

# Collection Profile Israel



## Collecting in Israel

- Payments in Israel normally transpire within 60 to 90 days between domestic companies, though these numbers are much lower when dealing with foreign companies.
- A recent reform in Israeli courts allows for speedy proceedings and execution activities for lawsuits up to NIS 75,000 (EUR 18,000). Despite this, significant delays, costs and difficulties must be expected when taking legal action, especially in cross-border disputes.
- Various insolvency proceedings are available, although in practice the chance of collecting debt when the debtor has become insolvent remains poor.

## Collection complexity



## Complexity relating to

Notable      Severe  
→

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



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## General information

### Availability of financial information

All businesses in Israel must register with the Companies Registrar and all incorporated companies must release annual audited financials to their shareholders. There is, however, no obligation to release these documents, therefore the system lacks transparency and little reliable financial data is publicly available.

On the other hand, there are companies in Israel dedicated to providing credit details, which can provide very good and reliable information about any business.

Euler Hermes allocates each company a grade reflecting its financial health and how it conducts business. 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 not require a commercial organization may be operated by one private individual registered as a Sole Trader. Two or more individuals may also decide to share ownership and responsibilities through Partnerships (under the Partnership Ordinance of 1975), in which case the partners may be jointly and individually liable for the actions of the other partners (while increasing fundraising capacity). Limited Partnerships may alternatively offer limited liability to the partners.
- Incorporated entities may also be relied upon (as provided under the Israeli Companies Ordinance of 1983). Private Limited Companies are popular since the shareholders (up to 50 members) are only liable for the company's debts in relation to their capital contribution, and there is no minimum capital requirement. Larger businesses would rather be set up through Public Joint-Stock Companies, for which a minimum capital of NIS 25 million is required. In this type of company, the shares are tradable and the shareholders are only liable for the value of their share, while debts may only be recuperated on the company's assets.
- Often, foreign investors decide to settle in Israel through Partnerships (Joint Ventures) or through a Branch entity independent from the parent company and capable of doing business.

### Regulatory environment

Israel has a mixed legal environment which, even though it is based on Common Law principles, is also influenced by Civil Law. Israeli courts have significant difficulties in coping with the case load for several reasons. First, domestic companies are quick to commence litigation proceedings and the law allows billing for legal expertise on a 'no win, no fee' basis, which means that the ability of debtors to engage in a lawsuit may play against creditors. Second, civil and commercial proceedings are regulated by numerous procedural rules which make litigation rather complex and time consuming. Third, all documents



#### Days Sales Outstanding

**(DSO):** Payments in Israel take 60 to 90 days between domestic companies, but payment behavior changes from sector to sector.



must be translated in the official languages (Hebrew and Arabic) thus making proceedings more complex to handle for foreigners. The judiciary is otherwise sophisticated and divides into various courts which deal with business claims as follows: 30 Magistrates Courts (Beit Mishpat HaShalom) all over the country handle small business disputes of less than NIS 2.5 million (EUR 520,000), while providing for a particular Execution Institute (Hots'a Lapoal) in charge for enforcing judgments and unpaid checks, drafts and promissory notes without the need to go to court. The Antitrust Tribunal deals with claims related to uncompetitive practices, while the Standard Contracts Tribunal based in Jerusalem deals with actions brought by consumers against unfair contractual terms. District Courts (Beit Mishpat Mehozi) rather deal with all commercial cases in excess of NIS 2.5 million and hear appeal proceedings against decisions rendered in the first instance by the Shalom Courts. Issuers of land and trademark infringements will normally be referred to the District Court, even for small amounts. Jurisdiction normally depends on the debtor's address but many international commercial disputes would be heard by the Courts of Tel Aviv and Jerusalem, while maritime claims would be dealt with in Haifa and Ashdod, where the ports of Israel are located. The Supreme Court (Beit Mishpat Elyon) would hear appeal claims brought against decisions rendered by the District Courts, as well as certain claims brought in relation to trademark infringements.

# Getting Paid

## Days Sales Outstanding (DSO)

Payments in Israel take place within 60 to 90 days between domestic companies, though these numbers reduce with foreign companies. However, delays of 15 to 30 days can be expected when transactions are not secured. The payment behavior of domestic companies changes from sector to sector.

## Late payment interest

Late payment interest starting from the original due date is normally paid in Israel, provided that the contract states that it should be paid, though the law provides no specific framework to this regard.

## Debt collection costs

Collection costs can only be charged to the debtor when a claim is filed with the court. In practice, such costs are used as a means to exercise pressure but would rarely be paid.

## Ownership protection

Use of Retention of Title (RoT) agreements, aiming at preserving ownership over goods until the related invoice is paid in full, is an established practice in Israel, but case law has had a significant impact on their admissibility.

The courts have characterized many RoT provisions into security interests (which must be registered with the Registrar of Pledges in order to be valid) and have limited their applicability, as they are considered as an ownership protection tool rather than as a right granting priority on future proceeds should the debtor default. In practice, the courts would tend to verify whether the RoT originally aimed at protecting ownership or at ensuring such priority,

which means that RoT provisions triggered against insolvent debtors might only have a limited effect unless the goods sold are still available and identifiable. RoTs in Israel thus have little margin of movement against banks' priority rights (in the form of floating charges) crystalizing as pledges during insolvency proceedings, and thus rarely allow receiving dividends in insolvency proceedings.

## 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. For export transactions, transfers 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 our 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. Also, 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.

Local bank guarantees are generally available, but they remain more expensive than in other developed countries. Promissory notes and checks also constitute interesting payment tools, as they are considered transferable securities which may be enforced with the court if the debtor defaults. Finally, 30% of transactions tend to be paid in advance and negotiating down payments is advisable.



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## Collecting overdues

### Amicable action

#### Negotiating

The slow and drawn out judicial system means amicable settlement opportunities constitute the strongest alternative to formal proceedings. Before starting legal proceedings against a debtor, assessment of assets is essential to verify whether the latter 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 often becomes impossible to collect a debt.

Prior to initiating a formal dispute, it may also be worth considering whether the contract allows having foreign or arbitral tribunals.

### Legal action

#### Ordinary proceedings

Given the complexity of conducting legal action in Israel, it is essential to first ensure that legal action only commences when all amicable negotiation opportunities have been exhausted.

Various fast-track proceedings may also help solve payment issues without having to conduct an ordinary lawsuit. These are available when the claim is for certain and undisputed liquidated sums up to NIS 75,000 (EUR 18,000): in such a case, the plaintiff files the claim with an affidavit, together with documented proof of the debt amount. The debtor has 45 days to file a defense with an affidavit (there is no need to obtain the court's permission).

Another quick way to receive payment is through a shorter process (injunction), which can be submitted directly to the Hotsa'a Lapaal: there is a limit on the claimed amount (NIS 75,000 / EUR 18,000) and it must be based on clear evidence which the debtor cannot deny (e.g. an acknowledgement of debt signed by the debtor). If the evidence is opposed, the debtor must apply for special permission from court in order to file a defense. If permission is granted, the process will become an ordinary one; if not, a judgment will be made.

Originating motions proceedings aim at solving disputes affecting one's rights (i.e. ownership rights, creditor's status, etc.). An ordinary proceeding must be based on claim facts accompanied by supporting documentation and the arguments of the plaintiff versus defender. When the option of commencing formal legal proceedings remains, a claim may be filed with the competent court (depending on the amount at stake) and the debtor must be served with a summons. The debtor must bring a defense within 30 days. The parties are given a chance to meet and exchange during a pre-trial hearing, which also provides them with an opportunity to settle the claim amicably. If no compromise is reached, the parties' evidence and arguments are then examined. The court may render its decision once the evidentiary hearing has taken place and the parties' summaries have been submitted. It should be added that, in practice, the parties may ask the court for extensions of the time periods stated in law, which are often granted.

Israeli courts may award remedies in the form of compensatory damages, mandatory or prohibitory injunctions and declarative decisions, but punitive damages are not allowed by law.

#### Necessary documents

Invoices, statements of account, checks, purchase orders, delivery notes, bills of lading, contracts between the parties, promissory notes or guarantees.

#### Time limitations

Commercial claims must normally be brought to court within seven years from the date where the cause of action arose.

#### Precautionary measures

Precautionary measures may help to preserve the debtor's interests pending a final decision. Indeed, the courts may order interim measures aiming at protecting assets (attachment orders) or at preventing the debtor from leaving the country. The claimant must however demonstrate that it has a strong case 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 against the decision rendered in first instance, before the higher court, within thirty days following the notification of the decision. It is however necessary to obtain the authorization (leave for appeal) from the court, which would then review the decision, taking issues of fact and law into consideration. Decisions rendered in second instance may also be appealed against before the Supreme Court, which awards are final and binding on the parties. The Supreme Court however only has authority to consider questions of law.

#### Enforcing court decisions

A judgment is enforceable as soon as it becomes final (i.e. when all appeal venues have been exhausted). If the debtor fails to satisfy the

#### 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.

judgment, it may become necessary to request compulsory enforcement of the judgment through the Execution Institute (Hotsa'a Lapoal). Having a lawyer is essential.

#### How long could legal action take?

Undisputed claims in Israel would normally be solved within six to nine months, but when the claims are disputed legal proceedings could take up to three years. Ultimately, the duration of litigation proceedings in Israel varies from case to case and is hard to predict, while lawsuits last for three years on average.

#### How much could this cost?

Until a verdict is reached, legal costs would be approximately 5% of the disputed amount, but not less than EUR 3,000.

### Alternatives to legal action

#### Alternative Dispute Resolution methods (ADR)

Given the difficulty of obtaining timely judgments from the courts, alternative methods of resolution such as mediation and arbitration are increasingly common in Israel.

Mediation involves the nomination of a mediator who is given the responsibility of helping the parties reach a compromise. The mediator has no authority to decide on behalf of the parties and 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 acts as a facilitator to settlement. In practice, the agreement is usually sent to court which then assures it in order to give it the value of a binding judgment. Arbitration 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 arbitrators' decision will be binding on the parties.

As an out-of-court settlement method, ADR can be cost-effective, generally reduces delays (awards must normally be rendered within three to nine months), allows preserving 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.

Precautionary measures (see above) normally fall under the jurisdiction of the courts, however in practice arbitration tribunals are given increasing liberty in awarding such orders.

#### Foreign forums

Foreign traders wanting to avoid overly busy courts may agree to solve their business disputes in a foreign forum (i.e. under a foreign law or before a foreign court), but having foreign jurisdiction clauses in Israel is not straightforward. First, the case law has imposed significant constraints on how the clauses must be worded in order to be applicable and effective. Second, the choice of a foreign jurisdiction may in certain conditions be construed as a depriving condition designed to deter the parties from enforcing their rights, and could

thus be void. Seeking specialized legal advice on the subject matter should not be considered optional.

#### Enforcing foreign awards

When the parties consider obtaining a decision from a foreign court in order to reduce delays, or when a foreign decision must be enforced in Israel because a debtor has assets in the country, it is first essential to ensure that Israeli courts will recognize the decision. As a general rule, indeed, courts must recognize foreign judgments as domestic decisions prior to enforcing them (through a bailiff), but specific rules apply.

Enforcement under the Foreign Judgment Enforcement Law of 1958 takes place before District Courts through an exequatur procedure aimed at verifying that the foreign proceedings have fulfilled certain requirements. In particular, it must be established that the issuing foreign court had jurisdiction to decide on the case, that the decision is final (i.e. that all appeal opportunities have been exhausted) and enforceable in the issuing country, and that enforcement of the foreign decision does not contradict Israeli public policy. Foreign claims must also be brought to court within five years in order to be enforced.

It is interesting to emphasize that Israel only has four reciprocal recognition and enforcement treaties with foreign countries (Austria, Germany, Spain, UK) but that, by contrast with many countries, it does not require the existence of a treaty to recognize and enforce a foreign decision as long as the previously mentioned conditions are fulfilled, and as long as the issuing country has a reciprocity policy despite the absence of a treaty.

Israel 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

Legislation on insolvent companies consists mainly of the Companies Ordinance of 1983 (as amended), the Bankruptcy Ordinance of 1980, and the Companies Law of 1999.

Israeli law recognizes three main ways of dealing with insolvent companies: a voluntary arrangement between the company and its creditors, liquidation of the company and receivership. All insolvency proceedings may be initiated by either the debtor or its creditors, but in each type of proceeding the courts would tend to give priority to the creditors over the interests of the company and third parties.

### Insolvency proceedings

#### Out-of-Court proceedings

The law provides no particular out-of-court proceedings.

#### Restructuring the debt

Formal rescue proceedings take place under section 350 of the Companies Act. Upon approval of the insolvency petition, the court orders a meeting of the parties aiming at a restructuration compromise. A proposal is drafted by the debtor and must be approved by a majority of participants (representing at least 75% of the value present at the vote), but the law imposes no limitation as to how much of the debt must be repaid in order for the proposal to be deemed acceptable. The proposal is then validated by the court and becomes binding.

This procedure usually comes along with a petition to the court for a stay on the proceedings aiming at protecting the debtor from parallel enforcement claims. During the proceedings, a trustee is given responsibility for managing the company in place of the directors.

#### Winding up proceedings

When the debt cannot be restructured, liquidation proceedings can be commenced upon request of the debtor (voluntary liquidation) or by the creditors with a view to realize the company's assets. The court appoints a liquidator, with whom the creditors must file a proof of claim within nine months from the formal date of final liquidation. The liquidator then takes responsibility for managing the company, selling its assets and distributing the proceeds of the sale to the various creditors taking priority rights into account.

Receivership proceedings are rather initiated by secured creditors to enforce specific contractual agreements and to recuperate specific debts, be this may be done to the detriment of the other creditors as these will not be represented.

#### Priority rules

Priority rules normally apply while distributing the proceeds to the creditors. Procedural costs would first be considered as priority debts, together with certain tax debts. Providers of 'fresh money' loans during the insolvency proceedings would also be granted special priority over the proceeds, provided that the court recognizes the necessary nature of such debts. Fixed charges (such as pledges) would

then rank higher than preferential creditors (such as employees and tax authorities) and floating charge holders. Unsecured creditors would come last and would thus rarely receive any compensation for their debts. As already mentioned, RoTs might be of limited effect.

#### Cancellation of suspect transactions (clawback)

Upon court approval, trustees and liquidators may cancel transactions made within a three months suspect period prior to the insolvency proceedings. Typically, transactions favoring one creditor over the others or reducing the estate's value (fraudulent acts, undervalue or gratuitous acts, etc.) could thus be void.

#### How long could insolvency proceedings take?

Insolvency proceedings take two to three years on average.

#### Necessary documents

Invoices, and statement of account.



#### 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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