

Getting Paid under Romanian Jurisdiction

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Debt Collection in Romania

a short guide

Main topics

- Choice of competence and applicable law
- Court proceedings costs
- Small claims procedure
- Payment ordinance
- Statutory late payment interest
- Statute of limitation
- Out of court settlement
- Representation in court
- Enforcement

It is crucial for any seller of goods to be paid on time. Lack of liquidity caused by late payment may endanger the survival of the business. Recovery of claims in court can be a tedious process for an exporter. That is why domestic trade is a safe land for traders, while expansion across borders includes a risk dose. It is much harder to navigate in a foreign legal and economic environment with a foreign language, different currency, different business practices, and especially with different legislation. However, selling goods to Romania should not deter exporters since the legal system and business practices are efficient and well-established.

Globalization and the development of international trade require solutions that simplify contractual relations. The EU aims to harmonize legislation to facilitate the recovery of claims between Member States and speed up payments in B2B relations (eg. Directive 2011/7/EU on combating late payment in commercial transactions transposed in Romania by Law 72/2013).

For exporters of goods in Romania, a solution against bad-payers is the recovery of claims in Romania, using Romanian lawyers, specialized and experienced in such cases. It is certainly more efficient and a less costly solution than trying to recover debt by using one's resources or mandating home lawyers.

Debt collection in Romania for foreign exporters is probably cheaper and more efficient than it would be to pursue a claim in their country of origin. The winning party in a legal dispute can recover all the court expenses and up to 100% of the lawyer's fees from the losing party.

Choice of competence and applicable law

Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters sets out the conditions under which a trader in a Member State or a third State can recover his claims before a court in another Member State.

A foreign exporter can recover his claims in Romania, usually only from debtors domiciled or having their registered office in Romania, irrespective of their nationality, as the rule is that everyone has the right to be sued in the territory of the Member State where is domiciled or has its registered office. Exceptions to this rule are expressly listed in the regulation and strictly interpreted.

Thus, as regards contractual matters, a debtor from a Member State may be sued in the courts for the place of performance of the obligation in question (in the absence of a convention to the contrary, is understood to mean the place in a where the goods have been or should have been delivered the services were or should have been rendered).

"There is no reason for an exporter to fear the costs of pursuing claims in Romania. If the claim is justified, the exporter recovers the lawyers' fees and court expenses and gets default interest of a minimum 6% per year if the price was agreed in foreign currency."

Stamp fee is of LEI 2,105 for the recovery of a LEI 50,000 claim (approx. EUR 10,700) and of 8,605 LEI for the recovery of a LEI 500,000 claim (approx. EUR 107,000). The stamp fee is maximum LEI 200 for simplified procedures.

Romanian system of law allows for the recovery of debts using simplified and accelerated procedures based almost exclusively on documentary evidence.

Advantages:

- low cost of stamp duty
- speed of procedure
- enforceability of the first instance judgment
- full recovery of the costs



Increase your chances of getting paid under Romanian jurisdiction by mandating a specialized debt collection lawyer

A person may also be sued before the court competent for another debtor where the creditor has more than one debtor, so one can refer to the court where any one of them is registered, provided there is a link between the requests so tight that it would be appropriate to examine and judge them at the same time.

Of course, the parties may conclude an agreement on jurisdiction, in which case jurisdiction is exclusive to the chosen court. The convention must be written or verbal with a written confirmation or in a form in accordance with the customs established between the parties. Any communication in electronic form which provides a durable record of the agreements shall be equivalent to writing.

Another aspect of choice is the law applicable to the contract. Regulation (EU) No 593/2008 on the law applicable to contractual obligations establishes the rule that the applicable law is the one chosen by the parties. In the absence of choice, the Regulation sets out a series of rules in this regard. The applicable law will be that of the country in which the seller has his habitual residence or where the service provider is habitually resident.

For an exporter, it is appropriate to choose the law applicable to the contract so as to maximize the possibility of recovering its claims against importers. As a matter of principle, the exporter's interest is to confer competence in case of litigation on the courts of origin and to choose the

same criterion for determining the applicable law.

If such clauses are not agreed, it is possible to choose the foreign law from the importer's registered office as the applicable law. All this in order to prevent that the court from the importer's registered office is ruling under a foreign law, that of the exporter's origin.

This latter hypothesis will occur if no assignment clause is agreed upon.

Although there is a general harmonization trend across Member States, there are still differences as regards the material law applicable to contracts. Thus, it is preferable to choose the most convenient law. Judicial proceedings in Romania and Romanian law as regards contractual matters present a series of benefits that can be of great interest to exporters that sell in Romania.

Costs related to court proceedings

In the Romanian judicial system, court expenses can be recovered in full. The prevailing party will request that the debtor is ordered to pay all the costs in his favor. Expenses include court fees, lawyers' fees, expert fees, and other costs related to the trial.

Stamp duties in the case of money claims are calculated progressively in relation to the value of the object of the claim. In order to recover debts in Romania, it is not necessary for the applicant to pay a bail. This may only be necessary if the judgment is requested to be applied provisionally when it is not enforceable in the first instance.

Small claims procedure

In order to recover debts whose value does not exceed LEI 10,000 (approx. EUR 2,150), the small claims procedure, which is also available in other Member States, can be used. In this case, the stamp duty is LEI 50 for amounts under LEI 2,000, or LEI 200 for amounts between 2,000 and 10,000. The proceedings may be finalized even within a period of two months and the judgment given in the first instance of jurisdiction is enforceable. Thus, the claimant will be able to obtain the money even before the solution becomes definitive if the defendant lodges an appeal. Additionally, the procedure usually takes place in the absence of parties, so there is no need to present before the court, which further reduces the costs of litigation (reduced costs with lawyer fees, no travel costs, etc.).

Oder for payment procedure

Another simplified procedure found in one form or another in other EU Member States is the order for payment procedure. It relies exclusively on documentary evidence, allows the recovery of any money claim, regardless of value, and it can be finalized as quickly as 45 days from registering the application before court. The stamp duty is LEI 200 irrespective of the amount of the claim, but it requires a clear legal situation where no expertise or witnesses are required for reaching a solution. The judgment given in the first instance of jurisdiction is enforceable.

In addition to these two procedures, in the case of disputes with extraneous elements, creditors may use the provisions of Regulation (EU) No 861/2007 laying down the European Small Claims Procedure and Regulation (EU) No 1896/2006 establishing a European order for payment procedure. Both provide for two simplified procedures to accelerate the debt recovery process. Thus, the seller from a certain Member State can either use the procedures regulated within the European regulations or the national law of the Member State whose law is applicable to the dispute.

Full recovery of the damage suffered, even in the absence of a contractual clause. Statutory interest

In the case of money claims, Romanian law allows the applicant to claim, in the absence of a contractual clause providing penalties for late payment, statutory interest for late payment (penalties for non-performance of the obligation on time). For B2B, this is equal to the BNR reference rate plus 8% per year. In the commercial relations with a cross-border dimension, when the Romanian law is applicable and when payment was stipulated using foreign currency, the statutory interest is 6% per year.

The debtor owes statutory interest right from the time of maturity of the obligation and until the full payment of the debit. If there is a conventional clause stipulating a contractual interest for late payment, this may be requested in court instead of the statutory one

If the non-payment of the principal debt is proven, the court grants statutory interest right from maturity, but only upon request.

Along with the statutory or conventional late payment penalty, the creditor has the right to request the updating of the claim with the inflation rate in order to avoid devaluation of the national currency. The cumulation of the two over the same reference period is possible, as was confirmed by the Romanian High Court of Cassation and Justice by Decision no. 4426/2013. If the payment is due in a currency other than the national one, the court will order the payment of the requested amount, in LEI equivalent, calculated at the NBR exchange rate from the actual payment date. Of course, in case of amounts due in foreign currency, they cannot be updated with the inflation index.



The general limitation period for the right to recover debts is 3 years

The creditor has a limitation period of 3 years from the maturity of the payment obligation during which the court proceedings for recovery of debts can be initiated.

However, it is preferable for a creditor to contact a lawyer and initiate debt collection within maximum 30 days from maturity. It is proven that any additional delay decreases the chances for recovery and only causes additional problems.

According to Romanian legislation, the court cannot invoke the statute of limitation *ex-officio*. The debtor is required to invoke the limitation status using the statement of defense or at the latest at the first hearing for which the parties are legally summoned. In other words, even a time barred claim may be recovered if the debtor does not defend himself or herself within the legal deadline.

Not being of public order, the Romanian law allows the parties to increase the statute of limitations from 3 to a maximum of 10 years. Thus, a cautious vendor will enter a clause within the initial contract as to conventionally increase the limitation period.



Amicable settlement is always more desirable.

We may propose the debtor an agreement for payment in installments and ask for additional guarantees.

Summon the debtor prior to the lawsuit

As a general rule, debt collection begins extrajudicially, with a dunning letter sent to the debtor demanding the voluntary and short-term payment of the amounts due. It is recommended that the seller submits no more than two payment demands. Any other subsequent attempt becomes a waste of time.

Further on, the exporter must use the services of a Romanian lawyer. The lawyer may also notify the debtor, on behalf of the exporter, that he will be given another short payment term. In Romania, this pre-court approach is optional when we talk about B2B commercial transactions. In such circumstances, the debtor is deemed to be late on payment by default.

For making an out-of-court payment demand, it is not necessary to attach the documents upon which the claim is founded. The related costs may be subsequently requested in court.

Amicable settlement

If the debtor has liquidity problems, an out-of-court negotiation may be attempted as to establish a debt repayment schedule. It is necessary to authenticate such a settlement before a public notary in order to obtain an enforceable title against the debtor. In addition, using such agreement the will request the debtor to provide additional payment guarantees.

Under Romanian law, an agreement containing a debt repayment schedule concluded before the public notary can be directly enforced, without resorting to the court, in case of failure to comply with the payment terms. This is equal to a court judgement ordering the payment.

Representation in court

In the Romanian legal system, a company may represent itself in court through its administrators with powers in this respect or may be represented by a lawyer. Under no circumstances can the company be represented by another company, irrespective of its object of activity, and regardless if there is a mandate to do so. Moreover, another company will not be able to represent the creditor company in court using its lawyers. It is essential that the recovery proceedings are based on a legal assistance contract concluded directly between the creditor company and a Romanian lawyer.

If debtors are registered in Romania, it is not recommended to use the services of a debt collection company. In fact, resorting to specialized lawyers is preferable as regards the lower costs, which are in principle limited to stamp duty and lawyers' fees. Most of the times, lawyers will also agree working using success fee arrangements.

Documents required for proceedings before the Romanian court

For the recovery of a money claim, the following documents are required: the agreement underlying the contractual relations, including the framework agreement, proof of order, confirmation of receipt of the order, invoices, proof of receipt of the goods, receipts proving the eventual partial payments / payment orders / bank statements. Of course, a court action can be successful even in the absence of all these documents.

In the absence of a written agreement, the contractual relations can be proven using the correspondence carried out by electronic means which will be corroborated with the invoices issued, the minutes for the receipt of goods and any other documents. The specificity of the evidence may vary according to the chosen judicial procedure. It is the lawyer who will recommend the judicial path to follow, depending on the specificity of the contractual relations, existing evidence and the circumstances of each case.

It should be kept in mind that all the documents that stay at the basis of the court request must be submitted in Romanian. Thus, documents in a foreign language must be submitted in certified copies accompanied by the certified translation. Translation expenses will also be recovered from the losing party.

Enforcement of the judgment

In the Romanian legal system, the general rule is the existence of a double degree of jurisdiction, which means that the judgment given by the court of first instance cannot be enforced until the appeal has been adjudicated, or until the expiry of the time-limit for bringing the appeal. The exception is represented by the simplified procedures mentioned above when the judgment given by the court of first instance is enforceable.

Enforcement of a judgement is made through a bailiff. A portion of the bailiff's fee is sometimes advanced by the and will be recovered from the debtor along with the recovery of the claim and any other expense.

Once the enforcement order has been registered with a Romanian enforcement officer, it is followed by the issuance of a writ of execution by the enforcement court and the summoning of the debtor by the enforcement officer. In case of non-payment, the enforcement office will levy the debtor's bank accounts and forcible sale its movable or immovable assets (save some exceptions regarding individuals, etc.). The enforcement officer is legally empowered to identify the assets and capitalize them.

A court order pronounced in Romania is recognized in all Member States of the European Union (except Denmark) and can be enforced with little additional formalities. Thus, a creditor who obtains a judgment in a Member State may act against the debtor in another Member State where the latter has assets.

If the judgement is given by a court in Romania, it does not need to be domesticated for being enforced in another EU country. Creditors can also freeze the accounts of the debtor in other European countries.



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BRISC LEGAL

BRISC LEGAL is a dynamic law firm from Cluj-Napoca, the heart of Transylvania. We provide business law services to public authorities and private clients from a wide range of industries covering both dispute resolution and transactional law capabilities.

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