

TSG TSG NEWSLETTER

TOMIĆ SINDJELIĆ GROZA

Advokatska kancelarija TSG TOMIĆ SINDJELIĆ GROZA informiše o aktuelnostima u radu kancelarije i zakonodavnom reljefu RS | Die Rechtsanwälte TSG TOMIĆ SINDJELIĆ GROZA informieren über aktuelle Themen der Kanzlei und des Rechtsrahmens der RS | The aim of the TSG Newsletter is to help clients and associates understand trends and legal developments in various areas of the law in the RS | Юридическое бюро ТСГ ТОМИЧ СИНДЖЕЛИЧ ГРОЗА информирует о самых актуальных событиях, о работе конторы и законодательном рельефе РС | Glavna urednica | Chefredakteurin | Editor-in-Chief | Главный редактор: Ljubica Tomić | Prevodi | Übersetzungen | Translations | Переводы: Andrijana Mihailović, Mirjana Zdravković, Viktorija Topalović | Lektor | Lektor | Proofreader | Лектор: Ivana Radović, Magda Braun | Print & Online urednica | Print & Online-Redakteurin | Print & Online editor | Печать & Онлайн-редактор: Mirjana Zdravković

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Changes to the Civil Procedure Code – Solution for NPL Market in Serbia–

The Law Amending the Civil Procedure Code ("RS Official Gazette" 87/18 of 13 November 2018) entered into force on 21 November 2018.

The amendments concern Article 204 of the Civil Procedure Code ("RS Official Gazette", Nos. 72/2011, 49/2013 – Constitutional Court Decision, 74/2013 – Constitutional Court Decision and 55/2014), which provides for alienation of disputed asset or right in a pending litigation and allows the acquirer of such asset or right to enter the litigation.

Prior to the amendments, Art 204 of the Civil Procedure Code comprised three paragraphs, as follows:

"If a party alienates the asset or right which is the subject of pending litigation, this shall not preclude the litigation from being completed between the same parties. (Paragraph 1)

The person who acquired the asset or right which is the subject of pending litigation may enter the proceedings instead of the plaintiff or the defendant only subject to the consent of both parties. (Paragraph 2)

In cases referred to under Paragraph 1 hereof, the ruling shall also produce effect on the acquirer". (Paragraph 3)

A legal transaction whereby an asset or right in dispute has been alienated normally leads to the termination of legal standing. However, in order to protect the interests of the opposing party, the Code set down that the change in the legal standing that had occurred in the course of the litigation shall not preclude the litigation from being completed between the same parties. Thus, the rule requiring the Court to dismiss a case due to the lack of legal standing, had been waived.

Paragraph 3 explicitly provided that the ruling delivered in a litigation completed between the same parties shall also produce effect on the acquirer, since the party that had alienated the asset or right had acted in the proceedings in its own name with respect to another person's right.

Art 204 still provides for the consequences of alienating an asset or right which is the subject of a pending litigation, however, the recent amendments have introduced the following changes to Paragraphs 2 & 3:



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„The person who acquired the asset or right which is the subject of a pending litigation from the defendant, may enter the litigation in place of the defendant only with the consent of both parties. (Paragraph 2)

The person who acquired the asset or right which is the subject of a pending litigation from the plaintiff, may enter the litigation in place of the plaintiff subject to a written consent submitted by the plaintiff to the Court. (Paragraph 3)“

The consent from both parties is now required only when the asset or right was acquired from the defendant and the acquirer intends to take up the proceedings in his place (Paragraph 2). When the asset or right was acquired from the plaintiff, the acquirer needs only the plaintiff's consent, given in writing and delivered to the Court, in order to take up the proceedings.

The third party that acquired the asset or right in dispute in the course of the litigation will now find it easier to take up proceedings as the plaintiff, because the Court will allow him to enter the litigation even where the defendant may object.

The NPL Resolution Strategy (“RS Official Gazette” No. 72/15) adopted by the Government, highlighted the issue of the sale of disputed non-performing loans (NPLs) after the bank as the seller has initiated litigation proceedings.

In such cases, prior to the amendments to the Civil Procedure Code, the new holder of NPL was unable to join or take over the litigation in place of the bank without consent of both parties. Such regulations presented an obstacle for NPL market development and the Action Plan for Implementation of the NPL Resolution Strategy provided for amendments to the Civil Procedure Code.

These amendments made it easier for the buyer of NPL to take up an already initiated litigation in place of the assignor bank, since this requires only a written consent of the plaintiff, submitted to the Court.

The amendments to the Code were initially aimed at the provision governing the effects of the ruling on the acquirer (Paragraph 3 prior to the amendments), as its application had raised issues in court practice.

The Code provided that a ruling delivered in litigation proceedings, in the course of which the disputed asset or right was alienated, should produce effect on the acquirer, without clarifying the conditions of such effect.

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This would mean that the ruling would affect even the acquirer who acted in good faith.

The acquirer was thus bound by the ruling settling the right such person acquired while the litigation was ongoing, even though the acquirer may not have been a party or even aware of such litigation.

This issue was resolved by deleting the entire paragraph and this provision is no longer contained in the Code following the recent amendments.

However, this begs the question of practical consequences for third parties – whether or not they need to initiate new litigation to enforce or defend the acquired asset or right.

You may contact our team for any legal advice.