

Collection Profile Russia

Collecting in Russia

- The payment behavior of domestic firms is often poor and the businesses themselves frequently have complex legal structures. Payment terms are not fully regulated and Russian counterparties try to renegotiate conditions, requesting postponement of payments or ignoring contractual obligations.
- Courts can be fairly efficient when a debt is certain and undisputed, but legal proceedings may otherwise be complex (no default judgments, no fast track proceedings above EUR 4,000 even if the debt is certain and undisputed) and cannot be avoided through Alternative Dispute Resolution methods (which is not relied upon) or through foreign courts (since Russian courts apply extremely strict jurisdictional exclusivity rules).
- Insolvency proceedings ought to be avoided. A debt renegotiation mechanism is indeed available, although it is unused in practice. Liquidation is therefore the default procedure, but unsecured creditors would have very limited chances of recovering their debt.

Collection complexity



Complexity relating to

Notable Severe
→

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



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General information

Availability of financial information

It is often difficult to collect financial data on domestic companies due to a general lack of integrity and complete information. Euler Hermes uses open resources, information agencies and an in-house information team to obtain proprietary information and allocate 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 commercial structure is necessary. In this case, the owner is held liable for all business debts. Since 2012, two to 50 shareholders may also decide to share ownership and responsibilities through limited Partnerships.
- Limited Liability Companies (Obshchestvo s ogranichennoi otvetstvennostyu, OOO) represent the great majority of businesses in Russia since they are the most flexible, requiring minimal capital funds (RUB 10,000) while the partners' liability is limited to their contribution. Non-Public Joint-Stock Companies (Nepublichnoe akzionerное obshchestvo, NPAO) are used for larger structures willing to divide their capital (at least RUB 10,000) into at least 50 holders, while Public Joint-Stock Companies (Publichnoe akzionerное obshchestvo, PAO) would aim at trading shares publicly. In these entities, the shareholders' liability is of course limited to the value of their shares.
- Foreign companies may alternatively settle in Russia through Branch Offices, which provide no liability limitations to the foreign parent company. Representative Offices may also be set up but these cannot generate cash. Joint Ventures may take the form of any legal structure listed above, but incorporation is not necessary, so a contract drafted for this purpose would suffice.

Regulatory environment

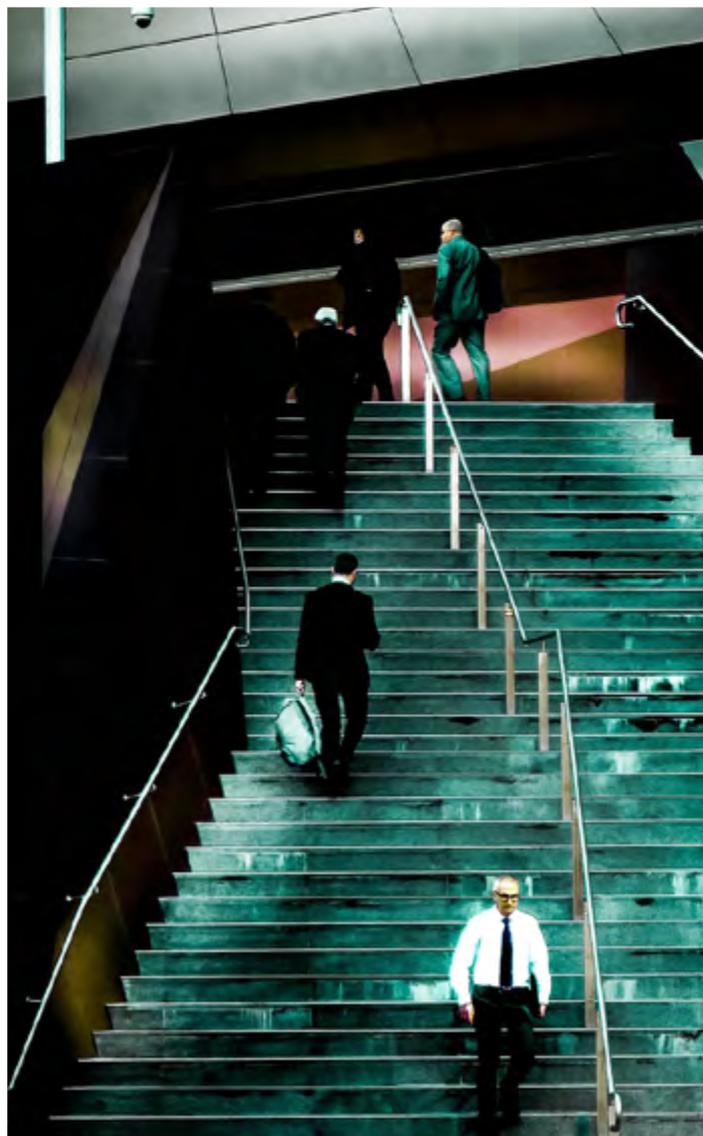
The Russian legal system is built on Civil Law principles, which means that regulations tend to be codified rather than developed by the courts through the case law.

The judicial system is complex as it divides into courts of general jurisdiction (mostly concerned with personal disputes), more than 80 Arbitrazh Courts focusing on commercial disputes, roughly 20 Appellate Arbitrazh Courts, ten Federal Arbitrazh Courts (acting as cassation courts), a Supreme Court (acting as a supervisory court), and a Constitutional Court. In parallel to this multifaceted court hierarchy, the law is divided between the Civil Procedure Code (applicable to the courts of general jurisdiction) and the Arbitrazh



Days Sales Outstanding (DSO)

(DSO): The payment behavior of Russian debtors is extremely poor while the law provides no general framework on payment terms.



Procedure Code (applicable to the Arbitrazh Courts).

A specialized court was also created in 2012 to deal with intellectual property matters, but it is not clear whether it is operational yet. Since 6 August 2014, the Supreme Court is the court of supervisory appeal within the system of Arbitrazh Courts.

Getting Paid

Days Sales Outstanding (DSO)

The payment behavior of Russian debtors is often poor and the law provides no general framework on payment terms. The food sector has a 10- to 45-day payment standard by law, but this is not observed in practice. Otherwise, contractual terms provide a 30- to 60-day basis on average, while in some industries 60 to 90 days is common. Payment delays are fairly common although difficult to quantify.

Late payment interest

The law provides some framework on late payment interest. In accordance to the Civil Code (Article 395) the late interest is equal to the key rate approved by the Central Bank of Russia to the corresponding period. This rate applies even if it not stipulated in the contract. However, if a rate is stipulated in the contract and it is higher, the contract rate applies. In practice however, a lot of effort must be put into obtaining late payment interest

Debt collection costs

The law does not regulate collection costs incurred during the amicable phase. When collection is made through court proceedings, the creditor has the right to ask the court to reimburse the cost. The court will award the costs if the decision is in favor of the creditor (Article 110 Civil Code).

Ownership protection:

In practice, creditors can return goods only through negotiation. In insolvency proceedings, Retention of Title (RoT) transfers to security (secured creditor). Advanced forms of RoT would however not be admissible and, in practice, enforcement remains extremely difficult.

Payments

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 Export Credit Insurance, 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 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) is increasingly relied upon.

Negotiating down payments is absolutely necessary because it will help avoid problems in case of buy insolvency. This point is a major issue since it is required to prove that contracts are effective in order to make international transfers, which may become difficult if the corporate structure cannot be identified.



Late payment interest:

The law provides some framework on late payment interest, although Russian debtors are not used to paying this in practice.



Collecting overdues

Amicable action

Negotiating

In practice, many debts are collected through negotiation. Currently, the courts resolve disputes fairly well when the debt is disputed, with civil proceedings not taking more than six to seven months. Thus, in many cases, transferring claims to arbitration is not necessary. 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

Collection attempts ought to start with a registered Demand Letter recalling the debtor's obligation to pay the principal together with late payment interest.

When the debt is below RUB 500,000 (about EUR 8,000) and the debtor is a company, or RUB 250,000 (about EUR 4,000) if the debtor is an individual entrepreneur, simplified court proceedings are available provided it is certain and undisputed. Once all the necessary documents are provided to the court, the debtor is duly informed and the court tax duty is paid, these proceedings are fairly efficiently settled.

When the debt is disputed, however, it becomes necessary to commence ordinary proceedings, which would be complicated to handle. The claim must be submitted to the court, which would then invite the debtor to a preliminary hearing. This is a Russian particularity, though failure of the debtor to attend would not entitle the creditor to a default judgment.

The courts would normally award remedies in the form of compensatory damages or injunctions, however punitive damages are not available.

Necessary documents

The following list of documents is needed for litigation:

- Contract
- Invoice/proforma invoice
- Shipment note with signature of authorized person and stamp of the debtor
- Dunning letter
- Extract from balance list
- Claim note with confirmation of delivery to respondent
- Payment order
- Extract from the EGRUL (applies to the applicant);
- Power of Attorney



Time limitations

Commercial claims in Russia must normally be brought to court within three years, although certain claims may be prescribed after one year (invalidation of a voidable transaction, sea transportation contracts). Failure to bring a claim within the expected timeframe would not bar access to court.

Provisional measures

Provisional measures may help preserve the creditor's interests pending a final judgment. Upon request, the courts would typically order interim measures aiming protect evidence and/or to avoid irreparable damage (attachment, injunction to do something or to prevent from doing something, protection of rights, bank account freeze, etc.), though this process is very formal and the creditor must prove the absolute necessity of awarding such measures. If the creditor can prove that the debtor was duly informed, the court may

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.

order precautionary measures ex parte (i.e. without all parties being present). It is important to note that the court satisfies motions on interim measures in less than 3% of cases. Arbitral tribunals cannot award such orders, as only the State Arbitration Court may do so. However, the party of arbitral procedure can file motion on interim measures to the state court.

Lodging an appeal

Appeal mechanisms are multi-layered and proceedings would require patience. Decisions rendered in first instance may be appealed before the Appellate Arbitrazh Court within one month, which will fully re-examine the case by taking both issues of fact and law into account. Decisions rendered in second instance may then be brought before the Federal Arbitrazh Courts within two months, as they act as cassation courts and focus on legal and procedural arguments only. Their rulings may then be reviewed in third instance before the Supreme Court, acting as a supervisory court in charge of investigating due process infringements.

Enforcing court decisions

A judgment is enforceable for three years provided that it has become final (i.e. when all appeal venues have been exhausted). If the debtor fails to satisfy the judgment, it may become necessary to request compulsory enforcement of the judgment from the court's bailiff services. The creditor also has the right to collect money directly through the bank.

How long could legal action take?

The court process would normally last three months, and another three months would be required to enforce the court decision. If the debt is disputed and the debtor's assets are difficult to locate, however, this reasonable timeframe would not apply. Domestic courts would not need more time to deal with claims involving foreign parties, however delays may occur when the documents must be translated, or if foreign witnesses must be heard. Additionally, when the debtor or another party involved in the court case is a foreign company, it takes around six months to notify the parties regarding the court dispute.

How much could this cost?

The defeated party would normally be required to pay the successful party's court costs, but legal costs would not be fully compensated, unless the proceedings have been unduly and improperly delayed. Court fees would also apply, while they follow a progressive scale. The maximum court fee for filing a statement of claim is RUB 200,000 (about EUR 3,100). Contingent no-win-no-fee arrangements whereby the legal costs depend on success are not allowed. Third-party litigation funding is allowed, however.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Alternative Dispute Resolution mechanisms such as mediation or

arbitration are rare in Russia since regulatory initiatives on the matter are only just emerging. In practice, the process remains more complex than ordinary legal proceedings before domestic courts, which have long treated arbitration agreements with a degree of uncertainty. In addition, dealing with disputes through ADR does not allow the freezing of the debtors' assets, which can make it impossible to enforce an obligation. In theory, however, the commercial courts should provide incentives to the parties to engage in conciliation during litigation proceedings (Article 138 of the Arbitrazh Procedure Code).

Having said this, considering the complexity of conducting legal proceedings in Russia, international arbitration awards would be enforceable by domestic courts and thus remain a unique opportunity to avoid haphazard lawsuits when complex disputes with an international dimension are at stake, although this requires that specific arrangements be included in the parties' contract for this purpose.

Foreign forums

Official comments published in July 2013 would seem to suggest that foreign jurisdiction clauses might be increasingly recognized in Russia, but these have long been interpreted creatively by the parties and courts. In particular, domestic courts have regularly assumed jurisdiction over disputes considered in foreign forums and have rendered judgment on the merits, thus preventing the successful party in the foreign proceedings to enforce the foreign decision in Russia.

Enforcing foreign awards

Enforcing a foreign judgment in Russia would require a high dose of patience. As in all countries, foreign decisions must first be recognized as a domestic decision by the Arbitrazh Court through an exequatur procedure. In practice, this is difficult for several reasons. First, Russia has only signed a limited amount of reciprocal recognition and enforcement agreements with foreign countries. Second, domestic courts have long been reluctant to recognize foreign jurisdiction clauses and have thus conducted numerous proceedings (based on the merits) to bar recognition of foreign decisions. However, arbitral awards issued in foreign countries (or by international arbitration tribunals) would normally be recognized and enforced by Russian courts because Russia is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

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 debtor in Russia is deemed insolvent when they are unable to settle debts in excess of RUB 300,000 for over three months.

Insolvency in Russia is governed by various regulations, the main of which are the Civil Code and the Federal Law 127-FZ on Insolvency of 2002, while proceedings would be dealt with before the Arbitrazh Court. The law provides a debt restructuring mechanism in addition to the traditional liquidation proceedings. Both can be commenced upon demand of the debtor and creditors alike. At all stages, the proceedings may be interrupted by an amicable settlement. In practice, debt renegotiation is rare and liquidation remains the default procedure. As a result, it may be estimated that, on average, unsecured creditors could recuperate around 3% of their debt through insolvency proceedings. Pre-legal action remains the most efficient method of collecting debt. Traditionally, Russian commercial courts favor written documentary evidence rather than examination of witnesses, hearing experts, or use of audio or video recordings. Documentary evidence made in a foreign language should be translated by professional translator and the translator's signature should be certified by a notary.

Insolvency proceedings

Out-of-Court proceedings

Russian law provides no out-of-court debt renegotiation proceedings.

Restructuring the debt

Debt restructuring would take place in various stages. Supervision proceedings would first be set up following the publication of a bankruptcy declaration by the court. The debtor would remain in possession of their right to manage the business, but a temporary administrator would evaluate the company's financial standing to establish whether or not it is viable. A moratorium would also be put in place for a maximum of seven months in order to protect the company from parallel enforcement claims. If the temporary administrator concludes that the company is viable and may be rescued, a financial rehabilitation stage may then commence. Upon request of the debtor or based on the creditors' meeting, the debtor may be exempt from paying their debts (for a maximum of two years), but an administrator is appointed to ensure that the plan to which the parties have agreed is respected. The law, however, provides limitations as to how much of the debt may be written off.

If necessary, a third external management phase may finally be put in place to further assist the debtor to return to solvency. In this situation, an external administrator takes over the company's management under the protection of a moratorium on enforcement claims.

Winding up proceedings

Liquidation is the default insolvency procedure. Upon demand of the parties or if, at the end of the supervision process, the temporary administrator concludes that the debtor is not viable and cannot be rescued, the liquidation phase may begin. A liquidator would be

appointed to identify the creditors and establish the list of all admissible claims prior to liquidating the company's assets and distributing the proceeds to the creditors according to their priority needs. The creditors must file their claims within one month of publication of the bankruptcy declaration by the court.

Priority Rules

Priority rules normally apply while distributing the proceeds to the creditors. The various legal costs, as well as the new loans contracted during the restructuring phase, are given absolute priority over the other claims (employees' claims, unsecured creditors' claims, etc.).

Cancellation of suspect transactions (clawback)

Liquidators are normally entitled to request the court to cancel certain transactions concluded prior to the insolvency proceedings. In particular, any measure taken by the debtor deemed fraudulent or detrimental to the creditors would typically be void. A suspect period of up to three years may apply.

How long could insolvency proceedings take?

Two years on average.

Necessary documents:

The following list of documents needed for litigation:

- Application
- Contract
- Invoice/proforma invoice
- Shipment note with signature of authorized person and stamp of the debtor
- Dunning letter
- Certification of incorporation (extract from the register of companies)*
- Claim note with confirmation that it delivered to respondent
- Extract from the EGRUL (applies to the applicant)
- Reconciliation report
- Power of Attorney
- Court title (if any)

* Documents should be prepared by an authorized state body or another institute (in accordance to local laws). In addition, documents should be apostilled (if the country is a member of Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents). In order to present documents to Russian commercial courts, documents should be translated by a professional translator and the translator's signature should be certified by a notary.

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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