



Euler Hermes

# Collection Profile Germany

## Collecting in Germany

- The payment behavior of domestic firms is good and the courts are efficient in delivering timely decisions however, professional 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 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 debtors.

## Collection complexity



## Complexity relating to

Notable      Severe  
→

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



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## General information

### Availability of financial information

Access to financial information on German companies has improved since business reporting obligations were put in place in 2007. All limited liability companies must register with the Commercial Register of the local court at the corporate seat of the business, but this is not mandatory for a small businesses operated by a private individual or through a civil law partnership.

Euler Hermes allocates each company a grade reflecting its financial health and how it conducts business. Euler Hermes 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.

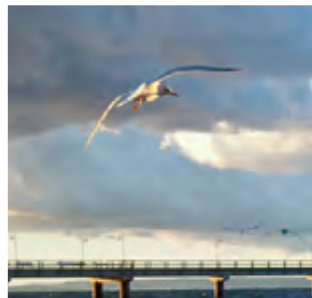
### Main corporate structures

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

- Businesses which do require a commercial structure may be set up through various corporate structures. Sole Proprietorships (Einzelunternehmen) are adapted to single entrepreneurs held fully liable for the debts of the business and may be extended into Civil Law Partnerships (Gesellschaft des bürgerlichen Rechts, GbR) in which the partners' liability is unlimited. Larger businesses may also be organized through General Partnerships (offene Handelsgesellschaft, OHG) which allow partners to collaborate without limiting their liability, while Limited Partnerships (Kommanditgesellschaft, KG) allow differentiating directors (fully liable) from non-managing partners (only liable for their contribution).
- Limited Liability Companies (Gesellschaft mit beschränkter Haftung, GmbH) are also frequently used (minimum capital requirement of EUR 25,000, partners' liability limited to their contribution) although Entrepreneurial Companies with Limited Liability (Unternehmergesellschaft, UG) are easier to set up (minimum capital is EUR 1).
- Joint-Stock Companies (Aktiengesellschaft) are the preferred legal structure for large businesses (minimum capital of EUR 50,000, liability limited to the capital).
- In practice, partnerships, trusts, co-operative companies and business association are rarely used by foreign investors who tend to rely on limited liability structures. In addition, it should be noted that foreign entities may set up registered commercial Branch Offices or Representative Offices.

### Regulatory environment

As a general rule, business disputes in Germany fall under the jurisdiction of District Courts. The responsibility of a particular District Court depends on the claimed amount. Payment-related legal proceedings for undisputed debts are dealt with through the Payment Order Court (Mahngericht). In practice, the amount of the claim defines the relevant court.



**Days Sales Outstanding (DSO):** The payment behavior of German companies is good, with average DSO at 45 days including delays.



## Getting Paid

### Days Sales Outstanding (DSO)

The payment behavior of German companies is good - with the average DSO at 45 days including delays - and, generally, short delays may be explained by a tendency to rely on supplier credit rather than on bank credit. As a general rule, German partners seek to preserve their credit history and thus avoid late payments.

### Late payment interest

The core principle under German law is that the debtor, however late with payments, has to compensate and/or reimburse the damages caused by the late payment to the creditor. The Recast Directive 2011/7/EU which stipulates that payments in the EU must be made within 60 days was thus transposed into domestic law. The domestic rules are however stricter than the EU requirements. As a general rule, business-to-business transactions must be paid as stated in the contract. Otherwise, the receivable would be due immediately. Late payment interest may be claimed as soon as the debt is overdue. Late payment interest rates may be agreed contractually or determined by the law calculated from the base rate set by the European Central Bank, plus 9 percentage points.

### Debt collection costs

Furthermore, the Civil Code (Bürgerliches Gesetzbuch, paragraphs 280 to 286) allows charging a compensation fee (Verzugsschadenersatz) covering the damage caused to the creditor, and covering collection costs. There is a long-lasting legal tradition in this regard in Germany. The law is in fact more favorable than the recently introduced EU allowances in case of late payment. In practice, whether or not outstanding debts are paid is a matter of negotiation and relies on collection specialists.

### Ownership protection

German law allows the parties to a contract to agree on how ownership should be transferred: in practice, goods would be transferred first while property of the goods would only be transferred to the buyer once the total cost is paid. Therefore, very exhaustive Retention of Title (RoT) provisions are common. By contrast with many other countries, ownership retention clauses in Germany do not merely preserve property over goods as long as they remain clearly identifiable: ownership may be preserved as long as all debts are not paid for, even though the debtor may have transformed the goods ('Lengthened RoT,' verlängerter Eigentumsvorbehalt) and sold the final product to a third party ('all monies' or 'Enlarged RoT,' erweiterter Eigentumsvorbehalt). It is crucial that the parties have clearly agreed on such terms prior to delivering the goods.



#### Late payment interest:

Business-to-business transactions must be paid within 30 calendar days and late payment interest may be claimed as soon as this has elapsed.



### Payments

The most common payment methods are as follows:

- Sepa bank transfers (Überweisung) and direct debit are very common means of payment in Germany. There has traditionally been two forms of direct debit: the 'Einzugsermächtigung' (replaced by the Sepa Direct Debit Core Scheme in February 2014) or the 'Abbuchungsverfahren' (replaced by Sepa Direct Debit B2B in February 2014).
- Down payments and discounts for early payments are fairly usual. Bills of exchange are becoming rare and often perceived as a lack of trust, while checks are revocable if not submitted to the bank within eight days, but both are considered debt recognition titles and would give access to accelerated procedures. Generally speaking, asking for bank guarantees suggests a lack of trust but Corporate Guarantees are commonly issued by holding firms.



## Collecting overdues

### Amicable action

#### Negotiating

Although German courts are reliable and fairly efficient, it is advisable to first consider amicable settlement opportunities as an alternative to formal proceedings.

Before starting legal proceedings against a debtor, assessment of assets is 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.

Since the Civil Procedure Reforms of 2002, entering into conciliation or mediation in order to reach a compromise has become a prerequisite to formal judicial proceedings and the courts tend to request proof that a mediation phase was undertaken before considering the claim any further. As a result, most negotiations with German debtors terminate with an amicable settlement (which may include a payment instalment or a debt write-off) which is generally respected.

### Legal action

#### Ordinary proceedings

When the debt is certain and undisputed – provided that the debtor's assets are traceable – German creditors can rely on fast-track Payment Order procedures (Mahnbescheid) before the Payment Order Court (Mahngericht). This is a rapid, efficient and cost-effective way to obtain an enforcement order (Vollstreckungsbescheid) within a matter of weeks since the procedure is increasingly automatized. In each case, the debtor must react within two weeks (i.e. pay its debts or oppose the Order). Any defence raised by the debtor however leads to solving the dispute through a regular lawsuit.

A belated opposition would be treated as an opposition to the enforcement order. In practice, therefore, any appeal proceedings would increase delays and costs, so a creditor should always act as quickly as possible to request the issuance of an enforcement decision.

If the amicable phase fails or if the debtor questions the claim, the option of starting ordinary legal action (Klageverfahren) remains. Proceedings would usually commence once summons have been served to the debtor. The courts often schedule preliminary hearings (Früher Erster Termin) and written proceedings (Schriftliches Vorverfahren) in order to consider the parties' arguments. As previously mentioned, the court would also attempt to set up a conciliation phase (Güteverhandlung) as part of these proceedings. The main hearing would then take place to enable the court to render a judgment.

When the debtor company has assets in other EU Member States, a European Payment Order procedure facilitating the recovery of undisputed debts (under Regulation EC No 1896/2006) may furthermore be triggered.

#### Necessary documents

- Payable invoices and delivery notes
- Power of Attorney
- Correspondence between the two parties
- Bank account of the debtor, if known (for further seizure of bank accounts)
- Additional documents such as order confirmations, any known information about the capital/estate of the debtor, contracts and general terms and conditions as signed by the debtor.

#### Time limitations

The general prescription period (Verjährungsfrist) in Germany is three years, commencing at the end of the year in which the claim arose or in which the creditor obtains knowledge of the circumstances giving rise to the claim (subjective limitation period). Various exceptions may apply, such as transportation claims which transpire within one year starting from the goods' delivery.

#### Provisional measures

Various measures may help preserve the demanding party's interests pending a final and enforceable judgment; however these would not be used in collection proceedings.

#### Lodging an appeal

Provided that the claim exceeds EUR 600, the defeated party is entitled to lodge an appeal against the first instance decision before the next higher District Court. A second decision will then be rendered. Decisions taken in second instance may also be appealed, although review by the Federal Supreme Court (Bundesgerichtshof) would be limited to questions of legal interpretation or application and restricted to claims in which legal uniformity would be at stake.

#### 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

Enforcement may commence once a judgment is final. If the debtor fails to satisfy the judgment, court decisions allow the closure of bank accounts or the seizure and sale of property (Zwangsvorsteigerung). Once issued, a local bailiff attached to the District Court will be instructed with enforcement of the writ and will proceed accordingly (auction of the debtor's assets or garnishment allowing payment from a third party, etc.) upon payment of a fee. Penalty payments may also be awarded.

### How long could legal action take?

The timescale for a court order varies depending on the procedure, on the tribunal and on the context of the case, but ordinary proceedings can take from three months to a year, while claims brought to the Federal Supreme Court (Bundesgerichtshof) could reach up to six years. Enforcement (which depends on the availability of bailiffs) may range from ten weeks to ten months.

### How much could this cost?

As previously mentioned, the successful party may request that part of its court fees and legal costs be paid by the defeated party. In addition, costs occurring as a result of enforcement proceedings may

be treated as a default loss and charged to the debtor. It is important to clarify in the Demand Letter and writ of summons that forthcoming costs shall be borne by the debtor. Conditional arrangements whereby attorneys are not paid upfront but receive a fixed sum upon success (i.e. 'no-win-no-fee') are not allowed, and fixed legal fees would be regulated by law. In fact, the law applicable to lawyers' fees (RVG, Rechtsanwaltsvergütungsgesetz) also applies to collections companies (RDG, Rechtsdienstleistungsgesetz), which means that domestic collection services may be offered to the creditor at a significantly lower cost than in other countries.

### 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 obliged by law to file a petition for insolvency proceedings within three weeks from the date on which the company has become illiquid or over-indebted.

The main purpose of insolvency proceedings (Insolvenzverfahren) in Germany has long been the realization of the debt through the liquidation of the debtor's assets. Rehabilitation proceedings aiming instead at developing a rescue culture and at supporting viable companies suffering temporary difficulties are increasingly relied upon.

### Insolvency proceedings

#### Out-of-Court proceedings

Instead of going to court, debtors may initiate confidential early Out-of-Court proceedings. Having first obtained a standstill agreement from their financial partners, debtors may indeed attempt to renegotiate their debts with their creditors. This helps protect debtors from early payment requests, but the procedure is also in the creditors' interest as it can be faster and tends to be less expensive than formal insolvency.

#### Restructuring the debt

Recent changes (based on Chapter 11 in the U.S.) have brought significant restructuring and recapitalization opportunities to businesses in difficulty. Indeed, sustainable restructuring appeared as a priority in 2008 and suggests that 'the purpose of the restructuring [under German Law] is to lead to a viable company which will not collapse back into insolvency when faced with minor financial difficulties.

Reorganization proceedings are governed by the Insolvency Act (Insolvenzordnung "InsO"), amended in 2012. Following a petition filed before the Insolvency Court (Insolvenzgericht) on the basis of illiquidity, imminent illiquidity or over-indebtedness, the court may open Preliminary Insolvency Proceedings (appointment of a preliminary administrator, of a preliminary Creditors' Committee) aimed at exploring the chances of restructuring the company. If the court authorizes the restructuration process, it then initiates formal proceedings and nominates an administrator in charge of continuing the debtor's business while preserving its assets. A creditors' meeting (Gläubigerversammlung) is given an opportunity to open a distribution register and plan for an insolvency schedule (Insolvenztabelle). As long as the company has not run out of cash, the law enables the debtor to file for a moratorium (Schutzschirmverfahren) shielding the company from any actions by creditors or instructions from shareholders. The debtor thus remains in possession and may even propose a trustee to supervise their actions. Approval of the Creditors' Committee (Gläubigerausschuss) must however be obtained by the judge to validate the procedure. It is worth noting that the revised Act provides the opportunity to force a debt-equity- swap against existing shareholders via an insolvency plan.



Alternatively, self-administration (Eigenverwaltung) allows the Directors to remain in possession of the management while implementing the insolvency under the supervision of a supervisor (Sachwalter), the Insolvency Court, the Creditors' Committee as well as the Creditors' Meeting. Self-administration seems to be used increasingly, especially in order to simplify procedures involving large groups of companies and to avoid facing multiple administrators (one for each entity), but restructuring experts generally manage in place of the managers.

In both procedures, the administrator/supervisor or the management may decide to pursue the liquidation procedure (Regelverfahren) or to develop and implement an Insolvency Plan (Insolvenzplan) with the creditors.

### Winding up proceedings

Liquidation proceedings have long been considered as the main insolvency proceeding and can be initiated on demand of either the debtor or the creditor provided that the debtor is unable to settle their debts as they fall due. Once the insolvency status of the debtor has been recognized through a liquidation decision by court, the creditors must file their claims with the liquidation administrator within three months of the publication. The administrator is then responsible for verifying the admissibility of the various claims, prior to supervising the sale of the debtor's assets and to distributing the proceeds to the various creditors. After the liquidation proceedings are finished, the company in insolvency would be deleted from the register.

### Priority rules

Priority rules apply while distributing the proceeds of the sale of the debtor's assets. All secured claims rank equally, but would receive priority over preferential and subordinated claims. Creditors own priority rights if they own secured receivables by a Retention of Title clause. Employee-related claims do not enjoy priority status.

### Cancellation of suspect transactions (clawback)

According to sections 129 to 146 of the Insolvency Act, reorganization and insolvency administrators are entitled to cancel certain actions taken by the insolvent company to the detriment of the creditors, provided that said actions were taken within a 'suspect period' ranging from three months to ten years prior to the filing for insolvency proceedings.

### How long could insolvency proceedings take?

Insolvency procedures could take from four to seven years.

### Necessary documents

- All invoices and delivery notes
- Open items list
- General Terms and Conditions if the goods were delivered under reservation of property right (RoP) building a 'Poolverfahren'
- Power of Attorney



### 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 suitable.



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