

Collection Profile Singapore



Collecting in Singapore

- The payment behavior of domestic companies and the DSO is good. However, the law provides no guidelines as to how late payments should be handled and contracts remain the only reference when business relationships turn sour.
- Overall, legal action remains 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.

Collection complexity



Complexity relating to

Notable Severe
→

Payments	\$ \$ \$ \$
Court proceedings	⚖️ ⚖️ ⚖️ ⚖️
Insolvency proceedings	↘️ ↘️ ↘️ ↘️



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

Transparency and reliability of financial information in Singapore is adequate, except for companies with Exempted Status which are not required to file financials. Pursuant to the Companies Act, all locally incorporated companies are required to file their annual returns within one month of the AGM with the Accounting and Corporate Regulatory Authority.

Euler Hermes cross-verifies financial information obtained from official and specialized sources to allocate each company a grade reflecting its financial health and how it conducts business. Grades represent a core of Euler Hermes' 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

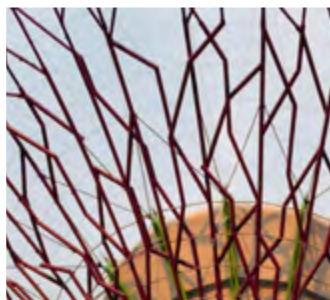
Liability for business debts is determined by legal structures, which are described as follows:

- 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 or more individuals may also decide to share ownership and responsibilities through Partnerships, in which case the partners may be jointly and individually liable for the actions of the other partners. Limited Liability Partnerships may alternatively offer limited liability to the partners.
- Limited Liability Companies are the most favored legal entities because they require a reasonable minimum capital funds (SGD 1, though SGD 1,000 is recommended) and they do not have paid-up capital, while the partners' liability is limited to their contribution. Joint-Stock Corporations are used for larger structures willing to divide their capital into tradable shares. In these entities, the shareholders' liability is limited to the value of their shares.
- Foreign companies may settle in Singapore through Representative Offices which are not allowed to generate income and thus merely act as liaison or market research offices. Use of Branch Offices is more common when doing business, even though such entities are not separate from the parent company's legal structure and thus offer no liability limitations. Thus, subsidiaries tend to be set up through Private Limited Companies.

Regulatory environment

The Singapore Court System consists of State Courts (Magistrate Court and District Courts) and the Supreme Courts (High Court and Court of Appeal).

The High Court hears civil and criminal cases in the first instance as well as in appeal from the State Courts. The amount of the claim will determine which court is competent: in general, civil cases involving claims not exceeding SGD 60,000 are dealt with by the Magistrate Courts whereas claims above SGD 60,000 but not exceeding SGD



Days Sales Outstanding

(DSO): The payment culture in Singapore is good: invoices are usually paid within 30 to 60 days depending on the industry.



250,000 are dealt with by the District Courts. Claims above SGD 250,000 are dealt with by the High Court. The Court of Appeal hears appeal cases from the High Court.

The courts are divided into divisions, but these do not operate on a specialty basis. The courts are overall fairly efficient and independent while the rule of law perception is good, however conducting legal action would remain a costly experience.

Getting Paid

Days Sales Outstanding (DSO)

The payment culture in Singapore is good: invoices are usually paid within 30 to 60 days depending upon the industry, while late payments are rare.

Late payment interest

Late payment interest must be agreed upon during the contractual negotiations and put in writing. In practice, interest would rather constitute a negotiation tool while collecting the debts.

Debt collection costs

Similarly, collection costs must be agreed upon in writing when negotiating the contract, but they would essentially be paid to the creditor upon court request. Therefore, they would essentially be used as negotiation tools during the pre-legal collection phase.

Ownership protection:

Retention of Title (RoT) provisions aiming at preserving ownership over goods until the price has been paid in full are admissible in domestic courts.

Payments

The most common payment methods are as follows:

A majority of domestic transactions in Singapore are done by check or open account, which means that the goods are shipped and delivered before payment is due.

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 an Export Credit Insurance policy, 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 bank guarantees the debtor's credit quality and repayment abilities) are often used in relation to export shipment transactions because 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.

Down payments may be negotiated and bank guarantees may generally be obtained, but they remain costly.



Late payment interest:

Late payment interest must be agreed upon during the contractual negotiations and put in writing.



Collecting overdues

Amicable action

Negotiating

Amicable settlement opportunities should always be considered as a serious and very common alternative to formal legal proceedings, which overall remain expensive even though the system is fairly efficient. Although there are no pre-legal action requirements, the courts would indeed tend to penalize unreasonable behavior (rejection of a reasonable settlement proposal, for instance).

Before starting legal proceedings against a debtor, assessing its assets is also important as it allows verification as to whether the company is still active and whether recovery chances are at best. In addition, it is essential to be aware of the debtor's solvency status: if insolvency proceedings have been initiated, it indeed becomes impossible to enforce a debt.

Legal action

Ordinary proceedings

Legal dunning ought to start with a registered Demand Letter recalling the debtor's obligation to pay the principal together with late payment interest (as contractually agreed or taking a legal rate as a reference) and possibly offering to enter negotiations. There is no fast-track scheme in Singapore therefore it is necessary to conduct a normal lawsuit even if the debt is certain and undisputed. When urgency is demonstrated, it is possible to get an earlier hearing date.

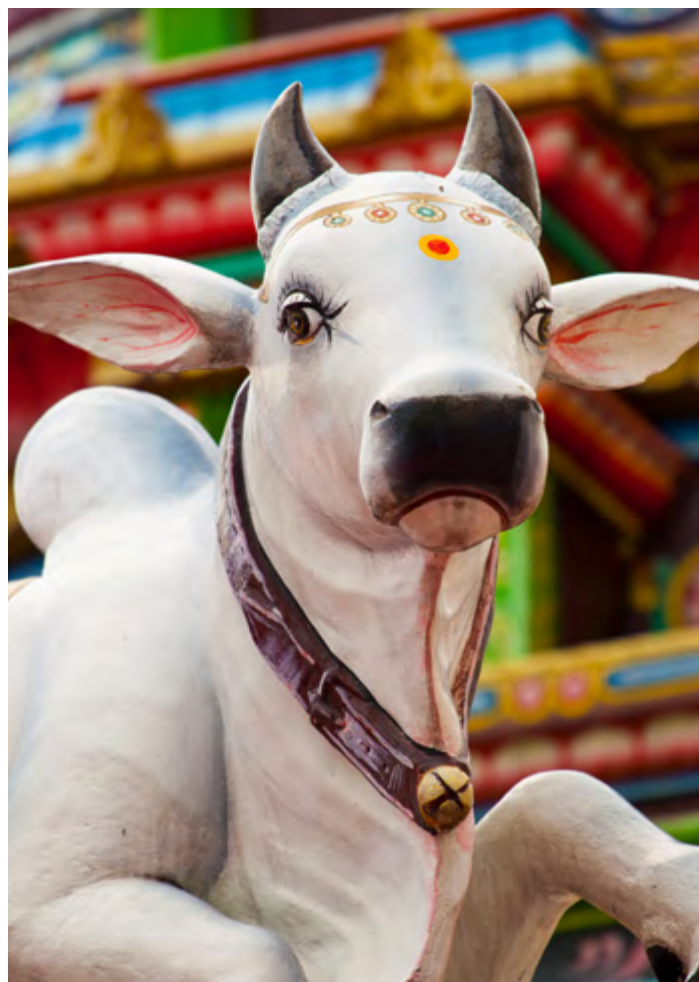
Ordinary legal action would usually commence when amicable collection has failed. The creditor may issue a Writ of Summons and have it served to the other party. The latter is then given 8 to 14 days to file a defense. Failure of the debtor to pay or react would typically entitle the court to render a default judgment, but refusing to acknowledge service of the Writ of Summons does not make the service invalid nor prevent the plaintiff from proceeding further. The court then sets up hearings in order to examine the parties' evidence (discovery stage) and considers the parties' arguments and witnesses prior to making a decision. When the debtor raises no defense or counterclaim during the proceedings, or if its defense has no real chance to succeed, a summary judgment may be rendered in order to shorten procedural delays.

Necessary documents

Invoices, purchase orders, delivery orders, bills of lading, sales contract, communication between the buyer and seller, statements of account.

Time limitations

The limitation periods imposed under Singapore law for a creditor to bring a claim and the starting point of such periods depend on various criteria, such as the type of cause of action, the nature of the contract, etc. Generally speaking, however, claims must be brought to court within six years.



Provisional measures

Provisional measures may help to preserve the creditor's interests pending a final judgment. Upon request, the courts would typically order interim measures aiming at preserving the status quo, at avoiding irreparable damage (attachment of the debtor's assets, mandatory injunctions to do something and prohibitory injunctions to prevent from doing something, protection of rights, etc.), or at preserving evidence (search orders, seizure orders). It would however be necessary to demonstrate that the claim has a good chance to succeed and that damages alone would not suffice in the absence of precautionary measures. In emergency situations, the court may make its decision *ex parte* (i.e. without the debtor being present) but would also order the claimant to provide security on costs in order to protect the respondent from irresponsible action.

Lodging an appeal

Decisions rendered in first instance by the Magistrates Courts and the District Courts may be brought to appeal before the High Court, while decisions rendered by the High Court may be appealed against before the Court of Appeal, provided that the appellant has been granted a leave for appeal authorizing such proceedings to take place.

In practice, appeal proceedings involve many steps and various timelines must be observed. As a result, the mere procedure may take several weeks or months before the case is even considered.

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, it is possible to request a mandatory enforcement order from the court in the form of damages, specific performance, injunctions, seizure and sale of the debtor's assets, or garnishee orders allowing the creditor to obtain payment of a debt through a third party owing money to the debtor. Punitive damages may only be awarded in exceptional circumstances.

How long could legal action take?

A default judgment may be obtained within four months, while a summary judgment or a first instance decision may be obtained within six months to a year. However, up to three years may be required to obtain a final judgment when appeal proceedings are commenced. Enforcement proceedings could last approximately two months.

Proceedings involving foreign parties would in practice require more time than proceedings involving domestic parties only.

How much could this cost?

Legal actions may be time consuming and therefore expensive, but the courts would usually not allow for the successful party's costs to be fully compensated by the defeated party. Overall, legal proceedings could reach SGD 5,000 to SGD 20,000 on average for a simple case, but costs are known to go up to SGD 40,000 for complex cases. Contingent fees whereby the legal professionals are entitled to receiving a percentage on the final award are forbidden by law, and attorneys would charge creditors on a time basis.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

As in most countries, Alternative Dispute Resolution methods in Singapore include expert determination, mediation and arbitration. Although ordinary litigation is in practice the most common way to settle commercial disputes, arbitration is becoming increasingly popular because it is a more straightforward means of settling a dispute insofar as the parties agree to rely on an independent and impartial third-party arbitrator, who is given authority to settle their dispute on their behalf. As an out-of-court settlement method, ADR can be cost-effective, generally reduces delays, allows preservation of confidentiality and offers a binding decision which may then be enforced before the courts if necessary. When international transactions are involved, international arbitration may be considered as Singapore is now widely recognized by parties trading in Asia as a place for conducting arbitration proceedings that are both neutral and geographically convenient.

Expert determination similarly relies on the nomination of a third-party expert to solve the dispute on behalf of the parties. Mediation proceedings rather involve the nominating of a mediator who is given responsibility for helping the parties to reach a compromise. In other words, the mediator has no authority to decide

on the behalf of the parties and renders no binding decisions insofar as the new agreement is considered as a contract.

Foreign forums

It is worth noting that courts in Singapore would tend to respect the will of the parties to a contract to choose the law applicable to their contract, and to select the court that will have jurisdiction over disputes. Therefore, traders may agree to solve their business disputes in a foreign forum (i.e. under a foreign law or before a foreign court). Courts do not require connecting factors to the chosen jurisdiction, however the courts may retain exclusive competence to deal with specific areas of law, especially if both parties to the contract concluded the contract in Singapore or if judicial proceedings taking place abroad significantly deprived the adverse party from their rights to benefit from a due process of law. In practice, obtaining a decision from a foreign court and enforcing it in Singapore would however tend to take longer than obtaining a decision through domestic courts. Furthermore, some restrictions may apply in terms of enforcement.

Enforcing foreign awards

Foreign judgments may only be enforced in Singapore provided that strict requirements have been fulfilled. Where a foreign creditor has already obtained a foreign judgment against the debtor, he may register the judgment with the Singapore courts and, once registered, the judgment may be enforced as if it were a local judgment. This procedure is only available if the foreign judgment is one that falls under the Reciprocal Enforcement of Foreign Judgments Act or the Reciprocal Enforcement of Commonwealth Judgments Act. If the judgment is one that falls outside these two acts, the foreign creditor will need to commence proceedings to sue on the foreign judgment as a debt.

Singapore is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). Therefore, domestic courts also ought to enforce decisions rendered through international arbitration proceedings.

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.



Handling insolvent debtors

Insolvency in Singapore is a matter of cash flow. Indeed, a debtor is deemed insolvent when they become unable to pay their debts, but the mere inability of a company's assets to compensate for its liabilities would not suffice.

Insolvency proceedings would normally be brought to the High Court. These would take the form of debt restructuring proceedings, or consist of liquidating the debtor company's assets to satisfy the creditors' rights but the latter is not recommended as the chances of recovering is very low.

Insolvency proceedings

Out-of-Court proceedings

The law does not provide for specifically designed out-of-court proceedings.

Restructuring the debt

There are some options when restructuring a debt: a scheme of arrangement upon proposition of the debtor to the creditors, which will be binding on all creditors and members where the required majority is obtained (three-quarters in value of the creditors or members present and voting) at the meeting, and subject to confirmation by the court. To allow members and creditors to exercise their votes properly, the notice summoning the meeting must contain a statement explaining the effect of the arrangement and any material interests of the directors. If the creditors and members do not have sufficient information to make an informed decision, the court may later decline to approve the scheme even though it may have been

approved by the required majority. The role of the court is to ensure that the procedure required by law has been complied with and that the scheme is fair and reasonable.

Alternatively, the debtor or its creditors may apply to court for an order of judicial management. The court may grant such an order if it is shown that the debtor is or will be unable to pay its debts but there is a reasonable prospect of rehabilitating the company or of preserving all or part of the business as a going concern, or that otherwise the interests of creditors would be better served than by resorting to a winding up. During the period for which the order is in force, all the powers and duties of the directors shall be exercised and performed by the judicial manager only. The benefit of judicial management is that it allows a debtor, that is not hopelessly insolvent, some breathing space to reorganize its affairs. Accordingly, there will be a moratorium on legal proceedings against the company and any steps to enforce any security save with leave of court or the consent of the judicial manager. The judicial management order will be discharged after 180 days (unless extended) or if the creditors decline to approve the judicial manager's proposals.

In both situations, failure of the debtor to fulfil its obligations would terminate the reorganization and lead to the liquidation of the company's assets in order to realize the creditors' debts.

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.

Winding up proceedings

A winding-up procedure can be filed either by the debtor (in such case, its members pass a special resolution to voluntarily appoint a liquidator for the purposes of winding-up the affairs and distributing the assets of the company) or by a creditor, who must establish that the company is unable to pay its debts (on the basis of the cash flow test or the balance sheet test ; they may also show that the company has failed to pay a sum exceeding SGD 10,000 within three weeks after the due request). Upon appointment of a liquidator, the powers of the directors cease. Once a winding-up order is made, an automatic moratorium is put in place to prevent any action against the company except by leave of the court. Similarly, any disposition of the company's property and any transfer of shares made after the commencement of the winding-up are void unless otherwise ordered by the court.

Priority Rules

Priority rules normally apply while distributing the proceeds of a debtor's assets. The priority of creditors' claims are governed by the Companies Act and the courts cannot change the rank of the creditors' claims which are as follows: (i) secured creditors need not prove their debts but can realize their security and obtain full satisfaction, (ii) for unsecured creditors, preferential debts (i.e. costs and expenses of the winding-up, employees' salaries, taxes, etc.) have priority over other unsecured creditors, whose debt would be considered pari passu (on equal footing). However, it shall be noted that if unsecured loans have been taken out by the liquidator post-liquidation, the post- liquidation creditors are entitled to priority over the pre-liquidation creditors if the loan was necessary for the beneficial realization of the company's undertakings.

In practice, banks would often gain priority over other creditors and collecting debt would be an impossible task.

Cancellation of suspect transactions (clawback)

A liquidator and a judicial manager have the power to set aside unfair preferences and transactions undervalue given when a company was insolvent or as a result of which the company became insolvent. A transaction undervalue can be challenged if it took place within five years before the presentation of a winding-up petition. An unfair preference which is not also a transaction undervalue and which is given to an associate of the company can be challenged if it took place within two years before the presentation of the winding-up petition. Any other unfair preference can be challenged if it took place within six months before the presentation of the winding-up petition.

How long could insolvency proceedings take?

It takes about one year to wind up a company. Voluntary administration/winding up can take more than two years.

Necessary documents

All documents that would help prove the claim such as correspondence (email or other), contracts, purchase order, invoices, checks, letters of credit and receipts. As court representation must be done through a lawyer, in case of court or arbitral files, a power of attorney is also required.



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.

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