

Collection Profile Thailand

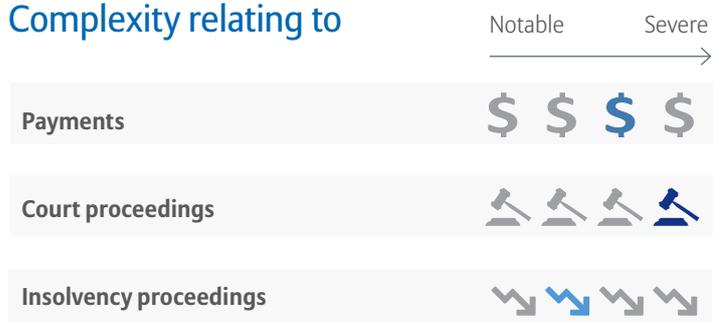
Collecting in Thailand

- The payment behavior of Thai companies is fairly good, but regulations are limited when it comes to late payments.
- Although domestic courts are fairly independent, the rule of law perception has margin for improvement, as procedural delays and costs may be an issue and enforcing court decisions can be challenging. Overall, use of the courts should be avoided and conducting pre-legal collection action is advisable.
- Collecting debt from insolvent debtors is often extremely difficult, especially when the debt is not secured.

Collection complexity



Complexity relating to



Contents

- General Information 3**
 - Availability of financial information..... 3
 - Main corporate structures..... 3
 - Regulatory environment..... 3

- Getting Paid..... 4**
 - Days Sales Outstanding (DSO) 4
 - Late payment interest..... 4
 - Debt collection costs..... 4
 - Ownership protection 4
 - Payments..... 4

- Collecting Overdues 5**
 - Amicable action 5
 - Legal action..... 5
 - Alternatives to legal action 7

- Handling Insolvent Debtors 8**
 - Insolvency proceedings 8



General information

Availability of financial information

Financial statements on domestic companies may be obtained directly from the Department of Business Development of the Ministry of Commerce, but the data may not be reliable. Euler Hermes works with specialized providers and allocates 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 are described as follows:

- Sole Proprietorship is a popular choice for small businesses managed by an individual and where 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. Partnerships can alternatively be registered as Limited Liability Entities to offer limited liability to the partners.
- Private Limited Companies are the most favored legal entities because they require little minimum capital funds while the shareholders' liability is limited to their contribution. Public Limited Companies under the Public Limited Companies Act B.E. 2535 (AD 1992) are usually used for larger structures aiming to divide their capital into tradable shares. In these entities, the shareholders' liability is limited to the unpaid value of their shares.
- Foreign companies may conduct business in Thailand through Representative Offices, which, however, are not allowed to generate income and can merely act as a liaison or market researcher. Doing business through Branch Offices is fairly common even though such branches are not separate entities from the parent and offer no liability limitations, but setting up subsidiaries in the form of Private Limited Companies is the most popular option. Joint Ventures are usually a matter of contract and may not require incorporating a company.

Regulatory environment

Thailand has a codified system of law (civil law) which has been significantly influenced by common law. The Thai court system is complex and is composed of the Court of Justice system, the Administrative Court system, and the Constitutional Court of Thailand. Civil and criminal cases are handled by the Court of Justice (a three-tier system consisting of the Court of First Instance, the Court of Appeals and the Supreme Court, in which the courts at the district level can hear small claims up to THB 300,000 while Provincial Courts would hear claims in excess of this amount). There are also specialized courts dealing with specific matters, for example,



Days Sales Outstanding (DSO): The payment behavior of Thai companies is fairly good. Most payments tend to be made within 30 days.



the Juvenile and Family Court, the Central Labor Court, the Central Tax Court, and the Central Intellectual Property and International Trade Court, where cases may be appealed directly to the Supreme Court. Disputes with administrative bodies and public agencies are dealt with by the Administrative Courts, where cases can be further appealed to the Supreme Administrative Court.

Getting Paid

Days Sales Outstanding (DSO)

The payment behavior of Thai companies is fairly good. Most payments tend to be made within 30 days, but delays of 10 to 20 days on average may appear when transactions have not been secured.

Late payment interest

Interest on late payments may be charged to the debtor and it may be fixed up to 15% in a contract. If no interest rate is fixed, the 7.5% legal rate will apply.

Debt collection costs

Some Thai businesses may charge additional collection costs on late payments, but this is not a common practice.

Ownership protection:

Retention of Title (RoT) provisions, aiming at retaining ownership over traded goods as long as the debt has not been fully paid, are lawful in Thailand. Thus, as long as the owner of the goods which have remained unpaid for can prove that they have ownership over the goods, they may then apply to the court to order release of the goods. During the pre-legal action phase, it may be possible to repossess the goods if the purchase agreement permits so. Otherwise, it would be necessary to commence legal action before the courts.

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, Thai exporters often use D/P (Document against Payment) or D/A (Document against Acceptance) mechanisms, but business may also 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) 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) is increasingly relied upon.

Bank guarantees are fairly available but remain expensive, however down payments may be negotiated.



Late payment interest:

Interest on late payments may be charged to the debtor and it may be fixed up to 15% in a contract. If no interest rate is fixed, the 7.5% legal rate will apply.





Collecting overdues

Amicable action

Negotiating

Although domestic courts are fairly independent, the rule of law perception has margin for improvement and time is an issue given the caseload handled by the courts. As such, amicable settlement opportunities should always be considered as a serious alternative to initiating legal action.

Before starting legal proceedings against a debtor, the debtor's assets should be assessed as it allows an estimation as to whether the recovery chances are at best. In addition, it is essential to be aware of the debtor's solvency status: if bankruptcy proceedings have been initiated, creditors must apply for repayment of their debt in the bankruptcy proceedings.

Legal action

Ordinary proceedings

Although there are no pre-action requirements, legal dunning ought to start with a registered Demand Letter recalling to the debtor its obligation to pay the principal together with late payment interest (as contractually agreed or taking a legal rate as a reference) and possibly offering to enter negotiations. In practice, the courts usually encourage the parties to reach a mutually acceptable compromise and the majority of cases are settled through negotiation.

Prior to commencing formal legal action proceedings, it is also worth considering the possibility of obtaining an arbitral award (see the ADR section) or a foreign decision which, even though it may be difficult to enforce could remain more efficient than merely appearing before domestic courts.

Ordinary legal action would usually commence when amicable collection has failed. The creditor would file a claim with the court which, if deemed admissible, will directly be served to the debtor. The debtor is then given 15 days to bring a defense (a default judgment can be awarded in case the defendant fails to submit its answer or if either party fails to appear before the court on the first day of witness examination, but the defeated party would be entitled to apply for reconsideration if it has proper excuses as accepted by the law). At the first hearing, the court will frame the issues to be tried and order which party has the burden of proof. However, the court will also ask the parties if they would like their dispute mediated. If mediation fails, the court will proceed with examination of witnesses.

Thai courts normally award remedies in the form of damages, performance or forbearance, but punitive damages would only be awarded in very specific circumstances as prescribed by law.

Necessary documents

The necessary documents usually include:

- Letter of demand
- Commercial contracts
- Purchase orders and invoices
- Proof of delivery and receipts
- Power of Attorney
- Documents showing the identity or legal personality of the plaintiff

Time limitations

Various limitation periods must be taken into account prior to commencing legal proceedings, but provisions relating to time limitations are complex in nature, hence, obtaining legal advice in this regard is not optional.

Provisional measures

Provisional measures may help preserve the creditor's interests pending a final judgment. Upon a party's application, the courts may order provisional measures aiming to protect the relevant party's interests, to preserve the status quo and avoid irreparable damage (provisional attachment of the debtor's assets, provisional mandatory or prohibitory injunctions, as well as other forms of protection). The general rule is that the applicant must provide reasonable causes for such an application. In emergency situations, the court may order provisional measures *ex parte* (i.e. without hearing the debtor) but the court might then request that the claimant provide a security deposit to compensate the other party for the damage it may suffer as a result of the imposition of the provisional measures.

Arbitral tribunals are not entitled to award provisional measures, therefore, the parties to an arbitration proceeding will have to submit a provisional measure application to the competent Thai Court.

Lodging an appeal

In case of general civil actions, judgments rendered in the Court of First Instance (trial court) may be brought to the Court of Appeal and with leave in special circumstances, to the Supreme Court. Judgments rendered by the specialized courts, on the other hand, can be appealed to the Supreme Court directly. Appeal proceedings may be lengthy as they can last more than six months, therefore they may be used as a delaying tactic.

How long could legal action take?

Depending on the complexity of a given case, obtaining a judgment from the Court of First Instance can take from nine to 18 months. In addition, it may take the Court of Appeal and the Supreme Court each about 12 to 18 months to render a judgment.

Overall, obtaining a final and enforceable order could thus require between three to five years on average.

Cases with a foreign element are more time consuming than cases with no foreign elements simply due to the fact that relevant documents must be translated into Thai and witnesses who cannot speak Thai must testify through an interpreter.

How much could this cost?

As a general rule, the defeated party is usually ordered to pay the court fee as well as lawyer's fee (not exceeding 5% and 3% of the amount claimed in the trial courts and the appellate courts, respectively) and legal costs (not exceeding 1% of the amount claimed) to the successful party, but the court has the discretion to decide which party should bear the court fee and how much. There is a court fee of 2% (capped at THB 200,000) of the amount of claim up to THB 50 million and there is a 0.1% fee on the amount exceeding THB 50 million.



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.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Considering the difficulty associated with obtaining enforceable judgment from domestic courts, it is more advisable to consider ADR opportunities. In particular, arbitration constitutes a reliable way to settle business disputes because it is confidential and straightforward. The parties agree by contract to authorize an independent and impartial third-party arbitrator (or panel of arbitrators) to settle their dispute on their behalf. As a quasi-judicial dispute settlement method, arbitration is generally cost-effective, reduces delays and offers a binding decision which may then be enforced by the courts if necessary. When international transactions are involved, international arbitration may also be considered. Mediation proceedings, on the other hand, involve nominating a mediator to act as a facilitator to help the parties reach a compromise.

Having said this, it is always essential to find out whether there is any arbitration or mediation agreement between the parties, as legal actions commenced in breach of such an agreement may be subject to preliminary disposal.

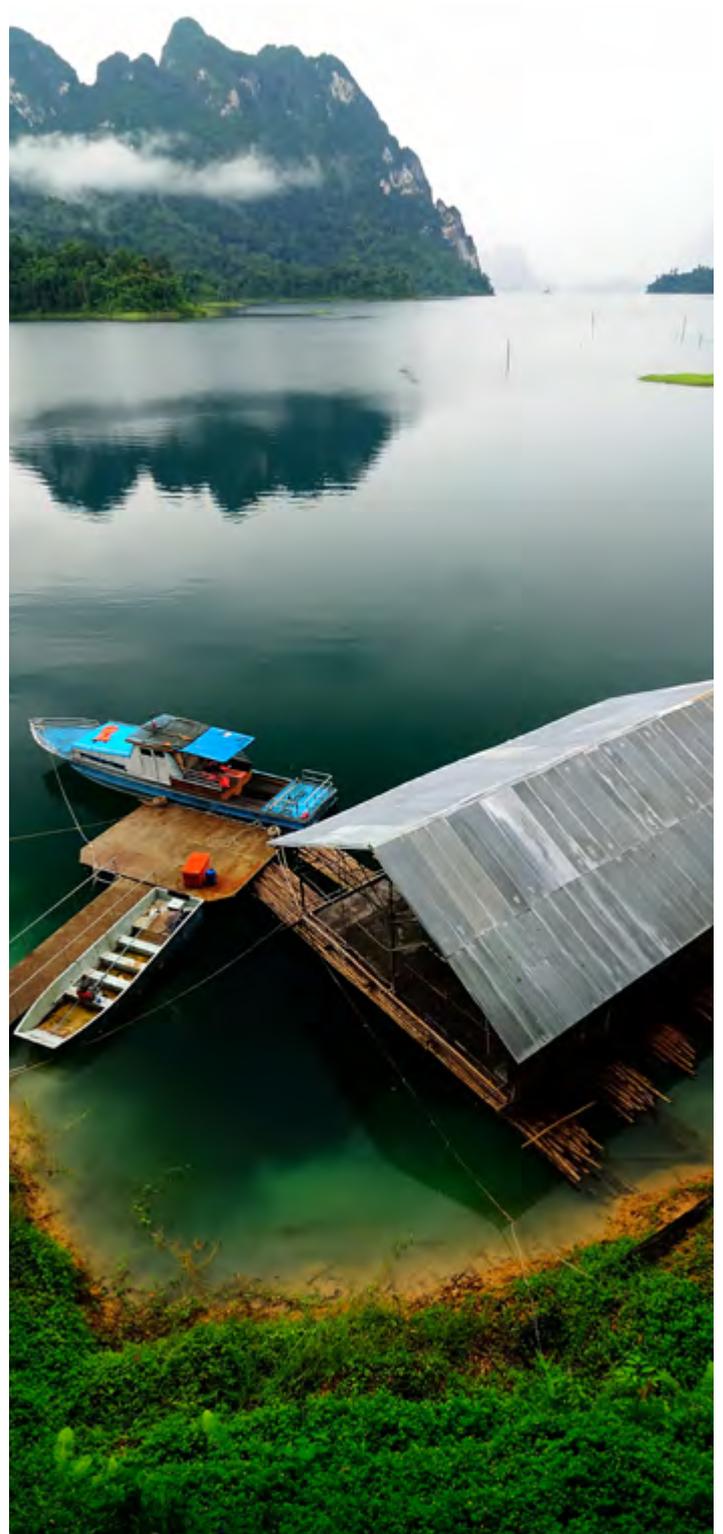
Foreign forums

The option of relying on a foreign jurisdiction is also available but remains uncertain in practice. Although Thai courts normally respect the parties' contractual agreements, various limitations may reduce the scope of application of jurisdiction, and governing law clauses aiming at having a foreign law as the applicable law or at placing the contract under the exclusive jurisdiction of a foreign court. First, a foreign law can only be applied by Thai courts provided that the said law is translated into Thai and does not contradict Thai public policy. Second, exclusive jurisdiction clauses have been held unenforceable and they do not bar Thai courts from exercising its jurisdiction where it is the natural forum.

Enforcing foreign awards

Given that Thailand has no reciprocal recognition and enforcement agreements with other foreign countries, foreign judgments are not directly enforceable. In fact, enforcing foreign judgments requires new legal proceedings, where the foreign judgment will be considered as evidence and defenses will be available to the opposing party.

In spite of the above, Thailand is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, therefore international arbitration awards may be enforced fairly rapidly provided that they are final and binding in the issuing country.



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 proceedings in Thailand are governed by the Bankruptcy Act BE 2483 (AD 1940, as amended), which provides for reorganization proceedings as well as bankruptcy proceedings. In practice, reorganization proceedings are fairly effective for viable businesses and a large number of Thai companies were successful in getting back on their feet after the 1997 Asian financial crisis. When it comes to bankruptcy, however, unsecured creditors would be unlikely to recover any debt.

Insolvency proceedings

Out-of-Court proceedings

Insolvency proceedings in Thailand are strictly court-based.

Restructuring the debt

Debt reorganization proceedings may be commenced upon the filing of an application with the court, by the debtor or their creditors, provided that the debtor owes one or several creditors a total sum of a minimum THB 10 million.

The debtor must prove that there are reasonable grounds for reorganizing its business. Once the court accepts the application, a moratorium is put in place to stay all enforcement proceedings against the debtor (until the plan is implemented or dismissed) while a planner is appointed to prepare a reorganization plan.

The creditors are then given one month to apply for repayment of debt from the date on which the planner's appointment is published in the Government Gazette, but failure to apply for such repayment of debt will bar the creditor from receiving any debt repayment.

Afterwards, the court appoints a plan administrator in charge of managing the debtor's business in accordance with the reorganization plan. The official receiver also plays a vital role in considering applications for repayment of debt and calling meetings of creditors. Once the reorganization plan has been approved by the meeting of creditors and the court, the plan will then be binding on the creditors. However, if the reorganization is not successful and the court finds that the debtor should be declared bankrupt, the court may issue a receivership order and cancel the reorganization.

Winding up proceedings

As a general rule, only creditors may file for bankruptcy proceedings (Section 9 of the Bankruptcy Act) but the debtor must owe a minimum of THB 1 million (for natural persons) or THB 2 million (for legal entities). If the court considers that the debtor is indeed insolvent, it will issue a receivership order and appoint an official receiver to collect and manage the debtor's assets. After the said receivership order has been issued, the creditors will be given two months to file their applications for repayment of debt. Again, enforcement claims against the debtor are stayed automatically once the receivership order is issued by the court.



Priority Rules

Priority rules normally apply while distributing the proceeds to the creditors. Secured creditors are given priority over unsecured creditors, in that they can enforce the security directly and apply for repayment of the shortfall. All expenses incurred as a result of the bankruptcy and reorganization proceedings are considered as preferential debts, having priority over taxes due within six months prior to the issue of the proceedings and wages payable to the debtor's employees prior to the proceedings. Unsecured debts would be considered last, once all preferential debts have been settled.

Cancellation of suspect transactions (clawback)

Planners, plan administrators and official receivers are normally entitled to request the court to cancel certain transactions concluded prior to the bankruptcy and reorganization proceedings. In particular, any measure taken by the debtor deemed detrimental to the creditors may be revoked (i.e. unfair loans, inappropriate debt repayment, suspicious disposal of assets, fraudulent transactions, and gratuitous acts) up to one year prior to the commencement of the bankruptcy or reorganization proceedings.

How long could insolvency proceedings take?

Bankruptcy proceedings can take from two and a half to three years and reorganization proceedings can take from nine to 22 months.

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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