



Cross-border business in the EU made easy

DISCOVER THE EU'S MEASURES
TO FACILITATE BUSINESS AND
SIMPLIFY CROSS-BORDER DEBT
RECOVERY IN THE SINGLE MARKET

3 April 2014 - Sofia



Интелигентно кредитно управление

Фирмена стабилност

Милена Виденова
3/04/2014

Значението на ефективното управление на търговските кредити

- Бизнес и икономическа среда - рискове и последствия
- Динамика на пазара и растящите нужди от ликвидност и финансиране
- Местна и международна дейност

Бизнес и икономическа среда - рискове и последствия

- Рецесия и банкова криза
- Повишаване на лихвените проценти, случаите на фалит, намаляване стойността на активите
- Голям ливъридж, който се оказва нерентабилен
- Забавяне на растежа на потребителските разходи

Динамика на пазара и растящите нужди от ликвидност и финансиране

- Чрез застраховка на търговските вземания, Вие получавате по-лесен достъп до финансиране при по-добри условия
 - Цедиране на застраховани вземания към банката, за което получавате финансиране (факторинг)
 - Получаване на финансиране срещу застраховани вземания (оборотното кредитиране)

Местна и международна дейност

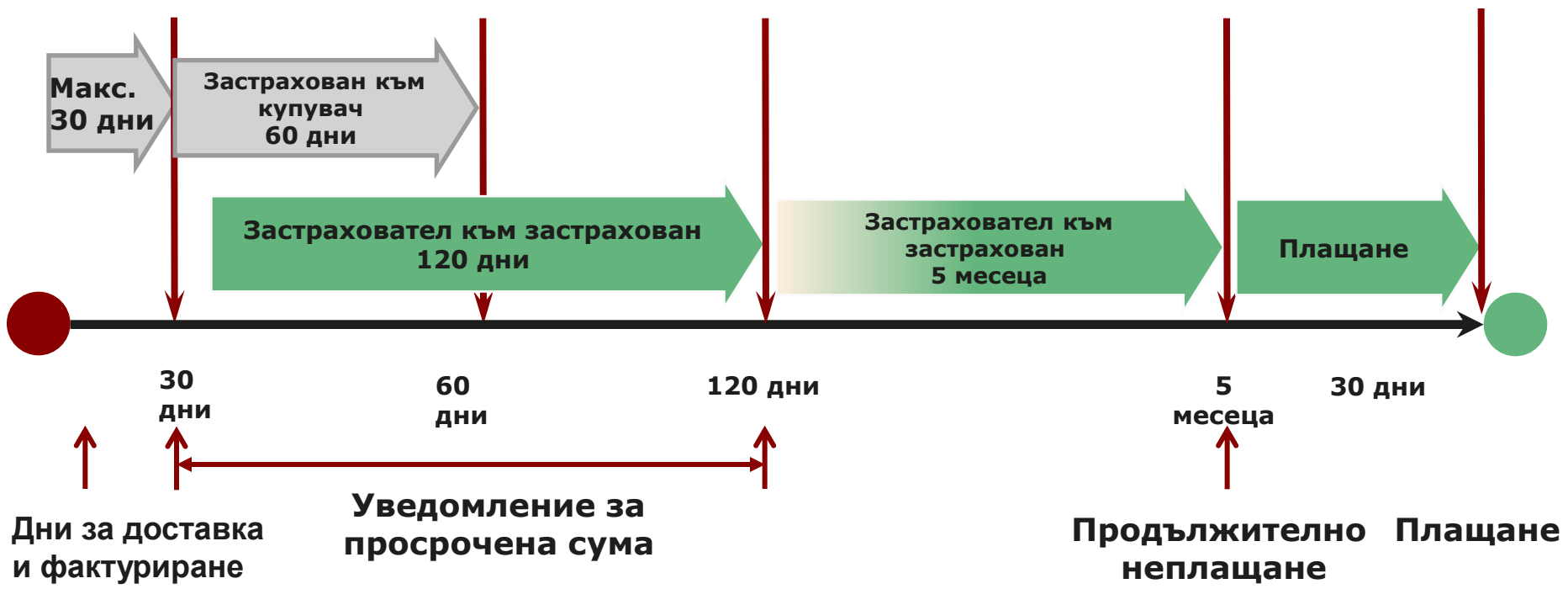
- Застраховката на търговски кредити има за цел да защити доставчиците срещу риск от неплащане на стоки или услуги от техни купувачи:
 - купувач със седалище в страната, в която оперира доставчикът (местен риск)
 - купувач със седалище в чужбина (експортен риск)

Как работи кредитната застраховка?



Максимален кредитен период + период на нотификация

Условия за плащане	Кредитен период	Максимален кредитен период	Изчаквателен период	Изплащане на обезщетение
--------------------	-----------------	----------------------------	---------------------	--------------------------



Решения за управление на кредитния риск

- Значението на разсрочено плащане в съвременния бизнес
- Покрива риска от неплащане на стоки или услуги от купувачите (включени износ на риска)
- Защита от финансови загуби (вземания от клиенти)
- Увеличаване на приходите и рентабилността, намаляване на разходите
- Подобряване на Вашия кредитен рейтинг

Бизнес информацията - конкурентно предимство

- Бизнес информацията дава конкурентно предимство чрез възможност за по-бързи решения и навременна реакция към исканията на клиентите.
- Бизнес информацията ви помага да контролирате риска, свързан с конкретни контрагенти или сделки. При взимането на важни решения, те стъпват върху надеждна и експертна информация, спестявайки време и разходи.

Събиране на вземания - подобрява ликвидността и предпазва от загуби

- Ползвате експертен опит
- Плащате комисионна върху реално събрана сума
- Процесът по-събиране е по-бърз
- Вие се фокусирате върху основния си бизнес

Изграждате имидж на Вашата компания

- Създайте имидж на компания с интелигентно и дългосрочно управление на кредитния риск
- Демонстрирайте успешното представяне на Вашата компания
- Дигитализирайте бизнеса и създайте видимост за Вашите продукти и услуги



European
Commission

Благодаря за вниманието!

**Милена Виденова,
Управител на Кофас за България**

milena.videnova@coface.com

T: +359 2 920 71 25

F.: + 359 2 920 71 50

ул. Петър Парчевич 42, София 1000, България



Cross-border business in the EU made easy

DISCOVER THE EU'S MEASURES
TO FACILITATE BUSINESS AND
SIMPLIFY CROSS-BORDER DEBT
RECOVERY IN THE SINGLE MARKET

3 April 2014 - Sofia



**Проблеми при
трансграничното
кредитиране и
управление на
вземанията в рамките
на ЕС**

**Преддоговорни проблеми и
договорна рамка**

Иван Василев Батачки
03.04.2014



Преддоговорни проблеми

- Вземане на превантивни мерки преди сключване на договор.
- Консултация с юрист.
- Ясна и обективна представа какво мога да дам/получа на/от моя контрагент.
- Какви клаузи трябва да съдържа моя договор (примери).

Договорна рамка

- Предмет на договора.
- Прости и ясни клаузи относно параметрите на договора.
- Клаузи във връзка с бъдещо разрешаване на евентуален спор.
- Алтернативни методи за разрешаване на спор.



Благодаря за вниманието!

- Иван Батачки
 - Юрисконсулт
 - Кофас България
- ivan.batachki@coface.com
- Ул. Петър Парчевич 42 - 1000 София – България
- Tel.:+359 2 821 37 36 - Fax.:+359 2 920 71 50 – www.coface.bg



Cross-border business in the EU made easy

DISCOVER THE EU'S MEASURES
TO FACILITATE BUSINESS AND
SIMPLIFY CROSS-BORDER DEBT
RECOVERY IN THE SINGLE MARKET

3 April 2014 – Sofia
Bit.ly/EUcbbBG



Court Enforcement

Cross Border Claims

Hugh J Ward & Co. Solicitors
3rd April 2014
Sofia

Preamble

- Before litigating you must know the name and address of the person you want to sue, whether they have assets to pay your claim, otherwise there is little point in litigating.
- A court judgment means that at the end of the case there is a court judgement which can be enforced against the debtor.
- The time for dispute of the debt is passed
- Legal action can have adverse consequence to the business relations with your customer.

Which Court

- EU has agreed certain procedures that simplify and speed up cross border cases
- The rules also make it easier to enforce a claim against a defendant in another member state
- The “Brussels 1” Regulation (44/2001) sets out the rules for which courts should hear cross border cases
 - General rule is the case should be heard by the courts of the member state where the defendant resides or where the company is based

What Procedures are available

- In a National Court.
 - application required to enforce in other EU States. (Brussels 1)
 - The European Order for Payment
 - (Automatically enforceable in other EU member states)
- The European Enforcement order for uncontested claims.
(Certified claim)
- The European Small Claims Procedure
 - (Automatically enforceable in other EU member states)



European
Commission

CASE STUDY 1

In the matter of Harley Medical Group (Ireland) Limited

Proceeding in National Courts

These are determined by the "Brussels I" Regulation (44/2001) which sets out the rules for deciding which courts should hear a cross-border case.

It is essential to know where you have to initiate legal proceedings. The normal rule is that the courts of the Member State where the defendant resides, or where the company is based, should hear the case, but there are exceptions.

Proceeding in National Courts

The Costs of legal proceedings in each member state vary greatly and the choice to go legal must be weighed up with any potential benefit.

The appropriate court will be determined by way of your terms and conditions discussed earlier – legal venue clause.

- 1. General Jurisdictional Rule**
- 2. Special Jurisdictional Rules**
- 3. Exclusive Jurisdiction**
- 4. Conflicts of law**

Proceeding in National Courts

Main objective of Brussels 1 is to simplify the recognition and enforcement of judgment's within the EU.

Proceeding in National Courts

- 1. Obtain your judgment in a national court within the EU**
- 2. Apply to the court in the member state where you wish to enforce your judgment. (In Ireland the application is ex-parte to master of High Court)**
- 3. Declaration of Enforceability is issued and is required to be served on the party against whom enforcement is sought.**

Proceeding in National Courts

There are a number of defences against recognition in this way (Article 34 defences) – eg Contrary to public policy, where judgment was granted in default of appearance etc)

Article 36 also states that “under no circumstances may the foreign judgment be reviewed as to substance”

EEO –v- Brussels 1

It may be more cost effective to apply for the European Enforcement order.

European Enforcement Order –v- Brussels 1

EEO - application to enforce is made to the court where the judgment was obtained

Brussels 1 – application to enforce is made to the court in the state where you want to enforce

It may be more cost effective to apply for the European Enforcement order.

European Enforcement Order

- The European Enforcement Order is for Uncontested Claims and is based on EC Regulation No. 805/2004.
- This process facilitates the simple recognition and enforcement of the national rulings of uncontested claims in another Member State (with the exception of Denmark).
- A European Enforcement Order can be enforced by the enforcement authorities of the other Member State without any further formalities.

European Enforcement Order

- A claim is deemed to be an uncontested claim within the meaning of the regulation, if the debtor:
 - has not contested it during the court proceedings;
 - has failed to appear at a hearing relating to the claim, having previously contested the claim during the court proceedings;
 - has expressly consented to the order by recognition or via a settlement entered into before a court.
 - has expressly acknowledged the claim in a public document of record.

European Enforcement Order

Certification of a ruling on an uncontested claim in the form of a European Enforcement Order can be obtained by the applicant before his/her own court before which the ruling was issued.

The application for certification can in turn be made using a standard European enforcement order form.

European Enforcement Order

- The certification of the European Enforcement Order must be submitted to the enforcement authorities of the EU Member State in which the debtor resides, together with an official copy of the original decision in respect of the uncontested claim, if necessary in the form of a translation into a language accepted in the other Member State.
- The claim may only be enforced in the other Member State under the enforcement options customary in that jurisdiction.

European Order for Payment

- The precondition for such an application is that a cross-border legal matter is at issue. This requirement is fulfilled when at least one of the parties has their usual residence or habitual domicile in an EU Member State other than the Member State of the court to which the case is referred.
- By contrast to the European Small Claims Procedure applicable only for claims not exceeding €2 000 in this procedure there is no maximum claim amount.

European Order for Payment

- It is also important to consider that the European Order for Payment Procedure only applies if the monetary claim is undisputed and due (at the time the application is submitted). The exact amount must be stated on the application.
- If the debtor lodges an objection to the claim in due time the matter is remanded to the competent courts in accordance with the regulations governing proper civil proceedings

European Order for Payment

- To apply for a European Order for Payment, a standardised form must be completed. It is codified in order to simplify same to account for possible language barriers.
- initially the relevant Form A must be completed, which can be downloaded online in the various EU Member State languages.
- It must be noted that the form must be completed in the official language(s) of that EU country in which the application is submitted. It must therefore first be clarified which court in which country is competent.

European Order for Payment

- The application must be submitted to the court that has jurisdiction under the terms of the Brussels I Regulation.
- This is generally the Member State in which the respondent is domiciled.
- The following website will tell you which court can issue an EPO in your case and where you should send your application form:
 - http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_courtsJurisd_en.htm

European Order for Payment

- Once submitted, the application is reviewed for completeness by the competent court;
- if necessary additional information will be requested.
- The court will examine your application and, if you have filled in the form correctly and replied to any requests for further information, the court should issue the European order for Payment within 30 days.

European Order for Payment

- The court does not however subsequently check the information provided by the applicant.
- Generally, courts issue the European Order for Payment after 30 days
- The European order for Payment will now be served on the defendant by the court. He can either pay you the amount of the claim, or contest it.

European Order for Payment

- He has 30 days to lodge any statement of opposition to the European order for Payment. If this happens, the case can be transferred to the normal civil law courts to be dealt with under national law.
- If the debtor does not challenge the order the European Order for Payment automatically becomes legal and enforceable in all EU Member States. In order to enforce the European order for Payment, the applicant will submit to the enforcement authorities of the EU Member State, where the enforcement is to take place, an official copy of the European Order for Payment.

European Small Claims Procedure

- The European Small Claims Procedure is based on EC Regulation No. 861/2007 – applies to consumers and businesses – commenced 1/1/2009
- The aim of this procedure is to simplify and expedite the enforcement of small cross-border claims of less than €2,000.00 (excluding interest, expenses and disbursements). (proposed increase to €10,000)
- Judgement rendered within the context of this process is also recognised as legal and enforced in the other Member States (with the exception of Denmark) without a declaration of enforceability

European Small Claims Procedure

- This is usually a written procedure for claims of up to €2000 (excluding interest) using standard forms, in order to keep it as short and simple as possible. This is again a codified procedure to alleviate language barriers.
- You must fill in your details and state your claim in "Form A" which is annexed to the Regulation and available electronically on the europa website.
- If you have relevant supporting documents, such as receipts, invoices etc., attach these to the application form.

European Small Claims Procedure

- Once the court receives your application form they will fill in the relevant part of the "Answer Form".
- Within 14 days of receiving your application form the court should serve a copy of it, along with the Answer Form, on the defendant.
- The defendant has 30 days to reply, by filling in his part of the Answer Form.
- The court must send a copy of any reply to you within 14 days.

European Small Claims Procedure

- Within 30 days of receiving the defendant's answer (if any) the court must either
 - **issue a judgment on your small claim,**
 - **request further details in writing from either party,**
 - **or summon the parties to an oral hearing. If there is an oral hearing, you do not need to be represented by a lawyer.**

European Small Claims Procedure

- Once the respective court has issued a judgement in the applicant's favour, the latter may then ask the court to fill out Form D as an official confirmation
- With this form (which might need to be translated into the language of the other Member State), and a copy of the judgment, The order is enforceable in any other Member States of the European Union, without any further formalities.

European Small Claims Procedure

- It is important to note that under the Small Claims Regulation, the authorities in your Member State are required to give you assistance to help fill in the forms – for example at your local court.

European Small Claims Procedure

The European Commission has proposed to strengthen the position of consumers and businesses in low-value cross-border disputes.

The European Parliament/Council's decision on the final text must be made. The whole procedure could take a couple of years.

The new proposal aims to change the ceiling for filing a claim under the procedure up from €2,000 to €10,000.

European Small Claims Procedure New Proposals

- Only 20% of small business claims fall below €2,000 – new limit of €10,000 will benefit SMEs as it will apply to 50% of SME claims
- Widen definition of what is a cross border case
- Cap Court Fees at 10% of value of claim and the minimum fee cannot be higher than €35 - payable online by credit card
- Cut Paper Work and Travel Costs – can claim online, email will be legally valid means of communication between parties and tele and video conferencing will be used for oral hearings, - no need to physically go to court



European
Commission

CASE STUDY 2

In the matter of the Enforcement of cross border airport charges

Comparative Models of Enforcement Systems

- Centralised Enforcement System
- Northern Ireland Enforcement of Judgments Office (EJO) and Sweden – Swedish Enforcement Authority (“Kronofogdemyndigheten”) and the National Tax Board (“Riksskatteverket”) – Swedish model very efficient with 75-80% enforcements completed in under 3 months

Comparative Models of Enforcement Systems

- Court Based Enforcement
- England and Wales
- Court makes enforcement order and these are executed by a mixture of private and public officers
- Seizure and sale of the debtors goods
- Attachment of earnings mechanism (not available in Ireland)
- Enforcement seen as inefficient mainly due to lack of information on the means assets of debtor

Comparative Models of Enforcement Systems

- Austria
- Example of court based enforcement which is efficient
- Under €10,000 creditor can apply online for a Payment Order
- Efficient due to online enforcement application system and wide powers of enforcing court to obtain information

Comparative Models of Enforcement Systems

- Privatised Enforcement
- France –enforcement carried out without judicial intervention with a special enforcement judge to resolve enforcement disputes
- Only authorised enforcement agents can carry out the enforcement itself (huissiers de justice)
- The huissiers may request the public prosecutor to obtain information on the debtor

Enforcement across border

- Difficulties in Cross border debt recovery is a bar to the EU market as a result of the various complicated enforcement regimes of the member states
- Key is information about the debtors assets in the member states
- The primary factor for efficiency of enforcement procedures is information on the debtors financial position
- Registers such as population registers, tax, social insurance, police records – national public policy

Ireland Enforcement

- Registration of judgment in the High Court – This results in the judgment being published in trade gazettes and will appear on searches should the Defendant apply for a loan.
- Sheriff – The judgment can be sent to the Sheriff for execution against goods.

Ireland – Enforcement

- Examination – A summons can be issued against the debtor in the District Court. The Debtor must file a Statement of Means and can be cross examined thereon. The judge will make an instalment order requiring the debtor to pay off the debt by certain instalments.
- Committal Order– Should the debtor breach the instalment order an application can be brought before the District Court to have the Debtor committed to prison for breach of a court order.

Ireland – Enforcement

- Bankruptcy - A bankruptcy petition can be issued against the debtor. Under the new legislation creditors may not be awarded the costs of the petition if they have been unreasonable in dealing with the debtor.
- Garnishee Order – A judgment creditor can make an application for a garnishee order with the aim of seizing or attaching debts due to the judgment debtor by any third party. The court can order that a third party should pay the debt direct to the judgment creditor in satisfaction or part satisfaction of the judgment debt.

Ireland – Enforcement

- Examination – A summons can be issued against the debtor in the District Court. The Debtor must file a Statement of Means and can be cross examined thereon. The judge will make an instalment order requiring the debtor to pay off the debt by certain instalments.
- Committal Order– Should the debtor breach the instalment order an application can be brought before the District Court to have the Debtor committed to prison for breach of a court order.

Ireland - Enforcement

- Receiver by Way of Equitable Execution – A creditor can apply to the court for an order for the appointment of a receiver over the assets which are about to come into the possession of the debtor e.g. rents.
- Judgment Mortgage – If the debtor owns property within the state the judgment can be registered as a judgment mortgage against the title of a debtor's property. A judgment mortgage is deemed a secured debt for the purposes of a PIA.

Conclusion

Whatever the facts of your case are will determine which procedure you should adopt.

European order for payment – Uncontested claims – no maximum value

European Enforcement Order – Uncontested Default Judgments

Small claims procedure – anything under 2k

Thank You

Hugh J Ward & Co. Solicitors
9 Seville Place
Dublin 1

Tel: 353-(0)1-8197010

Fax:353-(0)1-8197660

hjward@wardlawyers.eu

www.wardlawyers.eu

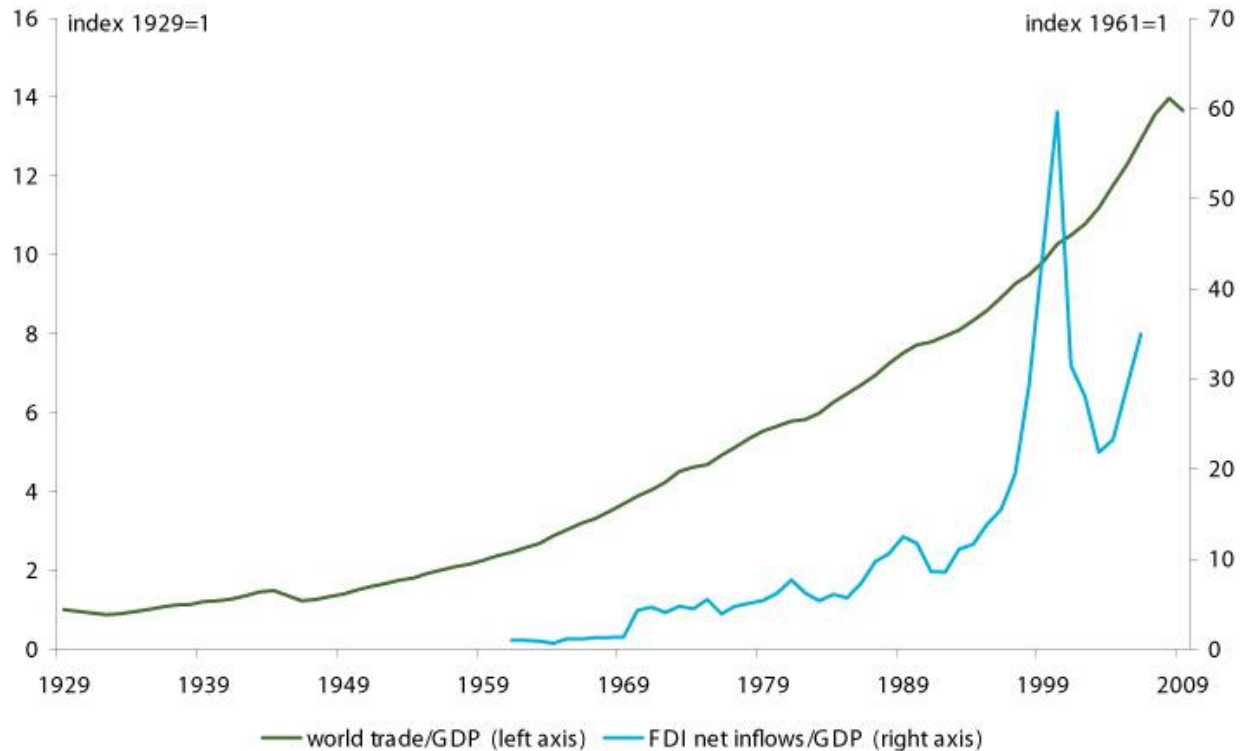


Cross-border business in the EU made easy

DISCOVER THE EU'S MEASURES
TO FACILITATE BUSINESS AND
SIMPLIFY CROSS-BORDER DEBT
RECOVERY IN THE SINGLE MARKET

3 April 2014 – Sofia
Bit.ly/EUcbbBG

Глобализация



„Вероятността нашите деца да започнат работа, която съществува и днес, когато се включат в пазара на труда е изненадващо ниска. В развитите икономики някои оценки показват, че само 1 от 5 ученици в началното училище ще си намери работа, която съществува и днес, след като се включат в пазара на труда.“

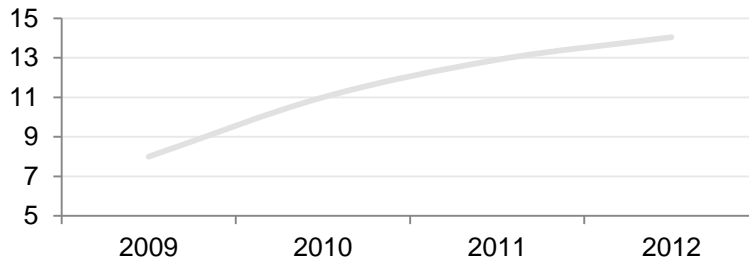
Управление на дължимите вземания

Светослав Дилов, Директор Риск, УниКредит Факторинг

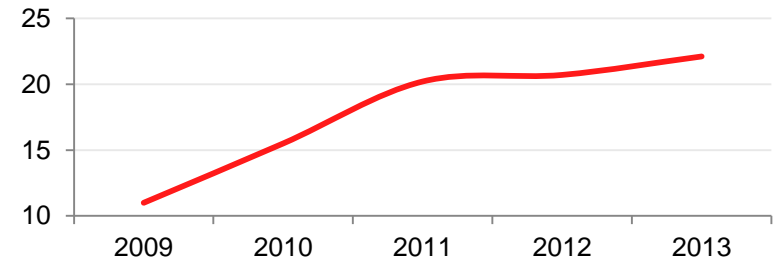
-
- Външната търговия – рискове и възможности
 - Управление на кредитния риск
 - Добри търговски практики
 - Нашият съвет
-

Външната търговия – рискове и възможности

Световен износ в трлн. евро



Български износ в млрд. евро



Тенденции:

- 87% ръст на български износ за 5 години;*
- 58% ръст на световната търговия за 4 години;*
- 81% разплащания на отложено плащане (в световен мащаб)*
- България – **експортно** ориентирана икономика

Макро среда:

- Ефекти от глобалната финансова криза
- Ограничен достъп до финансиране
- Увеличен риск
- Бавно възстановяване

Възможности

Повече продажби, при работа на отложено плащане

Диверсификация от местните ограничения

По-добри финансови параметри

Рискове

Културни различия

Различна правна рамка

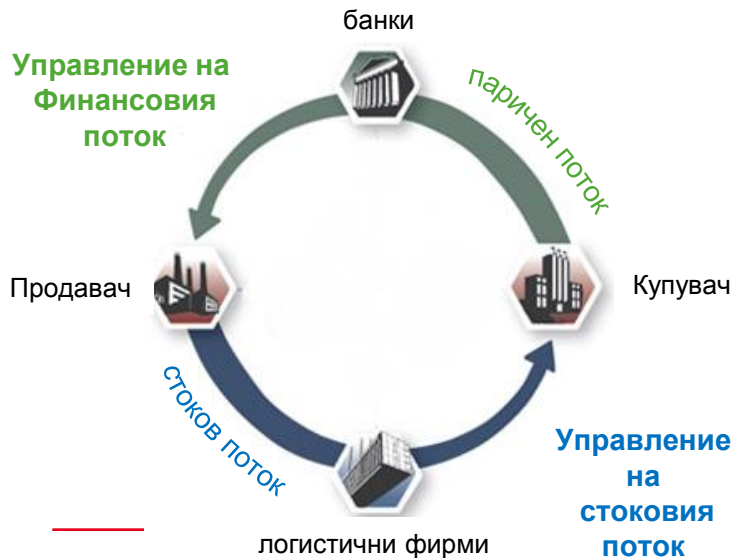
Риск, при работа на отложено плащане

Търговско финансиране и управление на търговските потоци

Елементи на Търговското финансиране


Плащане	Финансиране	Покритие на Риска	Информация
<ul style="list-style-type: none"> Сигурност Точно и на време Глобално С ниски разходи Във всички водещи валути 	<ul style="list-style-type: none"> Достъпно за износител или вносител На няколко етапа по време на транзакцията Оперативност 	<ul style="list-style-type: none"> Прехвърляне на риска Държавен, Банков и Търговски риск Транспортна застраховка Експортно застраховане 	<ul style="list-style-type: none"> Парични потоци Информация за пратка Качество на пратка Интеграция със счетоводните системи

Елементи на Търговските потоци



Управление на стокския ПОТОК	Управление на финансовия ПОТОК
<ul style="list-style-type: none"> Управление на покупките Управление на стоките запаси и производството Управление на продажбите Доставка и транспорт Търговски спорове Управление на продуктите гаранции 	<ul style="list-style-type: none"> Кредит от купувачи и продавачи Цени и ценообразуване Управление на риска по държави Управление на ликвидността Съгласуване и сравняване Плащане

ОСНОВНИ ВИДОВЕ

Вид продукт	Плащане	Финансиране	Покритие на Риска	Информация
Банкова гаранция				
Документарен акредитив				
Експортно застраховане				
Supply chain financing (факторинг и др.)				

Риск при търговско финансиране



Управление на вземания при търговски фирми?

Събиране на информация

- Макро/Микро информация
- Собственост
- Кредитен регистър
- Финансови отчети
- Кредитно досие

1

Оценка

- Анализ
- Кредитни доклади
- Публична информация

2

Категоризация

Подходящи
Максимален кредитен лимит

Максимално отложено плащане

Рискови
Минимален кредитен лимит

Ограничено отложено плащане

Неподходящи
Доставка без кредитен лимит

Плащане: аванс/след доставка

3

Ежедневен мониторинг

- Мониторинг на поведението на плащане
- Категоризация на дълга по клиенти
- Обществено достъпна информация

4

Стратегия за събиране

- Транзакционни особености на местните пазари
- Уведомления
- Разсрочване
- Ограничаване на доставки

5

Добри търговски практики

Проучване

- Проучване на клиентите
- Особености на пазарите и самите клиенти

Кредитна политика

- Анализ на събраната информация
- Определяне на кредитни лимити

Договорни отношения

- Договори
- Документирани поръчки
- Ясни условия на доставка

Нашият Съвет:

Превенция/Аутсорсинг

Варианти за аутсорсинг



Пример – Производител ООД

	Без факторинг		С факторинг	
 Ликвидност	Реализирани Поръчки	10 от 20	Реализирани Поръчки	20 от 20
	Продажби	10 000	Продажби	20 000
	Вземания	1 000	Вземания	2 000
 Защита	Рискови вземания	500	Рискови вземания	50
	Просрочени вземания	500	Просрочени вземания	100
 Оптимизация				

Благодаря за вниманието!



Cross-border business in the EU made easy

DISCOVER THE EU'S MEASURES
TO FACILITATE BUSINESS AND
SIMPLIFY CROSS-BORDER DEBT
RECOVERY IN THE SINGLE MARKET

3 April 2014 – Sofia
Bit.ly/EUcbbBG