

Legal Alert

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Proposed changes of the Execution Act – outline of a possible solution de lege ferenda

We would like to inform you about the intended changes of the law on the enforcement of receivables. These changes will, in our opinion, only complicate enforcement procedures of receivables in the Czech Republic, strengthen the position of debtors and weaken the position of creditors.

The expected benefits of the proposed changes are the disruption of clientelism between creditors and executors and lower proceedings costs for debtors.

The proposed changes are as follows:

Territoriality Principle

Executors should be assigned to individual cases by courts based on the resident address of the debtor instead of allowing the creditor's executor to freely choose.

Untrue Territoriality Principle

Is an alternative to the Territoriality Principle in which the character of the receivable determines the territorial jurisdiction of the executor. The Territoriality Principle will apply to receivables of state or public institutions. Private receivables will be governed by the Principle of Competition.

Multiple enforcement proceedings governed by a single executor

Multiple enforcement proceedings against the same debtor will be governed exclusively by one executor. Currently running multiple proceedings of one debtor governed by different executors will be assigned to one executor.

It is important to note that the negative aspects of the change seem to prevail. According to an analysis by the Ministry of Justice, implementing the Territoriality Principle will substantially decrease the enforceability of receivables due to the creditworthiness of different territories and the diverse effectiveness and performance of individual executors and their office facilities (such as the number of employees, etc.).

Furthermore, as a consequence, many executors will have "certainly" assigned cases, which may cause a decrease in the quality of the service provided, as many executors will stop to compete for creditors with other executors based on the effectiveness of their services.

Automatized personal bankruptcies

The Ministry of Justice is considering introducing an instrument which will in practice equal "a general pardon of debts" for debtors with concurrently running enforcement proceedings.

Executors will be entitled to propose such general pardon at court, even without the prior request of the debtor.

The minimum amount that a debtor in personal bankruptcy is obliged to pay will be revoked. Currently, paying a minimum amount is one of the conditions for personal bankruptcy.

Furthermore, the Presidium of the Chamber of Executors has published a list of problematic topics regarding debts and the enforcement of debts. It should be noted that executors are trying to delegate the economic responsibility for recovering receivables to creditors.

Among the proposed changes, we consider the following to be the most problematic:

- Protected account and protected instalment proceedings;
- Mandatory payment for initiation of enforcement proceedings;
- Right to terminate enforcement proceedings in case of the long-term lack of a debtor's assets;
- Mandatory pre-claim notice sent by executors.

Having creditors pay mandatory flat deposits before initiating enforcement proceedings are also being considered.

Conclusion

Based on the above, it is obvious that the responsibility for receivables will be transferred to creditors. Should any of the above mentioned changes be implemented, it can be reasonably expected that these will favour debtors in practice and the position of creditors will become weaker and the enforceability of their receivables will decrease. Therefore, we can only recommend not to hesitate in initiating enforcement proceedings and to start these immediately when possible.

Contacts:

In case of any questions, please do not hesitate to contact your contact person in our office, or approach David Lejček (david.lejcek@bapol.cz) or Martin Trojan (martin.trojan@bapol.cz).

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