

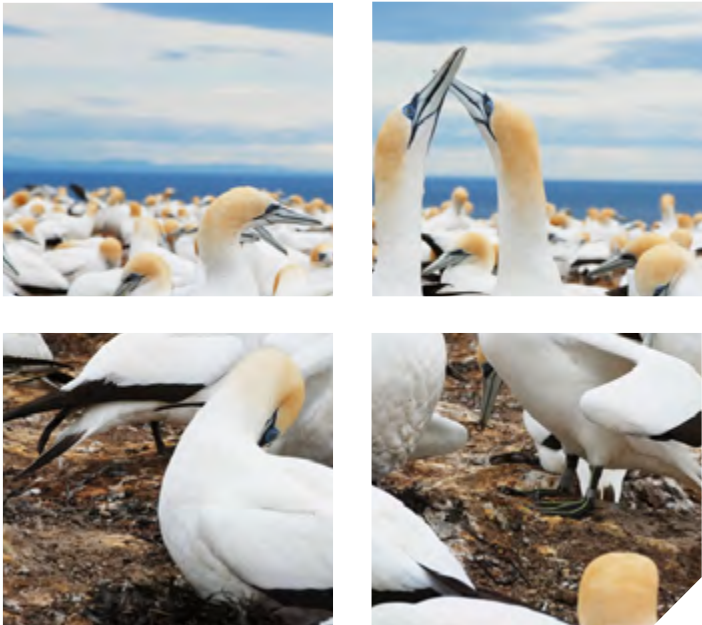
Collection Profile New Zealand



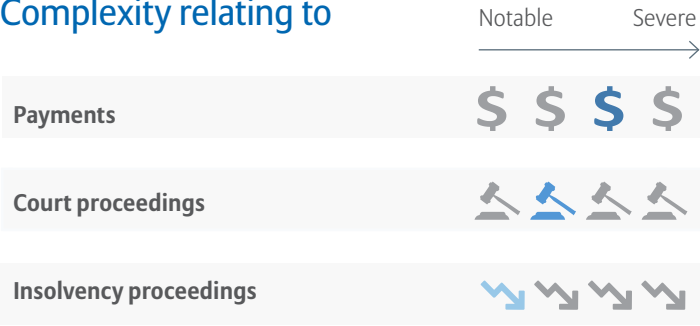
Collecting in New Zealand

- Late payments in New Zealand are not regulated, meaning that interest and collection costs would essentially depend on the court.
- Courts are fairly efficient in delivering timely decisions, however favoring amicable and pre-legal methods are always advisable. In fact, this is advised as soon as possible, since the risk of the debtor becoming insolvent will impact the chances of recovering the debt over time.

Collection complexity



Complexity relating to



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General information

Availability of financial information

Financial information on domestic companies is usually difficult to obtain but it remains fairly reliable.

Euler Hermes allocates each company a grade reflecting its financial health and how it conducts business. Our grades represent a core of our knowledge and analyses, helping 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:

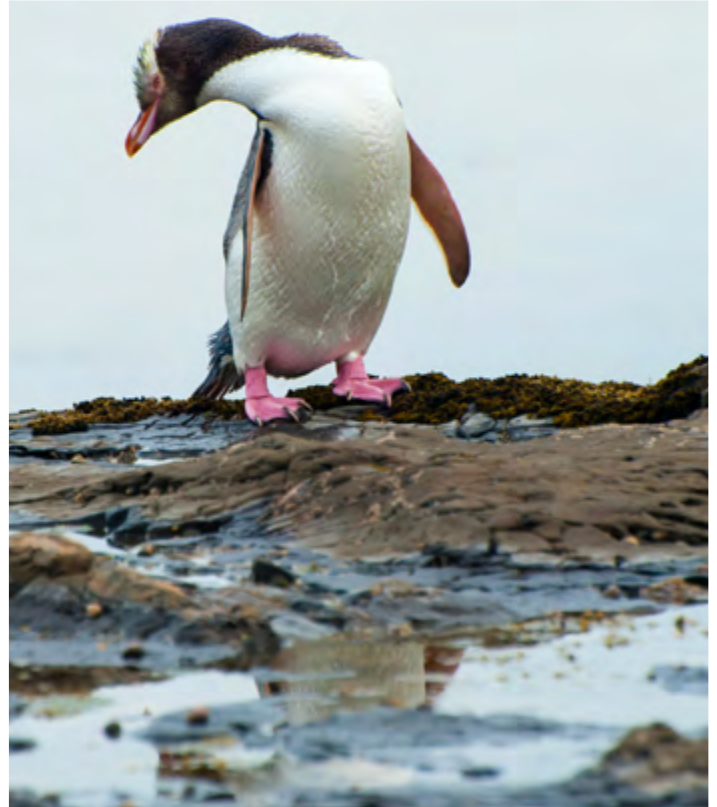
- Sole Proprietorship is available for small businesses managed by an individual and for which no commercial structure is necessary. In this case, the owner is held liable for all business debts. Two or more individuals may also decide to share ownership and responsibilities through Partnerships, in which case the partners may be jointly and individually liable for the actions of the other partners. Limited Liability Partnerships may alternatively offer limited liability to the partners.
- Companies (as regulated under the Companies Act of 1993) may take two forms. Private Companies with limited liability ('Limited' or 'Ltd') are the most favored legal entities since they require no minimum capital funds while the shareholders' liability is limited to their contribution. Public Corporations are rather used for larger structures willing to divide their capital into tradable shares. In these entities, the shareholders' liability is of course limited to the value of their shares. There is no minimum capital requirement for companies in New Zealand
- Foreign companies may settle through Branch Offices which provide no liability limitation. Therefore, local subsidiaries often take the form of Private or Public Companies. Joint Ventures may be incorporated as Companies, but they may also be established through a contract (in which case no incorporation is necessary).
- Trusts constitute very popular business entities in New Zealand insofar as they provide a means to manage and protect assets while maximizing tax. As such, they are not used to conduct business operations.

Regulatory environment

As a Member State of the Commonwealth, New Zealand is a constitutional monarchy falling under the authority of Queen Elizabeth II. The country's legal system is built upon British law and it is structured around common law principles, equity and statutes. The judiciary system essentially divides into sixty-three District Courts (which have jurisdiction in first instance over all civil disputes up to NZD 200,000), specialized courts (dealing with employment, environment-related disputes, etc.) and a High Court (dealing with



Days Sales Outstanding (DSO): Payments in New Zealand takes place within 30 days on average.



large business claims in first instance and as a Court of Appeal in certain non-business-related matters). The Court of Appeal then reviews the claims brought against decisions rendered in first instance by a District Court or by the High Court. The Supreme Court finally reviews decisions rendered in second instance, provided that a leave for appeal has been granted to this purpose.

Getting Paid

Days Sales Outstanding (DSO)

Payments in New Zealand take place within 30 days on average (starting from the month of supply), but delays of up to 15 days may also be expected when the contract is not sufficiently secured. SMEs tend to pay more slowly than large companies

Late payment interest

Should payment be late, interest would in practice be awarded at the discretion of the court on the basis of existing court rates, commencing from the time the debt became overdue. Late payment interest may also be regulated by the parties' contract provided that the agreed rate is not so high as to be deemed a penalty (which is illegal at common law). This second option is not commonly relied upon, however.

Debt collection costs

The law provides no rule as to collection costs.

Ownership protection

Most countries allow use of Retention of Title (RoT) which aims to preserve title to property over goods until the related invoice has been paid in full. Ownership protection in New Zealand is regulated under the Personal Property Securities Act of 1999 (PPSA), which provides that RoT provisions, considered as Security Interests must be registered with the Personal Property Securities Register. In practice, failure to register would have no impact on the validity of the right itself, however the lack of registration would provide no priority to the owner should insolvency proceedings be commenced. Seeking legal advice is therefore essential.

Payments

The most common payment methods are as follows: Electronic Funds Transfer (EFT) and Swift bank transfers are increasingly popular as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. For export transactions, transfers should be insured by an Export Credit Insurance, 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. 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. Down payments may be negotiated but could be perceived as a lack of trust.



Late payment interest:

Should payment be late, interest would in practice be awarded at the discretion of the court on the basis of existing court rates.



Collecting overdues

Amicable action

Negotiating

Even though the law in New Zealand is business-friendly and domestic tribunals are effective, amicable settlement opportunities should always be considered as an alternative to formal proceedings. In addition, before starting legal proceedings against a debtor, assessment of assets is important as it allows verification as to whether the company 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 indeed becomes impossible to enforce a debt (see below).

Legal action

Ordinary proceedings

Prior to commencing ordinary legal action, the parties may use a simplified procedure before the Disputes Tribunal, provided that the claim is below NZD 20,000. These proceedings are normally more efficient than ordinary proceedings because they are informal, confidential, quicker and cheaper than ordinary proceedings insofar as a referee mitigates the parties' claim and thus avoids judges and lawyers.

If the amicable phase fails or if the debtor questions the claim, the option of starting legal proceedings remains. A claim must be filed with the District Court (or with the High Court depending on the amounts at stake) and, if admitted, must be served to the debtor. The latter is given a month to bring a defense (25 days if the claim is brought before the High Court). The court then considers the parties' claims and often encourages them to reach a compromise prior to furthering the proceedings. When the dispute cannot be settled by the parties only, the judges increasingly attempt to mitigate disputes in court (Judicial Settlement Conference) but if no compromise can be reached the courts may proceed with formal hearings.

The courts typically award remedies in the form of equitable compensation, damages, specific performance, attachment orders (i.e. freezing and seizure), declarations (of a right, of the law, etc.), as well as mandatory and prohibitory injunctions. Punitive damages may be awarded although they remain rare in practice.

Necessary documents

Copies of unpaid invoices, last statement of account, copy supply contract, copy of credit application, proof of delivery if necessary (AWB BOL for export).

Time limitations

Claims in New Zealand must be brought to court within six years, starting when the loss or damage caused by the wrongful act (or omission) was (or should to have been) discovered.

Following recent reforms, the Limitation Act of 1950 applies to claims



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.



on events having originated prior to 31 December 2010, whereas the Limitation Act of 2010 applies to claims on events that took place since then. Under the new Act, a late knowledge period has been included, thus offering more flexibility to the parties. Having said this, time limitations would not prevent claims from being brought to court unless a defendant uses the argument to ground a counterclaim.

Precautionary measures

Precautionary measures may help preserve the debtor's interests pending a final decision. Indeed, the courts may order interim measures aiming at protecting assets (attachment orders, restraining orders). The claimant, however, must demonstrate that they have a strong case and that ordering such measures would prevent irreparable harm. Such measures are rarely awarded in practice.

Lodging an appeal

The defeated party is entitled to lodge a leave for appeal before the High Court or before the Court of Appeal (depending on which court rendered a decision in first instance), within 28 days from delivery. In other words, appeal proceedings are not directly available but must be granted by the competent courts, which would normally only focus on questions of law. If an application for Judicial Review is filed, the courts would consider both questions of law and fact.

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 judgment, it is possible to file a petition for liquidation against the debtor before the High Court, but the court would normally request that the debtor's financial situation is examined (Order for Examination), or that its assets be seized and sold (Distress Warrant). Garnishee Orders aiming at obtaining payment from third parties from whom the debtor is owed are also available.

How long could legal action take?

Obtaining a final judgment could take from 28 days (default judgment) to a year. Enforcement through sheriff or examination could be completed within two months, while uncontested winding-up proceedings could take three months. International litigation would always take longer and cost more than domestic litigation – the difference would depend on numerous factors which could only be meaningfully quantified on a case by case basis.

How much could this cost?

As a general rule, the defeated party may be required to pay court fees and annex costs, but the successful party's legal costs would often be compensated for partially.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Alternative Dispute Resolution methods are not necessary insofar as domestic courts provide timely decisions; nonetheless the use of ADR is growing in New Zealand, where mediation and arbitration are increasingly used as a means to avoid ordinary legal proceedings in the business community.

Mediation involves the nominating 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 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.

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 arbitrator's decision will be binding on the parties.

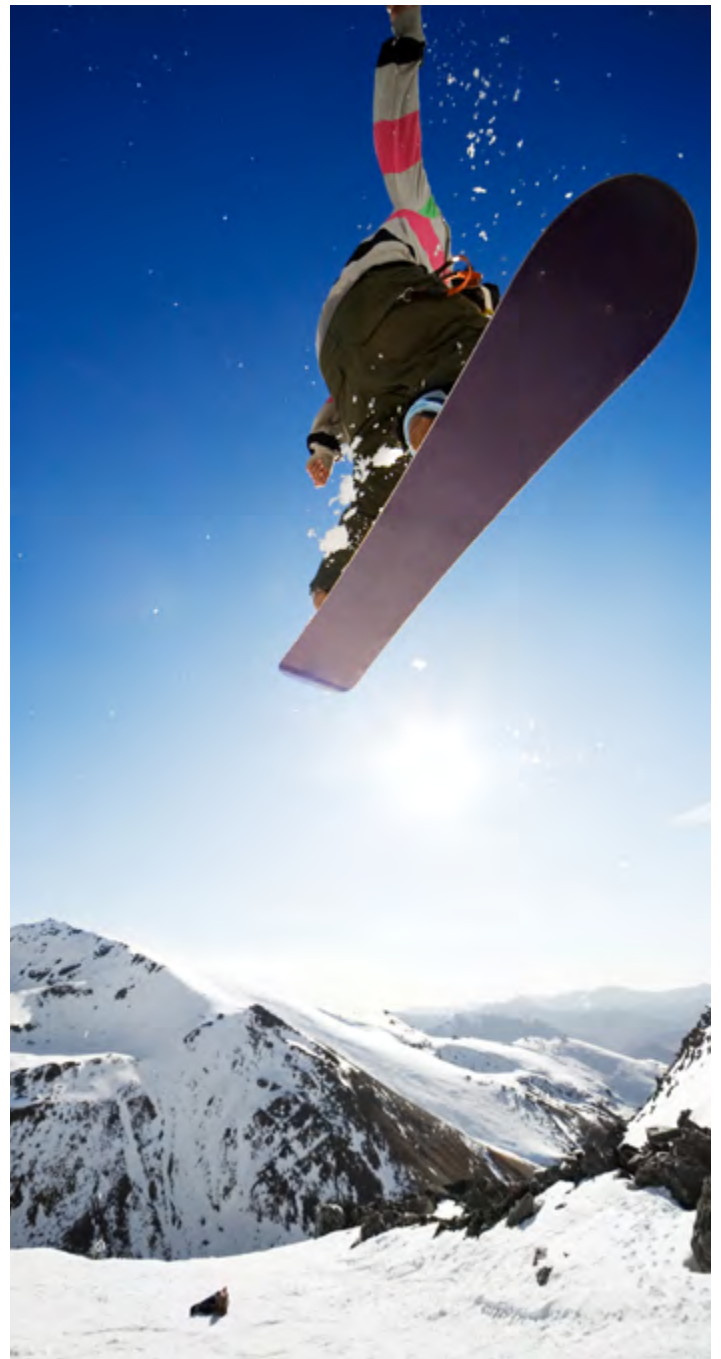
As an out-of-court settlement method, ADR can be cost-effective, generally reduces delays, allows preservation of confidentiality and offers a binding decision which may then be enforced before the courts, if necessary. When international transactions are involved, international arbitration may also be considered.

Foreign forums

For the same reason, use of a foreign forum in order to obtain an enforceable decision is not necessary, but domestic courts would nonetheless permit the parties of a contract to, by mutual agreement, choose the law applicable to this contract, and select the court that will have jurisdiction over disputes. As a result, the parties' written agreement to solve their business disputes in a foreign forum (i.e. under a foreign law or before a foreign court) would be applicable, provided that it does not contradict public policy.

Enforcing foreign awards

Using foreign forums in order to obtain enforceable decisions against domestic debtors is rather unusual, though foreign decisions issued against foreign debtors may be enforced in New Zealand if the debtor has assets therein. As in most countries, the foreign decision must first be recognized through an exequatur procedure (under Part 23 of the High Court Rules) in order to become enforceable. The court would, for instance, verify whether the foreign court had jurisdiction to decide on the case, whether its decision is final and enforceable in the issuing jurisdiction and whether enforcement would be incompatible with public policy. In addition, the reciprocity factor implies that, unless the issuing country has a reciprocal recognition and enforcement treaty with New Zealand (as provided under the amended Reciprocal Enforcement of Judgments Act of 1934), the foreign decision would not be enforced automatically by domestic courts. In this situation, the claiming party would indeed be required to bring legal action before the court, requesting that enforcement is



granted. New Zealand 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

Insolvency is regulated under the Insolvency Act 2006 and is defined as the inability to pay one's debts as they fall due. Bankruptcy only applies to natural persons while liquidation refers to corporate insolvency. Several mechanisms aim at supporting companies in financial difficulty through rehabilitation plans.

Insolvency proceedings

Out-of-Court proceedings

Informal out-of-court proceedings may be conducted so as to reach a Statutory Compromise (under the Companies Act 1993), but all creditors would need to agree and execute a Deed so that only one creditor could well overturn such an arrangement. Unlike a Deed of Company Agreement (DOCA), the creditors would have no protection against unfair preference claims by any later liquidator.

Restructuring the debt

Voluntary Administration is a new rehabilitation scheme in New Zealand, inspired by Australian insolvency law. Regulated under the Company Law of 2007, it consists in negotiating a debt resettlement (or write-off) with creditors of order to allow continuation when the core business is still viable. The company is temporarily managed by an administrator (often a chartered accountant) and a moratorium is placed on the company's debt repayment obligations while an agreement is reached in the creditors' meeting. The administrator must present a restructuring proposal which, if approved, becomes the new Deed of Company Agreement (DOCA) ruling the company. The law, however, provides no limitation as to how much of the debt may be written off. Strict time limits apply to the moratorium protection, and if agreement cannot be reached, the company goes into liquidation.

Winding up proceedings

Liquidation may be commenced upon demand of both the debtor (voluntary liquidation) and creditors (mandatory liquidation). The proceedings are usually conducted by an official assignee or by a private sector liquidator (often a chartered accountant). The company is closed down and the proceeds of the sales are distributed to the creditors according to their respective pre-insolvency entitlements.

Alternatively, receivership proceedings (as regulated under the Receiverships Act of 1993) may be set up in order to realize the rights of certain secured creditors (with a debenture containing the terms of a loan to the company and defining the assets which secure the loan) over specific assets of the debtor company.

Priority rules

Priority rules normally apply while distributing the proceeds to the creditors (under the Companies Act of 1993), but in practice the proceeds of the liquidation would be distributed as follows. They would first compensate for secured creditors (such as the

owners of registered Retention of Title rights, the providers of fresh money during rehabilitation proceedings, etc.), for the various fees flowing from the insolvency proceedings, and for the various costs awarded by the court to the creditors. Employees' claims would also be paid for (up to a certain point). The proceeds would finally compensate preferential tax creditors, leaving the remaining proceeds to unsecured creditors (5% to 10% on average).

Cancellation of suspect transactions (clawback)

Liquidators are usually entitled to request the court to cancel certain transactions concluded prior to the insolvency proceedings. In particular, any measure taken by the debtor deemed detrimental to the creditors would typically be void. A period of six months to two years may be considered.

How long could insolvency proceedings take?

Insolvency proceedings in New Zealand last for a year and a half on average.

Necessary documents

Copies of unpaid invoices, last statement of account, copy supply contract, copy credit application, proof of delivery if necessary (AWB BOL for export).



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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