

Collection Profile Kazakhstan

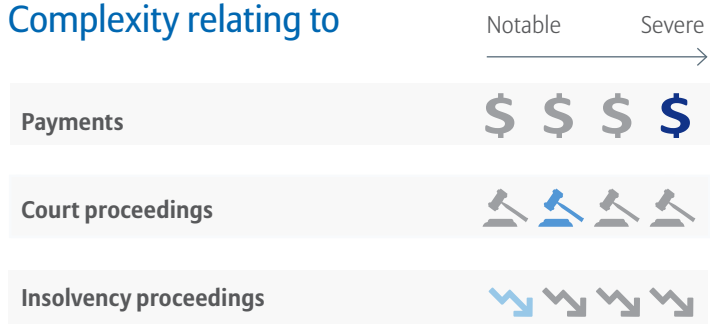
Collecting in Kazakhstan

- The payment culture of Kazakh companies has declined due to local currency devaluation from 2014, with a high risk of further devaluation in 2017. There are no DSO statistics available and it highly depends on industry.
- The courts are reliable and deliver their decisions quickly. However, the requirements to provide supporting documentation for the claim are rather high. Enforcement procedures show moderate results and there is room for improvement.
- Insolvency proceedings tend to bring low results for unsecured creditors, while the creditor's claim must be accompanied by the required set of documentation.

Collection complexity



Complexity relating to



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General information

Availability of financial information

The financial information on companies is only partly available for the public view – it depends on the type of company (e.g. the individual entrepreneur or limited liability company) and is not mandatory for all companies. There is an online depository of financial statements (regulated by the Ministry of Finance), which includes those of Joint Stock Companies, financial companies and state commercial companies.

The data available for the public view is usually reliable, however, the quantity tends to be insufficient to reach a conclusion about a given company.

Depending on the kind of information required, this can be obtained either in real-time (rarely) or, where possible, after a written request is sent to the authorized institution (more likely).

Main corporate structures

There are many different corporate structures in Kazakhstan, but the most popular are the following:

- Individual Entrepreneur (IP), which has several advantages – fast registration procedure, minor paperwork and the individual entrepreneur is not obliged to have a seal of the company, no obligation to submit financial data and sometimes no obligation to pay VAT. However, it has several disadvantages, as well – the shareholder is personally responsible for the debts of the company, the shareholder cannot be changed, the company cannot have branches, the number of employees is limited and some business activities can be forbidden.
- Limited Liability Companies (TOO) restrict the liability of the shareholder to be limited to the value of their share in the company. A Limited Liability Company can open branches, have an unlimited number of employees and all business activities are allowed. However, the company must have its seal and submit financial information to the authorities. The registration of the company is more complicated compared to an IP: a large set of documents must be provided and the registration takes more time.
- Joint Stock Company (AO) is the most complicated organization structure. There is no limit to the number of employees and turnover, but there is a list of certain requirements, including a minimal share capital, which have to be met. AO companies are monitored by local authorities during its whole period of operation. The most common type of company among the above listed structures is the Limited Liability Company (TOO), with more than 50% of all companies registered as such.

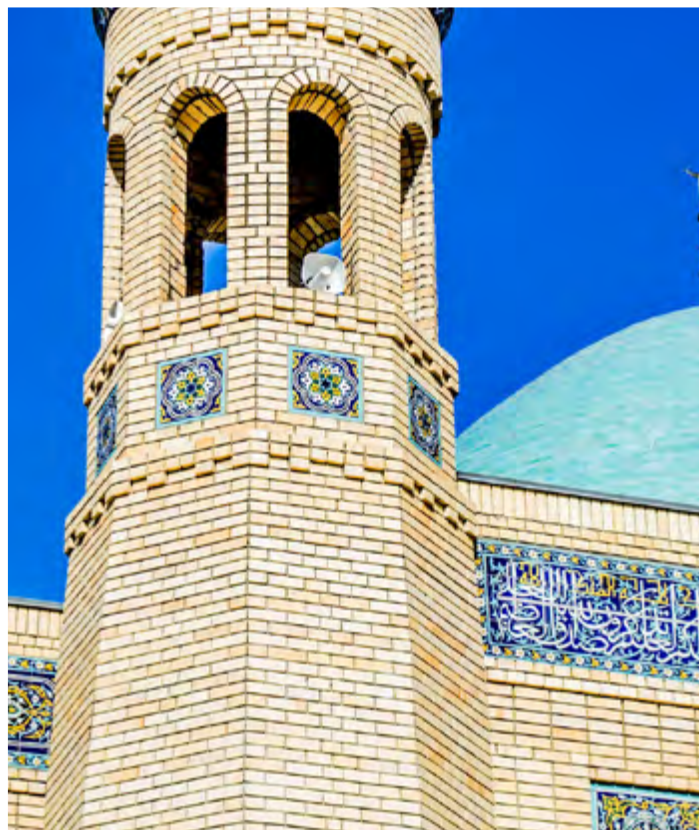
Regulatory environment

Proceedings in the Economic Court are regulated by the Civil Code, Civil Procedure Code and by the Law in the court system.

According to local legislation, the Specialized Economic Court is competent to handle commercial disputes. The legislation defines commercial disputes as where at least one party to the dispute is



Days Sales Outstanding (DSO): In general the payment culture in Kazakhstan is on a satisfactory level, but the payment discipline declined in 2014.



the legal person or where the claim relates to a corporate dispute. A Specialized Economic Court is located in each region of the country and the judge has 400 to 500 cases per year on average. There are also International Commercial Arbitration courts in Kazakhstan and the parties may agree that the dispute can be brought to this court. International Commercial Arbitration Courts are regulated by the Laws 'On International Commercial Arbitration' and 'On Arbitration Courts.' The Laws are developed on the basis of the UNCITRAL Model Law on International Commercial Arbitration. However, the Commercial Arbitration clause must be included in the contract (if not, parties need to sign an additional agreement). Agreement between parties to bring the dispute in Commercial Arbitration court can be reached even during trial in Economic Court. It is necessary to understand that the Commercial Arbitration is a commercial court and can be more expensive than the legal actions pursued in a General Jurisdiction Court. However, the decision of a Commercial Arbitration usually cannot be appealed and it reduces the timeframe for legal actions.



Late payment interest:

The legislation states that the creditor can ask the debtor to pay interest if there is a delay in payment for the received goods or provided services.



Getting Paid

Days Sales Outstanding (DSO)

In general the payment culture in Kazakhstan is on a satisfactory level, but the payment discipline declined in 2014 due to local currency devaluation and the Kazakh economic recession (i.e. the drop of oil prices).

There are no public statistics or business publications available regarding the country's DSO.

Late payment Interest

The legislation states that the creditor can ask the debtor to pay interest if there is a delay in payment for the received goods or provided services. The interest can be calculated based on the terms of the contract between the parties (the seller can use the rate indicated in the contract) or based on the Civil Law (then the refinancing rate of National Bank of Kazakhstan is applied). However, despite being possible to claim interest, it is rarely paid and often only if the debt is recovered through the court. If there are pre-legal negotiations ongoing, the debtor can negotiate that the interest is not paid at all. If the debtor is not willing to pay the interest, but the creditor requests it, the only solution is to start a legal procedure which can be time consuming and expensive.

Debt collection costs

The legislation of the country does not set an obligation for the debtor to compensate the costs for debt recovery or other similar expenses. In reality, most debtors are not willing to discuss possible repayment of any side costs and these amounts are almost always irrecoverable.

Ownership protection

The clause regarding Retention of Title (RoT) can be included in the contract between the parties and it can be used as a measure to stimulate the debtor to pay the invoice faster. However, RoT cannot bring positive results in certain circumstances (e.g. if the debtor company is suffering financial difficulties or if it was established to make fraudulent deals etc.). If the debtor is avoiding payment, provided there is an RoT clause in the contract, the creditor can request the return of the goods, but if the debtor ignores this request, the creditor will have to proceed to the court with a claim for unfulfilled conditions of the contract and request the return of the goods. This makes claiming RoT complicated and inefficient. If the debtor is declared bankrupt and there are goods that were left unpaid, under RoT conditions, the administrator will return these goods and will not include the claim of the creditor in the creditors list even if the value of the goods has reduced and the outstanding amount was not fully recovered.

Payments

The main forms of payment are by bank transfer or cash. Other methods like checks or banking guarantees are used very rarely and are therefore not trusted by local entrepreneurs.

There are currency control requirements that have to be fulfilled in order to proceed with a payment abroad and this may lead to delays in payments or to banks requesting additional documents. However, all difficulties can be resolved once the necessary documents are provided.

Sometimes customers make payments via a third party (offshore). While this practice is not a violation of the local legislation, it has its drawbacks and it is wise to carefully review payment offers from a third company instead of the original customer before accepting.

Collecting overdues

Amicable action

Negotiating

The legislation of Kazakhstan does not set the conditions of mandatory pre-legal negotiations before legal debt recovery can be started.

However, if it is a condition in the contract between the parties, then it has to be followed, otherwise the court will refuse the claim.

Even though there is a long history of solving disputes through the courts, with local companies not used to amicable debt collection practices and third-party involvement, there is a tendency to start using professional agencies to help solve problems through out-of-court means, even if this is done with reservations. It is always advisable to start any potential legal case with an amicable stage as it helps to understand the case background and possible drawbacks. This can also help reduce the cost of legal action, should it become necessary to proceed with litigation. On 6 May 2017, the Law on Debt Collection Activities was adopted, though it only regulates banking delinquency debt collection.

Legal action

Ordinary proceedings

Simplified court procedures are not possible when resolving commercial disputes and generally legal action will have to be started.

The claim has to be sent to the Economic Court in the region where the debtor is located (if no other court jurisdiction is stipulated in the contract). The decision of the court regarding acceptance of the claim is made within seven days from the date the claim is submitted. The court checks if the claim has been prepared and submitted in accordance with the legislation. If all conditions have been fulfilled, the court accepts the claim and begins to review it. The judge checks all aspects of the case, decides on the participants of the court session, sends a copy of the claim to the defendant and sets the deadline for the defendant to provide a response to the claim.

The court session is scheduled once the case is prepared for litigation and once the time given for the defendant to provide a response has passed. The court checks all supporting documents and information from the claimant and defendant, and makes a decision regarding the claim. It is possible to lodge an appeal against the decision of the court.

The parties can reach a settlement agreement while waiting for the judge's decision. However, if later the conditions of the settlement agreement are broken, the claimant can obtain a writ of execution and start the enforcement procedure.

If the judgment is not appealed, it becomes legally enforceable and the writ of execution can be issued, after which the enforcement procedure can be started.

If the parties proceeded with legal action via Commercial Arbitrage, the decision of the court has to be submitted to the General Jurisdiction Court in order to obtain the writ of execution and to start the enforcement procedure.

Necessary documents

Contract between the parties and/or orders placed by the debtor, transportation documents (delivery notes) or other documents confirming goods receipt, documents related to the unpaid amount (invoices, statement of account, payment promises made by the debtor (if any) etc.), extract from the register regarding the creditor and a power of attorney if the creditor is represented by another party (e.g. the lawyer).

All documents must be provided in the state language, thus, the translation must be done before the claim is submitted to the court.

Time limitations

The claim can be brought to the court up to three years from the date of the debtor's obligation to pay. If the limitation period has expired, the court will reject the claim.

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 judgement and enforcement.

Provisional measures

The court can apply provisional measures if such a request is made by the claimant. The mandatory condition is that there are reasonable grounds to believe that the enforcement of the court's decision can become complicated or impossible if these measures are not applied.

The following provisional measures are the most common in commercial disputes: (i) seizure of property or bank accounts, (ii) restriction to undertake certain actions or activities, and (iii) restriction on the third party to fulfill obligations or to transfer property to the creditor.

The provisional measures have to be proportional to the amount of the claim and the type can change according to the court's decision.

The court can ask the creditor to pay a deposit in order to cover any possible losses that the debtor can incur due to the application of the provisional measures. Additionally, the debtor can ask the creditor to pay the compensation after the provisional measures are cancelled, if the debtor has suffered any losses.

Lodging an appeal

The appeal can be lodged up to 15 days from receipt of the court's decision. No additional requirements or documents are needed to lodge an appeal.

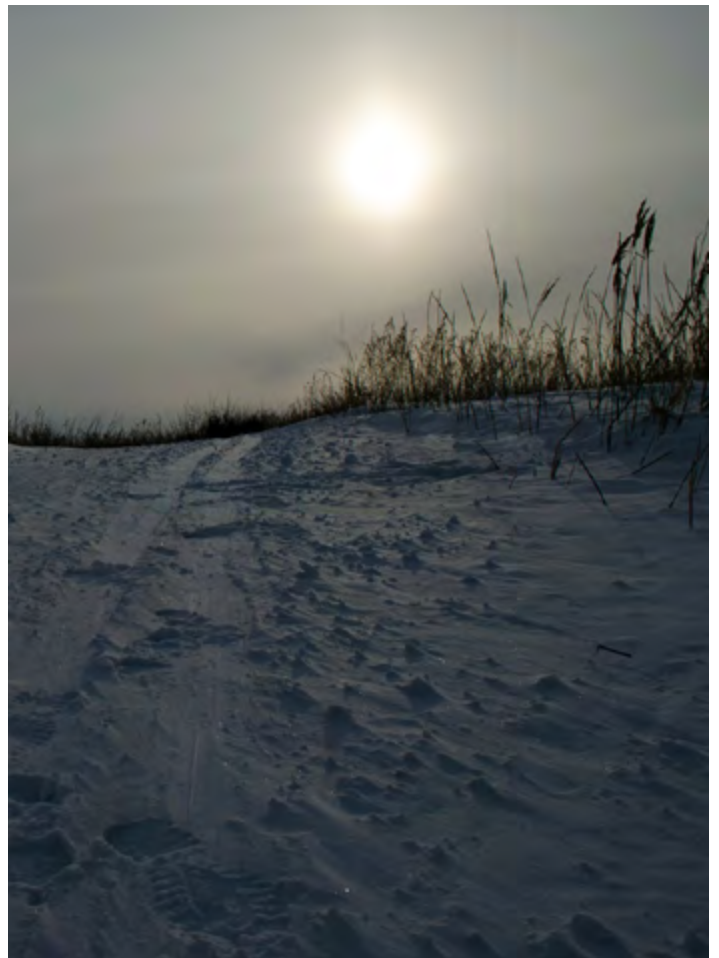
If the claim was submitted to the Commercial Arbitrage, usually an appeal cannot be submitted, except in situations where there was a violation of the procedural code by the court.

Enforcing court decisions:

If the parties do not submit an appeal petition on the decision of the first instance court, the decision becomes legally enforceable and the claimant can obtain the writ of execution. This document is then sent to the bailiff's office located in the region of the debtor. The bailiffs use different enforcement tools, but the most common are the seizure of property and the seizure of the debtor's bank accounts. The bailiff has a right to seize property in which the debtor has partial ownership, but it must be proportionate to the amount of the debtor's share in the seized property. The bailiff also has the right to forbid the debtor leaving the country (if the debtor is a legal person, such restriction will be made on the director of the company).

The timeframe given for the enforcement procedure is two months and the decision has to be fully enforced during this period of time. If enforcement is not possible due to lack of assets, the enforcement procedure will be finished with a negative result.

There are two different types of bailiffs: state employees and private bailiffs. Private bailiffs can sometimes recover the debt faster – e.g. a private bailiff can sell the debtor's property at an auction while a state bailiff must organize a special sale procedure with tender. However, a private bailiff cannot seize the property of the debtor without prior approval from the court for this action, but the state bailiff does not require special empowerment to do so or to forbid the debtor from undertaking certain actions.



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.

How long could legal action take?

The legislation sets that the court must check the case and reach a decision within two months from when the case is started. As the sending and registration of the claim can take up to one month, with another month required for the decision to become enforceable, the proceedings in the first instance court can therefore take up to four months. If the decision is appealed, the timeframe for the procedure can take at least eight months.

The enforcement procedure takes two months.

How much could this cost?

The court can make a decision in favor of the creditor and request the debtor to compensate part of the creditor's costs for legal procedure, but the amount of this compensation is set by the court and depends on several factors, like the debtor's personality, financial state, etc. Lawyers usually offer a fixed fee for preparation and submission of the claim. Other costs can include expenses for a lawyer's visits to court, court tax fees and translation costs. It is necessary to understand that the price of a lawyer's visit to court depends on the court's location, so if it is in a remote location the costs can be high. International Commercial Arbitrage costs include registration (USD 222) and the arbitration fee (from 1.5% to 3% depending on the dispute amount).

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Alternative Dispute Resolution is used in Kazakhstan, but mainly in the form of mediation.

As a court procedure can take a long time, mediation is a popular alternative to achieve an acceptable solution within a shorter period of time (e.g. several weeks). Mediation is used in both legal and amicable solution for disputes, but most often it is used when the claim has already been submitted to the court.

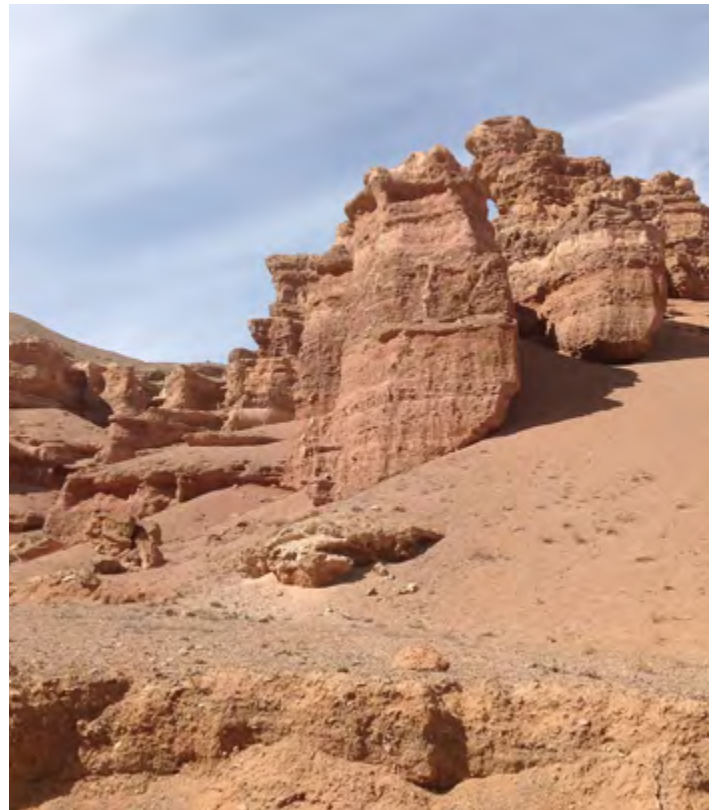
The number of mediation cases during the first six months of 2015 increased by 50% when compared with the same period in 2014. The cases that have been successfully resolved through this procedure should help increase the interest and use of mediation as a dispute solution tool.

Foreign forums

Kazakhstani legislation allows a foreign company to obtain a court decision in another country and then enforce it in Kazakhstan. The clause regarding foreign jurisdiction must be included in the contract between the parties. The court will reject the decision of a foreign court on a dispute between parties if the contract doesn't specify the said court as the competent court for solving disputes. The legislation of Kazakhstan allows enforcement of decisions of both types of foreign courts – general jurisdiction courts and foreign commercial arbitration courts.

Enforcing foreign awards

The decision of a foreign court has to be confirmed by a local court in Kazakhstan in order to issue a writ of execution and start the enforcement procedure. The court does not check the decision itself,



but only ensures that the procedural requirements are fulfilled and whether the debtor had every possibility to defend their interests in court. The creditor has to provide the decision of the foreign court and other documents (e.g. the document confirming that the debtor was properly informed by the foreign court about the location, date and time of the court session, etc.), and all documents have to be translated into the state language.

The confirmation procedure is possible only on decisions that have become legally enforceable. Usually the confirmation procedure is only a formality.

Once the decision of the foreign court is approved by a local court, the writ of execution can be issued and the enforcement procedure can begin.

It is necessary to remember that enforcement of the decision of a foreign court can only be made no later than three years from the enforceable date of the decision.

Handling insolvent debtors

The bankruptcy procedure is applicable only for legal persons and cannot be used for private individuals.

It consists of 2 procedures: bankruptcy and rehabilitation.

In rehabilitation procedures, the court appoints an administrator who tries to restore the solvency of the debtor company and if this procedure is successful, the company continues operating. If the rehabilitation procedure is applied by the court, but the rehabilitation plan is not fulfilled and the company's solvency cannot be restored, bankruptcy proceedings commence.

In bankruptcy procedures, the administrator does not try to restore the company's solvency, but sells the assets of the company and divides it among the creditors. Afterwards, the company is removed from the register for legal persons.

The claim with a request to initiate insolvency procedures is submitted to the court either by the debtor or by the creditor, and the court decides whether or not to approve it.

Insolvency proceedings

Out-of-Court proceedings

Such proceedings are not stipulated by the law.

Restructuring the debt

Rehabilitation or restructuring procedure can either be ordinary or accelerated, where the standard procedure lasts five years and the accelerated takes two years. The court may extend the given period, but only for a maximum of six months. The decision to start a restructuring procedure is made by the court after a corresponding motion is filed by the debtor or the creditor. The court also approves the plan of the procedure, which has to be prepared by the appointed administrator of the restructuring proceedings. Once the restructuring and its plan have been approved by the court, the management of the company is undertaken by the administrator, whose target is to take all possible measures to enable the company to follow the approved plan. The creditors' claims are to be filed within one month, but the law has a provision which allows the creditors to submit their claims after the deadline, although this would lead to losing voting rights.

During the implementation of the plan, the debtor should cover all liabilities due to all creditors listed in the plan.

The procedure ends either with the debtor's successful rehabilitation and further business or with a bankruptcy procedure, should the debtor fail to follow the given plan.

Winding up proceedings

The bankruptcy procedure lasts nine months, but can be extended a further three months. The administrator is in charge of all operations and it is their responsibility to draw up the creditors' register and to review the submitted claims and verify their legitimacy. Afterwards, the administrator will attempt to sell the debtor's assets in order to cover the creditors' claims.

The creditors' claims are to be submitted within one month from the date of publication of the proceedings notification. However, if this deadline is missed, the claim can still be submitted, although with a loss of voting rights for the creditor.

Priority rules

The priority rules are as follows: (i) employees of the debtor company, (ii) secured creditors, (iii) tax office and similar organizations, (iv) other creditors, and (v) the creditors' claims regarding recovery of interest and losses.

Cancellation of suspect transactions (clawback)

The administrator reviews all deals made by the debtor within the last three years and if a deal is suspicious, the administrator is entitled to submit a demand to the court requesting cancellation of the deal. If a deal is cancelled, the debtor must return the money or property to the administrator. If the property is lost or destroyed, the debtor is required to compensate for the value of the property. If there was a reorganization of the insolvent company made over the past three years before insolvency, the administrator has a right to submit a petition to the court asking to declare such reorganization as void, if the assets were moved from the insolvent company during this reorganization.

How long could insolvency proceedings take?

The rehabilitation procedure can last from two to five years, while the bankruptcy process takes one year.

If bankruptcy is started because of the debtor's inability to follow the rehabilitation procedure plan, the total amount of time for the insolvency process would be the two to five years of the rehabilitation procedure plus one additional year for the bankruptcy process.

Lawyers generally charge a fixed fee for the preparation and submission of the claim, but court visits (if necessary) are usually charged separately and the court tax fee will also have to be paid.

Necessary documents

Documents proving that the court tax fee was paid as well as all documents proving the claim.

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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