

Incidents during Enforcement under New Civil Procedure Code

The New Civil Procedure Code (NCPC) came into force on 15 February 2013 and is applicable to all enforcement proceedings that commenced after this date.

Creditors may begin forced execution if they have an enforceable title. During such proceedings several incidents may occur, which may result in either the impossibility or the delay to the full protection of the creditor's rights.

Statute of limitations

The right to enforce a title is subject to a limitation period of either 3 years (for personal rights) or 10 years (for real rights) from when the title becomes enforceable (e.g. in the case of a judgment, from the date when it cannot be challenged by means of ordinary appeal). After the lapse of the relevant period the enforceable title loses its force and the debtor may successfully evade forced execution by invoking the limitation period.

Solving a controversial aspect of the former civil procedure rules, the NCPC states that once the limitation period has expired, the creditor may obtain a new enforceable title without being barred by having already gained a title against the debtor on the same legal grounds.

If the creditor fails to request forced execution before the lapse of the limitation period, the last option is reinstatement. For the creditor to be successful in obtaining reinstatement he must not only show that he was prevented from requesting forced execution due to solid grounds, but also to file the enforcement claim within 30 days from the granting of reinstatement.

Stay of enforcement proceedings

A stay of enforcement proceedings may occur in three cases: where it is expressly provided for in law; by court order or upon the creditor's request. The proceedings shall be resumed only upon the request of the creditor.

Firstly, the court must stay proceedings if the title is not enforceable; if the title is declared false; if the debtor obtains the postponement of its obligations; if the enforcement covers significantly more valuable assets than the value of the creditor's receivable; or if the object of the enforcement is an immovable asset co-owned by the debtor and a third party.

Secondly, it takes solid grounds and a pecuniary fee for the judge to order the stay of enforcement proceedings until a contestation referring enforcement is settled by final judgment.

Thirdly, the creditor may ask for the stay of proceedings, but this may not be entirely advantageous for him as the limitation period will continue to lapse. On the contrary, in cases of a mandatory stay of proceedings, the limitation period will also be stayed, thereby not affecting the creditor's right to obtain forced execution.

Postponement of enforcement proceedings

The enforcement officer may adjourn the proceedings if either the summons procedure or tender documents are illegal, or if the creditor fails to pay in advance the enforcement expenses and to provide relevant information in respect of the debtor's assets.

Extinction of enforcement proceedings

The creditor must actively respond to the enforcement officer's requests. Otherwise, if the creditor culpably remains inactive for more than 6 months from the commencement of the enforcement proceedings, the proceedings may be terminated and all steps shall be annulled. As such, the creditor shall be forced to file another request to have his title enforced against the debtor within the limitation period.

Common property

If the enforcement proceedings target immovable assets owned by both the debtor and a third party, it is highly likely that the creditor shall be forced to wait until he obtains a final judgment of partition of these assets.

In other cases, personal exceptions may be invoked during enforcement proceedings, which may be delayed as a consequence. An example is where the targeted asset is common property of spouses or is the property of a personal guarantor.

In any case, the creditor may obtain the partition by means of either a separate partition claim or a motion to challenge enforcement proceedings.

Creditor rights may not be fully realized by invoking the above grounds in a procedural challenge to cancel and reverse enforcement proceedings. The main features of such a challenge shall be addressed in a forthcoming article.

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