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In focus: Law on Amendments and Supplements to the Law on Enforcement and Security Interest

On 26 July 2019, the National Assembly of the Republic of Serbia adopted the Law on Amendments and Supplements to the Law on Enforcement and Security Interest (hereinafter referred to as: the “**Law**”). The Law entered into force on 3 August 2019, and will become applicable on 1 January 2020, excluding several provisions of the Law which will become applicable on 1 March, i.e. 1 September 2020.

The main reason for rendering the Law is to resolve of all issues arising from its application, primarily by removing any flaws from certain articles of the law that contained incomplete and insufficiently clear provisions, as well as by introducing new legal solutions. The Law saw many amendments, of which the most notable are:

Amendments regarding exclusive jurisdiction of the court/public enforcer

The Law was amended in respect of exclusive jurisdiction of the court and public enforcer for conducting enforcement. Unlike the previous legislative solution by which the court was, *inter alia*, competent for enforcement of performance, the Law now stipulates that the court is competent for enforcement of the receivable that relates to the performance which can be

undertaken only by the enforcement debtor.

On the other hand, the public enforcers are now competent for enforcement of the receivable that relates to the performance which, in addition to the enforcement debtor, can be undertaken by other persons as well. In addition, the exclusive jurisdiction of public enforcers for enforcement has been additionally extended so that they are now exclusively competent for enforcement of the joint sale of immovable property and movable assets, for enforcement of Writs of Enforcement which are to be enforced *ex officio*, as well as for enforcement for the purpose of collection of statutory maintenance.

Furthermore, the public enforcers will be competent for ruling upon the Motion for Enforcement for the purpose of settlement of the pecuniary claims towards the Republic of Serbia, autonomous province, unit of local government and indirect beneficiary of budget funds.

Previously initiated proceedings in which the enforcement or security interest is performed by the court, for which the public enforcer is exclusively competent under the provisions of the Law, shall be continued before the public enforcer, whereby the enforcement creditor is obliged to pay 25% of the advance payment prescribed by the Public Enforcement Officers’ Rate, within 8 days from delivery of the conclusion on advance payment. In

the case of the contrary, the proceeding of enforcement or security interest will be suspended.

Submitting the Motion for Enforcement in electronic form

The Law introduces the possibility of submitting the Motion for Enforcement in electronic form. It is expected that a rulebook will be rendered in the forthcoming period, which would regulate this possibility in a more detailed manner.

Procedure of voluntary settlement of pecuniary claims

In order to reduce the number of enforcement proceedings, the Law introduced the possibility of initiating the procedure of voluntary settlement of pecuniary claims before initiating the enforcement procedure, which can (does not have to) be initiated by the enforcement creditor, and which will be conducted by the public enforcer.

Summary enforcement procedure

The Law foresees the possibility of enforcement under a summary procedure, in case the enforcement creditor and enforcement debtor are subjects whose disputes are resolved by the commercial court. A summary procedure may be conducted only on the basis of the following documents: promissory note, check, unconditional bank guarantee, unconditional letter of credit or certified statement of the enforcement debtor by which he authorizes the bank to transfer the funds from his account to the bank account of the enforcement creditor.

The deadlines for legal actions of the parties are shorter in this procedure, and the reasons for challenging the Writ of Enforcement are less flexible.

Amendments regarding delivery to the enforcement debtor

The Law now introduces the electronic bulletin board instead of a bulletin board in case of delivery of documents to the enforcement debtor. In case delivery is unsuccessful, the document will be posted on the electronic bulletin board of the court within 3 days, except when it comes to enforcement based on a credible document, in which case delivery will be repeated upon expiration of the deadline of 8 days from the previous delivery, and if the repeated delivery fails, the Motion will be posted on the electronic bulletin board of the court within 3 days.

The delivery will be considered accomplished upon expiration of the deadline of 8 days from the day the document was posted on the electronic bulletin board of the court.

Amendments regarding reimbursement of the enforcement creditor's costs of procedure

In order to prevent a significant increase of expenses for the enforcement debtor, the Law now stipulates that the enforcement creditor who submitted several Motions for Enforcement against one enforcement debtor and demanded separate settlement of multiple claims which could have been settled in one enforcement procedure, has the right for reimbursement only for expenses he would have suffered had he

submitted only one Motion for Enforcement.

This provision will be accordingly applied when the enforcement creditor submitted more Motions for Enforcement against one enforcement debtor demanding complete or partial settlement of the main debt of one claim, interest or the costs of procedure.

Determining and payment of default interest on the costs of the procedure awarded by the enforceable document

The Law stipulates that, in case the costs of the procedure are determined in the enforceable document, the court (or public enforcer) will, in the Writ of Enforcement and based on the creditor's Motion for Enforcement, determine the payment of default interest on the amount of awarded costs from the day of enforceability of the enforceable document until the payment date. This is a very important novelty contained in the Law, considering that court practice so far did not allow the payment of default interest when the interest was not contained in the enforceable document.

Amendments regarding the prohibition of disposing with the subject of enforcement or security interest

Unlike previously valid provisions by which the prohibition of disposing with the subject of enforcement or security interest becomes effective from the moment the debtor receives the Writ of Enforcement (or the Conclusion rendered by the public enforcer), which in practice represented a

problematic solution being that the enforcement debtors usually avoided receipt of these decisions, the Law now stipulates that the prohibition of disposal becomes effective on the day of rendering the Writ (or the Conclusion of the public enforcer), therefore disposing with the subject of enforcement after the Writ (or the Conclusion of the public enforcer) is rendered will produce no legal effect whatsoever.

Amendments in terms of the instrument of enforcement

The Law now enables two new instruments of enforcement for the purpose of settlement of pecuniary claims: joint sale of immovable property and movable assets (which has already been recognized and accepted in court practice) and cashing of other property rights of the enforcement debtor. The Law stipulates that the cashing of other property rights (patent, trademark and other) will be carried out by their confiscation, registration within the appropriate register and cashing in, whereas the provisions referring to enforcement on movable property for the purpose of settlement of pecuniary claims will be applied accordingly (excluding the provisions that refer to electronic public auction).

Amendments regarding settlement of the same creditor by applying different laws on mortgaged immovable property

The Law now entitles the mortgage creditor to choose the settlement of his claim through the enforcement procedure

instead of the previously initiated extrajudicial procedure prescribed by the Law on Mortgage. In case the mortgage creditor initiates the enforcement procedure after rendering of the resolution on registration of the annotation of mortgage foreclosure sale, it will be considered that he waived the settlement of his claim through extrajudicial sale, whereas the public enforcer is obliged to demand deregistration of the annotation on mortgaged foreclosure sale from the competent cadastral office.

Amendments regarding settlement of multiple creditors by applying different laws on mortgaged immovable property

The Law amended the provisions in respect to the moment in time shall determining which of the two settlement procedures (enforcement or extrajudicial) on the same immovable property will have priority in the case when multiple creditors simultaneously conduct both procedures.

Namely, unlike the previous legislative solution by which the extrajudicial procedure prescribed by the Law on Mortgage had an advantage over the enforcement procedure stipulated by the Law on Enforcement and Security Interest in case the resolution on registration of the annotation of mortgaged foreclosure sale was rendered before rendering the Writ of Enforcement, **the Law now stipulates that the moment for establishing jurisdiction will be the day when the Resolution on registration of the annotation of mortgaged foreclosure sale becomes final.** This means that the extrajudicial procedure will have an advantage only in case the Resolution on registration of the annotation

on mortgaged foreclosure sale became final before the day the Writ of Enforcement was rendered. In that case, the enforcement procedure shall continue if the immovable asset is not sold within 18 months from the day the Resolution on registration of the annotation of mortgaged foreclosure sale became final.

Amendments regarding the principle of proportionality

The previous legislative solution stipulated that, while choosing between multiple instruments and subjects of enforcement, one must take into account that the enforcement will be conducted on those instruments and subjects which are the least unfavorable for the enforcement debtor (principle of proportionality). The Law, *inter alia*, introduces the provision by which the principle of proportionality shall not be applied if the enforcement debtor had given his consent (in the form of public or certified document) that the enforcement will be conducted by a certain instrument and on a certain subject of enforcement, or if it is undoubtedly determined that there is only one instrument and only one subject of enforcement which can serve for settlement of the claim of the enforcement creditor.

On the other hand, the Law now reinforces the principle of proportionality in case the enforcement is performed on immovable property. Namely, it is now stipulated that after the registration of the annotation of Writ of Enforcement, the public enforcer shall, *ex officio* or following the creditor's proposal, determine that the enforcement will be performed on other immovable

property or by another instrument or subject of enforcement in case there is a disproportionality between the value of the claim and the value of the immovable property that the enforcement creditor stated in the Motion for Enforcement, and the other immovable property, i.e. other instrument or subject of enforcement is sufficient for settlement of the enforcement creditor's claim within a reasonable deadline.

Amendments regarding the sale of immovable property by public auction or direct agreement

For the first time, the Law now foresees the possibility of the sale of immovable property by an electronic public auction, in accordance with the Decision rendered by the public enforcer. Even though the Law becomes applicable on 1 January 2020, conducting an electronic public auction will not be possible before 1 March 2020, whereas starting from 1 September 2020, the electronic public auction will be the exclusive manner of organizing the sale of immovable and movable property.

The Law introduces another important novelty regarding the sale of immovable property by direct agreement. The Law now stipulates that, in case the parties agree on the sale of immovable property by direct agreement, the consent of the pledge creditor whose pledge right is registered before rendering of the oldest Writ of Enforcement is required (as well as in case of any potential amendments to such agreement).

Amendments regarding the limitation of enforcement on earnings of the enforcement debtor

The Law now establishes lower amounts of earnings of the enforcement debtor which can be affected by enforcement, therefore the enforcement against wage or salary can be carried out in the amount up to one half of the wage or salary, one third (if the wage is lower than average) or one quarter (in case of minimum wage).

Lower amounts have also been established in terms of pensions, such as: one third, one quarter (if the pension is lower than average) or one tenth (in case of minimum pension).

An exception from the abovementioned amounts is stipulated in case of settlement of the claims regarding statutory maintenance. In such cases, enforcement can be carried out in the amount up to one half of the wage, salary or pension.

Amendments regarding the enforcement against the beneficiary of budget funds

The Law now stipulates that, if the Motion for Enforcement is submitted against a direct or indirect beneficiary of budget funds (for whom the laws regulating the execution of the budget prescribe that the enforced collection will be carried out in the same way as for the direct beneficiary of the budget funds), the enforcement creditor is obliged to inform the ministry in charge of finances in writing, at the latest 30 days prior to submitting the Motion for Enforcement, as well as to deliver the

evidence of such sent notification to the public enforcer. Otherwise, the Motion for Enforcement will be rejected.

Amendments regarding the settlement of pecuniary claims arising from utility and related services

The Law now stipulates that the enforcement by sale of the only immovable property owned by the enforcement debtor as a natural person cannot be conducted if the amount of the main debt is lower than 5,000 EUR in dinar counter value, calculated by the official middle exchange rate of the National Bank of Serbia on the day the Motion for Enforcement is submitted.

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