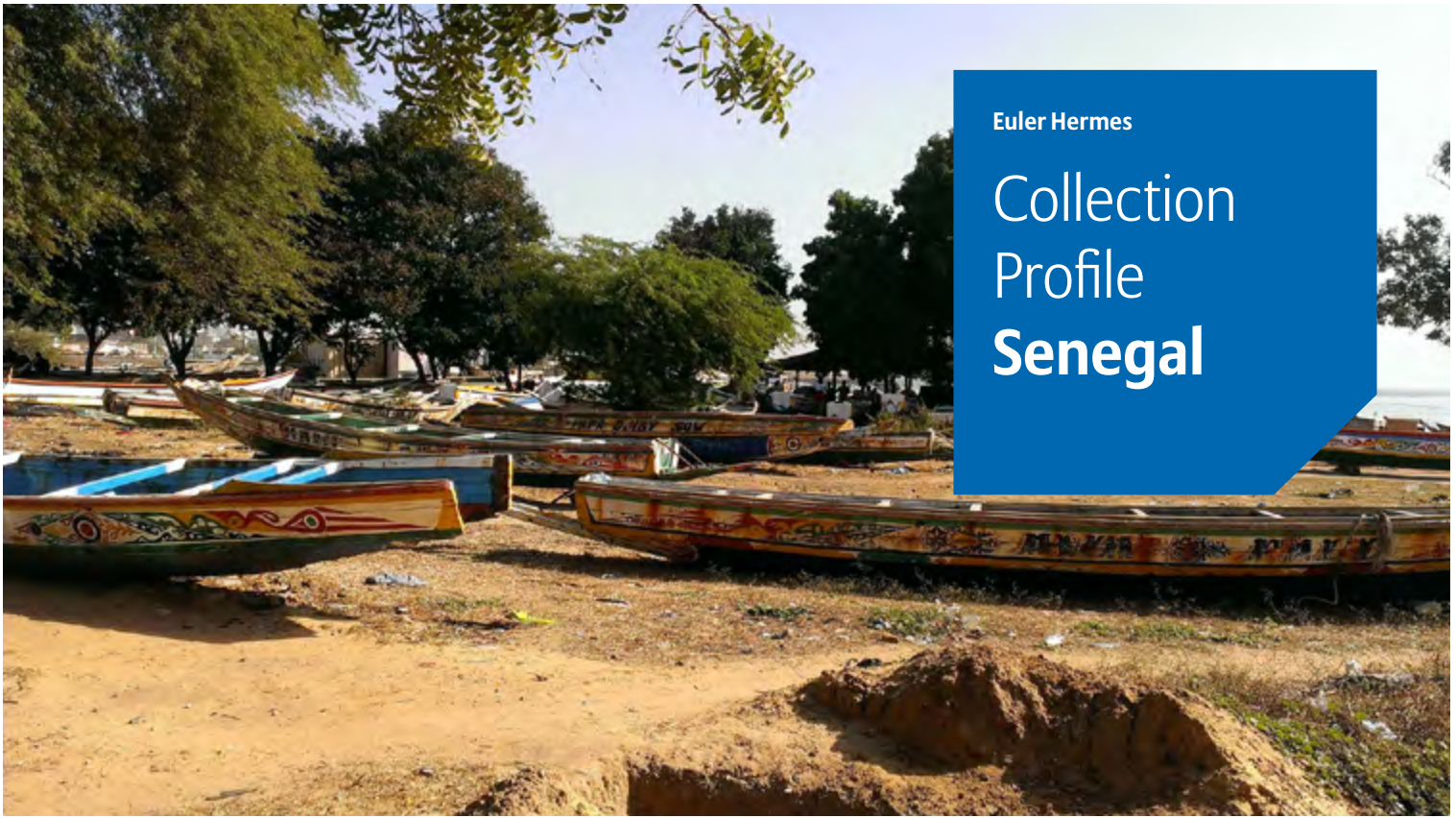


Collection Profile Senegal



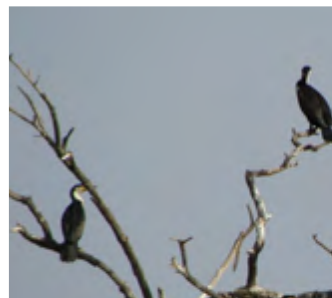
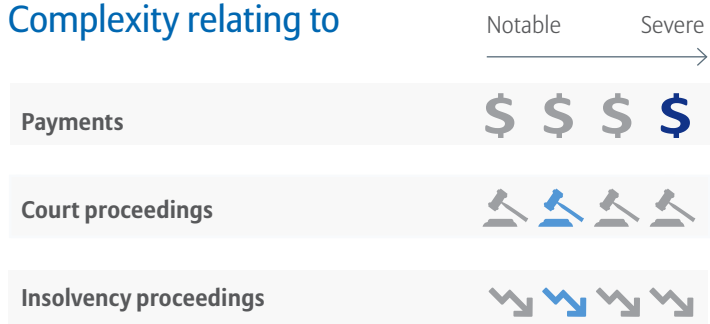
Collecting in Senegal

- The payment behavior in Senegal is poor, with payment terms usually stating 30 days, while payments are typically made within 60 days in practice.
- Late payments are susceptible to a 1% interest charge, though a judge can impose a different rate following assessment of the damage suffered by the creditor.
- The Civil Law in Senegal is inherited from the French Civil Law, which also features case law and customary law adaptations.

Collection complexity



Complexity relating to



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General information

Availability of financial information

Senegal is a signatory to the Organization for the Harmonization of Business Law in Africa Treaty (OHADA), a uniform act relating to commercial companies and economic interest groups.

Companies in Senegal are not obliged to submit their balance sheets, but they are required to file their tax returns.

Limited Liability Companies (SARL) are required to submit their financial statements to the tax authorities, while Public Limited Companies (SA) must also have them published. However, most SA companies do not adhere to this requirement and it is generally only the companies listed on the stock exchange – Bourse Régionale des Valeurs Mobilière (BRVM) – who publish their financial statements on the BRVM website.

A copy of the balance sheet is also submitted to the Central Bank of West African States (Banque Centrale des États de l'Afrique de l'Ouest, BCEAO), which provides a central view of payment incidents.

As companies in Senegal need to be registered in the Registration of Companies, additional information can be obtained from the Centre Unique de Collect de l'Information (CUCI), the Unique Information Collection Centre, which holds the national identification number of companies and associations, known as the Numéro d'Inditification National des Entreprise et des Associations (NINEA). The CUCI also records the financial statements of all registered companies, although not all companies submit the required information.

As financial information cannot always be relied upon, trading history is often a better indicator of a company's viability.

Main corporate structures

There are several types of companies in Senegal, but the most widely used are the SARL and the SA entities:

- Limited Liability Companies (Sociétés à Responsabilité Limitée, SARL) have seen a lot of improvements in order to facilitate the creation of such company type. The minimum capital required for a SARL is CFA 100,000 and the company can consist of a single partner (owning 100% of the shares) or several partners. SARL companies are the most common type of entity due to the flexibility they offer.
- Public Limited Companies (Société Anonyme, SA) can consist of either a General Director or a Board of Directors. SA entities are often used by larger companies due to the rules and protection that they offer to the shareholders.
- Another type of company, known as Sole Proprietorship, is the registration of a natural person to do business. Normally there are limitations to the type of operations a Sole Proprietorship business can conduct, but these are generally not respected. For example, Sole Proprietors are not eligible for an importer card, though they often find ways to obtain one regardless.



Days Sales Outstanding (DSO): The payment behavior is poor, with payment terms usually at 30 days, while payments are typically made within 60 days in practice.



Regulatory environment

The Civil Law in Senegal is inherited from the French Civil Law, which means that the Civil Code is inspired by French Code. However, features arising from case law and customary law (rules derived from local customs) has led to some adaptation of the original law. Otherwise, the text remains largely inspired by the French Civil Law. The legislation in Senegal, based on the original colonial legislation of the French Law and introduced in 1830, has evolved since the country became independent in 1960.

The judicial structure of Senegal consists of:

- The Courts of First Instance (Les Tribunaux de Première Instance), which are responsible for common law matters including criminal, civil, commercial, social and administrative law. They act in the first instance on cases which can then be brought before the Court of Appeal if the decision is contested.
- The Courts of Appeal (Les Cours d'Appel) can be considered as the court of second instance, ruling on disputes heard in a Court of First Instance where the outcome is appealed.
- The Supreme Court is the final appeal jurisdiction at the national level.
- The Common Court of Justice and Arbitration (Cour Commune de Justice et d'Arbitrage, CCJA) is the last resort in terms of all commercial area countries who are signed to the OHADA Treaty.



Late payment interest:

Late payment interest is usually 1%, although a judge can impose a different rate following assessment of the damage suffered by the creditor.



Getting Paid

Days Sales Outstanding (DSO)

Though the payment terms usually state 30 days, these are never respected and in practice, payments typically occur within 60 days.

Late payment interest

The law provides a framework to allow creditors to charge interest on late payments. The OHADA Treaty, of which Senegal is a signatory, governs the commercial sale between businesses, including the creation of the sales contract, the obligations of each party, the breach of those obligations and general terms of the contract. Late payment interest is usually 1%, although a judge can impose a different rate following assessment of the damage suffered by the creditor.

Debt collection costs

As per the guidelines provided by the OHADA Treaty, collection costs are borne by the debtor unless it is clear that they were not necessary at the time that they were incurred. Furthermore, unless the costs concern an act that is covered by National Law or the aforementioned Treaty and are authorized by the competent court, collection costs undertaken without enforcement are the responsibility of the creditor. Where the court awards collection costs to the creditor, there is no fixed rate. Instead, the court will assess the costs incurred by the lawyer and/or the creditor and award costs accordingly.

Ownership protection

In sales contracts, there is a clause relating to Retention of Title (RoT) which allows the creditor to retain ownership of the goods until payment is received in full for the corresponding invoice. In practice, said clause is rarely enforced or becomes ineffective, as the goods are often sold by the debtor prior to enforcement.

Payments

The most commonly used payment methods are: Bank transfers are the most commonly used method of payment as they are fast, secured, and supported by an increasingly developed banking network domestically and internationally. Checks are considered debt recognition titles and can be used to demonstrate that a debt is certain and undisputed. Letters of Credit are available, although not very popular. Direct payment by cash, check or bank transfer is usually preferred.

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.

Collecting overdues

Amicable action

Negotiating

Once a claim is due and one reminder has been sent, the creditor must notify the debtor officially via a letter of formal notice. The letter of formal notice summons the debtor to pay the claim within eight days. If they fail to do so, the creditor can begin the appropriate legal procedure.

Legal action

Ordinary proceedings

In case the matter lands in court, the creditor must appoint a lawyer who will issue a writ of summons to require the debtor to appear before the Court of First Instance. Pleadings would then be exchanged between the two parties' lawyers until the court is satisfied that they have obtained sufficient information in order to render a decision. Any party can appeal the First Instance Court's decision before the Court of Appeal within one month from the decision date.

Necessary documents

The creditor must produce all the supporting documents justifying their claim including contracts, invoices, proof of delivery and recognition of debt. All documents should be in, or translated into, French as it is the official language of Senegal.

Time limitations

For general commercial matters, the time limitation to bring a matter to court is five years. For claims concerning contracts of sale, the time limit is two years, in line with OHADA.

Provisional measures

There is a possibility to seek an attachment order preventing the debtor from disposing of specific assets until a decision has been made on the case's merits. The creditor must demonstrate that irreparable harm is likely to occur unless the injunction is granted, and that the claim has substantial chances to succeed.

Lodging an appeal

An appeal can be lodged against the Court of First Instance decisions within the time limit of one month from the decision date. Locally, a final appeal is also possible before the Supreme Court within two months from the decision's official notification via bailiff.

Enforcing court decisions

A judgment is enforceable as soon as it becomes final and definitive. The successful party may then ask the court to order enforcement proceedings.

How long could legal action take?

Obtaining a decision in first instance would generally take six months to one year, whereas a final and enforceable decision would normally

take three years. Enforcement proceedings themselves would last six months on average.

How much could this cost?

In general, costs for legal proceedings reach 5% to 7.5% of the total claim amount.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Arbitration and mediation are most frequently used, and take place before the Center of Arbitration and Mediation of the Dakar Chamber of Commerce. As a general rule, the best way to apply ADR is to agree to this possibility in the (sales/services) contract and/or the general terms and conditions. Parties are also able to mutually agree to ADR terms afterwards.

Foreign forums

Subjecting a contract to a foreign forum (i.e. foreign laws and/or foreign courts) may constitute a significant way of avoiding domestic courts. Indeed, Senegal allows selecting the law applicable to a contractual agreement as long as the public order is not threatened. There are various requirements, however, such as the necessity to demonstrate the international connection (for example, one party has elected domicile in another country, or the place of execution is abroad), and the validity of a foreign jurisdiction clause within the contract.

Enforcing foreign awards

In civil, commercial and administrative matters, contentious and gracious decisions rendered by foreign courts have the full authority of res judicata in the territory of Senegal if they meet the following conditions: (i) the decision is issued by a competent court in accordance with the rules concerning conflicts of jurisdiction admitted in Senegal, (ii) the decision applied the law applicable to the dispute by virtue of the rules for resolving conflicts of law admitted in Senegal, (iii) the decision is, according to the law of the state where it was rendered, res judicata and enforceable, (iv) the parties have been duly summoned,

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.

represented or declared to be in default, and (v) the decision contains nothing contrary to the public policy of Senegal and is not contrary to a Senegalese judicial decision possessing the authority of res judicata. Foreign awards shall not give rise to any enforcement until after they have been declared enforceable.

An exequatur shall be granted – irrespective the value of the claim – by the president of the high court of the location where the execution is to be continued.

Foreign arbitration awards can also be enforced in Senegal, in line with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

Handling insolvent debtors

Insolvency proceedings

The bankruptcy and insolvency law/regulation is uniformed by the OHADA treaty.

Out-of-Court proceedings

There are no out-of-court bankruptcy proceedings to reduce the court's caseload from the time the liquidator is nominated.

Restructuring the debt

A creditor can request the bankruptcy of a debtor when debtor has stopped making payments (cessation de paiement) and is unable to pay the debts due. This is said to be the case when the assets cannot cover the debts. The debtor can oppose the request for bankruptcy as filed by the creditor, or can also voluntarily request its own bankruptcy if it is insolvent.

Often a debtor company which has become insolvent goes bankrupt, but it can undergo a judicial restructuring process (redressement judiciaire). The court will then look into the possibilities to restructure the insolvent party by giving it time to discuss a possible solution with all creditors involved. If this is not considered possible, the court will proceed to with bankruptcy proceedings.

Bankruptcies are handled before the Tribunal de Grande Instance (TGI). Creditors must address the judge of TGI, which will then appoint a liquidator to assess the financial situation and conclude whether the debtor is really insolvent.

When a liquidator is nominated by the court, they become the sole manager of the company. All pending legal procedures are suspended. The liquidator's tasks are as follows:

- recover the company's claims from its (third-party) debtors
- invite all creditors to present and register their claims (creditors must present their titles of claim)
- organize creditors' meetings
- evaluate the assets and the debts
- liquidate assets/sell assets
- finalize the liquidation and submit a final report.

Creditors must register their claims within three months after the liquidator is nominated. In the event a claim is disputed by the debtor, the creditor will be requested to submit evidence supporting the claim.

Priority rules

Any proceeds are distributed to the creditors in the following order: justice, taxation, employees, creditors with enforceable title of debt and other creditors.

Necessary documents

Documents required to successfully request a debtor's bankruptcy are an enforceable title to claim (usually a court order/judgment) and an expertise report showing that the assets cannot cover the debts.



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.

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