



Euler Hermes

Collection Profile Togo

Collecting in Togo

- Though the payment terms usually state 30 days, these are never respected and in practice, payments occur within 60 to 90 days.
- The Civil Law is inherited from the French Civil Law, thus the Civil Code is still the French Code. However, features arising from case law and customary law (rules derived from local customs) have led to some adaptation of the original law.
- The law does not provide for out-of-court proceedings, though there are two procedures for debt restructuring which are available to creditors.

Collection complexity



Complexity relating to

Notable Severe
→

Payments	\$ \$ \$ \$
Court proceedings	⚖️ ⚖️ ⚖️ ⚖️
Insolvency proceedings	↘️ ↘️ ↘️ ↘️



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General information

Availability of financial information

Togo is a signatory to the Organization for the Harmonization of Business Law in Africa (OHADA) Treaty, a uniform act relating to commercial companies and economic interest groups. Companies in Togo are not obliged to submit their balance sheets, but they are required to file their tax returns. All companies are obliged to submit their balance sheets to the tax office except Proprietorships, which are required to file their tax returns, but most of the time the financial information supplied is not correct. 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 in the newspaper, Togo Press. 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 gives it a central view of payment incidents, although this information is only accessible to the banks.

Main corporate structures

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

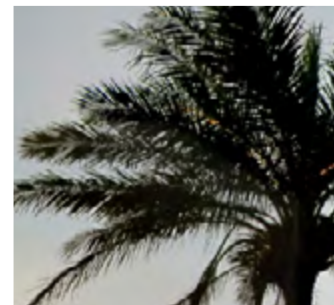
- Limited Liability Companies (Sociétés à Responsabilité Limitée, SARL) have seen a lot of improvements in order to facilitate the creation of such company type. The minimum capital required for a SARL is CFA 100,000 and the company can consist of a single partner (owning 100% of the shares) or several 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.
- Additionally, Economic Interest Groups (GIE) are not defined as companies, but rather as legal entities whose exclusive purpose is to facilitate or develop the economic activities of its members. A GIE can be constituted without capital and does not in itself give rise to the generation and distribution of profits. However, this type of organization is very rare in Togo.

Regulatory environment

The Civil Law in Togo is inherited from the French Civil Law, which means that the Civil Code is still the French Code. However, features

Days Sales Outstanding

(DSO): Though the payment terms usually state 30 days, these are never respected and in practice, payments occur within 60 to 90 days.



arising from case law and customary law (rules derived from local customs) have led to some adaptation of the original law. Otherwise, the text remains largely inspired by the French Civil Law.

The legislation in Togo, based on the original colonial legislation of the French Law, has evolved since the country became independent in 1960. The judicial structure of Togo consists of:

- Courts of First Instance have jurisdiction to hear civil and commercial matters in first instance, where the claims are in excess of CFA 100,000.
- The Courts of Appeal hear matters in civil, commercial and social chambers, among others. These are secondary courts in Togo, which hear cases previously referred to a court where the judgment does not satisfy one or more party.
- The Supreme Court is the highest court of the state in judicial and administrative matters. Its two chambers hear appeals from the courts of last instance in civil, commercial, social and criminal court, among other topics.
- 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 up to the OHADA Treaty.
- This court is located in Abidjan, Ivory Coast. It shall be composed of nine judges elected for a renewable term of seven years from among the nationals of the states’ members.

Getting Paid

Days Sales Outstanding (DSO)

Though the payment terms usually state 30 days, these are never respected and in practice, payments occur within 60 to 90 days.

Late payment interest

The law provides a framework to allow creditors to charge interest on late payments. The OHADA Treaty, of which Togo 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%, but a judge can impose a different rate following assessment of the damage suffered by the creditor.

Debt collection costs

As per 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 most sales contract, there is a clause relating to Retention of Title (RoT) which allows the creditor to retain ownership of the goods until payment in full is received for the corresponding invoice. While this clause is used in Togo, it depends on whether the sales contract had been signed in OHADA countries such as Togo, and the following articles are respected.

- The creditor, legitimate holder of personal property owned by their debtor, may withhold the property until full payment of the debt is received, independent of any security interest (as per Article 67).
- The right of retention may only be exercised if (i) the debt of the retainer is certain, of a fixed amount, and due, (ii) there is an associative link between the raising of the claim and the detention of the retained property, and (iii) the property was not seized before being withheld by the retainer (Article 68).
- The connection is presumed established when (i) the property retained was returned until full payment of the debt to the retainer, (ii) the unpaid debt results from an agreement that binds the retainer to return the property withheld, and (iii) the unpaid debt arose from withholding the asset retained (Article 69).
- The creditor has the obligation to preserve the asset retained: by derogation of the foregoing, the creditor may, with the authorization of the competent court ruling, expeditiously proceed with the sale of such asset due to its condition or the perishable nature of the latter or if expenses incurred due to its conservation exceed its value. In this case, the right of retention shall have an incidence on the sale price that will be recorded (Article 70).

Payments

Bank transfers are among the most commonly used payment methods in Benin as they are fast, secured, and supported by an increasingly developed banking network domestically and internationally. Verifying whether the bank is safe is sometimes necessary before transferring money, as the debtor requires an updated invoice to collect a change authorization from the Ministry of Finance. This regulation has been issued by the Central Bank to prevent money laundering.

Checks can be used as a debt recognition title as per the OHADA Law, as they demonstrate that a debt is certain and undisputed and can be used for fast-track proceedings or to lead to a criminal case, as the court can appose an execution title on the check.

Letters of Credit are most popular within the trade industry.



Late payment interest:

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



Collecting overdues

Amicable action

Negotiating

In Togo, except in the case of traffic accidents involving an insured vehicle and in social matters, there is no legal obligation to resort to a negotiation or conciliation phase prior to bringing the matter to the competent court to obtain condemnation of the debtor.

However, where the parties have inserted a friendly settlement clause in their contract in the event of a dispute, they must then seek an amicable settlement.

Similarly, if the parties stipulate an arbitration clause or mediation clause in their contract, they will be obliged to resort to an arbitrator or a mediator without ever going before the state judge in case of disputes. Generally speaking, the terms of the contract dictate the type of action to undertake.

Likewise, if a dispute arises, the parties may decide, even in the absence of any clause in the contract relating thereto, to bring it before an arbitral body or to submit it to mediation and not to a court of law.

There is an arbitration body in Togo called the Court of Arbitration of Togo (CATO) and a Community Court of Arbitration of the CCJA.

Legal action

Ordinary proceedings

Any legal proceedings begin with a summons to pay, by way of bailiff to the debtor. This summons, which details the principal and expense claim, gives the debtor variable time to execute.

In the absence of execution within the time limit, the creditor has the choice between several procedures.

The first procedure is related to a receivable that is liquid, due and has a contractual cause – or based on the issue or acceptance of any commercial instrument or check whose provision proved to be non-existent or insufficient. The creditor may submit a request to the president of the court of the debtor's domicile, for the purpose of obtaining an order for payment against them. This order can be obtained within 24 hours.

The debtor may lodge an objection against this order within 15 days of service and bring the matter before the court. Proceedings on the debtor's opposition may take from one to two months and the decision will be obtained no later than three months after the institution of proceedings.

The debtor may appeal against the judgment rendered on his opposition to OIP before the Court of Appeal in whose jurisdiction the court is situated, but they must do so within one month from the delivery of the judgment on pain of foreclosure.

The second procedure relates to a debt that is commercial but does not have the characteristics mentioned above. The creditor may apply to the commercial chamber of the court of the debtor's domicile for an

action in payment against the debtor. This procedure cannot exceed a period of three months to reach a decision and a further month to obtain a copy of the decision.

The debtor may appeal against the decision within one month of its service before the Court of Appeal in which the commercial court is located. This procedure can last four to six months.

In the case in the first procedure, the appeal against the judgment of the Court of Appeal can only be made before the CCJA and it can only intervene within a period of two months from the service of the judgment of the judgment of appeal.

Necessary documents

An extract from the commercial register, clearly showing the business name, company name, address, social form and method of administration (in the case of a legal entity); All documents to prove the claim and on which the claim is based (commercial invoices, payment receipt, promissory note, bill of exchange, unpaid check, the sales contract signed by the two parties, etc.).

Time limitations

In Togolese law, everything depends on the nature of the claim. If the claim is commercial, the law lays down a general limitation period of five years from the event giving rise to the claim. If the claim arises from a commercial sale, the limitation period is shorter: it will be two years from the event giving rise to the claim.

Provisional measures

Provisional measures exist in Togolese law. According to Article 54 of the OHADA Uniform Act on simplified procedures for recovery and enforcement, where the claim appears to be well founded and recovery is threatened, the creditor may request the president of the court to order a protective measure on all the movable, tangible or intangible property of the debtor.

The burden of justifying that the claim is grounded in principle and that there are circumstances that threaten recovery weighs on the creditor.

Collection methods @ 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.

The order therefore allows the creditor to seize the debtor's bank accounts or the tangible or intangible assets of the debtor. The seized property then becomes unavailable. The order authorizing the creditor to apply a precautionary measure lapses if the measure has not been applied within one month from the date of the order.

Similarly, the precautionary measure lapses if the creditor does not bring an action for obtaining an enforceable title within one month from the date on which the precautionary measure was imposed. Once the enforceable title has been obtained, the protective measure is transformed into an implementing measure and the creditor may, according to the measure, carry out a conversion into seizure attribution or seizure sale.

Lodging an appeal

Under Togolese law, pre-appeal authorization is provided for. Decisions rendered by the court of first instance are subject to appeal once the conditions of deadline and form are respected.

However, the decision of the Court of Appeal can only be challenged before the Joint Court of Justice and Arbitration, which has its seat in Abidjan, Côte d'Ivoire. The Supreme Court of Togo does not have jurisdiction to hear disputes arising from the application or interpretation of a uniform act of OHADA.

Enforcing court decisions

When the time limits for appeal are exhausted, the decision becomes final. The creditor must make administrative formalities with the court or court registry, depending on the nature of the decision, in order to obtain a certificate attesting to the exhaustion or absence of appeals.

The decision must subsequently be registered and the stamp duties paid to the tax authorities. In the case of a conviction, the registration fee is fixed at CFA 4,500. In the case of damages, the rate is 5% of the amount of the damages.

The decision becomes enforceable only when all formalities have been completed. The creditor can then proceed to enforcement action on the debtor. These measures are diverse and varied and left to the discretion of the creditor. The creditor can therefore opt for a seizure assignment of debt by seizing the bank accounts of their debtor. They may choose to go to a seizure sale of tangible personal property from the debtor. This seizure may occur whether the property is in the hands of the debtor or those of a third party.

How long could legal action take?

In the first instance, before the commercial chambers, a decision can normally be obtained within three months, plus one additional month to obtain a copy (four months in total).

The decision shall become final when the period of recourse, which is generally one month from the date of service, is exhausted. However, if the debtor does not appeal the decision of the first instance, the final and binding decision may be obtained within six to seven months from the date of the introduction of the decision before the court.

Whatever the enforcement action chosen by the creditor, if the debtor does not raise a challenge, the procedure shall not last more than two months.

How much could this cost?

The costs of the proceedings are threefold: (i) the costs of bailiff, (ii) transplant costs, and (iii) *cautio judicatum solvi*.

Bailiff costs include CFA 30,000 for service of the document instituting proceedings per person, CFA 30,000 for service of the judicial decision per recipient, CFA 150,000 for the seizure report, CFA 30,000 for the denunciation of the seizures, and CFA 75,000 for disbursement minutes.

Transplant costs consist of CFA 9,000 for enrolment fees to the court, CFA 9,000 for obtaining the decision, CFA 16,000 for enrolment to the Court of Appeal, and CFA 9,000 for obtaining a judgment.

Cautio judicatum solvi refers to when the creditor is a foreigner to the OHADA zone and is not a French national, and the court before which the action is initiated fixes a bond which the creditor is bound to pay.

The amount fixed by the court and recorded by the creditor is returned to them at the end of proceedings, once their case is successful.

The amounts indicated above do not take into account the costs inherent to the incidental procedures induced by the debtor's reactions.



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.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

The parties to a dispute may have recourse to Alternative Dispute Resolution (ADR) methods such as arbitration.

Arbitration is a more straightforward means of settling a dispute insofar as the parties agree to rely on an independent and impartial third-party arbitrator, who is given authority to settle their dispute on their behalf. As an out-of-court settlement method, arbitration is very effective: it is cost-effective, generally reduces delays, allows preserving confidentiality and offers a binding decision which may then be enforced before the courts if necessary. The CCJA gives notice prior to the adoption of the Uniform Acts and settles disputes between states as to the construction or application of the Treaty. It organizes arbitration but does not arbitrate itself. It appoints or confirms the arbitrators, is informed of the progress of the arbitration and examines the draft of awards to be granted or sentenced. It may decide on an exequatur for the specific enforcement of an arbitral award rendered in a state.

Enforcing foreign awards

In order to enforce a foreign court decision in Togo, it must be enforced by an exequatur. However, there must be judicial cooperation or a recognition enforcement treaty between Togo and the country where the decision is made.

For example, Togo has a judicial cooperation agreement with France, its former colonial power. Similarly, there is a legal cooperation agreement between Togo and 12 African countries through the OCAM (General Convention of Cooperation on Justice) treaty signed in Antananarivo on 12 September 1961.

Before enforcing a foreign deed, court decision or arbitral award, it is important to know whether the decision cannot be suspended by any type of appeal and if the decision has been declared enforceable by a court decision in the state where enforcement is sought.



Handling insolvent debtors

Insolvency proceedings

Out of Court Proceedings

No law provides for such a procedure in Togo.

Restructuring the debt

The Uniform Act provides two different types of restructuring of the debt. The first is the preventative settlement, which is available to any individual pursuing commercial activities and any corporate body pursuing commercial or non-commercial activities, including publicly owned companies. The purpose of this process is to allow the debtor to improve their financial situation and become a viable business. Only the debtor may commence this type of proceeding and must not be insolvent at the beginning of proceedings. The debtor may file an application, addressed to the president of the court, listing any debts for which they wish to obtain a suspension of enforcement. The application must be accompanied by several documents and liabilities, including the description of cash flow, details of the workforce and associated costs.

Within 30 days, the debtor must also file an offer of composition, in which they must specify how the financial situation of their company will be remedied. Once the president of the court received the composition order, an order to suspend individual proceedings – including provisional and enforcement measures – will be granted, along with a prohibition of any new proceedings. The only exception is granted to the debtor's employees, while all other creditors' claims are suspended.

The president of the court also appoints an expert to prepare a report on the economic and financial situation of the debtor, including prospects for recovery and measures within the composition offer. The expert proposes measures to the debtor and creditor in an attempt to reach an agreement. Within three months, the expert files a report outlining the composition agreement as proposed by the debtor or agreed by both the debtor and creditor(s). The debtor then appears before the court, together with the expert and creditor, to hear the court's decision. If it is found insolvent, the court orders the debtor to be put in administration of liquidation. The court can also reject the composition and cancel the preventative settlement if it finds that the debtor's financial situation does not warrant such measures. If the court considers preventive measures appropriate, a judgment will be issued and the composition agreement ratified. Appeals are not admissible regarding the suspension of individual proceedings, but may be filed regarding the judgment ratifying the composition agreement within 15 days. Administration, or legal redress, is the second way to restructure debt under the Uniform Act. In this stream, the debtor must file a declaration of cessation of payments to the court, in order to open proceedings for legal redress or liquidation of property, regardless of the nature of the debts. The declaration must be made within 30 days of the cessation of payments and must include the following documents, drawn up on the same date as the declaration: (i) an



extract of registration in the Trade and Personal Property Credit Register, (ii) summary financial statements, (iii) a cash position, (iv) a statistical statement of claims and debts, including the name and residence of creditors and debtors, etc. The debtor must lodge a composition proposal specifying the measures and conditions envisaged to redress the company within 15 days of the declaration. Collection proceedings may also be initiated at the request of the creditor regardless of the nature of their claim, as long as it is unquestionable, liquid and due. The creditor's writ of summons specifies the nature and amount of the claim, including proof of debt. The debtor has the possibility of making the declaration and the composition proposal within one month of the writ of summons. If the court finds that the company is insolvent it orders administration or liquidation, though this judgment is subject to appeal. It is registered as soon as possible with the RCCM, with extracts also published in a legal journal, together with an invitation to creditors to declare their claims. The administrator is responsible for ensuring that the formalities are complied with.

The judgment must also appoint a judge to supervise the ensuing proceedings and one to three administrators (syndics). It has the effect of constituting a single body of creditors; those concerned are those whose claims against the debtor arose before the date of judgment. The creditors are bound by the administrator's actions, as they act for their collective interest. All creditors belonging to the body of creditors must declare their claims within a period of 30 days following the administration second legal notice or within 60 days if they are located outside the country. The claims are verified by the administrator in the presence of the debtor and controllers. Any objections are notified to the creditor and to the judge, after which the creditor has 15 days (or 30 days for foreign creditors) to provide explanations regarding the objections.

Winding up proceedings

The court which has jurisdiction over commercial matters in the principal place of business, or registered office, of the debtor also has jurisdiction in

matters of liquidation. The proceedings with administration are the same to commence liquidation. A judge will order liquidation when it seems the debtor has not made a serious proposal for composition, or if it becomes apparent that the debtor is no longer in the position to make a composition proposal during the course of administration. The judgment ordering the date of liquidation determines the date of insolvency, which then delays the suspect period. The first stages are the same as within administration proceedings. The judgment also automatically entails the winding up of the debtor's company and the removal of the debtor from any involvement in administration or disposal of their assets.

The debtor is represented by a liquidator, who manages all correspondence regarding the debtor and acts in the creditors' collective interest as they declare their claims for verification. In liquidation, all of the debtor's debts that are not yet due become immediately due. Within one month of their appointment, the liquidator must provide the supervising judge with an estimate of the available or realizable assets, the secured and unsecured debts, and any possible financial liability of the debtor's management.

The liquidator sells the debtor's stocks and movable property, pays the debts and pursues the claims against third parties. If they do not have a final decision as to whether a claim is accepted, the corresponding amount is put in reserve.

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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