

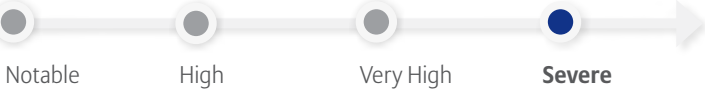
# Collection Profile Indonesia



## Collecting in Indonesia

- Payment terms in Indonesia are around 30 days on average. However, the payment behavior of Indonesian companies has deteriorated in recent years. Domestic law regulates the issue of late payment.
- Legal action in Indonesia is usually lengthy and costly while the appeal process provides debtors with an opportunity to further delay the proceedings; therefore conducting orchestrated debt collection efforts is the best option.
- The insolvency framework has improved over recent years, so the amount of inconsistent decisions which used to be rendered has been reduced, but in practice the insolvency system is still to be tested.

## Collection complexity



## Complexity relating to

Notable      Severe  
→

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



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## General information

### Availability of financial information

There is very little reliable financial information regarding Indonesian companies since partnerships and sole traders (which comprise 69% of registered entities in Indonesia) are not required to file audited annual financial statements, while private limited companies (29% of registered entities) are only required to file annual financial statements with the Ministry of Trade within six months after each financial year end, provided that certain criteria are met (listed or public companies, companies which engage in activities that collect funds from the public, companies which issue bonds, companies having assets that exceed IDR 25 billion/EUR 2 million, companies that are required by banks to file audited annual financial statements, foreign companies which carry out their business activities in Indonesia in accordance with the prevailing laws and are authorized to enter into agreements, state-owned companies). Public or listed companies have other stricter obligations but only account for 2% of registered entities. In practice, adherence to these requirements is low and relying on specialized providers is advisable (private channels may also help obtain reputation-based information). Euler Hermes cross-analyzes financial data obtained from banks, buyers, suppliers and official records 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 (Perusahaan Dagang, PD) 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 Commercial Partnerships (Firma), in which case the partners may be jointly and individually liable for the actions of the other partners. Limited Liability Partnerships (CV) may alternatively offer limited liability to the partners (under the Limited Liability Partnership Act of 2008).
- Limited Liability Companies (Perseroan Terbatas, PT, governed by Law 40/2007) are the most favored legal entities because they require reasonable minimum capital funds (Rp 50 million, about EUR 3,000) while the shareholders' liability is limited to their contribution. A limited liability company is required to have at least two shareholders.
- BUMN companies (Badan Usaha Milik Negara) are State Owned Enterprises (SOE), owned by government agencies.
- Subject to certain restrictions under the prevailing laws, foreigners may carry out businesses in Indonesia under Foreign



**Days Sales Outstanding (DSO):** Payment terms in Indonesia are usually 30 days on average, but delays may reach up to 20 days on average.



Direct Investment scheme by establishing a foreign investment limited liability company or a joint venture limited liability company. Any company established for the purpose of foreign investment is locally referred to as a PMA company (Perusahaan Penanaman Modal Asing). PMA companies are essentially limited liability companies with more stringent obligations compared to domestic limited liability companies and must comply with requirements under foreign investment laws (Law 25/2007 and its implementing regulations). The minimum capital required to establish a foreign investment company is Rp. 10 billion (approximately USD 1 million). Foreign businesses may also set up representative offices in Indonesia in order to conduct liaison functions or for marketing purposes. However, representative offices of foreign companies are prohibited from pursuing core business activities, entering into transactions or generating income.

### Regulatory environment

Indonesia has a mixed legal system in which Civil Law works together with religious principles and local customs. The Law No. 48 of 2009 concerning Judicial Power grants specific attributions to various District Courts acting in first instance: Religious Courts usually deal with family matters, while Administrative Courts deal with claims brought against official decisions and acts. Finally, General Courts (peradilan umum) generally deal with criminal and civil cases while Commercial Courts (located in the five largest District Courts) decide on disputes that relate to the bank's liquidation process (Law No. 24 of 2004), intellectual property and insolvency claims (Law No. 37 of 2004). The Supreme Court supervises the work of both District Courts and High Courts (acting as appeal courts) and it has the authority to adjudicate a petition of judicial review (i.e. examination of a statute or lower rank law against the Law/Undang-Undang).

It should be added that it is a requirement to draft contracts in Bahasa Indonesian when an Indonesian party is involved, but the parties may also enter into bilingual contracts in Bahasa Indonesian and another language of their choice. In 2013, the District Court of West Jakarta declared a contract void as it was not drafted in Bahasa Indonesian and, although Indonesia does not recognize binding precedents and judgment from one Indonesian court does not bind other courts, a party intending to enter into contracts with Indonesian individuals or companies is advised to comply with this rule.

According to the Law on Judicial Power, the courts must be independent but in practice they keep facing a high dose of corruption and the overall system suffers from a lack of reliability. Having said this, although transparency has always been an issue, some improvements have been made by the Supreme Court to ease access to information.



## Getting Paid

### Days Sales Outstanding (DSO)

Payments terms in Indonesia are usually around 30 days on average; however, payment behaviors of Indonesian companies in recent years has deteriorated and delays may reach up to 20 days on average.

Most Foreign Investment Companies (PMA) are good payers provided that they have sufficient cash flow liquidity and solid revenue streams, and as long as all contractual conditions are met. Middle to large Private National Companies similarly tend to preserve their reputations and would thus avoid being black-listed or credit defaulted due to overdue payments. Most delays can therefore be found with SMEs – which can encounter payment difficulties if they have short-term liquidity issues or are under-capitalized – and State Owned Enterprises (SOEs) which have rather questionable payment behaviors and are known to be late in meeting their payment obligations.

### Late payment interest

Indonesian law prescribes no standard payment terms, but the Civil Code regulates late payment interest, which has to be paid by the defaulting party upon request of the creditor before a court. Two sorts of interest would apply. On one hand, a conventional interest rate (bunga konvensional) may be agreed by the parties through a contract and applied in case of late payment or if a breach of other obligations occurs. On the other hand, if no contractual agreement exists, a 6% per annum legal interest rate (bunga morator) is set by law. The legal late payment interest is calculated from the date it is requested to the court, while the conventional interest rate is calculated as provided in the contract. In both cases, commencing legal proceedings is necessary to obtain payment.

### Debt collection costs

To date, there is no law or regulation in Indonesia which regulates collection costs in particular or debt collection activities in general.

### Ownership protection

Retention of Title (RoT) rights allowing the preservation of goods until the related invoice is paid in full is provided under the Civil Code. Ownership rights under Indonesian law are transferred to the buyer as soon as the goods have been delivered, whether or not the goods have been fully paid. RoT therefore only grant the seller a 'reclaim right,' provided that (i) the goods are still with the buyer and (ii) reclamations occur within 30 days after the goods' delivery to the buyer.

The Civil Code however does not recognize the concept of 'extended' RoT, hence, when the buyer has transformed and/or sold the goods, reclaim would not be possible and the seller would have no option but to request payment of the unpaid goods from the



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court. In addition, RoT agreements would have a role to play when the debtor becomes insolvent because RoT holders are considered preferred creditors during insolvency proceedings in Indonesia (see below).

### Payments

Swift bank transfers are becoming increasingly popular in Indonesia as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. For export transactions, transfers should be 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. 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. Bank guarantees may usually be obtained provided that a cash deposit equivalent to the requested guarantee is given, but it is advisable to negotiate down payments (35% to 40% of transactions are paid in advance).

## Collecting overdues

### Amicable action

#### Negotiating

Legal action in Indonesia is usually lengthy, costly and decisions may be inconsistent. Therefore, it is always advisable to consider amicable settlement opportunities as a serious alternative to formal proceedings, which overall should only be commenced where the debt is very significant (in excess of USD 500,000). As a matter of fact, negotiating with the debtor should always be the first step because in practice, it is an ideological principle (Pancasila) and a legal requirement (under Supreme Court Regulation No. 1 of 2008 on Procedures for Mediation in Court) for the parties to seek an amicable arrangement with a mediator prior to taking a claim to court, and to show that all efforts have been undertaken to do so.

### 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.

Ordinary legal action may only commence when the parties have first attempted to reach a compromise and amicable collection has failed. The creditor may then file a claim with the District Court, which is given responsibility for serving the debtor with summons. If the debtor fails to appear at the hearing to lodge a statement of defense, the court has discretion to organize a second hearing or to release a default judgment (verstek/verstekvonnis).

Prior to considering the debtor's defense, as previously mentioned, the court must first verify whether the parties have tried to reach an agreement or amicable settlement through mediation, as mandated by the Supreme Court Regulation No. 1 of 2008 concerning Procedures of Mediation at Court. If the parties have undergone the mediation process, the panel of judges will then continue the hearings and the parties' evidence will be examined. The court would then render a decision and may award remedies in the form of compensatory or punitive damages.

#### Necessary documents

- A duly executed Special Power of Attorney ( Surat Kuasa Khusus)
- Statement of claim
- Rejoinder (duplik) or reply to the defendant's response
- List of evidence

#### Time limitations

In general, all legal claims, whether business or individual, must be brought before domestic courts within 30 years. However, some provisions provide a more specific prescription period for bringing an action (i.e. claims related to bad checks must be brought within six months while those related to transportation by sea within one year). The examination of a dispute shall be settled within 180 calendar

days from the date of the formation of the Ad Hoc Arbitration. The period of examination of the case could be extended upon the agreement of both parties and if deemed necessary by the Arbitration Ad Hoc.

#### Provisional measures

Provisional measures may help preserve the creditor's interests pending a final judgment insofar as the courts may order the provisional attachment of the debtor's assets. In this case, the debtor retains property over its assets but loses the faculty to dispose of them as long as the proceedings continue. Such provisional orders would only be granted provided that the claimant has demonstrated the immediate necessity of doing so. It is also necessary to obtain permission from the High Court to enforce it.

#### Lodging an appeal

Dissatisfied parties may lodge an appeal against decisions rendered in the first instance before the High Court within 14 days following the notification of the decision. The appellate court would then review the decision, taking issues of fact and law into consideration. Decisions rendered in second instance may also be appealed against (cassation) before the Supreme Court, whose awards are final and binding on the parties. The Supreme Court however only has authority to consider questions of law. It should be emphasized that appeal proceedings have a suspense effect; therefore as long as the proceedings have not been terminated, a judgment cannot be enforced against the debtor. Appeal proceedings may be extended to the Supreme Court, which in practice gives debtors major means to delay the decision and increase procedural costs.

#### Enforcing court decisions

A judgment is enforceable as soon as it becomes final (i.e. when all appeal venues have been exhausted or when the parties accept the judgment and do not file an appeal or cassation). If the debtor fails to satisfy the judgment, it is possible to request the District

#### 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.

Court to commend execution by way of attachment and sale of the debtor's assets through public auction.

#### How long could legal action take?

The timescale to obtain a court order varies and depends on the procedure, on the tribunals' expertise and availability, as well as on the context of the file. District Courts would usually take six months to one year before rendering a decision in the first instance, but it is not unusual to wait for years in order to obtain a final and enforceable decision since appeals would often delay the process extensively. The proceedings may take a longer time when a case involves foreign parties as the summons will need to be served via diplomatic channel.

#### How much could this cost?

The Civil Procedure Code does not leave room for procedural costs and the courts hardly award costs in civil litigation proceedings. Each party must thus expect to bear its own legal fees. Contingent fees whereby the legal professionals are entitled to receive a percentage of the final award are allowed though uncommon. Practitioners would rather tend to charge a flat fee or an hourly fee, sometimes also charging an additional success fee.

### Alternative options to legal action

#### Alternative Dispute Resolution methods (ADR)

Mediation and arbitration (under Law No.30/1999) is increasingly common in Indonesia, especially when the dispute relates to large international contracts. In fact, the Indonesian National Mediation Centre (Pusat Mediasi Nasional) was set up in 2003 for this purpose. Mediation involves 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 involves the parties agreeing to rely on an independent and impartial third-party arbitrator, who is given authority to settle the dispute on their behalf. The arbitrators' 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.

Other matters shall be subject to the provisions of laws on arbitration, under the Law of the Republic of Indonesia Nr. 30 dated 12 August 1999 regarding Arbitration and Alternative Dispute Resolution.

#### Foreign forums

Foreign traders may alternatively agree to solve their business disputes in a foreign forum (i.e. under a foreign law or before a foreign court) insofar as Indonesian courts tend to respect foreign jurisdiction clauses



as long as the contract is drafted in Bahasa Indonesian. The main challenge is in enforcing the decision against Indonesian debtors.

#### Enforcing foreign awards

Enforcing foreign judgments may prove impossible. Indeed, Indonesia is not party to any treaty concerning reciprocal enforcement of judgments. This means that it would also be difficult to enforce the decisions of Indonesian courts abroad. International arbitration awards would however be enforceable insofar as Indonesia is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. The Bankruptcy Law adopts the principle of territoriality. A bankruptcy procedure initiated in another jurisdiction has, in principle, no effect in Indonesia. Assets located in Indonesia belonging to a company which has been declared bankrupt outside Indonesia are not considered part of the bankruptcy estate.

#### 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 be 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 in Indonesia is not a matter of cash flow or balance sheet. A debtor having two or more creditors failing to pay at least one debt that has matured and become payable may be declared insolvent by the decision of the Indonesian Commercial Court, either at the debtor's own petition or at the request of one or more of the creditors. The term 'failing to pay' is interpreted broadly and does not necessarily mean that the debtor does not have sufficient cash flow to pay the debts. Sometimes, a debtor would be declared insolvent by the Indonesian Commercial Court when, following a Suspension of Payment procedure, no composition plan has been approved by the creditors and the court alike.

The Insolvency Law No 4/1998 (Law 4/1998) has been replaced in 2004 by the Law on Insolvency and Suspension of Payment No 37/2004 (Insolvency Law), which governs insolvency and suspension of payment procedures in Indonesia. This framework has reduced the amount of inconsistent decisions which used to be rendered, but in practice the insolvency system is still to be tested.

### Insolvency proceedings

#### Restructuring the debt

Informal debt restructuring in Indonesia is in principle a renegotiation of a contract between the parties. The advantages are varied, especially compared to the procedural and practical difficulties in enforcing any security that the creditor may have obtained. A range of options are available in this process, including but not limited to interest rate reductions, debtor rescheduling and the granting of additional securities.

Suspension of Payments proceedings may be initiated by the debtor or its creditors (under Article 2 of the Insolvency Law) when the debtor company is facing temporary liquidity problems which are likely to be resolved, as long as the court has not declared the debtor insolvent. The debtor retains the ability to manage the company (under the supervision of a court-appointed administrator and a Supervisory Judge) and is given an opportunity to submit a composition plan to the creditors. If the latter approves the composition plan (over 50% of the secured creditors represented at the meeting and holding at least 66.67% in value of the total claims of all the secured creditors; and over 50% of the unsecured creditors represented at the meeting and holding at least 66.67% in value of the total claims of all the unsecured creditors), and the Commercial Court ratifies it after receiving a written report of the Supervisory Judge, the composition plan becomes binding on all the parties with the exception of the dissenting secured creditors. These dissenting secured creditors may try to reach an alternative agreement with the debtor which will need to be coordinated with the administrator and other creditors to ensure that such dissenting secured creditors do not benefit unfairly. In practice, such creditors often opt to receive prompt payment of their debts but with a substantial discount.

If the creditors and the Commercial Court reject the composition plan, the insolvency proceedings would commence. In order to support the

company during the composition phase, the court would generally order a temporary 45-day moratorium, followed by an extendable maximum of 270 days as a permanent moratorium, suspending all enforcement claims against it.

#### Winding up proceedings

Under Indonesian Insolvency Law, a company's insolvency would be pronounced by the court if the debtor has at least two creditors and that it is unable to pay one of the two debts due and payable.

Insolvency would occur upon demand of the debtor or the creditors. Once the Commercial Court accepts the insolvency petition and declares the debtor insolvent, a 90-day moratorium shields the company from enforcement proceedings. A receiver is appointed to manage the estate and to distribute the proceeds of the sale under the authority of a Supervisory Judge.

It should be noted that the debtor is allowed to propose a composition plan at all times. If approved by the creditors and ratified by the court, such plan would halt the liquidation process.

#### Priority rules

Priority rules normally apply while distributing the proceeds to the creditors. Tax debt (not exceeding five years) would be repaid first. Post-insolvency creditors (procedural costs, post-insolvency financing) would then be given priority over other creditors and would be entitled to receive their debts in full. The claims of preferred creditors, secured creditors (including RoT holders) and employees would be considered next. Unsecured creditors would come last. Holders of retention rights shall be differentiated from holders of security rights which hold security interests pursuant to specific security agreements with the debtors.

#### Cancellation of suspect transactions (clawback)

The Insolvency Law entitles the receiver to review and cancel any legal action conducted deliberately by the debtor in order to reduce its assets or to favor one creditor over the others. The receiver would normally issue an extrajudicial declaration, but if debtor files an opposition it may become necessary to commence specific legal proceedings.

#### How long could insolvency proceedings take?

Indonesian law stipulates the length of insolvency proceedings is between 60 to 180 days depending on whether or not there is an appeal. However, it may take longer in practice. District Courts (where the Commercial Courts are established) may take six months to one year before rendering a decision in first instance and it is not unusual to wait for years in order to obtain a final and enforceable decision since appeals would often delay the process extensively.

#### 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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