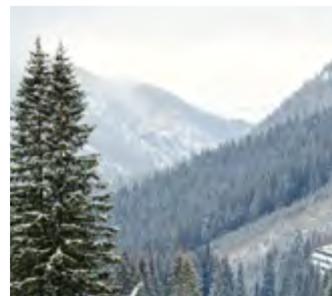


Collection Profile Slovakia

Collecting in Slovakia

- The payment behavior of domestic companies is quite good, however according to the data for 2016, companies or entrepreneurs in Slovakia pay after the due date in 27% of cases.
- The legal system suffers from a persisting lack of trust in the rule of law, while the legal process is overly slow. Domestic debtors often use the system to delay legal proceedings and enforcement attempts as much as possible.
- Debt restructuring mechanisms may help collect debts, but overall recovery chances remain extremely low when legal proceedings have been delayed and the debtor has become insolvent.

Collection complexity



Complexity relating to

Notable Severe
→

Payments



Court proceedings



Insolvency proceedings



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Days Sales Outstanding (DSO): The average payment terms tend to be from 30 to 60 days (up to 90 to 120 days in the heavy industry and construction sectors).



General information

Availability of financial information

Debtors are normally able to establish good credit history in Slovakia, facilitating easier access to credit, while creditors tend to have easy access to information about a potential debtor's financial history via credit information systems.

Euler Hermes obtains information from various sources in order to maintain a rich database of material. Euler Hermes then allocates each company a grade reflecting its financial health and how it conducts business. Grades represent a core of our knowledge and analyses, and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions.

Main corporate structures

Liability for business debts is determined by legal structures, which are described as follows:

- Sole Proprietorship is available for small businesses managed by an individual and for which no commercial structure is necessary. In this case, the owner is held liable for all business debts. Two to 50 individuals may also decide to share ownership and responsibilities through Partnerships (verejná obchodná spoločnosť, v.o.s.), in which case the partners may be jointly and individually liable for the actions of the other partners. Limited Liability Partnerships (komanditná spoločnosť, k.s) may alternatively offer limited liability to the partners.
- Private Limited Liability Companies (spoločnosť s ručením obmedzeným, s.r.o) represent the great majority of businesses in Slovakia since they require minimal capital funds (EUR 5,000) while the partners' liability is limited to their unpaid contribution. Once the contribution is paid partners are not liable for the debts of the company. Joint Stock Companies

(akciová spoločnosť, a.s.) are used for larger structures willing to divide their capital (EUR 25,000) into tradable shares. In these entities, the shareholders are not liable for the debts of the company. However, the shareholder must pay for their shares since it is not allowed to forgive the debt of a shareholder in order to pay the issue price of the shares. There are also certain types of Joint Stock Companies which are not commonly used: a) Joint Stock Company with flexible registered capital (akciová spoločnosť s premenlivým základným imaním) in which the registered capital (minimum EUR 125,000) is divided by a certain number of 'without par value' shares, unless provided differently by law, and can be incorporated only for the purpose of collective investment; b) Simple Joint Stock Company (jednoduchá spoločnosť na akcie) in which the registered capital (minimum EUR 1) is divided by a certain number of 'par value' shares. The shareholder is not liable for the debts of the company.

- Foreign companies may alternatively settle in Slovakia through Branch Offices (podnik alebo organizačná zložka podniku zahraničnej osoby) which provide no liability limitations to the foreign parent company. 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

Slovakia has a Civil Law system in which justice is provided through 54 District Courts rendering decisions in first instance, eight Regional Courts acting as appellate courts, and a Supreme Court acting as the court of final jurisdiction. In other words, the amount of the claim has no impact on jurisdiction attributions in Slovakia, which essentially depend on the debtor's place of registration or residency.

In June 2016, the European Commission emphasized a persisting lack of trust in the rule of law, with significant impacts on businesses' ability to access fair and equitable justice.

Getting Paid

Days Sales Outstanding (DSO)

The payment behavior of domestic companies is fairly good though it has been degrading in recent time, with delays of up to 20 days becoming increasingly frequent. Otherwise, the average payment terms tend to be from 30 to 60 days (up to 90 to 120 days in the heavy industry and construction sectors), although it is the norm for suppliers not to get paid until after the due date. In practice, payment frequently occurs seven to 30 days after the original due date, with 60% to 80% of overdue invoices actually paid within the first month after the due date.

Late payment interest

The EU Directive 2011/7/EU, which stipulates that payments in the EU must be made within 60 days, was transposed into Slovak law through Act no 513/1991 of the Commercial Code. As a general rule, business-to-business transactions must be paid within 60 days, although payment terms may be extended by contract, provided that they do not become unfair to one of the parties. Unless the parties agree on a higher interest rate by contract, the creditor is entitled to receive late payment interest calculated by default on the base rate of the European Central Bank, increased by eight percentage points (Sections 340 and 365 of the Commercial Code). In practice, applying a 9% interest rate for late payment is common, even though debtors rarely agree to pay such interest in the amicable collection phase.

Debt collection costs

Since 2013 and the transposition of the Recast Directive 2011/7/EU, creditors can furthermore charge a flat EUR 40 collection fee when late payment occurs. Often, collection costs would rather be claimed as part of a lawsuit, while they would be significantly higher than the flat fee.

Ownership protection

Retention of Title (RoT) agreements aiming at preserving ownership over goods until the related invoice is paid in full is possible in Slovakia, although uncommon.

In practice, the ownership limitation would most likely be limited to situations in which the products have not been sold or transformed by the buyer. In addition, the courts would tend to request that the buyer has clearly admitted being bound by the clause (i.e. through a specific approval), therefore enforcing RoT agreements remains very difficult.

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'



Late payment interest:

As a general rule, business-to-business transactions must be paid within 60 calendar days.



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. Bank guarantees remain expensive, therefore 30% of transactions tend to be paid in advance in practice, while negotiating down payments is strongly advisable.



Collecting overdues

Amicable action

Negotiating

The process of law in Slovakia has long been criticized for its lack of speed, transparency and certainty. In addition, the courts are generally overloaded while debtors have a wide range of possibilities to extend the duration of legal proceedings, starting with placing protests, being absent for hearings, etc. Finally, the burden of proof, which lies on the creditor, may be overly constraining. For these reasons, the ability of domestic courts to positively contribute to dispute settlement proceedings is extremely limited and amicable settlement opportunities constitute the most effective alternative to formal legal proceedings, however in practice it is not the favored method among the debtors. Before starting legal proceedings against a debtor, assessment of assets is also 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 by legal action.

Legal action

Ordinary proceedings

If the debt is certain and undisputed, the creditor may request a Payment Order from the District Courts (Pursuant to sec. 265 et seq. of

Act no. 160/2015 Coll. the Civil Litigation Procedure Code, as amended). The debtor would then have 15 days to pay the debt or to file a defense. In this case, or if the debtor fails to respond, the court continues with legal proceedings and usually orders a hearing. At the end of 2016, the legislator has enacted the Act No. 307/2016 Coll. on the Reminder proceedings (Act) with effect from 1 February 2017, which is an even simpler and cheaper alternative to enforcement of the monetary claims compared to the payment order pursuant to Civil Litigation Procedure Code. The new Act comes with the following (most important) changes: the petition on payment order may only be filed electronically using a specific form and must be signed with an authorized electronic signature; the only competent court is District Court Banská Bystrica and the court fee for initiating the procedure according to the Act is half of the court fee of when the creditor requests the issuance of a Payment Order.

Proceedings may also commence by the filing of a claim by the creditor. The debtor is then summoned to bring a defense; however the time necessary to organize hearings would typically give the debtor enough time to disappear. As previously mentioned, in addition, proceedings would provide debtors with multiple opportunities to further delay payment.

When the claim is undisputed and 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 could request a District Court to issue an Order to Pay which will then be enforceable in all European Union countries (except Denmark) without exequatur proceedings.



Necessary documents

When starting legal action, the court requires these basic documents: copies of the debtor's orders, evidence that receivables are due, copies of invoices, and copies of delivery notes signed by the debtor. Formal legal proceedings before domestic courts must be conducted in Slovak or Czech, however some flexibility has been introduced in the court model and documents in English or German are now increasingly admitted.

Time limitations

Commercial claims must generally be brought to court within four years; however transportation claims must be brought within one year.

Provisional measures

Provisional measures may, in theory, help preserve the creditor's interests pending a final court decision. Upon request, the courts may indeed order interim measures aiming at preserving the status quo or at avoiding irreparable damage (attachment of the debtor's assets, mandatory injunctions to do something and prohibitory injunctions to prevent from doing something, protection of rights, etc.). In practice, however, the process is extremely constraining and very difficult to put in place. The creditor would often find it difficult to demonstrate that the claim has a strong chance of succeeding and that damages alone would not suffice in the absence of precautionary measures. Providing a precise list of the debtor's assets would also be necessary, though extremely difficult to establish.

Lodging an appeal

The debtor is eligible to lodge appeal proceedings while the documents for doing so remain very general in nature. In this situation, the court would postpone the process and set a date for a new hearing, however lodging an appeal is possible only on the grounds of appellate reasons which are strictly defined in Civil Litigation Procedure Code. It is then for the creditor to prove its rights, once again. As a result, the appeal process is often used as a delaying tactic. Decisions taken in second instance cannot be appealed.

Enforcing court decisions

A judgment is enforceable for ten years provided that it has become final (i.e. when all appeal venues have been exhausted). In practice, it is common for the debtor to ignore the judgment, in which case it becomes necessary to request the court to order compulsory enforcement of the judgment through a bailiff/executor. Enforcement Procedure Code (Act No. 233/1995 Coll.) has been extensively amended as of 1 April 2017. The Amendment mainly introduces the two following changes:

The only enforcement court with territorial jurisdiction for the whole Slovak Republic is District Court Banská Bystrica and the enforcement petition may only be filed only electronically with an authorized electronic signature. On the basis of these changes, the enforcement procedure should be faster and more effective.

How long could legal action take?

Undisputed debts may be solved by courts within approximately 180 days however, as previously mentioned, obtaining a final and enforceable decision from domestic courts may take years. Enforcing foreign decisions may similarly be extremely time consuming but may nonetheless constitute a tactical move.

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.

How much could this cost?

In legal action, and upon the parties' request, all or part of the claimant's costs (legal costs, court fees and bailiff costs) would normally be paid by the defeated party. Court fees for initiating the procedure amounting to 6% of the claim must be paid by the plaintiff (to be refunded by the defeated party if the plaintiff is successful). No-win-no-fee mechanisms are not used in Slovakia, where lawyers would normally bill their clients for each action undertaken on their behalf.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

Mediation is presented as an alternative to court action under Law 420/2004, however it is not commonly used in Slovakia and if parties seek an out-of-court settlement, arbitration is generally preferred. Given the difficulty to obtain a final and enforceable decision from domestic courts, including an arbitration clause in contracts when doing business in Slovakia may be a relevant option. In particular, when transactions are conducted on an international scale and the amounts at stake are significant, international arbitration may prove efficient. An amendment to the Act on Arbitration Proceedings (Act No. 244/2002 Coll. on Arbitration Proceedings) came into force on 1 January 2017. It introduced major changes to the right to establish a court of arbitration as well as new obligations for established courts. According to the amendment, a permanent court of arbitration (PCA) seated in Slovakia can only be established by a national sports association or a chamber established under law, such as the Slovak Bar Association, or the Slovak Chamber of Commerce. The amendment also obliges legal persons which can establish a PCA to keep the court operational at their own expense, if this is stipulated in a separate provision (Act No. 492/2009 Coll. on Payment Services). Other legal persons (such as a company) is not able to establish a PCA. The legislator explained this as preventing a conflict between the founder of a PCA and the necessity for the court to be impartial. PCAs will no longer have a permanent seat, since proceedings can be conducted anywhere the parties agree on or where the court of arbitration decides.

Foreign forums

Alternatively, parties willing to avoid the domestic courts may choose to settle their disputes through a foreign forum since Slovakia 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. Domestic courts would, however, typically retain exclusive jurisdiction over specific issues of law (for instance, property) as well as over matters deemed incompatible with the public policies of Slovakia. Overall, although enforcing foreign (non EU) judgments may take years, the process could reduce the risk of obtaining an unsatisfactory decision. It would be 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 be specifically drafted for this purpose. Otherwise, arbitration may be of interest.

Enforcing foreign awards

Foreign decisions are enforceable in Slovakia but extensive patience may be required, as various circumstances may apply. On one hand, decisions rendered in an EU country would benefit from advantageous enforcement conditions. Apart from EU Payment Orders which are normally enforceable directly in domestic courts, the main methods of enforcing an EU judgment in Slovakia 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), and since 10 January 2015, by the Regulation of EU Parliament and Council no. 1215/2012.

If the judgment qualifies as an uncontested claim, it ought to 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 ought to be 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 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 Slovakia drafted for this purpose. Slovakia 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 Slovakia relates to cash flow insolvency (platobná neschopnosť) and balance sheet insolvency (predĺženie) alike. The Slovak insolvency law flows from the Act on Bankruptcy and Restructuring (which has been amended since then. Reforms were conducted in 2012 in order to make insolvency law more favorable to creditors (essentially through the introduction of softer conditions to begin proceedings). The latest amendments to Act No. 7/2005 Coll. on Bankruptcy and Restructuring with effect from 1 January and 1 March 2017 has introduced several substantive changes.

One of the major changes was carried out in connection with the restructuring procedure – according to Art. 154 sec. 1 letter g) all unsecured creditors must be satisfied at least in the amount of 50% of their claims since 1 January 2017. This applies to proceedings commenced after 1 January 2017, with small exceptions. The other important change lies in debt relief for individuals (i.e. personal bankruptcy). The changes address practical needs and make personal bankruptcy more accessible to debtors.

Only eight District Courts in Slovakia hear bankruptcy and restructuring cases (except appeals).

In practice, collecting money from insolvent debtors remains extremely difficult.

Insolvency proceedings

Out-of-Court proceedings

The law does not provide specifically designed out-of-court proceedings.

Restructuring the debt

The legal framework offers two distinct proceedings but gives priority to debt restructuring (reštrukturalizácia). Once the restructuring proceedings are initiated (the debtor's approval is compulsory), the petitioner requests a trustee of their choice to formulate a restructuring opinion on the basis of which the court will decide whether or not to commence a full proceeding. After the admission of restructuring by the court, the creditors must file a claim within 30 days. If they miss this time limit, their entitlement can no longer be enforced against the debtor.

The creditors' claims are thus registered and a Creditors' Committee is created in order to represent all of the creditors. The trustee then submits the restructuring plan for approval of the Creditors' Committee. The plan is binding on all its participants upon its final approval by the court. Debt restructuring schemes are increasingly popular among debtors in Slovakia.

Winding up proceedings

Bankruptcy proceedings (konkurz) aim at obtaining optimum realization of the creditors' interests from the proceeds of the debtor's assets. After the filing of a bankruptcy petition by either the debtor or its creditors – if the court starts bankruptcy proceedings and then declares bankruptcy on the debtor's assets – the creditors



are then obliged to file their claims within 45 days.

The court-appointed trustee (selected by a random computer generator) has full power of management of the estate. Their duty is to sell the assets and distribute the proceeds to the creditors. Foreign creditors must appoint a service agent resident in Slovakia in order to be considered by the courts.

Liquidation describes the voluntary procedure which is normally conducted when the debtor decides to close its business without necessarily being insolvent.

Priority Rules

Priority rules normally apply while distributing the proceeds to the secured creditors (separate part of the debtor's property). The creditors' committee is always composed of three or five members, the first of which are elected at the first creditors' meeting. Members of the creditors' committee can be unsecured creditors and secured creditors only to a certain extent. As already mentioned, Retention of Title provisions are extremely difficult to trigger and, in practice, the debtors often have no goods left to return.

How long could insolvency proceedings take?

Insolvency proceedings may last for years.

Necessary documents

Copies of invoices, statements, original order(s) from the debtor. The trustee is within their rights to refuse the claim due to administrative mistakes or if debt is not written into the accounting books of debtor. Then legal proceedings are necessary.

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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