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Enforcement proceedings in Belarus

Enforcement proceedings are a key and defining procedure for collecting debts from any counterparty, because the previous work on negotiations, filing claims, lawsuits and obtaining court decisions in your favor will be worthless without an enforcement procedure.

In Belarus, since 2014, after the implementation of the judicial reform, a vertical system of enforcement bodies has been functioning, independent of the courts and subordinate to the Ministry of Justice of the Republic of Belarus.

Therefore, the Belarusian court and the bailiff within the framework of enforcement proceedings have independent competence, they have their own range of procedural actions and powers that do not overlap. The court is empowered to issue a writ of execution (court decision) and its duplicate; restoration of the deadline for the presentation of a writ of execution; rotation of the execution of the court order; taking interim measures related to restrictions of a personal nature, as well as consideration of complaints against the actions of a bailiff. All other issues in the course of enforcement proceedings are in the competence of the bailiff.

The main subjects of enforcement proceedings: the claimant and the debtor, who can occupy these roles?

According to the Law of 24.10.2016 "On Enforcement Proceedings", a claimant is a citizen of Belarus, a foreign citizen, a stateless person, including an individual entrepreneur, a legal entity of Belarus, a foreign legal entity, an organization that is not a legal entity, Belarus, an administrative-territorial unit Belarus, in whose favor or in whose interests the executive document was issued. The debtor is a citizen, including an individual entrepreneur, a legal entity, an organization that is not a legal entity, Belarus, an administrative-territorial unit, obliged by an executive document to perform certain actions (transfer funds and (or) other property, fulfill other requirements contained in the executive document) or refrain from taking certain actions.

As for the representatives of the parties to the enforcement proceedings, their powers for any actions within the framework of the enforcement proceedings must be specifically provided for in the power of attorney.

Grounds for enforcement and executive documents.

The grounds for enforcement are court orders and other acts to be executed. **For instance:**

- ▶ court decisions of economic and general courts;
- ▶ decisions of international arbitration courts;
- ▶ mediation agreements;
- ▶ executive notices, decisions in the case of an administrative offense, etc.

At the same time, decisions of international arbitration courts, arbitration tribunals do not have direct executive power. To enforce these decisions in Belarus, the Belarusian court must issue a writ of execution. In the Belarusian procedural legislation there is a separate category of cases on applications for the issuance of a court order for the execution of decisions of arbitration courts.

Executive documents - documents on the basis of which enforcement proceedings are initiated. **For instance:**

- ▶ court orders of economic courts;

- ▶ rulings on the court order of economic courts;
- ▶ decisions of bailiffs;
- ▶ decisions of the court, the body conducting the administrative process, in terms of property penalties in cases of administrative offenses.

Court orders are issued by the Belarusian court after the entry of the court decision (ruling, decision) into legal force. **Exception:**

- ▶ immediate execution of a court decision on invalidation of non-normative legal acts of state bodies;
- ▶ decisions on the establishment of the suspension (prohibition) of activities, on the extension of the suspension (prohibition) of production;
- ▶ decisions on declaring economic insolvency (bankruptcy), etc.

For the issuance of a court order by the court, the recoverer does not need to submit any application, the order is issued by the court automatically and is sent by the court only to the recoverer, not sent to the bailiff. The claimant decides for himself whether to present the order for execution or not.

** a copy or photocopy of the court order is not legally binding. In case of loss, the court may issue a second original (duplicate) of the court order - at the request of the claimant in the court session. In this case, the claimant must prove that the order has been lost.*

Stages of enforcement proceedings:

1. initiation of enforcement proceedings;
2. preparation for the execution of enforcement actions;
3. execution of executive actions;
4. end of enforcement proceedings.

The stage of initiation of enforcement proceedings should be preceded by an appeal to the bank for undisputed debt collection. The procedure for the indisputable write-off of funds is regulated by the Resolution of the Board of the National Bank of March 29, 2001 No. 66 "On Approval of the Bank Transfer Instruction". This procedure does not apply to debt collection made on the basis of a writ of execution.

How does it work? The recoverer sends a writ of execution to his bank and sends it to the debtor's bank for execution. The document goes to the debtor's bank. Payment requests accepted for execution are subject to payment no later than the banking day of their receipt by the sending bank in full amount if funds are available on the payer's account. If the amount of the executed payment request is less than the amount of the order of execution, including taking into account the marks of partial payment, the second copy of the payment request is sent to the payer, and the third copy, together with the order of execution, is returned to the recoverer through the servicing bank. Unfulfilled (partially fulfilled) payment requests presented to the current account of the payer - a legal entity, in the unpaid amount are placed in the card index.

** Please note that a queue of payments from accounts has been established by Presidential Decree No. 359 of June 29, 2000 "On approval of the procedure for settlements between legal entities and individual entrepreneurs in the Republic of Belarus."*

The claimant has the right to withdraw from the bank a payment request with a writ of execution that was not executed or was partially executed. To do this, the recoverer must send an application for the return of the executive document to his bank. When initiating enforcement proceedings, the recoverer must attach a payment request and a writ of execution to the

application for initiating enforcement proceedings.

1. Initiation of enforcement proceedings.

Action – filing an application for initiation of enforcement proceedings with the attachment of the original executive document (court order, otherwise), evidence of an appeal to the bank for undisputed debt collection and a power of attorney, if the application is signed by a representative of the claimant. The state fee for filing an application is not paid.

The deadline for filing an application is 3 years from the date the court decision enters into legal force or from the date of the end of the period established when granting a deferral or installment plan for the execution of a court decision.

This period is interrupted:

- ▶ partial execution;
- ▶ presentation of a writ of execution to the bank, or
- ▶ the direction of work of the debtor-citizen.

Execution is carried out at the location / place of residence of the debtor or the place of business by the debtor or at the location of his property.

Execution proceedings are initiated without an application:

- ▶ on the executive document on property penalties in criminal cases;
- ▶ on the executive document on property penalties in administrative cases.

▶

2. Preparation for the execution of enforcement actions.

As part of this stage, the bailiff provides the debtor with a period for voluntary execution (7 working days), which is indicated in the order of initiation. The provision of this period is the obligation of the bailiff; at the request of the debtor, the period may be extended.

Further, the bailiff takes measures to establish the location of the debtor's property by sending appropriate requests and, in addition, takes measures to ensure the execution of the court order, if there is a risk of difficulty or impossibility of execution:

- ▶ seizure of the debtor's funds in his bank accounts;
- ▶ inventory and (or) seizure of the debtor's property;
- ▶ prohibition of the debtor to perform certain actions, etc.

Security measures related to restrictions of a personal nature in relation to the debtor or his manager are applied by the court.

3. Enforcement of executive actions.

At this stage, the bailiff has a wide range of powers to perform enforcement actions, in particular, he can issue orders to suspend,

in whole or in part, operations on bank accounts of citizens, individual entrepreneurs and legal entities (Article 63 of the Law on Enforcement Proceedings).

The Belarusian law provides for the following enforcement measures:

- ▶ foreclosure on the debtor's cash, belonging to him and held by him and (or) third parties;
- ▶ foreclosure on cash and other property of the debtor in his accounts, in deposits (deposit) or in storage in banks;
- ▶ foreclosure on the funds owed to the debtor, which are on the accounts of third parties in banks;
- ▶ seizure of the property specified in the court order from the debtor, and its transfer to the recoverer and other actions.

According to the sequence of foreclosure, a rule has been established that foreclosure is first of all applied to monetary funds, if the debtor does not have sufficient funds for execution, the foreclosure is applied to property.

Algorithm of actions for levying foreclosure on funds and property:

- ▶
 - property search;
 - inventory and arrest;
 - withdrawal and sale;
 - assessment.

4. End of enforcement proceedings:

Enforcement proceedings end with:

- ▶ execution of the court order (conditions: full fulfillment of the requirements of the court order, collection from the debtor of expenses for the execution of the enforcement proceedings and compulsory collection);
- ▶ termination of enforcement proceedings (in the presence of insurmountable obstacles to the conduct of enforcement proceedings);
- ▶ return of a writ of execution to a claimant (at the initiative of a claimant, for example, the claimant's submission of an application for the return of a court order);
- ▶ dispatchment of executive document to the place of work of the debtor-individual (sent to the place of work of the debtor - a citizen or individual entrepreneur for foreclosure on wages and income equivalent to it).

Enforcement issues with a foreign element.

Everything is clear with the standard enforcement proceedings, but the framework of the enforcement proceedings under foreign economic contracts is not directly regulated. In practice, a situation may arise when it is necessary to collect the resulting debt from a non-resident of Belarus. There are also situations when a non-resident recoverer is forced to use the legal mechanism for debt collection in Belarus. What do you need to know in these cases?

In both cases, it is necessary to make the court decision binding on the territory of the state where it is necessary to execute the decision - the state of the debtor. So, subject to this recognition condition, the grounds for enforcement in Belarus are also decisions of foreign courts and foreign arbitral awards. Recognition is carried out on the basis of an international treaty or on the basis of the principle of reciprocity.

** the recognition condition does not apply to decisions of arbitration courts of the Russian Federation in accordance with the Agreement between the Republic of Belarus and the Russian Federation on the procedure for mutual execution of judicial acts of economic courts of the Republic of Belarus and arbitration courts of the Russian Federation, concluded in Moscow on January 17, 2001.*

Future updates on enforcement proceedings.

Law of January 6, 2021 No. 90-3 introduced a number of changes to the legislation on enforcement proceedings. Some of the changes will come into effect on 07/15/2021, and some on 01/15/2021. A number of the following changes are foreseen:

- ▶ the debtor, according to an executive document providing for joint liability, has the right to receive information about the amount recovered from the joint and several debtors;
- ▶ the obligation of the bailiff is established to ensure that the announcement of the upcoming auction of the debtor's property (electronic auction) is posted on the global computer network Internet;
- ▶ submission of an application and attached documents in electronic form (must be signed with an electronic digital signature, contain an e-mail address);
- ▶ submission to the bank of a payment request for debiting funds in an indisputable manner will be carried out only in cases stipulated by law.

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