

## **Debt Recovery in Bulgaria**

### **Prior to initiating legal proceeding**

First relative stage is the debtor's default. Bulgarian law of obligations stipulates several rules regarding the maturity date. Where the date for performance of the obligation is fixed, the debtor shall be in default upon its expiration. Where no date for performance is fixed, the debtor shall be in default upon request on the part of the creditor. Where a non-feasance of monetary obligation is at hand, interest shall be accrued to the due sum from the date of default. The interest rate is determined by law. If the actually incurred losses are greater than the interest accrued the creditor may claim damages in accordance with the general rules. The Legal Interest Rate amounts to the Basic Interest Rate plus 10 points, where the Bulgarian National Bank shall determine the Basic Interest Rate. For the month of May 2010 it is 0.18%. For commercial disputes interests may be computed on interests if agreed so.

### **Pre-judicial phase**

Before referring the case to the court it is advisable to send a notary notice to the debtor. However this hardly raises any effect.

The Bulgarian legislation stipulates an option for imposing of preliminary security measures on the debtor before bringing an action in court. The proceeding for enforcing of such measures is heard in camera upon creditor's initiative. Persuasive written evidences such as invoices, contracts, notices, etc. should be presented and monetary guarantee shall be deposited. The amount of the guarantee is about 10 per cent of the claim according to the constant practice of Bulgarian courts. The security measures include such as: garnish of bank accounts or property, etc. The judge shall give a deadline to the creditor for bringing the claim in court. The term is fixed up to one month.

### **Judicial phase**

According to the Bulgarian legislation a creditor is entitled to initiate a proceeding within 5 years of the date when payment becomes due. For interest, damages, liquidated damages and periodical payments the claim shall be prescribed within a term of 3 years.

As a rule the disputes are heard by the Regional Court. Yet there are exceptions from that principle. The claims exceeding in value the sum of 25 000 leva, the cases related with estates evaluated to more than 50 000 leva and few other proceedings related with personal matters are heard by the District Court as first instance. The new Code of Civil Procedure enforced as of March 2008 stipulates requirement for presenting of all relevant evidences before the first instance, i.e. a limited number of cases are liable to an appeal before the second instance. The claim is submitted to the respective court where the address of the defendant company/person is found. As a rule, the legal proceeding passes through three instances, however some exceptions exist. Liable to cassation are only decisions suffering from defects explicitly given in the code as cassation grounds. The parties of a dispute shall attend the court sessions personally or shall be represented by attorney-at-law.

The Bulgarian Code of civil procedure provides special rules for certain disputes, such as: summary proceeding, proceeding in matrimonial suits, proceeding in civil status cases, interdiction, judicial partition, remedy against and recovery of disturbed possession, proceeding for conclusion of final contract, proceeding on commercial disputes, proceedings on class actions. There are some specifics in the proceeding on commercial disputes – the parties make a double exchange of statements and documents and the court may rule in closed session.

The court procedure in Bulgaria is considerably slow. It may take several years for each of the instances. The Code of Civil procedure enforced several measures aimed at faster civil process – such as short preclusive terms, limited grounds for appeal and others.

### **Fees and costs**

The claim submission is charged with state fee to the amount of 4% of the claim value. The losing party shall be liable for fees and costs of both the plaintiff and defendant. The claim for interest cumulated on the debt by the date of claim is charged independently with 4%. Furthermore expenses are due for forensic expert opinions, for translations or interpretations, copies of documents, etc. The request for issuance of writ of execution is addressed to the court and is subject to fee amounting to 2 % of the due sum.

### **Enforcement order procedure**

The Code of civil procedure stipulates a procedure for issuance of enforcement order. For claims cognizable by the Regional court, as well as for handing over of chattels, the application is submitted to the Regional court without the necessity for supporting it with documents. Notwithstanding the material interest the claimant is entitled to request issuance of enforcement order after presenting several explicitly given in the code types of documents, some of which are as follows: notarized agreements, extracts from accountancy books, promissory note or other. The issued enforcement order serves as legal ground for issuance of writ of execution.

Council Regulation (EC) No 44/2001 stipulates the procedure for enforcing of a judgment in one Member State in another Member State on application of any interested party and being enforceable there. The procedure for submission of the application is governed by the law of the Member State in which enforcement is sought. According to Bulgarian code of civil procedure the application for admission to enforcement of a judgment of court or another act rendered in another Member State shall be filed to the district court exercising jurisdiction over the permanent address of the person against whom enforcement is sought, over the registered office thereof, or over the place of enforcement. A transcript of the application shall not be presented for service on the person against whom enforcement is sought. The court examines the application in camera. The court verifies the conditions for admission to enforcement solely on the basis of the copy of the judgment of court, the certificate and the translation thereof into the Bulgarian language.

It is also possible the enforcement to be performed pursuant to European enforcement order. Regulation (EC) No 805/2004 of the European Parliament and of the Council creating European enforcement order for uncontested claims settles that a judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognized and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition. According to Bulgarian legislation the plaintiff shall submit straightly an application for the issuance of a writ of execution on the ground of the issued European enforcement order for an uncontested claim by the sense of art.3.1 of the Regulation. The competent Bulgarian court is the court exercising jurisdiction over the permanent address of the

person against whom enforcement is sought, over the registered office thereof, or over the place of enforcement.

### **Post litigation**

Following the announcement of the judgment and its entry into force, a procedure of its enforcement is initiated. If the judgment has been appealed, it is possible to ask for the enforcement prior to the final judicial decision – following the ruling of the second instance and before the hearing of the case by the court of cassation.

### **Bankruptcy Proceedings**

Insolvent shall be deemed a merchant unable to meet a financial obligation due under a commercial transaction, or a public law obligation to the state or municipalities related to its commercial activity or private law obligation to the state. Insolvency shall exist where the merchant has discontinued payments and also where has paid or is able to pay, partially or in full, only the claims of particular creditors. Relative for the insolvency are debts arising from commercial transactions despite of the value of the debt.

Bankruptcy proceedings shall be initiated pursuant to an application in writing submitted to the court by the debtor, respectively by the liquidator or the debtor's creditors under a commercial transaction, and by the Government Claims Agency, for a public obligation to the state or municipalities related to the commercial activity of the debtor.

The procedure passes through two phases:

1. Initiating of Bankruptcy Proceeding;
2. Announcement of Bankruptcy;

As companies against which a Bankruptcy proceeding application was issued meet a lot of restrictions in their business activity (for example they are not allowed to participate in public procurement procedures, nor to draw bank credits, etc.) issuance of such request is usually used as measure a debtor to be compelled to pay.

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