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Recognition and enforcement of the Polish judgments in Belarus

Recognition and enforcement of foreign judgments on the commercial matters against legal entities in Belarus are not rare. If decision of the foreign court is not executed voluntarily by the Belarusian debtor than one shall deal with procedure of recognition and enforcement.

According to the judicial practice of Belarusian courts the Polish judgments are recognized and enforced.

A condition for the judgment's recognition and enforcement in Belarus is to obtain a corresponding act of the Belarusian court (a procedure known as "exequatur").

The recognition and enforcement of Polish judgments in Belarus is regulated in particular by the agreement between Poland and Belarus on legal assistance and legal relations in civil, family, labor, and criminal cases dated October 26, 1994 (hereinafter – the Agreement).

According to art. 54 of the Agreement Belarus and Poland recognize and enforce on their territory court decisions made on the territory of the other party (settlement agreements are also considered court decisions).

Recognition and enforcement conditions

The Polish judgment shall be recognized and enforced in Belarus if (art. 55 of the Agreement):

- 1) it has entered into legal force and is subject to execution under the legislation of Belarus;
- 2) according to the Agreement provisions and in cases not provided for by it, the case does not belong to the exclusive competence of the Belarusian authorities under the legislation of Belarus;
- 3) the party was not deprived of the opportunity to defend its rights, especially the party that did not participate in the proceedings, and received a summons to the court session in due time and in due order;
- 4) in the identical case, a decision that has entered into legal force has not been previously issued or a case has not been initiated in the Belarusian court;
- 5) the judgment of a third state in an identical case on the territory of Belarus was not recognized or enforced;
- 6) when making the judgment, the law stipulated by the Agreement was applied, and in the absence of such regulation in the Agreement - based on the internal law of Belarus.

In the proceedings on the recognition and enforcement of the judgment, the court does not reconsider the decision on the merits but is limited to checking whether conditions listed in art. 55 of the Agreement are satisfied. The Polish applicant (claimant) must prove the fulfillment of these conditions in a Belarusian court.

1. Submission of an application for recognition and enforcement of the judgment

To initiate proceedings for the recognition and enforcement of the Polish judgment in Belarus, the applicant shall prepare

application and proceed according to the Belarusian legislation (par. 3 of art. 57 of the Agreement).

One shall mind that the foreign judgment can be submitted for the recognition and enforcement procedures only within 3 years maximum term starting from the date of entering into force. This term can be restored by the court at the request of the applicant if there are good reasons for that. The actions of the debtor to execute the judgment or recognize the obligations restore the term as well and it starts from the beginning.

According to art.56 of the Agreement application can be submitted either to the Belarusian court or to the Polish court that made a judgment (then Polish court shall send it to the appropriate Belarusian court through Ministry of Justice).

Application to the Economic Court of Belarus should be filed at the location of the debtor or at the location of the debtor's property if the location is unknown (art. 246 of the Commercial Procedural Code of the Republic of Belarus – hereinafter the CPC).

Requirements for the application:

- ▶ written form
- ▶ signature of the applicant or his representative.

Content:

- ▶ name of the target court to consider the recognition and enforcement matter;
- ▶ name and location of the Polish court that made judgment;
- ▶ name of the applicant, his location;
- ▶ name of the debtor, his location;
- ▶ information about the Polish court's judgment;
- ▶ claim for the recognition and enforcement of the Polish judgement;
- ▶ list of attachments;
- ▶ telephone and (or) fax numbers, e-mail addresses of the applicant, the debtor, their representatives and other information.

The application shall be accompanied by:

1) original judgment or a certified copy of it, together with confirmation that the judgment has entered into legal force and is partially or fully executed if this does not follow from the judgment itself;

2) a document confirming that the Belarusian defendant, against whom the judgment was made and who did not take part in the proceedings, received a summons to appear at the court session within the specified time and in the proper manner in accordance with the Polish law;

3) a certified translation of the application and the documents listed above into Russian / Belarusian;

** It is possible to translate documents into Russian / Belarusian both in Poland and in Belarus (notarization of the translation is not necessary, but advised).*

4) copies of the application and the specified documents for handing over to the participants in the proceedings;

- 5) a duly certified power of attorney or other document confirming the powers of the person who signed the application;
- 6) a document confirming the payment of the state fee for the consideration of the application in the economic court.

** State fee is 10 basic values – about 95 Euro (clause 14 of Appendix 15 to the Tax Code of Belarus).*

The Belarusian court returns the application to the applicant and leaves it without consideration in case of non-compliance with the requirements above.

Pay attention:

- ▶ diplomatic or consular legalization of Polish official documents is not required, since according to art. 11 of the Agreement, documents drawn up and certified by the competent authority of Belarus and Poland following the established form, signed by the authorized person of this authority, and sealed with the official seal, have evidentiary force on the territory of these states without legalization. The same rule applies to copies and translations of documents that have been certified by the competent authority. Besides, Belarus and Poland are parties to the Hague Convention Abolishing the Requirement for Legalization of Foreign Official Documents ("Apostille Convention"), 05.10.1961;
- ▶ judicial practice in cases of recognition and enforcement of foreign judgment showed that when the court receives a judgment in respect of joint and several debtors, the court has the right to consider the issue of recognizing the execution of this judgment in accordance to each of the debtors in a separate proceeding.

2. Order of consideration by the court

The court starts the case within 5 days from the date of submission of the application.

An application under art. 247 of the CPC is considered in a court session by a judge alone within *not more than one month* from the date of admission to the court.

The persons participating in the case are notified by the court about the time and place of the court session. Their failure to appear does not prevent the consideration of the case if they were duly notified of the time and place of the court session.

When considering a case, the court establishes the presence or absence of grounds for recognition and enforcement of the judgment. Belarusian court can demand explanations and evidences from the parties and the Polish court (clause 5. art. 57 of the CPC).

** If the execution of the judgment is suspended in Belarus under the legislation, then in Poland the proceedings on the recognition and execution of this judgment shall be accordingly suspended (clause 4 of art. 57 of the Agreement).*

If the conditions of recognition of the judgment, which were mentioned above, are not confirmed in the court session (art. 55 of the Agreement), as well as in cases of expiration of the limitation period for bringing the judgment to enforcement and this period has not been restored by the court; execution of the judgment would be contrary to public order in Belarus, the Belarusian court rejects in recognition and enforcement.

Based on the results of consideration of the application, the court issues a ruling containing the name and location of the Polish court that made the judgment; the name of the applicant and the debtor; information about the judgment of the Polish court; an indication of the recognition and enforcement of a judgment of a Polish court or of the rejection to recognize and enforce the

judgment.

3. Proofs

The applicant, that is the Polish resident, must prove in the Belarusian court the fulfillment of the conditions specified in art. 55 of the Agreement.

The listed conditions for the recognition and enforcement of the judgment are not particularly difficult to perform, except for the third point: "3) the party was not deprived of the opportunity to protect its rights, especially the party that did not participate in the proceedings and received a summons to the court session in due time and in due order."

The problem may arise if the Belarusian debtor did not participate in the court session in Poland. It can be difficult to prove in a Belarusian court that the Belarusian side was not deprived of the opportunity to protect its rights, received a summons to a court session in due time and in due order in cases where the Belarusian defendants, for example, deliberately did not appear in the Polish court, including changing the address of their location, so that later in the Belarusian court to claim that their right to judicial protection was violated. Even if the Belarusian side participated in the court sessions of the Polish court, it can try to prove that its right to defense was violated by receiving a summons to a court hearing in an improper manner, with a violation of deadlines, etc.

Keep in mind that compliance with the procedural requirements of the Polish legislation in the matter of serving court notices does not mean that the Belarusian side was provided with a legal right to defense. The defendant must have a fully guaranteed real opportunity to present his defensive pleading to the Polish court in due time and form.

The fact that the Polish court served the Belarusian defendant with the documents in the proper time, in the absence of their translation into Belarusian/Russian, will indicate a violation of the right of the Belarusian side to defend itself.

As provided by art. 8 of the Agreement, the Polish court hands over documents in accordance with the Polish law, if these documents are drawn up in the state language of the called party or a certified translation into the language of this party is attached. Otherwise, the documents are handed over to the addressee, provided that he agrees to accept them voluntarily.

In fact, the court must check the compliance of the Polish court with the requirements of the Polish procedural legislation in terms of the citation of the defendant.

If the defendant was abroad during the proceedings, the court will check the compliance of the Polish court with the requirements of international treaties on the proper citation of the defendant. Under the provisions of the Convention on the Service Abroad of Judicial and Non-Judicial Documents in Civil or Commercial Matters of 15 November 1965, the document is served in a manner determined by the domestic law of the requested state for the service of documents drawn up in that state to persons located in its territory.

Case law analysis showed that the Belarusian courts accepts the information contained in the certificates of foreign courts that issued a decision on the merits as admissible evidence of the timely and proper citation of the defendant to the court of a foreign state if the fact of the citation was not disputed by the debtor at the court session during consideration of an application for recognition and execution (in this case, this certificate cannot serve as sufficient evidence of such confirmation).

The Belarusian courts recognize as appropriate the way in which the judicial correspondence was delivered by hand.

In addition to the fact of delivery of the notice to the defendant, the subject of the assessment is also the timeliness of delivery of the notice. The person must be notified in such a way to give him enough time to prepare for a court session and ensure the protection of his rights and interests. The Belarusian court decides if the given term is enough for the notified person in each

specific case based on an assessment of all the circumstances of the complex case, especially taking into account the location of the notified person, venue of proceeding, case sample, and whether the notified person has a real opportunity to defend himself.

Thus, problems in proving this condition of recognition of the decision may not appear in the Belarusian court, but the outcome of the case may depend on the position taken by the Belarusian debtor.

4. Appealing

The court ruling (either on the recognition and enforcement or on the rejection) may be appealed by the parties to the Cassation instance (higher court level, which is a division of the Belarusian Supreme Court) within 1 month after it was rendered. This appeal should be considered by the Cassation instance within 1 month.

The court ruling may also be appealed further to the Supervisory instances (also divisions of the Belarusian Supreme Court) within 1 year after it is rendered.

5. Measures to enforce the decision of the Polish court

The ruling of the Belarusian court immediately after its issuance (enters into legal force from the moment of its issuance) becomes the legal ground for the application by the Belarusian court of measures to ensure the execution of the judgment of the Polish court. The interim measures are determined by the Polish resident in the application about the invocation of interim measures established by law.

Interim measures may include:

- ▶ arrest of real estate or other property owned by the defendant and held by him or other persons;
- ▶ freezing of funds held in accounts with banks and (or) non-bank credit and financial organizations;
- ▶ prohibiting the defendant from performing certain actions;
- ▶ assigning the defendant the obligation to perform certain actions;
- ▶ prohibiting other persons from performing certain actions related to the subject of the dispute;
- ▶ suspension of collection under an enforcement document or other document that allows collection in an uncontested (non-acceptance) order, in the event of claims for recognition of such documents as non-enforceable, etc.

It is important to understand that the Belarusian court also has the right to use such measures according to the granting of counter-security by the Polish side, guaranteeing compensation for possible losses for the Belarusian debtor as a result of using interim measures.

6. Execution

Enforcement of the decision of the Polish court is carried out following the procedure established by the legislation of Belarus on enforcement proceedings, based on a court order of the Belarusian court (art. 250 of the CPC).

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