

# Collection Profile Colombia



## Collecting in Colombia

- The payment behavior of domestic companies has been deteriorating, with DSO remaining high and late payments occurring frequently.
- Procedural costs and delays are significant, so court proceedings should be avoided overall. On the other hand, the court system has too many requirements in order to accept security titles.
- 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.

## Collection complexity



## Complexity relating to

Notable      Severe  
→

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



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## General information

### Availability of financial information

Companies must report their financial information annually to the Superintendence of Corporations (Superintendencia de Sociedades de Colombia) and the Commerce Chambers (Camara de Comercio) located in the main cities. However, in some cases relevant and reliable financial information is difficult to obtain due to the informality of the SMEs that represent the majority of Colombian companies. Private channels may help obtain reputational data and use of specialized providers is recommended. Euler Hermes allocates each company a grade reflecting its financial health and how it conducts business. EH grades represent a core of our knowledge and analyses, helping 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:

- Limited Partnerships (Sociedad en Comandita) involve one or more managing partner (jointly liable for the company's operations and debts) together with silent partners. Partners are liable in two different ways: a backer's liability is limited to the amount contributed while a representative shares full responsibility. It is important to note that these types of companies are decreasing due to the high levels of risk for their shareholders.
- Limited Liability Companies (Ltda.) require a minimum of two partners (up to 25), each liable for the amount of their capital contributions. Management is made through a board of partners and decisions are taken in proportion to the partners' shares.
- Corporations (SA) require a minimum of five shareholders, each being liable for the amount of their capital contribution.
- Simplified Shares Corporations (SAS) are increasingly relied upon as the main incorporated structure as they may be owned by a single shareholder whose liability is also strictly limited to their contribution.

### Regulatory environment

Colombia has a codified Civil Law system inspired by continental legal frameworks, distinguishing constitutional and administrative jurisdiction from ordinary (civil and commercial) jurisdiction. In the first instance, claims are allocated to Municipal Courts and Circuit Courts depending on the amount of the claim. Different Courts of Appeal (Tribunales Superiores del Distrito Judicial) then deal with cases in their specific districts, depending on their expertise. Civil procedure is governed by the Civil Procedure Code (Decrees No. 1400 and No. 2019 of 1970) – the last amendment (Law No. 1564 of 2012) coming into force in January 2014. Colombia also has a codified Commercial Law with a special policy and judgment process for companies and debtors. In a Civil Court, it is important to differentiate between ordinary and executive processes, as the policies are applicable to the latter regardless of whether it is a private individual or a company.



**Days Sales Outstanding (DSO):** Payment terms in Colombia usually provide 30 to 150 days for payment. However, the average DSO tends to be delayed by another 30 to 60 days on average.





### Late payment interest:

The law provides a maximum interest rate (Tasa de Usura) Each entity is given liberty in deciding whether or not interest will be charged.



## Getting Paid

### Days Sales Outstanding (DSO)

Payment terms in Colombia usually provide 30 to 150 days for payment, depending on the economic sector. However, the average DSO tends to be delayed by 30 to 60 days on average.

### Late payment interest

It is possible to charge interest for late payment in Colombia, however the system is singular. Instead of providing a minimum interest rate in case late payment occurs, the law provides a maximum interest rate (Tasa de Usura) applicable in the case of late payment, and each entity is given liberty in deciding whether or not interest will be charged. In commercial trades, however, it is unusual to charge interest in order to maintain customer relationships.

### Debt collection costs

Article 1629 of the Colombian Civil Procedure Code clearly stipulates that all cost caused by collection activities are to be supported by the debtor, provided that costs and efforts undertaken to recover the debt can be justified.

## Payments

The most common payment methods are as follows:

Swift bank transfers are among the most popular payment methods 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 they may trade and claim should something go wrong. Alternatively, Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) constitute reliable guarantees which can be interpreted as a sign of good faith since they 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) may be considered.

Generally speaking, bank guarantees often tend to be expensive. As a result, negotiating down payments is common and advisable. Invoices support nearly 90% of business transactions in the country, so increasing promissory notes for some particularly risky debtors may be executed in order to improve the legal position in court.

## Collecting overdues

### Amicable action

#### Negotiating

As a result of the last amendment of 2012, civil and commercial procedures ought to become more verbalized in the future but, in the meantime, formal legal action remains overly lengthy and unreliable. As a result, amicable settlement opportunities should always be considered as a strong alternative to formal proceedings. It is important to clarify that it is actually mandatory (under Law 640 of 2001) to conduct conciliation or mediation hearings before commencing formal proceedings (and pre-trial mediation must also be conducted in administrative litigations under Statutory Law of Justice Administration n°270 of 1996) in ordinary processes, however it is not compulsory in executive processes.

Before starting legal proceedings against a debtor, in addition, assessment of their solvency and assets is essential as it allows verification as to whether the company is still active and whether recovery chances are at best: if insolvency proceedings have been initiated, indeed, it often becomes impossible to enforce a debt (see below).

It is worth noting that most conciliations are agreed before the matter goes to court as an attorney will look to resolve the matter in conciliation or arbitration centres.

### Legal action

#### Ordinary proceedings

Ordinary legal action would usually commence when amicable collection has failed. When the debt is certain and undisputed (for instance if a promissory note or bill of exchange is available as provided under Law 1321 of 2008) the creditors may initiate summary proceedings to obtain a Payment Order, in which case the debtor must comply with the decision (or bring a defence) within four to ten days. Having said this, Law 1231 has made it more difficult to commence proceedings on the basis of a bill because it has established various restrictive conditions to their admissibility.

Otherwise, formal proceedings may commence as soon as a judge has authorized the action and the debtor has been served with a Writ. The debtor must answer the claim within twenty days, but any failure of the defendant to bring a defence would normally lead the judge to issue a default judgment depriving the defendant their right to appeal. Otherwise, the courts would systematically invite the parties to attend a mediation proceeding in order to reach an agreement. If the parties fail to do so, evidence collection may commence, and the court will consider the parties arguments before rendering a decision.

The courts would usually award specific performance or issue an order to execute an obligation or abstain from doing something. As a rule, the claimant must be fully compensated so the courts tend to award damages by taking into account profit losses. Similarly, interest on overdue debts is usually awarded upon the claimant's request. However, there are no punitive damages under Colombian law.

#### Necessary documents

- Original invoices (for executive processes)/copies of invoices (for ordinary processes)
- Promissory notes
- Detailed account status
- General information about debtor
- Power of attorney

#### Time limitations

As a general rule, claims must be brought within specific periods of time which vary depending on the subject matter. Ordinary proceedings must be brought within ten years, debt-related claims within five years (six months for bad checks, three years for negotiable instruments). Insurance and transportation claims must be presented within two years. Courts have no authority to alter time limitations which are considered a matter of substantive law, but cases are rarely dismissed due to time limitation issues.

#### Provisional measures

Provisional measures (autos) may help to preserve the creditor's interests pending a final and enforceable judgment. Indeed, the courts may order protective pre-action measures such as attachment and sequestration of the defendant's assets, ex parte (without the presence of both parties) to avoid irreparable damage, preserve the status quo or to protect evidence. The courts would, however, usually order the claimant to provide security on costs in order to protect the respondent from irresponsible action.

#### Lodging an appeal

The parties may lodge an appeal within three days of service. Decisions rendered in the first instance are brought before the Court of Appeal, but Supreme Courts only rarely review executive process decisions rendered in appeal (casación). Arbitration awards are not subject to appeal.

#### 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.

## Enforcing court decisions

A judgment is enforceable as soon as it becomes final (i.e. when all appeal venues have been exhausted) in ordinary processes. Usually, compulsory enforcement would occur through the seizure and auctioning of the debtor's assets at the beginning of the executive process, since security titles and original invoices have been obtained.

## How long could legal action take?

By law (Law 1395 of 2010), first instance decisions in Colombia ought to be rendered within a year, while Courts of Appeal ought to render their decisions within an additional six-month period. In practice, it may take five years to obtain a first instance ruling while a full disputed lawsuit could spread over 10 years in ordinary processes, although in executive processes the lawsuit could take one year in the first instance and approximately two years in the second instance.

In principle, domestic courts would take longer to deal with cases involving a foreign party (since the originals would not be available) than to deal with cases involving domestic parties only. In practice, some extra delays would nonetheless occur depending on the complexity of each case.

## How much could this cost?

As a general rule, the winning party may demand the court to hold the defeated party liable for the payment of the judicial tariff paid during the collection phase, the court fees as well as for part of the legal costs. Following the decision to strike down Law 1653 of 2013, Law 1394 of 2010 is now in effect. This law states that a court fee of 2% of the monetary claim applies once the legal process has been completed. Conditional arrangements in which attorneys are not paid upfront but instead receive a fixed sum upon success and contingent fees whereby the legal professionals are entitled to receive a percentage of the final award are common in Colombia. Use of third-party litigation funding companies is also common.

## Alternatives to legal action

### Alternative Dispute Resolution methods (ADR)

As previously mentioned, use of Alternative Dispute Resolution methods has increased over the last few years following the introduction of mandatory conciliation proceedings as a prerequisite to bringing a claim before the courts (Law 640 of 2001) in ordinary proceedings. The settlement agreements achieved through this phase are binding and enforceable as final judgments. Nevertheless, in executive processes, conciliation before legal action is not mandatory. In order to streamline the procedure, original documents are obtained to insure the seizure and collect directly.

In addition, domestic or international arbitration proceedings provide for confidential settlement opportunities while arbitral awards are final and enforceable. Though arbitrators are entitled to grant interim relief, ADR methods have shown no monetary benefit because they are expensive and often do not resolve the conflict. If legal action is subsequently taken, proceedings are not influenced by any issues resolved during the arbitration.



## Foreign forums

It is relevant to emphasize that Colombian law does not allow the parties of a contract to limit or waive the jurisdiction of Colombian courts through foreign jurisdiction clauses. In practice, the courts of Colombia strongly protect their role towards public policy preservation and have thus only admitted foreign jurisdiction clauses in international arbitration proceedings (Article 62 of Law 1563/2012) or where the contract was to be executed abroad (article 869 of the Commercial Code).

## Enforcing foreign awards

Although foreign decisions against Colombian debtors aiming at bypassing the authority of Colombian courts would not be enforced in Colombia (except in case of arbitration), domestic courts would normally enforce foreign judgments provided that they have been recognized by the Supreme Court of Justice, through an exequatur procedure, as having the value of a local judgment (Article 694 of the Civil Procedure Code).

The court would typically verify whether the foreign award is final and enforceable in the issuing country and whether the foreign court was seized with a matter normally falling under the exclusive jurisdiction of Colombian courts. It would also verify that the foreign decision was rendered without fraud while providing the parties with a due process of law. Of course, the foreign decision must be compatible with Colombian public policy. Recognition finally depends on reciprocity, which means that Colombian Courts will not recognize and enforce foreign decisions issued in countries which do not recognize Colombian decisions. Once exequatur is granted, the interested party may commence execution proceedings before a lower court. In addition, Colombia is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. 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

A debtor is deemed insolvent when it faces the imminent inability to satisfy its obligations, or whenever it fails to satisfy two or more obligations representing 10% or more of its total liabilities for a period exceeding ninety days.

The Colombian Insolvency Act (Law 1116 of 2006) provides for reorganization proceedings similar to U.S. Chapter 11 proceedings, as well as judicial liquidation proceedings (similar to U.S. Chapter 7).

### Insolvency proceedings

#### Out-of-Court proceedings

Out-of-Court negotiations allow debtors to discuss debt restructuring with their creditors before they have become insolvent. The rules of normal court proceedings are applied informally, but the final agreement must be validated by an insolvency judge or Society Superintendence.

#### Restructuring the debt

Debt restructuring proceedings are becoming increasingly efficient and may be commenced upon the filing of a petition by the debtor, by one or more of the defaulted creditors, or by the Superintendent. If the court admits the petition, the debtor is deemed insolvent and all enforcement claims are stayed: secured creditors lose their preferential treatment and their guarantees are put on hold until the reorganization plan is terminated. The reorganization plan submitted by the debtor must be approved by its creditors (simple majority of the five voting classes or a 75% majority notwithstanding debtors' classes) and by the judge to be final and binding. The company's directors often retain power to manage the business under the supervision of the Creditors' Committee, but the court may designate a different 'promoter' in certain circumstances. Where a promoter is assigned, he or she takes on the management role. If the company director wants to continue managing the company, authorization is needed from the creditors (in some cases) or by the Society Superintendence.

Debt reorganization proceedings terminate upon compliance of all obligations by the debtor, or turn into a liquidation procedure if implementation of the plan fails.

#### Winding up proceedings

Liquidation proceedings typically occur as a result of a failure to reach a reorganization compromise, or where the debtor has failed to abide by the negotiated terms. Another way to wind up the company is starting a voluntary process in court.

Liquidation may otherwise be ordered upon at the request of both the debtor and the creditors. A liquidator is appointed to establish a list of the creditors' claims, and to manage the estate's liquidation.

#### Priority rules

Priority is always given to secured credits, which include court costs. Priority rules normally apply while distributing the proceeds to the creditors and the Civil Procedure Code (Articles 2495, 2497 and 2506)



defines how the credits should be repaid. Five classes of creditors would be considered by order of priority: employees' salaries and tax credits, credits with pledge, credits with mortgage, suppliers, and credits without previous preferences.

#### How long could insolvency proceedings take?

Although it is difficult to provide an average duration of insolvency proceedings since it depends on cash flow, these could last for over seven years.

#### Necessary documents

The reorganization Society Superintendence must normally receive original bills, promissory notes or any other document to support the debt.

#### 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.

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