

Serbia: New Enforcement and Security Act - APRIL 2016

Novelties on Provisional Measures

The new Serbian Enforcement and Security Act becomes applicable on 1 July 2016. The changes are numerous. This is the first in a series of our Newsletters in which we will address the novelties introduced by the new legislation.

The new types of provisional measures

The existing legislation does not contain an exhaustive list of provisional measures that can be ordered in support of monetary or non-monetary claims. Instead, the statute offers a list by way of example. The new Enforcement and Security Act adds two more examples to the list of provisional measures that can be ordered in support of a monetary claim:

- the registration in the Central Register of Securities of the prohibition of share disposals and suspension of voting rights;
- the seizure of the debtor's cash or securities and their placement into the custody of a court or, as the case may be, a private bailiff.

The new legislation facilitates the provisional attachment of debtor's bank accounts by providing that the attachment order shall be addressed to and enforced by the National Bank of Serbia, rather than by the commercial banks holding the accounts.

As far as provisional measures in support of non-monetary claims are concerned, the following measures are no longer given as examples of available relief:

- the appointment of temporary administration over a corporate debtor;
- allowing the enforcement creditor to undertake an action at the expense of the enforcement debtor, in order to preserve the *status quo*;
- the order for provisional payment of the salary to the terminated employee, pending the dispute on his wrongful dismissal claim.

Since the new legislation maintains a general provision according to which the court may order any measure in support of a non-monetary claim which is capable of protecting the claim, it remains to be

seen whether the measures removed from the list of examples will be nevertheless ordered in practice on the basis of this general authority of the court.

Contents of the motion

According to the existing legislation, any motion for provisional measures has to contain information on the claim sought to be secured, the legal grounds warranting the measure sought and the facts and evidence proving the likelihood that those legal grounds exist. The new legislation imposes additional requirements: the motion is also to designate the type of provisional measure sought, the asset to be subject to the proposed provisional measure and the duration of the proposed measure. If the motion does not designate the affected asset, the court will reject it as incomplete.

If the creditor requests from the court more than one provisional measure, it may request that all measures be binding at the same time, or that some of the measures become binding only if one or more primary measures prove to be insufficient.

Enforcement of provisional measures

According to the existing legislation, the provisional relief is ordered by the court but the creditor can pursue its enforcement either through the court or through the private bailiff. The new legislation makes enforcement of provisional relief the exclusive prerogative of private bailiffs.

Venue

The new legislation clarifies that the court competent to decide on a motion for provisional measure before or in the course of arbitral proceedings is the court that would be competent to decide on the motion for enforcement of the arbitral award.

Provisional measures in support of a declaratory claim

The existing legislation does not support the issuance of provisional measures in aid of declaratory relief. The new legislation changes this by specifically stipulating that provisional measures may be ordered in support of condemnatory, as well as declaratory claims.

The new grounds for revocation of provisional measures

The existing legislation provides that the provisional measure may be revoked on the following grounds:

- when the provisional measure was ordered ahead of the proceedings on the merits, if the enforcement creditor does not initiate the proceedings on the merits within the deadline stipulated in the order for provisional measure;

- if the duration period of the provisional measure expires;
- if the provisional measure is no longer justified.

The new Enforcement and Security Act introduces three new grounds in the presence of which the debtor may request the court to revoke the provisional measure:

- if the debtor provides to the court or to the private bailiff security in the amount of the claim plus interest and the costs of proceedings;
- if the debtor proves that the claim is settled or sufficiently secured;
- if the debtor proves that the claim is barred under the *res iudicata* principle.

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