <li>■ Limited liability of the partners</li> </ul>
<b>“Società di capitali” (S.p.a)</b>	<ul style="list-style-type: none"> <li>■ A subscribed minimum capital of EUR 50,000</li> <li>■ Registered at the “Registro delle Imprese”</li> <li>■ Limited liability of the partners</li> </ul>
<b>“Società in accomandita per azioni” (S.a.p.a)</b>	<ul style="list-style-type: none"> <li>■ A minimum capital of EUR 50,000</li> <li>■ Registered at the “Registro delle imprese”</li> <li>■ Limited liability of some partners (“soci accomandanti”)</li> <li>■ Unlimited liability of some partners (“soci accomandatari”)</li> </ul>

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.

### 24.1.8. Sources of information

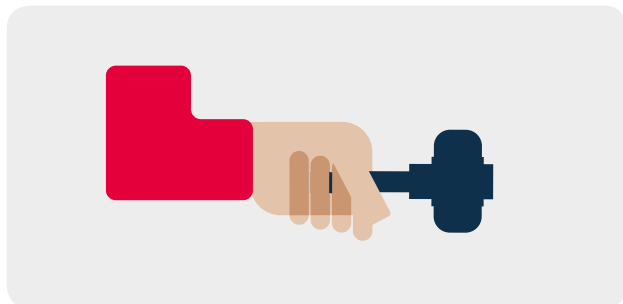
We can evaluate the solvency of debtors and the financial situations of debtor companies. To investigate in a more accurate way, we can add some extra services for you, such as bank account research, officially booked goods research (e.g. vehicles, crafts), estate research, and estimation in the public 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 at the Chamber of Commerce and we can ask for a certificate at the Town Council. We can also entrust the local agents in our network to investigate locally. At the Chamber of Commerce, we can obtain all information referring to a company, such as the legal form, legal address, names of the shareholders, and status of insolvency.

## 24.2. Safeguarding 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 on a payment plan. If the title is protested, we can start legal action and avoid the first phase of the legal action (injunction decree), thus reducing time and costs. We can also obtain the debtor's mortgage registered through a contract with a notary, if we have found out about the debtor's real estate.

## 24.3. Legal collections



### 24.3.1. General information

We can supply a professional network of experienced law firms in Italy to perform judicial credit collections activities. This network covers the whole country and is able to manage legal action in all the court districts. 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 does not pay or reply, thereby disputing the debt, the judicial phase will start with the injunction decree (“Decreto ingiuntivo”).

### 24.3.2. 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 foresees several kinds of judges, according to the amount of credit involved:

- Justice of the peace (for an amount below EUR 5,000)
- Tribunal (for an amount above EUR 5,000)

Traditionally, any legal action starts in the court district of the debtor or in the court district foreseen in an agreement signed by both parties.

Ordinary civil action is rarely used to collect credits founded on written documents such as invoices. Civil action is very long and can last for several years. It's also expensive due to lawyers' fees, witness examination, and evidence analysis involved in the case. The main purpose of the ordinary civil action 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 “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 credits in court.

### 24.3.3. Required documents

In order to start legal action, the documents we need are:

- Readable copies of the unpaid invoices
- Readable copies of the transport documents signed by the debtor (CMR)
- If there are no CMR documents signed by the debtor, we need an abstract from your books of account authenticated by a notary
- An original power of attorney, enclosed in the petition and signed by the legal representative of your company

### 24.3.4. Lawsuits

The D.L. n. 90/2014, converted into law n. 114/2014, establishes that from 30 June 2014, it is mandatory to start legal action by filing all the 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 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 the decree (from four to five months to from 15 to 30 days)
- A reduction in the activities undertaken by the associated law firm
- A reduction in legal costs

The D.L. n. 90/2014, converted into law n. 114/2014, establishes that:

- It is mandatory to file online from 30 June 2014 any act concerning the procedure of injunction decrees and any act in the civil procedures, such as execution in movable property and immovable property, bankruptcy and insolvency proceedings
- It is mandatory to file online from 30 June 2015 any petition for appeal

This new procedure cannot be applied to legal action handled by the justice of the peace with an amount below EUR 5,000.

This has to be filed in the Chancery together with all the enclosed documents as evidence. The judge examines the petition, and, if in agreement, an injunction decree is issued. The duration of the issuance has been reduced from four to five months to 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. If the debtor files for

opposition, a civil trial starts. It's a very long process, as phases required by the Italian Code must be followed so that the judge can issue a judgment.

When no opposition is raised, 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"). Both documents have to be notified to the debtor. You have to start forced execution within 90 days ("pignoramento"). If the debtor does not pay or oppose the debt within 10 days after receiving the decree, the lawyer will bring in an executive injunction decree – an order of injunction 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.

If the debtor opposes the injunction decree or the writ of execution, the summary judgment is suspended and the 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 (writ of execution, attachment, etc.), whilst 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.

#### 24.3.5. Appeals

An appeal against the ordinary civil action can be filed to the court in the area of jurisdiction where the judge issuing the judgment resides or to the Supreme Court. In the case of notification of the judgment, it's possible to file 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).

#### 24.3.6. Expected time frame

The average duration of legal action in Italy is from 10 to 12 months, whereas the ordinary civil action can take two to three years, depending on the complexity of the case.

#### 24.3.7. Costs and interest in the legal phase

All costs are dependent on the outstanding principal amount and are calculated taking into account the amounts kept by each party. There are different fees that can apply during the proceedings that make it difficult to predict the total costs. In addition to this, costs of witnesses and/or experts might also arise.

The injunction decree has to mention the amount of credit to collect, interest (calculated on the basis of D. Lgs. 9

October 2002 n. 231), and 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 the 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).

## 24.4. Enforcement

### 24.4.1. Enforcement in debt

Enforcement in debt requires an act 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 your credit, the list of goods or monies subject to the enforcement (the debtor cannot dispose of them), and the domicile election of your company in the city of the court. The enforcement can refer to different types of credits, such as bank accounts, goods located at a third party, and, on the basis of limits fixed by law, any salary and retirement pension.

### 24.4.2. Enforcement in movable property

The bailiff visits the debtor's address to find out if any property can be seized. It is foreseen by law that:

- The execution cannot be made against certain property (unseizable goods)
- The bailiff can only visit the debtor during a time period fixed by law, e.g. between 7.00am and 9.00pm
- The bailiff cannot proceed during 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 credits. 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

### 24.4.3. 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 to the debtor that contains a document detailing the immovable property and the rights submitted at the execution. After the notification, the bailiff gives the 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.

### 24.4.4. Expected time frame

For the enforcement in movable property, the duration of the procedure depends on how many auction sales the judge feels are necessary to sell the property.

The enforcement in immovable property is a very expensive and time-consuming measure that often lasts several years. Usually this procedure is used for large amounts above EUR 100,000.

## 24.5. Insolvency proceedings



### 24.5.1. General information

On the basis of the elements required by law, insolvency proceedings can be started at 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 bankruptcy ("fallimento") and a judicial composition with creditors ("concordato preventivo").

### 24.5.2. Proceedings

We can analyse in detail the two main types of insolvency proceedings:

#### Bankruptcy

In Italy, not all debtors can be declared bankrupt. According to Italian law, small debtors such as individual shops and small-scale farmers cannot 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 bankruptcy 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 Chamber of Commerce for more than one year. After all the petitions filed at the court within the term fixed are checked, the debt situation will be fixed with a judge's sentence, and the very long procedure of liquidation of the bankrupt debtor's assets can take place.

#### Composition with creditors

To avoid bankruptcy, the debtor can ask the court directly to be admitted to insolvency proceedings. The debtor's petition must include how much they can pay their creditors with the respective percentages of their debts. On the basis of D.L. n. 83/2015, in the case of a composition with creditors ("non in continuità aziendale"), it is foreseen 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.

### 24.5.3. Required documents

In order to lodge a bankruptcy claim, we need:

- Readable copies of the unpaid invoices
- Readable copies of the transport documents signed by the debtor (CMR)
- If there are no CMR documents signed by the debtor, then an abstract from your books of account authenticated by a notary is required

For the 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).

### 24.5.4. Expected time frame

For the bankruptcy procedure, the petition to lodge a claim can be:

- On time ("tempestiva"): It's filed at the court at least 30 days before the first hearing fixed by the court, and it's checked during this hearing
- Late ("tardiva"): It's filed at the court after the first fixed term but still within 12 months since the filing of the enforcement decree of the statement of liability

The average duration of a bankruptcy procedure is from six to seven years.

Regarding the composition with creditors, it's necessary to first communicate the amount of credit to the insolvency practitioner. Before the hearing is fixed for all the creditors, each creditor has to vote (positive or negative) on the proposal after the hearing. After the validation by the court, the insolvency practitioner can start with the liquidation that will usually take from two to three years.

### 24.5.5. Limited companies

A declaration of bankruptcy of a limited company has an effect only on the company and not on the individual persons, as they are not responsible for their own goods and real estate.

### 24.5.6. Unlimited companies / individuals

Regarding an unlimited company, the partners are declared bankrupt by the judgment that declares the bankruptcy of the company. The court proceeds to appoint one judge and one trustee. On the basis of the criteria foreseen by article n. 1 L.F., a minor entrepreneur cannot be declared bankrupt.



### 24.5.7. Pools of creditors

A pool of creditors is appointed by the judge within 30 days since the declaration of the bankruptcy. The pool is composed of three to five creditors, who have to represent the quality and quantity of the credits in a balanced way. The pool has to check the activities of the trustee, authorise the actions, and give advice on the case foreseen by law or at the request of the court or the judge. The pool's decision has to be agreed by the majority within 15 days since each request.

### 24.5.8. Rescission

On the basis of article 67 L.F., there are two groups of payment that can be disputed by the trustee:

- Payments made by the debtor to a creditor within one year prior to the declaration of bankruptcy where the creditor has to prove that they did not know the insolvency status of the debtor
- Other payments made by the debtor to a creditor within six months prior to the declaration of bankruptcy. For these cases, the trustee has to prove that the creditor knew the insolvency status of the debtor

If the trustee disputes a payment, and it is one of the payments mentioned by law, it has to be refunded by the creditor.

## 24.6. Arbitration and mediation

Besides the ordinary proceedings, you and your debtor have two other alternatives to solve a dispute:

### Arbitration (articles 806–840 c.p.c.)

The parties agree to entrust the dispute to an arbitration hearing. An arbitration clause must be included explicitly in the contracts (it must not be presumptive); otherwise, the competency of the arbitration may be called into question after the dispute. The arbitration must be convenient for both parties, managed by an arbitrator that both parties trust and are able to achieve a majority easily. Decisions taken by the arbitrator (award) must pass the certification of the court in order to be effective for the parties. It will always stay a private act, with the same effects as that of a judgment.

### Mediation (D.L. n. 28 on 4 March 2010, implementing law n. 60/2009, according to the European Directive 2008/52/CE)

The target is to drive the parties to an agreement. In Italy, mediation is indicated by law as a necessary step for some matters before starting a judgment (binding mediation). It is optional for other kinds of matters (optional mediation). And it is necessary during some procedures in accordance with orders of the judge (judicial mediation).

Mediation could be a convenient alternative because the whole proceedings should be concluded in three months. The costs are lower than the ordinary proceedings, and both parties are directly involved in the search for a satisfactory solution. The agreement issued by successful mediation is as enforceable as that of a judgment.

Arbitration and mediation are managed by specialised organisations, which are more flexible and place the utmost importance on finding possible solutions.

# 25. Lithuania

GDP  
**\$53** billion (2018)

Growth rate

GDP  
**1.72%**  
 (2019 est.)

Export  
**3.25%**  
 (2019 est.)

Import  
**4.24%**  
 (2019 est.)

Industries



Agriculture



Chemicals



Consumer durables



Electronics



Food



Machines



Textiles



Transport

Success rate

**75%–100%**



## 25.1. Amicable collections



### 25.1.1. General information

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

### 25.1.2. Local agents

We offer field service to visit debtors in Lithuania. The purpose is to collect monies, negotiate settlements, get an acknowledgement of debt, and gather information about the debtors' financial situations, residence, and places of business. You will 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.

### 25.1.3. Interest

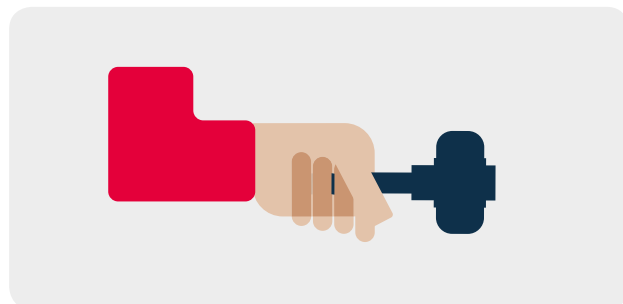
We always charge interest to debtors that is calculated from the base rate set by the Bank of Lithuania plus 8% per year. This rate is fixed twice a year on 1 January and 1 July.

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.

### 25.1.4. Debt collections costs

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

## 25.2. Legal collections



### 25.2.1. General information

Entering into legal proceedings is only possible with a written notice to your debtor before assigning the file to court.

### 25.2.2. Required documents

In order to apply the legal proceedings, we need copies of the 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, copies of the complete contractual documentation should be available, starting with 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.

### 25.2.3. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections have failed due to a dispute by the debtor, or following a legal dunning procedure 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 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 publish the final judgment. The parties will be informed about the outcome in writing by the responsible court.

### 25.2.4. 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 judge and lawyers on all sides.

### 25.2.5. Costs and interest in the legal phase

Costs of the 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 the 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.

## 25.3. Insolvency proceedings



### 25.3.1. 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 collecting the enforceable income of the individual who is declared bankrupt.

### 25.3.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check if 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 a claim in court to prove the justification of the claim when further documentation does not 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 insolvency estate is closed with a very small or no dividend at all.

### 25.3.3. Required documents

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

- Copies of the invoices
- An original signed power of attorney

### 25.3.4. Expected time frame

The deadline to lodge 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.

# 26. Luxembourg

GDP  
**\$69** billion (2018)

## Growth rate

GDP  
**1.26%**  
 (2019 est.)

Export  
**5.47%**  
 (2019 est.)

Import  
**6.51%**  
 (2019 est.)

## Industries



Chemicals



Construction materials



Electronics



Food



Machines



Metals



Services



Transport

## Success rate

**50%–75%**



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 26.1. Amicable collections



### 26.1.1. General information

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

### 26.1.2. Local agents

At the present time, we do not offer field service to visit debtors in Luxembourg. However, if debtors wish to visit our office, we will gladly meet them to discuss solutions for their cases face-to-face.

### 26.1.3. Interest

We always charge interest to debtors. The applied default rate is 12%, except that the interest rates foreseen in most of our clients' conditions of sale are higher. In that specific case, we apply the clients' interest rates.

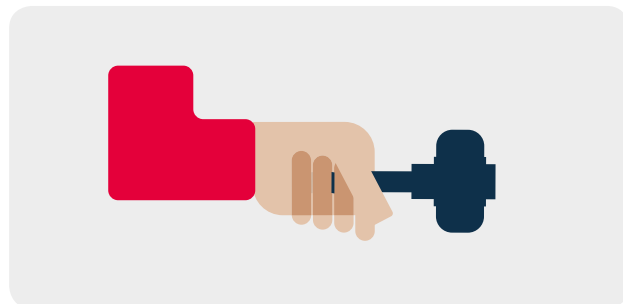
From a cultural point of view, recovery of late payment interest in Luxembourg is quite difficult and it's often used as a negotiation tool between debtors and collectors.

### 26.1.4. Debt collections costs

In Luxembourg, we charge two types of collections costs:

- The collections cost according to the European Directive on Late Payment 2011/7/EU. This is a fixed amount of EUR 40 (regardless of the amount of the debt)
- A penalty clause of 15% of the principal amount introduced

## 26.2. Legal collections



### 26.2.1. General information

Legal action to recover receivables is based on the general principles of the Civil Code ("Code Civil"), the Commercial Code ("Code de Commerce"), and the Judicial Code ("Code de Procédure Civile").

There are different courts in Luxembourg, and the competency of each court depends on:

- The amount of the claim
- The debtor's place of residence

### 26.2.2. 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, notes of all the conversations between you and your debtor should be kept and provided to our lawyers.

### 26.2.3. Legal dunning procedures

A summary procedure in Luxembourg has to be launched by a justice of the peace. This procedure is not always appropriate for recovery of receivables for the following reasons:

- The claim must be undisputed
- The whole claim cannot exceed EUR 10,000
- You can only claim interest and collections costs (EUR 40) according to the European Directive on Late Payment 2011/7/EU
- This procedure can be initiated by you or you can be represented by a lawyer. If you are not represented by a lawyer, the person signing the request form has to supply necessary documentation proving that they are authorised to sign on your behalf. To avoid practical and organisational issues and disputes about the signatures, we favour the representation of you as the creditor by a lawyer

#### 26.2.4. Lawsuits

Normally, we initiate legal proceedings before the competent Luxembourg court of the place of residence of the debtor. However, we see more and more that the Luxembourg courts control very strictly if they are competent to hear cases or not. If your contracts, invoices, or terms and conditions foresee an 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 are no written interventions from the lawyer. This procedure is supposed to be quick, but as it's rather popular, not every case can be handled at the foreseen 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.

#### 26.2.5. Expected time frame

The average duration for the legal proceedings and enforcement is about six months, but it can take longer in the case of a dispute or an appeal.

#### 26.2.6. 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 rechargeable 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 are not chargeable to the debtor
- Costs of enforcement depend on the number of actions the bailiff has to take and are charged to the debtor

A general cost estimation for 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 started, 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 (e.g. signed terms and conditions or other written proof of acceptance).

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 (e.g. signed terms and conditions or other written proof of acceptance). Instead of the penalty clause, you can also claim the collections costs of EUR 40 according to the European Directive on Late Payment 2011/7/EU, 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.

## 26.3. Insolvency proceedings



### 26.3.1. General information

In Luxembourg, there are three types of insolvency:

- Bankruptcy
- Temporary composition
- Controlled administration

The commercial court accepts the debtor's insolvency either with the goal of facing a non-payment situation (bankruptcy) or allowing and facilitating the continuity of the debtor's ability to trade. At the start of insolvency proceedings, all individual enforcement measures of the creditors are suspended.

### 26.3.2. 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 has to lodge their claim to the clerk of the court within the time frame set out in the judgment declaring the bankruptcy. After verification by the trustee, all 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 very rarely used in Luxembourg. Only debtors with the status of merchants can be granted a temporary composition in Luxembourg. The debtor will need to present a request for this effect simultaneously to the Commercial Chamber of the District Court and the High Court of Justice. 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 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 High Court of Justice 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 to help liquidate their assets. The debtor's request is presented to the Commercial Chamber of the District Court. Once it is 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 the controlled administration to the debtor, all of 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 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 will be approved by the court if the majority of the creditors agree on it.

### 26.3.3. Required documents

In order 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)

### 26.3.4. Expected time frame and outcome

The expected time frame of the 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 a dividend in bankruptcies are very poor (5%). Recovery rates are higher in 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.



# 27. Mexico

GDP  
**\$1,223** billion (2018)

## Growth rate

GDP  
**1.48%**  
(2019 est.)

Export  
**3.31%**  
(2019 est.)

Import  
**2.97%**  
(2019 est.)

## Industries



Chemicals



Consumer durables



Food



Metals



Services



Textiles



Transport

## Success rate

**up to 50%**



## 27.1. Amicable collections



### 27.1.1. General information

We maintain a professional collections process and focus on the relationships between you and your debtors at all times. Our team of collections specialists carry out the collections process in-house. We contact debtors both verbally and in writing whilst adhering to federal and state laws. We do this by analysing all contractual documents (e.g. signed contracts, orders, confirmations, invoices, delivery notes, and standard terms that have been agreed upon). All of our investigations are completed with the assistance and agreement of our legal team.

### 27.1.2. Local agents

Site visits in Mexico City are performed by our professional collectors and our local partners who can currently visit all 31 states.

### 27.1.3. Interest

We always charge interest to debtors. If you have previously agreed on a specific rate with your debtor, we will charge that rate. If no interest rate has been agreed on, the current legal rate of 6% per annum is charged.

From a cultural point of view, Mexican debtors are not used to paying moratorium interest on an amicable basis. Often the actual amount of interest is used as a matter of negotiation between debtors and collectors. Payment of interest can only be enforced through legal proceedings.

### 27.1.4. Debt collections costs

In Mexico, debt collections costs can be charged to debtors, but there are no specific rates or amounts established 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 are not used to paying collections costs on an amicable basis. Often collections costs are used as a matter of negotiation between debtors and collectors. From a legal point of view, payment of collections costs can only be enforced through formal legal proceedings.

### 27.1.5. 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 the 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, in order 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 Promissory Notes and International Bills of Exchange.

### 27.1.6. Accepted and most common payment methods

The most common payment methods are bank transfers and cheque payments.

### 27.1.7. Types of companies

<b>Limited liability stock corporation (“Sociedad Anónima”, S.A.)</b>	<ul style="list-style-type: none"> <li>■ This is the most common type of business entity in Mexico</li> <li>■ It usually may 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 limits established in the by-laws</li> <li>■ 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</li> <li>■ There must be at least two shareholders and a minimum capital of MXN 50,000, 20% of which must be paid at the time of incorporation</li> <li>■ 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</li> </ul>
<b>Limited liability company (“Sociedad de Responsabilidad Limitada”, S. de R.L.)</b>	<ul style="list-style-type: none"> <li>■ This type of company has the same limited liability as an S.A.</li> <li>■ This type of company must have at least two and no more than 50 partners</li> <li>■ The minimum capital 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</li> </ul>
<b>Civil enterprise (“Sociedad Civil”, S.C.)</b>	<ul style="list-style-type: none"> <li>■ This type of company is used by professional service providers, such as lawyers and accountants</li> <li>■ There are no minimum capital requirements</li> <li>■ 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</li> </ul>
<b>Branch (“Sucursal”)</b>	<ul style="list-style-type: none"> <li>■ Instead of incorporating an entity in Mexico, some companies choose to register their existing foreign company as a branch in Mexico</li> <li>■ The branch must register with the Public Registry of Commerce</li> <li>■ The foreign company will also be responsible, along with all of its assets, for any liability that it incurs in Mexico</li> </ul>
<b>Subsidiary (“Subsidiario”)</b>	<ul style="list-style-type: none"> <li>■ Unlike a branch, a subsidiary is actually a separate legal entity from the parent company</li> <li>■ Establishing a Mexican subsidiary shields the parent company from liability</li> </ul>

### 27.1.8. Sources of information

In Mexico, it’s very complicated to obtain debtors’ financial situations, as private companies are not obliged to publish their financial statements.

We are able to request information from various public registers. All traders have to be registered at the Public Registry of Commerce in the states where they are incorporated. 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.

## 27.2. Retention of title

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

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 supplier until full payment. The supplier can or must get the goods back.

### Increased ROT

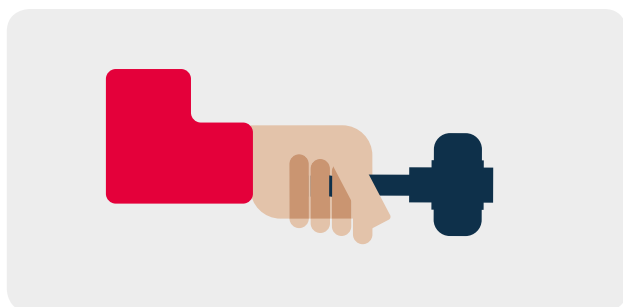
This is the retention of open accounts. In the course of ongoing business relations, the supplied goods remain the legal property of the supplier until all the outstanding amounts from the open account or business relation have been fully paid.

## 27.3. Safeguarding measures

In case your debtor isn't able to satisfy your claim in a speedy manner, we can request the debtor to 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 are not honoured. The corresponding notary costs have to be carried by you in the first instance and can be recharged 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 amounts. Debtors are also able to offer other means of security, such as mortgages, assignment of debts or assets. Contracts must be drawn up for assignment of debts or assets, while mortgages have to be registered by a notary.

## 27.4. Legal collections



### 27.4.1. General information

The modern Mexican legal systems are composed of public law, which regulates the relations between citizens and the state, and civil law, which regulates the relations 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 to the federal law. In case of any discrepancy, the federal law will override the civil law.

### 27.4.2. 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 the circuit courts, which take up cases on appeal and "amparo" cases. District courts have jurisdiction over

"amparo" cases in the first instance and function as courts of ordinary jurisdiction on 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 terms, state courts are organised in the following manner: the highest appellate court is known as the Superior Court of Justice, followed by the courts of first instance that deal with civil hearings and criminal and commercial cases, then there are minor courts of special jurisdiction, such as the family courts and bankruptcy courts (unlike in the United States where bankruptcy matters fall under the jurisdiction of federal bankruptcy courts).

The jurisdiction is divided by the matter of each case and the amount of monies it's dealing with. Usually, a collections lawsuit should be started at the state court nearest to the debtor's address, unless both parties have agreed on a specific jurisdiction or it was left to you as the creditor to choose.

### 27.4.3. 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 booked against the outstanding monies
- A notarised power of attorney with an apostille

It's worth mentioning that courts in Mexico do not allow simple or scanned copies in lawsuits. So original documents are needed. If the documents are not written in Spanish, proper and certified translation of all documents will be required.

The originals or certified copies of the following documents may be asked for, but are not 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.

#### 27.4.4. Legal dunning procedures

In Mexico, legal dunning procedures do not 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.

#### 27.4.5. Lawsuits

A regular lawsuit procedure is initiated directly after amicable collections have failed due to a dispute by the debtor, or because the debtor has ignored the payment demands. In Mexico, mediation or arbitral procedures are not used for collections purposes, and a lawsuit can be filed directly.

#### 27.4.6. 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 Mexican Supreme Court, depending on the case's jurisdiction and amount.

#### 27.4.7. 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 judge and lawyers on all sides. Legal proceedings that are initiated using a promissory note or a bounced cheque as the main support can be shorter compared to proceedings supported by overdue invoices.

#### 27.4.8. Costs and interest in the legal phase

All costs are dependent on the outstanding principal amount and are calculated while taking into account the amounts kept by each party. There are different fees that can apply during proceedings, making it difficult to predict the total costs. In addition to this, costs for 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 the legal proceedings. If the parties agreed on no specific interest rate, then an 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 Procedures and can't be higher than 20% of the claimed amount.

## 27.5. Enforcement

### 27.5.1. Enforcement in debt

The creditors can block the bank accounts of the debtor only if it can be proven 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 are not obliged to provide it.

### 27.5.2. Enforcement in movable property

Enforcement can be made once a final judgment is obtained. However, through an executive collections 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 a final judgment is dictated. For ordinary procedures, enforcement cannot be made until a judgment is obtained.

### 27.5.3. 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 recording of their claim in the land register 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 recording of the claim in the land register. However, it's the most efficient way to secure payment.

### 27.5.4. 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.

## 27.6. Insolvency proceedings



### 27.6.1. General information

As per the Commercial Insolvency Law (CIL), insolvency proceedings will contemplate 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 by collecting their enforceable income.

### 27.6.2. Proceedings

After the debtor or a creditor files for the debtor's reorganisation or liquidation, we will be permitted to use the lender's collateral, as agreed upon in the corresponding security agreements.

If the debtor company is declared commercially insolvent, the conciliatory 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 amount, order, and level of preference of their credits. At this stage, the conciliator (appointed by the Federal Institute of Specialists in Bankruptcy) should also coordinate the execution of the reorganisation agreement between the debtor company and its creditors.

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.

During the conciliatory stage, the debtor may seek financing as usual, but any new credit 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 safeguarding measures to secure tax credit payments.

Also during the conciliatory stage, the management of the debtor company will remain, although the conciliator will supervise the books and all operations and will decide on the termination of pending contracts. The conciliator will also approve, with prior input from the interventors (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 are not inherent in the day-to-day running of the debtor company.

### Date of retroaction

This law refers to a concept called 'date of retroaction' (also commonly known as the suspicious period). It exists to determine if, 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 date of retroaction 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, the interventors, or any creditors may establish a prior date as the date of retroaction.

The acknowledged creditors are classified into ranks according to the nature of their credits. The CIL contemplates that payments of these credits are made based on their level of preference. No payment may be made to the credits of a lower rank without previously having liquidated those from the higher ranks, according to the credits' established priority.

With regard to credits with collateral (secured credits), only the following credits against the estate will have preference:

- The 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
- The legal fees incurred during the defence or recovery of the property subject to guarantees or on which the privilege falls
- The necessary expenses for the replacement, conservation, and sale of such property subject to guarantees
- The credits against the estate

### 27.6.3. 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

### 27.6.4. Expected time frame

The deadline to lodge claims is 180 days and is activated once the debtor files the reorganisation or liquidation request. The whole duration of insolvency proceedings is between five and 10 years.

### 27.6.5. 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 do not cover all its debts. Under special circumstances, it could be that only the actual liquidity does not 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 do not cover its debts.

## 27.7. Arbitration and mediation

If you and your debtor agree on 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 will 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 are not judgments, but they are a kind of contract.

# 28. Morocco

GDP  
**\$118** billion (2018)

Growth rate

GDP  
**2.57%**  
(2019 est.)

Export  
**4.56%**  
(2019 est.)

Import  
**4.41%**  
(2019 est.)

Industries



Chemicals



Consumer durables



Food



Metals



Services



Textiles



Transport

Success rate

**50%–75%**





## 28.1. Amicable collections



### 28.1.1. General information

We follow a professional collections process with the objective of retaining the relationships between you and your debtors whenever possible. Our staff of collections professionals carry out the first collections tier in-house. We relentlessly pursue debtors verbally and in writing within the bounds of Moroccan law.

### 28.1.2. Local agents

We offer field service and can visit debtors regularly when necessary.

Depending on the specific details of each case, our local partners – may be lawyers – will try to come to a settlement without the need for a court case.

### 28.1.3. Interest

We always charge interest to debtors. It's calculated from the base rate set at 6% by the Bank Al-Maghrib, plus two points.

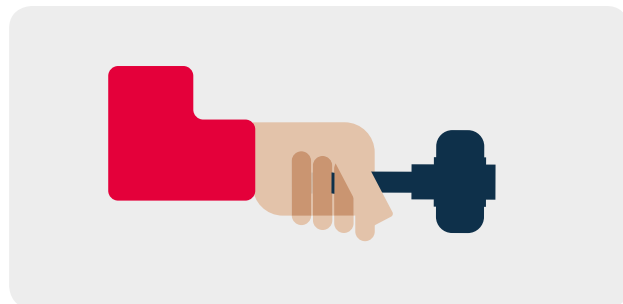
Moroccan debtors are used to paying late payment interest, though often the actual amounts of interest payment are considered a matter of negotiation between debtors and collectors. In this case, we talk about conventional interest.

### 28.1.4. Debt collections costs

In Morocco, debt collections 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 collections costs, though often the actual amounts of these costs are considered a matter of negotiation.

## 28.2. Legal collections



### 28.2.1. 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 the legal proceedings, it's practical to prove to the courts that all pre-court efforts were fruitless by pointing out prior correspondence.

### 28.2.2. Required documents

In order to apply a legal dunning procedure, we need 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 original complete contractual documentation should be available, starting with 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 oral negotiations, we need visits or negotiation reports and names of witnesses.

### 28.2.3. Legal dunning procedures

This type of procedure is only applicable for 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 a 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 the 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 the Moroccan civil process law. The debtor can appeal in both stages, which would transfer the dunning procedure into a regular lawsuit procedure.

#### 28.2.4. Lawsuits

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

#### 28.2.5. 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 the judge.

#### 28.2.6. 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 the 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 the Moroccan civil process law.

### 28.3. Insolvency proceedings



#### 28.3.1. 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 or collecting the enforceable income of the individual who is declared bankrupt.

Creditors who hold mortgage guarantees (preferential creditors), tax authorities, and employees are paid with a higher priority.

Creditors who do not have collateral (non-preferential creditors) will be paid in the event of a balance.

#### 28.3.2. 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. The 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 whilst 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 of 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 the 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 liability: This involves the payment 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 way, 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 actions on the assets of the debtor company.

The common thread between liquidation and judicial redress is the interest given to the creditors. This is for the court to help the debtor company clear their liability and continue their business.

### **28.3.3. 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

### **28.3.4. 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.

# 29. The Netherlands

GDP  
**\$913** billion (2018)

## Growth rate

GDP  
**0.12%**  
 (2019 est.)

Export  
**2.57%**  
 (2019 est.)

Import  
**3.23%**  
 (2019 est.)

## Industries



## Success rate

**75%–100%**



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 29.1. Amicable collections



### 29.1.1. General information

We maintain a professional collections process and focus on the relationships between you and your debtors at all times. Our team of collections specialists carry out the collections process in-house. We contact debtors both verbally and in writing whilst adhering to applicable laws. When there is a case of dispute, we may call on our experienced team of Dutch legal collectors, each of whom has a master's degree in law, to help us. They mainly play a consultative role but may take over the case if the dispute is related to legal aspects. In the event that mediation by the legal collectors might not lead to an agreement and legal proceedings are indicated, the file will always be dealt with by our Dutch legal team.

### 29.1.2. Local agents

We do not offer field service to visit debtors through local agents. But depending on the case, it will always be possible that our (legal) collectors visit the debtors. If the debtors wish to visit our premises, we will 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 (LDCs) in the Netherlands at very competitive rates. Our LDC network covers the whole Dutch territory, and the LDCs are able to carry out legal action in all the district courts. We can also offer a high-quality network of professional and experienced bailiffs, who are appointed by law to carry out the enforcement of verdicts or judgments.

### 29.1.3. Interest

We always charge debtors with 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 in 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 payments are considered a justified demand in relation to the overdue accounts. If you are 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 on, 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.

### 29.1.4. Debt collections costs

In the amicable phase, we are able to collect your invoices and interest to a certain extent with collections costs. The debtors are charged an extra 15% in collections costs over the principal amount, and we are fully focused on collecting costs within the bounds of law and jurisprudence. From a legal point of view, collections costs can only be recovered from a debtor on a scale related to the principal amount that has been entrusted for collections. If we're successful in collecting the principal amount, it's possible to recover a certain amount of the collections costs from the debtor through legal proceedings. The court uses a tariff table related to legal proceedings in order to identify what amount of collections costs can be recovered from the debtor. It's a complicated issue in jurisprudence, and there is usually only a small amount granted, despite existing clauses in written agreements and/or purchase conditions. In fact, the judge is free to condemn the debtor to pay the collections costs as long as they are considered reasonable, but the granted costs are normally part of the provision agreed with you.

In 2012, a bill was passed that sets out the levels of collections costs to be paid by private persons or consumer debtors who are in default. These specific legal collections costs are more or less aligned with the jurisprudence. It should be noted that legal collections costs also apply in the business-to-business segment as long as the parties do not agree otherwise. Since legal proceedings concerning collections costs are time-consuming and costly for both you and your debtors, we are quite successful in reaching agreements with the debtors with respect to the collections costs.

### 29.1.5. Prescription

The Dutch law has several terms for the prescription of debts, the most common of which relates to commercial (business) claims (e.g. purchasing, rendering services, contracting). For these transactions, the general prescription 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 received the announcement. Exceptions are possible; for example, in the transportation sector, shorter

terms of prescription of debts are used, according to the Convention on the contract for the international carriage of goods by road (CMR) Treaty.

### 29.1.6. Accepted and most common payment methods

The most common payment method is bank transfers. In international cases, we also accept cheque payments.

### 29.1.7. Types of companies

Like most other countries, the Netherlands has two major groups of companies. The first group consists of so-called person companies:

<b>Company with a sole owner (“eenmanszaak”)</b>	<ul style="list-style-type: none"> <li>■ The owner is fully liable for the company’s debts, also with their private assets</li> </ul>
<b>Company with several natural persons or partners involved (“vennootschap onder firma”, or VOF)</b>	<ul style="list-style-type: none"> <li>■ The partners are fully liable with their business funds and private assets</li> </ul>
<b>Company with a managing partner and a silent partner (“commanditaire vennootschap”, or CV)</b>	<ul style="list-style-type: none"> <li>■ The managing partner is fully liable with their business funds and private assets</li> <li>■ The silent partner is only liable with the company’s capital</li> </ul>
<b>Company as a professional partnership</b>	<ul style="list-style-type: none"> <li>■ The partners are natural persons practising professions (e.g. lawyers, doctors, architects)</li> <li>■ The partners are together fully liable for the company’s total debts with their private funds or assets</li> </ul>

The second group includes limited companies, or a legal person, or a legal entity, of which the most common are:

- “Besloten vennootschap”, or B.V.
- “Naamloze vennootschap”, or N.V.

For these companies, the (managing) directors are not liable with their private assets, unless there is documented proof of mismanagement.

### 29.1.8. Sources of information

We work in close cooperation with experienced information agencies and a network of bailiffs to evaluate debtors’ solvency. Using online checks with public registers, we can gather information about debtors’ financial situations, including any officially booked goods, estate, and other assets. Additional information can be obtained on shareholders, historical (financial) developments, and balance sheets. We can decide on a case-by-case basis whether to hire private investigators. Investigating your debtor’s financial situation is useful for determining which legal action might lead to results in the end.

## 29.2. Retention of title

The Netherlands has creditor-focused regulations on retention of title (ROT). According to the law, you as the creditor can appeal the so-called “recht van reclame” (the right to terminate a contract), which results in a rescission of the contract with an obligation to return the goods to you, which is also applicable if your debtor becomes bankrupt. To appeal this right, you have only a six-week term calculated from the due date of the invoice.

The most common method is stipulating ROT through a clause in the general purchase conditions. In order to use such a clause to your advantage, the specific clause or general conditions must be agreed to before, or, at the latest, at the moment the contract is concluded. You should be able to produce written evidence that the conditions were handed over to your debtor, e.g. by means of a line in the order confirmation.

There are two kinds of ROT:

**Basic ROT**

The goods supplied remain the legal property of the supplier until full payment. The supplier can get the goods back whenever there is any payment default.

**Increased ROT**

This is the retention of open accounts. In the course of an on-going business relation, the supplied goods remain the legal property of the supplier until all the outstanding amounts from the open account or business relation have been fully paid.

The most common method in the Netherlands is the open account retention (increased ROT), which is to be stipulated by a contract or clause in applicable purchase conditions. Please note that whenever your debtor is not cooperative in returning the goods, it will be necessary to go to court in order to get an approval from the judge to take back the goods using a bailiff.

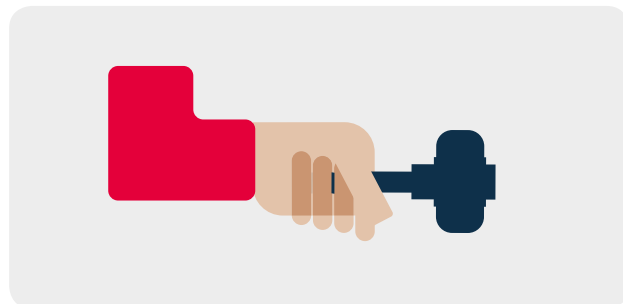
## 29.3. Safeguarding measures

According to Dutch law, a petition to the district court must be filed before starting legal proceedings, so it's possible to seize assets from your debtor. You are obliged to start legal proceedings within a fortnight after the date of the seizure, or it will be considered expired. Seizures will also expire if the debtor goes bankrupt. Once you have a verdict, the seized assets can be liquidated by the bailiff. During the procedure, the debtor is not allowed to do anything with the seized assets.

Preservative seizure might also be considered if it's known that a third party has to pay the debtor. It might be possible to go over to a seizure under this third party, meaning the third party is not allowed to pay the debtor to ensure the funds are available for the debtor's creditors.

The debtor is also able to offer other means of security, such as mortgages and assignment of debts or assets, either through a contract or via a notary.

## 29.4. Legal collections



### 29.4.1. General information

All rules concerning commercial private law are codified in the Dutch Civil Code ("Burgerlijk Wetboek"), whereas rules concerning procedures, courts, competency, and the likes are dealt with in the Civil Process Code ("Wetboek van Burgerlijke Rechtsvordering"). Entering into legal proceedings is possible without a prior formal warning to the debtor. However, all courts demand evidence that there have been pre-court efforts to try to get payment and/or to come to an amicable settlement. During these pre-court efforts, an announcement to start legal proceedings is common and should be done.

### 29.4.2. Legal systems

The Dutch judicial organisation recognises several kinds of courts, whereas competency is related 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")

For collections, it should be noted that for disputed civil claims up to EUR 25,000, Dutch legal collectors can handle the legal proceedings themselves in front of the county court. Beyond this amount, the district court is deemed competent, and the law prescribes an obligatory legal representative or lawyer. We manage these procedures through our LDC network, whereas our legal team will monitor the lawyers involved.

### 29.4.3. 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 is normally related to disputed cases, copies of the complete contractual documentation or proof of the trading relationship have to be supplied, such as:

- Written agreements
- Order confirmations
- Purchase conditions
- Invoices
- Delivery notes
- Correspondence
- Other relevant information or evidence to rebut the dispute
- Information about witnesses (names, places of residence)
- A description of the dispute
- Counterarguments from you as the creditor regarding the dispute

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.

#### 29.4.4. Legal dunning procedures

The Netherlands does not have legal dunning procedures, but, if the debt is undisputed, it is possible to use 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 will be paid with preference to you - the creditor who filed the petition.

As an alternative, it might be possible to agree on a payment plan, as this is also a very efficient action. We usually know within a month whether any monies can be collected.

#### 29.4.5. Lawsuits

Legal proceedings in the Netherlands are always related to disputed matters. For legal proceedings, written approval from you will be sufficient, so a formal power of attorney is not necessary.

Before starting legal action, our collectors investigate the debtor's financial situation. If it's considered that there are assets that can be taken for enforcement once a verdict has been received, the file will be handed over to one of our legal collectors. The legal collector will then study the case, contact you, and give advice on how to act further from a legal point of view. If the documents are missing or additional evidence needs to be supplied, the legal collector will ask you to supply relevant information. Our legal

collectors can handle the 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 legal collector or the LDC completes a summons, the debtor will be notified by the bailiff (obligatory) and be immediately presented to the court. In proceedings before the county court, the debtor can defend themselves, whereas in proceedings before the district court and beyond, the debtor must be represented by a lawyer. Once a writ of defence has been presented, it is usual practice for the court to direct 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 concluded, the proceedings will continue, usually with further written documents, witness statements, appointments of experts and the likes, until the court has a clear view of all the details and can reach a final judgment.

#### 29.4.6. Appeals

Appealing the 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 the 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 is not permissible.

#### 29.4.7. Expected time frame

The average duration of a regular lawsuit is dependent on which incidents might occur and can vary from about eight months - when there are no specific hearings - up to a minimum of 18 months, depending on the complexity and the hearings of all the witnesses and experts. The availability of the judge and lawyers on all sides also has influence on the time frame. The time frame for the outcome of filing a petition for bankruptcy is approximately eight weeks.

#### 29.4.8. Costs and interest in the legal phase

The costs of the legal proceedings are related to the amount of the outstanding debt and are determined by the court. They also follow a complex legislative tariff table using a wide range of calculations.

The losing party will be liable for the court costs and a legislative fee for procedural assistance according to the tariff table. The fee is related to the amount of legal handling in the proceedings and does not take into account the real legal fees. The way the legislative fee is calculated makes it difficult to predict the total costs, besides the complexity of the case, the number of court appearances, the eventual hearing of the witnesses, and the appointments of the experts. Whenever legal action is



necessary, cost estimations will be provided on a case-by-case basis. The difference between the legislative fee determined by the court and the legal fees for the LDCs and/or our legal collectors will be collected from your account and cannot be recovered from the debtor. The cost of filing a petition for bankruptcy is approximately EUR 1,350.

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 the 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.

## 29.5. Enforcement

### 29.5.1. Enforcement in debt

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 salary, 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, the name and address of their employer, and any information about their corporate shares or shares in businesses, is required for this kind of enforcement.

### 29.5.2. Enforcement in movable property

This is the 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 necessary for the debtor's basic daily life or that enables them to maintain their business activities.

### 29.5.3. Enforcement in immovable property

If the debtor owns real estate, it's possible to receive a record of their claim in the land register, and then 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 those mentioned previously, and it can be a long process to get a copy of the record. Afterwards, it can also take time to sell or sequester the land and real estate.

### 29.5.4. Expected time frame

The enforcement in monies is usually time-consuming. In order to receive monies, it's often necessary to agree on long-term payment plans. An alternative may be selling property, but it may not always lead to a net result. An attachment of salaries may result in small instalments of funds, and the total time frame for the enforcement can fluctuate from three to 24 months.

## 29.6. Insolvency proceedings



### 29.6.1. General information

#### Bankruptcy

All debtors can be declared bankrupt at their own request or at the request of just one of their creditors, provided that evidence is supplied to the court that more than one debt is left unpaid by the debtor. Insolvency proceedings – whether regular insolvency, insolvency plan, or individual insolvency – are a kind of collective enforcement by all the creditors to the debtor. With a verdict of 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 the 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 are not 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 will meet the obligations to the creditors.

### **Law-enforced composition with creditors for a natural person's debts (WSNP)**

This insolvency procedure is related to natural persons (owners of small shops, farmers, and the likes) who are personally liable for debts. Dutch law provides such debtors with the possibility to request the court that they be allowed to enter a WSNP. By fulfilling certain obligations in good faith, such debtors are allowed by the court to enter a WSNP. The court will appoint an official receiver who is monitored by a member of the court.

## **29.6.2. 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 ROT clauses. For goods in stock, the official receiver can choose either to pay the original prices to the creditors or to return the goods. In the case the goods are returned, there might be a request to pay an insolvency contribution, varying from 4% to 9% of the invoiced value. This contribution has been sanctioned in jurisprudence but has to be deemed reasonable. There are no specific deadlines for lodging claims, but it's advised that the creditors do so as soon as possible to prevent the goods delivered under ROT clauses from being liquidated. All the claims lodged are checked by the official receiver and, if agreed, are placed on a list of recognised creditors. The official receiver may dispute a claim and a specific procedure might follow, but this depends on whether there are any dividends for the creditors to be expected.

At the end of the proceedings, the official receiver will inform the court about the settlement or end of the

bankruptcy. Most insolvencies are ended without any dividends for the non-privileged creditors. If there are any dividends available, they will usually be small percentages of the debts varying from 1% to 20% of the original claims.

### **Suspension of payment**

Like in bankruptcy, the creditors have to lodge their claims with the official receiver. If it is 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 a composition approved by the court, the suspension will end. However, often suspension becomes bankruptcy.

### **Law-enforced composition with creditors for 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 for 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 a transfer to the WSNP. Most of the time, the creditors will receive only a small percentage of their debts (varying from 1% to 10%).

## **29.6.3. Required documents**

In order to lodge a claim on your behalf, we do not need an official or an original power of attorney, but we need the following:

- Copies of the invoices
- Copies of the contracts
- The order confirmations and delivery notes
- Copies of the general conditions of sale

## **29.6.4. Expected time frame**

In the Netherlands, there is no specific deadline for lodging claims, but it's advised to act as soon as possible on acknowledgement of any insolvency.

Bankruptcy proceedings normally last between one and five years, depending on the size of the insolvent company and the quantity of the assets to be liquidated.

The duration of a suspension of payment also depends on several factors, such as the economic outlook, and usually lasts between two and 24 months.

The total time frame for a law-enforced composition with creditors for a natural person's debts is normally three years.

#### 29.6.5. Limited companies

The main reason for filing a petition for bankruptcy at the debtor's request or at the request of one of the creditors is the debtor's inability to pay, which is supposed to be the case when at least two debts (of a reasonable amount) remain unpaid. Filing a petition for bankruptcy at the request of a creditor is normally an efficient action to get payment.

#### 29.6.6. Unlimited companies / individuals

For unlimited companies with personally liable partners or individual debtors, it's not common for them to request bankruptcy themselves. Filing a petition for bankruptcy against such a debtor at the request of a creditor is merely used as an efficient collections tool.

#### 29.6.7. Pools of creditors

In the Netherlands, there is no legislation on pools of creditors. In practice, however, such pools exist on a voluntary basis, especially when a bigger company goes bankrupt. A pool of creditors is mainly founded by credit insurance companies and/or the largest creditors, with the aim of accumulating all the claims of the creditors who delivered goods under ROT clauses, and instructing the official receiver to take appropriate legal action against the debtor company's managing directors if there are grounds for mismanagement.

#### 29.6.8. Rescission

The official receiver can dispute any juridical act carried out by the debtor one year before the date of their insolvency on a voluntary basis, and based on which the debtor knew or had to know that this would damage the position of their creditors. It's assumed that the debtor had this knowledge if the legal acts were executed one year before the date of their insolvency. If the liquidator disputes these legal acts, which include payments, those creditors have to indemnify the official receiver or refund the payments. The creditors can only lodge the corresponding claims or debts instead. If a creditor receives payment the moment they know that a petition for bankruptcy was already filed against the debtor, the creditor is obliged to refund the monies at the request of the liquidator.

## 29.7. Arbitration and mediation

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

Agreeing to a private arbitral tribunal has advantages compared to regular legal proceedings:

- It's quicker, as the courts are less occupied and there are usually no appeals
- It's generally more cost-effective
- There is expertise in certain branches (e.g. contracting, engineering, graphical industry, metal industry)
- It's an informal way of fact finding, where the processes and hearings are confidential
- There is no obligation to be represented by a lawyer (our legal collectors can handle arbitration procedures regardless of the outstanding amount)

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 find constructive agreements and solutions for both you and your debtor. Mediation or conciliation is carried out by professional organisations like the Chambers of Industry and Commerce or by professional mediators. There are now increasingly more attorneys who specialise in mediation. Also, our legal collectors often act as mediators to try to solve disputes and create solutions or settlements. The new agreement is not a judgment, but a kind of contract.

# 30. Norway

GDP  
**\$435** billion (2018)

## Growth rate

GDP  
**-1.82%**  
 (2019 est.)

Export  
**2.41%**  
 (2019 est.)

Import  
**2.91%**  
 (2019 est.)

## Industries



Agriculture



Chemicals



Construction materials



Food



Metals



Paper



Textiles



Transport

## Success rate

**50%–75%**



## 30.1. Amicable collections



### 30.1.1. General information

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

### 30.1.2. Local agents

At this time, we do not offer field service to visit debtors in Norway. However, if debtors wish to visit our premises, we will gladly arrange face-to-face meetings to discuss the situations.

### 30.1.3. Interest

We always charge interest to debtors. It's calculated from the base rate set by the National Bank of Norway, plus 8% on a daily basis. There are two alternatives:

- Calculate the interest rates as agreed between you and your debtors
- Calculate the interest rates according to the Norwegian regulations based on the rate fixed by the National Bank of Norway (plus 8% per year). This rate is fixed twice a year on 1 January and 1 July

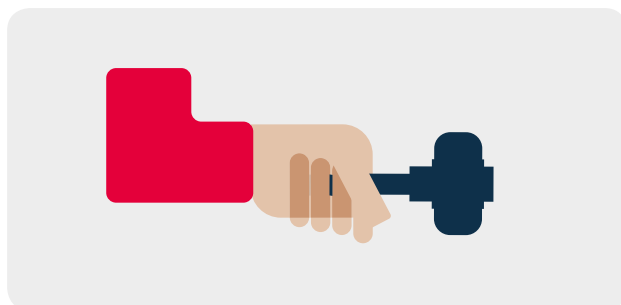
The second alternative will always occur if the interest rate is not agreed upon between you and your debtor.

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

### 30.1.4. Debt collections costs

In Norway, debt collections costs are chargeable to debtors, representing the creditors' claims for late payment. All costs depend on the amounts of the outstanding debts.

## 30.2. Legal collections



### 30.2.1. 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 determined to be enforceable. If the debt is undisputed, a bailiff will issue a payment order, which equals a judgment. If the debtor disputes the debt, the file is assigned for 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. Wage retention is the toughest measure the enforcement office can enforce. This requires the debtor's employer to withhold a certain portion of the debtor's salary and send the money to the bailiff, who then reports the amount to you.

### 30.2.2. Required documents

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

In the case of a regular lawsuit procedure, copies of the complete contractual documentation should be available, starting with 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 oral negotiations, we need visit reports and names of witnesses.

### 30.2.3. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections have failed due to a 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 the 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 publish the final judgment, and both parties will be informed about the outcome in writing by the court.

### 30.2.4. Expected time frame

The average duration of a legal process is up to 12 months or longer, depending on the complexity of the case and the availability of the judge and lawyers on all sides.

### 30.2.5. 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 for 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 the legal proceedings. Normally the losing party has to bear the costs of the legal proceedings if it goes to trial. In the case of a legal settlement, the parties normally bear their own costs for court and lawyers' fees.

## 30.3. Insolvency proceedings



### 30.3.1. 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

### 30.3.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check if 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 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 a claim in court to prove the justification of the claim when further documentation does not 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.

**30.3.3. Required documents**

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

**30.3.4. Expected time frame and outcome**

The expected time frame for an insolvency estate case in Norway is one to three years. Often insolvency estate cases are closed with no dividend at all.

# 31. Poland

GDP  
**\$586** billion (2018)

## Growth rate

GDP  
**1.24%**  
 (2019 est.)

Export  
**5.16%**  
 (2019 est.)

Import  
**6.60%**  
 (2019 est.)

## Industries



Chemicals



Construction materials



Food



Machines



Metals



Textiles



Transport

## Success rate

**50%–75%**





## 31.1. Amicable collections



### 31.1.1. General information

We maintain a professional collections process and focus on the relationships between you and your debtors at all times. Our team of collections specialists carry out the collections process in-house. We contact debtors both verbally and in writing whilst adhering to federal and state laws. 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 upon). All of our investigations are completed with the assistance and agreement of our legal team.

### 31.1.2. Local agents

We offer direct collections activities managed by a selected network of 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 agent network can also help investigate and find untraceable debtors.

### 31.1.3. Interest

We always charge interest to debtors. It's calculated at 9.5% (alternatively 7% or 5% depending on the contract stipulations). Interest is claimed in both amicable and judicial phases. We may request your approval regarding collecting interest and may ask you to provide an interest

note (at your debtor's request). It's often best practice to not ask for interest to be added after the principal amount has been paid in full.

### 31.1.4. Debt collections costs

In Poland, debt collections cost of EUR 40 can be added for invoices issued after 28 April 2013. During legal proceedings, you may also ask for other costs related to debt recovery (e.g. your debt collections company's invoices).

### 31.1.5. 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 the calendar year, unless the limitation period is less than two years.

Debts under sales contracts become prescribed within two years, and transport invoices become prescribed within one year. For services that require periodic invoicing, such as rental, telephone, and internet agreements, the limitation period is three years. The Polish Civil Code defines that the specific terms of a statute of limitations on debt depend on the type of contract.

After the expiration of the statute of limitations, the creditor can file against the debtor. But the debtor can ask the judge to dismiss the suit on the grounds that the statute of limitations has expired.

Prescription periods can be interrupted if the creditors start legal proceedings or receive written acknowledgements of debt.

### 31.1.6. Accepted and most common payment methods

The most common payment method is bank transfers. We do not offer direct booking off of debtors' accounts.

### 31.1.7. Types of companies

<b>Sole trader / sole proprietorship</b> (“Jednoosobowa działalność gospodarcza”)	<ul style="list-style-type: none"> <li>■ Unlimited liability of the owner with their business and private funds</li> </ul>
<b>Civil law partnership</b> (SP (“Spółka cywilna”))	<ul style="list-style-type: none"> <li>■ No minimum capital</li> <li>■ Unlimited liability of the partners</li> <li>■ Usually non-commercial or small-business activities</li> </ul>
<b>General partnership</b> (SP.J. (“Spółka jawna”))	<ul style="list-style-type: none"> <li>■ No minimum capital</li> <li>■ Unlimited liability of the partners</li> </ul>
<b>Limited partnership</b> (SP.K (“Spółka komandytowa”))	<ul style="list-style-type: none"> <li>■ No minimum capital</li> <li>■ At least one partner has unlimited liability with their business and private funds</li> <li>■ The limited partners are only liable with the company’s capital</li> </ul>
<b>Private unlimited company with a share capital</b> (S.K.A. (“Spółka komandytowo-akcyjna”))	<ul style="list-style-type: none"> <li>■ A minimum capital of PLN 50,000</li> <li>■ At least one partner has unlimited liability with their business and private funds</li> </ul>
<b>Professional (service) partnership</b> (SP.P. (“Spółka partnerska”))	<ul style="list-style-type: none"> <li>■ No minimum capital</li> <li>■ The partners are independent professionals, such as lawyers, doctors, or architects</li> </ul>
<b>Company with limited liability</b> (SP. Z O.O. (“Spółka z ograniczoną odpowiedzialnością”))	<ul style="list-style-type: none"> <li>■ A minimum capital of PLN 5,000</li> <li>■ The partners are only liable with the company’s capital</li> </ul>
<b>Company on shares</b> (S.A. (“Spółka akcyjna”))	<ul style="list-style-type: none"> <li>■ A minimum capital of PLN 100,000 divided into shares</li> <li>■ Liability is limited to the company’s capital</li> </ul>

In Poland, 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.

Depending on the legal forms of debtors, we may also be able to request information from public registers. All private entrepreneurs have to be registered at the Municipal Trade Offices. All companies with limited liability have to register with the trade register at a competent court. We have direct access and can obtain any additional information on shareholders, historical developments, and published balance sheets. Debtors with unknown addresses 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 to re-register in their new town. Some debtors do not follow this procedure and cannot be traced.

## 31.2. Retention of title

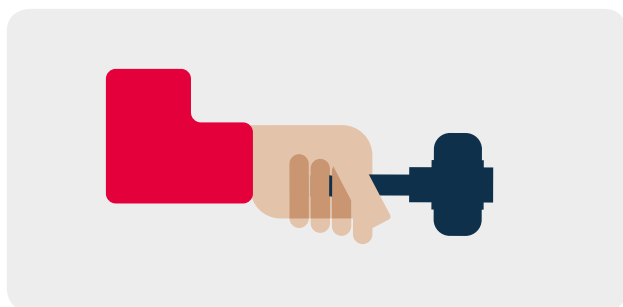
In Poland, retention of title clauses are applicable to movable property only. The suppliers retain the ownership of the goods delivered to the buyers until the full purchase prices have been paid. Retention of title clauses are mainly used for safeguarding instalment sale agreements. Retention of title clauses must be stipulated in writing and notarised with a certified date in order to make them insolvency-resistant, so goods to which the clauses are retained do not become part of the bankrupts’ estates. However, they provide limited practical protection against acquisition by third parties.

## 31.3. Safeguarding measures

In case your debtor isn’t able to satisfy your claim in a speedy manner, we can request the debtor to secure the debt in favour of you - the creditor. 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 are not honoured. The corresponding notary costs have to be carried by the debtor. The debtor is also able to offer other means of security, such as

mortgages, assignment of debts or assets. Contracts must be drawn up for assignment of debts or assets, while mortgages have to be registered by a notary.

## 31.4. Legal collections



### 31.4.1. General information

It's obligatory to send a written request for payment to your debtor before starting any legal action in court. When both parties in the dispute are conducting business activities, the commercial courts review their case. This kind of legal proceedings was established in 2011 to speed up the court's decision. Some simplified legal proceedings can also be run by the E-Court in Lublin.

Poland is a signatory of the European Council Regulation (EC) 805/2004, which allows creditors to enforce the European Enforcement Order (EEO). We provide service for obtaining in your country enforcement of the EEO in your debtor's country.

### 31.4.2. Legal systems

The Polish legal systems have two types of courts: arbitral courts and common courts. We can also proceed electronically through the E-Court. If there is no possibility for amicable collections to take place, we have to send a pre-judicial reminder to your debtor before legal action is started, as requested by the court.

#### Arbitral courts

To proceed in front of an arbitral court, it's necessary to have a contract or agreement with an arbitral clause mentioned. This procedure is expensive but quicker. When the 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:

##### Injunction proceedings ("postępowanie nakazowe")

According to the Code of Civil Procedure, creditors can file actions for writs of payment. The court can issue a writ of payment without the need for a court hearing if

the documents attached to your action include, but are not limited to, the agreements between you and your debtor concerning payment, the debt recognised by the debtor, the invoices accepted by the debtor (signed and stamped), and the proof from the post office that the invoices were delivered to the debtor. The court can also grant the writ of payment with attached agreements, proof of fulfilment and delivery to the debtor, and invoices. This procedure is easier and quicker for you, as the court will usually issue the writ of payment within one to three months unless the debtor lodges an objection. If that happens, the case will then be examined in an ordinary court procedure. This procedure is also cheaper for you, as the court fee is 1.25% of the claim value, and if the debtor appeals, the debtor has to pay the court fee.

##### Writ proceedings ("postępowanie upominawcze")

If you can provide us with only the invoices, proof of delivery/CRM, proof of the debtor's address, a statement of account, and an extract from the trade register of your company (but there is no debt 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 court hearing once it has checked all the documents. This procedure is more expensive for you (the court fee is 5%), and the debtor doesn't have to pay the court fee if they object. If there is an objection, the case is transferred to a common court for an ordinary procedure. 75% of the court fee is returned to you once a decision is reached.

### 31.4.3. Required documents

- Any invoices signed by the debtor with the proof of delivery of goods, regarding the sales transactions. The invoices must not be older than two years from the invoices' due dates. We would also like you to provide us with the document (by post) confirming, if possible, that the invoices have been delivered to the debtor
- The 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 disputes
- The correspondence between the parties
- A fulfilled and 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, WZ)

In Poland, it's possible to start legal proceedings with copies of the documents (the law allows the lawyer who runs a particular case to sign the copies of the documents submitted). The crucial point is that the signature(s) of the individual(s) in the power of attorney should be the same as mentioned in your extract from the trade register. Without this, the court can reject our legal action (for formal reasons).

**31.4.4. Legal dunning procedures**

To obtain an enforceable judgment, we need to get the court order first, then the enforcement clause needs to be applied and served on the debtor. The debtor can appeal, which would then transfer the dunning procedure to a standard lawsuit procedure.

**31.4.5. Mediation**

In January 2016, a new law was implemented that introduces an obligation in lawsuits to present whether the parties have attempted to settle the debt amicably before referring to a court. If such attempts were not made, the plaintiff should present the reasons in the lawsuit.

The obligation was also strengthened to inform debtors that debt negotiations may be referred to mediation processes. The court has also gained the right to direct the parties to attend an information meeting, during which the parties will receive information about mediation. The court may also invite the parties to mediation at any stage of the lawsuit and more than once during the legal proceedings.

**31.4.6. Lawsuits**

A regular lawsuit procedure is initiated directly either after amicable collections have failed due to a 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 the defendant must exchange opinions and proof by letter until the judge believes all the relevant information needed to make 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 publish the final judgment. Both parties will be informed about the outcome in writing by the court unless they are present at the pronouncement of the judgment.

**31.4.7. Appeals**

Appealing against the 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).

**31.4.8. Expected time frame**

The average duration of a legal dunning process is between two weeks and four months, whereas a court procedure can take up to one year or even longer, depending on the complexity of the case and if the debtor raises any objections.

**31.4.9. Costs and interest in the legal phase**

Creditors filing actions to court are obliged to pay court fees. There are three main types of court fees: flat-rate fees, proportional fees, and basic fees. The type of the fees you pay depends on the object of your action. In the case of an action for payment, you have to pay the proportional fees, which are 5% in respect of the monetary suit (no less than PLN 30 and no more than PLN 100,000).

The court fees must be paid in advance of the actions to the court, and the proof of payment must be attached to the statements of actions. If your case is considered in the proceedings for a writ of payment, the fee is 25% of the proportional fees mentioned above and not less than PLN 30.

Lawyers' fees depend on the claim amount and the type of proceedings being initiated (principal amount, without interest).

Extrajudicial interest can be claimed back as part of the outstanding debt during the legal proceedings.

Up to PLN 500	PLN 90 (PLN 60 writ proceedings)
Over PLN 500 and up to PLN 1,500	PLN 270 (PLN 180 writ proceedings)
Over PLN 1,500 and up to PLN 5,000	PLN 900 (PLN 600 writ proceedings)
Over PLN 5,000 and up to PLN 10,000	PLN 1,800 (PLN 1,200 writ proceedings)
Over PLN 10,000 and up to PLN 50,000	PLN 3,600 (PLN 2,400 writ proceedings)
Over PLN 50,000 and up to PLN 200,000	PLN 5,400 (PLN 3,600 writ proceedings)
Over PLN 200,000 and upto PLN 2 million	PLN 10,800 (PLN 7,200 writ proceedings)
Over PLN 2 million and up to PLN 5 million	PLN 15,000 (PLN 7,200 writ proceedings)
Over PLN 5 million	PLN 25,000 (PLN 7,200 writ proceedings)

## 31.5. Enforcement

### 31.5.1. Enforcement in debt

The bailiff, on your behalf, can make seizure of the debtor's bank accounts and ask for the debtor's claims against tax offices, such as life insurance, salary and 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, the name and address of their employer, and any information about their corporate shares or shares in businesses, is required for this kind of enforcement.

As of 1 January 2019, bailiffs' fees have been standardised and equal 10% in every case instead of 8% and 15% previously.

### 31.5.2. Enforcement in movable property

This is the standard procedure where the bailiff visits the debtor to take away movable property that can be sold in favour of the creditors. The bailiff can't seize goods that are necessary for the debtor's basic daily life or that enable them to maintain their business activities.

### 31.5.3. Enforcement in immovable property

If the debtor owns real estate, it's possible to receive a record of their claim in the land register, 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, and it can be a long process to get a copy of the record. Afterwards, it can also take time to sell or sequester the land and real estate.

### 31.5.4. Expected time frame

Enforcement in monies generally takes from 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.

Changes in the execution of farmers' real estate cause great difficulties in selling the real estate during auctions. As a result, the banking sector is much more restrictive in its approach to financing farmers.

## 31.6. Insolvency proceedings



### 31.6.1. General information

Starting from 1 January 2016, the Restructuring Law comes into force. This law was partially extracted from the insolvency law and amended with appropriate new institution for restructuring proceedings. As a result, the insolvency law no longer pertains to restructuring proceedings and remains the basis of bankruptcy proceedings only.

For all the legal entities that have filed their insolvency motions after 31 December 2015, the new regulations can be applied. The new law regulates the recovery activities that provide a wide range of possible restructuring proceedings for the companies that lose their liquidity. The main goal of the new regulations is to avoid companies declaring insolvency and to help entrepreneurs recover their financial liquidity.

### 31.6.2. Proceedings

Apart from the regular insolvency proceedings, which will remain regulated by the insolvency law, the new reparation regulations introduce four new types of restructuring proceedings: proceedings for the approval of an agreement ("postępowanie o zatwierdzenie układu"), accelerated arrangement proceedings ("przyspieszone postępowanie układowe"), arrangement proceedings ("postępowanie układowe"), and remedial proceedings ("postępowanie sanacyjne").

#### Proceedings for the approval of an arrangement ("postępowanie o zatwierdzenie układu")

These proceedings allow the insolvent debtor to make an agreement with the creditors as an effect of getting enough votes from the creditors without the court's assistance. The court is not active in this type of proceedings until a final arrangement is reached by the parties. It limits its role to approving the arrangement or not.

### **Accelerated arrangement proceedings (“przyspieszone postępowanie układowe”)**

These proceedings allow the court to examine an application for the start of accelerated arrangement proceedings at a closed session. It's based exclusively on the documents attached to the application submitted by the insolvent debtor within one week. An arrangement is voted on by the creditors within a couple of weeks from the day of the start of the accelerated arrangement proceedings. If the arrangement is agreed on and approved, it appropriately closes the proceedings.

### **Arrangement proceedings (“postępowanie układowe”)**

These proceedings differ from the accelerated arrangement proceedings on account of the potential necessity to schedule a hearing by the court. This results in different (and often longer) terms of the debtor's application examination – from two to six weeks.

### **Remedial proceedings (“postępowanie sanacyjne”)**

These are the most advanced and detailed restructuring proceedings. It allows the insolvent debtor to practice all kinds of restructuring activities, and it's aimed at improving the financial situation of the insolvent debtor company.

The new regulations anticipate the creation of a public Insolvency Register (“Centralny Rejestr Restrukturyzacji i Upadłości”), which will provide all the necessary information regarding the restructuring as well as insolvency proceedings in place. The new law introduces to the Polish law system a procedure that simplifies the possibility of obtaining public funds as financial backing for bankrupt companies. The changes are caused by the low percentage of companies that were able to recover and successfully rejoin the market after declaring their insolvency.

The restructuring proceedings can be applied to the debtor who is insolvent or in danger of insolvency. All cases conducted on grounds of the restructuring law are recognised by a restructuring court, which in fact is a district, commercial court competent on account of the insolvent debtor's seat.

The inventory of receivables is a document that contains the liability that the debtor owes to their creditors. The amounts indicated in the inventory specify the amounts that the creditors can claim from the debtor.

### **31.6.3. 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

### **31.6.4. Expected time frame**

The restructuring proceedings were designed to be as time-efficient as possible, so none of the new institution should last longer than 12 months, whereas regular insolvency proceedings can take up to five years.

### **31.6.5. Limited companies**

Limited companies are obliged to file applications for either appropriate restructuring proceedings or insolvency proceedings if they become unable to fulfil their obligations towards their creditors for more than three months or their liability exceeds their assets for more than 24 months.

In the case of restructuring proceedings, it's also possible for the debtor to file an appropriate application even when they're not yet required by the circumstances described above, but the circumstances are very likely to happen in the near future.

### **31.6.6. Unlimited companies / individuals**

For unlimited debtor companies or individual debtors, it's not obligatory to declare bankruptcy. Nevertheless, they can declare bankruptcy for the reason of inability to pay or expected inability to pay. The new law introducing bankruptcy of individuals was enacted in 2010. The costs of the proceedings are covered by the debtor's assets, or the liable persons may request respite of the costs.

### **31.6.7. Rescission**

The liquidator can dispute the payments made by the debtor generally within six months prior to their declaration of bankruptcy.

## **31.7. Arbitration and mediation**

If you and your debtor agree on an alternative dispute solution, there are two options available: arbitration and mediation or conciliation. Agreeing on a private tribunal has a number of 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 hearing and process are confidential.

The mediator cannot be asked to be a witness in court. Although it can shorten the duration of disputes in court, mediation is not very popular in Poland. The main reason for this is that mediation has only existed in Polish law since December 2005. The mediator's fees for court mediation is calculated at 1% of the claim value but not higher than PLN 1,000. This means that the price is too low to have the experts in the proceedings. It is very important that, afterwards, a commercial court approves the agreement resulting from mediation proceedings, so that the agreement can be treated as an enforcement title.

Arbitration is conducted on the basis of the arbitration clause in the contracts or 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, except for alimony cases. Submission of a dispute for arbitration requires an agreement of 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.

# 32. Portugal

GDP  
**\$586** billion (2018)

## Growth rate

GDP  
**1.24%**  
 (2019 est.)

Export  
**5.16%**  
 (2019 est.)

Import  
**6.60%**  
 (2019 est.)

## Industries



Agriculture



Chemicals



Construction materials



Consumer durables



Electronics



Food



Metals



Paper



Services



Textiles



Transport

## Success rate

**50%–75%**





## 32.1. Amicable collections



### 32.1.1. General information

If we have tried all amicable recovery actions (e.g. sending letters by mail to debtors along with faxes, phone calls, and emails) and it's still not possible to collect the debts within 30 days, we will analyse whether it would be viable to file lawsuits. In that event, the cases will be sent to lawyers.

### 32.1.2. Local agents

At the present time, we use our external lawyers' service to visit debtors in Portugal.

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 lawyers.

### 32.1.7. Types of companies

#### “Sociedade Anónima” or S.A.

- The minimum corporate capital for this type of company is EUR 50,000

#### “Sociedade por Quotas” or Lda

- In this case, the minimum capital is EUR 5,000

### 32.1.8. Sources of information

In Portugal, we have access to the database of Atradius Crédito y Caucción (ACYC), the credit insurance company of the Atradius group, and to the database 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 official accounts in recent years (P&L) that companies have to present annually, including sales volume, income, and the likes.

After checking all the information, we advise you on the next steps and write a final report with a summary of all

### 32.1.3. Interest

In amicable recovery, it's difficult to collect costs and interest from debtors. Should these costs be established in your general conditions of sale, we will have a better chance of claiming them.

In the amicable phase, we can settle agreements with or without interest, depending on the payment plans in place. In legal proceedings, there is always interest to claim. Currently, the interest rate is set at 8%.

### 32.1.4. Debt collections costs

Concerning the costs that you can charge your debtors, it's an indemnity no lower than EUR 40 for internal administrative collections costs regardless of the right to prove other reasonable costs.

### 32.1.5. Prescription

According to Portuguese law, there are two prescription periods regarding 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' credits resulting from goods sold to non-traders (article 317 of the Civil Code)

### 32.1.6. Accepted and most common payment methods

- Bank transfers to our bank account or your bank account
- Cheques addressed to us or you

our efforts. At this moment, if the traced debtors have solvent companies, assets, and are still open and trading, we will study the viability of legal action as the last resort.

## 32.2. Retention of title

According to the Portuguese civil code (Art. 409 – “Reserva de Propriedade”), it's possible to reserve the legal ownership of the goods to the supplier 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 put down in writing and be expressly accepted by the buyer. If the buyer hasn't definitively accepted it, the clause may be disputed by the buyer, even at a 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.

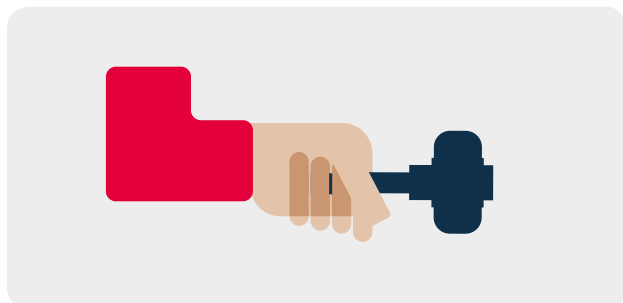
Legally, the supplier, having sold goods with a retention of title clause, is protected against legal measures that may come to affect them. Such is the case in executive or insolvency proceedings.

### 32.3. Safeguarding measures

In the scope of negotiations, we will always try to obtain private documents signed by the debtors recognising their debts. The documents can be signed by a notary, but normally this is not done due to the high costs for both parties - though this could be carried out in cases of high debt amounts or per your request.

The main advantage of documents signed by debtors is that they can be used in future legal claims as proof. Debtors are also able to offer other forms of security, such as mortgages, assignment of debts, or bank guarantees.

### 32.4. Legal collections



#### 32.4.1. General information

Through our lawyers' network, we establish whether it's advisable to start legal proceedings. We evaluate whether the costs are effective given the amount of the debt, compared to the amount of costs and time. We will assess the debtor's solvency and activity. If the debtor is not trading nor has any assets, it makes no sense to prepare for possible legal action.

#### 32.4.2. Required documents

In order to apply legal proceedings, we need:

- A power of attorney
- Copies of the invoices
- The 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

#### 32.4.3. Lawsuits

Once it's decided to start legal proceedings, we will 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 faster 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 collections costs

In order to start legal action, a draft of a power of attorney will be prepared to be signed by you. A notary's involvement is not required in Portugal, but the document needs to be signed by you and printed on headed paper.

#### 32.4.4. Appeals

If a party disagrees with the judgment, they have the right to lodge an appeal to the immediate superior court.

The most common appeal in Portugal is "Recurso de Apelação" (676 Civil Procedure Code), which must be lodged within 10 days from the notification of the original judgment.

#### 32.4.5. Expected time frame

The average duration of legal proceedings depends on the kind of procedure and if the case is in the first instance or the second instance.

The "Injunção" proceedings take about three months. The "Acção Declarativa" proceedings can take more than a year to obtain the court's judgment.

#### 32.4.6. Costs and interest in the legal phase

Costs of the civil law procedure (court costs) are determined by the court and are not 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.

## 32.5. Insolvency proceedings



### 32.5.1. General information

Whoever has a credit against the debtor (include 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 a credit against the debtor, the applicant may provide invoices arguing default, 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 collecting the enforceable income from the individual who is declared bankrupt.

### 32.5.2. Proceedings

Once the debtor has applied for insolvency and we know the insolvency proceedings' data, we usually prepare a draft of the 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 States Bulletin to lodge credits. They will be included in the general list of creditors in the time frame established by law. Once the practitioner receives all the claimed credits, they must present a payment plan that should establish the renegotiation of the principal amounts with the unsecured creditors, the period over which the payments will be made, 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 will not start to be paid until two years after the termination of the legal proceedings, which means that the total time span could be 10 years.

### “Processo de Revitalização” (PER)

PER is a special refinancing process to help companies with financial problems. Since its official publication by the court, the creditors will have 20 days to communicate their credits. 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 other processes (lawsuits or insolvency requests) will be paralysed. They will be activated again when PER ends.

Negotiations can conclude with or without approval of the recovery plan. The process can also end because the debtor is not able to reach an agreement, or because the three months of negotiations are exceeded without an agreement. In the last two situations, the closure of PER will imply the debtor's insolvency declaration within three days since the communication of the end of the negotiations.

### 32.5.3. 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

### 32.5.4. Expected time frame

The deadline to lodge claims after the publication in the Official State Gazette is one month. The whole duration of the insolvency proceedings is between two and 10 years.

# 33. Romania

GDP  
**\$240** billion (2018)

## Growth rate

GDP  
**1.80%**  
 (2019 est.)

Export  
**4.91%**  
 (2019 est.)

Import  
**6.98%**  
 (2019 est.)

## Industries



Chemicals



Construction materials



Electronics



Food



Metals



Textiles



Transport

## Success rate

**50%–75%**



## 33.1. Amicable collections



### 33.1.1. General information

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

### 33.1.2. Local agents

We can employ local agents to make field 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.

### 33.1.3. 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 apply the interest that is stated in the contract.

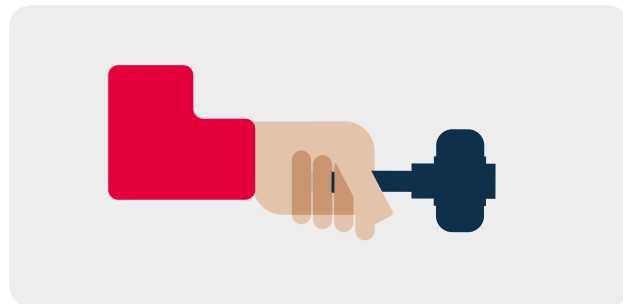
### 33.1.4. Debt collections costs

In Romania, the chances of receiving collections costs are very low.

## 33.2. Retention of title

Romanian law foresees 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 in the Electronic Archive of Movable Assets. The procedure is usually done by authorised agents in Romania and can be provided by our agents upon receipt of a proper power of attorney.

## 33.3. Legal collections



### 33.3.1. 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 occurs after we have 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 contested procedures. All parties can appeal once or twice, requiring one judge at the court of first instance and two or three judges in the case of appeals.

### 33.3.2. 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:

- 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

### 33.3.3. Legal dunning procedures

A legal dunning procedure is only required by law in the payment injunction procedure before filing the application. It's used as the last approach before starting the procedure.

### 33.3.4. 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 occurs after we have started a conciliation procedure and it involves more time and incurs higher costs. In 2012, the Civil Procedure Code was changed to allow the simplification and shortening of legal proceedings.

### 33.3.5. Appeals

The losing party can appeal the entire decision or part of it and will have to pay half of the court costs of the first instance's fees. The appeal is then made at the next level court.

### 33.3.6. 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, and a preventive concordat procedure will take 18 months.

### 33.3.7. Costs and interest in the legal phase

An initial legal collections 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 the interest is mentioned in the contracts or is acknowledged by the debtor, it will be enforced. Otherwise, the legal interest rate of 6% per annum will apply. We always ask for legal costs to be added to the debtor's costs.

## 33.4. Enforcement

An enforcement bailiff costs from EUR 200 to EUR 1,000. If the debtor doesn't pay voluntarily after receiving the judgment sentence 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 banking accounts. They are only performed by a legal executor, who can be an individual person or a specialised office.

### 33.4.1. Enforcement in movable property and immovable property

This can be done after the bailiff's evaluation with the help of a local expert.

### 33.4.2. Expected time frame

Most proceedings last for a few months, depending on the assets.

## 33.5. Insolvency proceedings



### 33.5.1. 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 activity. The administrator is guided by the judge.

### 33.5.2. Proceedings

A creditor can ask for insolvency proceedings to be opened, or they can lodge a claim to already opened insolvency proceedings. The insolvency proceedings will be closely monitored by our lawyers and may require you to be present at hearings and creditors' meetings.

### 33.5.3. Required documents

We require the original versions or certified copies of the documents as in legal proceedings.

### 33.5.4. Expected time frame

Insolvency proceedings usually last about three years. If the debtor's debt is 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.

### 33.5.5. Limited companies

They are subject to reorganisation or liquidation.

### 33.5.6. Unlimited companies / individuals

There is legislation in place for individuals, but it is often not used in Romania.

### 33.5.7. Rescission

Only transfers of the debt made with the intention of defrauding the creditors within three years before the insolvency can be cancelled.

### **33.6. 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 Arbitration under the Chamber of Commerce and Industry of Romania. The mediation institution was created in 2007, and mediators are authorised to work, but it's still in its early stages in Romania. Arbitral court procedures are quite expensive.

# 34. Russia

GDP

# \$1,631

 billion (2018)

Growth rate

GDP

## -1.24%

  
(2019 est.)

Export

## 3.26%

  
(2019 est.)

Import

## 3.80%

  
(2019 est.)

Industries



Chemicals



Construction



Consumer durables



Electronics



Food



Machines



Metals



Textiles



Transport

Success rate

# up to 50%





## 34.1. Amicable collections



### 34.1.1. General information

We handle every debt collections case with maximal care in order to achieve optimal results. Our staff pursue debtors verbally and in writing within the bounds of state laws.

### 34.1.2. Local agents

We offer field service to visit debtors at their offices, where you will be represented by our local lawyers, who will conduct the negotiations of your cases.

Taking into account the size of Russia, it should be noted that the fee for each visit will include transportation and accommodation costs.

In case the debtors wish to visit our office, we will gladly meet them to discuss solutions for your cases face-to-face.

### 34.1.3. Interest

The Russian business culture is not to pay interest fees, so it's difficult to achieve an amicable solution and obtain payment.

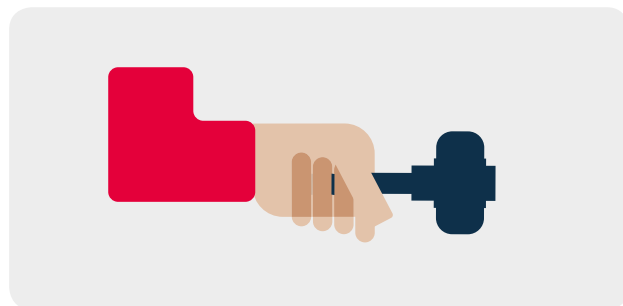
If, however, an agreement is reached and the debtor is ready to pay the interest fine, as per currency control and regulations, it's necessary to:

- Sign an additional agreement on the matter of payment of the interest
- Confirm the changes in the currency deal passport
- Issue an invoice from you totalling the amount of the interest
- Reconcile the payment with the debtor's banks

### 34.1.4. Debt collections costs

Debt collections costs are not chargeable to debtors in Russia, as there is no such law present for now. So payment of the debt collections costs depends only on the contractual agreements between you and your debtor.

## 34.2. Legal collections



### 34.2.1. 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 is not followed, your claim will be rejected by the court.

### 34.2.2. Required documents

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

- Contracts signed by the parties with all appendices (if exist)
- All unpaid invoices
- A statement of account indicating the payments and credit notes that have been booked regarding the outstanding invoices
- Transportation documents with the debtor's mark proving the goods' receipt and customs declarations
- Correspondence and other documents related to the debt
- An extract from the trade register of your company
- A power of attorney

### 34.2.3. Lawsuits

Your claim is submitted to the court and the court checks the documents and grounds of 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.

In case the Commercial court solves the dispute, the parties have to select a judge from each side. The decision of the Commercial court has to be proven in the general court before execution.

### 34.2.4. Expected time frame

The average duration of a court procedure can take three to six months or longer, depending on the complexity of the case and the availability of the judge.

### 34.2.5. Costs and interest in the legal phase

Costs of the proceedings (court costs and fees) are determined by the provisions of the Commercial Procedure Code and are not 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 the 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. The outcome is highly dependent on the court and judge. Requests for interest will increase the amount of court fees.

The debtor has to bear the court fees of the legal proceedings in accordance with the Commercial Procedure Code, but only if the 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 whether those are awarded from the debtor depends on the court.

## 34.3. Insolvency proceedings



### 34.3.1. General information

There are several stages of insolvency proceedings in Russia:

#### Surveillance procedure

A trustee checks the financial status of the debtor company and decides if rehabilitation is possible for the debtor.

#### Rehabilitation or bankruptcy procedure

Rehabilitation is used to recover the financial status of the debtor company and to repay their debts. The debtor company continues operating after the rehabilitation is finished.

#### Receivership procedure

If the rehabilitation is not possible, a receivership procedure is started and the court appoints an administrator who will sell the debtor company's assets and recover their debts. The recovered money is divided between the creditors in accordance with their order. The debtor company is deleted from the trade register after the procedure is finished.

### 34.3.2. Proceedings

Your claim has to be submitted within one month to the court that makes the decision to start insolvency proceedings.

If your claim is not submitted within this term:

- If the surveillance procedure is started: your claim is not rejected and the court decides on it only when the rehabilitation or bankruptcy procedure is started. If the surveillance procedure ends without transferring to the second stage, then it's possible to submit your claim in the general order
- If the rehabilitation or bankruptcy procedure is started: the court decides whether your claim can be accepted. If it happens, your claim will be the last in the order of creditors (5th line)

#### The order of creditors:

- 1st line – payments for damage to health and life
- 2nd line – salary claims of the debtor's employees
- 3rd line – other creditors
- 4th line – payments to the creditors whose deals with the debtor are considered void
- 5th line (unofficial) – other claims

### 34.3.3. Required documents

Your claim has to be lodged to 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.

### 34.3.4. Expected time frame and outcome

The whole duration of insolvency proceedings can't be predicted exactly. The minimal term of the surveillance procedure is six months, but it can be prolonged. The rehabilitation or bankruptcy procedure usually lasts from 12 to 24 months, but it can also be longer.

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

# 35. Saudi Arabia

GDP  
**\$782** billion (2018)

## Growth rate

GDP  
**-2.85%**  
 (2019 est.)

Export  
**0.75%**  
 (2019 est.)

Import  
**3.43%**  
 (2019 est.)

## Industries



Chemicals



Construction



Construction  
 materials



Metals

## Success rate

**50%–75%**



## 35.1. Amicable collections



### 35.1.1. 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 collections process that is professional at all times with the objective of retaining the relationships between you and your debtors whenever possible. Our team of collections specialists carry out the collections process in-house. We relentlessly pursue debtors verbally and in writing within the bounds of federal and state laws.

### 35.1.2. Local agents

We offer field service to visit debtors located in Jeddah, Riyadh, or any other cities in Saudi Arabia.

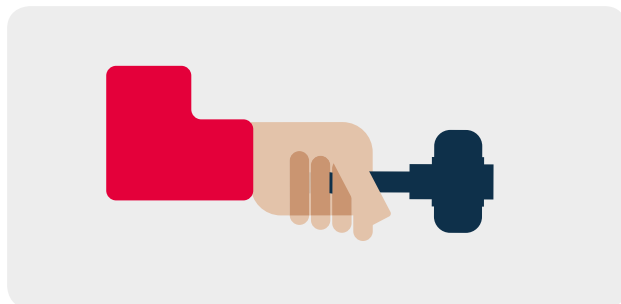
### 35.1.3. Interest

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).

### 35.1.4. Debt collections costs

From a cultural point of view, Saudi Arabian debtors are not used to paying collections costs. Under traditional Islamic law (Shariah), collections costs clauses make contracts void or invalid on account of the fact that Islam regards collections costs as a form of excessive remuneration (usury).

## 35.2. Legal collections



### 35.2.1. General information

Entering into legal proceedings is not 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 for a time period up to three years in order to have a final and irrevocable judgment.

### 35.2.2. 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 booked regarding the outstanding invoices

We also need the orders, order confirmations, delivery notes, invoices, and the likes. 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.

### 35.2.3. 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 does not set hearing dates. The judge directly passes 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 to 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 amounts

#### 35.2.4. 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.

#### 35.2.5. Expected time frame

The average duration of legal enforcement procedures is between eight and 12 weeks, whereas a court procedure of the first instance can take up to 12 months or longer, depending on the complexity of the case as well as the availability of the judge and lawyers on all sides. Sometimes a final irrevocable court order can take up to 36 months.

#### 35.2.6. 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 costs. 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 in charging 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 laws.

## 35.3. Insolvency proceedings



### 35.3.1. 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.

### 35.3.2. Proceedings

A recently enacted and sophisticated bankruptcy law No. M/05 dated 28/05/1439H (corresponding to 13/02/2018G) will become 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 a certain value, cause, 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 licensed trustee will be appointed to carry out the liquidation procedures. The debtor of the entity under liquidation will be prohibited from managing their business operations upon the commencement of the liquidation.

### **35.3.3. 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

### **35.3.4. 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 a claim in court to prove the justification of the claim when further documentation does not 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 insolvency estate is closed with a very small or no dividend at all.

# 36. Singapore

GDP

**\$361** billion (2018)

Growth rate

GDP

**3.24%**

(2019 est.)

Export

**1.55%**

(2019 est.)

Import

**1.04%**

(2019 est.)

Industries



Chemicals



Construction



Electronics



Food



Machines



Services



Transport

Success rate

**up to 50%**



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 36.1. Amicable collections



### 36.1.1. General information

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

### 36.1.2. Local agents

We can employ local agents to make field visits to debtors in all areas of Singapore, primarily to assess their business operations and locations. The fee for using agents is typically around 15% of the debt's recovery and varies depending on the age and size of the debt.

### 36.1.3. Interest

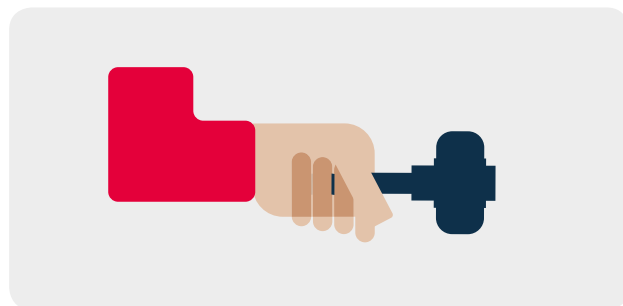
We use clauses or agreements already made between the parties in a credit application or terms and conditions as the legal basis for any interest charges. Otherwise, from a cultural point of view, Singaporean debtors very rarely agree to pay late payment interest. It's often used as a negotiation tool 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.

### 36.1.4. Debt collections costs

Recharging debt collections costs to debtors is not common in Singapore. Often, late payment interest is used as a negotiation tool between the debtors and the collectors if such clauses are imposed by the creditors and stated in the contracts.

## 36.2. Legal collections



### 36.2.1. 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 pre-court efforts of collections yield no results by revealing all prior correspondence with the debtor.

### 36.2.2. Required documents

In order to begin legal proceedings, we need:

- Copies of any contracts between the parties (including agreements for arbitration and jurisdiction)
- The invoices
- A clear statement of account indicating the payments and credit notes that have been paid against 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 meetings or notes about what was agreed.

### 36.2.3. Legal dunning procedures

In Singapore, our solicitors or local agents will always send a formal letter of demand with the attached documentation when taking action on a file.

### 36.2.4. 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 eight 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 in the case.

Cases in Singapore are expensive and will often require multiple hearings before the court makes a judgment and a decision on costs.

#### 36.2.5. Expected time frame

The courts generally conclude cases with default judgments within three months and trial matters between 12 months and 18 months.

#### 36.2.6. Costs and interest in the legal phase

Costs of proceedings are high in Singapore. Individual costs can be provided 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 is not expensive in Singapore. It's usually between SGD 120 and SGD 500.

It will cost about SGD 4,000 to get 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 costs 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 provide 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 court action may be awarded from 60% to 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.

## 36.3. Insolvency proceedings



### 36.3.1. General information

Singapore's primary insolvency laws relating to corporations appear in the Companies Act. These laws are based on principles found under Britain and Australian law. Debtors can be liquidated through court-ordered compulsory liquidation.

### 36.3.2. Proceedings

The insolvency regime in Singapore includes a number of creditor-focused features that are common to the Britain 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 over 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 in the debtor's insolvency.

The overriding objectives of Singaporean insolvency laws are to restore the debtor to profitable trading when practicable, and to maximise the returns to the creditors as a whole if the debtor company itself cannot 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.

Pursuant to section 340 of the Companies Act, the creditors may make 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 look to establish a fair and equitable system for claim ranking and asset distribution among the creditors, and to 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 liquidation will be returned to the shareholders. Expert legal opinions by our solicitors are highly recommended.

### **36.3.3. 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

### **36.3.4. Expected time frame and outcome**

The whole duration of insolvency proceedings can take anywhere between 12 and 18 months.

Singaporean insolvency laws protect the priority of the secured creditors, who have priority over virtually all 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.

# 37. Slovakia

GDP  
**\$107** billion (2018)

## Growth rate

GDP  
**3.08%**  
 (2019 est.)

Export  
**5.74%**  
 (2019 est.)

Import  
**5.08%**  
 (2019 est.)

## Industries



Chemicals



Construction materials



Electronics



Food



Machines



Metals



Paper



Textiles



Transport

## Success rate

**up to 50%**



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 37.1. Amicable collections



### 37.1.1. General information

We maintain a professional collections process and focus on the relationships between you and your debtors at all times. Our team of collections specialists carry out the collections process in-house. We contact debtors both verbally and in writing whilst adhering to state laws. 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 upon). All of our investigations are completed with the assistance and agreement of our legal team.

### 37.1.2. Local agents

We offer direct collections activities managed by a selected network of 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.

### 37.1.3. Interest

Interest rates on late payment should be specified in the contracts between you and your debtors. If this is not 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 relations. For contracts concluded before 31 January 2013, it is calculated as the main refinancing operations rate (fixed rate) of the European Central Bank, plus 8%. For contracts concluded after 31 January 2013, it is calculated as the main refinancing operations rate (fixed rate) of the European Central Bank applicable on the first day of the delay plus 8%, or as the main refinancing operations rate (fixed rate) of the European Central Bank applicable on the first day of the relevant half-year, plus 9%.

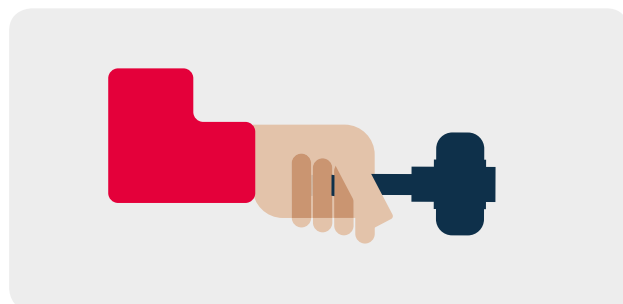
We charge interest to debtors, both in the amicable phase and judicial phase. In judicial proceedings, the interest rate is based on law if it is not contracted by the parties,

and courts award the interest that is required under the condition that the principal is granted.

### 37.1.4. Debt collections costs

You can also demand a lump sum of collections costs of EUR 40.

## 37.2. Legal collections



### 37.2.1. General information

Reminder letters for payment are usually sent to the debtor before court proceedings start. Reminders, however, increase the chance of collecting money in an amicable way.

If the debt is not fulfilled 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 are not agreed upon, legal action will be handled by the district court of the debtor.

### 37.2.2. Required documents

In order to start 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 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 is not the original supplier 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 collections process, we will try to obtain some security from the debtor that can be helpful during legal proceedings.

### 37.2.3. Legal dunning procedures

Legal dunning procedures are only applicable for monetary debts where the debtors are traceable and the court is able to deliver payment orders to the debtors. 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.

### 37.2.4. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections have failed due to a 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 cannot be delivered to the debtor.

### 37.2.5. 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 judge and lawyers on both sides.

### 37.2.6. Costs and interest in the legal phase

Court fees are 6% of the claim amount or 3% in the case of electronic payment orders (at least EUR 16.50 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 established by a special arbitration rule. Lawyers' fees depend on the form of the legal action and the amount of the claim in dispute and can vary from 2% to 4% of the claim. Other costs can be accumulated from the translation of the documents.

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

## 37.3. Enforcement

### 37.3.1. Enforcement of court decisions

A legitimate court judgment or an arbitration award may be executed by an executor in execution proceedings if the debtor does not fulfil the obligations imposed by the court judgment or arbitration award.

Execution proceedings are comprised of two parts. The first part starts by filing a motion to an executor and determining the question of the formal requirements. After the motion is filed to the executor, the court will authorise the executor to start execution proceedings. In the second part, the authorised executor carries out the 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 was transferred to them. The execution proceedings end when all the claims are fully paid, including all charges, or if the debtor has no property left.

### 37.3.2. Methods of execution

Enforcement of decisions imposing the payment of a sum of monies can be carried out by means of deductions 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 the specific legislation. The court decision can also be enforced by compulsorily debiting 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.

## 37.4. Insolvency proceedings



### 37.4.1. 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 the restructuring is permitted. A debtor is insolvent either 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 if they have more than one creditor and the amount of debts is greater than the assets of the debtor. These proceedings may last several years.

### 37.4.2. Proceedings

After the debtor or a creditor of the debtor submits a bankruptcy motion, the court checks the debtor's financial situation and decides if 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 the bankruptcy. If this deadline is missed, the creditors may still lodge their claims, but they cannot exercise their rights as creditors. Bankruptcy can be used if the assets of the debtor are used to discharge claims and the debtor closes their business. This procedure is available for both individuals and legal entities.

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. The debtor must

propose changes in their business that enables the debtor to pay the debts and keep the business whilst restructuring. If the requirements are met, the court permits the restructuring proceedings. The decision is 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. 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 permission for restructuring is published. If this deadline is missed, no claims will be added to the insolvency proceedings, and claims that were not lodged can no longer be enforced. This procedure is usually used for larger companies.

### 37.4.3. 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

### 37.4.4. Expected time frame

The whole duration of bankruptcy proceedings often takes more than a year, especially in more difficult cases. Important updates and steps undertaken in bankruptcy or restructuring proceedings may be found in the Business Journal.

# 38. South Africa

GDP  
**\$368** billion (2018)

## Growth rate

GDP  
**0.86%**  
 (2019 est.)

Export  
**2.43%**  
 (2019 est.)

Import  
**3.03%**  
 (2019 est.)

## Industries



Chemicals



Food



Machines



Metals



Textiles



Transport

## Success rate

**50%–75%**



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 38.1. Amicable collections



### 38.1.1. General information

South African law has Roman-Dutch origins, and the debt collections process is well entrenched in the system. The South African prescription period (statute of limitations) is normally three years from the date a debt becomes due and payable (in cases of dishonoured cheques, it would be six years). However, the fact that South Africa experiences corruption, fraud, and a weak currency can greatly affect debtors' ability and/or willingness to pay.

### 38.1.2. Local agents

Our local agents are a debt collections agency specialising in amicable and legal recovery. They are based in Roodepoort, Johannesburg, and specialise in debt recovery. Our local agents' network is well connected across South Africa, with colleagues 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 replies not be forthcoming, we normally recommend site visits.

### 38.1.3. Interest

Interest can be charged according to the National Credit Act. It defines invoices as an 'incidental credit' because a 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.

From a cultural point of view, recovery of late payment interest in South Africa is quite difficult due to the interest payment being considered a matter of negotiation between debtors and collectors.

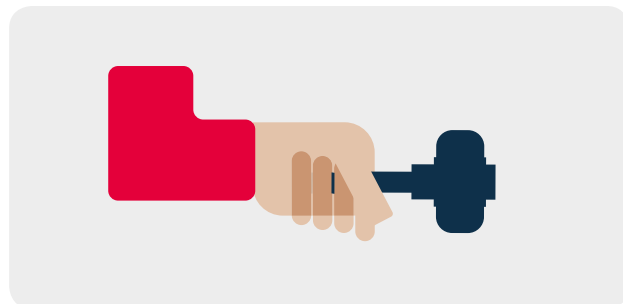
Once court action commences, the legal interest of 10.25% per annum can be charged from the date of the service of the summons to the date of the final payment of the debt.

South Africa does apply the in duplum rule, whereby interest charged may never exceed the original debt amount.

### 38.1.4. Debt collections costs

We do not charge collections costs to debtors in South Africa.

## 38.2. Legal collections



### 38.2.1. 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.

### 38.2.2. 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 is not a requirement, but the debtor's attorney may request it. In that case, it will have to be provided.

### 38.2.3. 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 can be entered into, whereby the debtor can settle the debt either in a lump sum or by monthly instalments. This agreement will then form the basis of court action, should it be necessary.

### 38.2.4. Lawsuits

A lawsuit commences with the issue of a summons, which is served on the debtor 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, a default judgment can be applied for 10 days after the service of the summons. In the event that the debtor does defend, a summary judgment can be applied within 15 days from the date of receipt of the defendant's plea.

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 will state the belief that the debtor only enters an appearance to defend with the intention of causing delay, and that the debtor does not have a defence in law. The plaintiff will be required to briefly state why the defendant's defence will not succeed in law in the form of an affidavit. If the debtor



can show that they have even minimal grounds for defending, the court will not grant the summary judgment. In that event, the matter will have to proceed to trial.

### 38.2.5. 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 three and six months.

### 38.2.6. Costs and interest in the legal phase

Litigation costs in South Africa are quite high. And the prospective plaintiff should keep in mind that should the litigation be unsuccessful, the plaintiff will also be liable for the costs of the debtor, in the same way that the debtor would be liable for the costs of the plaintiff should the debtor be unsuccessful in defence.

The problem, however, is that often the debtor is unable to settle such cost orders. Moreover, because the plaintiff is not a South African entity and does not own any attachable assets in South Africa, the debtor will likely request security for their costs should the plaintiff be unsuccessful in litigation.

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. However, it can normally be assumed that EUR 7,500 will be sufficient to take the matter up to the opposed summary judgment stage, whereafter the position may be reviewed and a decision may be made as to whether the matter should be continued. The EUR 7,500 does not include execution costs, which may vary considerably.

South Africa has an extremely stringent Credit Act, in terms of which an entity must be registered as a credit provider with the Credit Act.

## 38.3. Insolvency proceedings



### 38.3.1. General information

In South Africa, there are different acts of insolvency. Non-payment of an account or an admission that a company is not able to settle their debts is considered to constitute such an act. In these circumstances, the creditor(s) may apply to the court to have the debtor liquidated.

In South Africa, there are secured and unsecured creditors. Secured creditors are normally banks. 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 supplier 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.

### 38.3.2. Proceedings

#### Voluntary liquidation

This is done by the debtor through the passing of a special resolution, which is registered with the Registrar of Companies, which forwards the same content to the Master of the High Court, which in turn appoints a liquidator, who will attend to the wind-up of the entity. The winding-up process may take a while.

**Hostile liquidation**

In this instance, the creditor(s) apply to court to have the debtor liquidated. This is done by means of a motion, which must be served on all the known creditors, South African Revenue Service, Master of the Court, Registrar of Companies, and/or any other interested parties. The court will then grant an interim order, which must be published in the government 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, whereafter 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 is 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.

**38.3.3. Required documents**

The invoices and/or correspondence evidencing 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.

# 39. Spain

GDP

# \$1,426

billion (2018)

## Growth rate

GDP

# 0.23%

(2019 est.)

Export

# 2.52%

(2019 est.)

Import

# 2.71%

(2019 est.)

## Industries



Chemicals



Construction materials



Electronics



Food



Machines



Metals



Services



Textiles



Transport

## Success rate

# up to 50%



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 39.1. Amicable collections



### 39.1.1. General information

We maintain a professional collections process and focus on preserving the relationships between you and your debtors at all times. Our team of collections specialists carry out the collections 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 (e.g. signed contracts, orders, confirmations, invoices, delivery notes, as well as standard terms previously agreed upon). Our investigations are completed with the assistance and agreement of our legal team.

### 39.1.2. Local agents

In cases where we are not able to locate the debtor or our actions in the amicable phase do not give satisfactory results, provided that we do not have proof that the debtor has ceased their activity or if you request it, we can transfer the file to one of our agents who will make a face-to-face visit and verify these aspects. The agent will also submit a payment request to the debtor on our behalf. The agent will issue a final report. This service is provided throughout Spain and a fee will be charged to you with your prior approval.

### 39.1.3. Interest

We always charge accrued interest to debtors or any other amounts that have been agreed on by contract between the parties. In 2018, the official accrued interest rate is 8%.

From a cultural point of view, Spanish debtors are not used to paying late payment interest during the amicable phase, and the actual amount of interest payment is considered a matter of negotiation. Nevertheless, we always try to negotiate payment of interest in the amicable phase.

### 39.1.4. Debt collections costs

In Spain, debt collections 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 are not used to paying debt collections costs, though often the actual amount 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.

### 39.1.5. Prescription

The law 42/2015 Civil Procedures' modification changes the period of prescription, establishing a general prescription period of five years for debts generated after 7 October 2015. For debts prior to that date, the general prescription period is 15 years, starting from the day after the invoices are due. This is according to article 943 of the Spanish Commercial Code in combination with article 1964 of the Spanish Civil Code. Transportation claims prescribe within one year for land transport and maritime transport, starting from the dates of the payment obligations.

The prescription period is suspended when:

- You as the creditor claim payment judicially
- You as the creditor make an extrajudicial claim by fax or notary requirement
- The debtor performs an act of acknowledgement of the debt

This is subject to Spanish Civil Law, article 1973.

The prescription has to be claimed by the debtor in legal proceedings and cannot be declared officially by the court.

### 39.1.6. Accepted and most common payment methods

The most common payment method is bank transfers either to our own or your bank account. We also accept cheques, but in this case, we try to ensure that they are issued directly to you. We do not offer direct booking off of debtors' accounts.

### 39.1.7. Types of companies

The most common types of companies in Spain are:

- "Sociedad Limitada", or SL: The minimum corporate capital for this type is EUR 3,000
- "Sociedad Anónima", or SA: In this case, the minimum corporate capital is EUR 60,000

In both types, the shareholders' assets are not affected by the company's debts. And it's necessary to prove in the presence of the judge that the administrators are following bad practices.

- Community of goods: This is a more popular type. In this type, the co-owners' assets are affected by the company's debts if the company doesn't have enough assets to pay all their debts

### 39.1.8. Sources of information

In Spain, we have access to the databases of Atradius Crédito y Caución (ACYC) – the credit insurance company of the Atradius Group – and 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, 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. If we need more detailed reports containing legal information, studies of debtors' businesses' trajectories, or the likes, a cost per report will be charged to you with your prior approval.

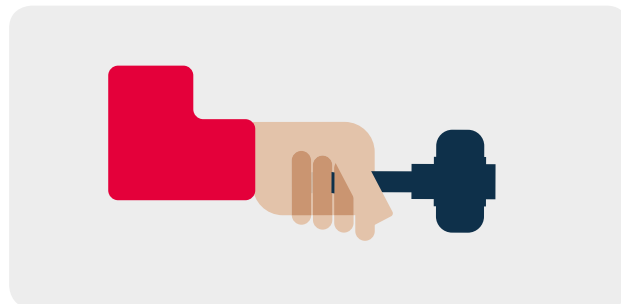
## 39.2. Retention of title

This is not a common title in Spain. Having a contract of this type is not binding between the parties. Unless the contract has been signed by a notary, it is not an executive title and we have to follow normal legal proceedings. This means starting a declarative procedure where the judge will have to recognise our right to cover the debt or remove the merchandise. If the merchandise has been seized, it will be necessary to start special legal proceedings called "Tercería de Dominio", in which we will have to prove our right to divest the ownership and possession to a third party.

## 39.3. Safeguarding measures

We will always try to obtain documents signed by debtors in order to get the debts recognised. A notary's signature is not mandatory. In the case of obtaining the signatures from the debtors, they can be used in any future legal claims as proof. The debtors are able to offer other forms of security, such as mortgages, assignment of debts or assets against debts. Assignment of debts or assets can be done via contract, whilst mortgages have to be registered by a notary.

## 39.4. Legal collections



### 39.4.1. General information

The modern Spanish legal system is composed of public law, which regulates the relations between a citizen and the state or two bodies of the state, and civil law, which regulates the relations between two people or companies.

Entering into legal proceedings is possible without a prior warning to the debtor. Anyway, it will be advisable to exhaust the amicable options before starting 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 the collections 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 will assess if further legal action is viable or not.

### 39.4.2. Legal systems

In Spain, the 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 will obtain a final decision that could be appealed in the second instance (in this case, it is a body composed of three judges) 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 fixing the competence will be the debtor's address unless both parties agree on another one. The third instance "Recurso de Casación" in Spain is based on restricted reasons, and any claims that do not meet the criteria will be rejected. It's also necessary to pay a legal tax that depends on the type of proceedings.

### 39.4.3. 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 against the outstanding invoices.

In the case of a regular lawsuit procedure, the original versions of the complete contractual documentation should be available, starting with contracts, orders, order confirmations, delivery notes, and invoices. 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.

In the case of any oral negotiations, we would request that the dates and notes of any visits and negotiation reports be kept, along with the names of the witnesses. 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 are not from Spain.

#### 39.4.4. Legal dunning procedures

A legal dunning procedure, named "Monitorio" in Spain, is only applicable for monetary debts (less than EUR 250,000) and only when the debts are due and payable and not disputed. The responsible court is the first instance local court. The court only declares your right as the creditor and urges the debtor to pay the principal amount and the interest. If the debtor does not 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, since the first judge only has to declare that the "Monitorio" procedure is not possible. In the event that the debtor pays the debt, the procedure will end. In the event that the debtor does not pay the debt, an enforcement procedure will start. In any case, you will have the final decision to start the "Ordinario" procedure, where a decision will be taken about the debt.

#### 39.4.5. Lawsuits

A regular lawsuit ("Ordinario" procedure or "Verbal" procedure) is initiated directly either after the amicable collections have 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 the defendant will submit allegations with evidence that will be assessed and discussed during the hearing. Evidence may include documentation, witnesses, and experts. After the oral hearing, the judge sets a date to publish the final judgment, and both parties will be informed about the outcome in writing by the responsible court.

#### 39.4.6. Appeals

Appealing the judgment is possible within 20 days since the notification of that resolution. It will trigger a verdict by the court of second instance (local court to district court, district court to higher regional court). In the case of the

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 is not possible, unless the evidence was not known in the first instance hearing.

#### 39.4.7. Legal taxes

Taxes have to be paid at the same time that we take legal action. Otherwise, the lawsuit will not 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 are not rechargeable to the debtor and cannot be reimbursed in any case, except if both parties reach an agreement during the legal proceedings. In that case, 60% of the taxes paid will be returned.

Other additional local charges might be charged.

#### 39.4.8. Expected time frame

The average duration of a legal process depends on the kind of procedures and if the case is in the first instance or second instance. The "Monitorio" procedure takes about three months. The "Ordinario" procedure can take more than a year to obtain the court judgment.

#### 39.4.9. 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 related to the proceedings' type and a maximum fee related 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 taken to keep costs low, at least when the debtor simply does not react, thereby accepting the claim.

It's not possible to start legal proceedings only for the interest or costs, but these will always be included in any final collected amount. 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 judges 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.

## 39.5. Enforcement

### 39.5.1. Enforcement in debt

Once a judgment is issued by the court and the parties do not appeal in the legal period, the judgment becomes definitive. The condemned debtor will have to serve the judgment within 20 days following its publication.

### 39.5.2. Provisional enforcement

Spanish law allows provisional enforcement of the judgment when the condemned debtor presents an appeal and this is admitted. To put it into effect, it has to be requested by writ to the same court of first instance that has issued the judgment. And it can be enforced once the final judgment is pronounced. The warrant is used to obtain a statutory declaration from the debtor.

### 39.5.3. Enforcement of definitive judgments

Should the condemned debtor do not pay within the 20-day period following the publication 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. Otherwise, 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 will 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.

### 39.5.4. Expected time frame

The time frame for enforcement is difficult to estimate, as it depends on the course of the case, the court, locations of the assets, possible banks, and of course, possible buyers. It usually takes longer than the principal proceedings.

## 39.6. Insolvency proceedings



### 39.6.1. General information

Insolvency proceedings, also named “concurso de acreedores”, can be classified as “ordinarios” or “abreviados”. The aim of insolvency proceedings is to create a restructuring of the debtor company in order to pay out all their 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.

There is a kind of collective enforcement by all the creditors to the debtor. With the start of the preliminary proceedings, all the individual enforcement is suspended. Only when the insolvency is solved will all the individual enforcement be reactivated.

### 39.6.2. Proceedings

Depending on the volume of the debtor company, its insolvency can be denominated as “Abreviado” or “Ordinario”:

#### “Procedimiento Abreviado”

This type of insolvency proceedings can be managed by an insolvency mediator. It's more flexible and briefer than the usual ones. It's applicable to smaller insolvencies (with less than 50 creditors and less than EUR 5 million in liability). Its principal characteristics are that the payment plan cannot be longer than three years and the reduction cannot be higher than 25%.

#### “Procedimiento Ordinario”

All the insolvencies that do not respect the above-mentioned requirements will have to be managed via court. Depending on who will present the insolvency to the court, the insolvency will be nominated as:

- “Procedimiento Voluntario”: This is issued by the debtor when the debtor company is in a bankruptcy situation
- “Procedimiento Necesario”: This is issued by a creditor of the debtor once the debtor interrupts the payment

In both cases, the judge will study the documents and confirm the insolvency situation. Once the insolvency situation is confirmed by the court (after possible demands in contrary are checked), trustees of the bankruptcy will be appointed. They will act as administrators of the debtor company during the proceedings. They should be composed of:

- One lawyer or a law firm
- One economic expert
- One of the biggest creditors (usually a bank)

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 (“ordinarios” proceedings) or 15 days (“abreviados” proceedings) to lodge their credit claims. Once the period for lodging credits ends, the trustees of the bankruptcy will prepare a financial report with a list of all the credits and a balance sheet including the active and passive claims to the debtor company. If any creditors think that their rights are not recognised in full, they can present an incident before the trustees. Only when all the incidents are solved and the trustees prepare the definitive report, including the results of the incidents, will the proceedings continue.

If the debtor company has enough assets for a payment plan, they will present an agreement to the creditors that normally includes a discount and a payment plan in the balance sheet. The creditors can accept or reject the plan, and present their decision 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 does not have enough assets or does not 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 credits.

#### **Pre-insolvency**

This is special insolvency proceedings created to accelerate the process and to give more freedom to the debtor in order to agree on a special restructuring with the creditors. In this case, the debtor will communicate to the court their situation of insolvency and will propose a payment plan to all the creditors. If this is accepted, it will be homologated by the court. If the debtor's proposal, after three months since the communication to the court, does not gain three fifths of the creditors' approval, or the payment plan is not complied with the creditors' approval, the debtor will have to start the ordinary insolvency proceedings within the next month.

During the whole proceedings, the debtor company will not be considered insolvent, so all the legal procedures and actions will be open and active.

#### **39.6.3. Required documents**

In order to lodge a claim, we need:

- Copies of the invoices
- An updated statement of account

#### **39.6.4. Expected time frame**

The deadline for lodging claims is from 15 to 30 days, depending on the type of proceedings, and it starts from the publication of the insolvency in the Spanish Official Gazette. The revision of the claims lodged can take three to six months, but it depends on the incidents presented, and the trustees have to check all of them before issuing the final report with a list of credits.

The whole duration of insolvency proceedings depends on the payment plan agreed or the time needed to liquidate the debtor company. It should be between five and ten years. In Spain, a case is open until all the payments have been received by you, or we verify that we have no option of recovery.

## **39.7. Arbitration and mediation**

Should the parties have agreed previously, there are two available options to solve a dispute: arbitration and mediation or conciliation. Agreeing to a private arbitral tribunal has three advantages compared to regular legal proceedings. It's quicker, as the arbitral tribunals are less busy, and there are no appeals. It's also more cost-effective, and the hearing and process are confidential. However, agreeing to arbitration also means excluding the jurisdiction of the ordinary courts.

Arbitration in Spain is based on the rules of Arbitration Law 60/2003 and Law reform 11/2011. The arbitration administration and procedure can be commissioned from public law corporations, non-profit entities and associations, and other arbitration institutions.

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 find 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 Chambers of Industry and Commerce or by professional mediators. The resulting agreement is not a judgment, and the parties can ignore the mediator's advice if they wish.



# 40. Sweden

GDP  
**\$551** billion (2018)

## Growth rate

GDP  
**-0.73%**  
 (2019 est.)

Export  
**1.54%**  
 (2019 est.)

Import  
**2.01%**  
 (2019 est.)

## Industries



Electronics



Food



Metals



Paper



Transport

## Success rate

**50%–75%**



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 40.1. Amicable collections



### 40.1.1. General information

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

### 40.1.2. Local agents

Currently we do not offer field service to visit debtors in Sweden. However, if debtors wish to visit our premises, we will gladly arrange face-to-face meetings to discuss the situations.

### 40.1.3. Interest

We always charge interest to debtors. It's calculated from the base rate set by the National Bank of Sweden, 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 National Bank of Sweden (plus 8% per year). This rate is fixed twice a year on 1 January and 1 July

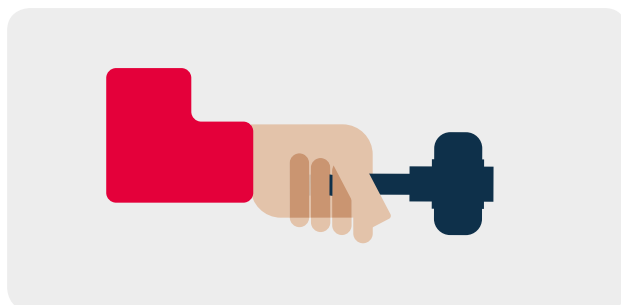
The second alternative will always occur if the interest rate is not agreed upon between you and your debtor.

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

### 40.1.4. Debt collections costs

In Sweden, debt collections costs are chargeable to debtors, representing the creditors' claims for late payment. SEK 180 can be charged for a collections file and further costs will be added if the file is assigned to court. From a cultural point of view, Swedish debtors are used to paying debt collections costs.

## 40.2. Legal collections



### 40.2.1. 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 proven 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 for trial handling, regardless of the reason or the seriousness of the dispute. If a judgment is obtained and the debtor does not pay accordingly, the file will be handed over to the bailiff's court for execution. Wage retention is the most effective measure used by the enforcement office. It requires that the debtor's employer withhold a certain portion of the debtor's salary so that it can be sent to the bailiff, who can then advise the creditors on the paid amounts.

### 40.2.2. Required documents

In order to apply the legal proceedings, we need copies of the contracts, invoices, and a clear statement of account indicating the payments and credit notes that have been paid against 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 oral negotiations, we need the visit or negotiation reports and the names of any witnesses.

### 40.2.3. Lawsuits

A regular lawsuit procedure is initiated directly either after the amicable collections have failed due to a 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 the 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 publish the final judgment. The parties will be informed about the outcome in writing by the responsible court.

### 40.2.4. 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 judge and lawyers on both sides.

### 40.2.5. Costs and interest in the legal phase

SEK 160 can be charged for a collections file and further costs will be added if the file is assigned to 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 the 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.

## 40.3. Insolvency proceedings



### 40.3.1. 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

### 40.3.2. Proceedings

After the debtor or a creditor files for the insolvency of the debtor, a preliminary liquidator is appointed to check if sufficient assets are available to cover the costs of the proceedings and the liquidators. If these costs are deemed to be covered, then the insolvency proceedings will start and a liquidator will be appointed. If this procedure is not 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 a 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 estate insolvency proceedings, no dividends are paid.

**40.3.3. Required documents**

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

**40.3.4. Expected time frame**

The expected time frame for insolvency estate in Sweden is one to three years.

# 41. Switzerland

GDP  
**\$704** billion (2018)

## Growth rate

GDP  
**0.54%**  
 (2019 est.)

Export  
**1.69%**  
 (2019 est.)

Import  
**2.43%**  
 (2019 est.)

## Industries



Chemicals



Consumer durables



Electronics



Machines



Services



Textiles

## Success rate

**up to 50%**



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 41.1. Amicable collections



### 41.1.1. General information

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

### 41.1.2. Local agents

At the present time, we do not offer field service to visit debtors in Switzerland. Services are operated from our office in Germany.

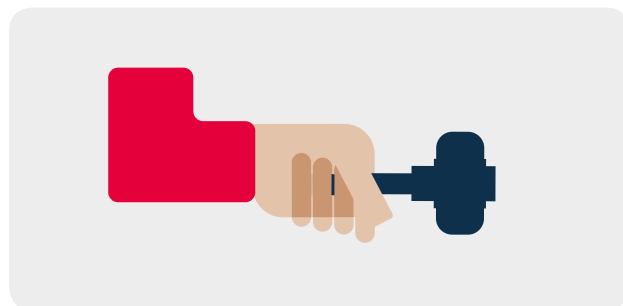
### 41.1.3. Interest

We always charge interest to debtors. It is 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.

### 41.1.4. Debt collections costs

Debt collections costs are charged to debtors. They are calculated on the basis of the recommendations of the Swiss Debt Collection Union. The collections costs represent your claim to the debtor based on the payment delay of the debtor and include the interest and costs resulting from the late payment. We forward all the recovered debt collections costs to you to reduce the claim, retain the costs, or add them to our success fees. This depends fully on the contractual debt collections agreement between you and Atradius Collections.

## 41.2. Legal collections



### 41.2.1. 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".

### 41.2.2. 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 booked regarding the outstanding invoices.

In the case of a regular lawsuit procedure, copies of the complete contractual documentation should be available, starting with 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 oral negotiations, we need the visit or negotiation reports and the names of the witnesses.

### 41.2.3. Legal dunning procedures

Before you can sue your debtor, mandatory pre-legal actions have to be initiated before the administrative official debt collections 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 collections 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 cannot be charged to the debtor.

### 41.2.4. Lawsuits

A regular lawsuit is initiated either after 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.

#### 41.2.5. Expected time frame

Four to six months are required before the execution in the proceedings before the debt collections 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.

#### 41.2.6. 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 attorneys' fees. These depend on the judge's decision as to whether the debtor bears them in full, partially, or not at all.

## 41.3. Insolvency proceedings



### 41.3.1. 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.

### 41.3.2. 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 is not possible. A trustee in bankruptcy is appointed by the assembly of the creditors that decide if it will be a particular person or a specialised officer belonging to the Bankruptcy Office. The creditors receive a certificate of loss ("Verlustschein") if their claims are not 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 will have to be ratified by the court.

### **41.3.3. 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

### **41.3.4. Expected time frame and outcome**

The whole duration of insolvency proceedings is between one and five years. In the case of a moratorium, dividends of around 20% to 25% can be expected.



# 42. Tunisia

GDP  
**\$40** billion (2018)

## Growth rate

GDP  
**-9.25%**  
 (2019 est.)

Export  
**2.95%**  
 (2019 est.)

Import  
**0.10%**  
 (2019 est.)

## Industries



Agriculture



Chemicals



Food



Metals



Services



Textiles

## Success rate

**50%–75%**



## 42.1. Amicable collections



### 42.1.1. 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, collections opportunities have become worse.

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

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 payment orders in case of non-payment. They're much quicker than ordinary lawsuits.

### 42.1.2. Local agents

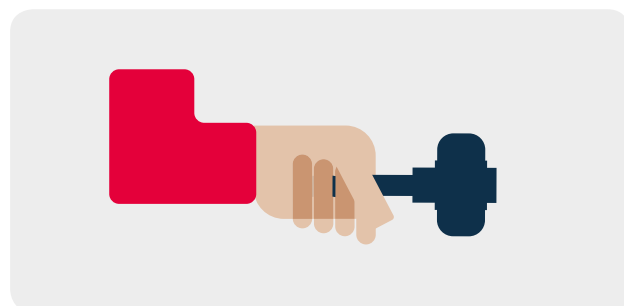
Our collectors may take decisions to increase pressure through local agents out of court, if in-house debt collections attempts fail. These agents may appoint a bailiff, who will send an out-of-court formal notice of payment to the debtor and will organise a visit if appropriate. Depending on the specific details of each case, the local agents may appoint a lawyer, who will continue to try to come to a settlement without the need for a court case.

### 42.1.3. Interest

During the amicable phase, it's prohibited to transfer any amount of interest or costs that do not correspond to those mentioned in the sales and customs documents, even if both parties agreed on them. 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 if agreed on by both parties.

It only becomes possible to transfer the interest and contractual indemnities resulting from the agreement of the parties in the frame of legal proceedings. In commercial dealings, the parties may agree on commonly used interest (used in their businesses), on the condition that it does not reach a level that can be considered usurious. The date from which this interest rate will begin 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 cannot be capitalised.

## 42.2. Legal collections



### 42.2.1. General information

Depending on the outcome of the amicable debt collections procedure, the documents available, and the debtor's solvency, we will always make the most sensible recommendations as to whether or not it is 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 the Private International Law, it is the characteristic performance that determines the rules of jurisdiction. Under Tunisian law, it is the rules of the country of the supplier that govern this relationship in cases where the parties failed 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 limits for appeals and the means of evidence in commercial matters. The time limit to lodge an appeal is 15 years between traders and starts from the transaction dates. In terms of providing proof of contract performance, it is 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 to lodge appeals (15 years), thereby preventing the case from

becoming time-barred, given the fact that the institution of court proceedings is 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 inside the country.

#### 42.2.2. Required documents

Tunisian law requires the 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.

#### 42.2.3. Legal dunning procedures

A payment order is the quickest procedure but it can only be used if your claim cannot 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.

#### 42.2.4. 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 does not pay voluntarily to avoid the attachment of their movable or immovable property or the seizure of their bank accounts. Most of the time, the legal proceedings are so long that debtors have enough time to organise their insolvency.

#### 42.2.5. Expected time frame

A judgment usually takes two years or more, depending on the specifics of the case. The debtor can still appeal the decision, which can add to the case's time.

#### 42.2.6. 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 the economic and financial situation. 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.

## 42.3. Insolvency proceedings



#### 42.3.1. General information

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

#### 42.3.2. 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 the bankruptcy, the creditors lodge their claims to the receiver ("syndic") with a recapitulative listing of the attached documents with evidence of the debts. The creditors who do not lodge their claims within eight days from the decree of the 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 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 letter. 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 the bankruptcy, the receiver sends to the clerk's office a statement of debts. The clerk's office then warns the creditors of the deposits of 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 letter.

### **Act on the Recovery of Companies in Economic Difficulties**

The Act on the Recovery of Companies in Economic Difficulties aims at providing 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 regime 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 the creditors reach an agreement within three months, which may be extended by another month.

The launch of the procedure causes all the lawsuits and enforcement of the recovery of all the prior claims to be suspended. There are no restrictions on the way the parties reach an agreement (e.g. payment of the debts by instalments, cancellation of the debts, halting the accrual of interest).

If the terms are agreed on, 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 in 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 their creditors. To this end, the debtor is to file 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 the 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 individual legal action and all 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 asserted after this period will not be registered.

# 43. Turkey

GDP  
**\$766** billion (2018)

## Growth rate

GDP  
**-7.85%**  
 (2019 est.)

Export  
**5%**  
 (2019 est.)

Import  
**-7.20%**  
 (2019 est.)

## Industries



Chemicals



Construction



Construction materials



Electronics



Food



Metals



Paper



Textiles



Transport

## Success rate

**up to 50%**



## 43.1. Amicable collections



### 43.1.1. General information

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

### 43.1.2. Local agents

We use two experienced local debt collections attorneys as a debt collections company on our behalf. They can also represent us in court if legal action becomes unavoidable. They provide a comprehensive collections service, including double-registered letters, faxes, collections calls, personal visits, and debtors' credit reports.

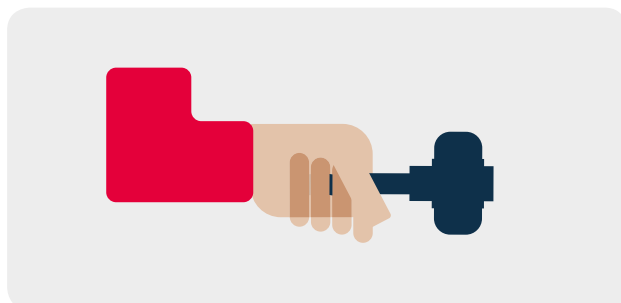
### 43.1.3. Interest

Contractual interest can usually be claimed. If no interest rate has been agreed contractually, the legal and default interest rate is set as the maximum interest rate applied to foreign exchange accounts set by Turkish public banks. As this rate fluctuates daily, our lawyers advise applying an average rate of 6%. If your claim is in Turkish currency, the interest rate will be significantly higher (approximately 20% per year).

### 43.1.4. Debt collections costs

Collections costs can only be demanded from the debtors if these have been contractually agreed between you and your debtors.

## 43.2. Legal collections



### 43.2.1. General information

The civil courts of first instance cover all civil cases other than those assigned to the peace courts. The Turkish judicial system is composed of high courts, courts of appeal, and the Supreme Court of Appeal, which is the last instance for reviewing judgments rendered by the lower courts. 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.

### 43.2.2. Required documents

In order to proceed with a payment order, a power of attorney is required that must be notarised and legalised by the 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 contracts, orders, order confirmations, delivery notes, invoices, as well as exchanges of correspondence. In the case of oral negotiations, we require the visit and negotiation reports, together with the names of the witnesses.

### 43.2.3. 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 to declare 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 the 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 bank accounts.

#### 43.2.4. Lawsuits

In the case that the debtor files an objection, no enforcement will be initiated and you have to apply to the commercial court. 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 file to the experts. The parties can then submit their objections to the expert's 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 is not justified and the debtor appeals the decision, it is possible to pick up the enforcement. An appeal does not stop the enforcement, unless the debtor submits a bank guarantee for your claim amount to the bailiff's office.

#### 43.2.5. 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.

#### 43.2.6. 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 court costs and administrative expenses of the collected amount only. If there are 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 "Harclar Kanunu", laws number 492 (law for 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 situations. In all cases, the losing party has to bear the costs of the legal proceedings according to article 417 I "Usul Hukuk Muhakemeleri Kanunu" (Turkey Civil Process Law). In the case of partially winning, the costs will be divided between the parties.

## 43.3. Insolvency proceedings



### 43.3.1. 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 will not be sufficient to meet 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 threat of bankruptcy, rather than for the sake of the bankruptcy itself.

A bankruptcy action will be started as an individual action by the creditors and will remain an individual action right up to the moment the court declares the debtor bankrupt. This enables the initiating creditors to stall or stop the bankruptcy procedure in return for payments or settlements.

### 43.3.2. Proceedings

A bankruptcy order of payment is served on the debtor. Regardless of the debtor's response to the order of payment, you must take the matter to court, and it has to be the court that decides if 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 an 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 to abort the case right until the moment the court declares the

debtor bankrupt. Once this happens, you will no longer have sole control over the matter and all the creditors will have to decide together. It will 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 the deadline of one month. In any event, if there is a dispute between the debtor and the creditors, the court must first resolve this dispute completely. Bankruptcy can only be declared after all the disputes have been resolved by the court (as an integrated phase of the bankruptcy case).

#### **43.3.3. 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 original remaining 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 are not 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.

#### **43.3.4. Expected time frame and outcome**

A bankruptcy claim will typically take about one year from the start of the bankruptcy declaration if the debtor does not fight against it. If the debtor defends, it will 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 will 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.



# 44. Ukraine

GDP  
**\$125** billion (2018)

## Growth rate

GDP  
**8.25%**  
 (2019 est.)

Export  
**4.72%**  
 (2019 est.)

Import  
**4.39%**  
 (2019 est.)

## Industries



Chemicals



Electronics



Food



Machines



Metals



Transport

## Success rate

**up to 50%** 

Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 44.1. Amicable collections



### 44.1.1. General information

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

### 44.1.2. Local agents

We offer field service to visit debtors at their offices, where you will 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 the debtors wish to visit our office, we will gladly meet them to discuss solutions for your cases face-to-face.

### 44.1.3. Interest

The Ukrainian business culture is not to pay interest fees, so it's difficult to achieve an amicable solution and obtain payment.

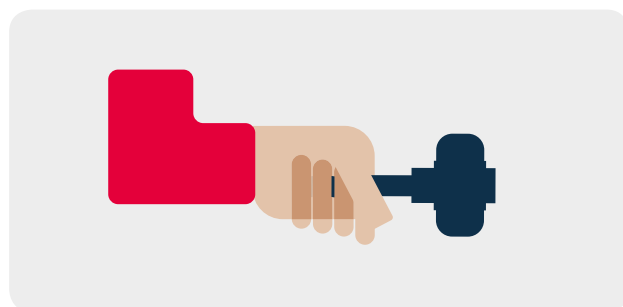
If, however, an agreement is reached and the debtor is ready to pay the interest fine, as per currency control and regulations, it's necessary to:

- Sign an additional agreement on the matter of payment of the interest
- Confirm the changes in the currency deal passport
- Issue an invoice from you totalling the amount of the interest
- Reconcile the payment with the debtor's banks

### 44.1.4. Debt collections costs

Debt collections costs are not chargeable to debtors in Ukraine, as there is no such law present for now. So payment of the debt collections costs depends only on the contractual agreements between you and your debtor.

## 44.2. Legal collections



### 44.2.1. 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 is not followed, your claim will be rejected by the court.

### 44.2.2. Required documents

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

- Contracts signed by the parties with all appendices
- All unpaid invoices
- A statement of account indicating the payments and credit notes that have been booked regarding the outstanding invoices
- Transportation documents with the debtor's mark proving the goods' receipt and customs declarations
- Correspondence and other documents related to the debt
- An extract from the trade register of your company
- A power of attorney

### 44.2.3. Lawsuits

Your claim is submitted to the court and the court checks the documents and grounds of 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. In case the Commercial court solves the dispute, the parties have to select a judge from each side.

### 44.2.4. Expected time frame

The average duration of a court procedure can take from four to six months or longer.

### 44.2.5. Costs and interest in the legal phase

Costs of the proceedings (court costs and fees) are determined by the provisions of the procedure code and are not 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 the 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. Usually the court awards maximum interest up to 10% of the principal amount in cases where it's requested from the debtor; however, there isn't 100% guarantee that the interest will be awarded. Requests for interest will increase the amount of court fees.

The debtor has to cover the court fees if the 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 whether they are awarded from the debtor depends on the court.

## 44.3. Insolvency proceedings



### 44.3.1. 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 cover debts in accordance with their reorganisation plan.

#### Liquidation procedure

The court appoints an administrator who will prepare the list of creditors, receive the documents, recover the debts, and sell the assets. The debtor company is liquidated once the procedure is finished.

### 44.3.2. Proceedings

Your claim has to be submitted within one month to the court making the decision to start insolvency proceedings. If your claim is not submitted within this term, it can still be accepted by the court, but the claim will be the last in the order of creditors.

### 44.3.3. Required documents

Your claim has to be lodged to 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.

### 44.3.4. Expected time frame and outcome

The deadline to lodge claims is one month and it starts from the date when the information about the court's 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.

# 45. The United Arab Emirates

GDP  
**\$425** billion (2018)

## Growth rate

GDP  
**0.76%**  
(2019 est.)

Export  
**2.89%**  
(2019 est.)

Import  
**0.85%**  
(2019 est.)

## Industries



Agriculture



Chemicals



Construction materials



Consumer durables



Metals



Textiles



Transport

## Success rate

**up to 50%**



## 45.1. Amicable collections



### 45.1.1. 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 keeping close contact with debtors, we are 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. Field visits and face-to-face meetings with debtors are an integral part of our collections initiatives.

### 45.1.2. 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 commence legal action in the UAE, your claim will have to be filed at the court of first instance.

### 45.1.3. Interest

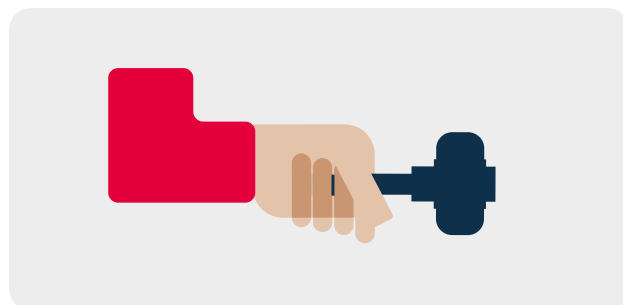
Although the chief justice of the Supreme Court in suits filed by banks for recovery ruled that ordering the debtors to pay interest for late payments can be considered some sort of damage, it is compliant with both UAE law and traditional Islamic law (Shariah).

From a cultural point of view and in practice, debtors in the UAE do not pay interest on delayed payments.

### 45.1.4. Debt collections costs

From a cultural point of view and in practice, debtors in the UAE do not pay collections costs.

## 45.2. Legal collections



### 45.2.1. General information

There is a three-tier legal system, including the court of first instance, court of appeal, and court of cassation.

The civil court (or court of first instance) hears all the 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 points of law alone to the court of cassation, which is usually composed of five judges. All the decisions of the court of cassation are final and are not subject to appeal.

### 45.2.2. Required documents

Litigation in the Middle East tends to be almost completely document-focused. There is little oral advocacy, and it's vital that your case can be proven on paper.

In order to substantiate your claim, each stage of the contracts must be evidenced (e.g. 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 with 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 which there will be translation costs. These costs are generally not recoverable in the proceedings.

### 45.2.3. Lawsuits

In order to commence legal action in the UAE, your claim will have to be filed at a relevant court (i.e. a court that has the jurisdiction to hear the dispute). The claim needs to set out the basis of 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 at court and the claim itself will need to be in Arabic or translated into Arabic by an official translator.

#### 45.2.4. 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 judge and lawyers on both sides.

#### 45.2.5. Costs and interest in the legal phase

Legal costs depend on many factors; therefore, it is 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 debt. 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.

## 45.3. Insolvency proceedings



### 45.3.1. General information

The UAE's federal laws provide frameworks for the reorganisation, liquidation, and bankruptcy of insolvent companies and individuals. The UAE 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 Bankruptcy Law:

#### Repeal of the current regime

Chapter V of the Commercial Code, which sets out the UAE's current insolvency 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 Code 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 not established under the CCL. For example, companies formed by the Emiri decree 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 the financial free zones (DIFC and ADGM) that have their own insolvency provisions. In contrast to the 2011 Draft, there are no provisions addressing individuals acting in their private capacity.

#### 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 Code provisions apply to businesses that cannot pay their debts (essentially, a cash flow test). The New Law introduces an alternative balance sheet test to assess if the assets of a business are insufficient to cover its liability.

#### 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 court approval, which may be extended for another three years with creditor 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 levels of creditor approval. But a longer period of five years (extendable by another three years) is allowed for implementation.
3. **Insolvency and 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 is expressly provided that the relevant process continues whilst 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 are not substantially different from those currently available under the Commercial Code. In particular, unlike the 2011 Draft, the New Law does not 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 apply 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 bankruptcy) rather than attempt to restructure the business. One of the key changes under the New Law is to decriminalise this behaviour. If the debtor fails to pay their due debts for over 30 business days, or is insolvent on a balance sheet basis, they are required to initiate insolvency proceedings. Failure to do so may result in a disqualification order against the debtor under certain circumstances – but it is not a criminal offence.

#### **Bounced cheques**

Potential criminal liability for signing bounced cheques applies in respect of non-UAE nationals under the Penal

Code. This feature of UAE law is often cited as a key reason why so many traders in financial difficulties flee the country. The New Law provides for proceedings in respect of the bounced cheques issued by the debtor to be stayed once a protective composition or reorganisation scheme has been initiated, provided that the cheques in question were written prior to the application. The stay continues until the relevant procedure is completed and the holders of the cheques are treated in the same way as the debtor's other creditors, with settlements in accordance with the scheme discharging the debts and potentially rectifying the criminal breach. This is a particularly helpful change, which is likely to encourage the debtor to take proactive steps to address their financial difficulties.

#### **Creditors**

Under the Commercial Code, any creditor, regardless of their claim amount, may apply to have their debtor declared bankrupt. The New Law introduces some new specific requirements in this regard. Before filing insolvency proceedings against the debtor, the creditor or the group of creditors must now hold 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**

Provisions are included that allow priority to new finance following the commencement of a protective composition or reorganisation scheme, with safeguards for existing secured creditors.

#### **45.3.2. 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 satisfied that the debtor company has ceased to pay their debts as a result of financial difficulties.

After the 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 their investigations and resolving any preliminary disputes, the court will fix a date of 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 interest, notwithstanding the declaration of bankruptcy.

#### **45.3.3. Required documents**

Whilst initiating the 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.

#### **45.3.4. Expected time frame**

The average duration of bankruptcy proceedings is between two and three years, and varies on a case-by-case basis.



# 46. The United Kingdom

GDP

# \$2,829

billion (2018)

## Growth rate

GDP

# 0.02%

(2019 est.)

Export

# 2.45%

(2019 est.)

Import

# 3.15%

(2019 est.)

## Industries



Chemicals



Consumer durables



Electronics



Food



Machines



Metals



Paper



Textiles



Transport

## Success rate

# 50%–75%



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

# A The United Kingdom

## 46.A.1. Amicable collections



### 46.A.1.1. General information

Our collectors try to collect debts without recourse to legal action by telephone and letter. We always try to obtain 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 upon). All of our investigations are completed with the assistance and agreement of our legal team.

### 46.A.1.2. Local agents

We currently use a field agent partner to visit debtors to ascertain if they have any assets or means to make payment.

### 46.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 the contracts between businesses. It's important to realise that this legislation applies only to commercial debts. It does not apply when one of the parties is not acting as a business; for example, sales to a private individual or a consumer. The debts should have arisen in the course of business. Both parties should be businesses, commercial entities, or public sector organisations.

Interest is claimed at the prevailing Bank of England rate – currently at 0.5% plus 8%. The rate is listed as the UK 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.

### 46.A.1.4. Debt collections costs

As well as interest, you may also charge an amount to compensate for the costs of collecting 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

### 46.A.1.5. Prescription

#### The Limitations Act 1980

This outlines the time limit in which you can chase your debtors for outstanding debts. This act only applies when no contact has been made between you and your debtors 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 debtors, which is outlined in the Limitations Act 1980. After this period, it's no longer possible to pursue your debts.

### 46.A.1.6. Accepted and most common payment methods

The UK still operates on payment 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.

### 46.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 prime reasons why legal action fails is because the creditors do not 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 time.

<b>Sole trader</b>	This type of company is run by one individual. That individual is personally liable for the business's debts. But in order to issue legal proceedings, we must first be sure of the identity of the individual, such as their name and, if possible, date of birth
<b>Partnership</b>	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
<b>Limited company</b>	This type of company is run by directorship. We can only pursue the company and not the individuals themselves

#### 46.A.1.8. Sources of information

Limited companies must register with the Official Register Companies House. Sole traders and partnerships are not required to do so. We are 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 a tracing agent to undertake personal online searches and qualify this information by means of calls to the individuals' neighbours and other businesses. In the UK, using a debt collections agency is the most preferred method when outsourcing debt recovery.

### 46.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 payment for each invoice relating to the goods.

#### All monies

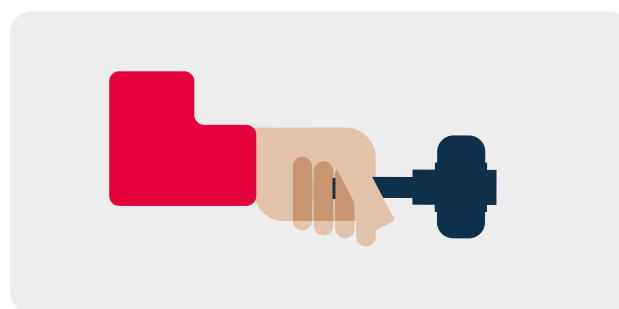
The title to the goods only passes to the buyer when they have paid for all the goods supplied.

We will advise you to enforce your ROT clauses. In the case of all monies, the goods must be identifiable. For this reason, it's not possible for us to enforce ROT clauses on your behalf; however, we will assist in any way we can.

### 46.A.3. Safeguarding measures

Occasionally, debtors will offer personal guarantees for the debts, but it's important to note that this must be legally enforceable.

### 46.A.4. Legal collections



#### 46.A.4.1. General information

Within the UK, there are several different and separate legal jurisdictions: England and Wales, Scotland and Northern Ireland. Whilst 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 the 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 is not successful, there are three main options:

- County court judgement
- 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 under the policy, then in most cases, any credit insurance in place will contribute towards the legal costs. You will still be consulted on the legal action, but, if your claim has been paid, the credit insurance will direct such action. If the credit insurance does not cover the debt, then we will need you to agree to legal action and its costs in writing prior to commencing litigation. We will also ask you to make payment on account for legal action, particularly if the case is defended.

#### 46.A.4.2. Expected time frame

On average, pre-legal actions like the LBC take 14 days after their issuance. Litigation action takes approximately 12 weeks for a standard case to reach a judgment. The case is then transferred to the High Court to obtain 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.

#### 46.A.4.3. Costs and interest in the legal phase

Costs will differ greatly depending on the type of legal action necessary 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 commences.

Court fees for England and Wales were increased in 2014 and 2015. You can find more details at [www.gov.uk/make-court-claim-for-money/court-fees](http://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 debtor's account after successful judgment.

We offer a highly competitive, fixed tariff for standard cases. Legal costs of 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. This cost can range from GBP 150 to GBP 500 per hour. It's not possible at the start of a case to make an exact estimation of its costs, but it's clear to see that heavily defended costs can easily equal or exceed the value of the debt itself. For this reason, we will advise on some form of negotiation and/or mediation. Indeed, the UK government has recently ruled that all cases must partake in some form of mediation before going to litigation, and, at the very least, be able to show attempts to resolve the disputed issues between the parties. The solicitor will continue to add statutory interest and costs to the debt.

## 46.A.5. Enforcement

### 46.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. A judgment does not 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.

### 46.A.5.2. Enforcement in movable property

If the debtor is not able to make any payments, then the sheriff can seize the goods relating to the debtor's business as payment towards 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.

### 46.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 cannot 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.

## 46.A.6. Insolvency proceedings



### 46.A.6.1. General information

There are a variety of insolvency types within the UK, ranging from a voluntary arrangement - offering a fixed percentage payout to the creditors, to administration - where an administrator is appointed to try and trade out the debtor company, to liquidation - where all 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 establish 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 is judged that there will be dividends at some point in the future, we can monitor the debtor to claim the dividends when appropriate.

#### 46.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

#### 46.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.

## 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.

### 46.B.1. Summary cause actions

A court action can be commenced by you (the claimant) by preparing a summons on a pre-printed form. The supporting invoices or a statement of account should be produced 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 post – and thereafter by the sheriff officer if the postal service is unsuccessful. With 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, whilst the calling date (always seven days after the return date) is the date 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 minuting for a decree) by completing a pre-printed form. The judgment will be granted 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 an individual or 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.

#### 46.B.1.1. Ordinary actions

Unlike the 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.

#### 46.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 the expiry of 21 days, minute for a decree. If the defender admits 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 if the application should be granted. The court takes about three weeks to send the judgment to the claimant's lawyer.

### 46.B.2. Enforcement of decrees

The responsibility for enforcing sheriff court decrees falls on the 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 within a dwelling house. The effectiveness of diligence can be described best as a filtering process, with the slow payers settling earlier on in 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 deals more sympathetically with individual consumer debtors, but commercial debtors have less protection.

### 46.B.3. Debt arrangement scheme

A central feature of the 2002 Act is the debt arrangement scheme (DAS), available to individuals and sole traders, allowing them an opportunity to pay their debts in a managed way over a given period of time without threats of enforcement. Such individuals 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 whilst an application is being considered.

#### **46.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 it be paid within 14 days.

#### **46.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.

# 47. The United States

GDP

# \$20,494

billion (2018)

## Growth rate

GDP  
**4.15%**  
(2019 est.)

Export  
**2.71%**  
(2019 est.)

Import  
**3.90%**  
(2019 est.)

## Industries



Chemicals



Construction materials



Consumer durables



Electronics



Food



Metals



Transport

## Success rate

# up to 50%



Source: International Monetary Fund, World Economic Outlook Database, Central Intelligence Agency's Factbook

## 47.1. Amicable collections



### 47.1.1. General information

We maintain a professional collections process and focus on the relationships between you and your debtors at all times. We pursue debtors within the bounds of federal and state laws 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 collections phase is not productive, the file is adequately documented to fully utilise the second tier of our collections 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 upon). All of our investigations are completed with the assistance and agreement of our legal team.

### 47.1.2. Local agents

We have a network of local attorneys to assist with collections if necessary. Currently we do not offer field service to visit debtors in the U.S.

### 47.1.3. Interest

We may charge interest back to debtors. Currently, we add 4% interest to each case placed with our office in the U.S. However, in most states, if no signed contractual agreements exist, then we cannot exert legal means to collect the interest. If the contractual interest is greater than 4%, then the interest we charge will match that of the agreed amount. U.S.-based debtors are not used to paying interest. Often the actual amount of interest is considered a negotiation tool between debtors and collectors.

### 47.1.4. Debt collections costs

Collection costs cannot be added to your case unless a signed contractual agreement exists between you and your debtor. However, even if the contractual agreement includes the collections costs, they are often used as a negotiation tool between the debtor and collectors.

### 47.1.5. Prescription

A statute of limitations governs the time period within which a lawsuit must be commenced. Statutes of limitation 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 partial payment, or if legal action is undertaken prior to the expiration of the statute.

### 47.1.6. Accepted and most common payment methods

The most common payment methods are bank transfers, wire transfers, and cheque payments.

### 47.1.7. 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 laws 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)



#### 47.1.8. 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 are able to recommend the next steps.

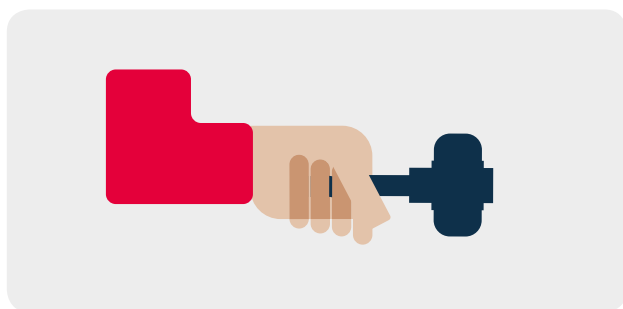
In most of the fifty states, companies register with the Secretary of State, which can be accessed online. We have direct access to these websites and can obtain additional information on shareholders, status, and some corporate developments, which may be published.

A debtor with an unknown address can be traced by our in-house skip tracing efforts. We are 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.

## 47.2. Safeguarding measures

You can safeguard debts from U.S.-based debtors by having signed personal guarantees in place upon the sale of the goods or services. A signed personal guarantee gives you the right to pursue personal assets if the debtor company defaults.

## 47.3. Legal collections



#### 47.3.1. 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 the state court system. Whilst 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 key goals of both systems.

#### 47.3.2. 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 collections matters are handled through the state and county courts.

#### 47.3.3. 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 attorney assigned 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.

#### 47.3.4. Legal dunning procedures

This is most commonly known as initial legal proceedings. The attorney assigned to the case is required to take efforts to collect or settle the outstanding debt prior to commencing 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.

#### 47.3.5. Lawsuits

Once the attorney receives the suit's requirements and any necessary documentation, they will prepare a summons and complaint and file both with the clerk of the court. It is 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 is not served within the state's statutory period for service of process.

#### 47.3.6. 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 cannot be appealed.

#### 47.3.7. 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.

#### **47.3.8. Costs and interest in the legal phase**

Legal collections in the U.S. are 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 towards 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 filed. All the other fees and collections costs are at the discretion of the presiding judge and, in most cases, never allowed.

### **47.4. Enforcement**

#### **47.4.1. Enforcement in debt**

After the court enters 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. Judgment liens 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 entered 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 cannot be located. Post-judgment discovery can include interrogatories, requests to produce financial documents, and depositions of the debtor's principals, in order to learn the nature, extent, and locations of the debtor's assets. If the debtor does not 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.

#### **47.4.2. Enforcement in movable property**

The judgment must be served on the debtor through service of process, after which the court will enter 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 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.

#### **47.4.3. 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.

#### **47.4.4. Expected time frame**

Enforcement in movable property has a wide 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.

## 47.5. Insolvency proceedings



### 47.5.1. General information

Bankruptcy is controlled by federal laws, which prevent any collections effort or litigation from proceeding as long as bankruptcy petitions are pending. There are more bankruptcies filed as no-asset bankruptcy, in which the debtors give sworn statements that there are no assets to satisfy the creditors. The creditors are not 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 to submit 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 if the creditors will receive distributions from the bankruptcy estate.

### 47.5.2. 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 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 off 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 consumers or personal guarantors, and chapter 11 is normally filed by companies or corporations. Individuals filing chapter 11 are

allowed, but it's rare. 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.

### 47.5.3. 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

### 47.5.4. 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 if any dividends are available for distribution.

The duration of bankruptcy proceedings is between six months and five years.

### 47.5.5. Rescission

In the preference period or 90 days prior to the filing date of the 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.

## 47.6. 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 to 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. The parties each present 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 trial. If both parties agree with 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 a lesser result at trial than what the mediator or arbitrator recommended, that party must pay the opposing party's attorneys' fees.

# 48. Vietnam

GDP

# \$241

 billion (2018)

Growth rate

GDP

## 7.89%

(2019 est.)

Export

## 12.85%

(2019 est.)

Import

## 13.25%

(2019 est.)

Industries



Chemicals



Construction materials



Consumer durables



Electronics



Food



Machines



Metals



Textiles

Success rate

# up to 50%



## 48.1. Amicable collections



### 48.1.1. General information

We follow a collections process that is professional at all times. Our objective is to retain the relationships between you and your debtors whenever possible. Our staff of collections professionals are able to speak and write the Vietnamese language and carry out the first collections tier in-house. We do background research on debtor companies and their directors, and verify their addresses along with phone numbers. Our team relentlessly pursues debtors verbally and in writing within the bounds of federal and state laws.

### 48.1.2. Local agents

We have several local law firms and agents to help us with amicable collections and litigation matters. One of the agents is a specialised credit-reporting provider. They're also able to trace debtors and conduct face-to-face meetings, depending on the debtors' locations. Our local partners are present in various locations across Vietnam, including Hanoi and Ho Chi Minh City. Through their network, they're able to cover most of Vietnam.

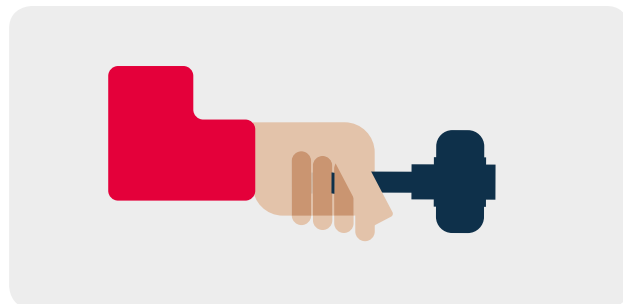
### 48.1.3. Interest

It's not common in Vietnam to collect late payment interest, and we focus mostly on the principal amounts. In the legal stage, interest charges, if previously agreed upon per contract, will be added to the principal amounts.

### 48.1.4. Debt collections costs

Debt collections costs can't be charged to debtors, as it's not common practice in Vietnam. Therefore, we will only focus on collecting principal amounts.

## 48.2. Legal collections



### 48.2.1. General information

Legal proceedings in Vietnam can be lengthy and expensive, as the legal system in Vietnam isn't very efficient. Legal proceedings are rarely applied in Vietnam due to weak judgment enforcement procedures. A legal procedure is often taken in order to get the debtor to go to court following the judge's summons. However, we aim to obtain conciliation negotiations at the court when both parties are summoned there. This method is particularly effective for publicly listed companies.

### 48.2.2. Required documents

The required documents include, but not limited to:

- Agreements
- Invoices
- Statements of account
- Acknowledgements of debt
- Bills of lading
- Delivery orders

All documents are subject to translation into the Vietnamese language.

If you're a foreign creditor, you're required to sign a power of attorney and a statement of claim. Then you have to submit, but not limited to, your business registry, the charter or articles of association of your company, and your directors' passports to start legal proceedings in Vietnam. These documents are required to be notarised and legalised by the Vietnamese Embassy in your country. Correct and duly signed and stamped documents are key in legal proceedings in Vietnam.

### 48.2.3. Legal dunning procedures

When our lawyer is authorised to take legal action, they will serve the debtor a legal demand letter, setting a deadline to receive the payment. The lawyer will also arrange a meeting with the debtor to discuss a settlement offer or a repayment plan arrangement.

#### 48.2.4. Lawsuits

Generally, Vietnamese law is not well developed. It's often vague or ambiguously drafted and doesn't have a system of case law precedents or other interpretative aids of binding value. This is also the case in respect of the Bankruptcy Law 2014. The law often only sets out basic principles and the regulations need implementing to be effective. Furthermore, partly because of lack of clarity, Vietnamese law in any specific instance is subject to broad interpretation. Different lawyers, governmental agencies, and officials can have contrasting views on the law's application and interpretation.

A lawsuit in Vietnam means a solicitor is allowed to file legal documents against the debtor at court. It can also be done in case the debtor is capable of paying but tries to evade the debt. The lawyer will prepare the documents on your behalf and submit the document to the court. You, as the plaintiff, have to make an advance payment of 50% of the court fees at the time of the document submission.

#### 48.2.5. Expected time frame

The period for a case to run is between six and 24 months, depending on each case's progress through the courts: from filing documents, case acceptance, two to three sessions of request clarifications, two to three mediation sessions, to multiple hearings before a final judgment is granted. This depends on the complexity of the case and the availability of the judge and the lawyers on all sides.

After a judgment is obtained, there is an enforcement period for asset appraisals, asset enforcement, creditor payments, and enforcement fees. This period is between 12 and 60 months.

#### 48.2.6. Costs and interest in the legal phase

Costs vary from case to case, but the minimum legal fee can range between USD 5,000 to USD 10,000, excluding court fees, translation fees, disbursement fees, and collections costs (success fees).

Interest can be applied and added to the principal amount. Legal costs can be considered and applied depending on the facts and the final decision made by the judge. In our experience, the overdue interest is often approved, while the judge often rejects the legal collections costs.

## 48.3. Insolvency proceedings



### 48.3.1. General information

In insolvency proceedings, as a general rule, all companies established in Vietnam will be subject to the provisions of the Bankruptcy Law 2014. Insolvency is a situation in which the debtor can't pay their due debts within three months. It's not based on the debt amounts, but the capability of payments when they're due (Article No.4 of the Bankruptcy Law 2014). The Bankruptcy Law 2014 expressly states that an enterprise or co-operative is deemed to be bankrupt only after the court has determined that the entity is insolvent and has issued a decision declaring its bankruptcy.

### 48.3.2. Proceedings

The creditors, employees, shareholders, and the debtor company itself can start the 'insolvency-toward-bankruptcy' proceedings as per local law.

### 48.3.3. Required documents

The required documents include, but not limited to:

- Agreements
- Invoices
- Statements of account
- Acknowledgements of debt
- Bills of lading
- Delivery orders
- Dunning history
- Email correspondence

All documents are subject to translation into the Vietnamese language.

### 48.3.4. Expected time frame

120 days according to the law, but it could take longer depending on the judge's decision, and time frames can differ on a case-by-case basis.

# Case study

## At a glance

HP Inc. creates technology that makes life better for everyone, everywhere. Through a portfolio of printers, personal computers, mobile devices, solutions and services, HP Inc. engineers experiences that amaze.

- **Industry:** Information Technology and Services
- **Market:** Global
- **Challenge:** Recover invoices from difficult cases and resource-intensive cases
- **Solution:** Amicable collections
- **Result:** HP Inc.'s amount of recovered invoices increased significantly. The result was maximised while their workload of collections was minimised

## Debt collections case

Collecting debts from unresponsive B2B customers took an unwanted toll on HP Inc.'s resources and the recovery rate was disappointing. That's when HP Inc. decided to ask us to recover their debts. "There were cases where we were simply unable to collect the debts. But right away, Atradius Collections achieved impressive results," says Alex Gasca, Global Default and Recovery Manager at HP Inc.

We initiated an amicable collections process for HP Inc. and their number of recovered invoices increased substantially. "There were lots of cases and the recovery rate of Atradius Collections was very high," says Gasca. "Like HP Inc., Atradius Collections operates worldwide. So they know the laws, regulations, and culture in each region and country. They have both the global and local know-how."

Over the years, both businesses have evolved. HP Inc. has improved its in-house collections process and we have gained deep-seated knowledge of HP Inc. – their culture, people, organisation, financial processes, and how HP Inc. works. It was time for the close collaboration between HP Inc. and us to reach the next level.

A new setup called 'the monthly challenge' was introduced to both companies. HP Inc. would discuss the most troublesome cases that Gasca and his team had from various locations worldwide with us. We would learn everything necessary about the cases – what type of customers, what type of invoices, what were the previous collections efforts – and then get to work where the cases were located. "These days we have become more efficient internally. So now the debt collections cases we send Atradius Collections are only the most difficult ones," says Gasca. "But they continue to get results – even with the toughest cases."

The common goal and mutual understanding between HP Inc. and us have made this long-term collaboration flourish. "From the outset, the relationship with Atradius Collections has been open, transparent, and friendly. It helps that we know each other on a personal level. That is important to us. We share the same mission: making HP Inc. more profitable," Gasca continues. "And collecting debts – the big challenge – has worked out very well, from the earliest cases to today's."

If you need to recover commercial debts worldwide like HP Inc., email us [client\\_relations\\_global@atradius.com](mailto:client_relations_global@atradius.com) or call us +31 (0) 20 553 2000. We will follow up with the most suitable solutions to collect your debts.

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### About Atradius Collections

Through a presence in 33 countries, we provide commercial debt collections services in 96% of the countries across the world. Our wide breadth of services, ranging from accounts receivable outsourcing to third party collections, helps companies around the globe recover unpaid invoices. Atradius Collections forms part of Grupo Catalana Occidente, one of the leading credit insurance companies in Spain and worldwide.

If you find this book useful, please visit our website [www.atradiuscollections.com](http://www.atradiuscollections.com). There you will get more publications focusing on the global economy, industry analyses, advice on credit management and current business issues.

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