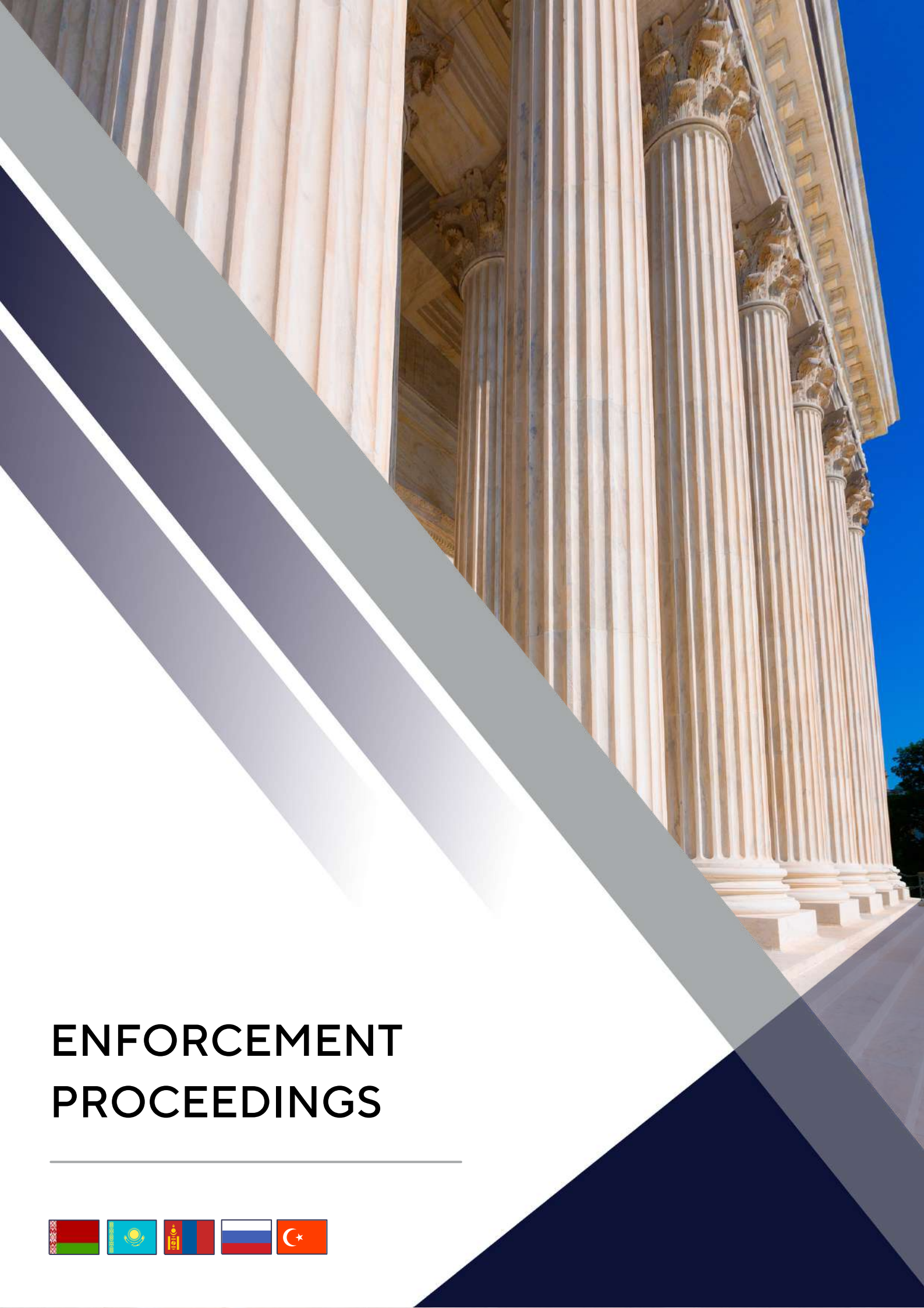

ENFORCEMENT PROCEEDINGS

INTRODUCTION

If in order to "judge the pudding, you have to try it" as they say in the well-known English proverb, then for justice in various cases (criminal, civil, economic, etc.), the main test is the implementation of its final products - court decisions, court orders and other legal acts subject to execution (hereinafter - judicial acts), which establish certain rights and obligations.
The key to effective legal protection is achieving the desired results.

Therefore, it may be quite unexpected that only about two decades ago, sufficient attention was not paid to the enforcement of judicial acts both in national and comparative legal studies, and in the field of harmonization at the regional and international levels. This can be explained, at least in part, only by the fact that the dominant psychological attitude of the representatives of the legal profession involved in the resolution of the case was usually to focus attention on the delivery of a judicial act, while subsequent events were considered more or less personal. problems of the parties.

The situation has now changed. The existence of an enforceable judicial act does not imply an obligatory positive result of enforcement, which raises questions about general standards in the field of human rights protection.

The experience of different states, given in the brochure, will demonstrate the existence of not one, but several ways to overcome the slowness and inefficiency of execution in practice, and also that the possible solutions to the problem are varied, but they all ultimately are based on a delicate balance, along with other things, of the norms of executive the law and practice of their application, a high level of training and responsibility of various professionals involved in the implementation process, as well as the institutional and social systems in which these professionals are forced to carry out their activities.

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A wide network of office operating under one system and platform delivers great convenience for our clients. Any office can act as a "one-stop-shop" for its clients and provide them with access to services in other cities and countries. If necessary, inter-office teams with relevant experience are assembled to provide solutions to complex tasks. Service quality is assured by a clear system of organisation of this process.

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Key Industry Sectors:

- Banking & Finance
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- Technology, Media & Telecommunications
- Transport

> 22
countries of presence

> 32
years of experience

> 220
professionals

> 15
practice areas

14 400+
clients

36 500+
projects

ENFORCEMENT PROCEEDINGS IN BELARUS

Angelina Romanchuk

Junior Associate
Minsk, Belarus

E akorsak@gratanet.com

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;
- m ediation agreements;
- e xecutive 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.

ENFORCEMENT PROCEEDINGS IN KAZAKHSTAN

Timur Berekmoinov
Partner
Almaty, Kazakhstan

T +7 701 731 2714
E tberekmoinov@gratanet.com

Askar Konysbayev
Partner
Almaty, Kazakhstan

T +7 701 716 8102
E akonysbayev@gratanet.com

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 it. 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.

ENFORCEMENT PROCEEDINGS IN MONGOLIA

Bolormaa Volodya

Partner
Ulaanbaatar, Mongolia

T +976 990 850 31
E bvolodya@gratanet.com

A citizen of Mongolia is entitled under the Constitution of Mongolia to the right to:

- appeal to the court for protection if the one considers his/her rights or freedoms granted by the laws of Mongolia or an international treaty to have been violated;
- to be compensated for the damage illegally caused by others;
- to receive legal assistance; to have evidence examined;
- to a fair trial;
- to be tried in one's presence;
- and to appeal against a court decision.

If any disputing Parties cannot reach an agreement by negotiations, they may file a claim to a domestic or foreign court or arbitration. Unless it is set forth in the agreement concluded by the Parties that any dispute or controversy shall be settled by arbitration, the claim shall be settled by the court according to the Civil procedure code of Mongolia.

As determined in the Law of Mongolia on the Court, the judicial system of Mongolia shall be independent in terms of its organization and shall consist of the Supreme Court, aimag [1] and capital city courts /the Appellate Courts/ and soum [2] or inter-soum and district courts /the Courts of first instance/. Soum, intersoum and district courts are the lower courts that hear all civil cases and settle them at first instance. The upper court or aimag and capital city courts decide appeals against decisions of the Court of First Instance. The Supreme Court is the highest level of Court in Mongolia and reviews decisions of the Aimag and the Capital City Courts. Some cases may be settled at first instance or appellate level by aimag and capital city courts or the Supreme Court provided that the case is subject to their special jurisdiction under the Law on the Court. The Supreme Court shall have specialized chambers on criminal, civil and administrative cases. The first instance and appellate court may have specialized chambers.

Mongolian International Arbitration Center at the Mongolian National Chamber of Commerce and Industry (hereinafter the MIAC) is an internationally recognized permanent court of arbitration in Mongolia that has commenced its operation in 1960. The MIAC has its branches in 21 aimags. Currently, 51 local arbitrators qualified in law, economics, finance, and mining and 11 foreign arbitrators (from the Russian Federation, the People's Republic of China, Federal Republic of Germany, Japan, Hong Kong, and Poland) are working at the MIAC.

[1] Province – the administrative unit in Mongolia outside Ulaanbaatar, the capital city.
[2] Subdivision of aimag or province.

1. Court decision

A citizen or legal entity is obliged to comply with any valid court decisions. In case of non-compliance with the court decision voluntarily, it shall be enforced in accordance with the grounds and procedures specified in the Civil procedure code of Mongolia. Enforcement of domestic and foreign court decisions or arbitral awards is regulated in the Law of Mongolia on Enforcement of the Court Decision and International treaties of Mongolia.

Foreign court decision: Mongolia has acceded to the 1954 Convention on Civil Procedure in 1999. The enforcement proceeding shall be conducted in the territory of Mongolia on the basis of the decision of foreign courts and international courts and arbitral awards if provided in an international treaty to which Mongolia is a party. The State, on the territory of which the execution of a judicial document is to be affected, may refuse to enforce it if the State considers that its sovereignty or its security would be prejudiced thereby according to the Convention on Civil Procedure. The procedure to implement the foreign court decisions is enforced in the same way as the arbitral award.

Domestic court decision. The ground to enforce the court decision shall be a writ of execution certified by the court decision according to the Civil procedure code of Mongolia. Civil enforcement proceedings shall not be initiated if the following period has passed:

- 4 years from the date of entry into force of a court decision on civil claims that are settled together with civil case and criminal case;
- 4 years from the date of entry into force of a judge's order on a case settled in a simplified procedure;
- 3 years from the date of entry into force of the decision of a foreign court and international court, or arbitral award;
- 2 years from the entry into force of a judge's order on taking measures to ensure the execution of a court decision, etc.

The judge shall issue an order to enforce a court decision upon the following grounds:

- the payee has applied for enforcement of the court decision;
- the judge ruled that it is urgent to execute the court decision immediately.

The bailiff may implement from the following types of enforcement actions in order to enforce the court decision:

- to obtain in accordance with the laws information on whether there is any property in the ownership of the payer, to withdraw from the payer's savings and current accounts, conduct body search and property search and inspection, and to seal, confiscate, and sell the property;
- to testify the payer about the property and register the payer in the registration of debtors;
- to deduct from the payer's salary and other similar income;
- to levy payment in accordance with laws from the payer's property in the disposal of others;
- other actions provided by law.

Monetary assets confiscated during civil enforcement proceedings shall be transferred to the payee within 3 working days.

2. Arbitral award

When Mongolia joined the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter the Convention) in 1997, it has declared that:

- *Mongolia will apply the Convention, on the basis of reciprocity, to the recognition and enforcement of arbitral awards made only in the territory of another Contracting State;*
- *Mongolia will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of Mongolia.*

Therefore, in accordance with the Convention each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. However, recognition and enforcement of an arbitral award may also be refused under

The Convention if the competent authority in the country where recognition and enforcement is sought finds that:

- the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- the recognition or enforcement of the award would be contrary to the public policy of that country.

Also, there are several specific circumstances under the Law of Mongolia on Arbitration in which a foreign arbitration will not be enforced:

- one of the parties to the arbitration agreement has no legal capacity or the arbitration agreement is invalid;
- a party responsible for the arbitral award had not received proper notice of the appointment of an arbitrator or of the arbitral proceedings and had been unable to participate in the arbitral proceeding and provide the response;
- arbitral award is not contemplated by or not falling within the terms of the claim, or arbitral award is beyond the scope of the claim;
- the composition of the arbitral tribunal and the arbitral proceeding are not in accordance with the agreement of the parties, or, in the absence of such an agreement, not in accordance with law of the country of jurisdiction;
- the arbitral award is not valid, or enforcement of the award is suspended;
- the subject-matter of the dispute is not capable of settlement by arbitration under the law of Mongolia;
- the recognition or enforcement of the award would be contrary to the public policy of Mongolia.

The courts of Mongolia will enforce an arbitral award in Mongolia provided that such award:

- is final;
- is in relation to a dispute which is commercial in nature;
- is confirmed by a judicial order in Mongolia;
- is not in respect of taxes, a fine or a penalty; and
- was not obtained in a manner and is not of a kind the enforcement of which is contrary to the public policy of Mongolia.

Under Article 48.1 of the Arbitration Law of Mongolia, the arbitral award shall be final and binding regardless of where it has been issued. A Party interested in the enforcement of the arbitral award shall submit a request for a writ of execution of the arbitral award to the court of the jurisdiction of the payer's residence according to Article 184.2 and 184.3 of the Civil Procedure Code of Mongolia. Enforcement of the arbitral award shall be confirmed by a judge's order within 7 days from submission of the request. The judge shall immediately issue the writ of execution and deliver it to the payee, payer, and General Executive Agency of Court Decision within 7 days after issuance of the order.

For instance, Khan Resources LLC disputed to be compensated for the loss and damage caused to it due to the Government's illegal action revoking the company's license of uranium without any justifications in 2012. Causing damage and loss in an amount equal to USD 80 million and violating the Energy agreement and the Law of Mongolia on Investment, the Government of Mongolia has executed and satisfied the arbitral award in accordance with UNCITRAL Arbitration Rule wholly.

RECOGNITION AND ENFORCEMENT OF RUSSIAN COURT JUDGMENTS AND ARBITRAL AWARDS IN THE FORMER SOVIET UNION STATES[1]

Vyacheslav Khorovskiy
Managing partner
Moscow, Russia

T +7 495 660 11 84
E vkhorovskiy@gratanet.com

The establishment and development of a common economic space between the states of the former Soviet Union has led to an increase in cross-border disputes. Current experience shows that recognition and enforcement of foreign court judgments and arbitral awards are among the top problems which business and professional communities participating in cross-border disputes face. To a certain extent, this issue is the cornerstone for achieving a fair dispute resolution since all previous processes may lose any purpose without recognition and enforcement. This article focuses on the procedure of recognition and enforcement of Russian court judgements and arbitral awards in the former Soviet Union states, save for the Baltic countries (ie Latvia, Lithuania and Estonia).

1.LEGAL FRAMEWORK

1.1 Generally, international practice knows two models of recognition and enforcement of court judgements: a contractual model and a model based on the principle of reciprocity. The contractual model requires an international treaty (bilateral or multilateral) between the state of adjudication and the state of enforcement to recognize the authority of the foreign court to resolve the dispute with legal implications in the contracting states. The principle of reciprocity holds that despite the absence of a treaty between the state of adjudication and the state of enforcement, court judgements may be still recognized and enforced if there is evidence of legal mutuality between the states. In Russia, both models may apply.

1.2 To date, the Russian Federation is a party to a complex set of multilateral, international treaties with the states of the former Soviet Union on recognition and enforcement of court judgements and arbitral awards. These include:

1.2.1 the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (the "New York Convention"); [2]

1.2.2 the Kiev Treaty on the Procedure of Settling Disputes related to Economic Activity of 20 March 1992 (the "Kiev Treaty"); [3] and

1.2.3 the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 January 1993 (the "Minsk Convention"). [4]

1.3 In practice, the complicated structure of the contractual relations may lead to confusion and misunderstandings on how these treaties connect with each other and which treaty applies in a particular situation. Starting with what is relatively easy, the New York Convention applies to recognition and enforcement of arbitral awards,

[1] This articled has been published on www.journal.arbitration.ru
[2] All states of the former Soviet Union, save for Turkmenistan, are parties to the New York Convention.
[3] Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan are parties to the Kiev Treaty.
[4] Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan are parties to the Minsk Convention.

while the Kiev Treaty and the Minsk Convention provide for recognition and enforcement of court judgements. The interrelation between the Kiev Treaty and the Minsk Convention was considered by the Economic Court of the Commonwealth of Independent States. According to the Ruling of the court No.01-1/2-06 of 21 February 2007, the Kiev Treaty and the Minsk Convention have different subjects of regulation and apply independently. The Kiev Treaty regulates recognition and enforcement of court judgements related to economic disputes, while the Minsk Convention applies to civil, family and criminal cases.

1.4 In addition to the multilateral, international treaties, the Russian Federation has entered into a number of bilateral treaties similarly regulating inter alia the issues of legal assistance, and recognition and enforcement of court judgements. Currently, the Russian Federation is a party to legal assistance treaties providing for recognition and enforcement of court judgements with Azerbaijan, Belarus, Georgia, Kyrgyzstan and Moldova. However, how do they interrelate with the multilateral treaties? According to the general principle of international public law, bilateral treaties on the same matters will prevail since they reflect specifics of relations between the contracting states to a greater extent than multilateral treaties. However, in the case of recognition and enforcement, it is not that simple. In order to resolve the conflict between multilateral and bilateral treaties properly, the type of relations regulated by a bilateral treaty will matter. For example, the Treaty on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 December 1992 between Azerbaijan and the Russian Federation applies to relations arising from civil, family and criminal cases, while the Treaty on the Procedure of Reciprocal Enforcement of Judicial Acts of the Arbitrazh Courts of the Russian Federation and Economic Courts of the Republic of Belarus of 17 January 2001 between Belarus and the Russian Federation applies in the area of economic disputes. Thus, the treaty with Azerbaijan will have priority over the Minsk Convention, while the treaty with Belarus will prevail over the Kiev Treaty.

Accordingly, the treaty with Azerbaijan does not affect the issues regulated by the Kiev Treaty and the treaty with Belarus has no impact on issues regulated by the Minsk Convention.

1.5. Despite the existing contractual relations between the Russian Federation and the states of the former Soviet Union, the principle of reciprocity still remains relevant. As an example, the principle applies to recognition and enforcement of the court judgments on bankruptcy of individuals and legal entities since there is no treaty regulating this specific area. Russian courts recognize reciprocity between the Russian Federation and Belarus in bankruptcy cases, [5] while reciprocity between Azerbaijan and the Russian Federation is not considered to be yet established [6].Reciprocity between jurisdictions is not assumed in the Russian courts and should be proved in each particular case.

2.FILING APPLICATION

The Kiev Treaty and the New York Convention suggest that an application on recognition and enforcement should be submitted in the state where recognition and enforcement is sought. In contrast, the Minsk Convention additionally provides for an option to file an application through a court of first instance which issued the judgment. In all cases, the competent court to consider the application is determined in accordance with the law of the state where recognition and enforcement is sought. The list of documents to be attached to the application is set out in the table below.

[5] Ruling of the Arbitrazh Court of the Voronezh Region No. A14-10699/2011 dated 28 December 2011.
[6] Resolution of the Arbitrazh Court of the Moscow District No. A40-185979/2017 dated 8 November 2018.

New York Convention	Kiev Treaty	Minsk Convention
A duly authenticated original award or its duly certified copy	A duly certified copy of the judgment	An original judgement or its duly certified copy
A duly signed arbitration agreement (an agreement with an arbitration clause) or its duly certified copy	An official document confirming the judgement has become effective, unless this is evident from the judgement	An official document confirming the judgement has become effective or it is subject to enforcement before it becomes effective, unless this is evident from the judgement
A duly certified translation of the arbitral award and the agreement into the language of the state where the recognition and enforcement is sought	Evidence of notification of the other party about the process	Evidence of notification of the other party which did not participate in the process and proper representation of the other party in the process in case of procedural legal incapacity of the other party
	An enforcement document	A document confirming a partial performance of the judgement at the time of its delivery
		A document confirming agreement of the parties on jurisdiction of the court
		A certified translation of the application and the attached documents into the language of the state of enforcement or into Russian

3. GROUNDS FOR REFUSAL

3.1 The New York Convention contains the broadest list of grounds for refusal of recognition and enforcement. There are 3 main groups of such grounds:

3.1.1 violation of rights of a party during the arbitration proceedings (eg incapacity of a party, failure to give proper notice of the appointment of the arbitrator or of the arbitration proceedings, the party was otherwise unable to present the case);

3.1.2 lack of authority of the arbitral tribunal to consider the dispute (eg invalidity of the arbitration agreement under its governing law or the law of the country where the award was made if there is no governing law, failure to comply with provisions of the arbitration agreement in relation to the composition of the arbitral tribunal or the arbitral procedure or the law of the country where the arbitration took place if there are no such provisions in the arbitration agreement, or inability of the dispute to be settled by arbitration under the law of the country where recognition and enforcement is sought); and

3.1.3 flaws of the arbitral award itself (eg the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, it contains decisions on matters beyond the scope of the arbitration agreement, it has not yet become binding, has been set aside or suspended in the country in which, or under the law of which, the award was made, violation of public policy).

3.2 In contrast to the New York Convention, the Kiev Treaty and the Minsk Convention include relatively shorter lists of grounds for refusal of recognition and enforcement. Under the Kiev Treaty, the court refuses to recognize and enforce a judgement if:

3.2.1 there is already an effective judgment issued by a court in the state where the enforcement is sought in relation to a dispute between the same parties, on the same matter and the same grounds;

3.2.2 there is already a recognized judgment of an authorized court from another state in relation to a dispute between the same parties, on the same matter and the same grounds;

3.2.3 the dispute is considered by a court which is not authorized to do that under the Kiev Treaty;

3.2.4 the other party is not notified of the process; and

3.2.5 the 3 year limitation period has expired.

3.3 The Minsk Convention permits refusal to enforce if:

3.3.1 under the law of the state where the judgement is made the judgement has not become effective or not subject to enforcement yet, unless the judgement is subject to enforcement before it becomes effective;

3.3.2 the defendant was not notified properly and did not participate in the process;

3.3.3 there is already an effective judgment issued by a court in the state where the recognition and enforcement is sought, or an initiated procedure in the same state, or a recognized judgment of a court from another state, in each case in relation to a dispute between the same parties, on the same matter and the same grounds;

3.3.4 under the terms of the Minsk Convention or the law of the state where the recognition and enforcement is sought, only courts of that state are authorized to consider the dispute;

3.3.5 there is no document evidencing agreement of the parties to refer disputes to the relevant court; and

3.3.6 the limitation period for enforcement in the state where the enforcement is sought has expired.

3.4 In practice, however, the lists of grounds for refusal under the Kiev Treaty and the Minsk Convention are not exhaustive. The procedural codes of the post-Soviet states contain provisions allowing refusal to recognize and enforce a judgment if the court in that state finds that enforcement of the foreign court judgment may breach its public policy (eg Article 465.1.5 of the Civil Procedure Code of Azerbaijan, Articles 255 and 256 of the Economic Procedure Code of Uzbekistan, Article 244(1) of the Arbitrazh Procedure Code of the Russian Federation etc.). Violation of public policy appears to be one of the most common grounds for refusal of recognition and enforcement, along with violation of the requirements for notifying the parties. The concept of public policy is broadly interpreted by courts in the states which leads to some unpredictability of recognition and enforcement of court judgments and arbitral awards.

4. Summarizing, there is an extensive set of rules in relation to recognition and enforcement of Russian court judgements and arbitral awards in the states of the former Soviet Union. However, the procedures do not guarantee an effective performance of obligations and protection of violated rights in all cases. There are still challenges and uncertainties which a claimant may face.

ENFORCEMENT PROCEEDINGS IN RUSSIA
ROSTOV-ON-DON

Inna Makarova

Partner
Rostov-on-Don, Russia

T +7 928 160 76 42
E imakarova@gratanet.com

Often, seafarers have to go through several rounds of legal proceedings in order to recover their legitimately earned wages which had not been not paid by the shipowner. Twelve crew members of the infamous motor ship "L", which was arrested for wage arrears, also have this experience.

Thus, by the decision of the Proletarskiy District Court of Rostov-on-Don, the wage arrears were recovered from the company "K" in favor of the plaintiffs. However, in accordance with the information obtained from the response of the International Maritime Organization to the UN to the plaintiffs' request, the offshore company does not own property on the territory of the Russian Federation, which makes it impossible for the actual execution of the court decision.

In this regard, the plaintiffs were forced to appeal to the Zheleznodorozhny District Court of Rostov-on-Don with claims against the personnel selection service.

The Zheleznodorozhny District Court of Rostov-on-Don, having considered the said statement of claim, established that "one of the ways to protect the rights of seafarers in the event of non-payment of wages is compensation for unpaid wages by an agent for the recruitment of seafarers, which is directly provided for by international law". Thus, the court concluded that the plaintiffs' claims were satisfied.

But getting a court decision on the recovery of unpaid amounts is a solution to half of the problem, it is also necessary to execute it. This is where the bailiffs-executors come into play.

The fact that the debtor belongs to an offshore jurisdiction significantly complicates the procedure for the execution of a court decision. The debtor, being a foreign company, according to the plaintiffs, does not have current accounts in Russian banks and there is no information about the availability of funds. In this regard, the only possible way to enforce the judgment is to foreclose on the debtor's property, in the manner prescribed by the Federal Law "On Enforcement Proceedings" No. 229-FZ. In turn, the debtor does not possess, by right of ownership, any property located in the Russian Federation, with the exception of ships that periodically call at Russian ports.

Thus, the seizure of property is not only an admissible measure of enforcement proceedings, but also the only possible measure of court's decision enforcement. If the debtor's property is not seized, then any opportunity to foreclose on it will be missed, which will lead to the impossibility of executing the court decision and, as a result, violation of the rights of the plaintiffs.

In this regard, the plaintiffs repeatedly (when entering the ports of the Russian Federation of ships belonging to the debtor on the right of

ownership) appealed to the Leninsky district department of bailiffs of the city of Rostov-on-Don with applications for urgent seizure of the debtor's property and the appointment of a custodian, however, the requested arrests were denied due to misinterpretation by the bailiffs-executors of the norms of the Code of Merchant Shipping of the Russian Federation (KTM RF), namely, the opinion that "the arrest of a vessel can only be made on the basis of a court order, an arbitration court or an arbitration tribunal authorized to arrest." However, the bailiffs did not take into account the second half of part 1 of Article 388 of the Russian Federation of Labour Code: “For the purposes of this chapter, the arrest of a vessel is any detention or restriction in the movement of a vessel while it is within the jurisdiction of the Russian Federation, carried out on the basis of a court order , an arbitration court or authorized by law to seize an arbitration tribunal in maritime matters to secure a maritime claim, as defined in Article 389 of this Code, with the exception of the detention of a vessel carried out to enforce a judgment of a court, arbitration court or arbitration tribunal that has entered into legal force".

It follows from Article 388 of the Merchant Shipping Code of the Russian Federation that the legislator distinguishes between the concept of “arrest of a vessel” as a detention or restriction in the movement of a vessel, carried out on the basis of a judicial act (in everyday life, “sea arrest”), and the detention of a vessel to enforce a court decision.

The requested and possible arrests were not executed, as a result of which the vessels left the territory of the Russian Federation, which made it impossible to enforce the judicial act.

The complaint to the higher Directorate of the FSSP in the Rostov region about the inaction of the bailiff of the executor also did not have a positive effect.

Realizing that the bailiffs did not want to fulfill the duties assigned to them by law, the crew members decided to go the other way - a court proceeding was initiated to recover damages, the Russian Federation was declared a defendant in the person of the Federal Bailiff Service, acting as the manager of budgetary funds, as Third parties, who do not declare independent claims, were involved with the FSSP Administration for the Rostov Region and the Leninsky District Department of the bailiffs of the city of Rostov-on-Don.

The basis for the recovery of losses is the composition of the offense, which in this case is as follows:

Vessels owned by the debtor on the right of ownership may never again enter the ports of the Russian Federation, therefore, today the opportunity to collect the debt has been lost and the plaintiffs are deprived of the opportunity to satisfy their claims as creditors and receive the money awarded by the court, that is, they are harmed (damage).

The unlawfulness of the behavior of the bailiff-executor lies in the failure to fulfill the tasks assigned to him by the legislation of the Russian Federation to carry out the compulsory execution of judicial acts by seizing the debtor's property.

The causal relationship is absolutely indisputable - the delay of the bailiff and his failure to comply with the plaintiffs' legal requirement for the possible and enforceable arrest of the debtor's ship led to the loss of the possibility of executing the judicial act due to the fact that the the act and receipt of funds collected in their favor.

To establish the guilt of the bailiff, it is necessary to determine whether it was possible to execute the judicial act. The requested arrests are permitted by the laws of the Russian Federation and are therefore lawful and justified. Thus, the bailiff-executor had the opportunity to execute the judicial act.
However, despite the existence of a corpus delicti, the stated claims were denied, the court concluded that the amount of money subject to collection from the debtor by way of enforcement proceedings on the basis of a judicial act, by its legal nature, cannot be attributed to losses.

Recovery of damages caused by the inaction of the bailiff is in line with the European Convention for

the Protection of Human Rights and Fundamental Freedoms, as well as the main approaches to the application of this Convention developed by the European Court of Human Rights. Article 1 of Protocol 1 to the Convention states that every natural or legal person has the right to respect for his property. The awarding of the amount of debt to a person by a court decision in accordance with the precedents developed by the European Court within the meaning of Art. 1 of Protocol No. 1 to the Convention can be considered as "property".

The adoption of a court decision on the recovery of a sum of money is provided by the person in whose favor this decision was made, with requirements that can be legally enforced. At the same time, the possibility of compulsory execution of a court decision can only be ensured through enforcement proceedings carried out by the bailiff service. Thus, the possession of the person, in favor of whom the judgment was made, of his property (the awarded amount of money) depends on the exercise of the broad powers of the public authorities.

Based on this, the European Court formulated a precedent according to which “property” within the meaning of Article 1 of Protocol No. 1 to the Convention may represent not only a material amount, but also a legitimate expectation that the bailiff service will exercise its powers to enforce a judgment.

Thus, the amount of money awarded to the plaintiffs by the court decision is the property of the plaintiffs, their legitimate expectation that the enforcement authority will fulfill the requirements of the judicial act.

Since the amount of money awarded to the plaintiffs as collectors was not recovered by the official of the state body for compulsory enforcement as a result of the illegal inaction of this official, the plaintiffs suffered harm in the form of losses.

Moreover, the court did not take into account the fact that the materials of the enforcement proceedings contain only evidence of the position actively taken by the claimants, which consisted in the independent tracking of the debtor's property (the entry of ships into the ports of the Russian Federation) and the repeated filing of applications for the seizure of the debtor's property, while the bailiffs-executors took a passive position: no inquiries were made to the tax authorities regarding the accredited branches and representative offices of the debtor as a foreign legal entity, regarding information about the debtor in the Unified State Register of Legal Entities, regarding the debtor's tax registration in the Russian Federation; there was no search for the debtor's property: neither his current accounts, nor real estate, nor movable property.

Among other things, the crew members made an attempt to initiate a criminal case, but, unfortunately, it was also unsuccessful. The main stumbling block is the conclusion of contracts by crew members on the territory of the Russian Federation (in fact) and under the jurisdiction of a foreign state with an offshore company (it is not possible for law enforcement agencies to establish information about the financial condition of companies falling under foreign jurisdiction).

For almost three years, the crew members of the motor ship "L" could not receive the money owed to them. At the same time, and with exactly the same set of problems, we received the case of the crew of the second ship of the same debtor company, who used the labour of the ship's workers for free.

Stubborn unwillingness to leave such a long mission unsuccessful and the opening window of fortune allowed us to catch the ill-fated ships in other ports, where the bailiffs turned out to be quick, competent and courageous. Arrests of two courts took place. As a result, the debts to the sailors who were already expecting nothing were paid off in full.

Of course, bailiffs-executors do not come across such atypical property of a debtor as sea vessels every day, but, as in any case, the willingness to take responsibility and use a wide range of powers, which are endowed with officials to fulfill the main goal, is important - not leave court decisions unfulfilled when it is possible to legally and fully restore the rights of the offended party.

ENFORCEMENT PROCEEDING IN RUSSIA

SAMARA

Alexey Pankratov

Associate
Samara, Russia

T +7 927 265 57 17
E apankratov@gratanet.com

The institution of enforcement proceedings was created, among other powers, for the compulsory execution of judicial acts.

In the 11th century, in accordance with Russian Pravda, the so-called posadnikov or princely warriors - youths, swordsmen and children, acted as "executors", defenders of the plaintiff's interests, collected court fees and assisted in getting back the borrowed property.

It is believed that it was from this time that the institution of bailiffs began to emerge in the history of Russia.

Progress does not stand still, and technologies reach, among other things, the modern bailiff service.

Despite the fact that the debtor is, in fact, a person who has violated the law or an obligation, and in respect of whom a judicial act has been issued, the debtor has a certain list of rights and guarantees that cannot be violated.

In practice, there are often cases when bailiffs-executors, within the framework of the statutory enforcement actions, infringe on the rights of debtors.

Since the entry into force of the Federal Law "On Enforcement Proceedings", the following instruments have been introduced to facilitate the process of enforcement proceedings:

- submission of applications, complaints and petitions in electronic form;
- the possibility of concluding a conciliation agreement between the parties;
- requesting from the tax service information about the presence of the debtor's property;
- the bailiff does not have the right to foreclose on the funds established by Article 101 of the Federal Law "On Enforcement Proceedings";
- the debtor has the right to independently sell property worth less than 30,000 rubles;
- the debtor has the right to leave unrealized property worth less than 30,000 rubles for himself;
- notices of trades are posted only on the Internet;
- a lump sum payment of 10,000 rubles for each child is not subject to collection.

In addition to the existing institutions for protecting the rights of the debtor, new tools are being introduced to prevent unnecessary write-offs of funds from the debtor.

So, for example, in May 2020, changes were made in terms of income that cannot be collected even by a court decision.

According to the current federal law, no more than half of the paid wages or other current income can be collected to pay off debts.

The mechanism was introduced to protect debtors. Since, in practice, bailiffs often foreclose on all their funds without understanding who the sender of the funds is and on what basis they were credited to the account. At the same time, banks are not obliged by law to establish the source of funds for the accounts for the further possibility or impossibility of fulfilling the requirements of the bailiffs. This situation provokes litigation on the claims of private debtors. At the same time, the bailiffs claim that they do not know the sources of funds to the plaintiff's account, and the banks, in turn, refer to their lack of obligation to verify this.

It is understood that in the future, in connection with the development of scientific and technological progress, enforcement proceedings will also develop towards humanization and compliance with the balance of the rights of both the debtor and the claimant.

ENFORCEMENT PROCEEDINGS AND BANKRUPTCY IN TURKEY

Ali Ceylan

Partner
Istanbul, Turkey

T +90 212 465 66 99
E ali.ceylan@gratanet.com

Execution and Bankruptcy Law is the field of law that regulates procedures and rules in order creditors to collect their receivables by using the powers of the judicial state organs due to the debtor's failure to fulfill his/her debt.

The Turkish Execution and Bankruptcy Law No. 2004 ("EBL") regulates various enforcement and bankruptcy procedures related to the collection and recovery of creditors' receivables.

Execution Proceeding without Judgement	Enforcement Proceeding with Judgement
It is an enforcement proceeding method that can be initiated without the need for a court decision: • general execution proceedings; • execution proceedings of negotiable instruments (such as promissory notes, cheques, etc.); • eviction of leased real estate without judgment.	**This is enforcement of a court decision or another document which can be assumed as a court order according to the applicable legislation:** • for monetary debts; • for delivery of movables; • for delivery of a child and to form a personal relationship with a child; • to perform or not to perform an action; • for delivery and eviction of a real estate.

Execution Proceeding Without Judgment
General Execution Proceedings

Under the execution proceeding without a judgment, the creditor submits a request to the execution office which is provided as a standard form of request. Upon this request, the execution office sends a payment order to the debtor to pay the order within 7 days. If the request of payment order is based on a negotiable instrument, debtor is granted 5 days to pay the amount in the payment order rather than 7 days.

The debtor can pay the amount stated in the payment order or object to the payment order. If the debtor neither objects nor pays the amount, the debtor shall declare his assets and properties to the execution office.

If the debtor does not object, the payment order becomes final and the creditor can ask the execution office to seize and sell the assets of the debtor to collect creditor's receivable. If the debtor objects to the payment order, the proceeding suspends by the decision of the execution officer. Creditor then can go to the courts to have the objection of debtor cancelled or lifted.

There are two possible options if the creditor decides to go to the court:

- the creditor can file for the "cancellation of the objection" before the civil or commercial courts within 1 year after the objection by the debtor;
- the creditor can file for the "lifting of the objection" before the execution courts if the objected execution proceeding is based on a document (i) acknowledging the debt provided that the signature on such document is accepted by the debtor or certified by a notary or (ii) duly issued by official authorities or other authorized bodies.

The execution courts' review in the lifting of the objection cases is limited and such case is concluded faster compared to cancellation of objection cases to be filed before civil or commercial courts.

If the objection by the debtor is found to be unjust in cancellation of the objection case, the court will order a compensation not less than 20% of the claim amount (in practice courts are not inclined to order more than 20%) to the creditor in addition the claim amount (the amount in the payment order) Likewise, if the court decides the objection was made on just grounds and the creditor initiated the proceedings in bad will, the court then orders the creditor to pay a compensation to debtor not less than 20% of the claim amount. The same compensation regulation also applies in lifting of the objection cases. In lifting of the objection cases, 10% monetary penalty may also apply. If the debtor claims that the signature on the document which the execution proceeding was based on does not belong to him/her but it turns out that the signature in fact belong to debtor, the court orders a 10% monetary penalty.

If the court decides in favor of the creditor in lifting of the objection or cancellation of the objection case, the creditor can continue the proceedings before the execution office which creditor started. Upon lifting or cancellation of the objection, the execution office can seize and sell the assets of the debtor to collect creditor's receivable in cases of:

- execution proceeding without court decision is only applicable for monetary and security receivables;
- it is a way where the creditor can directly apply to the execution office and initiate execution proceedings without a need for a court decision;
- it is possible to initiate execution proceedings without any document or promissory note. However, if the proceeding is based on a document such document should also be attached to the payment order sent to the creditor;
- general rule is that the execution office within the district of debtor's address has the authority to initiate an execution proceeding without a court judgment. The parties may agree on the execution office's authority. In this case, both execution offices, one at the district of debtor's address and the district of the place agreed by the parties will have authority. The debtor can object to the authority of the execution office. If such objection is accepted by the execution office, the proceeding against debtor suspends.

Execution proceedings of negotiable instruments

While the execution proceeding regulated for negotiable instruments such as checks, promissory notes have similarities with general execution proceedings, there are some major differences.

Once the payment order based on a promissory note is sent by the execution office upon request of the creditor, the debtor has 5 days to object and 10 days to pay or declare assets.

Unlike general execution proceedings, the debtor shall submit is objection(s) directly to the execution court rather than execution office in cases if:

- the debtor can prove with a signed document that the debt is paid or the debt no longer exists under statute of limitations;
- the signature on the promissory note does not belong to debtor;
- the proceeding is started by a bankruptcy office which is not authorized to start such proceeding.

Unlike the general execution proceedings, objections of the debtor do not suspend the execution proceedings other than the sale of seized assets of debtor. Unless the execution court orders a stay of execution, the creditor can even collect any seized cash of debtor. In other words, the objection only stops the sale of the assets, not the execution for debt.

Unlike the general execution proceedings, there are no cases of cancellation or lifting of the objection that creditor should pursue. The promissory note is considered as an acknowledgment and acceptance of the debt and it is debtor's burden to prove otherwise before the execution court by debtor's arguments of objection.

Eviction of Leased Immovable Properties without Judgment

In this execution proceeding, the execution Office sends a payment order stating that the tenant shall pay outstanding rents within 30 days otherwise the tenant will be evicted from the property. Tenant has 7 days to object to the payment order. If the debtor objects within 7 days, the execution proceeding will stop, and if the debtor pays the rent within 30 days the debtor cannot be evicted.

If the tenant does not pay the debts within 30 (thirty) days, creditor can file a claim before the execution court including all proceeding costs, for the eviction of the tenant.

Enforcement Proceeding with Judgement

This proceeding is the enforcement of a court judgment. If certain conditions required by concerning regulations are fulfilled, arbitral awards, in and out of court settlements, certain deeds executed before the notaries, certain undertakings given before the execution offices can be enforced under the enforcement proceedings for judgments.

The enforcement proceedings with judgment can be initiated for various matters decided by courts:

- money collection and recovery;
- delivery of a child to one if of his/her parents;
- establishing contact and personal relationship with child by one of his/her parents;
- performing or not performing an action;
- evacuation of a real estate.

There is no authorized execution office for enforcement proceedings. A court order can be enforced at any execution office. The statute of limitation for enforcement proceedings with judgment is 10 years. However, judgments related to ownership, rights on a real estate and some personal rights (e.g. right to see child in after divorce) are not subject to such statute of limitation. The order sent by the execution office is called "execution order" unlike payment order regulated under enforcement proceedings without a court order.

Enforcement for the Foreclosure of Collaterals

If a receivable is secured by a collateral such as mortgage, account pledge, share pledge, immovable pledge, etc. the enforcement of such collateral is subject to a particular proceeding which is enforcement for the foreclosure of collaterals. The main rule is the enforcement of the collateral other than certain exceptions (mandatory application to the enforcement of collateral proceedings) Enforcement of the foreclosure of collaterals can be enforced by virtue of the rules under the enforcement proceedings for judgments if there is a collateral document clearly acknowledging the debt. There are some minor differences in terms of payment time of the debt.

Enforcement of Real property collaterals:

- ordinary enforcement proceedings: Execution office sends a payment order - 7 days to object – 30 days to pay the debt;
- enforcement proceedings for judgments: Execution office sends an execution order – no objection – debtor must prove the debt is paid to suspend the proceedings -30 days to pay the debt.

Enforcement of immovable property collaterals:

- ordinary enforcement proceedings: Execution office sends a payment order - 7 days to object – 15 days to pay the debt;

- enforcement proceedings for judgments: Execution office sends an execution order – no objection – debtor must prove the debt is paid to suspend the proceedings -7 days to pay the debt.

BANKRUPTCY PROCEEDINGS

General Bankruptcy Proceedings

Ordinary Bankruptcy Proceeding

Unsecured creditors, up to their discretion, may choose to pursue bankruptcy proceedings rather than execution proceedings described so far. Main differences of bankruptcy proceedings versus execution proceedings can be listed as the following:

- the execution office sends a "bankruptcy payment order" The debtor has 7 days to object or to make the payment. If the debtor does not make the payment or object to the bankruptcy order within 7 days, the debtor is declared bankrupt by the commercial court upon application of the creditor. The bankruptcy proceedings can be only initiated against merchants.

If an objection is made, the creditor has right to file a case before the commercial court to lift the objection and declaration of bankruptcy of the debtor. This case is a two-stage case. The court first deals whether the debtor has a debt to the creditor or not. Unlike a normal receivable claim case, if the court is in the opinion that there is a debt to be paid, the court orders at the end of the trial that the debtor to pay the debt into the court within 7 days otherwise the debtor to be declared bankrupt.

Bankruptcy proceedings of negotiable instruments

This procedure is similar to the execution proceedings of negotiable instruments. The execution office sends a bankruptcy payment order specifical for bankruptcy proceedings. The debtor has 5 days to object or to make the payment. The rest of the proceedings is the same as ordinary bankruptcy proceedings. The creditor needs to file a case before the commercial court to lift

the objection and declaration of bankruptcy of the debtor like in the ordinary bankruptcy proceedings.

Direct Bankruptcy Proceedings

Filing bankruptcy of debtor by the creditor

The creditors can apply to the commercial court asking bankruptcy of a debtor under certain circumstances provide by the EBL. Some of these circumstances are:

- debtor does not have a permanent address;
- debtor is involved in fraudulent attempts or takes actions infringing creditors' rights;
- debtor is hiding assets in order not to pay debts;
- debtor suspends to make payments to its creditors;
- debtor's application for concordat is rejected;
- debtor did not pay an amount that it has to pay based on an execution order.

Debtor filing for its own bankruptcy.

A company can file for its own bankruptcy if the company's liabilities are more than its assets.

Global Presence

Integrated Offices

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Baku

Belarus
Minsk

Georgia
Tbilisi

Kazakhstan
Astana
Almaty
Atyrau
Aktau, etc.

Kyrgyzstan
Bishkek

Moldova
Chisinau

Mongolia
Ulaanbaatar

Russia
Moscow
Rostov-on-Don
St. Petersburg

Tajikistan
Dushanbe

Ukraine
Kyiv

Uzbekistan
Tashkent

Armenia
Yerevan

Associate Offices

Cyprus
Limassol

Russia
Samara

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Kuala Lumpur

Switzerland
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