

Collection Profile Morocco



Collecting in Morocco

- The average DSO in Morocco remains high at 83 days on average in 2016 and the payment behavior of domestic companies is rather poor.
- The judiciary is a multi-layered system which remains under influence and is criticized for its lack of organization, efficiency and transparency. Therefore, commencing legal action would be unreasonable in most cases while enforcement judgments would be difficult. In all circumstances, entrusting collection specialists with a strong knowledge of the local market remains the wiser approach.
- Various insolvency proceedings are available in Morocco but these remain complex, slow and mostly inefficient when it comes to collecting debt

Collection complexity



Complexity relating to

Notable → Severe

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



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General information

Availability of financial information

In theory, companies based in the country have an obligation to submit financial statements to the Tax Authorities, and become publicly available from the Moroccan Office of Intellectual and Commercial Property (OMPIC) approximately 10 months after the accounting closing date. Listed companies or companies involved in public offerings must also publish their financials every six months, along with auditor's reports. Otherwise, direct contact with companies may also help obtain data. In practice, however, it remains difficult to obtain information on domestic companies in Morocco because financials are not systematically communicated and a significant number of companies tend to minimize their real levels of revenue and profit, by transmitting understated financial statements. In addition, the obligation to have certified accounts in Morocco only applies to limited companies and to limited liability companies declaring EUR 4.5 million or more of revenue, which remains marginal comparing to the overall number of companies in Morocco. As a result, financial information is unlikely to reflect the real operations of a company.

Euler Hermes allocates each company a grade reflecting its solvency 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 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 individuals may also decide to share ownership and responsibilities through Partnerships, in which case the partners may be jointly and individually liable for the actions of the other partners. Limited Liability Partnerships (Société en Commandite Simple) may alternatively offer limited liability to the partners.
- Private Limited Liability Companies (Société à Responsabilité Limitée, SARL) represent the great majority of businesses in Morocco because they require minimal capital funds (EUR 900) while the partners' liability is limited to their contribution. Public Limited Companies (Société Anonyme, SA) are rather used for larger structures willing to divide their capital (at least EUR 27,000, or EUR 270,000 when Initial Public Offerings are put in place) into tradable shares. In these entities, the shareholders' liability is limited to the value of their shares.
- Foreign companies may alternatively settle in Morocco through Branch Offices which provide no liability limitations to the foreign parent company. Joint Ventures would take the form of a contract drafted for this purpose and cannot undertake any legally binding action as they do not have legal status.



Days Sales Outstanding (DSO): The DSO in Morocco is at 83 days on average in 2016.



Regulatory environment

The legal framework of Morocco is based on French law as well as on Islamic principles and traditions. The judiciary, as recently modified, is composed of Proximity Courts (justice de proximité) in charge of settling disputes between individuals, Courts of First Instance dealing with all civil matters, Commercial Courts dealing with business disputes, Appellate Courts dealing with civil and administrative matters, and a Court of Cassation. In practice, this multi-layered system however remains influenced by the executive power and it is criticized for its lack of organization, efficiency and transparency.

Getting Paid

Days Sales Outstanding (DSO)

Despite law n°32-10 of 2011 aiming at restricting payment terms to 60 days, the DSO in Morocco is 83 days on average in 2016. The payment behavior of domestic firms is quite poor as a result of the worldwide financial context, but public sector debtors are even more worrying insofar as they tend to pay their debts within a year.

Late payment interest

According to law n°32-10, interest is due without any notification required, on the day following the due date mentioned on the invoice. When no specific interest rate was foreseen by the parties, compensation is to be calculated on the basis of the Bank Al Maghrib's reference rate (currently 3%), increased by at least 7 percentage points. In practice, however, tribunals tend to apply the former 6% interest rate.

It should be added that legal action aiming at obtaining the compulsory payment of interest must be commenced within one year following the due date (Article 78.3 of law n°32-10).

Debt collection costs

Collection costs are not usually charged to the debtor.

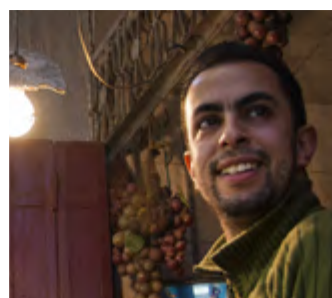
Ownership protection

Contractual Retention of Title (RoT) agreements aiming at preserving the creditor's ownership over goods until the related invoice has been paid in full are recognized in Morocco and would therefore provide creditors with a right to have the goods returned during insolvency proceedings. In addition, RoT provisions may also be triggered during the pre-legal action phase (amicable settlement) or during the legal action phase (*procédure en restitution*).

Payments

The most common payment methods are as follows:

Bank transfers are among the most popular payment means for international transactions 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 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) are often used in relation to export shipment transactions because they constitute reliable guarantees which can be triggered as a 'payment of last resort' if the client fails to fulfil a contractual commitment. Also, 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) are increasingly relied upon. Bank guarantees are fairly available at a reasonable cost, however requesting personal guarantees from business partners may also help secure transactions efficiently. In practice, the law allows requesting 40% of the invoice to be paid in advance. Checks are very often used as payment methods but may also constitute efficient debt recognition titles insofar that the failing debtor may be prosecuted. Bills of exchange, although less common nowadays, also constitute an attractive means of payment because they are a source of short-term financing by means of discounting, instalment or transfer.



Late payment interest:

According to law n°32-10, interest is due without any notification being required, on the day following the due date mentioned on the invoice.



Collecting overdues

Amicable action

Negotiating

Amicable settlement opportunities should always be considered as an alternative to formal proceedings which are lengthy and costly in Morocco. In practice, individual and informal pre-legal collection methods are more successful than ordinary formal proceedings, especially when the process is handled by professionals capable of conducting on-site negotiations with a strong personal dimension. Legal dunning ought to start with a registered Demand Letter recalling the debtor's obligation to pay the principal together with late payment interest (as contractually agreed or taking a legal rate as a reference). It is essential to obtain a payment instalment agreement or, at least, a debt recognition document as these will then allow the creditor to obtain an enforceable Injunction Order.

Legal action

Ordinary proceedings

Morocco remains a highly dynamic region in constant need of investment. The Moroccan law is mainly inspired by French legislation, and judicial proceedings are in constant evolution and modernization. If the amicable phase fails and provided that the debt is certain and undisputed (i.e. when the creditor has the means of payment returned unpaid by the debtor), fast-track proceedings allow requesting of a Payment Order from the President of the Commercial Court together with the garnishment of the debtor's assets (*saisies arrêts, saisies-conservatoires sur les biens du débiteur*) from the court. This process ought to be flexible and fast insofar as the parties do not need to appear. If the court finds the request legitimate, the debtor will be ordered to pay the debt immediately.

If the claim is disputed, the case will be reviewed through an ordinary lawsuit. Law 1-74-447 approving the text of the Civil Procedure Act, supplemented by Law 42-10 on the organization of courts and local laws establishing jurisdiction requirements, clearly define the legal organization of the kingdom and the various procedural deadlines. As far as damages are concerned, plaintiffs can seek compensation for the amount of damages they believe they have suffered and include penalty to compel the debtor to pay as soon as possible.

It is strongly advisable to conduct legal actions with the support of a qualified lawyer, known as being reliable and trustworthy. Euler Hermes is in a strong position to provide the support of its network of specialized practitioners.

Necessary documents

Invoices, statement of account, delivery notes, means of payment unpaid, sales conditions (if available), shipping documents and any other evidence of the commercial transaction. Please note that all debates are conducted in Arabic and that, although documents written in French are admissible, documents drafted in other languages (English included) would have to be translated in Arabic.

Time limitations

Claims in Morocco must be brought to court within five years, starting from when the loss or damage caused by the wrongful act (or omission) was – or ought to have been – discovered.

Penal complaints relating to bounced checks must be made within four years and the injunction to pay based on the check or bill of exchange as title of payment should be enforced within three years.

Precautionary measures

Precautionary measures help protect the creditor's interests against any diversion of property by the debtor. Provisional measures are ordered when the proof of debt is provided to the court by the creditor. When the creditor has filed for an injunction to pay (i.e. when the creditor has in their possession means of payment left unpaid for) the judge may authorize garnishment of bank accounts, receivables, as well as garnishment in the hands of third parties. The competent court for this kind of action is the one where the debtor's business is based. The garnishment orders are awarded without the presence of the debtor and could be pronounced the same day of the demand.

Lodging an appeal

Decisions rendered in first instance may be appealed against by the parties within 15 days of notification. The proceedings must however be admitted by the Court of Appeal, which would verify the existence of questions related to legal or factual aspects. Appeal against decisions rendered in second instance is also possible before the Court of Cassation within 30 days. The deadlines stated above would normally be doubled for applicants residing abroad.

Enforcing court decisions

A judgment is final and enforceable once all recourse actions have been exhausted. Execution against the debtor can then start. At this stage it is recommended that any action to seize and sell the debtor's assets is mastered personally, either by the creditor or by a trusted third party (collector, lawyer). Garnishee orders are normally efficient but remain long due to the quantity of procedural steps needed.

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?

Most straightforward claims in Morocco may be settled within 12 to 18 months, but the most complex cases would require more time before a final and enforceable judgment is rendered. This is due to additional difficulties occurring as a result of involving experts, witnesses etc. Domestic courts normally make no difference between domestic and international litigation proceedings, however delays may be increased when it is necessary to obtain documents, evidence or statements from abroad.

How much could this cost?

The cost of the procedure is normally supported by the defeated party but it happens that the court decides to divide the amount between the parties. Court fees are fairly affordable considering that they would essentially reach 1% of the debt amount, plus additional small fixed costs depending on the level of the court and the nature of the request.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

The opportunity of relying on mediation and arbitration as an alternative to judicial proceedings is traditionally not used to solve disputes between businesses. Having said this, mediation has begun to be used to solve problems between banks and their clients (provided that delinquency is not at stake) and is becoming an increasingly significant means to solve disputes while avoiding costly, time-consuming and disorganized legal actions.

Foreign forums

In addition to arbitration provisions, large businesses and multinational companies doing business in Morocco increasingly consider the option of applying a foreign law to their contract. The parties, indeed, are entitled to choose the law applicable to their contract provided that the agreement is 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 jurisdiction clause is specifically drafted for this purpose.

In practice, it remains rare to seek foreign decisions in debt-related disputes because enforcing the decisions may then be more difficult than obtaining an enforceable judgment from domestic courts.

Enforcing foreign awards

Decisions issued against debtors owning assets in Morocco are usually enforced since domestic courts ought to recognize judgments rendered abroad even if there is no convention signed for this purpose with the issuing country. In order for the foreign decision to be recognized as a domestic judgment and enforced, the original copy of the foreign judgment must be provided to the court together with a certificate of non-appeal. In practice, however, seeking a judgment before domestic tribunals remains more effective and entrusting collection specialists with a strong knowledge of the local market remains the wiser approach. Morocco is a signatory to the New York Convention on the



Recognition and Enforcement of Foreign Arbitral Awards of 1958, therefore, domestic courts also ought to recognize and enforce decisions 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

Various insolvency proceedings are available in Morocco but these often remain slow and inefficient. As a 2013 report of the European Bank for Reconstruction and Development (EBRD) notes, 'one of the key practical issues in Morocco is the lack of professional skills and experience of insolvency office holders and judges who handle insolvency cases.'

Insolvency law nonetheless offers two types of prevention mechanisms which operate as long as the business remains solvent. On one hand, the business must work towards the 'internal prevention' of financial difficulties and has an obligation to set up an internal recovery plan aimed at continuing the business. On the other hand, the 'external prevention' mechanism empowers the Commercial Court to determine whether an amicable settlement procedure should be opened. The debtor is thus placed under the supervision of an external mediator (conciliateur) for three months while a compromise is found with the creditors, which have no genuine power to influence proceedings, however. Once an agreement is reached with the main creditors, the court actually has broad power to impose debt-rescheduling on non-consenting creditors. There seems to be no confidentiality standard attached to this procedure.

The law then offers traditional insolvency proceedings which can be initiated by the debtor, the creditor or the court.

Insolvency proceedings

Out-of-Court proceedings

Book V of the Commercial Code seems to encompass provisions on prevention of difficulties through out-of-court workouts. In practice, insolvency procedures are rarely initiated, therefore relying on informal workouts may be efficient.

Restructuring the debt

Judicial Rehabilitation proceedings are only available for debtors that are in a state of cessation of payments but whose financial situation is not irreparably compromised. The court appoints an insolvency judge (juge commissaire) and an insolvency office holder (syndic) but the company's directors remain in possession of their management prerogatives. The insolvency office holder is required to prepare a report on the situation of the company within four months, which recommends a rehabilitation plan, the sale of the business to a third party or its liquidation. The procedure is entirely court-driven and there is no direct vote by the creditors on the options available. There seems to be no moratorium in this procedure.

Winding up proceedings

The judgment opening the liquidation procedure renders all debts immediately due and payable. Creditors have two months (four months if they live outside Morocco) to submit their claims. The assets of the debtor company are then sold and the proceeds are distributed among the creditors by the insolvency office holder.

Priority rules

Priority rules apply while redistributing the proceeds of the sale of the debtor's assets.

Cancellation of suspect transactions (clawback)

The insolvency office holder is entitled to set aside various types of transactions concluded by the debtor during the suspect period (18 months). Payments done in favor of some vendors can be cancelled, and the guarantees offered to secure transactions can be contested.

How long could insolvency proceedings take?

Obtaining visibility on restructuring plans may take at least one year. In terms of liquidation, the simplest proceedings may be settled in a few months, but more complex cases may last over several years.

Necessary documents

The documents needed to start insolvency proceedings are the same as those required to commence legal action.



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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