

# TSG TSG NEWSLETTER

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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, 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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## THE LONG-AWAITED NEW AMENDMENTS TO THE LAW ON ENFORCEMENT AND SECURITY

The new Amendments to the Law on Enforcement and Security were introduced on 3 August 2019. The amended law will come into force on 1 January 2020, with certain provisions applying from 1 March 2020 and 1 September 2020 respectively.

The latest Amendments seek to address queries arising from practice, as well as introduce radically new solutions and procedures into the enforcement proceedings.

### Expanded powers of public enforcement officers: new sole powers

As a significant conceptual change, public enforcement officers will have expanded powers of enforcement and new sole powers when it comes to determination of enforcement.

Most significantly, public enforcement officers now have the sole power to make determinations on creditor proposals and enforcement orders for the purpose of debt collection against the budget of the Republic of Serbia or local government (i.e. in situations where the Republic of Serbia, an autonomous province, a local government unit or any other direct or an indirect user of the Budget funds, are debtors).

Furthermore, public enforcement officers are now solely responsible for the execution of enforcement by means of liquidation of real estate and movable assets, as well as for the enforcement of action, which can be incumbent on the debtor or a third person.

Since the court practice remains divided on enforcement when it comes to legally mandated financial support, the Law now explicitly gives the court the power to enforce family law documents, except when it comes to enforcing legally mandated financial support, in which case it is the public enforcement officers who have sole responsibility.

Further, public enforcement officers now have the sole power to enforce mandated public dues (for instance, collection of court fees).

The public enforcement officers now also have sole power to execute for enforcement mandated by a special Law. This change is intended to leave room for future expansion of powers of public enforcement officers to include enforcement of tax and public revenue collection.

Finally, the new Amendments give public enforcement officers the power (although not obligation) to mediate in out-of-court financial settlements before public enforcement



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officers, before the court proceedings are initiated. The out-of-court settlement procedure can be initiated by the creditor, in a written proposal accompanied by an enforceable document or the public enforcement officer then invites the debtor to settle the debt voluntarily within 60 days. Two aspects of this change are particularly convenient for creditors: a) the costs of the out-of-court procedure are significantly lower than court-based enforcement, and b) initiation of out-of-court proceedings extends the e deadline by 60 days. As this procedure is extrajudicial by nature, it will be regulated by appropriate by-laws.

## **A new warrant of enforcement**

The decision of the Constitutional Court to approve constitutional appeal for compensation of damages represents a new warrant of enforcement introduced by the Amendments.

It is relevant also that Amendments offer a more precise definition of the scope and reach of the extract from the Pledge Register and Financial Leasing Register functioning as warrants of enforcement. The Law now strictly stipulates that they can regulate enforcement only on the basis of the law of pledge (pledged property only; other assets owned by the debtor are not applicable). Although unregulated by previous iterations of the law, this solution has dominated court practice (although different judgments have also been recorded).

## **A new instrument of enforcement**

The law now includes "liquidation of debtor's intellectual and trade property" (logo, trademark, patent and other) as a new instrument of enforcement.

## **Enforcement of repossession of entire property on the basis of a document attesting to debt now possible**

The law previously stipulated that a warrant of enforcement constituted the only grounds for enforcement by means of repossession of all assets (the New Amendments have addressed this limitation). The creditor now has the authority to enforce repossession of a debtor's entire property, regardless of whether the process is based on a warrant of enforcement or a document attesting to debt.

## **Stricter rules for awarding costs of proceedings to the creditor**

This Amendments seek to suppress the fraudulent practice whereby the creditor initiates multiple enforcement proceedings against a single debtor, which could reasonably be expected to be settled as a part of a unified enforcement process.

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A fraudulent practice of seeking to maximise income by pursuing multiple discrete enforcement proceedings for the collection of the main claim, statutory interest and court costs— all arising from a single same enforcement warrant — has become widespread. Creditors also frequently initiate multiple enforcement proceedings to collect claims arising from individual invoices based on individual invoices and other documents attesting to debt (for instance, invoices for monthly instalments arising from the same purchase contract).

Such creditor practices inflate enforcement costs in a way that does not promote successful financial settlement and places undue financial pressure on the debtor. The new Amendments therefore stipulate that the creditor shall be reimbursed only for the enforcement costs that would have been incurred if a single enforcement procedure had been initiated to cover all claims arising from an individual case.

## Electronic public sale

For the first time, enforcement can now draw on electronic facilities, such as electronic bulletin boards and electronic public auctions, to aid the process of public sale.

The law stipulates that the court electronic bulletin board will be the only avenue for electronic advertising of the sale of property in the context of enforcement. This solution is expected to make a significant contribution to the efficiency and transparency of enforcement proceedings, as well as to the accessibility of court information.

Public sales will be conducted by means of electronic public auctions. From 1 March 2020, an option to use electronic public auctions will be made available in addition to traditional auction formats. From 1 September 2020, all public auctions— whether they relate to real estate or to movable assets— will be conducted in electronic format only.

The opportunity to submit an electronic application for enforcement is yet another significant improvement offered by the recent Amendments. As the Law does not cover procedural details associated with 'e-applications for enforcement', it is expected that the Ministry of Justice will issue a new set of instructions.

## Shorter deadlines in commercial disputes

Under the new Amendments, the law provides for Summary Enforcement Proceedings, a modified form of enforcement proceedings. These proceedings are conducted in commercial disputes under the jurisdiction of the Commercial Court (), and only on the basis of the following types of documents attesting to debt: (1) Promissory note or check issued by a domestic or foreign entity (an objection can be included where necessary for the establishment of the claim);

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(2) an unconditional bank guarantee, (3) an unconditional Letter of Credit and (4) a notarised affidavit provided by the debtor, authorizing the bank to transfer funds from the debtor's account into the account of the enforcement creditor.

Tighter deadlines for the actions of the parties and the court, aimed at faster enforcement and collection proceedings, are an essential feature of the Summary Enforcement Proceedings.

## **Assignment of old court cases to public enforcement officers**

Finally, the Law stipulates that the ongoing enforcement proceedings be carried out by the court, giving public enforcement officers, appointed by the President of the Court, the sole power to conduct them. The enforcement creditor is required to cover up to 25% of the stipulated advance for the public enforcement officer's fee. In the event of failure to pay, the enforcement proceedings will be suspended.

Finally, it is worth mentioning a decision which has given rise to vigorous public debate in the days following the entry of the Amendments into force. The independent Article 166 paragraph 6 of the Law on Amendments reads as follows:

*"Enforcement against the account of the debtor which has been frozen for more than three years on the date of the introduction of this Law, shall be suspended unless the enforcement creditor proposes an alternative objective and means of enforcement within eight days from the said date of the introduction of this Law."*

This provision is illogical, since it gives creditors an extremely short deadline within which to declare an alternative course of action, calculated not from the date the law will come into force (1 January 2020), but the day of the introduction of the Law (3 August 2019). Since the deadline is preclusive (i.e. it leads to the suspension of the enforcement proceedings when the creditor fails to make a timely declaration), we expect the court commentaries interpreting this extremely controversial legal provision to be issued soon.

For any further queries or detailed explanation please contact us at: [rajko.krejovic@tsg.rs](mailto:rajko.krejovic@tsg.rs) or [office@tsg.rs](mailto:office@tsg.rs).