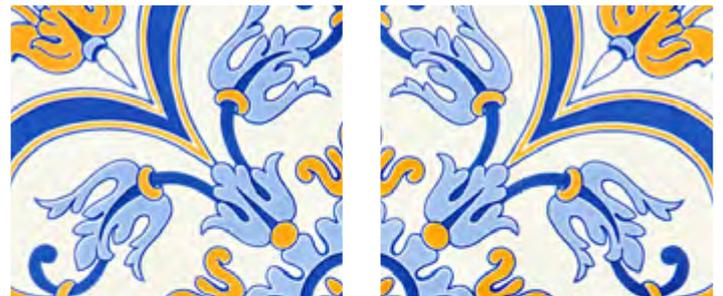


# Collection Profile Portugal

## Collecting in Portugal

- Payment terms and late payment interest are regulated in accordance with applicable EU rules; however the standards put in place are among the most lenient in Europe. As a result, DSO remains excessive at around 69 days.
- The court process is a major complication when it comes to collecting debt and it is advisable to first conduct negotiation with the support of collection specialists. When court is needed, Alternative Dispute Resolution methods and foreign courts (EU judgments will be fairly enforceable in Portugal) may be worth considering in order to avoid inefficient domestic courts.
- Despite reforms conducted in 2012 to increase company rescue possibilities, insolvency proceedings often lead to the liquidation of the company and it is rare for unsecured debtors to recover their debt.

## Collection complexity



## Complexity relating to

Notable Severe →

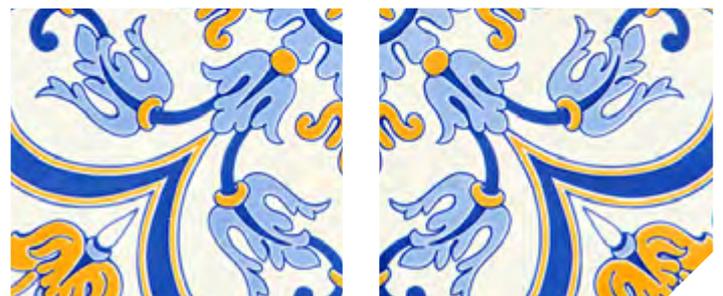
Payments



Court proceedings



Insolvency proceedings



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## General information

### Availability of financial information

All companies are obliged to publish their balance sheets and accounts which are then available to be consulted, this data is fairly reliable. 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 may be described as follows:

- Sole Proprietorship (Empresário em Nome Individual) is available for small businesses managed by an individual and for which no commercial structure is necessary. In this case, the owner is liable for all business debts. Two or more individuals may also share ownership and responsibilities through Partnerships (Sociedade em Nome Coletivo), in which case the partners may be jointly and individually liable for the actions of the other partners. Limited Liability Partnerships (Sociedade em Comandita) may alternatively offer limited liability to the partners.
- Private Limited Liability Companies (Lda) represent the great majority of businesses in Portugal because they require no minimal capital funds (versus EUR 5,000 prior to January 2011) while the partners' liability is limited to their contribution. Public Limited Companies (SA) are rather used for larger structures willing to divide their capital (at least EUR 50,000) into tradable shares. In these entities, the shareholders' liability is limited to the value of their shares.
- Foreign companies may alternatively settle in Portugal through Branch Offices which provide no liability limitations to the foreign parent company. Representative Offices (escritório de representação) 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 (a contract drafted for this purpose would suffice).

### Regulatory environment

The legal system in Portugal is based on Civil Law, which means that the rules are codified while the courts' decisions only have a limited law-creating effect. County Courts have general competence to deal with claims in first instance (Tribunais Judiciais de Primeira Instância), but they are normally divided into specialized divisions to deal with specific commercial (Tribunais de Comércio), employment (Tribunais de Trabalho), maritime (Tribunais Marítimos) or criminal matters (Tribunais Criminais). Commercial Courts are available in several points of the country.

In parallel, disputes involving public actors must be brought before the administrative courts. Appeal proceedings would then take place before one of the country's five Courts of Appeal (Lisbon, Oporto, Évora, Coimbra and Guimarães) and the Supreme Court of Justice (Lisbon).



#### Days Sales Outstanding

**(DSO):** Companies doing business in Portugal usually agree to extended payment terms, with payments received in around 69 days.



## Getting Paid

### Days Sales Outstanding (DSO)

The payment behavior of domestic companies remains weak partly due to a lack of banking support which restricts businesses' cash flow and transforms late payments into a cash management strategy. As a result, it is common for companies doing business in Portugal to agree on extended payment terms, and to receive payments in around 69 days on average. Tight payment terms are common in order to plan for delays.

### Late payment interest

The Directive 2011/7/EU which stipulates that payments in the EU must be made within 60 days has been transposed into domestic law by Law Decree 62/2013 of 10 May 2013, two months after the implementation deadline originally imposed by the EU authorities. The law provides that payment in business-to-business transactions ought to occur within 60 days following the issuing date and it is therefore in line with the Directive; however it remains much more permissive than other EU Member States in which payment must occur within 30 days unless the parties agree otherwise. In practice, average payment terms in Portugal are 66 days but the parties may contractually agree on longer payment periods provided that arrangements are not grossly unfair to the creditor. Unless a contract stipulates otherwise, interests for late payment must be calculated on the basis of the European Central Bank's refinancing rate, increased by a minimum of 7 percentage points as published in the Official Journal (Diário da Republica). In practice, interest is essentially used as a negotiation tool.

### Debt collection costs

Similarly, EU rules entitle creditors to charge a flat EUR 40 fee to cover their costs, but additional collection costs may be claimed to cover reasonable fees in excess of this sum (lawyers, recovery agencies, etc.) during legal proceedings.

### Ownership protection:

Retention of Title clauses aiming at retaining ownership over goods until the related invoice has been paid in full are admissible in Portugal, under Civil Code (Article 409) provided that they are clearly emphasized in the contract and that the agreement has been registered (real estate, cars, planes or boats). Having said this, the clauses are not applicable, in most business-to-business transactions where the goods are to be transformed and incorporated into a new product.

### Payments

The most common payment methods are as follows:  
Swift bank transfers are becoming increasingly popular as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. Export transactions should nonetheless be guaranteed through an Export Credit



#### Late payment interest:

Unless contractually stipulated, late payment interest is calculated on the basis of the European Central Bank's refinancing rate plus 7%.



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 reliable guarantees even though they are not frequently used in Portugal. 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) may also be considered.

Alternatively, it is advisable to negotiate payments in advance or down payments, but these may be perceived as a lack of trust. As in many countries, checks, bills of exchange and documentary credits would increasingly be used as debt recognition titles rather than as payment means. If left unpaid, these would indeed make the debt certain and undisputed, thus giving access to fast-track proceedings aiming at obtaining an enforceable Payment Order against the debtor.

## Collecting overdues

### Amicable action

#### Negotiating

Having said this, the judicial administration in Portugal is heavy and case settlement is an overly time consuming exercise. As a result, amicable settlement opportunities must always be considered as an immediate alternative to lengthy and costly legal proceedings. As a matter of fact, having collection specialists may help negotiate payment instalments and would tend to prove extremely efficient insofar as domestic businesses fear the loss of commercial relations more than lawsuits.

In all circumstances, legal dunning ought to start with a registered Demand Letter recalling to the debtor its obligation to pay the principal together with late payment interest (as contractually agreed or taking a legal rate as a reference) within eight days. It would also seem wise to verify whether the debtor company is actually undergoing an insolvency procedure: the company would then be registered in the Trade Register (Registo Comercial) or within the Official Journal (Diário da República II serie).

### Legal action

#### Ordinary proceedings

When the debt is certain and undisputed (i.e. when a debt recognition title may be provided) Payment Order fast-track electronic proceedings (injunção) may be requested from the court. In addition, when the debtor company has assets in other EU Member States, a European Payment Order procedure facilitating the recovery of undisputed debts (under Regulation EC No 1896/2006) may furthermore be triggered. In this case, the demanding party may request the Council Court to issue an Order to Pay which will then be enforceable in all European Union countries (except Denmark) without exequatur proceedings.

The Acção Declarativa is otherwise the main procedure when a claim is disputed and cannot be solved amicably. Once the claim is filed with the court and the debtor is notified, they may file a defense within 30 days. Failure to pay or to reply, however, would entitle the court to deliver a default judgment in favor of the creditor. When the claim has been duly proven and determined through written statements and an oral phase, the court may then order damages, strictly as requested by the demanding party (not more). When going legal, the parties must always be represented by a lawyer registered in the Portuguese Law Bar Association, and all relevant documents must be translated in Portuguese. Insofar as legal proceedings in Portugal are long, having arbitration or to a foreign forum is finally worth considering because both arbitral awards and EU decisions are fairly enforceable by domestic courts.

#### Necessary documents

All documents that would help prove the claim such as correspondence (email or other), contracts, purchase orders, invoices,



checks, letters of credit and receipts. As court representation must be done through a lawyer, in case of court or arbitral files power of attorney is also required.

#### Time limitations

Commercial claims must normally be brought to court within 20 years (prazo de prescrição ordinário). This time limit is considered a strict matter of substantive law (no margin), but may be extended if any fact justifies interrupting the lapse of this legal term.

#### Provisional measures

Provisional measures may help preserve the creditor's interests pending a final decision insofar as the courts may order the provisional attachment of the debtor's assets (freezing orders, asset repossession orders, etc). In this case the latter retains property over its assets but loses the faculty to dispose of them as long as the proceedings continue. The courts may also render injunctive or declaratory measures aiming at protecting the creditors' rights.

As a general rule, provisional orders would however only be granted provided that the claimant has demonstrated the immediate necessity of doing so. In emergency situations, the court may render its decision ex parte (i.e. in the absence of the debtor), as it deems appropriate. In certain circumstances, the courts may also qualify provisional measures as final and binding awards, in which case the debtor must initiate a formal lawsuit to obtain a revision of the decision.

## Lodging an appeal

Decisions rendered in first instance may be brought to the Courts of Appeal provided that they exceed EUR 3,740. Decisions rendered in second instance in excess of EUR 14,963 may also be appealed against before the Supreme Court of Justice, but the latter would only consider legal issues (incorrect interpretation, failure to state reasons, failure to observe procedural requirements, etc.). According to the Dupla Conforme rule, decisions rendered in first instance and confirmed in second instance cannot be brought to the Supreme Court of Justice.

## Enforcing court decisions

A judgment is normally enforceable as soon as it becomes final (i.e. when all appeal venues have been exhausted). If the debtor fails to satisfy the judgment, it is possible to request compulsory enforcement (juízos de execução) of the decision before the enforcement courts through Attachment Orders giving access to the debtor's bank account and Garnishee Orders allowing payment of the debt to be obtained from a third party owing to the debtor.

## How long could legal action take?

Obtaining a decision in first instance could take one year, whereas obtaining a final and enforceable decision in Portugal could take up to two years, depending on the complexity of the case. Enforcement proceedings can be very quick but it depends on the existence of assets, or on the difficulty of identifying the assets to apprehend and sell. Domestic courts would generally need more time to deal with claims involving foreign parties, particularly because documents would then be translated, while foreign witnesses might have to be heard.

## How much could this cost?

As a general rule, the defeated party would usually be required to pay part of the successful party's costs, but amounts remain at the court's discretion.

It is difficult to provide an overall estimate of court fees because these would depend on the complexity of the file and on the various procedures to be undertaken. Bailiff's fees are determined according to a specific table. The Bar Association rules do not allow contingent no-win-no-fee arrangements but mix fee arrangements (low fixed fees and success fees) may be considered.

## Alternatives to legal action

### Alternative Dispute Resolution methods (ADR)

As a result of the difficulty of domestic courts to deliver timely decisions, use of Alternative Dispute Resolution methods is growing since a modern Arbitration Law came into force in March 2012 as a means to increase judicial response to litigation needs while limiting the courts' caseload.

Mediation involves nomination of a mediator who is given responsibility for helping the parties reach a compromise. In other words, the mediator has no authority to decide on the behalf of the

parties and cannot bind them with a decision. An agreement is only binding if a settlement agreement is entered into between the parties at the end of the mediation. The mediator really acts as a facilitator to settlement.

Arbitration involves the parties agreeing to rely on an independent and impartial third-party arbitrator, who is given authority to settle their dispute on their behalf. The arbitrator's decision will be binding on the parties.

As an out-of-court settlement method, ADR can be cost-effective, generally reduces delays, allows preservation of confidentiality and offers a binding decision which may then be enforced before the courts if necessary. When international transactions are involved, international arbitration may also be considered. In all situations, a specifically drafted provision must be included in the parties' contract.

## Foreign forums

Alternatively, Portugal is a signatory to the Rome I Regulation on the law applicable to contractual obligations, which stipulates that the parties to a contract may, by mutual agreement, choose the law applicable to their contract, and select the court that will have jurisdiction over disputes. Therefore, foreign traders may alternatively agree to solve their business disputes in a foreign forum (i.e. under a foreign law or before a foreign court). Domestic courts may however retain exclusive jurisdiction over mandatory rules of Portuguese law, or if the chosen foreign law is deemed incompatible with Portuguese public policy.

Again, it is essential that the agreement be 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 specifically drafted for this purpose.

## Enforcing foreign awards

Foreign decisions are enforceable in Portugal but patience may be required and various circumstances may apply. On one hand, decisions rendered in an EU country would benefit from particularly advantageous enforcement conditions. Apart from EU Payment Orders which are normally enforceable directly in domestic courts,

### 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.



the two main methods of enforcing an EU judgment in Portugal are by the use of a European Enforcement Order (EEO, as provided under Regulation EC No. 805/2004) when the claim is undisputed, or by registering the judgment under the provisions of the Brussels I Regulation (44/2001).

If the judgment qualifies as an uncontested claim, it can be enforced directly (i.e. without registration) by use of an EEO provided that the debtor has identified assets in the country. A European Small Claims Procedure (as provided by Regulation EC 861/2007) aiming at eliminating intermediate steps may similarly be relied upon while enforcing decisions up to EUR 2,000.

If the claim is disputed, the procedure for registering an EU judgment with domestic courts is relatively simple. The judgment holder must apply to the relevant court for the judgment to be registered and provide the court with, among other documents, an authenticated copy of the judgment, a certified translation and, if interest is claimed, a statement confirming the amount and rate of interest at the date of the application and going forward. Once the judgment has been registered, it can be enforced as if it were issued by domestic courts (according to the Recast Regulation EC 1215/2012, such an exequatur procedure is no longer required from January 2015).

On the other hand, judgments rendered in foreign countries outside of the EU would normally be recognized and enforced on a reciprocity basis provided that the issuing country is party to a bilateral or

multilateral agreement with Portugal drafted for this purpose. In the absence of reciprocal arrangements, exequatur proceedings would take place before domestic courts. As a general rule, foreign judgments cannot be reviewed on the merits of the case, but the courts would deny admissibility where the foreign decision is neither final nor enforceable in the issuing country, deemed incompatible with domestic public policy or with decisions rendered by domestic courts, if the defendant has not benefited from a due process of law, if the foreign court has awarded punitive damages, etc.

Portugal is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, therefore its domestic courts ought to recognize and enforce awards rendered through international arbitration proceedings.

#### **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

Insolvency in Portugal is a matter of cash flow and balance sheet alike. Portuguese Insolvency Law (Insolvency and Recovery Code, as approved by Decree Law No 53/2004 of March 2004) originally provided a single insolvency proceeding (processo de insolvência) aiming at obtaining payments through negotiation or liquidation, however reforms conducted in 2012 could be more efficient in supporting companies in financial difficulty.

### Insolvency proceedings

#### Out-of-Court proceedings

The decree-Law 178/2012 has established a 'system of extrajudicial recovery of undertakings' (Processo Especial de Conciliação, PEC conducted under the auspices of the IAPMEI). Under this procedure mediated by IAPMEI, the debtor and its creditors (representing at least 50% of the debt) may reach a compromise in a confidential and consensual way. This scheme replaces a former procedure regulated by Decree Law No 316/98 of 2008 which was not commonly used because any compromise had to be concluded with creditors representing two-thirds of the debt. Recent comments suggest that just over 10% of companies which went through the new PER procedure have become insolvent.

#### Restructuring the debt

Debt negotiation under the 2004 law placed a company facing financial difficulties under the control of a court-appointed administrator under the request of the debtor, their creditors and the Public Prosecutor (Ministério Público). The court designated a Creditors' Committee to approve potential insolvency plans but the scheme only had limited impact. Since April 2012, a new 'revitalization' procedure (Programa Especial de Revitalização, or PER as provided under Law 16/2012) now allows companies in financial distress to initiate recovery and debt relief negotiations with their creditors. A moratorium halts all enforcement proceedings for three months to preserve the debtor while the parties attempt to reach a compromise, which becomes binding on the parties as soon as it has been agreed upon by a quorum of creditors defined by law, and validated by the court. Therefore, although the goal of the PER procedure is still to ensure the ultimate satisfaction of the creditors, more flexibility has been introduced to increase rescue opportunities.

#### Winding up proceedings

Liquidation takes place by apprehending and selling all assets of the debtor company. This procedure is made by a court representative, an insolvency administrator, through public auctions.

#### Priority Rules

Priority rules normally apply as follows while distributing the proceeds of the sale of the debtor's assets: secured debts benefiting from priority rights, preferential debts benefiting from general privileges



(workers, Social Security, state), common debts and subordinated claims (which can be satisfied only once all debts have been repaid). In the majority of the cases it is difficult for common creditors to recover part of their debts. In domestic transactions, the declaration of insolvency allows recuperating the VAT on debts not covered by credit insurance policies.

#### Cancellation of suspect transactions (clawback)

Liquidators are normally entitled to request the courts to cancel suspect transactions deemed harmful to the creditors and diminishing, frustrating, obstructing, endangering or delaying the satisfaction of creditors in bankruptcy proceedings. A suspect period starting four years before the commencement of the proceedings is applicable.

#### How long could insolvency proceedings take?

Insolvency proceedings in Portugal, as in many countries, may be time consuming and could require from two years (on average) to nine years for the most complex cases.

#### Necessary documents

All documents that would help prove the claim such as correspondence (email or other), contracts, purchase orders, invoices, checks, letters of credit and receipts. As court representation must be done through a lawyer, in case of court or arbitral files, a power of attorney is also needed.

#### 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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