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In focus: Law on Enforcement and Security

Introduction

The new Law on enforcement and security (hereinafter referred to as: the “Law”) was published in the “*Official Gazette of the Republic of Serbia*” no. 31/2011 on May 09th, 2011, entered into force on May 17th, 2011 and began to apply on September 17th, 2011. The Law contains solutions whose aim is to make the enforcement procedure faster and more efficient.

1. General Provisions

The Law governs the enforcement and security procedure of claims which are embodied in a domestic or foreign executive title or in a domestic or foreign authentic document. The procedure shall be initiated on the motion of a creditor or ex officio when so provided by the Law. *The enforcement and security shall be ordered by the court and conducted by the court or the executor.*

2. The Executor

For the first time in the Republic of Serbia, the Law introduces the institute of extrajudicial executors. The executor is a natural person appointed by the Minister of Justice, who, as an official, conducts execution in terms of the decision on

enforcement and conducts other authorities provided by the Law. The executors shall start to work within a period of one year from the day the Law enters into force, i.e. on May 17th, 2012. Meanwhile, the court shall conduct actions that are under the executors’ jurisdiction.

3. Deadlines for Carrying out Actions

The enforcement and security procedure is urgent. In the enforcement and security procedure *postponement is not allowed*, unless otherwise prescribed by the Law. The court shall decide on a motion to enforce within *5 working days following its filing and to deliver a decision to the parties within 5 working days following its issuing*. If the motion to enforce is based on a foreign executive title which has not previously been recognized in the Republic of Serbia, the deadline for rendering a decision shall amount to 30 days following its filing.

4. Executive Title and Authentic Document

The Law also brings novelties in defining terms of an executive title i.e. authentic document.

Among the new solutions is that an executive title has to be provided only with

the certification of becoming final and binding.

According to the new Law, an authentic document is, inter alia, an invoice (bill) of a foreign or domestic entity with a delivery note or other written proof that the executive debtor was informed of the existing obligation. For the first time, the Law explicitly introduces an invoice (bill) of a foreign entity as an authentic document. Differences from the previous Law are also seen in the creditor's obligation to submit, together with a motion to enforce, a delivery note or other written proof as confirmation that the debtor was informed of his obligation.

5. Means of Enforcement

In the same manner as the previous, the new Law prescribes the following means of enforcement for realizing a monetary claim: sale of chattels, sale of immovable property, transfer of monetary claim, transfer of claim for handing over chattels or immovable property, monetizing of other property rights, transfer of funds from bank accounts, sale of stock and shares in business entities.

6. Enforcement against the Debtor's Business Account

Jurisdiction to decide on a motion to enforce and to conduct enforcement against financial assets kept in accounts of the debtor shall no longer lie with the court on whose territory the seat of the bank or other financial institution is located, or the court on whose territory the organizational part of the bank or financial institution where the debtor's account is kept is

located, but with the court on whose territory the debtor has permanent or temporary residence, i.e. seat.

7. Costs of the Procedure

In relation to the costs of the procedure, the Law establishes the obligation of the creditor to pay costs of the procedure in advance, as well as to submit to the court, together with the motion to enforce, proof of advance payment. The court i.e. the executor shall suspend enforcement if the creditor did not provide the court with proof of advance payment.

8. Content of the Motion and Supporting Documents

Provisions of the Law regulating the content of a motion to enforce do not differ from provisions of the previously effective Law, except in the novelty regarding the motion to enforce on the basis of an authentic document which has to contain the request that, together with the claim, calculated costs of procedure shall be collected. The original or certified copy or transcript of the executive title i.e. authentic document shall be submitted to the court together with a motion to enforce. A foreign authentic document, on which the motion to enforce is based, shall be submitted translated by a court interpreter into the language which is in official use in the court. The motion to enforce must state whether the enforcement shall be conducted by the court or the executor.

9. Service

In order to make the enforcement procedure more efficient, the Law

prescribes that, in case a service could not have been performed within five working days as of the day of sending the note, the service shall be conducted by posting on the court's notice board. The service should be considered successful by expiry of 5 working days as of the day of posting the notice. On the other hand, in terms of service of a decision based on an authentic document, the Law prescribes that, in case a service could not have been performed within a period of 5 working days as of the day of sending the decision, the same should be attempted once again, 15 days after expiry of the stated deadline. If re-delivery was unsuccessful, the same should be conducted by posting on the court's notice board.

10. Legal Remedies

Unlike the previously effective Law, the right to appeal is no longer stipulated by the Law. The only legal remedy prescribed by the new Law is an objection, which may be filed only in cases determined by the Law and no later than 5 working days as of the day of service of the decision on enforcement. The court shall decide upon the objection within 5 working days, unless otherwise stipulated by the Law. The Law explicitly states reasons for challenging the decision on enforcement based on an executive title i.e. authentic document. The objection has to contain all reasons for challenging and has to be supported by proofs on which it is based, otherwise the debtor loses the right to subsequently present new facts and evidences. Also, the Law explicitly states written documents by which the debtor proves the statements

from the objection to the decision on enforcement based on an authentic document.

11. Final Provisions

Enforcement and security procedures, in which the enforcement has commenced before the date of legal effectiveness of the Law, shall be completed under the provisions of the new Law.

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