

Collection Profile UAE

Collecting in UAE

- While the payment behavior of large domestic companies is generally good, dealing with small and medium size businesses may represent a significant risk of non-payment. Since insolvent debtors may be sentenced to a prison term, their tendency to disappear when things go wrong is significant.
- The legal framework is complex and the courts tend to lack independence and reliability, while procedural delays and costs may be prohibitive.
- Insolvency law does not provide much support when it comes to debt recovery: a debt renegotiation mechanism has been put in place, though in practice it remains largely untested allowing liquidation to prevail, thus leaving no chance of recovery for the creditors.

Collection complexity



Complexity relating to

Notable Severe
→

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



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General information

Availability of financial information

In general, access to reliable financial information is a challenge that is faced across the GCC (Gulf Corporation Council) region as a whole and obtaining such data in the UAE is very difficult as there is no legal requirement for companies to publish financials. An exception to this would be for publicly listed companies.

As a result, financial information on potential business partners is not readily available from independent sources, while documents provided by unofficial sources may not be completely reliable. Euler Hermes collects financial information mainly through direct calls and buyer visits conducted by credit analysts, and 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. However, given that the proprietorship is not a corporate entity with limited liability, the owner is liable for all business debts.
- Different types of partnerships are also available. A General Partnership is formed by two or more partners who will be jointly liable to the extent of all the assets of the partnership. Each partner shall be considered a merchant and the partnership's bankruptcy shall mean the bankruptcy of all partners. A Limited Partnership rather consists of one or more general partners jointly liable to the full extent of their assets for the partnership's debts, and one or more limited partners whose responsibility for the partnership's liabilities does not exceed the value of his share in the capital.
- There are several types of companies in the UAE. Limited Liability Companies (LLC) are the most common corporate vehicle used by foreign companies doing business in the UAE. A company must have a capital that is sufficient to achieve its purpose and shall be fixed by the partner, but at least 51% of the shares of an LLC incorporated in the UAE must be held by a UAE national or a company 100% owned by UAE nationals (or nationals of the countries of the GCC i.e. UAE, Saudi Arabia, Bahrain, Kuwait, Qatar, Oman). In practice and unofficially, the 'sponsor' gets a fixed annual percentage of the profit and a sponsorship fee without any investment in the company. Liability is limited to the shareholders' contribution to the LLC.
- A Public Joint Stock Company is a company with a capital consisting of transferable shares of equal value. Each partner is only liable to the extent of his share in the capital. The company's capital must be sufficient to carry out the objectives for which the company has been established but such capital cannot be less



Days Sales Outstanding

(DSO): Payment terms in the UAE have long been 30 days, although they increasingly tend to be extended up to 60 days



than AED 10 million. A Private Joint Stock Company is a company which does not offer its share for public subscription, but its capital cannot be less than AED two million.

- Foreign companies may also set up Branches in the UAE, although these have no separate corporate entity and their liability is not limited to their assets, meaning that recourse can be extended to assets of the parent company. Finally, Joint Ventures may be set up through a contract by two or more partners willing to share the profits or losses incurred from one or more commercial enterprise undertaken by one of the partners in their own name. Third parties can only make claims against the partner with whom they conduct business.

Regulatory environment

The UAE has a legal system based on Civil Law and Sharīah Law. It is a federation of seven Emirates sharing a common federal judicial system (with the exception of Dubai and Ras Al Kaimah). The judiciary is organized through courts of general jurisdiction, Appeal Courts and Cassation Courts. There are no specialist courts, which mean that all commercial disputes are heard by non-specialized judges.

In addition, it is necessary to distinguish local courts competent for all civil matters raised by companies registered in the UAE, from Freezones' Authorities (such as the Dubai International Financial Center) which apply different (Common Law based) rules and are competent for cases filed by companies registered in these Freezones only.

Getting Paid

Days Sales Outstanding (DSO)

Payment terms in the UAE have long been 30 days, though they increasingly tend to extend up to 60 days. The average DSO for listed companies is 62 days and varies greatly from one sector to another. Large oil & gas, construction or service entities, in particular, are likely to stretch their payment terms but would normally pay their dues. Smaller businesses (e.g. general trading) are likely to default on their debt, leaving their creditors without recourse. Indeed, since there is no efficient administration, insolvency or bankruptcy law in the UAE, and bearing in mind that defaulting on a payment obligation is a criminal offense, most small traders will choose the 'escape' route to avoid ending up in jail. In addition, most companies registered in the UAE are de facto ruled by foreigners who would tend to disappear when problems arise (sponsors are rarely involved in the business' administration and are not liable for the debts).

Late payment interest

As per Article 76 of the UAE Code of Commercial Practice, "A creditor shall be entitled to charge interest on a commercial loan according to the rate provided in the contract. If the rate of interest is not specified in the contract, it shall be reckoned according to the market rate prevailing at the time of the transaction, but in this case shall not exceed 12% until payment is made."

Debt collection costs

Collection costs are not charged to the debtor.

Ownership protection

Insolvency Law in the UAE recognizes the validity of Retention of Title agreements aiming at preserving the seller's ownership over goods until the related invoice has been paid in full by the debtor. In certain circumstances, in addition, the law also recognizes the possibility of maintaining ownership despite the sale of the goods by the debtor to a third party (Articles 118 to 119 of the Commercial Code). In practice, however, enforcing such clauses remains extremely difficult and, by the time proceedings have taken place (if any), there is no guarantee that the goods will still be there once time comes for repossession.

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. Export transactions are usually 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.



Late payment interest:

A creditor shall be entitled to charge interest on a commercial loan according to the rate provided in the contract.



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) are increasingly relied upon. Local bank guarantees are available but the process can take up to one week.

Checks are commonly used as payment instruments since they constitute reliable debt recognition titles which, if left unpaid, may be enforced directly with the court. In addition, a person may be punished by imprisonment (one month to three years) and/or fined AED 100 to AED 30,000 if they deliver in bad faith a check without sufficient consideration. A noteworthy trend is the usage of Post-Dated Checks, which are thus used as a guarantee for payment. Having said this, in practice, the possibility of bouncing checks is very high in the region.

Letters of Credit, although decreasing in popularity, are still an attractive means of payment for businesses because they are a source of short-term financing by means of discounting or transfer. In particular, they are appropriate for payments in instalments. Payment in advance and down payments are frequent.



Collecting overdues

Amicable action

Negotiating

Despite obvious improvements over the past few years and a clear intention to speed up business-related queries, the judiciary of the UAE has significant margin for improvement. Although the principle of the independence of the judiciary and the rule of law being recognized in the Constitution of 1971, domestic courts lack reliability and independence in practice, so obtaining favorable court decisions remains an uncertain exercise. In fact, it is often not advisable to commence legal action before domestic courts, unless the claim is significant and the chances to succeed are good. As a result, amicable settlement opportunities should always be considered as a serious 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 at 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.

Legal action

Ordinary proceedings

Legal dunning ought to start with a registered Demand Letter recalling the debtor of their obligation to pay the principal together with late payment interest.

Often, business disputes may be settled before a Reconciliation and Settlement Committee (in Dubai, every dispute below AED 50,000 must be brought before the Centre for Amicable Settlement of Disputes).

If the amicable negotiation phase fails, the Civil Procedure Code considers a summary judgment procedure, provided that the debt is for a specific or liquidated sum and that it is certain and undisputed (i.e. confirmed in writing through a commercial document). In this case, the debtor is served and must pay (or bring a defense) within 15 days. If a defense is filed, the dispute must be resolved through an ordinary lawsuit before the court of first instance.

Ordinary legal action should be avoided, but if undertaken, proceedings would usually commence when amicable collection has failed. The creditor would file a plaint with the court, which would then serve summons to the debtor. The latter would be required to file a response and written arguments would then be exchanged by the parties: all court proceedings in the UAE are in writing, there is virtually no oral hearing in civil cases. Of course, all proceedings are conducted in Arabic and all documents must be translated.

The courts would normally issue remedies in the form of specific performances and compensatory damages, but injunctive relief is generally unavailable in the UAE while attachment orders are difficult to obtain; there must be a prima facie case against the defendant and a real risk that the requesting party may not be able to enforce the judgment. In practice, it is difficult to obtain such an attachment against the assets of a UAE national or a UAE company as it is difficult to establish the risk of dissipation of such assets. Only in rare cases would a litigant be able to recover consequential losses and/or punitive damages in the UAE.

Necessary documents

A Power of Attorney authorizing a lawyer to act on behalf of the client must be duly notarized. If notarized in the UAE, it must be bilingual and therefore drafted in English and Arabic. If originated outside the UAE, it must be notarized by a competent authority in the customer's home country and later legalized and authenticated by the UAE Embassy and the Ministry of Foreign Affairs in the UAE. This document must be forwarded to the lawyer before or at the time of filing the case. Furthermore, all evidentiary and supporting documents must be translated in Arabic by a certified legal translator and submitted with the originals.

Time limitations

In Civil Law matters, Article 473 Civil Code sets the standard timeframe at 15 years. However, in many cases the applicable timeframe will be a lot shorter. For instance, contract breaches would need to be brought within 15 years, while bounced checks would need to be brought within one to three years.

Provisional measures

There is no concept of interim or injunctive relief available from the UAE courts for an attachment of assets but, assuming that a case has been filed with the court, the judge can grant a provisional attachment of assets if there is a risk that the defendant will not make payment or a risk of dissipation of assets. In practice, however, these proceedings are rarely awarded and the claimant would be required to demonstrate that the claim has a good chance to succeed 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) on a same-day basis, but the court would usually request that the claimant provides security on costs in order to protect the respondent from irresponsible action.

Lodging an appeal

Decisions rendered in first instance by civil courts may be brought to the Court of Appeal within 30 days, where the decision will be reviewed considering questions of both fact and law. The Court of Appeal may either confirm or reverse the judgment of the Court of First Instance and substitute the judgment with its own determination of the matter. In some instances, the Court of Appeal may refer the matter back to the Court of First Instance. Except in Ras Al Kaimah, the decision rendered in second instance may be appealed to the Cassation Court, which only reviews legal issues (improper interpretation of the law, failure to state reasons, failure to abide by procedural requirements, etc). It is not until several weeks and sometimes months later that the oral hearing will be scheduled, however appeal proceedings before the Court of Cassation do not normally prevent the enforcement or execution of the judgment delivered by the Court of Appeal.



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:

A judgment is enforceable as soon as it becomes final (i.e. when all appeal venues have been exhausted). If the debtor fails to satisfy the judgment within 15 days, and as long as the debtor's assets may be located, it is possible to obtain an attachment order from the Execution Court and, in extreme circumstances, imprisonment of the debtor.

The execution procedure may seem straightforward but it can become time consuming and complicated depending upon the existence of the assets of the debtor.

Due to the lack of specific regulatory framework, arbitral awards may prove difficult to enforce.

How long could legal action take?

Obtaining a decision in first instance could take between nine months and two years, depending on the complexity of the case. In addition, it is frequent for a defendant to file for appeal proceedings in order to delay enforcement. Enforcement may then be difficult, especially if the debtor has taken the 'escape' route, as previously explained.

How much could this cost?

As a general rule, the successful party may only expect to receive compensation for part of its legal costs (AED 2,000 on average), but court fees (4% to 7.5% of the claim, capped at AED 30,000/USD 8,000) may be fully recovered. Court fees would vary depending on the resolution requested and on the court where the resolution is being sought.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

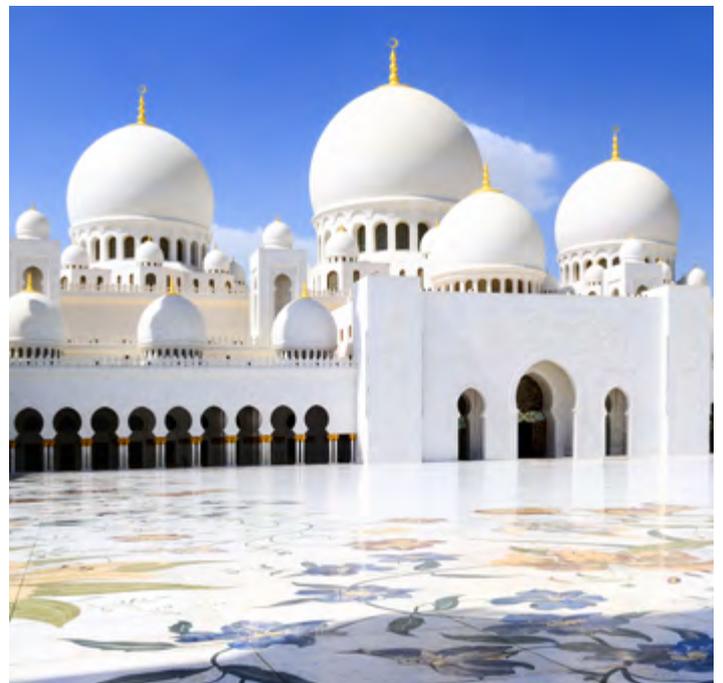
Arbitration constitutes an increasingly popular Alternative Dispute Resolution method, even though reaching an acceptable compromise may be culturally challenging. Having said this, the practice lacks a definite legal framework. Enforcing awards may also prove difficult.

Foreign forums

It must be emphasized that, although the law allows business partners to solve their disputes in a foreign forum (i.e. under a foreign law or before a foreign court), courts in the UAE are reluctant to apply foreign law and would typically ignore foreign jurisdiction provisions if they find themselves competent to deal with a dispute. In addition, even though domestic courts might agree to apply foreign law, they might interpret it without taking into account the case law applied in the jurisdiction of origin. Finally, UAE courts would most generally retain exclusive jurisdiction over various areas of law (such as government contracts, transportation by sea, insurance law, employment law, property law, etc.) and over any other matters deemed of public order in the UAE.

Enforcing foreign awards

Enforcement of foreign awards by domestic courts issued against nationals tends to be difficult. In order to be considered enforceable,



foreign judgments must first be recognized as domestic judgments. When bilateral or multilateral reciprocal recognition and enforcement treaties exist (such as the Riyadh Convention), this requirement is normally a formality.

However, in the absence of such agreements, exequatur proceedings aim to ensure that the enforcing tribunal did not have exclusive jurisdiction to decide on the claim, verify that the decision was rendered by a competent court and that it is final and enforceable in the issuing country, and that the parties both benefited from a due process of law. The courts, finally, would also ensure that the foreign decision does not contradict previous decisions rendered by UAE courts and that enforcement does not contradict public morality and public order in the UAE.

The UAE became a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 in 2006; therefore foreign arbitral awards ought to be enforced by domestic courts. Recent case law dated 2013, however, contradicts previous 'pro foreign awards' decisions and suggests that even awards falling under the Convention would in practice be subject to the rules set forth in the Civil Procedure Code. This news is considered by some practitioners as a serious and worrying setback, as it implies that traditional international arbitration schemes would be rendered potentially ineffective.

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

A new UAE bankruptcy law (Federal Law No. 9 of 2016) – the New Bankruptcy Law – was published on 29 September 2016 and came into effect on 29 December 2016. Although it is still too early to assess the practical effects of the new law, there is a general consensus among industry practitioners that the new law is a welcome development and is likely to have far reaching effects on the way business is conducted in the UAE.

The New Bankruptcy Law repeals and replaces the bankruptcy and restructuring provisions set out in Chapter V of the Commercial Code (Federal Law No. 18 of 1993) – the Commercial Code – bringing forward a number of material changes from the previous law.

Insolvency proceedings

Out-of-Court proceedings

A debtor may apply for a Preventive Composition Proceeding “if they encounter financial hardship that requires assistance to reach a settlement with their creditors” and if they are not in default of their payment duties for more than 30 consecutive days.

According to Article 5 of the Bankruptcy Law, “the purpose of the preventive composition procedure is to assist the debtor to reach settlements with their creditors under a preventive composition scheme, under supervision of the court” and by the assistance of a trustee.

The Preventive Proceedings are handled by a trustee with the assistance of the debtor and the supervision of the court. Such proceedings shall conclude with the elaboration of a Preventive Composition Scheme that shall contain the terms and conditions of the debt settlement, which the creditors shall approve.

With the aim of this procedure to protect the debtor’s patrimony, the debtor is prevented from disposing of their patrimony and the creditors shall see their proceedings against the debtor suspended, unless otherwise is decided by the court.

Restructuring the debt

As per Article 3.1 of the UAE Bankruptcy Law, the UAE Council of Ministers, known as the Cabinet, shall issue a resolution forming the so-called Financial Restructuring Committee. The committee’s role is still to be defined in detail through such resolution; however, the Bankruptcy Law has advanced some of the committee’s functions. Hence, it is expected that the committee will deal mainly with two matters. Firstly, the committee shall oversee the management of the enterprises’ financial restructuring procedures by the assistance of experts in order to facilitate consensual agreements between creditors and debtors.

In addition to that, the committee shall set up and regulate a registry for the disqualified persons and directors against whom judgments have been issued imposing bankruptcy restrictions and orders. This kind of registry has been long requested by companies operating in the UAE that were unable to discover the financial health of the companies they were financing.



Winding up proceedings

The Bankruptcy Proceeding may be filed by: (a) the debtor, if they cease repayment of their debt on maturity dates for over 30 consecutive business days; (b) the creditor(s) holding an ordinary debt of at least AED 100,000, if the debtor fails to repay the due debt within 30 consecutive business days from the date of being notified; and (c) the court, upon request from the Public Prosecutor proving that the debtor is in the condition of account receivable.

These procedures governed by the Bankruptcy Law regulate two scenarios, depending on the financial health of the company: (i) the debtor’s restructuring, if possible, by assisting in applying the business restructuring scheme; and (ii) the debtor’s declaration of bankruptcy, by assisting in proceeding with a fair liquidation of properties to discharge their obligations.

The debtor’s restructuring procedure is, as the Preventive Composition Proceedings, handled by a trustee with the assistance of the debtor and the supervision of the court. Such proceedings shall conclude with the elaboration of a Restructuring Scheme within three months, which shall contain the terms and conditions of the debt settlement, to be voted by the creditors.

The debtor’s declaration of bankruptcy shall take place via judgment when settlement of the debts could not be reached, regardless of the reason. Upon issuance of the judgment, the creditors shall file their claim within ten business days or otherwise discarded. The bankruptcy proceeding will also be handled by a trustee appointed by court, who will audit and liquidate the debtor’s assets that do not fall under the protection of assets provisions contained within Article 132 of the Bankruptcy Law.



Priority Rules

Having liquidated the assets, the trustee shall distribute the liquidation revenues based on priorities among creditors as per the provision of the law. Pursuant to Chapter 6 of Section 5 of the Bankruptcy Law, the priority payments shall be as follows: (i) the trustee's expenses in the process of selling the guaranteed properties; (ii) creditors holding guaranteed debts; (iii) judicial, expert or trustee's fees or expenses; (iv) labor entitlements of employees; and (v) debts of maintenance paid by the debtor as per a competent court's judgment.

Cancellation of suspect transactions (clawback)

Clawbacks and Shareholders: (i) the trustee may conclude that past dividend payments were made from fictitious profits – indefinite retroactive exposure under Article 30 of the Commercial Companies Law; (ii) the trustee will call back any loans made by the debtor company to shareholders.

Clawbacks and Banks: Wide-ranging clawback provisions in New Law, Article 168 (i) donations/gifts; (b) prepayment of debt; and (c) fresh guarantees over debtor's assets for past debts can be reversed if the creditor had knowledge of the negative financial situation.

Banks will often be exposed because they have knowledge of their customer's difficulties, therefore: (i) loan facility agreements mandate notification to the company's bank; (ii) loan facility agreements usually

permit banks to call facilities immediately if informal insolvency process initiated; and (iii) UAE banks in time, will likely establish monitoring systems to keep track of bankruptcy procedures initiated in the courts.

How long could insolvency proceedings take?

Despite numerous requests for the criminal sanctions to be removed from the bankruptcy proceeding, it is still a type of sanctioning tool that UAE courts may impose. Hence, the Bankruptcy Law's Section 6 of Chapter 7 sets out a set of scenarios in which an imprisonment sentence can be imposed on the board of directors, managers, liquidators, trustee or expert when their actions cause damage to the debtor's patrimony in the detriment of the creditors. The length of these imprisonment sentences may range between one to five 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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