

Collection Profile Poland

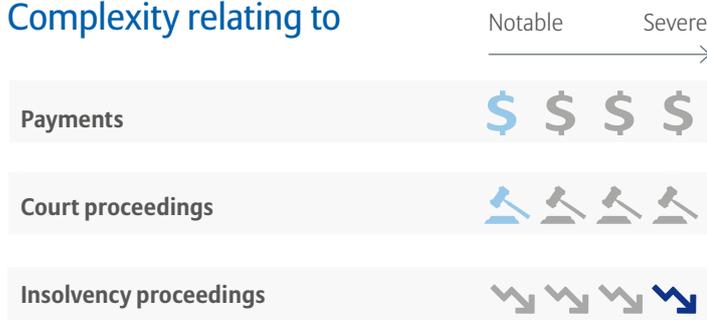
Collecting in Poland

- The payment behavior of domestic firms is generally reasonable, with the average DSO at 58 days. Domestic regulations on late payments are more demanding than EU standards, while the government has recently endeavored to adopt new reporting principles and access to data has improved.
- Amicable and pre-legal collection processes are fairly efficient in Poland, especially when a settlement is authenticated by a notary, and can be enforced through fast-track proceedings. Legal action can end up taking a long time, but are quite reliable.
- Collecting debt from insolvent debtors is a challenging task and, although debt renegotiation mechanisms have been set up, they are rarely relied upon.

Collection complexity



Complexity relating to



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General information

Availability of financial information

Companies in Poland have an obligation to report their financial statements with the National Court Register (KRS), which are published with the Monitor Sądowy i Gospodarczy (MSiG) in certain circumstances. Accounting standards and obligations are simplified for partnership structures in which turnover does not exceed EUR 1.2 million. In practice, however, many commercial companies disregard their legal obligations to publish their financial statements and furthermore refuse to reveal their financial data once approached directly, thus making it difficult for potential partners to have any visibility at all as to their financial health and viability. Often, the only way to receive financial information is to rely on external companies processing data available from the KRS offices. In recent times, the government has endeavored to adopt new reporting principles and access to data has improved. Euler Hermes allocates each company a grade reflecting its financial health and how it conducts business. Grades represent a core of our knowledge and analyses, and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions.

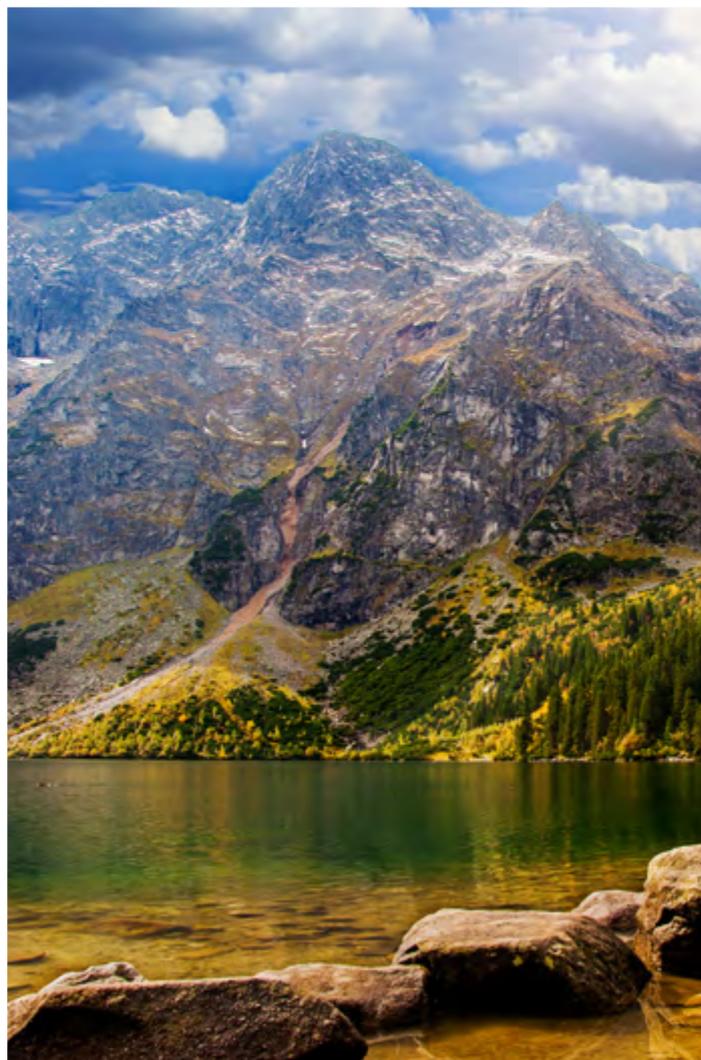
Main corporate structures

Liability for business debts is determined by legal structures, which are described as follows:

- Sole Proprietorship (indywidualna działalność gospodarcza) is available for small businesses managed by an individual, 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 various forms of Partnerships. Under Civil Partnerships (Spółka Cywilna, S.C.) and General Partnerships (Spółka Jawna, Sp.J.), the partners may be jointly and individually liable for the actions of the other partners. Under Limited Liability Partnerships (Spółka Partnerska sp. p.), Limited Partnerships (Spółka Komandytowa, Sp.K.) and the very common Limited Joint-Stock Partnerships (Spółka Komandytowo-akcyjna, Sp.K. A.), by contrast, the partners' liability would be limited.
- Incorporated entities are also available. Limited Liability Companies (spółka z ograniczoną odpowiedzialnością, sp. z o.o) are in practice the most favored legal entities since they require reasonable minimum capital funds (PLN 5,000) while the partners' liability is limited to their contribution. Joint-Stock Corporations (spółka akcyjna, SA) are rather used for larger structures and require a minimum capital amount of PLN 100,000 which must be divided into tradable shares. In these entities, the shareholders' liability is limited to the value of their shares.
- Foreign businesses may settle in Poland through Branch Offices (Oddział) or Representative Offices (przedstawicielstwo) aiming at promoting the business, but these entities are not separate from the parent company's legal structure and thus offer no liability limitations. Joint Ventures may also be set up by contract without any incorporation required.



Days Sales Outstanding (DSO): The average DSO was 58 days in 2016, for listed companies with variances across sectors.



Regulatory environment

Poland has a Civil Law system in which the rules are provided by statutes rather than through the case law. The court system in first instance divides between District Courts (sąd rejonowy) and Provincial Courts (Sąd Okręgowy), and both have specialized court divisions competent to deal with commercial disputes (wydziały gospodarcze). Claims in excess of PLN 75,000 would fall under the jurisdiction of Provincial courts. Administrative courts would deal with administrative disputes. The Supreme Court acts as the court of final jurisdiction.

Getting Paid

Days Sales Outstanding (DSO)

The average DSO for business-to-business invoices has dropped to 58 days in 2016. The regulation in Poland is stricter than the EU requirements. As a general rule, business-to-business transactions must be paid within 30 calendar days.

The payment behavior of domestic firms overall is reasonable, with businesses increasingly ensuring that payment is made (and received) on time. The tactic of delaying payments to exert pressure on suppliers is also becoming less common.

Late payment interest

The EU Directive 2011/7/EU which stipulates that payments in the EU must be made within 60 days has been transposed into Polish law through the new Act on Payment Terms in Commercial Transactions of 8 March 2013 (Journal of Laws Dz.U. 2013 item 403). The rules in Poland are stricter, however, than the EU requirements: as a general rule, business-to-business transactions must be paid within 30 calendar days, although payment terms may be extended by contract to 60 days provided that they do not become unfair to one of the parties. Unless the parties agree on a higher interest rate by contract, the creditor is entitled to receive late payment interest calculated based on the National Bank of Poland interest rate.

Debt collection costs

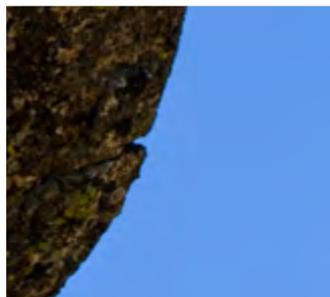
Under the new law, a flat collection fee equivalent to EUR 40 may also be charged to the debtor and, if the collection costs exceed this sum, the creditor is furthermore entitled to seek reimbursement of their actual costs through the courts. In practice, debtors are often reluctant to pay and would negotiate the value of the interest. For instance, where the EUR 40 fee is paid, they would usually refuse to pay any interest beyond this amount.

Ownership protection:

Retention of Title (RoT) agreements aiming to preserve ownership over goods until the related invoice is paid in full is admitted under Polish law, but their validity is conditioned by the fulfilment of strict requirements. In particular, the counterpart's clear approval of the agreement must be emphasized in written form and, in order to be effective during the legal phase or during insolvency proceedings, it is imperative to ensure that the agreement has been registered with a certified notary. In addition, 'all monies' agreements aiming to retain ownership until all invoices have been paid by the buyer, as well as extended forms of RoT, aiming to protect ownership despite transformation or selling to a third party, would not be enforceable.

Payments

The most common payment methods are as follows: Bank transfers are becoming increasingly popular as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. Export transactions should



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nonetheless be guaranteed through 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 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 frequently used in Poland. 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. As a general rule, obtaining bank guarantees from large corporations is fairly common in Poland. As far as smaller businesses are concerned, the lack of banking support may be compensated by negotiating down payments or payments in advance. It should be noted that although checks, bills of exchange and promissory notes (weschel in blanco) are not commonly used, they tend to be considered as debt recognition titles rather than as payment means. If left unpaid, they would thus become directly enforceable before the courts through fast-track proceedings.

Collecting overdues

Amicable action

Negotiating

Legal action in Poland can be long, therefore formal proceedings should commence when all amicable collection opportunities have been exhausted.

Whenever this is possible, alternative dispute resolution methods should be considered. As a matter of fact, the courts must give parties some incentives to use conciliation at all stages during legal proceedings, therefore avoiding negotiation would be a misuse of time. Legal dunning efforts conducted by collectors and lawyers often start with a letter recalling the debtor its obligation to pay the principal together with late payment interest (as contractually agreed or taking a legal rate as a reference). In fact, in Poland it is often advisable to have a collection agency capable of conducting firm negotiations with the debtor, whether over the phone or at their premises. Often, involving Euler Hermes' intermediaries would suffice to secure payment.

If an amicable settlement (instalment plan, full or partial payment) may be achieved, it is important to have it authenticated by a notary as any violation of the agreement would then make it enforceable through fast-track 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 or restructuring proceedings have been initiated, it indeed becomes impossible to enforce a debt.

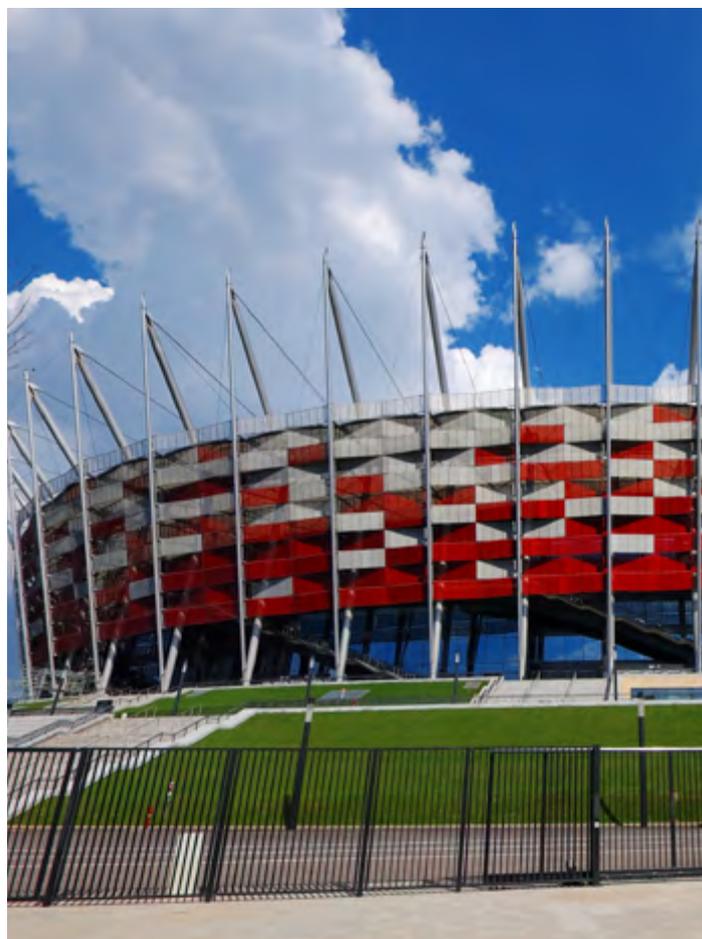
Legal action

Ordinary proceedings

If the debt is certain an unquestioned, the creditor may first request payment from the courts through prescription proceedings or through electronic Payment Orders. Any dispute at this stage would then be transformed into an ordinary lawsuit.

When the debtor has assets in other EU Member States, a European Payment Order procedure facilitating the recovery of undisputed debts (under Regulation EC No 1896/2006) may furthermore be triggered. In this case, the demanding party may request a District or Provincial Court to issue an Order to Pay which will then be enforceable in all European Union countries (except Denmark) without exequatur proceedings.

If a debt is disputed and the creditor wants to commence ordinary legal action (before Polish courts) they must file a claim with the court, which would then serve the debtor with a summons. The debtor is normally given 14 days to file a defense, but failure to do so would entitle the creditor to request a default judgment from the court. The court would then organize proceedings so that the parties' arguments and evidence may be considered prior to rendering a decision.



Necessary documents

Some documents are indispensable for filing a complaint with Polish courts:

- Duly filled and signed Power of Attorney by a person fully authorized to act on behalf of a company
- Registration documents, explicitly disclosing the mode of representation of a company and indicating the entitled people
- Invoices ascertaining the claim
- Bills of exchange (if any)
- Acknowledgement of debt signed by debtor (if any)
- Proof of delivery of goods such as CMR letters, protocols etc.
- Any other documentation related to the particular case

Time limitations

Business claims in Poland must normally be brought to court within two years (one year for transportation claims). However failure to bring a claim within the appropriate period of time does not automatically bar legal action, unless the claimant raises the limitation argument and asks the court to dismiss the case.

Provisional measures

Provisional measures may help preserve the debtor's interests pending a final judgment. Indeed, the courts may order interim measures aiming to protect assets (attachment orders, restraining orders). The claimant must however demonstrate that it has a strong case and that ordering such measures would prevent irreparable harm.

As in most countries, the courts could agree to render ex parte decisions (in the debtor's absence) in emergency situations, but the claimant would then be asked to provide security on costs in order to protect the respondent from irresponsible action.

Lodging an appeal

Decisions rendered in the first instance by a lower court may be appealed before the higher court within 14 days of receiving grounds of the decision in writing.

Appeal proceedings commence with the filing of an appeal by the appellant. If the appeal is accepted by the court, the counter-party has the right to lodge an answer to the appeal within two weeks of receiving it. The hearing takes place in appeal proceedings with or without both parties present. Final judgment is legally binding and should be considered as enforcement title. In some circumstances decisions rendered in the second instance can be appealed in cassation before the Supreme Court.

Enforcing court decisions

A judgment is enforceable as soon as it becomes final (i.e. when all appeal venues have been exhausted) and, if the debtor fails to satisfy the judgment, it is possible to request the court to order the compulsory enforcement of the decision through a bailiff. Court decisions remain enforceable for ten years. The following constitute enforcement orders: res judicata judgments, non-res judicata judgments subject to immediate enforcement, settlements reached in court, arbitral awards, notarial deeds in which a debtor accepts enforcement (comprising an obligation to repay a sum of money or quantifiable equivalent, or an obligation to deliver individually designated items), and judgments issued in EU Member States.

How long could legal action take?

The justice process in Poland can be time consuming, with legal action taking up to three to four years. However most cases managed by Euler Hermes can be resolved quicker – within six months on average.

Enforcement takes 12 months on average, but great disparities may be seen, ranging from four months to five years when the debtor's assets are not clearly identifiable.

Domestic courts would make no difference between cases involving international parties and cases involving domestic parties only, but delays may occur as a result of potential difficulties translating documents, or difficulties bringing foreign witnesses to court.

How much could this cost?

As a general rule, the defeated party would usually be required to pay part of the successful party's costs.

Court fees would represent 5% of the claim, while legal fees would be calculated on an hourly basis, or as a percentage of the award.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Alternative Dispute Resolution methods such as mediation and arbitration would constitute a very significant means of avoiding domestic courts.

Mediation involves the nomination of a mediator who is given responsibility for helping the parties to reach a compromise. In other words, the mediator has no authority to decide on behalf of the parties and cannot bind the parties with a decision. An agreement is only binding if a settlement agreement is entered into between the parties at the end of the mediation. The mediator acts as a facilitator to settlement. 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.

Overall, ADR can be a cost-effective out-of-court settlement method because it may reduce 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.



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.



Foreign forums

Alternatively, Poland is a signatory to the Rome I Regulation on the law applicable to contractual obligations, which stipulates that the parties of a contract may, by mutual agreement, choose the law applicable to their contract and select the court that will have jurisdiction over disputes. Therefore, the parties may also agree to solve their business disputes in a foreign forum (i.e. under a foreign law or before a foreign court). It is 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 to this purpose. Domestic courts may however retain exclusive jurisdiction when specific legal or public policy matters are involved (in relation to real estate, for instance).

Enforcing foreign awards

Foreign decisions are generally enforceable in Poland. Judgments rendered in an EU country and enforceable in a domestic country are enforceable in Poland directly, so any additional declarations of enforceability are not required. Judgments rendered in foreign countries outside of the EU would normally be recognized (uznanie) and enforced on a reciprocity basis, provided that the issuing country is party to a bilateral or

multilateral agreement with Poland drafted for this purpose. 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, if the foreign court has awarded punitive damages, etc. Poland is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, therefore its domestic courts ought to recognize and enforce awards rendered through international arbitration proceedings.

Litigation @ Euler Hermes

Should legal action be necessary, Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

Handling insolvent debtors

Insolvency in Poland is a matter of cash flow and balance sheet alike. The Bankruptcy Act of 2003 and the Restructuring Act of 2015 have adapted the Polish legal framework to the EU market. It ensures that proceedings must be conducted in such a way that the creditors' claims may be satisfied to the greatest extent, while the debtor's enterprise will be preserved if an opportunity to do so exists. However, in practice, liquidation remains the default proceeding when a debtor has become insolvent.

Insolvency proceedings

Out-of-Court proceedings

The law provides no specific mechanisms for reaching an out-of-court composition agreement between the debtor and creditors.

Restructuring the debt

A debtor is entitled to commence restructuring proceedings when it is – or is in danger of becoming – illiquid. The main purpose of restructuring proceedings is to avoid bankruptcy of the debtor. If restructuring proceedings are pending, commencement of an insolvency procedure is prohibited. The debtor may file a petition with the District Court in order to commence restructuring proceedings. Restructuring procedures aimed at rehabilitating/reorganizing the debt in order to allow the survival of viable companies through attaining a composition agreement between the debtor and creditors. The administrator establishes a list of claims. During the proceedings, a moratorium protects the company while the debtor keeps control over the business management (debtor-in-possession), with the approval of an administrator.

Winding up proceedings

A debtor is considered insolvent when it is illiquid (i.e. when it is unable to pay its outstanding debts), although illiquidity may also be characterized when the debtor's assets cannot satisfy all of the company's liabilities. The debtor and creditors may file a petition in order to obtain a bankruptcy declaration from the District Court. As soon as the court declares a state of bankruptcy, liquidation proceedings are conducted by a liquidator in charge of managing and liquidating the debtor company's estate. The court would normally require creditors to lodge their claims within a specific timeframe, from one to three months following the admission of the bankruptcy petition. On this basis, the liquidator would then establish a list of claims and submit it to the judge-commissioner, who would then notify the public. Within two weeks, creditors may object to the judge-commissioner concerning the lack of acknowledgement of their claims. The proceeds of the sale are then distributed to the creditors according to their priority ranking.

Priority Rules

Priority rules normally apply while distributing the proceeds to the creditors. Secured debts (fresh money provided to the company



during the insolvency proceedings, costs of the proceedings, debts falling under a RoT provision) would be given priority over preferential claims (tax claims, employment and social benefits, etc.). Unsecured claims would be considered last and therefore may never be recovered.

Cancellation of suspect transactions (clawback)

Liquidators are normally 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 suspect period of six months to a year may apply.

How long could insolvency proceedings take?

Although the court should in declare bankruptcy within two months following the petition's submission, commencement of liquidation procedures may be long. Thus, bankruptcy proceedings seem to vary from several months to several years.

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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