

Collection Profile Turkey

Collecting in Turkey

- The payment behavior of domestic firms has a significant margin for improvement and normal payment terms seem excessive. In fact, as a result of the trend in long payment duration, the value of unpaid receivables has grown considerably in recent years.
- Domestic courts lack independence, the rule of law perception is moderate, and the chances of obtaining payment through legal action are lower than through strong pre-legal negotiation efforts.
- Debt renegotiation proceedings before the courts are not generalized and when it comes to insolvency issues, liquidation remains the default proceeding even though liquidation sales rarely yield efficient results and may not be in the creditors' best interest.

Collection complexity



Complexity relating to

Notable Severe
→

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



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General information

Availability of financial information

Obtaining financial information on domestic companies may be difficult insofar as the domestic market generally lacks transparency and visibility despite strict regulations being put into place.

By cross-verifying information provided by the buyers (on-site visits, extensive phone calls, etc.) or by specialized data providers, 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 is available for small businesses managed by an individual and for which no corporate 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. Limited Liability Partnerships (Komandit Sirket) alternatively offer limited liability to the partners.
- Limited Liability Companies (Limited Sirket, Şti) represent the great majority of businesses in Turkey because they require minimal capital funds (TRY 10,000) while the partners' liability is limited to their contribution. Joint Stock Companies (Anonim Sirket, AŞ) are used for larger structures willing to divide their capital (at least TRY 50,000) into shares. In these entities, the shareholders' liability is limited to their capital commitments.
- Foreign companies may alternatively settle in Turkey through Branch Offices, which provide no liability limitations to the foreign parent company. Joint Ventures may take the form of commercial partnerships (Komandit Sirket and Kollektif Sirket) but they may also be set up through incorporated entities as listed above.

Regulatory environment

Turkey has a Civil Law system inspired by Swiss, German and French law, and in which the judiciary is made up by two distinct bodies of law. On one hand, the ordinary jurisdiction divides into Courts of Ordinary (Civil and Criminal) Jurisdiction rendering decisions in first instance, District Courts of Appeal and a Court of Cassation, acting as the court of final jurisdiction on civil law matters. In relation to business, disputes are dealt with by specialized commercial (Ticaret Mahkemeleri), intellectual and industrial property (Fikri ve Sinai Haklar Mahkemeleri), labor (İs Mahkemeleri) or enforcement (İcra Mahkemeleri) courts. On the other hand, the administrative jurisdiction exclusively focuses on disputes involving public bodies through Tax and Administrative Courts in first instance, District Administrative



Days Sales Outstanding (DSO): Paying behavior of domestic firms has room for improvement, with the average DSO for listed companies at 83 days.



Courts acting as Appellate Courts and a Council of State acting as the final jurisdiction instance.

Overall, although Turkish authorities emphasize that the country has made significant efforts to harmonize domestic rules with EU standards, the judiciary is not fully independent, business lawsuits remain slow and costly, and there is margin to improve the rule of law perception in the country.

Getting Paid

Days Sales Outstanding (DSO)

The paying behavior of domestic firms has significant margin for improvement. While parties are free to determine their own rules for payment terms, average delays of up to 30 days must be expected. As a result of this long payment duration trend, the value of unpaid receivables has grown considerably in recent years. The latest average DSO for listed companies was 83 days.

Late payment interest

A buyer would normally be considered in default when an invoice has been left unpaid after 30 days of the date of receipt, or following delivery (if the receipt date of the invoice cannot be determined). Interest on late payment may then be charged to the debtor as prescribed through a contract or taking the 9.75% interest rate (per annum) normally applied by courts (under Law No. 3095 on Legal Interest and Default Interest). Late payment interest often constitutes a negotiation tool during the amicable collection phase, though it may be added to the claim when legal action commences. In most cases, the courts would then calculate interest automatically.

Debt collection costs

Collection costs must be settled as provided in the contract though they would rarely be charged to the debtor in practice and would rather serve as a negotiation tool. Even if there is no related clause in the contract, when legal action is commenced the court would normally order the defeated party to pay collection costs (Law No. 6100 on Civil Procedures, Law No.492 on Charges).

Ownership protection

Use of Retention of Title (RoT) agreements, aiming to preserve ownership of goods until the related invoice is paid in full, are admissible in Turkey provided that the provisions have been registered with a notary in the debtor's place of registration. It should be noted that RoT agreements do not provide a complete safeguard, particularly when goods are sold by the debtor to a third party acting in good faith, when legal action becomes impossible.

RoT agreements are normally used to gain priority during insolvency proceedings however, when the debtor fails to fulfil their payment obligations, the creditor may also rely on a RoT to request the return of the goods. Unless the parties reach an amicable solution, however, commencing legal action would be necessary.

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, transfers are usually guaranteed through Export Credit Insurance, which helps minimize the risk of sudden or unexpected customer insolvency.



Late payment interest:

Interest on late payment may be charged to the debtor as prescribed through a contract or taking the 9.75% interest rate.



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, since 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) are increasingly relied upon. Although bank guarantees are fairly available, promissory notes and checks are often used in Turkey as transferable debt recognition titles, allowing the holder to acquire a Payment Order from the Enforcement Bureau (İcra Dairesi) and to obtain seizure of the debtor's assets without going through the courts. Importantly, bounced checks may also generate heavy financial penalties and since 2012, the issuer can be prevented from using checks for ten years upon the decision of an administrative judge.

Collecting overdues

Amicable action

Negotiating

Given the difficulty in obtaining timely decisions from domestic courts, amicable settlement opportunities should always be considered as the best alternative to formal legal proceedings. 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 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).

Legal dunning should then start with a registered Demand Letter, recalling the debtor's obligation to pay the principal together with late payment interests, however in practice it is very important to rely on a collection agency with local correspondents, as they will be able to establish a dialogue with the debtor.

Obtaining transactions in the form of a debt instalment is rather satisfactory, but if the debtor rejects discussions, having a collection specialist threatening to commence execution proceedings at a bailiff's office usually helps exercise further pressure.

Legal action

Ordinary proceedings

When the debt is certain and undisputed, Law No. 2004 on Execution and Bankruptcy provides fast-track Payment Order proceedings before the bailiff's office for the recovery of the debt. The debtor is then summoned to pay or submit their objections within seven days (five days if the debt stems from a bill of exchange) from the service date of the Payment Order. If the debtor stays silent, the creditor may obtain attachment of the debtor's movable and immovable properties (including bank accounts) and also the debtor's receivables from third parties. If the debtor brings a defense, the claim must be resolved through an ordinary lawsuit. Ordinary legal action would usually commence when amicable collection has failed. The creditor would file a claim with the court and notify the debtor, whom is given up to two weeks to file a defense. The parties are then given an opportunity to exchange arguments and evidence but, prior to rendering a decision, the court would normally encourage the parties to negotiate a compromise (although rarely achieved in practice).

The courts normally award remedies in the form of damages, specific performance, declaratory judgments or injunctions (to do or abstain from doing something), but punitive damages are not available.

Necessary documents

Invoices, accounting statement, selling contract, purchase orders, shipment documents, and customs document for exportation.

Time limitations

Time limitations for filing claims range from two to ten years depending on the cause of action. As a general rule of debt law, the creditor should commence proceedings for debt collection either through the courts or execution offices within ten years of the due date, should there be no tighter time limitation provided by any other statute.

Precautionary measures

The law on Civil Procedures provides precautionary measures to help preserve the creditor's interests pending a final decision. Upon request, the courts could order provisional measures aiming at preserving the status quo and at avoiding irreparable damage (attachment of the debtor's assets, mandatory injunctions to do something, prohibitory injunctions to prevent from doing something, declaratory judgments aiming at protecting a right, orders for the payment of interests, etc.). It would, however, be necessary to demonstrate that the claim has a good chance of succeeding and that damages alone would not suffice in the absence of precautionary measures. In emergency situations, the court may make its decision *ex parte* (i.e. without the debtor being present) but the court would usually request that the claimant provides security on costs in order to protect the respondent from irresponsible action. Precautionary measures must be enforced within one week of notification to the parties, though the debtor's counterclaims would not prevent enforcement. Turkish arbitration law entitles arbitrators to order precautionary measures.

Lodging an appeal

Decisions rendered by first instance courts may be appealed before the District Court of Appeal and the decisions rendered by this court may be appealed before the Court of Cassation. Filing periods for appeals vary from eight days to one month, with respect to which type of court the decision is rendered from. There are also monetary restrictions that prevent lower-value cases from being subject to appeals. For such cases, decisions of first instance courts are absolute.

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.

Enforcing court decisions

First instance court judgments ordering the payment of a debt are enforceable as soon as they have been served to the parties, even if the defeated party has appealed against the court decision. A debtor wishing to halt the execution office proceedings until the decision of the Court of Cassation must provide an acceptable security, valued as (in common practice) the entire debt amount plus 90 days of interest, and obtain a stay order from the Court of Cassation. If the debtor fails to pay or to act, the creditor may request garnishment of the debtor's assets and of third parties' receivables from the bailiff.

How long could legal action take?

Undisputed proceedings may take six months, however more complex cases may require seven years before a final and enforceable decision is rendered.

How much could this cost?

Litigation expenses mainly consist of term fees, expert/survey fees, witness fees and Court of Cassation fees. Term fees represent 6.8% of the claim, 25% of which must be paid by the claimant at the commencement of court proceedings together with an amount of around TRY 750 for expertise/survey fees and witness fees. As a general rule, the litigation expenses shall be imposed on the defeated party.

Contingent fees whereby the legal professionals are entitled to receive a percentage of the final award are not allowed by law.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Although the efficiency of Turkish courts has a significant margin for improvement, domestic companies hardly rely on Alternative Dispute Resolution methods such as mediation or arbitration (the Law No. 4686 on International Arbitration is applicable to disputes involving a foreign element and where Turkey has been chosen as the place of arbitration). In practice, however, the effects of ADR are limited and the courts' interference during the process is inevitable.

Foreign forums

Similarly, creditors could seek a judgment abroad and have it enforced against the debtor by domestic courts (provided that the agreement be characterized by an international connection and that a jurisdiction clause is specifically drafted for this purpose), though in practice the process is hazardous and would have very little effect. Firstly, the recognition and enforcement process would most likely be more time consuming than seeking a decision through domestic courts. Secondly, a certain degree of uncertainty should be emphasized insofar as the courts have consistently identified areas of exclusive jurisdiction, preventing the parties from avoiding domestic courts in certain circumstances.



Enforcing foreign awards

Enforcing foreign decisions aiming to bypass the authority of domestic courts would be futile, but legitimate foreign decisions against Turkish debtors may nonetheless be enforced in Turkey. Enforcing foreign decisions, under the Turkish International Private and Procedural Law No. 5,718 of 2007, normally requires recognition of the decision by domestic courts prior to enforcing it. As in most countries, the courts would normally ensure (among other points) that the foreign tribunal did not declare on subject matters falling exclusively under the jurisdiction of Turkish courts, that the foreign decision is final and binding in the issuing country, and that the ruling does not conflict with domestic public policy. The process is complicated by a tendency of domestic courts to conduct thorough exequatur proceedings focusing on the existence of reciprocity requirements, in the form of a reciprocal recognition and enforcement treaty, or of de facto reciprocal recognition practices. As a result, enforcement proceedings may be lengthy.

Turkey is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, therefore international arbitration awards ought to 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

The liquidation and bankruptcy procedure of a company in Turkey is governed by the Turkish Commercial Code (Law No. 6102) and the Execution and Bankruptcy Law (Law No. 2004). In 2003 and 2004, amendments to the Execution and Bankruptcy Law indeed led to the introduction of additional procedures, as banking institutions recognized that supporting debtors facing economic turmoil (through restructuring procedures) could be more constructive and efficient than merely organizing their liquidation. Several Turkish institutions have entered into a consensual framework agreement since, and elaborated separate debt restructuring agreements with large debtors (Istanbul Approach) and small/medium debtors, as well (Anadolu Approach).

Insolvency proceedings

Out-of-Court proceedings

Turkish law provides no possibility to conduct out-of-court debt restructuring negotiations.

Restructuring the debt

Safeguarding proceedings are normally opened for debtors facing difficulties likely to make them insolvent even though their business is viable. These preventive measures may be commenced upon the debtor's initiative but, insofar as no time limitations are provided by law, they may well become detrimental to the creditors.

When the proceedings are conducted under court supervision, the debtor and their creditors would normally aim to negotiate a business continuation plan. It would then be possible to apply for an extension order shielding the company from enforcement claims for a year (extendable up to four years).

Winding up proceedings

Liquidation would in practice remain the default insolvency procedure. Creditors seeking their debtor's liquidation must first request payment of the debt through the competent execution office and obtain a bankruptcy payment order. If the debtor fails to pay within seven days, the creditor may file a bankruptcy lawsuit before the Commercial Court and request interim measures to be taken (preparation of an inventory of assets, appointment of a trustee, etc.). Once the bankruptcy decision is granted, it is sent to the bankruptcy office which then executes interim measures, supervises the proceedings, calls for the creditors' meeting and sells the assets. It should be noted, however, that since the office is not entitled to sell assets below certain thresholds, liquidation sales may be inefficient and would thus not be in the creditors' interest.

Priority rules

In the liquidation process, receivables secured by pledge, severance wage and pay in lieu of notice of labor, receivables of employees' provident funds, settlement for a spouse or children, preferred claims have priority over other types of receivables.

Under a Retention of Title agreement, ownership of the goods remains with the creditor who may therefore bring a claim arguing that the moveable goods in question are not within the bankruptcy assets.

Cancellation of suspect transactions (clawback)

All gifts granted two years prior to the issuance of a garnishee, insolvency or bankruptcy order may be cancelled. Pledges, payments for undue debts, and transactions with extraordinary payment methods may be cancelled if such transactions were conducted within one year prior to the order. Transactions detrimental to the creditors may also be cancelled if the creditors commenced execution proceedings against the debtor (through garnishment or bankruptcy proceedings) within five years from the transaction date and provided that the other party to the transaction was aware of the financial state of the debtor.

How long could insolvency proceedings take?

Debt restructuring proceedings ought to last one year but may be extended to up to four years in practice.



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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