

Collection Profile India



Collecting in India

- DSO in India is high, late payments are not regulated and ownership protection may be difficult to enforce.
- The court system is complex whilst extensive delays and costs make legal action difficult. Accelerated proceedings are not available for undisputed debts and foreign debt judgments would be enforced with difficulty.

Collection complexity



Complexity relating to

Notable Severe
→

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



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General information

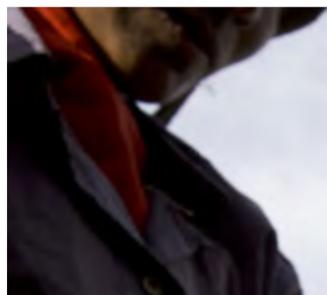
Availability of financial information

Accessing financial information in India is very difficult as most businesses are run through non-incorporated Sole Proprietorship and Partnership models which do not require communicating any financial information to the public. Information provided by incorporated entities is fairly reliable, otherwise it is necessary to rely on specialized providers. Euler Hermes allocates each company a grade reflecting its financial health and how it conducts business. EH 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 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 or more (up to ten in the banking business, up to twenty otherwise) individuals may also decide to share ownership and responsibilities through Partnerships (under the Indian Partnership Act of 1932), in which case the partners may be jointly, individually and unlimitedly liable for the actions of the other partners. Limited Liability Partnerships (LLPs) may alternatively offer limited liability to the partners (under the Limited Liability Partnership Act of 2008).
- Private Limited Companies (regulated under the Companies Act of 1956) are in practice the most favored legal entities because they require no minimum capital funds whilst the partners' liability is limited to their contribution. Public Limited Companies are rather used for larger structures which capital must be divided into tradable shares. In these entities, the shareholders' liability is limited to the value of their shares.
- Foreign businesses tend to settle in India through Joint Venture Companies and Wholly Owned Subsidiary Companies (WOS). Representative Offices may also be set up in order to conduct liaison functions without pursuing core business activities and income creation. Alternatively, Branch Offices are allowed to conduct business activities under the Foreign Exchange Management Regulations.
- The Companies Act of 2013 was enacted in August 2013 but is only partially in place so that its effects are not fully operational yet. Nonetheless, it may be added at this point that the Act would soon provide for a new One Person Company (OPC) as well as a Small Company and a Dormant Company (conducting activities with no economic significance).



Days Sales Outstanding (DSO):

Payments in India usually take place within 30 to 90 days on average.



Regulatory environment

The court system in India is not very efficient as it is overly slow. Based on a quasi-federal structure, the country is composed of 28 states – which usually possess or share a High Court (24 in total) – and of several hundreds of administrative districts, each of which possesses a District Court. As a general rule, commercial disputes must be brought before District Courts where the cause of action arose or where the debtor resides, carries out their business or personally works for gain, although the quantum of debt in dispute also matters. The Delhi High Court has original jurisdiction and is also competent to hear recovery suits, however the Bombay High Court (Mumbai) has no authority to deal with such claims. In addition, various specialized courts deal specifically with specific debt recovery issues (bank loans, etc.), competition and anti-trust litigation, consumer protection, etc. Furthermore, recently the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) have been formed under the newly enacted Insolvency and Bankruptcy Code of 2016.

Getting Paid

Days Sales Outstanding (DSO)

Payments in India usually take place within 30 to 90 days on average. The local payment culture is good but local partners usually insist on obtaining favorable payment terms of 60 days or more even though only 20% of transactions are paid on time. Therefore approving such terms is not advisable.

Late payment interest

Indian law does not regulate late payments and does not provide for a legal late payment interest rate. Having said this, the courts generally awards payment of interest on the overdue amount in their judgments, even if there is no agreement related to payment of interest between the parties. However in amicable collection, as a practice, debtors do not pay interest on the overdue amounts.

Debt collection costs

As a general rule, collection costs are not charged to the debtor in India and must be recovered through legal proceedings.

Ownership protection

The law entitles a seller to retain ownership over goods until its buyer has paid the invoice in full, as long as a written agreement has been concluded between the parties. Retention of Title (RoT) provisions are fairly common in supply contracts, but it is uncertain whether the courts would in practice recognize the most sophisticated 'all monies' provisions aiming at retaining ownership despite transformation or sale of the goods to a third party.

Payments

The most common payment methods as follows:
Swift bank transfers are becoming increasingly popular in India as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. For export transactions, transfers should nonetheless be guaranteed through an Export Credit Insurance, which helps minimizing the risk of sudden or unexpected customer insolvency. Euler Hermes' worldwide network of risk offices monitors the financial well-being of your customers and grants them a specific credit limit up to which you 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. 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 also be considered. Such bank guarantees however tend to be expensive, whilst obtaining them requires patience. As a result, negotiating down payments is common and advisable. post-dated cheques is also frequent as these constitute a method of payment as well as a debt recognition title allowing the seller to initiate legal (and insolvency) proceedings against the debtor when the cheque remains unpaid.



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Collecting overdues

Amicable action

Negotiating

Because the judicial system is overly slow and costly, amicable settlement opportunities constitute the strongest alternative to formal proceedings. Before starting legal proceedings against a debtor, assessing its assets is essential as it allows verifying whether the latter is still in activity 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 often becomes impossible to enforce a debt.

In practice, although conciliation and mediation are no prerequisites to conducting legal action, the courts seem to be increasingly involved in helping the parties to reach an amicable settlement. Sometimes, the judges would actually draft the terms of an agreements and leave the parties to decide on their acceptability before referring the case to ADR.

Legal action

Ordinary proceedings

If the amicable phase fails or if the debtor questions the claim, the option of starting legal proceedings remains. No fast-track proceedings are available and the outcome of a lawsuit is haphazard, but the process would nonetheless take place as follows. A claim must be filed with the court, which then serves the debtor with summons if the claim is deemed admissible. The debtor is then given thirty days (sixty days if the respondent is a public entity) to pay or bring a defence. Failure to do so would entitle the claimant to request a default judgment from the court, but in practice the courts are flexible with this time requirement. Hearings would then be organized and evidence would be cross-examined before a judgment is rendered. In addition, judges must give the benefice of the doubt to defendants where the evidence is questionable, so that going to court when the claim is challenged may be extremely risky.

Courts typically award remedies in the form of declaratory decisions (as to a title, a right or a legal status), specific performance, compensatory damages or injunctions. The courts would never award punitive damages.

Necessary documents

The following documents would be necessary:

Invoices, sales contract, purchase order, bill of lading/airway bill, any email/letter wherein debtor has acknowledged the debt or promised payment. Further the said documents are required in original at the time of initiating legal action or latest at evidence stage.

Time limitations

Commercial claims must be brought before Indian Courts within three years, starting from the invoice due date. The limitation period may be extended for an additional three years if the debtor acknowledges the debt in writing or pays the debt in part.

Otherwise, this limitation is considered a matter of substantive law which the courts have no authority to bypass. Beyond this period, legal action will therefore not be admitted.

Precautionary measures

Precautionary measures may help to preserve the debtor's interests pending a final decision. Indeed, the courts may order interim measures or injunctions aiming at protecting assets (attachment orders) or evidence (search orders). The claimant must however demonstrate that it has a prima facie case, that the balance of convenience is in his favor and that ordering such measures would prevent the occurrence of irreparable harm. Same-day orders may be obtained in emergency situations if the courts agree to render ex parte decisions (in the debtor's absence), but the claimant would be asked to provide security on costs in order to protect the respondent from irresponsible action.

Lodging an appeal

The defeated party may lodge an appeal before a High Court against the decision (decree) rendered in first instance, within 30 days of notification of the court decision. The court would then review the judgment, taking questions of law and fact into account. Decisions rendered in second instance may also be appealed against before the Supreme Court within 90 days, but the latter must grant a leave for appeal to this effect and will only consider questions of law of general importance.

Decrees and orders issued in first instance by any High Court may be appealed in the same court within thirty days.

Enforcing court decisions

Enforcement of domestic judgments may commence once a judgment is final (i.e. is no appeal is lodged within ninety days). If the debtor fails to satisfy the judgment, it is possible to request the court to commend execution by way of an attachment and sale of the debtor's assets. Action to obtain an enforcement order may be barred after twelve years.

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?

The duration of legal proceedings in India would vary, depending on the type of legal proceedings and the courts before which legal action is initiated. Nonetheless, it would be fairly reasonable to say that legal action could require three to four years on average. Difficult enforcement conditions in the most complex cases could double this duration.

The courts in India do not differentiate between domestic and International litigation proceedings, therefore no specific delays ought to be expected in this regard.

How much could this cost?

The winning party may obtain from the court that part of the costs deemed necessary to defend the claim be paid by the defeated party. In practice, the courts have however imposed significant limitations to the benefit of the latter. Significant court fees must be paid whilst initiating a recovery suit against a debtor. The fees may vary importantly from one State to another since, in the absence of uniform regulation, these are not always capped.

The costs of proceedings otherwise include the lawyer's fees, the fees of process server, the bailiff's fees, publication costs and other miscellaneous expenses. As far as attorney fees are concerned, conditional arrangements and contingency arrangements whereby legal fees are not paid upfront but rather consist of a percentage of the awarded damages (i.e. 'no-win-no-fee') are prohibited by law.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Given the difficulty to obtain court decisions through the ordinary legal process, Alternative Dispute Resolution methods may prove very effective. The Arbitration and Conciliation Act 1996 is based on the UNCITRAL Model Law on International Commercial Arbitration of 1985 and would allow the parties to solve their dispute by either reaching a voluntary compromise (conciliation) or having the dispute decided by a neutral third-party whose decision is binding on the parties (arbitration). These proceedings also bring confidentiality to the dispute settlement proceedings and may thus constitute a serious means of protecting trade or commercial secrets.

Foreign forums

Even though recognition and enforcement may be complicated (see below), foreign traders may also escape domestic courts by subjecting business disputes to a foreign forum (i.e. under a foreign law or before a foreign court). Indian courts indeed tend to respect foreign jurisdiction clauses provided that there is no contradiction with Indian regulations or public policy, and that a foreign law does not aim at escaping Indian tax law. If a foreign law is to be applied, Indian courts would nonetheless apply Indian procedural rules as well as Indian rules of evidence.

It is however essential that the agreement be characterized by an international connection (for example, one party has elected domicile in another country, or the place of execution is located abroad), and

that a jurisdiction clause is drafted to this effect by a specialist. As far as arbitration, is concerned, domestic proceedings conducted under the Arbitration and Conciliation Act would prevent the parties from applying a foreign law to the dispute. Foreign laws would however be applicable in international arbitration proceedings.

Enforcing foreign awards

India is a party to the Hague Convention on Foreign Judgments in Civil and Commercial Matters since 2006 but enforcing foreign awards in the country may be a lengthy, costly and haphazard process. When the foreign decision was issued in a country signatory to a reciprocal enforcement agreement with India, the decision is deemed enforceable by District Courts as if it had been issued by an Indian court (Section 44A of the Code of Civil Procedures of 1908). The court would nonetheless verify, amongst other details, whether the issuing court had jurisdiction to decide with the claim in the first place and whether the decision is compatible with Indian and international law. When no reciprocity agreement applies, enforcement requires commencing a new legal action before the District Court of the defendant's location (Section 13 CPC), which would also verify these points.

India is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, therefore its domestic courts ought to recognize and enforce awards 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

The Ministry of Corporate Affairs (Central Government) constituted the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) under the provision of section 408 and section 410 of the Companies Act of 2013. It was first introduced by the Companies (Second Amendment) Act of 2002, based on the recommendations of the ERADI committee.

The newly set up NCLT has eleven benches, two in New Delhi and one each in Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai.

The NCLT has replaced the existing Company Law Board (CLB), the Board for Industrial and Financial Reconstruction (BIFR) and its appellate authority i.e. Appellate Authority for Industrial and Financial Reconstruction (AAIFR). Thus, the all matters previously handled by the aforementioned authorities will be now handled by the NCLT.

Insolvency proceedings

Out-of-Court proceedings

Out-of-court settlement may be considered as the Code of Civil Procedure allows parties to settle the matter provided that a judge passes a consent decree.

Restructuring the debt

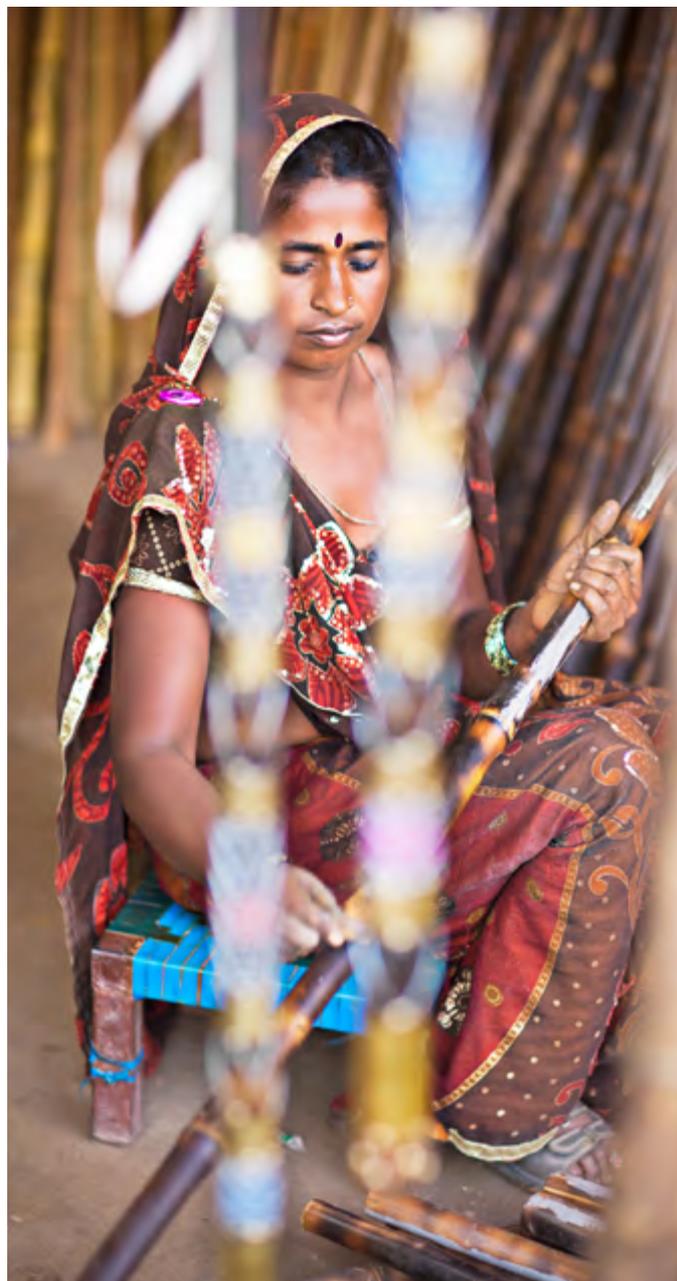
Reorganization may be conducted through two distinct mechanisms, which may be described as follows.

First, the Companies Act of 1956 entitles both the debtor and the creditors to submit a reorganization scheme to the High Court, which then organizes a meeting of creditors. If the debtor's proposal is validated by 50% of the present creditors owing three-quarters of the claim, the court may decide to approve it. In this case, the debtor, together with the absent and dissenting creditors, is bound by the approved scheme. A Committee of Creditors may be set up to assist the liquidator in ensuring that the scheme is respected. The High Court may alternatively order the winding up of the debtor company.

Secondly, the process under the Insolvency and Bankruptcy Code may be undertaken. After receiving an application, the NCLT appoints an insolvency professional (which is a third-party; usually a chartered accountant) to administer the IRP (Insolvency Resolution Process). The insolvency professional's primary function is to take over the management of the corporate debtor and operate their business as a going concern under the broad directions of a committee of creditors. The insolvency professional will then identify the financial creditors and will constitute a creditors committee, which will consider proposals for the revival of the debtor and must decide whether to proceed with a revival plan or with liquidation within a period of 180 days (subject to a one-time extension of 90 days).

Winding up proceedings

Liquidation (winding up) proceedings may otherwise be initiated upon demand of either the debtor or the creditor, on the ground that the debtor is unable to pay its debts.





Under the Insolvency and Bankruptcy Code, a debtor may be put into liquidation in the following scenarios:

- A 75% majority of the creditor's committee resolves to liquidate the debtor at any time during the insolvency resolution process;
- The creditor's committee does not approve a resolution plan within 180 days (or within the extended 90 days);
- The NCLT rejects the resolution plan submitted to it on technical grounds; or
- The debtor contravenes the agreed resolution plan and an affected person makes an application to the NCLT to liquidate the corporate debtor.

Priority rules

In the new Insolvency and Bankruptcy Code, the highest priority is given to insolvency resolution process costs and the liquidation costs. Thereafter, the dues towards employee compensation and secured creditors, followed by unsecured and government dues are prioritized respectively.

Cancellation of suspect transactions (clawback)

Receivers in reorganization and liquidation proceedings are both entitled to review and apply for cancellation of any suspect transaction conducted by the debtor during a suspect period

ranging from three months to five years prior to the beginning of the insolvency proceedings. Typically, transactions favoring one creditor over the others or reducing the estate's value (etc.) could thus be void.

How long could insolvency proceedings take?

With the enactment of the new Insolvency and Bankruptcy Code, the total duration for concluding insolvency proceedings is 180 days, which may be extended by another 90 days.

Necessary documents

Invoices, sales contracts, purchase orders, bills of lading/airway bills, any emails/letters wherein the debtor has acknowledged the debt or promised payment. Copies of the mentioned documents are acceptable, although originals may be required in some cases.

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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