

# Collection Profile Norway

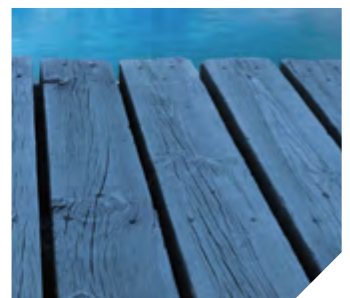
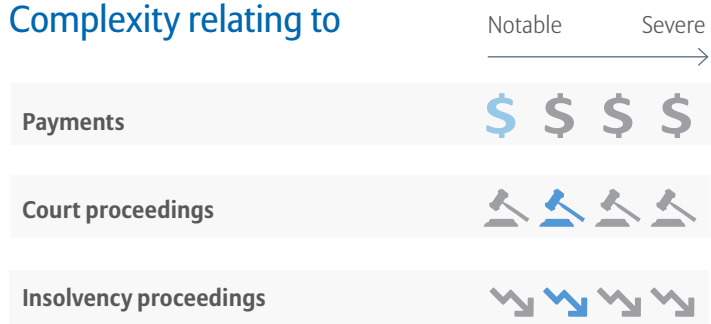
## Collecting in Norway

- The payment behavior of domestic companies is good, with payments made within 30 days on average, and domestic courts are fairly efficient in dealing with disputes in a timely manner.
- Having said this, negotiation and compromises are considered as a pre-requisite to legal action and obtaining effective support in this regard is important.
- In the event of insolvency, recovering the debt becomes difficult as debt renegotiation schemes are not effective and the priority rules set forth in liquidation proceedings make it unlikely for unsecured creditors to receive any part of the proceeds.

## Collection complexity



## Complexity relating to



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## General information

### Availability of financial information

Obtaining reliable financial information on domestic companies is as easy as transparency over information, companies, stakeholders and financial records is generalized. All Limited Liability Companies are obliged to disclose their financial statements, and these are made public for anyone to see. In addition, company information such as ownership and address, financial records, mortgage movable property and insolvency proceedings are listed with the Brønnøysund Register Centre, which keeps track of financial records and insolvency proceedings.

There are a number of credit information companies on the market and Euler Hermes collaborates with one of the largest credit information providers 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.

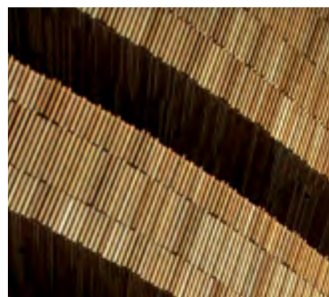
### Main corporate structures

Liability for business debts is determined by legal structures, which 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 (ansvarlig selskap, ANS), in which case the partners may be jointly and individually liable for the actions of the other partners. Limited Liability Partnerships (selskap med delt ansvar, DA) may alternatively offer limited liability to the partners.
- Private Limited Liability Companies (Aksjeselskap, AS) require minimal capital funds (NOK 30,000) while the partners' liability is limited to their contribution. Joint-Stock or Public Limited Companies (Allmennaksjeselskap, ASA) represent the great majority of businesses in Norway because they used for larger structures willing to divide their capital (at least NOK 1 million) into tradable shares. In these entities, the shareholders' liability is limited to the value of their shares. All companies in Norway may be set up by a single shareholder.
- Foreign companies may alternatively settle in Norway through Branch Offices which provide no liability limitations on the foreign parent company since the Branch Office is not regarded as a separate legal entity. Joint Ventures are established by contract, they are not incorporated and do not constitute independent legal entities.

### Regulatory environment

Norway has a Civil Law system in which the rules are codified rather than established by the case law. The country is part of the



#### Days Sales Outstanding

**(DSO):** Payments in Norway take place within 30 days on average and the paying behavior of local companies is exemplary.



European Economic Area Agreement, therefore most EU regulations are now implemented in Norwegian law.

The judiciary divides into Conciliation Boards (present in most cities) and 66 District Courts (tingrett) spread over the country, which are competent to deal with both civil and criminal cases. All commercial disputes are handled by the district court as there are no specialized courts in the country.

Disputes below NOK 125,000 where the parties are not represented by a lawyer must normally be brought to the Boards prior to being submitted to the District Courts. The six Courts of Appeal and the Supreme Court (located in Oslo) then respectively act as the second instance and final jurisdiction courts.

## Getting Paid

### Days Sales Outstanding (DSO)

Payments in Norway take place within 30 days on average and the paying behavior of local companies is exemplary. For listed companies, the DSO is slightly higher at 56 days.

### Late payment interest

Even though Norway is not an EU Member State, the country has aligned its regulations with the principles laid down by EU Directive 2011/7/EU, which stipulates that payments in the EU must be made within 60 days. In accordance with the Norwegian Act relating to Interest on Overdue Payments, late payment interest may be claimed the day following the due date of the accounts receivable. Unless a contract provides a specific interest rate, the reference rate of the Norwegian Department of Justice (reviewed every six months), increased by 8 percentage points, may be applied. Interest is normally paid by the debtor but may also be used as a negotiation tool in order to preserve the business relationship.

### Debt collection costs

Debt collection costs should be charged to the debtor in accordance with the Norwegian Debt Collection Act. In accordance with the EU directive, collection costs of EUR 40 may also be claimed, but these would be deducted from the debt collection fees paid by the debtor under the Debt Collection Act. Collection specialists will systematically obtain payment of such costs.

### Ownership protection

Most countries allow use of Retention of Title (RoT) with the aim of preserving property over goods until the related invoice has been paid

in full. Ownership protection in Norway however treats RoT provisions as sales pledges, and has thus imposed some limitations on the concept. Ownership retention is not available on various movable goods (such as planes, ships, etc.) and cannot be applied to goods which the buyer would normally resell or transform. This means that the most elaborate forms of ownership reservation tools would not be admissible in Norway.

### Payments

The most common payment methods are as follows: Bank transfers are the most common payment method in Norway because they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. For export transactions, transfers can nonetheless 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 even though they are not commonly used. 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. Overall, bank guarantees are fairly available but may be costly. Checks are no longer used as a payment method in Norway and some Norwegian banks no longer accept foreign checks. Checks (issued within six months), bills of exchange and promissory notes tend to be used as debt recognition titles rather than as payment means. If left unpaid, they would thus become directly enforceable with the courts.



#### Payment terms:

Norway has aligned its regulations with the EU which stipulates that payments must be made within 60 days.



## Collecting overdues

### Amicable action

#### Negotiating

Amicable settlement opportunities always ought to 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).

Norwegian regulations provide strong incentives to use a financial conciliation mechanism (Forlikraderet) under the auspices of the Conciliation Boards. The Board forwards this information to the debtor, who is obliged to provide its views in writing to the Board. The parties will thereafter meet together with the Conciliation Board in order to reach an agreement (this process is often done without lawyers). If the parties achieve no agreement but the claim is legitimately grounded, or if the debtor fails to respond within three weeks, the Board may decide for the parties and render an enforceable Order. Otherwise, the claim is sent to court and leads to ordinary legal action. This procedure often takes up to one year.

### Legal action

#### Ordinary proceedings

If the debt is certain and undisputed, a bailiff is first entitled to issue a Payment Order which is given the same value as a court judgement. Thus, if the debtor does not pay as requested, the bailiff may commence forced execution.

If the debtor disputes the debt, however, the case must be solved through the Conciliation Board or through an ordinary lawsuit. The creditor would normally file a claim with the District Court which would invite the parties to a meeting in order to identify the claims, and organize hearings to collect evidence and arguments prior to rendering a decision.

Courts in Norway would normally award remedies in the form of damages, interests and litigation costs. Punitive damages are not available.

#### Necessary documents

Order confirmation, invoices, statement of accounts, delivery notes, agreement between the parties and any other documents that evidence the creditor's rights.

#### Time limitations

Commercial claims must be brought to court within three years however in practice the parties may reduce or extend this limitation period for up to ten years.

#### 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 must however demonstrate that it has a strong case and that ordering such measures would prevent the occurrence of irreparable harm. As in most countries, the courts may agree to render ex parte decisions (in the debtor's absence) in emergency situations, but the claimant would be asked to provide security on costs in order to protect the respondent from irresponsible action. Same-day orders are not available in Norway.

#### Lodging an appeal

Judgments rendered in first instance may be appealed before the Courts of Appeal within four weeks. In addition, decisions taken in second instance may also be brought to appeal before the Supreme Court. In this case, the claimant must however request the authorization of the Court's Appeal Committee.

#### Enforcing court decisions

A judgment is enforceable for ten years provided that it has become final (i.e. when all appeal venues have been exhausted). If the debtor fails to satisfy the judgment, it may become necessary to request compulsory enforcement of the judgment from the enforcement authorities, which will then seize the debtor's assets and funds in order to pay the claim.

#### How long could legal action take?

The length of proceedings may vary from one court to another and it is thus not possible to give a reliable average duration for litigation proceedings.

Legal action in regards to debt collection is the same for domestic and foreign creditors, and the courts do not require more time to decide on disputes filed by foreign creditors. However, proceedings may take longer as the file may be more complex.

#### 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 much could this cost?

As a general rule, the defeated party would usually be required to pay the successful party's costs in full, but in practice the court often asks the parties to cover their own cost in connection with the proceedings.

Court fees would also apply, however these would vary depending on the type of case and the number of days spent in court.

Contingent fees whereby the legal professionals are entitled to receive a percentage on the final award are considered unlawful.

## Alternatives to legal action

### Alternative Dispute Resolution methods (ADR)

Alternative Dispute Resolution methods are common in Norway, 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 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 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, allows preserving 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

Use of a foreign forum in order to obtain an enforceable decision is not necessary, but Norway is a signatory to the Hague Convention of 15 June 1955 on the Law Applicable to International Sale of Goods which entitles the parties to a contract to choose the law governing their business relationship. Therefore, foreign traders may well agree to solve their business disputes in a foreign forum (i.e. under a foreign law or before a foreign court).

It is however essential that the agreement be 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 a jurisdiction clause is specifically drafted for this purpose.

As far as ownership protection is concerned, the courts have established that only Norwegian law would be applicable, notwithstanding any agreement by the parties to rely on a foreign forum.

### Enforcing foreign awards

Although using foreign forums in order to obtain enforceable decisions against domestic debtors is rather unusual, foreign decisions

issued against foreign debtors may be enforced in Norway provided that certain conditions are observed. On one hand, decisions rendered in an EU country would benefit from particularly advantageous enforcement conditions. Apart from EU Payment Orders which are normally enforceable directly in domestic courts, the two main methods of enforcing an EU judgment in Norway are by the use of a European Enforcement Order (EEO, as provided under Regulation EC No. 805/2004) when the claim is undisputed, or by registering the judgment under the provisions of the Brussels I Regulation (44/2001). If the judgment qualifies as an uncontested claim, it can be enforced directly (i.e. without registration) by use of an EEO provided that the debtor has identified assets in the country. A European Small Claims Procedure (as provided by Regulation EC 861/2007) aiming at eliminating intermediate steps may similarly be relied upon while enforcing decisions up to EUR 2,000.

If the claim is disputed, the procedure for registering an EU judgment with domestic courts is relatively simple. The judgment holder must apply to the relevant court for the judgment to be registered and provide the court with, among other documents, an authenticated copy of the judgment, a certified translation and, if interest is claimed, a statement confirming the amount and rate of interest at the date of the application and going forward. Once the judgment has been registered, it can be enforced as if it were issued by domestic courts (according to the Recast Regulation EC 1215/2012, such an exequatur procedure will no longer be required from January 2015).

On the other hand, judgments rendered in foreign countries outside the EU would normally be recognized and enforced on a reciprocity basis provided that the issuing country is party to a bilateral or multilateral agreement with Norway drafted for this purpose.

For instance, the Act No 71 of 1977 concerning recognition and enforcement of Nordic judgments provides that final decisions made by Danish, Finnish, Icelandic or Swedish courts must be enforced by domestic courts. In the absence of reciprocal arrangements, exequatur proceedings would take place before domestic courts.

As a general rule, foreign judgments cannot be reviewed on the merits of the case, but the courts would deny admissibility where the foreign decision is neither final nor enforceable in the issuing country, deemed incompatible with domestic public policy or with decisions rendered by domestic courts, if the defendant has not benefited from a due process of law, etc.

Norway is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

### 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

In order to apply for insolvency proceedings (Konkurs) in Norway, the debtor needs to be both insolvent and 'insufficient.' While insolvency (illikvid) refers to the permanent inability to pay outstanding debts as they fall due, insufficiency rather describes a situation where the debt exceeds the company's assets. The main Norwegian insolvency legislation is built upon two main pieces of legislation. The 1984 Creditors Recovery Act (The Recovery Act) regulates debt recovery procedures, sets out relevant deadlines, and clarifies priority issues. The 1984 Debt Reorganization and Bankruptcy Act (the DNB-Act) rather regulates voluntary and compulsory debt settlement proceedings as well as bankruptcy proceedings. All District Courts in Norway handle bankruptcy proceedings. In Oslo, however, there is a specialized court that handles all bankruptcy proceedings.

### Insolvency proceedings

#### Out-of-Court proceedings

Private non-judicially administered reorganizations are common in Norway but proceedings are not regulated by law. This mechanism is often relied upon because it secures a confidential negotiation process between the parties. A debtor and their creditors are thus free to make any kind of arrangements they choose but in practice the DNB rules are often applied and many creditors (such as credit insurance companies, factoring companies and banks) will require that an external party (lawyer or accountant) handles the process.

#### Restructuring the debt

Debt settlement proceedings (under the DNB Act) may only be initiated by a willing debtor, who needs to prove that the company is illiquid, i.e. unable to satisfy their debt as it falls due unless this condition is temporary. The debtor's financial situation is assessed with a court-appointed Supervisory Committee and a composition proposal is prepared (confidential phase). If the court finds it likely to succeed, a Composition Committee as well as a court-appointed trustee will manage the debtors' operations and formulate a composition agreement. During this stage, a moratorium ensures that the debtor is protected against enforcement of individual claims. A debt settlement proceeding may result in a completed debt settlement, composition or – usually – the commencement of bankruptcy proceedings.

In a 2012 publication, the Norwegian Advisory Council on Bankruptcy however emphasized that DNB procedures have not become the popular success envisaged in 1984. Although the legislation is inspired from the U.S. Chapter 11, it never provided the court with the flexibility needed to achieve win-win compromises. In addition, although procedures ought to be confidential, in practice they often rapidly become public, thus pushing debtors into out-of-court confidential negotiations.

#### Winding up proceedings

Bankruptcy proceedings may be opened by a court decision upon petition, either from the debtor (and its employees) or from a creditor. A creditor that petitions for the commencement of bankruptcy proceedings must guarantee for expenses related to the proceedings (limited to NOK 43,000). Upon the commencement of bankruptcy proceedings, the court will appoint a trustee (usually a lawyer) and assess the need for a creditor



committee, prior to issuing a bankruptcy order and giving the creditors between three and six weeks to file their claim. All of the debtor's assets are confiscated the debt is evaluated and a list of claims is established.

The process is concluded when the debtor's assets are distributed to the creditors or when the process is discontinued due to insufficient means.

#### **Priority rules**

Priority rules normally apply while distributing the proceeds to the creditors. Claims related to pensions, salaries and tax are given priority over preferential and unsecured claims.

Preferential claims must be met in full before the remaining funds of the estate are divided among the creditors. Section 9.2 of the Creditors Recovery Act furthermore provides a full overview of the various types of preferential claims. Examples of such claims would be the costs incurred in processing the estate, court costs and the trustee's fee. If the estate continues the business of the debtor after the commencement of bankruptcy proceedings, operating expenses incurred after the commencement of these proceedings would also constitute preferential claims. Furthermore, preferential claims may also be non-monetary in nature, for example the claim for the delivery of an object that was sold by the bankruptcy estate. Interest accruing on preferential claims has the status of a preferential claim.

Creditors holding a RoT right are in a special position in regards to bankruptcy, but these would not apply to all movable goods (such as planes, ships, etc.) and cannot be applied to goods which the buyer would normally resell or transform. Unsecured claims would often remain unsettled.

#### **Cancellation of suspect transactions (clawback)**

Certain dispositions taken by the debtor prior to bankruptcy may be revoked, such as bankruptcy motivated dispositions (generally going back two years, in certain cases longer) and, on a strict basis, gifts, denunciations of inheritance, extraordinary payments of debts, or provisions of security for existing debt during the period prior to the cut-off date (generally going back three months).

#### **How long could insolvency proceedings take?**

Insolvency proceedings, whether in the form of a debt restructuring or a bankruptcy can take from one to several years.

#### **Necessary documents**

A petition for bankruptcy needs to be sent where the creditor proves that the company should be declared bankrupt. In this case, any documents that can support this in addition to the documents requested under legal action should be provided.



#### **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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