



**GRATA**  
INTERNATIONAL

Local Knowledge  
for Global Business

[www.gratanet.com](http://www.gratanet.com)

# Enforcement proceedings in the Republic of Kazakhstan

State power in the Republic of Kazakhstan is exercised on the basis of the Constitution and laws in accordance with the principle of its division into legislative, executive and judicial branches and interaction with each other using a system of checks and balances. Enforcement proceedings are delimited from the judicial branch and assigned to the jurisdiction of the executive authorities.

The execution on the territory of the Republic of Kazakhstan of judicial acts (primarily executive documents) of Kazakhstan's courts, in addition to civil procedural legislation, is regulated by the Law of the Republic of Kazakhstan dated April 2, 2010 No. 261-IV "On enforcement proceedings and the status of bailiffs" (hereinafter - the "Law») and other regulatory legal acts.

The problem of the execution of court decisions is currently quite relevant due to the fact that some part of the court decisions due to the lack of funds or other property from the debtor is delayed with execution for a long time or is not executed at all. Therefore, winning the case in court is only part of the success in defending your rights.

As indicated in the Code of Civil Procedure, judicial acts that have entered into legal force, as well as orders, requirements, instructions, summons, inquiries and other appeals of courts and judges in the administration of justice are mandatory for all state bodies, local self-government bodies, legal entities, officials, citizens and are subject to execution throughout the territory of the Republic of Kazakhstan. Failure to comply with judicial acts, as well as any other manifestation of contempt of court, shall entail liability stipulated by law.

As soon as the court of first instance, at the request of the party, issues a writ of execution, the creditor sends it to the bailiff, who initiates enforcement proceedings and begins the procedure for the enforcement of the court decision.

There are two categories of bailiffs in Kazakhstan: private bailiffs (PB) and state bailiffs (SB). The transfer of enforcement proceedings to the PB has serious advantages, since the PB is a private person (entrepreneur) acting on the basis of a license. Thus, PB, as a rule, are interested in the prompt execution of the judicial act.

It should be additionally noted that the creditor is free to choose the PB. If, for any reason, the PB does not suit the creditor, the creditor has the right to apply to the PB with an application for the return of the writ of execution and then transfer it to another PB for execution.

In order to start and continue the execution of a judicial act, the PB, as a rule, can ask for advance payment to cover the expenses. Such expenses include travel costs, property appraisal, storage (if applicable), and so on. As a rule, the amount of the advance payment does not exceed USD 500-1,000. This amount is negotiable.

When executing a judicial act through the SB, it is necessary to contact the relevant department for the execution of judicial acts of the region, which is a subdivision of the Ministry of Justice of the Republic of Kazakhstan. Execution of judicial acts through the SB is quite rare, but based on the practice of SBs work much less efficiently than the PB. The state pays for the cost of SB services. The SB collects an enforcement sanction from the debtor in the amount of 10% of the collected amount or the value of the property.

The main difference between the PB and the SB, in terms of the executive documents that can be accepted for execution, is that the PB cannot be accepted for execution by the executive documents, according to which the state acts as one of the parties. All other executive documents can be accepted by the PB for execution without restrictions.

So, the bailiff, after the receipt of the executive document, no later than 3 working days, initiates enforcement proceedings, which makes a decision.

At the same time, the bailiff and the creditor conclude an agreement (agreement) on the conditions for the execution of the court order, and also explains the rights and obligations of the creditor provided for by the Law.

The bailiff, simultaneously with the initiation of enforcement proceedings, takes measures to ensure the execution of enforcement documents provided for by the Law, and also by means of verification through the state automated information system of enforcement proceedings, reveals the existence of other enforcement proceedings in relation to the debtor, if they are identified, notifies the creditor and explains the order of priority for satisfying its requirements according to the Law.

In accordance with the legislation of the Republic of Kazakhstan, the term of enforcement proceedings should not exceed two months from the date of initiation of enforcement proceedings (or no more than four months if an assessment of the pledged property is required). However, in practice, enforcement proceedings can last for years, taking into account the need to take additional measures to ensure the execution of enforcement documents (search for the debtor's assets, property valuation, and so on). Among other things, the Law provides for the grounds for the suspension of enforcement proceedings, which also significantly delays the deadlines for enforcement proceedings.

The bailiff, after the initiation of enforcement proceedings, sends a letter to the debtor with the requirement to provide information about his property status, as well as provide information about the sources of income.

At the same time, the bailiff requires from second-tier banks information about the numbers of bank accounts and the availability of money for them. The bailiff issues an order on the seizure of money in bank accounts. The ruling is approved by the prosecutor and then sent to the banks. At the same time, the bailiff can issue an order on the imposition of seizure on all movable and immovable property of the debtor within the amount of the debt.

#### **Measures to ensure the execution of court orders, among other things, are:**

- ▶ seizure of movable and immovable property of the debtor;
- ▶ prohibition of the debtor to perform certain actions, including the use of property, a prohibition on the alienation of property;
- ▶ sealing of the debtor's property;
- ▶ seizure of title documents;
- ▶ prohibition to other persons to transfer property, including money, to the debtor or to perform other actions in relation to him.

After receiving information from the bank about the existence of a bank account, the bailiff issues a collection order to the bank to write off funds from the account in favor of the bailiff. The execution of the collection order occurs as the funds are received into the debtor's bank account. After the bailiff receives money from the bank, the bailiff transfers the funds to the creditor.

If the debtor does not have the amount of money sufficient to pay off the debt, the collection is applied to other property belonging to the debtor. The bailiff, with the written consent of the creditor or creditors of one queue and the debtor, having previously estimated the property, has the right to transfer it to the creditor or creditors of the same queue in kind without sale with the drawing up of a transfer act.

The bailiff within 10 working days from the moment of arrest and revealing the ownership of the property to the debtor shall issue a resolution on the appointment of an appraiser.

If the debtor is against the transfer of property in kind, with the written permission of the bailiff and within the time period set by him, the debtor has the right to sell the seized property at a value not lower than the estimated value.

If the debtor is against this or does not have time to sell the property on time, then the bailiff issues a resolution on the sale of property from public auctions in the form of an electronic auction on a single electronic trading platform of the state automated information system of enforcement proceedings or on a single electronic trading platform, the choice of which is carried out By the Republican Chamber in the manner determined by the authorized body.

The announcement of the upcoming electronic auction is published on the unified electronic trading platform no later than 10 calendar days before the electronic auction.

Persons wishing to take part in the electronic auction are required to submit an application and pay a guarantee fee of 5% of the original value of the property. Bailiffs and judges who made a decision on this enforcement proceedings, an appraiser who evaluated the seized property, as well as their close relatives, spouse, debtor, cannot participate in the electronic auction as buyers.

The winner of the auction concludes a sale and purchase agreement with the bailiff, according to which the funds are sent to the cash control account of the territorial authority or to the current account of the bailiff. Upon receipt of funds from the buyer, the bailiff transfers them to the creditor within 1-2 days.

If the property is not sold at auction after 2 attempts, the creditor can keep the property for himself, about which he writes a statement to the bailiff. Within 3 working days, the bailiff issues an order on the transfer of ownership of the property in favor of the creditor.

**If the debtor does not have money, immovable and movable property, the bailiff shall foreclose on the following types of property:**

- ▶ collection on the share of the debtor in the common property. Before collection, the bailiff sends a notification to the property owners about the seizure of the debtor's property and after one month (if the owner has not exercised the right to preferential acquisition) sells the share;
- ▶ foreclosure on receivables. In the resolution on the foreclosure of the receivables, the bailiff specifies the procedure for the debtor to deposit money to the bailiff's account. After receipt of funds from the debtor, the bailiff sends the funds in favor of the creditor within 1-2 days.

As a rule, if the debtor has funds, the enforcement proceedings can be completed within 1-2 months. If the debtor does not have funds, but has movable and immovable property, the execution may take more than 4 months (taking into account possible obstacles on the part of the debtor, for example, withdrawal, sale of assets, challenging the appraisal of property and other various actions of the bailiff).

For non-execution of a court order, the debtor may be brought to administrative or criminal liability.

Bringing to responsibility does not relieve the debtor from the obligation to perform the actions provided for by the court order.

Improving the execution of judicial and other acts is today one of the urgent tasks of the state. Solving this fundamental problem will help to improve the efficiency of justice, improve the investment climate, and enhance competitiveness.

## Practice areas

[DISPUTE RESOLUTION](#)

## Locations

[KAZAKHSTAN](#)

## Key contacts



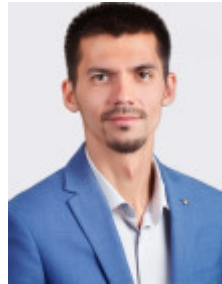
### **Askar Konysbayev**

Partner

 Almaty, Kazakhstan

 +7701716 8102

 akonysbayev@gratanet.com



### **Timur Berekmoinov**

Partner, Head of Intellectual Property  
Department

 Almaty, Kazakhstan

 +7701731 2714

 tberekmoinov@gratanet.com