

EBRD INSOLVENCY LAW ASSESSMENTS PROJECT 2006				
HUNGARY				
The assessment is based on the Bankruptcy and Liquidation Proceedings Act (1991) of Hungary as amended to 2006.				
The assessed compliance score was medium compliance.				
The law has been considerably improved since the last assessment. In particular, there are satisfactory provisions: -				
<ul style="list-style-type: none"> • regarding the criteria for insolvency and the evidence that may be used to establish that financial condition; • regarding the avoidance of pre-bankruptcy transactions; • in respect of cross border insolvency. 				
Unfortunately, the law remains subject to the following defects: -				
<ul style="list-style-type: none"> • very few safeguards are provided for creditors in respect to the reorganisation process. There is still no requirement for the provision of material information to creditors; no independent analysis of a proposed plan; and no class voting. • the significant time involved in hearing and determining initiating applications of up to 60 days. 				
KEY		COMPLIANCE RATING		
Y	Substantial compliance			90% ++ very high compliance
Y/?	Compliance with reservations			80% - 89% high compliance
N/?	Doubtful compliance			70% - 79% medium compliance
N	Non compliance			60% - 69% low compliance
N/A	Not applicable			below 60% very low compliance
PART A - COMMENCEMENT		YES / NO	ARTICLE	COMMENTARY
1. APPLICATION OF THE INSOLVENCY LAW				
Does the law apply to the following enterprises engaged in commercial activity:				
1.1 natural person enterprises;	N	3		Hungarian law does not pertain to natural persons. Banks and insurance companies are subject to special legislation.
1.2 legal person enterprises;	Y	3		
1.3 state owned/controlled enterprises?	Y	3		

2. COMMENCEMENT ELIGIBILITY				
Does the insolvency law permit an insolvency proceeding to be initiated by a:				Section 7 applies to 'bankruptcy' process that can be initiated by the debtor only and would normally lead to an attempt at reorganisation/composition. Section 22 applies to liquidation proceedings, which can be initiated either by the debtor or the creditor and can be converted to reorganization.
2.1 debtor enterprise;	Y	7, 22		
2.2 creditor of a debtor enterprise?	Y	22		
3. COMMENCEMENT CRITERIA				
3.1 Does the law clearly state the type of financial condition that must apply to a debtor enterprise before an insolvency proceeding may be initiated?	Y	27		
3.2 Does this financial condition refer to a situation in which a debtor is unable to pay its mature debts?	Y	27		
3.3 Does this financial condition refer to a situation in which a debtor's liabilities exceed its assets?	N			
3.4 Does this financial condition also include the circumstance that a debtor will or may become unable to pay its mature debts?	Y/?			By inference in relation to bankruptcy proceedings (as a matter of principle) but not in relation to liquidation proceedings.
3.5 Does the law permit an insolvency proceeding to be initiated by a debtor with reasonably minimal formalities?	Y	8, 22, 23		
3.6 Does the law provide any specific means to enable a creditor to establish the financial condition referred to in 3.2 (such as failure to satisfy a demand for payment of an undisputed debt)?	Y	24		
4. COURT / TRIBUNAL JURISDICTION				
4.1 Does the law clearly identify the court or tribunal in which proceedings should be commenced?	Y	6		
4.2 Does the law provide for the proceedings to be under the control or supervision of that court or tribunal?	Y	6		
4.3 Is the court a special bankruptcy or commercial court (or division)?	Y	6		It is a quasi special division within the ordinary court, called "economic affaires" division.
5. REMEDIES				
5.1 Does the law provide for alternative remedies of bankruptcy (liquidation) and reorganisation (rescue)?	Y	1		

5.2 Does the law provide for the conversion from one type of remedy to the other?	Y/?	10, 21		
6. INTERIM RELIEF				
6.1 Does the law provide for interim relief to protect the assets of the debtor?	Y	24A		
7. HEARING AND DETERMINATION OF PROCEEDINGS				
7.1 Do the rules and procedure for the opening of an insolvency proceeding provide for: -				
i) an early (timely) consideration of the case;	Y/?	27		In case of liquidation proceedings the court renders its decision within 60 days of filing the relevant request. Procedural rules may be found in Act on Civil Procedure. Liquidation/bankruptcy procedures are to be conducted without interruption.
ii) a fair and proper process of notice and hearing of a disputed case;	Y	24A		
iii) the right to appeal from a decision in a case?	N	27B		
7.2 Does the law provide that the court/tribunal must open an insolvency case if a debtor or a creditor satisfies the legislative formalities required for the opening of an insolvency proceeding?	Y	27		
7.3 Does the law permit a case to be opened and fully administered where the assets are insufficient to meet the costs and expenses of such administration?	Y	63B		
7.4 Does the law provide for effective notification of the commencement of proceedings to:				
i) the public generally;	Y	28		
ii) all known creditors individually;	Y	28		
iii) all relevant regulatory authorities?	Y	29		
8. AUTOMATIC STAY ON OPENING PROCEEDING				
8.1 Does the law provide that, without any further determination, the opening of proceedings has the following effect:				
i) all enforcement action or proceedings against the debtor's assets are stayed;	Y	38		
ii) the commencement or continuation of any individual action or proceedings concerning the debtor's assets is stayed;	Y	38		
iii) the right to transfer, secure or otherwise deal with the debtor's assets is suspended?	Y	38		
8.2 Does the law provide that the court/tribunal should make orders to this effect upon or shortly after the opening of the case?	Y	38		
8.3 Do the prohibitions above extend to:				
i) a secured creditor;	Y	38		
ii) a third party who owns property that is used, occupied or in the possession of the debtor;	N			

iii) a supplier under retention of title terms?	N			
8.4 Does the law specify the rights of any of the persons mentioned in 8.3 to apply for relief from the stay?	N			
9. OFFICE HOLDERS				
9.1 Does the law provide for the appointment of an independent functionary to either				
i) take full control of the debtor's business and assets; or	Y	34		
ii) supervise the debtor's business and assets?	Y	14, 24A		
9.2 Does the law specify the qualifications of a person who may be appointed an independent functionary to administer the insolvency?	Y	27A,C		
9.3 Does the law provide for the appointment of a functionary through the court or the creditors?	Y	27A		
9.4 Does the law provide for the possible removal and replacement of a functionary?	Y	27A		
PART B – ASSETS OF THE ESTATE				
	YES / NO	ARTICLE		COMMENTARY
10. ASSETS OF THE DEBTOR				
10.1 Does the law adequately define the assets, forming the debtor estate?	Y	3, 4		
10.2 Does the law clearly state that the ownership rights of third parties and secured property rights are preserved?	Y/?	38, 49, 57		Ownership rights of third parties are preserved. Secured property rights are not preserved.
10.3 Does the law require that the debtor safeguard, deliver up or make available all assets belonging to the estate to the relevant functionary?	N			
10.4 Does the law provide that a third party in possession of assets of the estate of a debtor is required to deliver up such assets or make them available to the relevant functionary?	N			
11. PROVISION OF INFORMATION TO A RELEVANT FUNCTIONARY				
11.1 Does the law require the debtor (or relevant persons connected to the debtor) to provide all information concerning the assets and financial affairs of the debtor?	Y	31		
11.2 Does the law require relevant third parties to provide all information concerning the assets and financial affairs of the debtor?	N			

12. AVOIDANCE OF PRE-BANKRUPTCY TRANSACTIONS				
12.1 Does the law provide for the avoidance or setting aside of transactions made prior to the opening of insolvency proceedings that involves the transfer, disposal or granting of security in relation to assets of the debtor (including the payment of money):				
i) in favour of a creditor, if as a result of the transaction a creditor is preferred over other creditors;	Y	40		
ii) in favour of a third party, if the transaction is a transaction at an under value as regards the debtor;	Y	40		
iii) in favour of a third party, if the transaction was made with the intention of defeating, prejudicing or otherwise defrauding creditors of the debtor?	Y	40		
12.2 Does the law provide clear criteria (including time periods) that must be established before any such transaction may be avoided or set aside?	Y	40		
12.3 Does the law also provide for establishing lesser criteria to avoid or set aside transactions such as those mentioned above where the other party involved in the transaction is closely connected to the debtor?	Y	40		
12.4 If the law provides for the setting aside of transactions such as those mentioned above, does it provide for recovery from the third party?	Y	40		
12.5 Does the law provide for the avoidance or setting aside of a transfer, disposal or grant of a security in relation to the assets of the debtor that is made subsequent to the opening of proceedings without proper authority?	N			
PART C – CREDITORS	YES / NO	ARTICLE		COMMENTARY
13. CLAIMS OF CREDITORS				
13.1 Does the law provide for creditors (including secured and foreign creditors) of the debtor to be notified of any requirement to lodge claims?	Y	28		
13.2 Does the law enable claims to be made and accepted in respect of all debts and liabilities (including liability for a civil wrong) of the debtor?	Y/?	3		It is not clear. The section defines creditor as a person who has 'a claim, whether in money or in kind expressed in money terms'. It is not clear if this includes a claim for unquantified damages.
13.3 Does the law provide for set-off?	Y	38		
13.4 Does the law allow creditors to claim at any time before a dividend is paid?	Y	37		Up to one year from appointed time, otherwise claim is forfeited.
13.5 Is there provision for judicial or other review of the claim of a creditor that is rejected or disallowed by the relevant functionary?	Y	46		
14. INVOLVEMENT OF CREDITORS				

14.1 Does the law provide for adequate participation in an insolvency case either by the creditors as a whole or through a representative committee?	Y	5, 39		
14.2 Does the law require meetings of the creditors and/or creditors' committee?	Y	5, 9, 39		
14.3 Does the law require that creditors be informed of the progress of the administration of an insolvency case at relevant stages?	Y/?	5		This is achieved through participation in the select creditors' committee
14.4 Do creditors have access to a court or tribunal to review aspects of insolvency case that affect their interest/s to which they object?	Y	6		
15. PRIORITY OF CLAIMS AND EQUALITY BETWEEN CREDITORS				
15.1 Does the law provide that the costs and charges involved in the administration of an insolvency case rank in priority to creditors' claims?	Y	57		
15.2 Does the law clearly otherwise state the priority for the payment of creditors claims?	Y	57		
15.3 With the exception of the above priorities, does the law provide for equal treatment for all creditors of the same class?	Y	57		
PART D - REORGANISATION PROCEEDINGS				
16. REORGANISATION PROCEEDINGS	YES / NO	ARTICLE		COMMENTARY
16.1 Does the law clearly provide who has the power of continued management in a case of reorganisation?	Y	14		
16.2 If the debtor (or representative/s of the debtor) may continue to manage, does the law provide for any supervision by a relevant functionary and/or the replacement of the debtor by a relevant functionary if circumstances require it?	Y	14		
16.3 In a case of a proposed reorganisation, does the law specifically prohibit or restrict the termination of:				
i) the supply of essential services including gas, electricity and telecommunications to the debtor;	N			
ii) other essential contracts to which the debtor is a party?	N			
16.4 Does the law require that a decision regarding a proposed reorganisation be reached within a specified time frame?	Y	18		This provides the time limits for a moratorium under the 'bankruptcy' process.
16.5 Does the law clearly state who is responsible for the preparation of a proposed plan of reorganisation?	Y	18		
16.6 Does the law require that material information in connection with a proposed plan be fully disclosed to creditors?	N			

16.7 Does the law provide that an independent analysis of a proposed plan of reorganisation be made available to creditors?	N			
16.8 Does the law provide that a reorganisation plan must comply with specified minimum 'protective' requirements (e.g. that the anticipated return to creditors will be at least equal to the return they would obtain in a liquidation) or otherwise provide against possible commercial abuse?	N			
17. REORGANISATION FINANCING				
17.1 Does the law provide for financing the on-going needs of the business that is attempting a reorganisation?	N			
17.2 If so, does the law provide for a commercially sound process by which such finance may be obtained and repaid?	N			
18. APPROVAL OF REORGANISATION PLAN				
18.1 Does the law provide that a prescribed percentage of creditors (whether in number, value or both) is required to approve a plan of reorganisation of the affairs of the debtor?	Y	9, 19		
18.2 If so, is the approval required no more than 75% and more than 50%?	Y	9, 19		
18.3 Does the law provide for restrictions on voting on a reorganisation plan by 'insider' creditors (e.g. shareholders, directors of the debtor)?	N			
18.4 Does the law provide that a sufficient vote of approval binds all creditors (including dissenting creditors)?	Y	19		
18.5 Does the law enable a dissenting creditor to appeal against a reorganisation plan?	N			
18.6 Does the law require that a reorganisation plan be approved/confirmed by a court/tribunal?	Y	10		
18.7 Does the law provide that the bona fide approval of the relevant majority of creditors cannot be over-ruled by the court?	N			
18.8 Does the law enable a case of reorganisation to be converted to a case of liquidation in the event that a plan of reorganisation is not prepared within time, a plan is not approved by creditors or a plan is not approved/confirmed by a court/tribunal?	Y/?	21		But only if a liquidation procedure has been initiated against the debtor prior to the attempt at reorganisation and the liquidation proceeding was suspended due to the reorganisation.
19. POST APPROVAL				
19.1 Does the law provide for any supervision in the implementation of a reorganisation plan?	N			
19.2 Does the law enable a plan of reorganisation to be amended/modified with the approval of	N			

creditors?				
19.3 Does the law clearly state the effect of a failure to implement a plan of reorganisation?	Y	21		
PART E – TERMINAL PROCEEDINGS	YES / NO	ARTICLE		COMMENTARY
20. LIQUIDATION				
20.1 Does the law provide for the termination of the powers and authority of the management of an insolvent debtor enterprise once it has been determined that the debtor enterprise should be liquidated?	Y	34		
20.2 Does the law provide for the sale of the assets of the debtor by either public auction or private sale?	Y	49		
20.3 Does the law make provision for the timely conduct of a liquidation?	Y	52		
20.4 Once a liquidation commences, does the law provide for a lifting of any stay in respect of actions and proceedings against the assets of the debtor in so far as it affects secured creditors and other persons who own property that is in the possession or occupation of the debtor?	N			
21. DISCHARGE/ RELEASE OF DEBTS				
21.1 Does the law provide for the discharge/release of all debts and liabilities on the completion of the proceedings?	N			Article 41 requires a composition in liquidation before the final liquidation balance sheet is submitted.
21.2 If not, is it clear what liabilities survive discharge?	N			
22. ENFORCEMENT & SANCTIONS				
22.1 Does the law provide sanctions for persons who breach or fail to fulfil obligations under the law?	Y	21, 33		there are sanctions provided for in the Criminal Code
22.2 Does the law provide for directors or managers continuing to trade when they knew that the company could not escape insolvency to be held liable to the creditors?	Y			"Wrongful trading" was introduced in the Companies Act.
23. CROSS-BORDER INSOLVENCY				
23.1 Does the law provide for the recognition of an insolvency case that has been opened in another jurisdiction?	Y	6B, 6C		

23.2 If so, does the law enable a court or tribunal to assist and co-operate in respect of such foreign proceedings?	Y	6B, 6C		
--	---	--------	--	--