

New Balkans Law Office

Enforcement Client Note

ABOUT US

New Balkans Law Office is a Bulgarian legal services provider, specialising in corporate and commercial law, with a particular emphasis on advisory and cross-border work and an interest in the technology and venture capital and private equity sectors. Founded in 2005, the firm has gone from strength to strength, providing advice primarily to international clients and diversifying its portfolio of practice areas. It also has a strong private client practice.

The firm is distinguished by its modern approach and international reach, with offices in both Sofia and London. A number of our lawyers are dual-qualified, particularly helpful when dealing with cross-border issues.

With lawyers experienced in the conduct of both local Bulgarian and international legal business, we are able to strike a balance between local and international demands. Our lawyers' professional experience and academic excellence set us apart from our peers.

CLIENT BACKGROUNDS

Our clients originate from a range of countries and industries. We serve large corporate and private clients alike. Since the firm's founding in 2005, we have acted for private investors, international think-tanks, multi-national venture capitalists and government bodies.

We advise both investors new to Bulgaria and those with previous experience. Our work includes the structuring of region-wide and international transactions which frequently makes use of Bulgaria's advantageous corporate and tax infrastructure.

FAST

We understand our clients' needs for a prompt and responsive service and the urgency for document production that can arise. At the same time, we remain committed to professionalism and attention to detail.

EFFICIENT

We provide specialist teams which rapidly respond to transactional demands. These small, flexible teams deal with your client matters efficiently.

INNOVATIVE

We supervise and train our junior and senior lawyers extensively and value international experience.

FLEXIBLE

We discuss at length each client's budgeting schedule, their prior experience of Bulgaria and manages the engagement in a way advantageous to the client.

AFFORDABLE

Our rates are very competitive and we strive to offer cost structures that are closely aligned with clients' internal budgeting processes and with what is of highest value to them.

Enforcing of domestic and international awards in Bulgaria

An Outline of the Legal Framework

Enforcing in Bulgaria: Introduction

The purpose of enforcement is generally to recover sums of money, but it may also be to achieve other goals, typically to obtain the assistance of government authorities in making a counterparty or a third party involved in a dispute cooperate in a certain way or refrain from doing something. In Bulgaria, enforcement action by the domestic courts typically depends on the existence of enforceable document as an absolute requirement. Typically the enforceable document is a formal a court document or a formal document of an arbitration tribunal, including judgments, decisions, rulings, orders or orders giving effect to or recognising [out of court] settlements. There are special rules for execution of acts of foreign courts. This special procedure differs also, depending if the enforcement document has been issued by an EU or Non-EU member country court.

Key aspects to be kept in mind with enforcement in the Bulgarian courts are the efficiency and costs of enforcement. Where other jurisdictions are also involved, a good understanding of the foreign requirements and how these translate in the Bulgarian context; the appointment of an advisor capable of acting skilfully in tandem with a foreign lawyer; and speed are also paramount.

1. What may be enforced?

1.1. Final court judgments and orders

- (i) Court judgments and orders, arbitration awards and settlements issued in Bulgaria:
- (ii) Foreign judgments and orders and arbitration awards which do not require recognition proceedings (principally those governed by the Brussels régime);
- (iii) Foreign judgments subject to full recognition proceedings prior to execution.

1.2. Applications for enforcement of domestic and foreign orders for interim relief (in certain cases).

1.3. Unchallenged regulatory and administrative decisions which become subject to enforced collection by the State Receivables Collection Agency (which may be a risk concern or a matter of tactical relevance for foreign investors).

¹ The regime created by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and the Lugano Convention (Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters - where EFTA countries are concerned), and supplemented by the European Enforcement Order; European Order for Payment and the Small Claims procedure.

2. Execution: commencement, progress and termination of enforcement

2.1. Monetary vs. non-monetary remedies

The majority of dispute resolutions result in money awards. Where voluntary payment of the judgment is not forthcoming, the assistance of the judicial branch of the Bulgarian government can be recruited through execution proceedings. Enforcement unrelated to money is examined below.

2.2. The division of responsibility between the creditor and enforcement officers

Enforcement by way of execution relies on either private or state enforcement officers. Both hold identical powers. Only in the case of a pledge registered against chattels, is enforcement by the judgment creditor personally (or his appointed officers) possible. See further the text box.

Both routes to execution generally function efficiently. Some creditors prefer the private enforcement officers who collect the service fees for their own account and are more immediately incentivised to be zealous and resourceful in pursuing enforcement. As the creditor is expected to cover the cost of enforcement before this is added to the execution debt for collection, cost

Execution: The Process

may be an important consideration. Where the assets of the debtor are liquid and easily enforceable against and/or the resources of the creditor are not disproportionately small, this is less of a concern.

Although the execution creditor is expected to specify his preferred route (s) of enforcement before any enforcement action commences, he may change that election while enforcement is in progress.

2.3. Costs involved in execution

Upfront costs payable initially by investors include the commencement fee, the cost of searches carried out, the costs of charging and inventorying assets and of collecting the judgment debts. The major items are the (optional) cost of inventorying at 1.5% of the debt, and the cost of collection - 7.25% of the debt for amounts of Lv 100,000 (€ 51,200, \$ 69,000) and over.

2.4. Ancillary powers of enforcement officers

A relatively powerful arsenal of tools ancillary to execution is available to the creditor via the enforcement officer. The officer may enquire into the property of the debtor, search various publicly- and privately-held financial and property

Foreclosure against a charged asset

Where the default is on a debt secured by a registered pledge, the pledgee must file a notice with the Register of Registered Pledges and notify the pledgor.

On filing, the pledgee obtains rights of disposal in the pledged assets and may take steps to preserve the assets, draw an income from them or sell them (the latter requires a minimum of two further weeks from the foreclosure notice). If the pledgee fails to sell the assets within six months, any other creditor with a subsequent in order charge may take control.

Foreclosed property may only be sold for cash. Proceeds are placed with a Depositary. This is an accountant appointed by the pledgee who has a duty to record the size and priority of claims against the proceeds, prepare a distribution plan and distribute accordingly.

The Depositary's powers are subject to the supervisory jurisdiction of the courts.

The balance of proceeds after distribution to creditors is paid to the pledgor.

Where there is a floating charge over a business's undertaking, the chargee may seek enforcement against the undertaking as a whole or against individual assets forming part of it. The latter scenario reduces to the foreclosure process above. Under the former, the chargee appoints a director who is granted exclusive executive powers by law. Such an appointee however is restricted from disposing of the going concern or real estate of the business; executing negotiable instruments; borrowing or representing the undertaking in court without the prior consent of the chargor.

Where the pledgor does not cooperate with the foreclosure, the pledgee may apply for an enforcement order and obtain the assistance of an enforcement officer.

Limits on Execution:

When is execution not applicable?

creditor has the responsibility to direct the officer towards the property against which execution will be sought. The costs of searches cumulate to the other costs of enforcement and are ultimately payable by the judgment debtor.

2.5. Third-party notices (enforcement against receivables of the debtor)

Where an enforcement officer proceeds against third parties who hold assets of the debtor, he or she would issue to them a binding notice of execution. The third party is enjoined to repay any due amounts or hand any property to the execution creditor's possession. Employment income of an execution debtor, securities and/or participation interests in a corporation can be attached in this way just as much.

2.6. Terminating enforcement

The enforcement proceedings are terminated on presentation of a proof of satisfaction, where the creditor has confirmed this in writing, or the writ of execution has been cancelled. See also at 4 below.

3. Limits on execution

3.1. Assets outside the possible scope of execution are not subject to enforcement

(i) Certain income and assets belonging to individuals and specifically:

- such part of the income of an individual needed to cover basic needs (See Endnote 2);
- personal belongings of first necessity;
- a dwelling which serves as a sole residence (unless it is charged by way of a mortgage in the creditor's favour).

(ii) Property belonging to another

The enforcement officer may include in the execution only property of the execution debtor. What constitutes property of the debtor is in the first instance a question of fact and the officer has a reasonable latitude in making up his or her mind on this.

(iii) Enforcement against assets belonging to the agencies of the State and or to municipalities

Writs of execution against central government are unenforceable. Instead, on the presentation of a writ enforceable receivables are paid out of a special-purpose account maintained by the public body in question. If funds in the

special account are insufficient at the time of presentation, the government agency superior to the debtor agency is under an obligation to make budgetary provision for the requisite funds to be available by the next budget appropriation at the latest.

(iv) Enforcement against assets of entities directly funded from the State Budget

Examples of such bodies may, depending on the individual case, include: state-owned hospitals, port and airport authorities and others. Enforcement against the bank accounts in which such bodies receive budgetary funds only is inadmissible and there appears to be no option to apply for payment from a special account. Enforcement against any other property of such debtors, however, follows the general rules.

3.2. Other limits

Execution discontinues where there is no further property nominated by the creditor available to be seized; or on the expiry of two years of inaction by the creditor, and in certain other cases.

Relief against Execution; Distribution of the proceeds

4. Relief against execution

The execution creditor, debtor and third parties may each appeal against unlawful actions or refusals to act on the part of the enforcement officer which affect their rights.

The execution debtor may also contest the enforcement in court proceedings, where such debtor founds his or her claim solely on facts occurring after conclusion of the proceedings under which the enforcement writ/order was issued.

Any third party, whose rights have been adversely affected by the enforcement, may apply to court for a declaration that the property against which enforcement for a money debt is levied is not a part of the execution debtor's estate. The creditor is liable for damages to third parties caused in the process of enforcement.

The debtor may propose that the enforcement be carried out against another piece of property or receivable, or otherwise restrict the enforcement demanded by the creditor. If the enforcement officer determines in his discretion that the alternative method proposed by the debtor would adequately satisfy the execution creditor, the enforcement officer is free to re-direct the enforcement accordingly.

5. Distribution of the proceeds from execution. Order of preference in satisfaction

During enforcement, other creditors of the same execution debtor, including mandatorily the State where applicable, may join the proceedings with the same rights as those enjoyed by the original execution creditor.

If the amount collected through enforcement is insufficient, the enforcement officer pays out in the following order of preference, with each class of creditors being paid pro rata within their class:

- (i) claims for the costs of enforcement;
- (ii) claims of the State related to taxes on a certain property - up to the value of that property;
- (iii) claims secured by a pledge or mortgage – up of the value of the pledged or mortgaged property;
- (iv) lien rights – up to the value of the property over which a lien is exercised;
- (v) employee claims arising from employment contracts;
- (vi) claims of the State other than fines (which fall under (vii) below);
- (vii) all other claims.

6 Remedies other than a payment of a sum of money

6.1. Delivery

(i) Delivery up of a Chattel

Where a court awards the delivery up of a chattel, enforcement by way of seizure and delivery to the execution creditor is available on application. If the chattel is not in the possession of the execution debtor or has deteriorated badly, the enforcement officer has the power to enforce collection of the cash value of the same chattel.

(ii) Delivery of Possession of Land

A Bulgarian court's order for the transfer of possession of land is enforceable via an enforcement officer. Where an occupier of land subject to a transfer of possession order fails to vacate voluntarily, such an occupier is subject to eviction. If the occupier is a third party and the enforcement officer is satisfied that the third party acquired possession after the commencement of the case in which the order of possession was issued, the officer would enforce possession of the execution creditor, recording his reasons for believing that possession by the third party post-dated the commencement of the legal proceedings.

Delivery of assets; Insolvency

If the third party claims rights adverse to the rights of the execution creditor, the enforcement officer must postpone enforcement to allow the third party to apply to the district court for a declaration.

Where the evictee recovers possession without lawful permission, the enforcement officer, acting on a motion by the execution creditor, must re-evict. The evictee may be guilty of an offence where he or she gains possession contrary to a court order.

For reasons of private international law, orders for the possession or the transfer of title of land located in Bulgaria, issued in foreign courts or tribunals, are either not enforceable or are subject to a more complex enforcement route. This is an area which is not dealt with here in appropriate detail.

6.2. Specific performance

Where the execution debtor fails to perform an act which he has been ordered to by the court, but which is capable of being performed by another (eg, because it is a service readily available on the market), the execution creditor may seek the enforcement officer's permission to obtain performance elsewhere and apply to court to order the execution debtor to deposit with the court the amount

necessary to cover the cost of the performance.

Where the act depends on the person of the execution debtor, the enforcement officer is entitled to demand the debtor to perform, imposing a fine not exceeding Lv 200 (€105, \$160) for each successive failure to perform. This rule does not apply to workers' obligations arising from employment or quasi-employment.

6.3. "Cease and desist" orders

Where the execution debtor acts contrary to what the debtor is obligated to do or to suffer, the enforcement officer, acting on a motion by the execution creditor, imposes on the debtor a fine not exceeding Lv 400 (€210, \$320) for each breach.

7. Insolvency

Bulgarian law recognizes corporate insolvency, the insolvency of an unlimited partner in a limited partnership (which technically is a corporation under Bulgarian law) which is itself in insolvency proceedings, and the insolvency of a sole proprietor, but not personal insolvency proper outside of these cases.

Insolvency is dealt with in more detail in our Dispute Resolution brochure.

[While this may be a consideration where personal guarantees are provided by counterparties who are individuals, there is for the time being no political desire to introduce a law of personal insolvency.

Corporate insolvency is commonly used and may be a suitable and cost-effective enforcement mechanism. Insolvency proceedings are started in the regular courts and need to be commenced in the first instance in the district courts of the registered address of the debtor. Applications are initially without notice to the allegedly insolvent counterparty but are served on it and the counterparty is capable of defending the application. The proceedings are conducted in private to protect such interests of a debtor that may suffer unfairly as a result of an application which may ultimately be found unsupported by the evidence.

Insolvency depends on the proof of several key elements: either the debtor's inability to meet payments due and/or an over-indebtedness are required. In addition, proof that the debt results from a transaction which is "commercial" in a legal technical sense is also necessary.

Where bankruptcy proceedings are formally opened as part of the insolvency process, various mechanisms are put in place to protect creditors' interests and any equity of redemption, to govern the

Awards and determinations by other bodies

corporation through the process and to administer the liquidation.

The Bulgarian courts' jurisprudence on the subject has evolved quite rapidly and has been marked by several seminal insolvency proceedings in the last several years, including the major Kremikovtzi case. The majority of proceedings tend towards a liquidation at a discount.]

8. Awards and determinations of various regulatory, quasi-judicial and self-regulatory bodies and their interaction with court judgments

These include decisions of the Commission for the Protection of Competition (the national antitrust enforcement agency); the Commission for Consumer Protection; Commission for Protection from Discrimination, Data Protection Commission and various others, which have a supervisory jurisdiction and are able to issue decisions of infraction and impose sanctions and compel behaviour. Most of these "administrative acts" may be appealed before the respective competent court. Upon entering in effect administrative acts with a financial expression are subject to execution as public obligations.

9. Enforcement of 'Brussels regime' judgments

9.1. Enforcing a 'Brussels Regulation' judgment

Enforcing judgments (or other equivalent instruments, including orders, etc.) issued by courts in Brussels Regulation states requires prior registration with the Bulgarian courts. Registration requires written evidence in support of the application including an address for service within Bulgaria; details of any interest sought as recoverable; a copy of the authentic judgment and a translation of it; a certificate as legislated for in an Annex to the Brussels Regulation and its translation.

9.2. Giving effect to a European Enforcement Order

An EEO issued by a court in an EU country other than Bulgaria is enforceable via an application made to a Bulgarian court for the direct issue of a writ of execution which would normally result in an order for the issue of such a writ. Any order issued is appealable to the Sofia Appeals Court in the first instance. EEOs are issued where the original claim concerns one of a range of relatively clear-cut situations and is commercially highly relevant.

Endnotes:

- (1) The creditor may apply for an enforcement order where such an application is accompanied by a back-to-back application for a writ of execution, where his claim is based on a notarial deed containing obligations to pay sums of money or other fungible things, or to deliver particular things; or is based on any negotiable security payable to order. The delivery of bonds or coupons attached thereto; documents certifying pledge or mortgage; other documents provided for by law are also the subject of immediate specific performance under the enforcement order provisions.
- (2) Natural persons are protected from enforcement against the following: a sustenance monthly income as determined from time to time; and slightly more

Where to find us

Our offices

CONTACT US

We are always available for consultations on recent developments in Bulgarian law.

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The main NBLO office is in central Sofia. It is fully capable of supporting the needs of the services that NBLO offers.

Our office located in London is a representative office which undertakes client liaison and allows the firm to serve all the needs of clients directly. You are always able to contact or meet us in London to discuss any issue which require an immediate conference or demand immediate attention in Europe's pre-eminent financial centre.

All types of work performed by our Bulgarian lawyers are supported and liaised on from London.