

# Collection Profile Argentina



## Collecting in Argentina

- The payment behavior of domestic companies is poor and the average DSO is excessive.
- Procedural delays are common and costs are high. Considering the inability of domestic courts to cope with the caseload in a timely manner, commencing legal action without having first conducted pre-legal action is unwise.
- For insolvent debtors debt renegotiation mechanisms have been put in place, however in practice, liquidation remains the default procedure even though it is never in the interest of unsecured debtors.

## Collection complexity



## Complexity relating to

Notable → Severe

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



# Contents

- General Information .....3**
  - Availability of financial information.....3
  - Main corporate structures.....3
  - Regulatory environment.....3
  
- Getting Paid.....4**
  - Days Sales Outstanding (DSO) .....4
  - Late payment interest.....4
  - Debt collection costs.....4
  - Ownership protection .....4
  - Payments.....4
  
- Collecting Overdues .....5**
  - Amicable action .....5
  - Legal action.....5
  - Alternatives to legal action .....7
  
- Handling Insolvent Debtors .....8**
  - Insolvency proceedings .....8



## General information

### Availability of financial information

Relevant financial information on domestic companies is difficult to attain from official sources, but may be obtained through informal business channels and specialized 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:

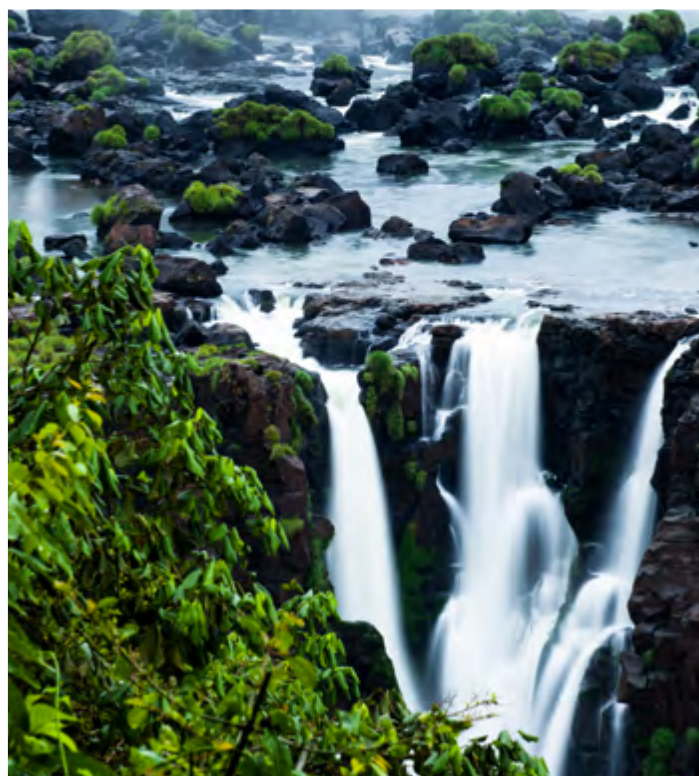
- Sole Proprietorship does not exist under the Argentine legal framework. General Partnerships (Sociedades Colectivas) are entities in which the participants' liability is unlimited. No minimum capital is required and liquidation requires unanimous consent. Limited Partnerships may alternatively be set up in order to limit the liability of non-managing partners.
- Limited Liability Companies (Sociedades de Responsabilidad Limitada, SRL) are very popular structures which may be set up by two partners (with a maximum of 50 partners) and can be individuals or corporate entities. The capital contribution (at least AR\$10,000) must be paid within two years (25% of which must be paid immediately) in local currency. Shareholders are not liable beyond their capital contributions.
- Corporations (Sociedades Anónimas, SA) may alternatively be set up by two shareholders (either corporate entities or individuals), requiring minimum capital of at least AR\$ 100,000 (25% of which must be paid immediately, the rest becoming due within two years), however a majority of the board of directors must be Argentine residents. Shareholders are not liable beyond their share contributions.
- Foreign companies usually build investment vehicles through independent branch companies (sucursales) taking the form of a Limited Liability Company or of a Corporation. Alternatively, foreign companies may also acquire shares of an existing structure, or invest through a Joint Venture (Unión Transitoria de Empresas) with local partners. It must be added that Joint Ventures are set up as a contractual matter but do not create a specific entity. Foreign investors may hold up to 100% of the share capital of an investment in Argentina and do not require prior government approval (except in the broadcasting area and for matters relating to antitrust regulations), however equity investors must register with the Public Registry of Commerce (Inspección General De Justicia) of the place of incorporation.

### Regulatory environment

Argentina has a federal government system and its judiciary is thus distinguished between federal and provincial courts. At the Federal level, District Courts render judgments in the first instance whilst



**Days Sales Outstanding (DSO):** Payments in Argentina take 30 days on average, however late payments ranging from 15 days to 2 months are common.



Circuit Courts together with the Supreme Court of Justice both act as Appellate Jurisdictions. There are similar tribunals at the provincial level, as well as Justices of the Peace in charge of minor issues. Litigation is governed by the National Civil and Commercial Procedural Code at both federal and provincial levels; the provincial courts also tend to apply their own provincial procedural codes and their own administrative law.

Commercial disputes of all sizes may be settled by federal and provincial courts alike, although jurisdiction would depend on where the transaction takes place: for instance, commercial disputes located in the Capital District (Buenos Aires) are systematically subject to federal jurisdiction. In addition, certain matters (trademarks, patents, maritime law) automatically fall under the jurisdiction of Federal Courts notwithstanding geographical considerations. First instance courts are usually spread over several divisions depending on their expertise area (administrative, civil, commercial, criminal, labor law).

Argentinian courts are normally independent, however the local legal system tends to be extremely slow, expensive and to a certain extent, unreliable. In addition, a lack of transparency and reliability may be emphasized where a political public interest is involved.



#### Late payment interest:

It is highly suggested that interest in case of late payments are set contractually.



## Getting Paid

### Days Sales Outstanding (DSO)

Payments in Argentina take 30 days on average. The payment behavior of domestic companies is poor and late payments ranging from 15 days to 2 months are common.

The financial crisis over the last decade has furthermore weakened the banking system, which fails to support the corporate treasury and provides insufficient short-term financing opportunities. A currency shortage tends to increase the problem.

### Late payment interest

Argentinian regulation does not have a special set of norms to establish late payment interest which, given the general lack of specific arrangement in most contracts, would be set judicially in practice. As a result, it is highly recommended that interest in case of late payments is set contractually. The only limit is that the sum of compensatory and moratorium interest cannot exceed 2.5 times the interest charged by public banks on the discount of commercial papers.

### Debt collection costs

Similarly, the law provides no regulation on collection costs as far as extrajudicial (pre-legal) collection action stages – mediation or conciliation – are concerned. Costs may nonetheless be used as a negotiation tool as long as the parties have not excluded this possibility within their contract.

### Ownership protection

Retention of Title (RoT) provisions aiming at preserving ownership until the invoice has been paid in full are rarely used in Argentina since the holder of tangible property is assumed to be the owner by law. Proving otherwise in court is costly and time consuming.

### Payments

The most common payment methods are as follows:

International business 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. Alternatively, Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) constitute common and reliable guarantees which can be interpreted as a sign of good faith since they can be triggered as a 'payment of last resort' if the client fails to fulfil a contractual commitment. Also, 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) may be considered as it can be obtained easily from local banks (though it may be costly).

In complement, it is worth noting that 45% of international transactions tend to be paid in advance. Down payments are also frequent and recommended.

## Collecting overdues

### Amicable action

#### Negotiating

The legal system in Argentina is slow and often unreliable; therefore it is essential to rely on amicable settlement opportunities, pre-legal collection and fast-track alternatives to ordinary legal action. On one hand, the courts seem to have difficulties in managing their caseload and ordinary proceedings are thus time consuming. On the other hand, mediation or conciliation action is a mandatory prerequisite to commencing any formal legal action (Law No. 26,589 and Decree 1467/2011). Mediators and conciliators may be appointed by the parties or the courts, but their role is limited to helping the parties in reaching a compromise. Thus, they have no authority to decide on behalf of the parties. If the parties reach an agreement, it is certified by the mediator (or conciliator) before being validated by the Ministry of Justice and Human Rights. The agreement then becomes binding and enforceable through enforcement proceedings if the parties disregard their obligations. If no agreement is reached, the claimant is entitled to take formal legal action. There are no penalties for failing to attend mediation; however the court would then be entitled to dismiss the claim.

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. If insolvency proceedings have been initiated, it indeed becomes impossible to enforce a debt (see below).

### Legal action

#### Ordinary proceedings

When amicable pre-legal action is insufficient, fast-track proceedings may help recover debt efficiently without commencing complex lawsuits, provided that the debt is certain and undisputed (in particular, under Section 523 of the National Civil and Commercial Procedural Code, formal debt recognition instruments in the form of checks, promissory notes or signed documents certified by a public notary would allow for obtaining summary Payment Orders in which the debtor's grounds for defense are limited). If the debtor files a counterclaim within ten days, the debt must be proven by any means of evidence through ordinary proceedings which are generally lengthy and costly and must therefore be considered a last resort. That being said, civil proceedings commence with the filing of a claim with the clerk's general office of the competent Circuit Court, which then allocates the case to a first instance court. The creditor must provide evidence that steps were taken to resolve the dispute. The defendant is then served with a Writ of Summons (through a registered letter or a judicial officer), and is given 15 days to file a counterclaim (Sections 338 to 342 of the Code); however this time limitation is extended to 60 days where state agencies are involved.

The court then organizes a preliminary hearing in which the parties are invited to reach an amicable settlement. If none is reached, a 40-day evidentiary period commences, after which judgment must be issued (again, within 40 days). The court must decide the case according to its merits and the evidence produced. Failure of the debtor to take part in the proceedings does not entitle the creditor to seek a default judgment and does not suspend the case (trials must thus be carried out in integral form in the debtor's absence) but would tend to create a negative presumption against the debtor. It can be emphasized that claims for breach of contract are among the most common types of litigation in Argentina, but class actions in commercial matters have also increased recently.

#### Necessary documents

The burden of the proof at trial is borne by the party that asserts the existence of a controversial fact (Section 377 of the Code). Therefore, the claimant has a duty to prove the factual circumstances of the claim and it is essential to support the claim with evidence. All available documents that may help should be provided, while relying on witnesses and appointing experts is also crucial during the initial proceedings. Similarly, the defendant will be given an opportunity (five days) to answer the claim and allege new facts while producing its defense (Section 334 of the Code). There are no 'discovery' proceedings in Argentina, which means that the parties must gather their own evidence. However, the court may request any documents deemed essential for the case. Denying such request may generate negative presumption unless disclosure may cause harm.

#### Time limitations

Contractual claims, claims seeking to annul a legal act, and claims to enforce a debt must be brought within ten years, starting from the date on which the damage occurred or could have (reasonably) been discovered by the victim. Beyond this time limitation, legal action will not be granted. Claims in tort are subject to a two-year limitation period.

#### 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.

### Precautionary measures

Provisional measures in the form of preliminary injunctions may be awarded to preserve the status quo pending a final and enforceable judgment. Interim attachment orders may also prevent the debtor from disposing of specific assets pending a final order. The claimant must demonstrate that the claim is certain, and show that (i) irreparable harm is likely unless the injunction is granted while (ii) the claim has substantial chances (in terms of facts and law) to succeed. Precautionary orders must be requested from the court before which the proceedings are taking place, but would not be granted if the substantive proceedings take place abroad (except if the procedure falls under the Inter-American Convention on Conflicts of Law). Precautionary measures may be requested prior to filing the claim, including during the pre-legal mediation phase. In emergency circumstances, interim orders may be granted on the same day but this remains rare. To avoid abuse, the court would most likely request that the claimant provides security on costs, to compensate for any losses caused to the defendant as a result of such measures. Indeed, the parties against whom interim injunctions are taken are rarely given a chance to bring a defense prior to making a decision (ex parte proceedings). The defeated party must be notified within three days and lodging an appeal is not sufficient to stay enforcement of the measures.

### Lodging an appeal

Leave for appeal, if any, may be filed within five days following communication of the decision rendered in first instance, provided that the claim is over AS\$ 20,000. If the Appellate Court grants leave to appeal, the appellant must submit the grounds (points of law or facts) motivating the appeal within ten business days of receiving notice (Section 260 of the Code). The first instance award is then suspended until a decision is rendered.

### Enforcing court decisions

A judgment becomes enforceable as soon as it becomes final (i.e. when appeals are not available anymore). When the defeated party fails to abide by the court's decision, the successful party may obtain enforcement by way of an Order for attachment of the debtor's property. Property is then sold to cover the debt (plus interest), as well as judicial costs. The debtor may, within five days, raise very limited defense against enforcement on grounds of full payment or total/partial debt renegotiation of the debt, false judgement, elapsed statute of limitations, etc. Enforcement for transactions involving public entities is extremely limited since the courts are not independent enough.

### How long could legal action take?

The average duration of legal proceedings in Argentina is quite unpredictable but obtaining a first instance judgment before at least two and a half years is unlikely, not to mention appeal procedures. Enforcement could require a further six months to one year. Legal proceedings involving a foreign party may require more time than proceedings involving domestic parties only. Courts may

furthermore require bonds to be placed in cases where the plaintiff is a foreign party, to protect the interests of the local defendant in case they win the action.

### How much could this cost?

As a general principle, the unsuccessful party bears all costs (including justified pre-legal action collection costs), but the court may attenuate this rule if it identifies a reasonable cause of action. Costs are calculated by the court and include judicial fees, legal fees, expert fees and interests. Judicial fees are initially paid by the claimant while submitting its claim and amount to 3% of the claim (Section 68 of the Code). Legal fees may be freely negotiated as long as they do not exceed 40% of the compensation awarded to the client. In the absence of such agreement, the law (Law No. 21.839) indicates that legal fees for the successful party may represent 11% to 20% of the value of the claim for the work done in first instance (plus 25% to 35% in case of an appeal), while legal fees for the defeated party represent 7% to 18% of the value of the claim, similarly increased in case of an appeal. In practice, this system is relied upon by independent lawyers while large law firms tend to agree on hourly rates structures, with or without caps.



### 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)

As previously mentioned, the courts must invite the parties to solve their dispute through Alternative Dispute Resolution (ADR) methods, such as arbitration, mediation or conciliation.

This has helped initiate a virtuous circle insofar as, although large commercial disputes are mostly brought before commercial courts, parties increasingly agree to submit their disputes to ADR instead of embarking into heavy judicial proceedings. This is because ADR methods constitute a faster and more flexible means of settling disputes while preserving confidentiality and allowing the parties to preserve their commercial relationships.

It is worth noting that arbitration tribunals may render interim or definitive awards, however they have no authority to conduct enforcement proceedings, which thus fall under the exclusive jurisdiction of domestic courts. Nonetheless, the process of obtaining a final decision through arbitration remains faster than through the courts.

### Foreign forums

Alternatively, foreign traders may agree to solve their business disputes in a foreign forum (i.e. under a foreign law or before a foreign court). Indeed, Argentina allows selecting the law applicable to contractual arrangements as long as the public order is not threatened. It is however essential that the agreement is characterized by an international connection (for example, one party has elected domicile in another country, or the place of execution is located abroad), and that a jurisdiction clause is drafted to this effect. Foreign forums can be used for credit collection cases, whether the debtor's assets are located in Argentina or not, but some delays can be expected.

### Enforcing foreign awards

Foreign judgments (including arbitral awards) are generally enforced effectively because the law permits foreign tribunals provided that the contract contains a jurisdiction clause (see above) and that certain conditions are met.

In particular, Argentine civil procedure requires an exequatur proceeding to be conducted in order to 'domesticate' a foreign judgment: domestic courts would verify that the foreign decision complies with domestic law or, alternatively, with standards established by treaty between Argentina and the issuing country (Sections 517 to 519 of the National Civil and Commercial Procedural Code). It is also essential that the decision is valid and final in the issuing country, that the defendant benefited from a due process of law (i.e. the opportunity to defend itself), that it is not manifestly contrary to the laws and public policies of Argentina, and that it does not conflict with a prior judgment issued by a local court. This recognition phase may be simplified if the issuing country is party to a reciprocal recognition and enforcement treaty with Argentina. Argentina has indeed entered into various bilateral treaties (i.e. with Brazil, China, Russia, France, Italy, and Tunisia) and multilateral agreements concerning the recognition and execution of foreign judgments (Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards; Montevideo Treaty of International Procedural Law).

Argentina is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Therefore, domestic courts also ought to enforce decisions rendered through international arbitration proceedings.



## Handling insolvent debtors

Debt recovery may alternatively occur through insolvency proceedings under Bankruptcy Law No. 24,522. Indeed, although the regulation does not specify circumstances when directors must file for bankruptcy, it provides for three judicial procedures with distinct objectives. Of these, debt restructuring is in fact increasingly used. However, in practice, a vast majority of restructuring procedures eventually finish on a bankruptcy/liquidation proceeding, since from the commercial perspective the restructuring process severely limits the possibility to obtain new contracts and credit access, which in turn ends up commonly weakening companies under debt restructuring. In practice, liquidation rarely helps yield any returns and the chances of recovering the debt once the debtor becomes insolvent are extremely low.

### Insolvency proceedings

#### Out-of-Court proceedings

Out-of-court restructuring between the debtor and their creditors is authorized by law. If the debt instruments are bonds or other securities, the restructuring will be a tender offer (or an exchange of new bonds for the old restructured bonds). There is no moratorium/protection from creditors during this negotiation.

The parties may also use simplified out-of-court restructuring (Acuerdo Preventivo Extrajudicial) which requires that the agreement is approved by a majority of unsecured creditors (representing at least two-thirds of the principal) and validated by the court. Through this procedure, pending claims by unsecured creditors are stayed. The restructuring agreement is binding on the signatories.

#### Restructuring the debt

Restructuration (concurso preventivo) proceedings may be initiated voluntarily by debtors willing to restructure their outstanding debts. A receiver (síndico) is judicially-appointed to review the company's financial situation and advises the court as to the debt reorganization plan proposed by the debtor. The plan is then submitted to the Creditors' Committee (90-day period) and validated by the court provided that it has been approved by creditors holding at least 75% of the debt. There is however no limitation as to how much of the debt may be written off provided that the previously mentioned requirement is observed. The Board of Directors remains "in possession" as it keeps controlling the company's business under the supervision of the court, while the Creditors' Committee oversees performance of the plan. A temporary moratorium is put in place to protect the distressed company from pending and forthcoming claims.

#### Winding up proceedings

Liquidation proceedings may be initiated as a result of the failure of the restructuring plan, or upon the filing of a liquidation petition by the debtor (Voluntary Dissolution) or by the creditors. The judicially-appointed receiver and the court then propose a proceeds allocation plan to the Creditors' Committee in charge of supervising the liquidation.

Financial organizations (banks, insurance companies) have special insolvency proceedings and remain outside the scope of certain aspects of the Bankruptcy Law.





### **Priority rules**

Priority rules normally apply while distributing the proceeds to the creditors. Priority is always given to credits with special privileges, such as expenses made for the preservation of assets. Employees' claims (owed for six months and those resulting from indemnifications for work-related accidents, seniority, unemployment fund, etc.) would then have priority on the merchandise, raw materials and machinery property of the restructured debtor (located on the debtor's premises). Tax and duties are then considered, followed by credits guaranteed with mortgages, liens, warrants and those corresponding to debentures and negotiable notes with special or floating guarantees. Credits with general privileges would come next (remuneration and family subsidies owed to the employee for six months, principals from benefits owed to social security, family subsidies, and unemployment funds. Unsecured credits (without any privilege) and subordinated credits would be considered last in chain.

### **Cancellation of suspect transactions (clawback)**

The receiver may declare the inefficacy of suspicious acts carried out by the bankrupt debtor for a period limited to the last two years, calculated from the date of the bankruptcy declaration (gratuitous acts, prepayment of debts that by title should mature on the day of the bankruptcy or afterwards, creation of a mortgage or pledge or any other preferences, etc.). Other acts detrimental to creditors and granted during the suspected period may also be declared ineffective with regards to creditors, if a third party acting with the debtor was aware of the state of default in payments by the debtor (the third party must thus prove that the act did not cause prejudice).

### **How long could insolvency proceedings take?**

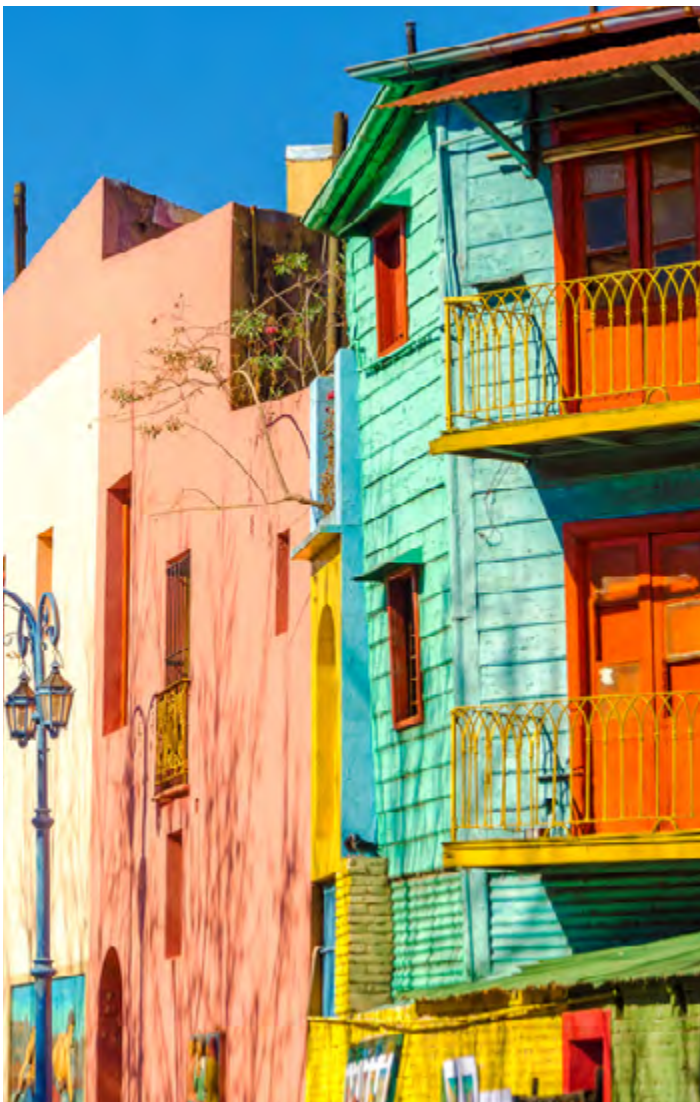
It is worth noting that the whole process is extremely lengthy and can take several years.

### **Necessary documents**

For the recognition of the credit, a presentation before the trustee must be made, detailing the amount, cause and privileges that the credit may have. It must be accompanied by all titles supporting the credit. If the credit is recognized with the issuance of enforcement titles – formal debt recognition instruments in the form of checks, promissory notes or signed document certified by public notaries – it would not be enough to supply such titles alone, but it must be accompanied with all original documentation relating to the transactions and contracts that originated the credit being claimed.

### **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.



This Collection Profile is published by Euler Hermes, a company of Allianz, for information purposes only. The information provided therein shall not be regarded as providing any legal advice or advice of any kind. Readers should make their own independent evaluation of this information and under no circumstances shall any action be undertaken solely relying on it, while legal advice should be sought with legal practitioners at all times. While this information has been collected and drafted by recognized experts in their field and it is believed to be correct and reliable, Euler Hermes makes no warranty (express or implied) of any kind, in regards to the accuracy or completeness of this information, nor does it accept any responsibility or liability for any loss or damage arising in any way from any use made of, or reliance placed on, this information. This material should not be reproduced or disclosed without our consent. It is not intended for distribution in any jurisdiction in which this would be prohibited and Collection Profiles are subject to change without notice.

© Copyright 2017 Euler Hermes. All rights reserved.

Euler Hermes, a company of Allianz, leader in credit insurance solutions helping companies grow their business safely at home and abroad, provides global commercial debt collection services with true end-to-end capability. Euler Hermes offers both domestic and international trade debt collection services worldwide. Through our network, we use our experience and knowledge of local markets to ensure a professional service for our clients from pre-legal action through to legal proceedings.

Visit Euler Hermes at [www.eulerhermes.com](http://www.eulerhermes.com)