



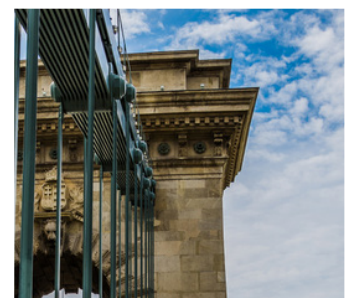
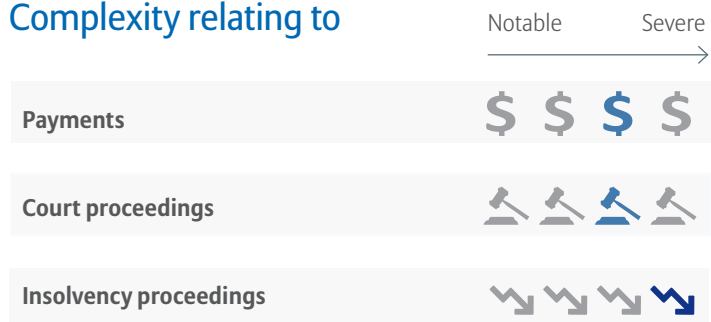
## Collecting in Hungary

- The conformity of domestic law with EU rules on late payment in business-to-business transactions unfortunately does not protect traders from the uncertain payment behavior of domestic companies with average payment term at over 35 days for 2015.
- When considering legal action, it is worth keeping in mind that domestic courts are known for the lengthy and costly nature of their proceedings. In fact, commencing legal action in Hungary would be unreasonable in most cases and pre-legal collection efforts remain the only effective option.
- Although domestic insolvency law aims at rescuing companies to increase the chances of recovering debts, it provides no limitations as to how much of the debt may be written off in restructuration negotiations and it is rare for unsecured creditors to recover from insolvent debtors in practice.

## Collection complexity



## Complexity relating to



**World Bank  
Doing Business  
Insolvency rating for  
2016: 65/189 countries  
(against 64/189 countries  
in 2015).**



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## General information

### Availability of financial information

It is difficult to obtain reliable financial information on Hungarian companies. On the one hand, it is mandatory for most companies to submit their financials to the Courts of Registration every year. On the other hand, although this information is thus openly available, there are in practice various methods to make these figures look better than they actually are audits, are far from systematic, especially for small businesses.

Euler Hermes allocates each company a grade reflecting its financial health and how it conducts business. In addition to the openly available financial figures, our experts obtain relevant information from external providers, request information directly from the companies under evaluation, and conduct on-site visits if necessary. Grades represent a core of Euler Hermes' 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 (Egyéni cég, i.e. Private Company) 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 or more individuals may also decide to share ownership and responsibilities through Unlimited Partnerships (Kkt), in which case the partners may be fully, jointly and individually liable for the actions of the other partners (whilst increasing fund-raising capacity. Limited Partnerships (Betéti Társaság, Bt) may alternatively offer limited liability to the non-managing partners.
- Limited Liability Companies (Korlátolt Felelősségű Társaság, Kft) are in practice the most favored legal entities because they require a reasonable minimum of capital funds (HUF 3,000,000 since March 2014) whilst the partners' liability is limited to their contribution. Corporations (Részvénytársaság, Rt) tend to be used for larger structures and require a minimum capital amount of HUF 5,000,000 for private entities (Zrt) or HUF 20,000,000 for public corporation (Nyrt) which must be divided into tradable shares. In these entities, the shareholders' liability is of course limited to the value of their shares.
- Foreign businesses also tend to settle in Hungary through Representative Offices intended to conduct liaison functions without pursuing core business activities and income creation. Alternatively, Branch Offices are allowed to conduct business activities but cannot provide liability limitations to the foreign parent company. Therefore, subsidiaries tend to be set up through Limited Liability Companies.



### Days Sales Outstanding (DSO)

The average payment term in Hungary was a little over 35 days in 2015, but it can vary depending on the industry,



### Regulatory environment

Hungary has a Civil Law system in which claims are allocated to specific courts taking into account the subject matter of the claim and the amounts at stake. Following recent changes from 2012 (based on Act CLXI 2011), the names and attributions of courts have been modified. Claims in excess of HUF 30 million and claims relating to insolvency, administrative disputes, intellectual property, company law or international transportation would now fall under the jurisdiction of 20 County Courts which increasingly operate through specialized divisions. The other cases would belong to Township Courts but claims under HUF 200,000 can only be solved through payment injunctions delivered by public notaries without geographic restrictions.

Trust in the Hungarian judicial system is growing as its reliability and stability are improving (compared to the country's volatile legislative system), however transparency remains an issue because judges have enormous discretion in weighing evidence, and corruption scandals emerge from time to time.

## Getting Paid

### Days Sales Outstanding (DSO)

The average payment term in Hungary was a little over 35 days in 2015, but it can vary depending on the industry. However, overdues are on the upside since 2014, now above 20 days on average, as a lot of companies have low liquidity and finance their cash-flow through their creditors.

### Late payment interest

The Recast Directive 2011/7/EU which stipulates that payments in the EU must be made within 60 days was recently transposed into domestic law. The rules in Hungary are however stricter than the EU requirements: as a general rule, business-to-business transactions must be paid within 30 calendar days following the invoice date. This period may be slightly extended by contract but payment periods beyond 60 days shall be considered as unfair conditions and may be annulled by courts.

If the parties' contract provides no agreement as to the applicable interest the base rate of the Hungarian Central Bank (Magyar Nemzeti Bank) shall be applied, increased by at least 8 percentage points (against 7 under the previous framework). In practice, however, interest rates are essentially used as a negotiation tool and are rarely paid to the creditors.

### Debt collection costs

Similarly, Recast Directive 2011/7/EU allows charging a fixed sum of EUR 40 as collections cost to the debtor ('minimum supplementary damages'). The costs ought to be charged systematically, however because the transposing law's wording is complex, it is largely unclear how the rule should be applied in practice.

### Ownership protection

Retention of Title (RoT) clauses aiming at retaining ownership over goods pending payment of the related invoices are rather uncommon in Hungary and some sophisticated forms of RoT have actually been considered invalid (the new Civil Codex does not consider them at all).

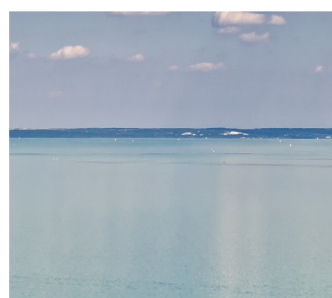
It should be noted that ownership protection in Hungary would not give a right to request goods back but merely grant a priority in case the debt is solved through insolvency proceedings (provided that the agreement is registered in a public database maintained by the Chamber of Public Notaries). The regulations are however largely unclear as to how the registration process should take place.

### Payments

The most common payment methods are often used in a complementary manner and may be listed as follows:

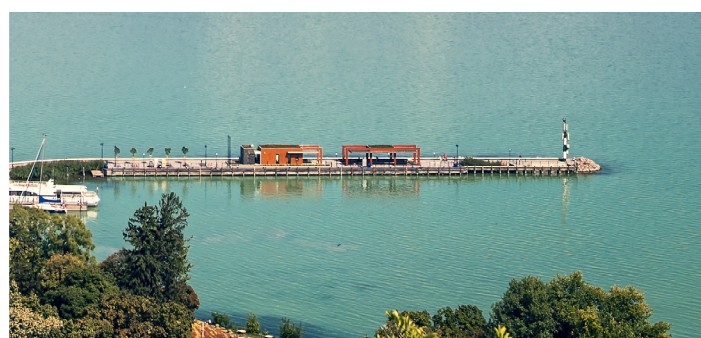
Sepa transfers are amongst the most popular payment means as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. For export transactions, transfers are usually guaranteed through an Export Credit Insurance policy, which helps minimize the risk of sudden or unexpected customer insolvency. Euler Hermes' worldwide network of risk offices monitors the financial well-being of your customers and grants them a specific credit limit up to which you may trade and claim should something go wrong. Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) which usually constitute reliable guarantees are not very common in Hungary.

Payment by cheques is also uncommon. Negotiating down payments may be advisable, depending on the amounts at stake.



#### Late payment interest:

As a general rule, business-to-business transactions must be paid within 30 calendar days, although the terms may be extended to 60 days by contract.





## Collecting overdues

### Amicable action

#### Negotiating

Commencing ordinary legal action in Hungary is not advisable and amicable settlement opportunities should always be considered as a major alternative to court proceedings. Indeed, the Hungarian judiciary system is overall excessively formal and costly, whilst the courts have difficulties coping with the caseload because they are often ill-equipped and there is a lack of trained staff. In particular, negotiating payment instalments is interesting insofar as they constitute obvious debt recognition titles (if authenticated by a bailiff) which would then become enforceable upon court approval whenever the agreement is disregarded.

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 good. In addition, it is essential to be aware of the debtor's solvency status: if insolvency proceedings have been initiated, it indeed often becomes impossible to enforce a debt.

### Legal action

#### Ordinary proceedings

Legal dunning ought to start with a registered Demand Letter recalling the debtor its obligation to pay the principal together with late payment interests (as contractually agreed or taking a legal rate as a reference). Importantly, since insolvency laws were amended in 2006, dunning letters constitute a legal basis to request a company's liquidation, with very limited options for the debtor to dispute the claim. If handled properly, such a threat subjects the debtor to considerable pressure and may help reaching a compromise.

When the debt is certain and undisputed, a fast-track electronic procedure aiming at obtaining an injunction of payment (*fizetési meghagyás*) from a notary is available: the Order becomes enforceable unless the respondent brings a counterclaim within 15 days, in which case the claim must be settled through ordinary proceedings. In practice, it is common for a debtor to dispute the claim in order to stall the procedure. 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.

When conducting legal action is the only option left, the claimant must file a claim with the court which then has 30 days to decide whether the case is admissible. Upon approval, the court must serve the claim to the debtor. Hearings are organized to collect the respondent's arguments, and the evidence is examined by the court which must then render a decision. Since the law was amended in 2010, the parties to a dispute are no longer required to demonstrate that negotiation attempts took place prior to commencing formal proceedings.

Depending on the circumstances of the case, the courts would typically award remedies in the form of compensatory damages, specific

performance, injunctions or declarations, but they cannot award remedies which have not been requested by the claimant. Punitive damages are not provided by law.

#### Necessary documents

Necessary documents for successful litigation in Hungary:  
Client's extract from company register – preferably notarized, original signed and stamped Power of Attorney and Proxy – signed by an authorized person included on the extract from company register, invoice copies, CMR copies, Contract between the parties / if exist, any relevant correspondence between the parties.

#### Time limitations

Commercial claims must be brought before the courts within five years from the date where the cause of action arose. Statutes of limitations are considered as substantive legal requirements and failure to react in due time would bar access to courts unless the debtor acknowledges the debt. The parties may also agree on a different limitation period.

#### Precautionary measures

In emergency situations precautionary measures may help to preserve the creditor's interests pending a final decision provided that a request is brought before or with the main claim. It is however necessary to demonstrate that the measure would allow preventing of imminent damage or maintenance of the status quo, and the court would often order the claimant to provide security on costs in order to protect the respondent from irresponsible action. The respondent may lodge an appeal against interim orders, but the procedure has no suspension effects on the order. Enforcement of interim orders is left to a bailiff, who is entitled to issue attachment orders on the respondent's assets. In practice, the courts would however very rarely order such measures.

#### Lodging an appeal

The defeated party is entitled to lodge an appeal against the decision rendered by the County Courts in first instance, within 15 days of notification of the decision, before one of the country's 5 regional Courts of Appeal. The court will review the case on points of fact, law

#### 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 whilst retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgment and enforcement.

and procedure but it is not possible to submit new evidence on appeal. Decision rendered in second instance may also be appealed against before the Supreme Court (Curia) but the latter normally focuses on legal interpretation matters.

### Enforcing court decisions

A judgment is enforceable as soon as it becomes final (i.e. when all appeal venues have been exhausted). If the debtor fails to satisfy the judgment, it is possible to request an enforcement order from the Court under Act LIII of 1994 on Judicial Enforcement (the Enforcement Act). In this case, the court would typically order specific performance (i.e. payment) in which case the bailiff can gradually increase the measures necessary to enforce compliance, from seizure of bank accounts to foreclosing real estate. The beneficiary of the enforced decision does not need to request the performance of these enforcement actions separately. Fines may also be imposed on the debtor.

### How long could legal action take?

Litigation proceedings in Hungary may be excessively long, two to three years may be necessary before obtaining a final and enforceable order, depending on the complexity of the case. In practice, it is not uncommon for a process to last 5-6 years and in certain cases even 10 years. Enforcement may require 8-9 years but could reach an additional couple of years depending on the difficulty faced in locating the debtor's assets.

Domestic courts would normally make no difference between domestic and international litigation proceedings, however delays may be increased when it is necessary to obtain documents, evidence or statements from abroad.

### How much could this cost?

The successful party may obtain from the court costs deemed necessary to defend the claim, which would be paid by the defeated party. Cost allocation would usually take into account the parties behavior (good faith, delaying attempts), but full compensation of the winning party's legal costs is rarely ordered.

Court costs for fast-track procedures would typically reach 3% of the claim, doubled in ordinary legal proceedings. Enforcement may also cost up to 3% of the amount. Overall, the cost of conducting legal action could reach 15% of the claim.

Legal professionals invoicing a combination of a negotiated base price and contingent fees are very common.

## Alternatives to legal action

### Alternative Dispute Resolution methods (ADR)

Chamber of Industry and Commerce (Kereskedelmi és Iparkamara) has become the most efficient and common alternative dispute settlement method, especially with international partners. However, while it is usually faster than the ordinary proceedings, arbitration may in complicated cases be costly and time consuming. Arbitration (under Act LXXI of 1994 on Arbitration) is generally



### 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, you will be informed of all costs prior to any action and advised on which route is best to take.





permitted provided that a written agreement was included in the parties' contract to this end. Confidential international arbitration is also worth considering. Arbitral awards are final and binding on the parties, they are not subject to appeal and may be enforced as any other final decisions.

Mediation (under Act LV of 2002) aims at assisting the parties in finding a compromise. This ADR method is also increasingly considered.

### Foreign forums

In certain circumstances, reaching a court decision outside Hungary may be cheaper and quicker. Hungary is a signatory to the 'Rome I' Regulation on the law applicable to contractual obligations, which stipulates that parties in a contract may, by mutual agreement, choose the law applicable to this contract and select the court that will have jurisdiction over disputes. Therefore, foreign traders may well solve their business disputes in a foreign forum. It is however 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 to this purpose. Having said this, Hungarian courts normally keep exclusive jurisdiction over numerous claims dealing with consumer protection, real estate property, intellectual property, action against public authorities, company law matters, etc. Before putting such measures into place, giving mandate to a third party to collect the debt whilst mediating potential disputes would seem essential.

### Enforcing foreign awards

Hungarian courts have retained exclusive jurisdiction regarding the enforcement of foreign judgments therefore enforcing certain decisions could be difficult. Otherwise, foreign judgments may be enforced under various mechanisms.

On the 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, the two main methods of enforcing a EU judgment in Hungary 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 whilst 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, amongst other documents, an authenticated copy of the judgment, a certified translation of the judgment 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, the judgment can be enforced as if it were issued by domestic courts (according to the Recast Regulation EC 1215/2012, such an exequatur procedure will no longer be required from January 2015).

On the other hand, judgments rendered in foreign countries outside the EU would be recognized and enforced on a reciprocity basis provided that the issuing country is party to a bilateral or multilateral agreement with Hungary drafted for this purpose.

Hungary 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.

## Handling insolvent debtors

Insolvency is characterized as where the debtor's debts exceed its assets or where the debtor is deemed unable to settle its debts on the due date.

Insolvency in Hungary is governed by Act XLIX of 1991 on Bankruptcy Proceedings, Liquidation Proceedings and Voluntary Dissolution, which was amended in 2006. Although there are some gaps in the law, in general, insolvency procedures are regulated in detail. The new legislation points towards increasing creditor protection and significantly departs from the company rescue approach which is widespread in most countries. Insolvency proceedings are usually dealt with by the County Court of the debtor's registered seat.

### Insolvency proceedings

#### Out-of-Court proceedings

Hungarian law does not formalize out-of-court workouts, but due to high legal constraints and as a result of the policy move mentioned previously, most insolvency proceedings in Hungary end in liquidation. Between a creditor's request to liquidate a debtor and the court's order, however, intense negotiations between the parties to avoid this outcome often take place and privately negotiated work-outs often constitute a practical approach to avoid liquidation. If an agreement is reached between the two parties, they can request the suspension of the procedure until the agreement is respected.

#### Restructuring the debt

Companies in Hungary are under no obligation to file for mandatory insolvency proceedings but the law entitles debtors to file for reorganization proceedings as a means to overcome financial difficulties. In practice, this method of solving insolvency situation remains rarely relied upon.

Upon its application, the debtor is granted a systematic ninety-day stay, with a view to reaching a composition agreement with the creditors and to preserve or restore its solvency. From this moment, the acts of the debtor are overlooked by an administrator. The reorganization agreement must be validated by a majority of creditors (secured and unsecured alike), but the court must also approve the plan. The agreement binds all creditors who registered their claim, whether they accepted or rejected it, if the majority of both the unsecured and secured creditors separately accepted it. Should the parties fail to reach a compromise, the court would typically terminate the proceedings and declare the debtor insolvent. In this case, the liquidation phase would begin.

As a general rule, creditors alone cannot force a debtor into restructuring proceedings against its will but every creditor can directly request the debtor's liquidation, thus skipping the entire restructuring process.

#### Winding up proceedings

Liquidation proceedings may otherwise be initiated upon demand of either the debtor or the creditor, in which case a liquidator is appointed.

All creditors must lodge their claim within 40 days of the commencement of the proceedings in order to be listed in the table of creditors and have any chance to receive a share of the proceeds (late claims may be registered within up to 180 days, but the creditors would only be satisfied after all other properly registered claims are settled). The liquidator then assesses the debtor economic situation together with the various claims and provides the court with recommendations as to how the assets should be distributed amongst the creditors. The Court then makes a decision.

#### Priority rules

Priority rules normally apply whilst distributing the proceeds to the creditors.

In case a company is liquidated, the creditors are classified into several tiers, where the satisfaction of the higher tiers takes precedence over the lower tiers. Secured creditors (financial institutions, employees, public authorities) must be paid out in full before unsecured creditors may receive any proceeds. Unusually, providers of fresh cash during debt restructuring proceedings seem unable to obtain superiority over anterior debts. In addition, since it is unclear whether Retention of Title provisions would be applied (see above), recovery chances are overall difficult to quantify.

#### Cancellation of suspect transactions (clawback)

Transactions concluded by the debtor with creditors before or during the insolvency proceedings which may be deemed detrimental to the other creditors may be cancelled by the court upon request of the administrator.

Similarly, liquidators may require cancellation of transactions aiming at making the debtor insolvent in order to escape its creditors (when the transaction has occurred within a suspect period of five years prior to the commencement of the proceedings), or at favoring one creditor over the others (when the transaction has occurred within ninety days prior to the commencement of the proceedings). Various timelines apply depending on the context.

#### How long could insolvency proceedings take?

Depending on the size of the company and the complexity of the financial relationships, insolvency procedures can take 3 to 5 years.

#### Necessary documents

Client's extract from company register – preferably notarized, Original signed and stamped POA and Proxy – signed by an authorized person included on the extract from company register, Invoice copies, CMR copies, Contract between the parties /if exist, Any relevant correspondence between the parties.

#### Insolvency @ Euler Hermes

Euler Hermes work 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 suitable.



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