



EURAVOCAT LAW HANDBOOK

# DEBT COLLECTION IN HUNGARY

From our member in Budapest



Before deciding how to recover a debt from a debtor, it is always a good idea to check in the Hungarian database who the debtor is: What is the business relationship with the debtor and what is the debtor's financial situation.

There are ways of obtaining company details, data and annual accounts. These will show the debtor's financial situation.

You can see whether there are any enforcement proceedings, liquidation or bankruptcy proceedings against the debtor.

## **1. Out-of-court debt collection**

Although it is no longer mandatory in Hungary to try to reach a settlement before litigation, it is still recommended and customary for the legal representative with a power of attorney to send a letter of formal notice to the debtor.

In many cases, when the debtor's contact details are known, the first step is to telephone him or her to find out what the debtor's ideas are about paying the debt and what his or her excuses are for not paying the debt.

If the telephone or e-mail enquiry does not lead to a result, the next step is to send the notice by mail. Usually the parties, including the debtor, will be represented by a legal representative.

However, the legal representatives are obliged to correspond with each other and to reply in writing to all requests. In the case of an appointment of a lawyer, all contacts are between lawyers.

## **2. Recovery of debts by order for payment**

If a party does not pay voluntarily, one of the simplest procedures is to issue an order for payment.

In the countries of the European Union, an order for payment may be issued in the European Union.

In Hungary, the Notary is authorized to issue an order for payment and not the Court. The cost is 3% of the value of the debt. If the debtor does not reply to the order for payment within the time limit, it becomes final and enforceable.

If the order for payment is final, the debtor may pay voluntarily or an enforcement proceeding must be initiated, the cost depends on the amount to be collected.

When submitting an order for payment, the legal basis must not be given, so it does not need to be supported by evidence.

It is clear that an order for payment, if it becomes final at first instance and only needs to be enforced, is the quickest and cheapest procedure.

### **3. Debt collection through litigation**

If the order for payment is contested by a party to a lawsuit, the order for payment is converted into a lawsuit, but only if the applicant, i.e. the creditor, pays the difference between the 3% already paid for the order for payment and the 6% required for court proceedings.

The percentage is calculated on the amount that the creditor claims from the debtor. So the basic amount here is 6%, which is a court fee. As the payment is made in Hungarian forint (HUF), it must also be made in Hungarian forint.

The original amount of the claim should therefore be calculated at the bank exchange rate prevailing at the time the fee is paid and the fee should be calculated accordingly.

The lawyer's fees are in addition to the official fees.

But in litigation, we must prove all the legal grounds for the claim and, if possible, all the evidence - so we have to prove our claim. In contrast to the notarial order for payment procedure, we have an obligation to produce and submit to the Court documents that can be genuinely proved and substantiated.

The burden of proof is on the petitioner.

In the new Hungarian Civil Procedure Act, there are two levels of proceedings before the civil court.

The first is the so-called pre-trial procedure. In this procedure, the application, the statement of defense, any counter-application.

The statement of defense and the written submissions of the parties' proposed motions for evidence or the evidence itself (usually documents) must be filed first. It will also be possible to hear the Claimant as well as the Defendant's administrator.

Depending on the outcome of the hearing, further requests for evidence may be necessary, as ordered by the Court, so another hearing may be scheduled at this stage.

In most cases, after the first, but at most, after the second pre-trial hearing, the proceedings will move to the trial stage, where no further evidence can be presented.

Here, the court will hear the witnesses as they have been presented, possibly appoint an expert, and then make its decision. This stage takes approximately 6 months to 1 year.

The judgment of the court of first instance can be appealed. In lack of appeal, the judgement becomes final and enforceable.

An appeal depends on a number of factors and can take up to a year or a year and a half before a final and enforceable judgment is reached in a dispute between the parties.

The judgment also determines the extent to which the unsuccessful party is liable to pay the costs of the proceedings.

The costs of the proceedings are made up of two parts: the fees paid to (the Notary and) the Court and the lawyer's fees and other costs, which the Court has discretion to decide.

The lawyer's fees depend on the agreement, and in general in Hungary lawyers' fees are calculated on an hourly basis, in Euro, with a minimum fee to be paid. It is possible - but this is usually

the case in criminal proceedings - for the parties to agree on a so-called success fee, depending on the expected outcome.

However, this is not common in civil cases.

## **4. Recovery of debts by opening winding-up proceedings**

In cases where the debtor has not raised any objection as to why he is not paying, and therefore cannot be expected to be able to bring a reason to the proceedings why he should not pay, it may be possible to propose the opening of a liquidation proceeding.

Liquidation proceedings can be opened against the debtor in the County Courts, with proof of the amount of the debt and the title to which it is owed, moreover that the debtor has been duly reminded to pay and that at least 90 days have elapsed since the due date for payment. In this case, it is possible to open liquidation proceedings.

If the debtor is of goodwill, it can pay voluntarily before the proceedings are opened, so that the liquidation proceedings.

In the case we have no contestation for withholding the payment, this could be a good option to collect outstanding amounts.

If liquidation proceedings are opened, it is to be expected that they may last for a long time, even years, and if the debtor's debts

exceed the assets at its disposal, the creditor may not be able to get his money in liquidation or only to a lesser extent.

(I note that this can also happen on the basis of a final and enforceable court judgment, as unfortunately in Hungary is very general, that many companies go into liquidation and close down their company rather than voluntarily pay a larger amount.)

What I would also like to add is that it will soon only be possible to submit an order for payment electronically in Hungary.

In court proceedings, the so-called electronic procedure has been compulsory for years, so no paper documents need to be submitted, but at the same time, such proceedings can only be conducted with the representation of a lawyer.

DECEMBER 2023

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*About Hungary*