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## ENFORCEMENT INSCRIPTION AS A NEW TOOL FOR DEBT COLLECTION IN BELARUS

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Since August 2015 new legislation is in force that allows creditors, both national and foreign, to recover debts arising from most common commercial contracts by means of an enforcement inscription issued by a notary public.

### What is an enforcement inscription?

An enforcement inscription is a document, issued by a notary public, that orders a debtor to pay a certain amount of money to a creditor. Roughly speaking, an enforcement inscription is equal to an enforceable court decision.

Moreover, an enforcement inscription operates as an executive document, thus allowing the creditor to start executive (enforcement) proceedings with bailiffs without additional formalities.

### What are the ADVANTAGES of obtaining an enforcement inscription?

First, it is **quick** and **cheap**. Subject to submitting all the necessary documents, it takes only up to three days to obtain an enforcement inscription. Although the notary fee is calculated as 5% of the amount to be recovered, it is limited to a maximum 10 basic units (approx. EUR 95).

Second, the debtor is not informed about the creditor's application for an enforcement inscription. Thus, the debtor will only know about the issue of an enforcement inscription after enforcement proceedings have been launched. This lessens the risk that the debtor may try to legitimately dispose of its property before an executive document is issued.

### What are the CONDITIONS for obtaining an enforcement inscription?

To avail itself of the enforcement inscription procedure a creditor must make sure that the debt meets certain conditions and that a number of documents are at the creditor's disposal:

- ✓ first of all, the enforcement inscription procedure applies only to monetary claims arising out of a limited number of contracts such as sales, contracting and other services, carriage, storage and some others – check to make sure your contract is within this range;
- ✓ secondly, in most cases the debtor must acknowledge the debt in writing – make sure to secure an acknowledgement by means of a protocol, accounts reconciliation statement or a letter from the debtor;
- ✓ thirdly, the documents to be submitted to a notary public (contract and all addendums etc. to it, documents confirming payment obligation – CMRs, acceptance certificates etc., as well as a document confirming acknowledgement of the debt by the debtor) must be available in their originals. It is advisable to take control of these documents at an early stage, even before the debt arises.

### What is the procedure for obtaining an enforcement inscription?

Any notary public in Belarus can issue an enforcement inscription against any debtor residing in Belarus.

A duly authorized representative of the creditor must visit a notary public in person. To confirm the creditor's legal capacity and the due authorization of the representative an extract from a trade register and a power of attorney must be prepared.

When issuing an enforcement inscription, a notary public also orders the debtor to reimburse the creditor the amount of the notary fee paid. However, it is not possible to recover legal fees through an enforcement inscription.

Should a notary public refuse to issue an enforcement inscription, the notary fee is returned to the creditor who, in turn, must first submit a corresponding application.

### Can the debtor appeal an enforcement inscription?

Yes. The debtor may either appeal the notary public's act of issuing an enforcement inscription or file a claim to declare an enforcement inscription unenforceable. Appealing the act of issuing an enforcement inscription makes sense in the case of irregularities by a notary public. A debtor that wants to contest an enforcement inscription on the merits must apply to declare it unenforceable. Both appeal and claim are filed in a court.

To declare an enforcement inscription unenforceable the debtor must pay a state fee calculated according to the amount of debt recovered which the debtor contests and produce proof that the creditor was not entitled to claim debt recovery. Thus, the burden of proof regarding the existence of the debt shifts from creditor to debtor.

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**We will be glad to provide you with legal advice on debt collection in Belarus.**



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