

Collection Profile Hong Kong



Collecting in Hong Kong

- The payment behavior of domestic companies is acceptable, taking 30 to 90 days on average but delays are frequent and 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.

Collection complexity



Complexity relating to

Notable Severe
→

| | 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

Disclosure of financial information in Hong Kong is much more generalized and reliable than in mainland China since it is a regional hub where the free circulation of capital governs. In practice, financial information is disclosed at least twice a year by listed companies and is available publicly, but unlisted companies have no such obligations.

Euler Hermes cross-verifies data sourced from various providers and allocates 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:

- Proprietorship is commonly relied upon for small-scale operations since it is based on the qualities of the sole proprietor who personally owns the business assets. As a result, the proprietor is fully liable for the business' activities and debts.
- Partnerships allow two or more people to share ownership and responsibilities (partners are jointly and individually liable for the actions of the other partners) without incorporating a company.
- Private Limited Companies are in practice the most commonly used business entities, as they only require a director (non-residents are eligible) whose liability is limited to their contribution and a company secretary (whether an individual, or another company). There is a HK\$ 1 minimum capital requirement. Public Limited Companies are available when raising equity requires shares to be publicly traded. These entities are thus preferred by large businesses.
- Given the quantity of cross-border businesses in Hong Kong, Branch Offices are very common even though such entities are not separate from the parent company's legal structure and thus offer no liability limitations. Subsidiaries therefore tend to be set up through Private Limited Companies. There are no specific structures for Joint Ventures, which tend to be built through partnerships. Representative Offices are also used in order to explore the market but cannot engage in profit-making activities.

Regulatory environment

The legal system of Hong Kong is based on the British Common Law. Business claims tend to be settled efficiently, but courts can differ due to amounts at stake.

Claims not exceeding HK\$ 50,000 would fall under the jurisdiction of the Small Claims Tribunals, which usually treat claims quickly, informally and at a low cost insofar as legal representation is simply not available. Claims up to HK\$ 1 million would rather be treated by District Courts, while High Courts would deal with the largest commercial claims (intellectual



Days Sales Outstanding (DSO): Payments in Hong Kong take place between 30 to 90 days on average. Delays reaching 30 to 60 days regularly occur even though default is rare.



property, real property, contract breaches, insolvency, insurance, etc.) in excess of HK\$ 1 million. Since 2009, the Rules of the High Court have been improved to reduce complexity, delays and costs in civil litigation proceedings. Hong Kong finally has a Closer Economic Partnership Arrangement (CEPA) free trade agreement, as well as a Double Taxation Avoidance Agreement with mainland China.

Getting Paid

Days Sales Outstanding (DSO)

Payments in Hong Kong take place between 30 to 90 days on average. The payment behavior of domestic companies is acceptable although delays reaching 30 to 60 days would regularly occur even though default is rare.

Late payment interest

Late payment interest is not regulated by law and remains a matter of negotiation between the contractual parties. Therefore, failure to clearly state the parties' common position regarding late payment interest in a contract could complicate the debt collection process. In fact, many trades involve no written sales contracts and would in practice rely mainly on purchase orders, email orders or verbal orders which normally do not include a late payment interest clause.

Debt collection costs

Similarly, debt collection costs cannot be charged to the debtor unless a contractual agreement clearly mentions this possibility. In practice, collection costs are seldom paid by the debtor.

Ownership protection

Retention of Title (RoT) contractual provisions ensuring that a trade partner shall only acquire ownership of goods once payment has been received in full are admissible, while extended clauses may furthermore help preserve ownership over transformed goods as long as the debt has not been fully paid for.

Having said this, RoT agreements are not used commonly by small and medium companies. Furthermore, although the RoT clause is valid under Hong Kong law, it remains difficult to predict how such a clause would be construed and implemented by the courts since there has been very limited case law on the subject. For this reason, the clauses are not efficiently used to recover goods as part of pre-legal proceedings, but would give a certain degree of priority during insolvency proceedings (it would then be advisable to register RoT agreements with the Registrar of Companies).

Payments

The most common payment methods are as follows:

Bank transfers are among the most popular payment means 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) 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. Irrevocable and confirmed Documentary



Late payment interest:

Late payment interest is not regulated by law and remains a matter of negotiation between the contractual parties.



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 also common. Generally speaking, bank guarantees may be obtained rapidly, which does not prevent from negotiating down payments, depending on the amounts at stake. By contrast with Bills of Exchange, checks are also very common.

Collecting overdues

Amicable action

Negotiating

Although Hong Kong courts are reliable and swift in dealing with business claims, it is advisable to first consider amicable settlement opportunities as an alternative to formal proceedings. Indeed, although the law does not designate conciliation or mediation as prerequisites to formal legal action, in practice the courts increasingly encourage parties to partake in Alternative Dispute Resolution methods prior to commencing lawsuits. In fact, the courts also tend to impose financial sanctions on any party unreasonably refusing to undergo formal negotiation processes.

Legal action

Ordinary proceedings

Having said this, legal dunning ought to start by serving a Writ of Summons recalling to the debtor their obligation to pay the principal together with late payment interest (as contractually agreed). Once served, the debtor may agree to settle the debt or decide to file a defense. In this case, the claim will be considered more extensively through formal legal proceedings.

Ordinary legal action in Hong Kong is effective and fairly reasonable in terms of costs and timing, but it should only commence when amicable collection has failed. As previously mentioned, indeed, the judges increasingly encourage mediation in order to solve disputes out of court, and tend to impose cost sanctions to parties which unreasonably reject amicable negotiation.

Once summons are served to the debtor, the latter must acknowledge it within 14 days and bring a defense within 28 days. This process based on the exchange of a series of written claims and counterclaims between the parties may lead to a compromise, otherwise the claimant may request the court to take on a case management role and hearings shall be organized. Failure to bring a defense entitles the claimant to request a default judgment, and summary judgments may also be available when the case is not disputed. The courts would usually order remedies in the form of damages, specific performance, injunctions, declarations, etc. Punitive damages are very rarely awarded.

Necessary documents

Copies of any documents that support the claim, such as purchase orders, invoices, statements of accounts, sales contracts and delivery evidence.

Time limitations

Commercial and tort claims must be brought within six years, starting from the due date mentioned on the invoice. Claims on deeds must be brought within 12 years from the date of the breach.

Provisional measures

Provisional measures may help to preserve the status quo pending a final and enforceable judgment. Indeed, the courts may also issue an interim prohibitory or mandatory injunction on an ex parte basis (without the debtor being present) as a means to prevent irreparable harm, to protect assets or to protect evidence (Anton Piller orders). Injunctions may be obtained on the same day, but it is then necessary to demonstrate a certain degree of emergency and the claimant would usually be required to provide security on costs in order to protect the debtor from irresponsible action.

Lodging an appeal

Appeal against decisions rendered in first instance may generally be lodged within 28 days with the Court of Appeal, which will review the claim on factual and legal grounds. Similarly, the decision rendered in second instance may be appealed against before the Court of Final Appeal.

At both levels, the claimant must file a petition, and it is for the court to grant a leave for appeal.

Enforcing court decisions

Enforcement may commence once a judgment is final (i.e. no appeal is lodged within 28 days). If the debtor fails to satisfy the judgment, it is possible to request an enforcement order from the court. The latter would usually render a garnishee order (allowing the claimant to obtain payment of the debt from a third party owing money to the debtor), a Fieri Facias order (allowing a bailiff to seize and sell the debtors tradable goods) or a charging order (allowing seizing and selling the debtor's property to satisfy the debt). The court may also appoint a receiver in charge for conducting the execution proceedings, and it may order insolvency proceedings. A prohibition order may also be requested to prevent the debtor from leaving Hong Kong.

If necessary, the courts may also issue Examination Orders allowing verbal interviews with the director of the debtor firm in order to obtain further information on the financial status of the company.

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.

How long could legal action take?

Summary judgment would take six to 12 months on average while obtaining (and enforcing) a final judgment would take one to three years. However, most of the cases would be recommended by courts to go for mediation and would thus take a relatively shorter time to settle (two to three months depending on the parties' willingness to settle amicably).

Domestic courts would normally make no difference between domestic and transnational litigation proceedings; however delays may be increased when it is necessary to obtain documents, evidence or statements from abroad.

How much could this cost?

The cost of legal proceedings is normally significant, but the successful party may obtain the court to order all costs deemed necessary to defend the claim be paid by the defeated party. Conditional arrangements whereby attorneys are not paid upfront but rather receive of a fixed sum upon success (i.e. 'no-win-no-fee') and contingent fees whereby the legal professionals are entitled to receiving a percentage on the final award are strictly prohibited.

Alternative options to legal action

Alternative Dispute Resolution methods (ADR)

Alternative Dispute Resolution (mediation, arbitration) is strongly encouraged by courts. Mediation involves the nomination of a mediator who is given responsibility for helping the parties reach a compromise. In other words, the mediator has no authority to decide on the behalf of the parties and they cannot bind the parties with a decision. An agreement is only binding if a settlement agreement is entered into between the parties at the end of the mediation. The mediator really acts as a facilitator to settlement.

Arbitration rather involves the parties agreeing to rely on an independent and impartial third-party arbitrator, who is given authority to settle their dispute on their behalf. The arbitrator's decision will be binding on the parties.

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 also be considered. As a general rule, the best way to approach ADR is to include this possibility as a contractual matter, thus making it clear that normal proceedings will be avoided if possible. Again, specialized legal advice must be obtained.

Foreign forums

Although it is not necessary since domestic courts are efficient in delivering timely decision, the parties may alternatively agree to solve their business disputes in a foreign forum (i.e. under a foreign law or before a foreign court) as domestic courts generally respect foreign jurisdiction clauses. There are some exceptions, especially when applying a foreign law is contrary to Hong Kong law or public policy, or if a foreign law is chosen for the purpose of evading a more constraining Hong Kong regulation. In addition, courts could deny



foreign jurisdiction when the dispute has a clear link with Hong Kong (domiciliation of the parties, contract realization, land-related issues, etc.). It is a requirement that foreign forum matters be included in the parties' contract, while specialized legal advice cannot be considered optional.

Enforcing foreign awards

Foreign judgments would usually be enforced under the Foreign Judgments (Reciprocal Enforcement) Ordinance. Going through a verification phase (exequatur) is mandatory, but in practice a foreign decision issued in a country with which Hong Kong has signed a reciprocity treaty (Australia, Belgium, Bermuda, Brunei, France, Germany, India, Israel, Italy, Malaysia, The Netherlands, New Zealand and Singapore) would merely need to be registered prior to becoming enforceable automatically.

Otherwise, enforcement may be requested before the court, which would verify, among other points, that the foreign judgment is final in the issuing jurisdiction before recognizing it and allowing enforcement.

It should also be emphasized that the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters (REJA) of 2006 has been specifically concluded with China in order to make judgments rendered in mainland China and Hong Kong automatically enforceable by the courts of the other contracting party. Given the difficulty in enforcing decisions in mainland China, this means that Hong Kong has in time become a diversion route to enforce rights in mainland China, but the contracts need to be drafted accordingly.

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 is not defined in the Companies Ordinance or under the Companies (Winding-up) Rules, but a company is usually deemed insolvent if it is unable to pay its debts.

Insolvency proceedings

Out-of-Court proceedings

While out-of-court proceedings may help the parties reach a debt settlement agreement in order to avoid going to court, the law provides no formal procedures to achieve a restructuring of the company's debts. Thus, restructuring proceedings take place through informal workouts (i.e. contractual arrangements approved by 100% of the creditors), compositions and Schemes of Arrangement between the parties concerned.

A company may thus enter into a binding compromise with its shareholders and/or creditors in respect to its debts, at all times. The directors may be appointed as the Scheme Administrators. There is however no moratorium to prevent creditors from enforcing their claims against the debtor company.

Winding up proceedings

Liquidation (Winding-up) under the Companies Ordinance & Companies Rules (Chapter 32) may be initiated upon demand of either the debtor (Voluntary Winding-up) or the creditor (Compulsory Winding-up). In this case, a liquidator is appointed. The creditors must file their claims with the liquidator, who is then responsible for supervising the sale of assets and the distribution of the proceeds to the creditors. Unless the court consents to claims, there is a moratorium on proceedings against the company.

Priority rules

Priority rules normally apply while distributing the proceeds to the creditors. Costs relating to the insolvency proceedings are given top priority over secured creditors. Wages and government debts are given a preferential status and thus have priority over unsecured claims. RoT agreements would essentially give the debtor a priority to get goods out of the debtor's inventory prior to liquidating its assets.

Cancellation of suspect transactions (clawback)

In addition, the liquidator is entitled to set aside various types of transactions concluded by the debtor during a suspect period ranging from six months to two years prior to the insolvency proceedings. In particular, any transaction deemed fraudulent, unfair, disproportionate (unfair loans), or misplaced insofar as they favored one creditor over the others, as well as certain floating charges would typically be void.

Necessary documents

Copies of any documents that support the debtor's insolvency and claims such as the notice of commencement of insolvency proceedings, the filing proof of debt, the confirmation of debt issued by insolvency practitioner, purchase orders, invoices, statements of accounts, sales contracts and delivery evidence.

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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