

Collection Profile Mexico

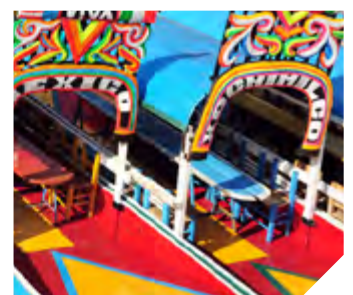
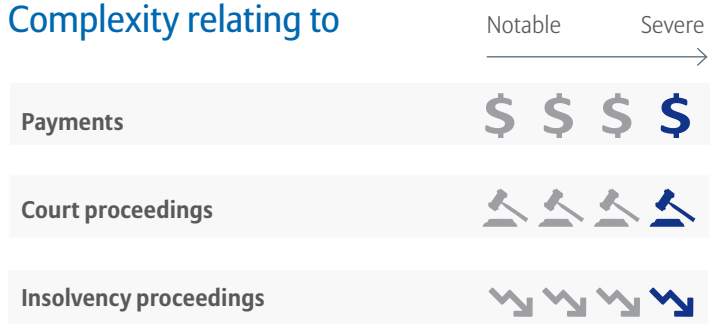
Collecting in Mexico

- The law provides no framework on standard payment terms, but it is common to rely on 30-day credit terms starting from the date of the invoice. In practice, payments take place within 40 to 50 days on average, while delays of 15 to 30 days may be expected.
- The court system is complicated by its federal structure and is 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 the default procedure when the debtor becomes insolvent, though the chances of collecting debt through this channel are very low.

Collection complexity



Complexity relating to



Contents

- General Information 3**
 - Availability of financial information..... 3
 - Main corporate structures..... 3
 - Regulatory environment..... 3

- Getting Paid..... 4**
 - Days Sales Outstanding (DSO) 4
 - Late payment interest..... 4
 - Debt collection costs..... 4
 - Ownership protection 4
 - Payments..... 4

- Collecting Overdues 5**
 - Amicable action 5
 - Legal action..... 5
 - Alternatives to legal action 6

- Handling Insolvent Debtors 7**
 - Insolvency proceedings 7



General information

Availability of financial information

Obtaining financial information on domestic companies is a challenging exercise. Financial reporting on larger companies lacks transparency, while smaller businesses have no obligation to publish their financials and tend to disappear without notice.

Euler Hermes has access to the financial information released by public and audited companies, and relies on various specialized providers. The data is then verified and analyzed in order to allocate each company a grade reflecting its financial health and how it conducts business. Grades represent a core of our knowledge and analyses, and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions.

Main corporate structures

Liability for business debts is determined by legal structures, which which may be described as follows:

- Sole Proprietorship is available for small businesses managed by an individual and for which no commercial structure is necessary. In this case, the owner is held liable for all business debts. Two to fifty individuals may also decide to share ownership and responsibilities through Partnerships (Sociedades en Nombre Colectivo), in which case the partners may be jointly and individually liable for the actions of the other partners. Limited Liability Partnerships (Sociedades en Comandita Simple) may alternatively offer limited liability to the partners. Civil Societies (Sociedad Civil) are often used for service businesses like consulting and audit firms, but the owners would be completely responsible for the liabilities of the company.
- Limited Liability Companies (Sociedades de Responsabilidad Limitada, RL) require minimal capital funds (MP\$ 3,000) while the partners' liability is limited to their contribution. Corporations (Sociedades Anónimas, SA) represent the majority of businesses in Mexico and are used for larger structures willing to divide their capital (at least MP\$ 50,000) into tradable shares. In these entities, the shareholders' liability is limited to the value of their shares.
- Foreign companies may alternatively settle in Mexico through registered Branch Offices (Sucursales) which provide no liability limitations to the foreign parent company, or through Subsidiary Companies (Subsidiarios), which do take the form of separate legal entities. Joint Ventures (Asociaciones en Participación, A en P) do not require incorporations and would simply be set up through a contract drafted for this purpose.

Regulatory environment

Mexico has a legal system based on Civil Law traditions where the rules are essentially codified. The country is made of 32 states and thus has a federal organization; various bodies of law operate at the federal level (Civil Code, Commercial Code, and Code of Civil Procedures) and at the state level alike.



Days Sales Outstanding

(DSO): In practice, payments take place within 40 - 50 days on average. Delays of 15 - 30 days may be expected if transaction is not secured.



The judiciary divides into District Courts (competent to deal with civil, commercial and criminal matters) operating in first instance at the federal and state levels alongside specialized courts (dealing with bankruptcy and family disputes) and administrative courts. The Circuit Courts then act as the appellate body, while the Supreme Court operates as the ultimate jurisdiction in Mexico.

Getting Paid

Days Sales Outstanding (DSO)

The law provides no framework on standard payment terms, but it is common to rely on 30-day credit terms starting from the invoice date. Broader terms are very frequent and in practice, payments take place within 40 to 50 days on average while delays of 15 to 30 days may be expected if the transaction is not secured. Having said this, the payment behavior of domestic companies is good and characterized by a strong attachment on trust and business relationships. Therefore, small businesses are flexible with payment schedules but do not voluntarily delay payments (delays would more likely occur as a result of poor banking support), while larger companies would endeavor to pay on time in order to preserve their credit rating and maximize their business opportunities on an international plane. Some exceptions exist of course, and in certain occasions collecting from small and micro companies may prove very difficult as they may change names and operations from one day to the next in order to escape their contractual responsibilities.

Late payment interest

The law provides no framework on late payment, which is normally considered as a matter of contractual negotiation. To claim interest pre-legally, it needs to have been previously agreed. Often, a 6% interest rate would be applied but in practice it would be difficult to charge any interest as part of pre-legal negotiations. These would need to be claimed during court proceedings.

Debt collection costs

Collection costs would usually be used as a negotiation tool when the debtor has financial difficulties, otherwise they would be charged as part of the legal collection process.

Ownership protection:

Companies would rather sign guarantee documents (promissory notes) and in exceptional cases personal guarantees. However, these documents do not necessarily mean that the debtor will pay. A legal process and trial resolution may be needed to execute these guarantees. Even if there is a favorable judgment, there is no guarantee that there are sufficient goods to cover the debt. It is therefore important to be sure that the debtor can be located, is trading and has enough goods to cover the debt.

Payments

Bank transfers are among the most popular payment means for international transactions as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. Export transactions are usually guaranteed through Export Credit Insurance, which helps minimize the risk of sudden or unexpected customer insolvency. Euler Hermes' worldwide network of risk offices monitors the financial well-being of customers and grants them a specific credit limit up to which clients may trade and claim should something go wrong. Alternatively, Standby Letters of Credit (a



Late payment interest:

Late payment interest:
Often, a 6% interest rate would be applied but in practice it would be difficult to charge any interest as part of pre-legal negotiations.



bank guarantees the debtor's credit quality and repayment abilities) are often used in relation to export shipment transactions as they constitute reliable guarantees which can be triggered as a 'payment of last resort' if the client fails to fulfil a contractual commitment. Also, irrevocable and confirmed Documentary Letters of Credit (a debtor guarantees that a certain amount of money is made available to a beneficiary through a bank once certain terms specifically agreed by the parties have been met) is increasingly relied upon. Banking guarantees may be difficult to obtain in Mexico, but checks and promissory notes tend to be used as debt recognition titles. It is advisable (though difficult) to negotiate for payments to be made in advance, or to obtain down payments. Payment instalments are often relied upon.

Collecting overdues

Amicable action

Negotiating

Amicable settlement opportunities should always be considered as a serious alternative to formal proceedings which are costly and very lengthy. In practice, only claims in excess of USD 20,000 would normally be brought to court, and pre-legal collection methods would often be more successful than ordinary proceedings. In addition, it is essential to be aware of the debtor's activity and solvency status: if the company is not in business anymore or if insolvency proceedings have been initiated, it generally becomes impossible to enforce a debt.

Legal action

Ordinary proceedings

Legal dunning always ought to start with a registered Demand Letter reminding the debtor of their obligation to pay the principal together with late payment interest (as contractually agreed or taking a legal rate as a reference), but this demand may be reinforced if sent through a notary. When the debt is undisputed by the debtor, a 'preparatory media' procedure aims to help the parties reach an agreement within three months. In practice, this possibility is rarely relied upon and formal lawsuits remain the default procedure.

Formal legal action in first instance would normally take place through either a Civil Process (Civil Complaint about the Debt) or a Commercial Law Process, depending on the case. The creditor would file a claim with the District Court, while summons would be served to the debtor. The latter would normally be given 15 days to bring a defence. Failure to do so would entitle the creditor to request a default judgment from the court. Otherwise, the court would review the parties' evidence and arguments over a 40-day period prior to rendering its decision. In practice, however, these time requirements are not always applied. The courts would normally award remedies in the form of executive orders, specific performance or injunctions. Punitive damages could, in theory, be awarded but remain rare in practice as the proof threshold is very burdensome.

Prior to commencing formal proceedings and provided that the contract allows it, initiating legal action in a foreign jurisdiction or commencing arbitration or international arbitration may be considered (arbitration may prove more costly than ordinary lawsuits, however enforceable decisions would be rendered more rapidly).

Necessary documents

The case must be supported with all the information that can explain in detail the payment default and situation.

- Proof that the debtor company exists and is in activity (credit report only as support in order to be sure that the debtor continues trading and can be located)
- Power of attorney
- Original documents (invoices, orders, delivery documents)



Time limitations

Commercial claims must be brought to court within specific periods of time. Invoices may be brought within ten years from the end of the year of the due date, but payment titles (such as signed payment promises and checks) must be brought within three years.

Provisional measures

Provisional measures may help preserve the debtor's interests pending a final judgment. Indeed, the court may order interim measures aiming at protecting assets (attachment orders, restraining orders). The claimant must demonstrate that it has a strong case and that ordering such measures would prevent the occurrence of irreparable harm. Same-day orders cannot be obtained in practice and it is usually necessary to expect a three- to five-day delay prior to obtaining an order. In Mexico like in most countries, the courts may render ex parte decisions (in the debtor's absence) in emergency situations, but the claimant would be asked to provide security on costs in order to protect the respondent from irresponsible action.

Collection @ Euler Hermes

It is always advised to attempt collection prior to any legal action in order to maximize chances of successful recovery and avoid legal costs and delays. Our key principle is to collect in close proximity to the debtor, using a series of letters, emails and phone calls in the local debtor language. Our World Collection Network of Euler Hermes offices and external providers are experts in professional trade debt collection and negotiation, ensuring positive outcomes while retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgment and enforcement.

Lodging an appeal

Appeal rules in Mexico used to be fairly complex but they have benefited from reforms conducted since 2008. Decisions in first instance may be appealed (Recursos) before the Circuit Courts within 15 days (versus nine days prior to the reforms) following the delivery of the decision. This appeal does not question the court's decision but verifies the court's compliance with procedural rules. If the appeal is successful, the file must be returned to the lower court for amendment and a new judgment may be delivered. If the appeal is rejected, a second appeal may be brought to the Supreme Court on constitutionality grounds (Juicio de Amparo).

Enforcing court decisions

A judgment is enforceable as soon as it becomes final (i.e. when all appeal venues have been exhausted). If the debtor fails to satisfy the judgment and their assets can be located, it is possible to request a mandatory enforcement order from the court, in the form of an attachment order, sale of specific assets or liquidation of the company. This process can take between six months and two years.

How long could legal action take?

Obtaining a decision in first instance could take a minimum of 12 to 18 months, but depending on the complexity of the case, obtaining a final and enforceable decision would take between two and five years. Enforcement proceedings can take anywhere from six months to much longer if assets need to be seized and sold. Courts would not require more time to deal with cases involving a foreign party, however the case documentation needs to comply with local standards (translation, for instance) and this can require some extra time.

How much could this cost?

In addition, although justice should be available at no cost, the courts tend to impose costs when the parties fail to provide sufficient evidence or fail to contribute to the proceedings in a constructive fashion. As a general rule, the parties must pay for their own attorney fees but the courts may order the defeated party to bear up to 20% of the successful party's legal costs.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Alternative dispute resolution methods such as mediation and arbitration are not widely used for collection purposes in Mexico, but could nonetheless provide a means to escape lengthy legal proceedings.

Enforcing foreign awards

The law in Mexico makes it possible for a foreign judgment to be enforced by domestic courts against a domestic debtor through exequatur proceedings. As in most countries, the Mexican courts would not conduct a re-trial procedure, but they would verify that certain requirements are fulfilled prior to recognizing the foreign decision as a domestic one. According to the Federal Code of Civil



Procedures, the courts must particularly validate, among other points, that the foreign court had jurisdiction to decide on the issue, that the parties both benefited from a due process of law, that the said decision is final and enforceable in the issuing jurisdiction, and that enforcing the foreign decision would not conflict with Mexican law or public policy.

Mexico is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, to the Inter-American Convention on International Commercial Arbitration of 1975, to the Inter-American Convention on International Jurisprudence for the Enforceability of Foreign Judgments of 1979, and to the Inter-American Convention on the Extraterritorial Enforceability of Foreign Decisions and Arbitral Awards of 1987. Therefore, domestic courts also ought to recognize and enforce decisions rendered through international arbitration proceedings.

Litigation @ Euler Hermes

Should legal action be necessary, Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

Handling insolvent debtors

Insolvency in Mexico is a matter of cash flow and balance. A company is deemed insolvent once it is unable to settle debts once they fall due, or when its assets cannot compensate for its liabilities. Various criteria apply, but as a general rule, prior to commencing insolvency proceedings the debtor must owe at least two creditors and the debt must have remained unpaid for more than 30 days while representing at least 35% of the company's debt. The Ley de Concursos Mercantiles (LCM), also known as the Business Reorganization Act of 2000, provides two main insolvency procedures and is described as having incorporated most of the best international practices. The Act fosters corporate restructuring rather than liquidation, imposes restrictions on litigation, and automatically triggers a liquidation process in order to deter excessive delays. All insolvency proceedings must be conducted before the Federal District Courts.

Insolvency proceedings

Out-of-Court proceedings

The 2007 amendment to the Insolvency Law allows the debtor (with the approval of creditors holding at least 40% of the debt) to establish a pre-package reorganization agreement, allowing the court to issue an Insolvency Declaration and declare the company in Concurso Mercantil.

Winding up proceedings

The Concurso Mercantil debt restructuring process is not efficient at all, and proceedings may last for years (ex. Mexicana, more than 10 years). As a result, liquidation is in practice the default procedure when the debtor becomes insolvent.

Liquidation may only be requested by the debtor; however a debtor may be placed into liquidation as a result of its failure to submit an acceptable debt restructuring proposal to the creditors through the Concurso Mercantil proceedings. A liquidator (Interventor) is appointed, and given responsibility for managing the company, selling the assets and distributing the proceeds to the creditors according to their priority ranks. Creditors are normally given roughly six months to file their claims.

Priority rules

Priority rules apply while redistributing the proceeds of the sale of the debtor's assets. Employees are normally given super priority over tax creditors, which have priority over estate administration claims and secured debts (legal costs, preferential labor debts). Unsecured debts would be considered last.

In addition, there are two types of liability guarantees: guaranteed debts are given a priority and allow recovering money through the debtor's assets, while unguaranteed debts have no priority and would most likely allow no money to be obtained.



Cancellation of suspect transactions (clawback)

Creditors and liquidators are normally entitled to request the court to cancel certain transactions concluded during a suspect period starting approximately nine months prior to the insolvency proceedings. In particular, any measure taken by the debtor deemed detrimental to the creditors would typically be void (unfair loans, inappropriate debt repayment, debt write-offs, suspect disposal of assets, fraudulent transactions, gratuitous acts, etc.).

How long could insolvency proceedings take?

Insolvency proceedings last between five to ten years on average.

Necessary documents

All required documentation relies on the prior legal process; therefore all stated documents apply (originals along with translations and certifications).

Insolvency @ Euler Hermes

Euler Hermes works closely with debtors, creditors and lawyers to provide support during insolvency and restructuring processes. With many options available when it comes to insolvency action, we can offer advice on which option is most suitable.

This Collection Profile is published by Euler Hermes, a company of Allianz, for information purposes only. The information provided therein shall not be regarded as providing any legal advice or advice of any kind. Readers should make their own independent evaluation of this information and under no circumstances shall any action be undertaken solely relying on it, while legal advice should be sought with legal practitioners at all times. While this information has been collected and drafted by recognized experts in their field and it is believed to be correct and reliable, Euler Hermes makes no warranty (express or implied) of any kind, in regards to the accuracy or completeness of this information, nor does it accept any responsibility or liability for any loss or damage arising in any way from any use made of, or reliance placed on, this information. This material should not be reproduced or disclosed without our consent. It is not intended for distribution in any jurisdiction in which this would be prohibited and Collection Profiles are subject to change without notice.

©Copyright 2017 Euler Hermes. All rights reserved.

Euler Hermes, a company of Allianz, leader in credit insurance solutions helping companies grow their business safely at home and abroad, provides global commercial debt collection services with true end-to-end capability. Euler Hermes offers both domestic and international trade debt collection services worldwide. Through our network, we use our experience and knowledge of local markets to ensure a professional service for our clients from pre-legal action through to legal proceedings.

Visit Euler Hermes at www.eulerhermes.com