



**Economic
Outlook
no.1213**

December 2014

Special Report

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International
debt collection

The **Good**, the **Bad** and the **Ugly**

Economic Research



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Economic Outlook no. 1213

Special Report

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Fifty shades of collection

LUDOVIC SUBRAN

Let's face it, whether your business is domestic or international in nature, collecting debt is often a daunting task which one would always prefer to avoid. Of course, collection is about persuasion but there is more to it and, often, going through successive layers of proceedings may be necessary. Persuasion, intimidation, whip-cracking judges are as many reasons why I wanted to draw a parallel between international debt collection and *Fifty Shades of Grey* the international best seller (coming soon to cinemas!). Sometimes, you wonder why companies do that to themselves; it cannot be corporate BDSM, right? But the reality is unfortunately always the same: The longer one waits, the greater the danger of never collecting the debt. Prevention is key, so is getting professional help when needed. You certainly do not want to face toothless courts or enter a weird judiciary game where you will have to put a lot of money and energy with an uncertain outcome. Knowing the cardinal sins (and the commandments) of debt collection in countries where you operate is a must. And go figure, there are as many ways to collect your dues as there are countries in the world. In this report, we analyzed 44 countries and let me tell you, there are 44 shades of collection practices! From Australia's absence of fast-track proceedings to Argentina's excessive pay-

ment terms, it never seems easy. From Belgium to Brazil, amicable arrangements are always preferred over legal actions. Another interesting point is that when people ask why some countries are still labeled as emerging countries when they have growth rates that are ten times what advanced economies are experiencing, it is also about how the private sector's safety net is woven. From payment practices to courts and insolvency proceedings, a country's attractiveness is based on its reputation and how easy to work with it appears to the world. Of course, demand is everything and if there are buyers, why not go but the risks you take - when you are unsure about the 'how to' collect your dues - can put off many CEOs and shareholders. The good news is that all countries are trying to make efforts to sanitize their commercial justice and help international companies get a fair treatment locally. Yet, a good dose of elbow grease is always necessary by specialists, preferably. In the end, you do not want this nightmare to last too long, there is always a fine line between pleasure and pain.

OVERVIEW

International **debt collection**

The **Good**, the **Bad** and the **Ugly**

ANTOINE MARTIN, MAXIME LEMERLE, LUDOVIC SUBRAN

- How does international debt collection work?
- How complex is collecting debt around the world?
- What are the dos and don'ts of debt collection?

International Debt Collection: A three-step approach

International debt collection is never the same. Its complexity depends on many factors including one's relationship with its client. Even though there is a country-specific legal backdrop for collecting your dues (see summaries of Euler Hermes' country collection profiles that appear in the margins of this report), collection can be summarized in three steps.

Step one: Amicable pre-legal negotiation

Negotiating to obtain payment may be difficult, time consuming, costly and frustrating, but this is an essential phase when collecting debt. First, negotiation may be the best way to preserve existing business relationships because discussing issues and finding compromises is often an efficient alternative to contentious routes. Second, negotiation is often a demanding exercise (in terms of both time and money), but it will always be less costly than commencing legal proceedings which always remain complex.



ARGENTINA

- The payment behavior of domestic companies is poor and the average DSO is overall excessive.
- Procedural delays and costs are high and, considering the inability of domestic courts to cope with the caseload in a timely manner, commencing legal action without having first conducting debt collection pre-legal action is overall of little value.
- Debt renegotiation mechanisms have been put in place but in practice, when the debtor has become insolvent, liquidation remains the default procedure even though it is never in the interest of unsecured debtors.



AUSTRALIA

■ The payment culture of Australian companies and the average DSO are overall good but standard payment terms are beyond 30 days whilst the law provides no framework on late payments, late payment interest and collection costs.

■ The court system is complexified by the country's federal structure and provides no fast track proceedings susceptible of facilitating the settlement of undisputable claims. The courts are otherwise efficient, but delays and costs tend to be significant whilst enforcing foreign judgments may prove difficult.

■ Recourse to legal proceedings when the debtor is insolvent is complex and expensive, and the chances of recovering the debt are very low.

Step two: Legal action

Having said this, pre-legal action may also become a frustrating exercise because compromises may lead to debt instalments as well as to debt write-offs, whilst negotiations offers little means to constrain the debtor to pay. Thus, when amicable attempts lead to a dead end, legal action may be the next step.

First, assessing whether the debtor company is still in activity and whether it is solvent is a prerequisite prior to commencing litigation proceedings. Indeed, collecting debt from insolvent debtors is a challenge and it requires commencing complex proceedings which may last for years without any result being guaranteed.

Second, if going to court is always about having one's rights enforced, the process is always constraining and various levels of complexity apply from one country to another. For instance, although legal insecurity is inherent notwithstanding the country, the rule of law perception may

vary, courts may be more or less independent and, needless to say, the duration and cost of proceedings may vary significantly.

Step three: Insolvency

Let's be clear: the longer the proceedings, the greater the chances of realizing that a debtor has not paid other debts and the greater the chance of realizing that it has actually become insolvent too.

Against this worst case scenario, various mechanisms have been put in place to deal with insolvent companies. However, although each type of proceeding has a specific purpose (rescuing viable companies, liquidating others to realize the debt through the sale of the company's assets), in practice companies reaching the insolvency stage rarely survive. Furthermore, the recovery rate in insolvency cases is usually very low: by contrast with debts secured through specifically designated assets, most business



Our Methodology

The Euler Hermes Collection Complexity Score and Rating provide a simple assessment of debt collection procedures in each country, helping to support decisions and manage expectations when trading internationally.

The score is a measure of the level of complexity relating to debt collection procedures within each given country from 0 (least complex) to 100 (most complex). To simplify cross-country comparisons, we summarized the level of complexity in a four-modality rating system: Notable (score below 40), Significant (score between 40 and 50), Major (50 to 60) and Severe (above 60). The score and rating are combining expert judgment by Euler Hermes' Collection specialists worldwide and over 40 objective indicators relating to three areas:

Local payment practices
The local payment habits and regulatory framework overseeing payments. Based on the availability of financial information, payment methods, payment terms, days sales outstanding figures, local payment behaviour and the legal framework relating to late payment interest and collection costs.

Local court proceedings
The complexity and efficiency of court proceedings - measure of the regulatory environment, chances of success, fast-track proceedings, default judgments, the formal legal action process, ownership protection, alternative dispute

Local insolvency proceedings
The existence of effective insolvency proceedings - taking into account insolvency proceedings, priority rules and cancellation of prior transactions

For each country, a visual representation of the complexity by area and the final rating are shown via a four-point scale and corresponding symbols.



► transactions left unpaid would indeed be considered as unsecured debts and would thus come last in the chain of priorities. In other words, financial institutions and tax offices would see their debts being settled first whilst other creditors would typically be repaid with the remaining money. If any, that is.

The underlying logic behind these three steps is crystal clear: when time and procedures go on and on, collection complexity increases, costs rise and the risk of dealing with an insolvent debtor grows. **Simply put, the longer one waits, the greater the danger of never collecting the debt.**

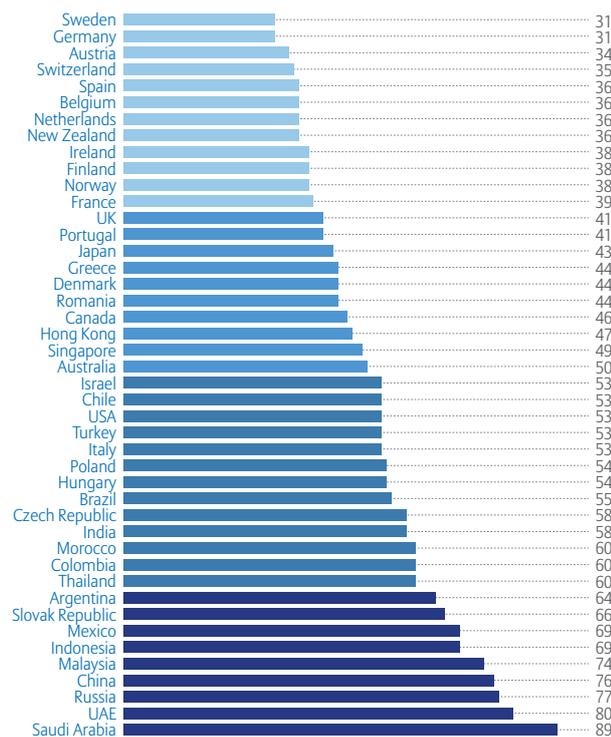
Euler Hermes' Unique Collection Complexity Score

The truth is that the debt collection process is a layer cake of obvious but nonetheless essential steps, each characterized by a specific and increasing dose of complexity. We developed a unique score which takes into account over 40 items related to local payment practices, local court proceedings and local insolvency proceedings. The methodology (see box) enabled us to

rank 44 countries around the world. We designed both a score from 0 (least complex) to 100 (most complex) and a summary rating system (notable, significant, major, severe) to assess debt collection procedures in each country. We will update this ranking on a yearly basis and look forward to including more countries in the scope. In our effort to benchmark best and worst practices in internal debt collection, we ran into serious difficulties as there are as many payment practices, court proceedings and insolvency proceedings as there are countries around the world. However, by itemizing our methodology to very specific business environment elements - such as whether a debt re-structuring mechanism is available or the recognition of a Retention of Title clause - we managed to assess collection complexity to help companies understand what could go wrong when they have to be paid.

The results are fascinating: Sweden, Germany and Austria take the lead, while Russia, the United Arab Emirates and Saudi Arabia are still lagging behind when it comes to simplifying the life of companies trying to recover their dues. There is a divide between emerging markets and advanced economies and sometimes vibrant GDP growth did not necessarily entail more conducive a business environment. ►

Collection complexity
Overall complexity score, 0=least complex, 100=most complex



Source: Euler Hermes



**AUSTRIA**

■ The payment behavior of domestic companies is good and the EU legal framework provides reliable tools when it comes to late payment issues.

■ The court system is overall efficient and reliable but pre-legal action conducted by specialists remains the most effective method of collecting debt.

■ Although Austrian insolvency law aims at rescuing companies to increase the chances of recovering debts, it provides no limitations as to how much of the debt may be written off in restructuring negotiations and it is rare for unsecured creditors to recover from insolvent debtors in practice.

**BELGIUM**

■ Payment terms in Belgium are slightly higher than 30 days but DSO could be improved and the transposition of EU rules on late payment in domestic law is not as demanding as in other EU countries.

■ Court proceedings are reliable and benefit from EU standards, but enforcing domestic judgments remains time consuming and costly, so that pre-legal action conducted by collection specialists remains the most efficient option when it comes to recovering debt.

■ Although domestic insolvency law aims at rescuing companies to increase the chances of recovering debts, it provides no limitations as to how much of the debt may be written off in restructuring negotiations and it is rare for unsecured creditors to recover from insolvent debtors in practice.

**BRAZIL**

■ The payment behavior of domestic companies is acceptable but standard payment terms are very broad whilst DSO remains excessive.

■ Given the length and cost of legal actions in Brazil, chances of obtaining enforceable judgments in a timely manner are low and it is preferable to consider amicable arrangements and specialist debt collection methods as a means to avoid domestic courts.

■ When it comes to insolvent debtors, recourse to company rescue mechanisms is increasing, however in practice the chances of recovering debt remain extremely low.

**CANADA**

■ Although the payment behavior of domestic companies is good, the law provides no standard payment terms and does not facilitate the debt collection process so that late payment conditions (delays, interest rate, collection costs) are left for the parties to consider contractually.

■ Canada offers an efficient judiciary system, which may however be complex insofar as different federal and local rules are applicable. Contractual ownership protection mechanisms commonly admitted in many countries are not recognized by Canadian courts.

■ Insolvency law provides sophisticated mechanisms, but their efficiency in recovering unsecured debt is very limited so that pre-legal action ought to be considered as the best debt collection opportunity.

**CHILE**

■ Although the payment behavior of domestic companies is good, the standard payment terms are very broad (60 to 90 days).

■ Courts are trustworthy however the system provides no fast track proceedings, which implies that pre-legal action conducted by collection specialists is the most efficient way to obtain payment without commencing formal litigation in which legal costs and delays would be disproportionate.

■ Debt renegotiation mechanisms aiming at rescuing companies have been put in place but these are never used and liquidation remains the default proceeding when it comes to dealing with insolvent debtors, therefore the chances of collecting unsecured debt through insolvency courts are inexistent.



Five takeaways for sound debt collection worldwide

In this report, we will go from Argentina to Saudi Arabia to China to understand why international debt collection is complex and how to deal with cross border complexity. Based on this research, five simple rules always apply:

- (i) Never underestimate the business context;
- (ii) Negotiation with teeth is one's best friend;
- (iii) Beware of toothless courts;
- (iv) Collecting debt from insolvent debtors is a challenge;
- (v) The longer one waits, the greater the complexity and risks. ■

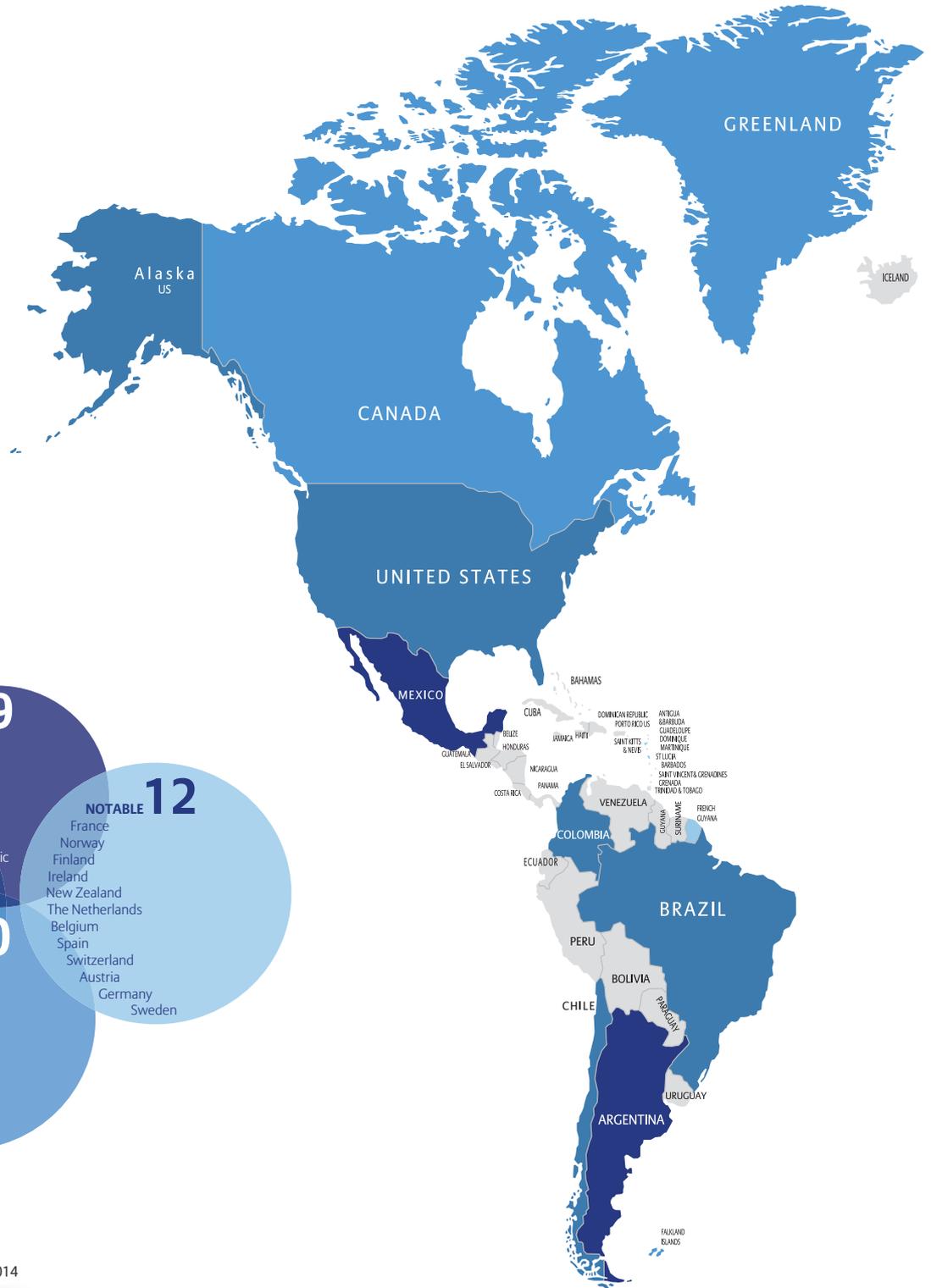


**COLLECTION
complexity**

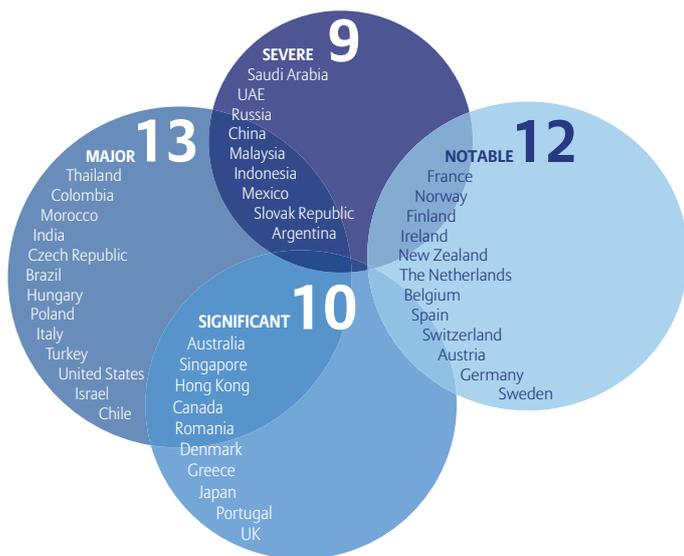
2014

Country collection complexity

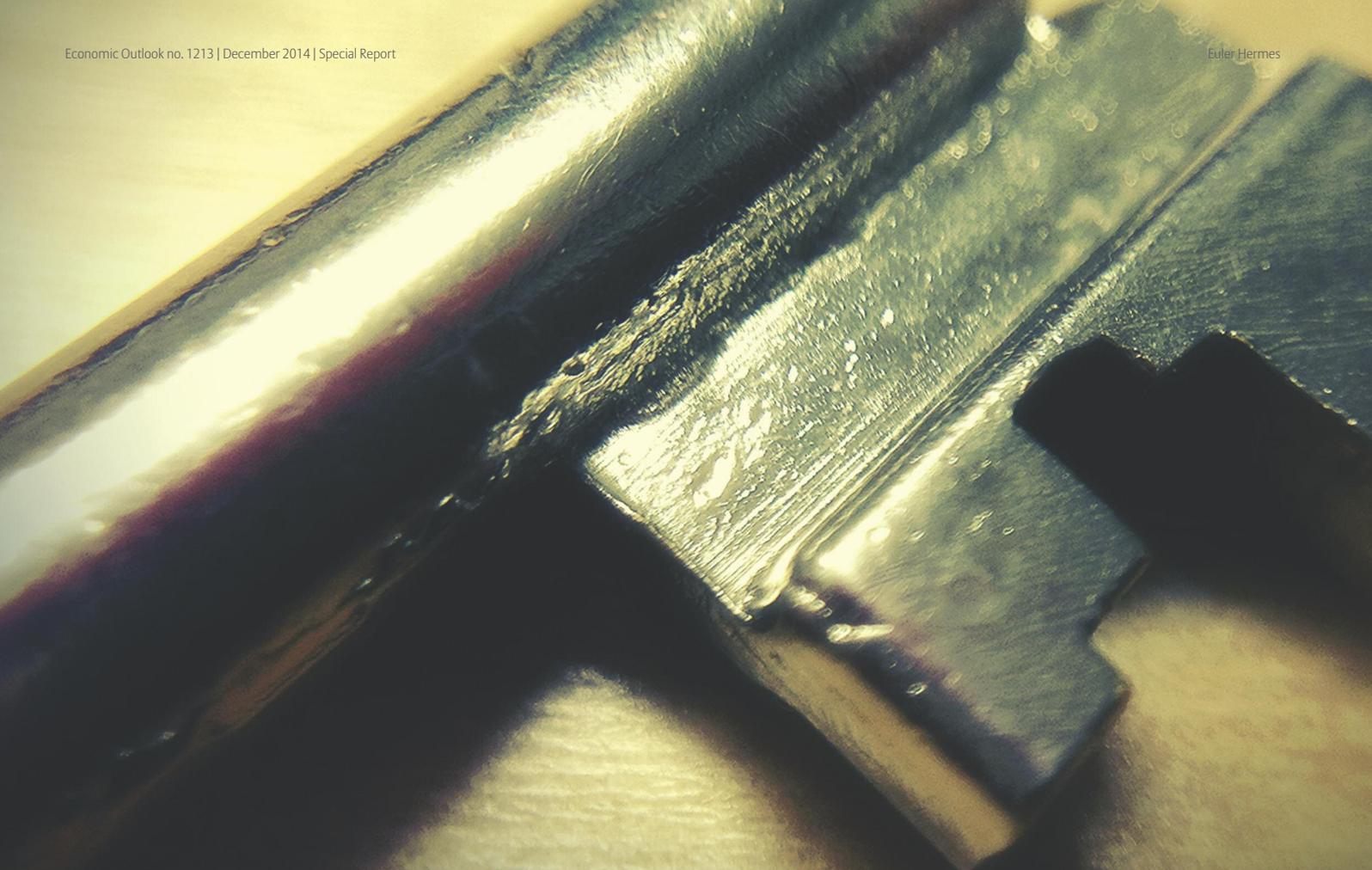
ECONOMIC RESEARCH TEAM



Overall collection complexity



Source: Euler Hermes, as of December 2, 2014



The five commandments of international debt collection

Why is international debt collection complex, and how to deal with cross border complexity? Five rules apply: (i) Never underestimate the business context; (ii) Negotiation with teeth is your best friend; (iii) Beware of toothless courts; (iv) Collecting debt from insolvent debtors is a challenge; (v) The longer one waits, the greater the complexity and risks.

Rule #1

Never underestimate the business context

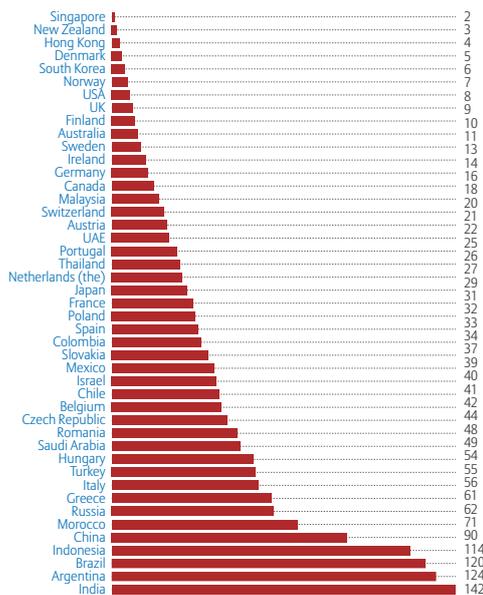
The context in which foreign trade partners do business is a must-know and must be considered in the first place, prior to doing business abroad.

Various data sources can help assessing where one sets foot, and sources such as the World Bank produce freely accessible data as to the business environment of most economies

For instance, the Doing Business project measures the ease of doing business across 189 countries by looking at the availability of business regulations, the ease of creating a company, to access electricity, obtain loans, enforce contracts,

Ease of doing business - World Bank indicators

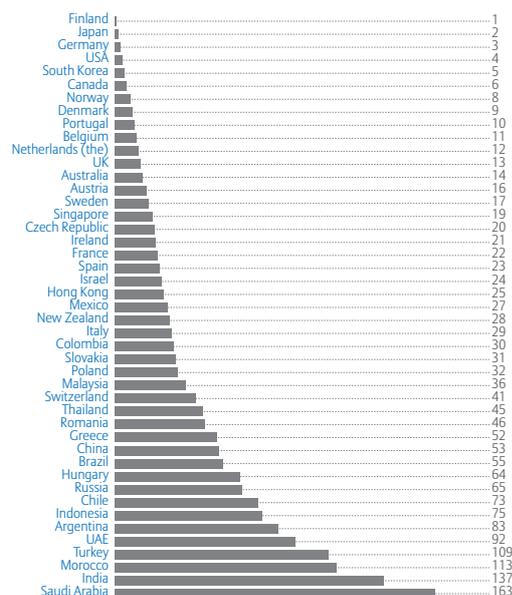
Ranking of countries from 1 (best) to 189 (worst)



Source: World Bank, 2014 Survey

Ease of resolving insolvency - World Bank indicators

Ranking of countries from 1 (best) to 189 (worst)



Source: World Bank, 2014 Survey

CHINA

■ Although traditions towards payment obligations are worth noticing, DSO remain excessive whilst late payments are not efficiently regulated. In fact, the law imposes no restriction on Chinese traders to start a new business after shutting down a company without settling its debts.

■ The court system is overly complex and suffers from a lack of transparency, high procedural delays and costs whilst enforcing court decisions against domestic companies may prove impossible.

■ The insolvency framework is overly complex, unreliable and unused.

COLOMBIA

■ The paying behavior of domestic companies is fairly correct but DSO remain excessive and late payments are frequent.

■ The court system lacks transparency and significant procedural costs and delays are significant so that court proceedings overall ought to be avoided.

■ When it comes to insolvent debtors, collecting debt is a genuine challenge and, overall, negotiating payment during the pre-legal action phase remains the most efficient alternative.

settle insolvency issues, etc. In parallel, the Enterprise Surveys project similarly considers multiple business environment-related issues, including access to finance, corruption levels, infrastructure or workforce availability, competition, etc. across 135 countries.

Having said this, the findings provided in such institutional sources may sometimes be difficult to interpret and should thus be cross-verified with other sources. According to the Bank, for instance, while no more than 7.4% of business owners and top managers (in 4,420 Russian firms interviewed from August 2011 through June 2012) apparently identified Russian courts as a major constraint when doing business in the country, 70.3% of the interviewees however declared that domestic courts lacked fairness and impartiality whilst being corrupted. This potential incoherence may also be found when looking at China where, although no more than 1.3% of business owners and top managers (in 2,700 Chinese firms interviewed from November 2011 through March 2013) identified Chinese courts as a major constraint when doing business in the country, 43.6% of the interviewees nonetheless declared that domestic courts lacked fairness and impartiality whilst being corrupted. These estimates would seem contradictory, but our research would tend to confirm that China and Russia would rank amongst the most complex countries in terms of collection work.

In addition to these institutional assessments which overall focus on business development at a macro-level, various in-

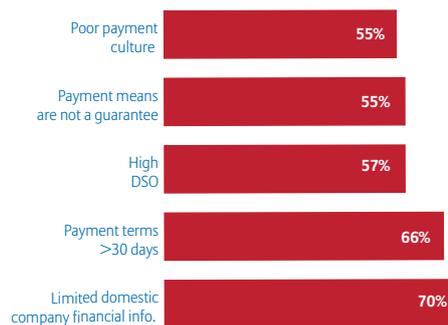
dicators may draw one's attention to potentially forthcoming business difficulties at the company level.

It first goes without saying that inquiring on a partner's credit situation and financial health prior to doing business may save the trouble of struggling to get paid later on

Various difficulties may however appear. Some countries such as Russia, Saudi Arabia, Mexico or Italy are for instance known for a tendency of business owners to hide behind screening companies or to disappear when things turn wrong, whilst China imposes no restriction on a company director to start a new business after shutting down another

Payment-related complexity Top 5 difficulties for collection

Number of countries in %

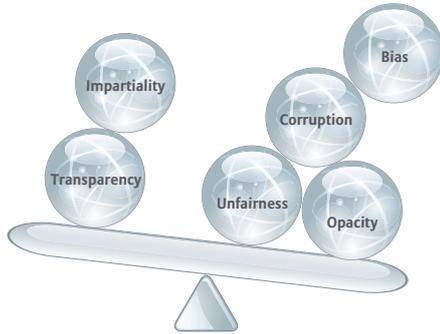


Source: Euler Hermes

 **CZECH REPUBLIC**

- The payment culture of domestic companies is generally good but when it comes to settling bills some delays must be expected.
- The court system is complex and is criticized for a lack of transparency and independence. In addition, legal proceedings tend to be overly lengthy and costly whilst enforcing court decisions may also be problematic.
- When the debtor has become insolvent, debt-renegotiation mechanisms are inefficient and liquidation is the default procedure so that the chances of collecting the debt are extremely poor.

Judicial complexity



Source: Euler Hermes



 **DENMARK**

- The payment behavior of domestic companies has margin for improvement but the EU legal framework provides reliable tools when it comes to let payment matters.
- Courts are reliable but the system provides no fast proceedings susceptible of genuinely facilitating the collection process when the claim is undisputable. Delays and costs otherwise remain significant when a claim is disputed, and EU standard proceedings are not fully applicable in the country.
- Although domestic insolvency law aims at rescuing companies to increase the chances of recovering debts, it provides no limitations as to how much of the debt may be written off in restructuring negotiations and it is rare for unsecured creditors to recover from insolvent debtors in practice.

▶ business without settling its debts. Elsewhere, financial information on domestic companies may sometimes be difficult to obtain because regulations impose no obligation on non-listed companies to disclose their financials (Canada, Switzerland, Hong Kong, etc.), or because companies simply tend to ignore strict regulations on the matter (Turkey, Poland).

In countries such as Greece, Brazil, Thailand or Hungary, alternatively, obtaining financial information on domestic companies is not a major issue, however determining to what extent the said information is trustworthy and reflects the company's reality would be challenging.

The corporate structure of a business partner may also have a significant impact on debt recovery possibilities (liability limitation, corporate veil & screening companies)

The very objective of setting up a legal entity to conduct business is to separate the liabilities flowing from the business activities from the business owners' responsibility. Hence, in practice, except when the company management is visibly faulty, obtaining payment for the business' debts is an impossible task when a liability limitation framework has been

put in place. In addition, many countries tend to impose no minimum capital requirements on limited liability companies and thus provide no guarantees to business partners that a company has a sufficient safety net to absorb unforeseen losses.

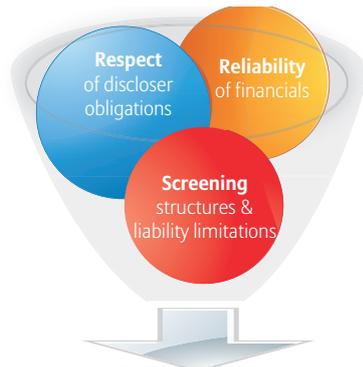
Payment behaviors vary from one country to another

Payment behaviors have a major impact on debt collection and dealing with businesses in Northern Europe (Sweden, Norway, Finland, and Netherlands), Canada, Japan or Chile (where late payments are publicly recorded and thus have an impact on credit histories) would often be a guarantee as companies in these countries are known for paying on time. The payment behavior of companies in Russia or Saudi Arabia, by contrast, is extremely poor, whilst companies in Ireland, Italy or Greece are generally known for taking their time when it comes to paying bills. Similarly, large businesses in the U.S. or in the UK would increasingly tend to extend terms without further discussion with their suppliers, forgetting that a period of credit is a privilege, not a right.

 **FINLAND**

- The payment behavior of domestic companies is good and the EU framework provides reliable tools when it comes to late payment.
- Courts are reliable and efficient but enforcement proceedings may be time consuming, especially when the debtor's assets are difficult to locate. Thus, recovering debt through pre-legal collection methods remains the most efficient solution.
- Although insolvency law aims at rescuing companies facing financial difficulties in order to increase repayment possibilities, most reconstruction procedures spread over years (or fail) thus leaving the creditors with no or very little dividends, whilst liquidation procedures leave very little recovery chances to unsecured creditors.

Transparency issues



Source: Euler Hermes

Payment behaviors



Source: Euler Hermes

FOCUS

Talking about **payment...**

FRANCE

■ The payment behavior of domestic companies is correct but some margin for improvement remains as the average DSO does not match the standards set forth in recent regulations stringently transposing EU payment standards into domestic law.

■ French courts are fairly efficient in dealing with disputes in a timely manner, however once the debtor is declared insolvent it becomes extremely difficult to enforce a debt because French law protects the debtor company as long as the insolvency proceedings are not terminated.


GERMANY

■ The payment behavior of domestic firms is good and the courts are efficient in delivering timely decisions however, orchestrated pre-legal negotiation efforts remain the most efficient means of collecting debt.

■ The purpose of insolvency proceedings in Germany has long been to realize the debtor's assets to as to repay the creditor's debt. As a result, liquidation has in practice remained the default procedure and the system provides no genuine support to unsecured creditors when it comes to collecting debt from insolvent creditors.


GREECE

■ Late payments in Greece are frequent and, despite improvements being regularly observed, the average DSO remains high compared to other EU markets, but this is not surprising insofar as the law has implemented EU rules on late payment with flexibility.

■ Although the courts are fairly reliable, the legal process remains slow and enforcement may be difficult because debtors are often well aware of loopholes in the system.

■ Insolvency law provides a debt renegotiation mechanism but collecting money at this stage remains a significant challenge.

► **Payment culture and payment habits** are complementary though distinct concepts. On the one hand, 'payment culture' describes the tendency of companies to pay on time. On the other hand, 'payment habits' would rather refer to the amount of time (Days Sales Outstanding or DSO) necessary to obtain payment in a said country.

► **For instance**, payment ought to occur (by law) within 30 days in Italy and 60 days in Greece but would tend to occur respectively within 100 days (increasing) and 109 days (decreasing) on average. Thus, whilst payment habits are questionable in both countries, the payment culture is improving in Greece

and worsening in Italy. In Israel, similarly, the average DSO is around 91 days so that the payment habits must be taken into account, however delays remain limited in practice so that it can be fairly said that domestic companies tend to play by the rules.

► **It should also be noted** that the payment culture in many countries may be (very) good despite significant DSO. For instance in Germany, Hungary, China, Portugal, Spain, Romania or Australia, most companies would normally endeavour to pay on time but, due to a lack of banking support, would tend to use commercial credit as a cash management method and delay payments, thus ■

Rule #2

When facing late payers, negotiation with teeth is one's best friend

Fact: payments are normally deemed late once the due date has expired. There is however no consensus as to how due dates ought to be fixed and two schools actually provide diverging possibilities.

Contractual freedom v. legal interest rates: May the best win

Collection attempts on a global scale may be very complex because most countries provide no particular rules as to how much time ought to be left to a debtor prior to considering that an invoice is due.

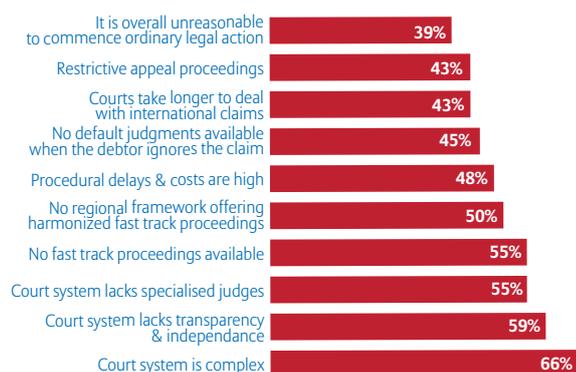
Generally, contractual freedom is considered as the main source of market self-regulation and complete liberty is left for the parties to decide on this point. Problematically, contractual freedom only partially protects the creditor and, often, a debtor with significant influence would enjoy a de facto possibility to take liberties with deadlines. A creditor placed in an inferior situation would, in turn, typically have no choice but to accept this situation to preserve its commercial relationship with the debtor. Otherwise, the only way to constrain the debtor to pay would be to go to court, but this would usually be too late whilst additional costs (and delays!) would be borne by the creditors.

Contracts matter

This may sound a self-evident truth but, even though this is not systematic in practice, ensuring that business is conducted under the framework of a contract is essential. First, when no regulatory framework is in place or when the existing framework relies on contractual freedom, not relying on a contract means that no rules apply. Second, although not negotiating a contract may seem like a time-saver, when the time to demonstrate the existence of a debt comes, no contract means that it will be very difficult to prove that trade terms have been infringed, particularly when the burden of proof is on the demanding party.

Court proceedings-related complexity Top 10 difficulties for collection

Number of countries in %



Source: Euler Hermes

 **HONG KONG**

■ The payment behavior of domestic companies is acceptable but delays are frequent whilst late payments are not regulated by law.

■ Hong Kong courts are reliable and swift in dealing with business claims, however when it comes to dealing with insolvent debtors, the law provides no formal procedures to achieve a restructuring of the company's debts.

 **HUNGARY**

■ The conformity of domestic law with EU rules on late payment in Business-to-business transactions does not protect traders from the uncertain payment behavior of domestic companies.

■ When commencing legal action is necessary, it is worth keeping in mind that domestic courts are not known for their independence and transparency, but for the lengthy and costly nature of their proceedings. In fact, commencing legal action in Hungary would be unreasonable in most cases and pre-legal collection efforts remain the only effective option.

■ Although domestic insolvency law aims at rescuing companies to increase the chances of recovering debts, it provides no limitations as to how much of the debt may be written off in restructuring negotiations and it is rare for unsecured creditors to recover from insolvent debtors in practice.

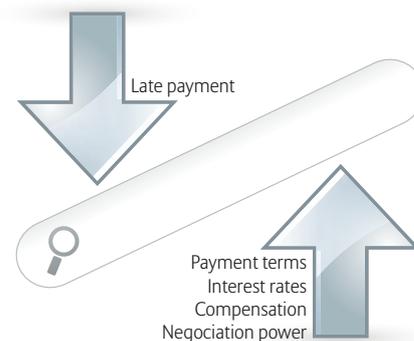
 **INDIA**

■ The payment behavior of domestic companies is poor and the average DSO is overall excessive.

■ The court system is complex whilst extensive delays and costs make it unreasonable to commence legal action. Accelerated proceedings are not available for undisputed debts and foreign debt judgments would be enforced with difficulty.

■ The insolvency framework is made up of several overlapping bodies of laws applied by conflicting public authorities. Thus, it is extremely difficult to see through the system.

Favorable way-out



Source: Euler Hermes

► For this reason, regulators in various countries have established reference payment standards by law, whether at the country level, or on a regional scale. These standards are often disparate and are not always observed in practice, but they nonetheless provide a regulatory framework, a basis for calculating interest rates as well as a negotiation tool when payment becomes an issue.

Always negotiate a favorable way-out

Debt collection efforts may be simplified when contracts include strict payment terms as well as conditions deemed applicable should late payment occur.

Since the average DSO may differ significantly from the negotiated terms, for instance, imposing payment terms (30 days, 60 days, etc.) and payment deadlines allows demonstrating that a specific agreement has been breached when going to court is necessary. In addition, legal interest rates must be used as a reference whenever a framework is available, whilst contractual rates must otherwise be negotiated and applied.

Having said this, although legal interest rates may be charged automatically to the debtor in various countries, in practice many companies do not take the pain of issuing additional invoices so that, rather than being paid to the creditor, interest and costs are often used as a pressure tool whilst conducting

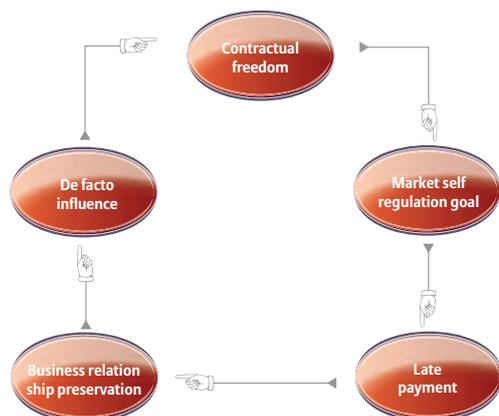
collection negotiations. Otherwise, obtaining payment of interest would at least require orchestrated negotiation, whilst court support (i.e. formal legal proceedings) would often be necessary. In both cases, self-conducted collection work is time consuming whilst recourse to third-party negotiators or lawyers has a price. As a result, it is also essential to make sure that the contract sets how late payment interest and collection compensation shall be settled and who (the creditor or the debtor) shall bear the cost of amicable or legal collection proceedings.

The choice of specific payment means may finally have an impact on collection proceedings; whilst negotiations may also help reaching an agreement as to how and when ownership of the goods would shift from the seller to the buyer (see Focus p.17).

Avoid never-ending lawsuits

Overall, whenever this is possible, pre-legal action negotiation should be considered as the best alternative to legal proceedings which, notwithstanding each country's particularities, always remain complex. Often, negotiations would entail expenses, debt instalments and debt write-offs, but these efforts would be less important than legal action-related costs and timescales, whilst reducing the chances of facing insolvencies.

May the best win



Source: Euler Hermes

PAYMENT MEANS COULD (INCREASINGLY) HELP

► In fact, in nearly half of the 44 countries considered for the purpose of this publication, payment instruments such as cheques or bills of exchange would tend to be considered as debt recognition titles. In other words, payment means in various countries may confirm a debt by making it "certain and undisputed", thus allowing access to fast track legal proceedings before domestic tribunals. This trend is far from being generalised, but it is nonetheless increasing and thus suggests that carefully negotiating which payment instruments will be relied upon may have an impact on collection efforts and should not be underestimated. ■

ZOOM

Methods may vary but various mechanisms have been put in place worldwide to limit the negative effects of late payment.

Regional and local perspectives towards late payment

The Sharia's legal exception

Countries in which Shari'ah law applies should be mentioned here because they are a great counter-example to common practices. In particular, these countries normally forbid the very notion of interest; therefore compensation for late payment in countries such as the UAE or Saudi Arabia does not exist.

Maximum interest rates in South America

South American states have so far developed no common regulations regarding late payments, but it is interesting to note that, whilst most countries worldwide provide a default 'minimum' interest rate (ranging from 6 to 15% on average), countries such as Colombia and Chile would rather rely on 'maximum' rates reaching 20 to 30%. Rate calculation methods are however based on multiple indicators and thus remain complex to handle.

The strength of EU efforts

The European Union has in time developed the most sophisticated regional consensus on late payment management. The Recast Directive 2011/7/EU has recently replaced Directive 2000/35/EC (which originally created a right of creditor companies to charge interest on late

payers) and constitutes a major attempt to harmonise payment terms across the EU. On the one hand, the regulation first states that, unless a contract fairly provides otherwise, payment in business-to-business transactions must occur within 60 days following the due date (30 days in the absence of a contractual agreement). On the other hand, failure to pay within this timeframe entitles the seller to charge late payment interest (at least 8 percentage points above the European Central Bank's refinancing rate) together with a EUR 40 flat fee compensating for collection costs, without any recourse to courts being necessary.

Although the Recast Directive ought to have been translated into domestic laws by March 2013, some countries have so far failed to meet this requirement. In addition, a certain margin of appreciation has been left to the national regulators so that, when transposed into domestic law, the rules may be applied more or less strictly. Nonetheless, only 5 out of the 19 EU member states considered for the purpose of this paper have strictly implemented the 60 days standard, whilst the 14 others have systematically followed the more constraining 30 days rule. Norway, which is not part of the EU, has nonetheless transposed the EU standard into its domestic law.

Overall, regulatory efforts at the EU level, when considered together with the parallel

development of EU-wide harmonised court proceedings (see below), have a significant impact. Regional standards not only increase regulatory security in Member States, they also set up a regional and local comparative benchmark. First, the EU zone as a whole stands out as a rather business-friendly zone (payment terms standardisation, late payment acknowledgment, collection costs compensation, procedural venues) in comparison with other regions in which no such standards exist. Second, when implemented in a demanding manner (30 days terms instead of 60 days for instance), the EU framework gives Member States a significant comparative advantage. Hence, regional policies have impacted our perception of domestic regulatory standards and improved the collection complexity ranking of certain low performing countries (Italy, Czech Republic, Poland) by up to five places. Similarly, it is interesting to note that countries such as the U.S. which have not put any late payment regulation framework in place, despite their constraining federal structure, would gain by harmonising certain business and collection-related standards. This point is so significant that the existence of such standards in the U.S. would rank it in the 'significant complexity' group rather than the 'major complexity' group (see map). ■




INDONESIA

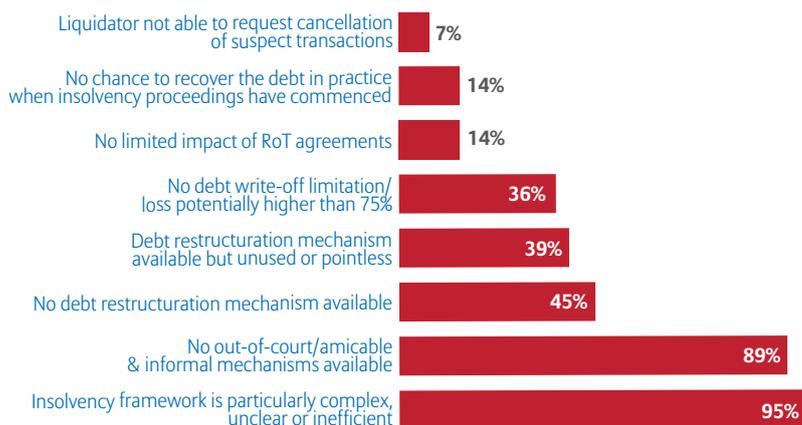
■ Domestic law regulates the issue of late payment, and the current payment behavior of Indonesian companies (which has improved in recent years) is be somewhere between acceptable and good.

■ Legal action in Indonesia is usually lengthy, costly and decision may be haphazard whilst the appeal process provides debtors with an opportunity to further delay the proceedings, therefore conducting orchestrated debt collection efforts is the best option.

■ The insolvency framework has been improved over the last years so that the amount of inconsistent decisions have been reduced, but in practice the insolvency system is still to be tested.

**Insolvency-related complexity
Top 8 difficulties for collection**

Number of countries in %



Source: Euler Hermes

► Rule #3

Beware of toothless courts


IRELAND

■ Despite domestic rules on payment terms being in line with the latest EU standards, Irish debtors are not in a state of emergency when the time comes to settle monies owed and the average DSO is excessive.

■ Domestic courts are fairly efficient in dealing with disputes in a timely manner, however once the debtor is declared insolvent it becomes difficult to recover debts because renegotiation mechanisms provide no limitation as to how much of the debt may be written off, whilst priority rules in liquidation proceedings make it unlikely for unsecured creditors to receive any part of the proceeds.


ISRAEL

■ Payment terms in Israel are regulated by contract rather than by law, therefore the average DSO remains excessive and the paying behavior of domestic companies has significant margin for improvement.

■ Israeli courts having significant difficulties in coping with the caseload, significant delays, costs and difficulties must be expected when commencing legal action. Cross-border disputes would require further patience.

■ Various insolvency proceedings are available but in practice the chances of collecting debt when the debtor has become insolvent remain poor.

Fact: having recourse to courts may be necessary if negotiation attempts have led to a deadlock, however major time and cost inequalities may be noticed whilst comparing court proceedings worldwide. When courts have no teeth, commencing legal action in certain countries should be simply avoided, thus turning orchestrated negotiation and persuasion into the only efficient debt-collection method.

Courts' trustworthiness and efficiency are not a given and if absent, should raise concerns

Needless to say, whether domestic courts in the host country are independent and transparent (not to mention the level of recognition of the rule of law) has an impact of the obtention of a favorable and timely decision. This is particularly true when cross-border litigation is initiated against a domestic party and the court is possibly biased.

Relatedly, whether a claim is to be dealt with by general jurisdiction courts or by specialized courts may have a significant impact as all judges, especially in the least developed systems, are not equipped to deal with complex commercial disputes. Multiple layers of jurisdiction and federal judicial systems may further increase the complexity of court proceedings.

These parameters would normally have an impact on procedural delays (and costs) which may become significant or excessive, thus making certain legal actions unreasonable. In Mexico or China, for instance, only claims in excess of USD 20,000 to 30,000 would normally be brought to court. Furthermore, when delays become a problem, debtors well aware of time issues will often rely on appeal proceedings to further extend timescales and costs at the claimant's ex-

pense. In a minority of countries such as Russia, Indonesia or Argentina, courts will actually deny rendering summary (default) judgments despite the deliberate failure of the debtor to appear in court, thus forcing the demanding party to conduct a full trial anyway.

Enforcement is the judicial system's armed wing. Only, it does not necessarily work. It may be delayed because the debtors' may be difficult to find, because proceedings are not particularly efficient (Saudi Arabia, China, Mexico, Brazil, Argentina, India, Thailand, Czech Republic, etc.), remain untested (UAE), or because domestic courts are known for refusing to enforce decisions provided that are favorable to foreign companies (China, see Focus, p.19).

Plan for a Plan B

Saying that a 'Plan B' won't be necessary is really different from saying that no 'Plan B' is available. Therefore, prior to doing business in a foreign country, verifying whether alternatives to lengthy proceedings exist is essential. ►

TIMEFRAMES

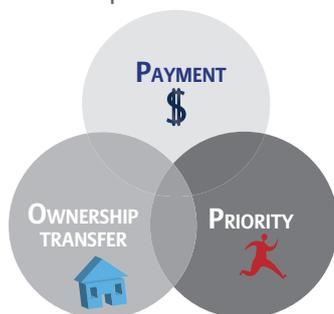
► Legal proceedings may be fairly quick when a debt is not disputed, however when a full lawsuit must be commenced time variations may be very significant, ranging from less than a year up to a decade depending on the complexity of the case and the ability of courts to process the file. In addition, disputes characterised by a foreign element would often require more time than domestic proceedings due to translation delays. Often, malicious debtors well aware of such procedural particularities would thus extend proceedings in order to postpone payments as much as possible (Slovakia, UAE, etc.). ■

FOCUS

Ownership protection agreements may help

Retention of Title (RoT) agreements may seem irrelevant and excessively specific, but the topic merit attention.

Ownership Protection



► **In theory, RoT provisions aim at preserving the seller's ownership over an asset until payment has occurred.** In practice, they are however used in various ways from one country to another because the law in each country has been drafted (or interpreted) with a specific intent. In France, for instance, ownership transfer would occur with the approval of an agreement, so that property would typically be passed on to the buyer with a hand shake, even though the price has not been paid yet. In such circumstances, the RoT would not be triggered to take the goods back (because the seller is no longer the owner) but to obtain payment or, if the debtor has turned insolvent, to obtain priority on the debtor's estate. In Germany, by contrast, contracts only create an obligation to transfer goods,

whilst the transfer of property would only occur after payment has been made. In other words, sellers in Germany would be entitled to repossess goods left unpaid for, even though the said goods have been transformed and/or re-sold because ownership remains with the original seller until the price is paid.

► **The comparison is relevant to collection issues** because the way a RoT is admitted and enforced could have a significant impact on whether or not a debt could be recovered. First, numerous countries (U.S., GCC countries, Russia, Mexico, Hong Kong, etc.) would simply not give force to RoT agreements. Second, other countries would give power to RoT agreements. However, they would discard their ability to repossess

goods (thus essentially recognising their ability to grant creditors a priority over other debts during insolvency proceedings) or they would give little importance to priority issues (Israel for instance). Thus each giving a de facto primacy to banks (as secured creditors) against unsecured creditors.

► **Having said this, if ownership protection clauses play a significant role in obtaining payment** (or in repossessing goods), it should be recalled that registration may be necessary (Poland, Portugal, New Zealand, Israel, etc.) whilst, unless the debtor agrees to avoid proceedings, having the clauses enforced by courts remains a prerequisite. ■





ITALY

■ The payment behavior of domestic companies is poor and the average DSO is overall excessive even though the regulations on late payments are more constraining than the applicable EU rules.

■ Procedural delays and costs are high whilst enforcing court decisions may prove a real challenge. Thus, commencing legal action without first establishing a pre-legal collection strategy with teeth is most unreasonable.

■ When the debtor is insolvent, debt renegotiation mechanisms have been put into place but they remain mostly unused in practice. Liquidation (bankruptcy) therefore remains the default route, but leaves little (if any) chances for unsecured creditors to recover their debt.



JAPAN

■ The payment culture in Japan is excellent however in practice excessive DSO and significant payment disparities may be witnessed from one sector to another.

■ Although domestic courts tend to be fairly efficient in delivering timely decisions, recourse to tribunals is time-consuming, expensive and complex. Therefore, conducting well orchestrated pre-legal collection actions is essential.

■ Similarly, collecting debt from insolvent debtors is overall a challenging exercise and, even though insolvency proceedings could yield 'some' dividends, these would spread over years and generate significant costs.



MALAYSIA

■ Even though the payment behavior of domestic companies is good, the law provides no framework when it comes to late payment. As a result, interest rates and collection costs must be considered as part of the contract but would overall tend to have little impact.

■ Despite recent efforts, the courts' independency and transparency still have margin for improvement and lawsuits -which can be very slow - ought to be avoided whenever possible.

■ In the absence of an efficient and working debt restructuring scheme, debtor insolvency would only be dealt with through liquidation proceedings which generally leave little (if any) recovery chances to unsecured creditors.

▶ First, fast track proceedings may be available provided that the debt is certain and undisputed. However such mechanisms might not always be efficient (Mexico), would remain uncommon in Asian countries, and are simply inexistent in certain countries such as the U.S.

Alternative Dispute Resolution mechanisms such as mediation (a neutral third party is appointed to help achieving a compromise) or arbitration (the third party decides for the parties) may also be relied upon even though the practice is not always widespread when it comes to settling debt-related disputes. For instance, although most disputes would be settled prior to commencing formal legal action in the U.S. or in Northern Europe, ADR would otherwise be commonly used as an escape route where courts are not efficient enough (Argentina, India, Indonesia, Israel, Hungary, Portugal, Poland, Morocco, Malaysia, etc.), where courts cannot be trusted (Saudi Arabia, Russia), or where preserving confidentiality is a priority. A contractual agreement drafted to this effect would be a sine qua none condition, but ADR methods might

not always be efficient (Turkey) whilst many jurisdictions (such as Russia, China, Mexico, Czech Republic, etc.) would simply not allow such proceedings.

Act local, think global

Similarly, contracts may be drafted to allow recourse to a foreign law or to foreign tribunals, but foreign decisions need to be enforced against the debtor, by the courts of the host country through a sometimes complex 'exequatur' procedure (i.e. the foreign judgment must be recognized by domestic courts in order to be enforced against debtors falling under their jurisdiction).

Most tribunals would, in the best case scenario, preserve a certain degree of exclusivity, but judgments rendered in foreign countries would often be recognized and enforced provided that the issuing country is party to a bilateral or multi-lateral agreement with the issuing country (reciprocity rule). The Commonwealth countries are for instance known for their cooperation in enforcing judgment on a reciprocal basis



Source: Euler Hermes

(courts in Singapore would tend to deny giving force to judgments issued by non-Commonwealth courts).

Having said this, many countries would simply not allow recourse to foreign forums (Russia, China, Saudi Arabia, Colombia), fail to enforce foreign judgments (UAE, Malaysia, India), or simply provide no venues for recognition of demands (Indonesia, Thailand). Chinese courts would for instance provide no such possibilities except for decisions issued in Hong Kong.

Again, supranational arrangements have been set up to facilitate litigation proceedings worldwide and should thus be used when cross-border disputes are at stake, or when debtors have assets spread in various countries.

In particular, the EU zone provides for expedited proceedings, judgment recognition methods and judgment enforcement methods. For instance, provided that the debt is undisputed, courts in the EU are competent under Regulation 1896/2006/EC to issue European Payment Orders enforceable in all European Union countries (except Denmark) without recourse to exequatur proceedings. Judgments rendered by courts in the EU would otherwise be enforceable in any

Member State through a European Enforcement Order (under Regulation EC No. 805/2004), whilst decisions up to EUR 2,000 would be similarly enforced through the European Small Claims Procedure (under Regulation EC 861/2007).

Overall, exequatur procedures will no longer be required in Europe from January 2015 (as provided in Recast Regulation EC 1215/2012), but these will remain the normal route to enforcement everywhere else.

As far as arbitral decisions are concerned, most countries are signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Therefore, arbitral decisions ought to be fairly enforceable but difficulties may nonetheless appear (AUE, China, Chile, and Greece). ▶

FOCUS

Unsupportive courts

Selected examples



 > **Obtaining and enforcing a judgment against a Russian debtor** ought to be a fairly straightforward procedure as long as the debt is certain and undisputed, however things may otherwise become complex. In particular, when recourse to a foreign court is considered (to avoid domestic courts, or when a foreign claimant is acting against a Russian debtor from abroad), proceedings may turn into an ugly deadlock because foreign jurisdiction agreements have long been interpreted creatively by Russian courts which have

regularly assumed full jurisdiction over disputes considered in foreign forums and have rendered judgements on the merits instead of merely recognising and enforcing foreign decisions.



> **Similarly, courts in Saudi Arabia or in the UAE** would typically ignore any decision rendered by a foreign court or enforcing a foreign law (incompatible with Sharia's principles) even though a specific agreement has been reached as part of a contract.

 > **Chinese courts provide another example** of unsupportiveness since enforcing a (domestic or foreign) court judgment or an arbitral award against a Chinese debtor in China may prove impossible. In practice, conducting proceedings before domestic courts would most likely be a waste of time (and money) so that the best solution would rather be to obtain enforceable decisions through Hong Kong courts, under the 'Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and

Commercial Matters' (REJA) of 2006. Indeed, Hong Kong has an efficient legal system independent from the Chinese courts, and REJA allows Hong Kong courts to enforce decisions in Mainland China. As a result, Hong Kong has long been the preferred jurisdiction for contracts involving foreign and Chinese parties and remains the best venue to enforce decisions in China. ■

Rule #4

Insolvent debtors? Hurry before it is too late

Obtaining repayments when the debtor's bank account has run empty is possibly the most challenging exercise and the worst case scenario when it comes to collecting debt. Various mechanisms have been put in place to improve recovery chances but, in practice, Rule #5 applies: the sooner, the better.



MEXICO

- The law provides no framework on standard payment terms and late payment, therefore interest and collection costs may only be obtained before the courts. The DSO is significant and the tendency to disappear when things turn wrong is worth noting.

- The court system is complexified by its federal structure, but it is more problematically known for a lack of transparency and independence. Business disputes are not dealt with by specialized judges and in practice the fast track mechanisms which could facilitate proceedings when the claim is straightforward cannot be relied upon. Overall, procedural delays and costs are significant and pre-legal action remains the most efficient means of collecting debt.

- The debt restructuring process is not efficient at all, and proceedings may last for years (ex. Mexicana). As a result, liquidation is in practice the default procedure when the debtor becomes insolvent and the chances of collecting debt through this channel are inexistent.

Basics

The common way of dealing with insolvent debtors is often to file a declaration of insolvency with courts, in order to obtain payment for debts from the sale of the debtor's assets after lengthy liquidation proceedings (also known as bankruptcy or winding up proceedings from one country to another) have taken place.

Normally, a debtor would be deemed insolvent when unable to pay its debts as they fall due (the illiquidity test in Russia for instance comes along with a RUB 100,000 / USD 2,900 unpaid debt threshold) and/or when liabilities become excessive in comparison with the company's assets (balance sheet test).

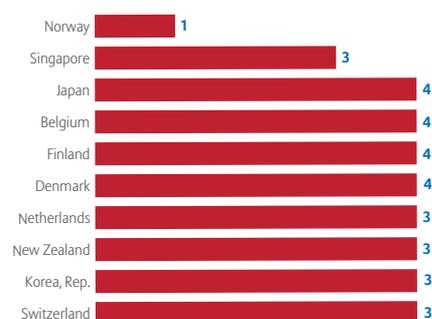
Debt renegotiation mechanisms: Company rescue & debt write-offs

In practice, collecting debt when the debtor's money is gone often remains an impossible task. Legal proceedings are often extremely complex and typically, notwithstanding con-

Cost of procedure - World Bank indicators

Top 10 countries with the lowest cost

Cost (% of estate)

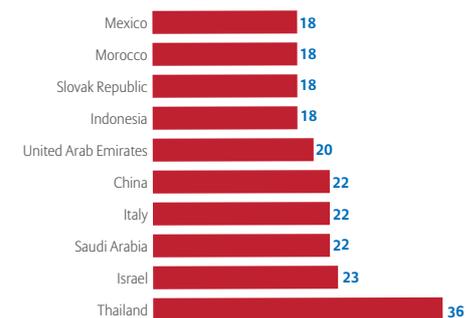


Source: World Bank, 2014 Survey

Cost of procedure - World Bank indicators

Top 10 countries with the highest cost

Cost (% of estate)



Source: World Bank, 2014 Survey



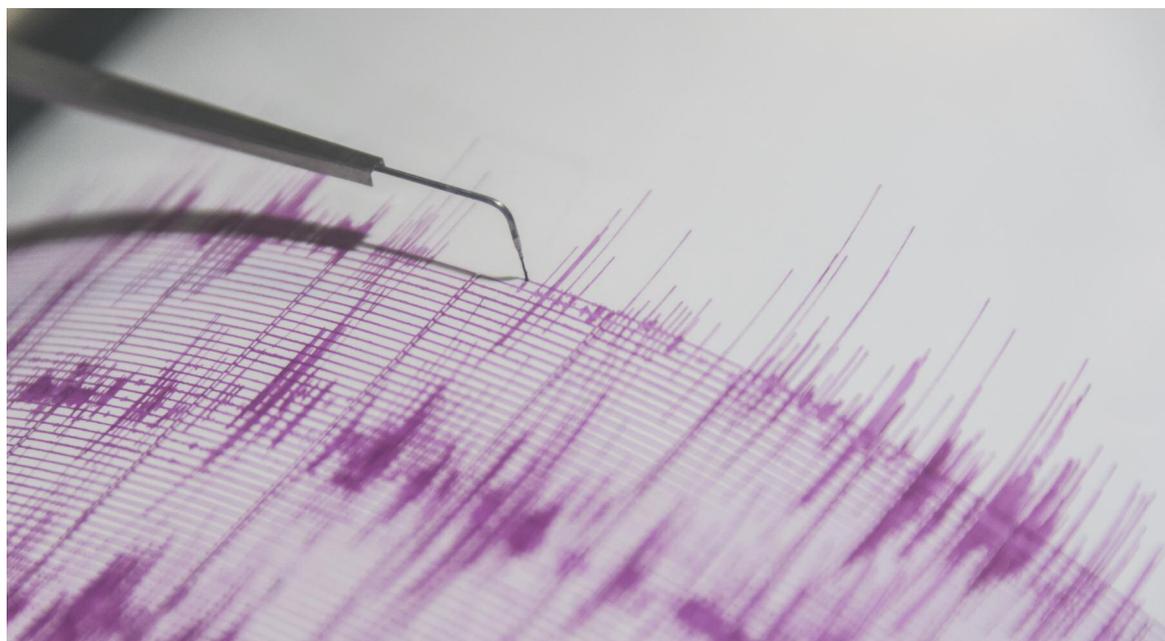
MOROCCO

- The average DSO in Morocco remains excessive and the paying behavior of domestic companies is degrading.

- The judiciary is a multi-layered system which remains under influence and is criticized for its lack of organization, efficiency and transparency. Therefore, commencing legal action would be unreasonable in most cases whilst enforcement judgments would be difficult.

- Various insolvency proceedings are available in Morocco but these remain complex, slow and mostly inefficient it comes to collecting debt.

- In all circumstances, entrusting collection specialists with a strong knowledge of the local market remains the wiser approach.




THE NETHERLANDS

■ The paying behavior of domestic companies is excellent; however the rules implementing the latest EU Directive on late payments are less demanding than the EU standards.

■ In practice, although the courts are reliable, negotiating payment instalments is often the most efficient way to avoid unnecessary costs and having recourse to a specialized collection agency may often suffice to obtain payment.

■ When the debtor has become insolvent, debt renegotiation mechanisms are available but remain inefficient and unused whilst the most bankruptcies are terminated without any payments of dividends to unsecured creditors.


NEW ZEALAND

■ Late payments in New Zealand are not regulated so that interest and collection costs would essentially depend on the court.

■ Courts are fairly efficient in delivering timely decisions, however favoring amicable and pre-legal methods is always advisable. In fact, the sooner the better as, if the debtor becomes insolvent, the chances of recovering the debt will reduce in time.


NORWAY

■ The payment behavior of domestic companies is a reference and domestic courts are fairly efficient in dealing with disputes in a timely manner.

■ Having said this, negotiation and compromises are considered as a pre-requisite to legal action and obtaining effective support in this regard is important.

■ Indeed, when time goes on, chances are that bad payers will become insolvent. In such cases, recovering the debt becomes mostly impossible because debt renegotiation schemes are not effective which the priority rules set forth in liquidation proceedings make it unlikely for unsecured creditors to receive any part of the proceeds.

tractual agreements granting a particular priority to a specific creditor, banks and tax authorities hold secured or preferential debts which have priority over classic (unsecured) debt which are considered last in the chain and paid only if sufficient money remains.

As a result, a consensus has emerged in the last decades on the idea that saving viable companies and renegotiating their debts may be more efficient (i.e. yield more repayment in the long term) than merely stopping their activities and selling their assets to obtain immediate though limited cash. Known as the 'London Approach', this school of thought has spread worldwide, leading to the well-known 'Chapter 11' restructuring procedure in the U.S., and to similar mechanisms in many countries (see BOX). In practice, however, such mechanisms often remain inexistent (Saudi Arabia, Hong Kong, Malaysia, etc.), untested (UAE, Indonesia), unused (Russia, China, Hungary, Poland, Argentina, Chile, etc.) or inefficient (Netherlands, Norway, France, Mexico, Czech Republic). But, once an insolvency petition is filed with the courts, creditors and debtors would nonetheless be given an opportunity to draft and agree on a debt restructuring and repayment plan, under the control of court officials. In most countries where such mechanisms exist, however, moratoriums are put in place to stay debt-enforcement pro-

ceedings against the debtor for a given period of time. Therefore, when such mechanisms are available, debtors would have major incentives to initiate restructuring proceedings. In addition, although certain countries provide specific limitations as to how much of the debt may be written-off (up to 50% in Spain for instance), in most circumstances the parties are free to decide how much of the debt will be repaid, and in which proportions. In other words, if debt restructuring mechanisms could in theory give creditors a chance to get a greater part of their debt than through liquidation proceedings, nothing in practice indicates that unsecured creditors would indeed come out victorious. In fact, it would be fair to say that the average recovery rate for unsecured creditors in most countries would range between 5 and 10% of the debt, if not less. ►

ZOOM

Regional perspective: From progress to **run-aways**

The development of debt restructuring mechanisms is increasing worldwide but has not been generalized. In Asia and the Middle East, for instance, efforts are currently made but results remain uncertain.

> **Asian countries** provide an interesting case study of insolvency regulatory efforts. For instance, if restructuring mechanisms are fairly efficient when it comes to rescuing viable companies in Thailand, the complexity of insolvency rules in Malaysia have made the system inefficient and unused, whilst the insolvency framework in Indonesia is new and largely untested.

> **Insolvency frameworks in GCC countries** would also tend to be a problem. The company rescue culture is for instance inexistent in Saudi Arabia where no debt-restructuring proceedings are available, whilst the mechanism set up in the UAE is

recent and remains largely untested. This notable absence of restructuring opportunities may in part be explained by a tendency to consider that debt repayment is a matter of personal honour. Thus, it is common in these countries that creditors, instead of relying on insolvency proceedings, file criminal complaints and fetch money through a direct route (board members in the UAE may be held personally liable for debts). Believe it or not, but when an insolvent debtor may be sentenced to a prison term, a recurrent tendency to disappear when things turn wrong seems to surface. ■

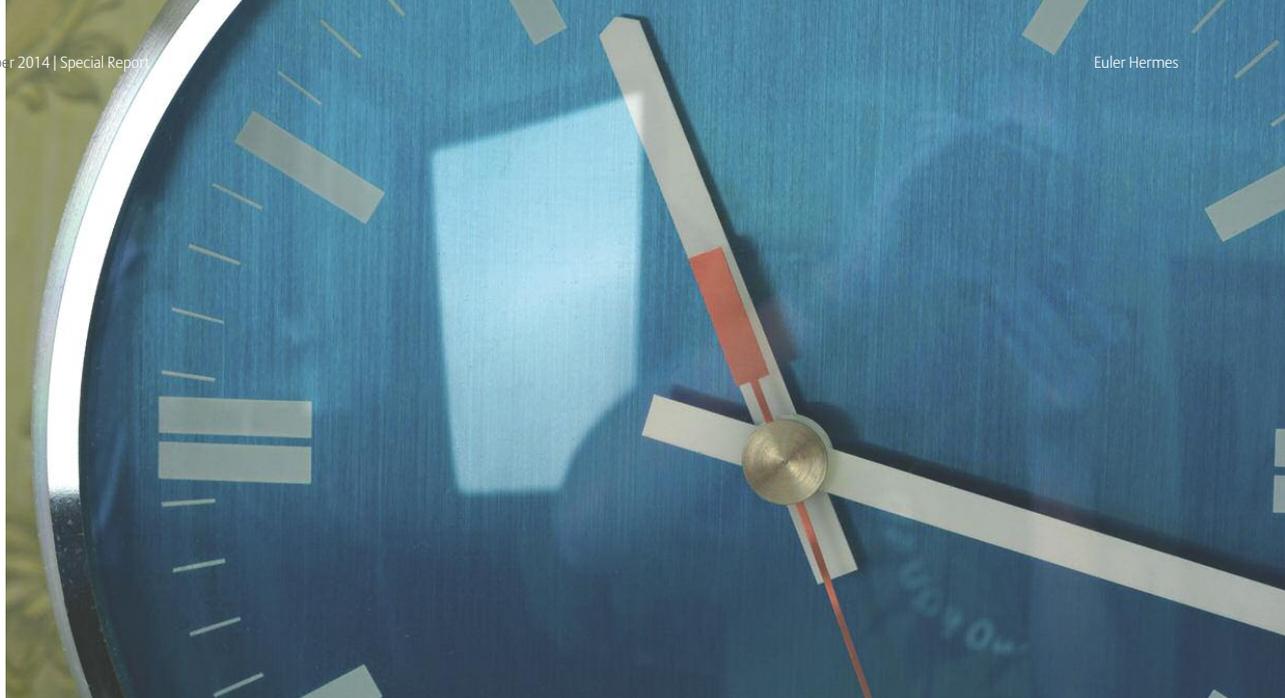



POLAND

■ The payment behavior of domestic firms overall remains poor and the average DSO is overall excessive, despite domestic regulations on late payments being more demanding than EU standards.

■ Legal action in Poland is long and unpredictable, therefore formal proceedings should only commence when all amicable and pre-legal collection opportunities have been exhausted.

■ Collecting debt from insolvent debtors is a challenging task and, although debt renegotiation mechanisms have been set up, they are rarely relied upon and liquidation proceedings remain the default proceedings in practice.



Rule #5

The sooner, the better


PORTUGAL

■ Payment terms and late payment are regulated in Portugal in accordance with the applicable EU rules, however the standards put in place are within the softer in Europe. As a result, DSO remain excessive.

■ The court process is a major complication when it comes to collecting debt and it seems advisable to first conduct negotiation with teeth with the support of collection specialists. When recourse to court is needed, Alternative Dispute Resolution methods and foreign courts (EU judgments will be fairly enforceable in Portugal) may be worth considering in order to avoid inefficient domestic courts.

■ Despite reforms conducted in 2012 to increase company rescue possibilities, insolvency proceedings often lead to the liquidation of the company and it is rare for unsecured debtors to recover their debt.


ROMANIA

■ Although Romania's regulations on late payments are more demanding than EU rules on the matter, the paying behavior of domestic companies remains questionable.

■ Legal proceedings are long and costly, therefore having recourse to arbitration or to a foreign (European) forum is worth considering because both arbitral awards and decisions rendered in EU countries are fairly enforceable.

■ Before commencing legal actions of any kind, however, it is essential to conduct thorough pre-legal actions. Indeed, when time goes on, chances are that bad payers will become insolvent. In such cases, recovering the debt becomes mostly impossible.

As explained throughout, complexity stems from three main factors: payment customs, court tortuousness, and insolvency hazards. As the attached charts demonstrate, these three major sources of complexity tend to fluctuate from one country to another. In France or Germany, for instance, courts are reliable and proceedings are fairly efficient, so that the insolvency of the debtor would constitute the main peril once collecting debt. In China, the UAE or Saudi Arabia, by contrast, the complexity weighting significantly differs because the court system would seem to be as unreliable as the insolvency system.

Nonetheless, the above may be summarized as follows. First, the risk related to payment customs may be limited by inquiring about a country's payment culture (would domestic buyers traditionally pay on time?) and payment habits (what is the average duration to obtain effective payment?). In addition, negotiating a favorable way-out is always worthwhile, and ensuring that contractual terms are agreed upon is essential in case payment is late. In this regard, a broad range of mechanisms such as payment instruments, contractual ownership agreements and interest rates may be put in place, although specifics may differ from one country to another.

Second, pre-legal negotiations would in most circumstances yield more results than formal legal action and, even though the courts are efficient in many countries, negotiating a favorable outcome would usually be a time and money saver because court systems vary and great disparities may be flagged up. As our map shows, commencing legal proceedings in numerous countries would be simply foolish unless important amounts are at stake because courts may be inefficient or unsupportive. Having said this, international debt

collection efforts may often benefit from regional frameworks which, beyond common prejudices, are not a mere matter of politics.

Finally, if time is money, extensive delays may be tantamount to severe cash management problems. Hence, the longer one waits, the greater the chances of finding that the buyer has become insolvent or has disappeared. Only, insolvency mechanisms in most countries lead to poor results as far as unsecured creditors are concerned and the odds of collecting debt from buyers through debt restructuring or liquidation proceedings are null.

Let's wrap it up: collecting debt is always a complex task, no matter what, no matter how. Thus, orchestrated pre-legal collection efforts are key and, overall, the sooner the reaction the better. ■

**RUSSIA**

- The paying behavior of domestic firms is poor and chances are that the business partner has disappeared or is in fact hiding behind complex legal structures. Payment terms are not regulated and interest on late payment does not make part of local traditions.
- Courts may be fairly efficient when a debt is certain and undisputed, but legal proceedings may otherwise be complex (no default judgments, no fast track proceedings above EUR 6,000 even if the debt is certain and undisputed) and cannot be avoided through Alternative Dispute Resolution methods (which is not relied upon) or through foreign courts (since Russian courts apply extremely strict jurisdictional exclusivity rules).
- Insolvency proceedings ought to be avoided. A debt renegotiation mechanism is in theory available but it is left unused in practice. Liquidation is therefore the default procedure, but unsecured debtors would in practice have very limited chances of recovering their debt.

**SAUDI ARABIA**

- As with all GCC states, late payment is common in Saudi Arabia. In practice, the law does not regulate late payment, whilst late payment interest is simply prohibited and collection costs cannot be recovered from the debtor unless a specific agreement has been concluded by the parties. As a result, debtors will often try to negotiate discounts of debts in exchange for prompt payment.
- Local legal action is overall very slow, costly and uncertain because the courts are not bound by a system of precedent and have considerable discretion in applying Sharia's principles to specific circumstances. In addition, several weeks or months may separate each hearing and the courts hardly abide by time management requirements.
- Insolvency laws in the Middle East are not as sophisticated as in other regions of the world and the inexistent company rescue culture in Saudi Arabia illustrates this tendency.

**SINGAPORE**

- The paying behavior of domestic companies is good and the DSO is correct, however the law provides no guideline as to how late payments should be handled and contracts thus remain the only reference when business relationships turn bad.
- Legal action overall remain expensive even though the court system is fairly efficient.
- The Insolvency framework is in line with international standards however in practice, as in most countries, collecting debt from insolvent debtors would prove to be a genuine challenge.

**SLOVAK REPUBLIC**

- The payment behavior of domestic companies is fairly good but has degraded lately despite EU standards on late payment being transposed into domestic law.
- The legal system suffers from a persisting lack of trust in the Rule of Law, whilst the legal process is overly slow (not to mention a tendency of domestic debtors to use the system so as to delay legal proceedings and enforcement attempts as much as possible).
- Debt restructuring mechanisms may help collecting debts, but recovery chances would overall remain extremely limited (null) when legal proceedings have been delayed and the debtor has become insolvent.

**SPAIN**

- The paying behavior of Spanish companies is fairly bad and commercial credit (late payment) constitutes an underlying feature of commercial exchanges in Spain.
- The judicial process in Spain is very slow, so it is usually preferable to conduct efficient and orchestrated debt collection efforts prior to considering legal action (which often leads directly to insolvency proceedings).
- When the debtor has become insolvent, collecting debt becomes extremely complicated, especially as far as unsecured creditors are concerned.

**SWEDEN**

- The payment behavior of domestic companies is a reference and domestic courts are fairly efficient in dealing with disputes in a timely manner, however collecting debt through negotiation remains the most effective option
- Recovering the debt becomes mostly impossible when the debtor becomes insolvent because debt renegotiation schemes would allow writing off up to 75% of the debt, whilst the priority rules set forth in liquidation proceedings make it unlikely for unsecured creditors to receive any part of the proceeds.

**SWITZERLAND**

- The payment behavior of domestic companies is a reference and domestic courts are fairly efficient in dealing with disputes in a timely manner, however collecting debt through negotiation remains the most effective option.
- Indeed, even though mechanisms designed to increase debt renegotiation and company rescue have been put into place, liquidation would seem to remain the default procedure at this time, thus leaving little chances for unsecured creditors to collect debts from insolvent debtors.

**THAILAND**

- The paying behavior of Thai companies is fairly good but regulations are limited when it comes to late payments.
- Although domestic courts are fairly independent, the rule of law perception has margin for improvement, procedural delays and costs may be an issue and enforcing court decisions may be challenging. Overall, recourse to courts should be avoided and conducting orchestrated collection actions is rather advisable.
- Collecting debt from insolvent debtors is often extremely difficult, especially when the debt is not secured.

**TURKEY**

- The paying behavior of domestic firms has significant margin for improvement and normal payment terms may seem excessive. In fact, as a result of a long payment duration trend, the value of unpaid receivables has grown considerably since the last 3 years.
- Domestic courts lack independence, the rule of law perception is moderate, and the chances of obtaining debt payment through legal action is lower than through strong negotiation efforts.
- Debt renegotiation proceedings before the courts are not generalized when it comes to insolvency issues and liquidation remains the default proceedings even though liquidative sells rarely yield efficient results and may thus not be in the creditors' best interest.

**UNITED ARAB EMIRATES**

- The paying behavior of large domestic companies is correct, however dealing with small and medium size businesses may represent a significant risk of non-payment. Since insolvent debtors may be sentenced to a prison term, indeed, their tendency to disappear when things turn wrong is significant.
- The legal framework is complex and the courts tend to lack independency and reliability whilst procedural delays and costs may be prohibitive.
- Insolvency law does not provide much support when it comes to debt recovery: a debt renegotiation mechanism has been put in place but in practice it remains largely untested and liquidation prevails, thus leaving no chances of recovery to the creditors.

**UNITED KINGDOM**

- The average DSO in the UK has decreased lately, however the payment culture of domestic companies is becoming increasingly questionable.
- Courts are efficient in delivering timely decisions but pre-legal action efforts often remain the most effective: the longer the legal proceedings the greater the chances of facing insolvency issues.
- The insolvency framework is oriented towards the protection of the creditor's rights, but an emphasis has been made on the need to rescue viable businesses. Such proceedings would however not guarantee that the debt would be recovered as in practice there are no limitations as to how much of the debt may be written off during renegotiations. Furthermore, liquidation proceedings would rarely yield any of the proceeds to unsecured creditors.

**UNITED STATES**

- The payment culture of domestic companies is becoming uncertain and, in the absence of a harmonized framework on late payments, payment terms remain a mere contractual issue and the average DSO would tend to be excessive.
- The court system is complexified by a federal structure in which ownership protection mechanisms are not recognized and where no simplified proceedings are available to settle the simplest files. As a result, significant delays and costs must be expected whilst enforcement may be difficult.
- When the debtor becomes insolvent, collecting debt becomes a complex task. First, the bankruptcy system remains pro-debtor and, although it is often said that making a company insolvent is a significant way to obtain payment, in practice bankruptcy reorganization is resource-draining. In addition, most states protect the debtors' personal assets and there is therefore a possibility for a corporate bankruptcy to be listed as "no asset" cases. This means that after liquidating the debts, the likelihood of any distribution to creditors is zero.



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