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## DEBT COLLECTION: GUIDELINES FOR BUSINESS

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These guidelines provide information about the debt recovery procedure for businesses wishing to collect money owed to them by the debtors situated in Belarus, where Belarus would be the correct place to apply for debt collection (taking into account the terms of a particular agreement). There are certain peculiarities of which we recommend to be aware.

### Step 1. Making enquiries about the Debtor

Before taking any action concerning the Debtor, it is necessary to find out whether the Debtor is still “alive” – that is, whether he still operates and, therefore, it makes sense to send him a claim, or whether a claim should be, for example, filed in the bankruptcy proceedings. It is also worth assessing the chances of debt recovery by checking on the financial status of the Debtor (at least by the available means).

Information about whether or not the Debtor is currently operating is open and can be found on the website of the Unified State Register of Legal Entities and Individual Entrepreneurs (hereinafter “the USR”). To find information about the current status of the Debtor (whether operating, in liquidation or bankruptcy proceedings, or excluded from the USR) it is enough to enter the registration number or the name of the Debtor. The information provided on the website also includes the details of registration or – in case where an entity or an individual entrepreneur was excluded from the USR – the date of exclusion. Should you find that the Debtor was excluded from the USR, debt collection against him will not be possible.

More detailed information about the Debtor may be obtained on request from the Ministry of Justice, which provides an extract from the USR containing the following information (in addition to the abovementioned): address of the place of business, ownership, type of activity, amount of the statutory fund, name and contact telephone number of the director, information about the shareholders and their shares in the statutory fund etc. The state fee for such an extract is 1 basic unit (about 9 EUR). The application procedure is described on the website of the USR.

To find out about the Debtor’s financial situation an enquiry can be made to an appropriate Enforcement Division (most often at the place of the Debtor’s business), which provides information about enforcement proceedings initiated against the Debtor as of the time of enquiry. The state fee for such information in respect of one debtor is 3 basic units (about EUR 27).

An advocate is in the position to obtain information about the immovable objects belonging to the Debtor from the Unified State Register of Real Property, Rights and Transactions Relating to It, as well as enquire with other competent authorities having information about the Debtor’s property.

### Step 2. Complying with a (pre-trial) claim procedure of dispute resolution

If the Debtor is an operating business, before applying to court it is required to draft a claim (a written proposal for voluntary settlement of the dispute) and send it to the Debtor by registered mail with delivery notification. Requirements for the contents of such a claim are established by procedural law (Appendix 1 to the Belarus Economic Procedure Code)

It is generally required to follow a (pre-trial) claim procedure for dispute resolution. However, parties may exclude this requirement in their agreement or shorten the one-month term established by law for the recipient to consider a claim. The parties may also agree on another pre-trial procedure for dispute resolution.

The Debtor is obliged to consider the claim and send a written reply within one month. Upon receiving a reply within the deadline, in which the Debtor does not acknowledge the debt, the Creditor can file a claim in court. If no reply is received within one month, it is possible to recover the debt by means of writ proceedings. Should

the Debtor acknowledge the debt in writing, debt collection is carried out on the basis of an enforcement inscription made by a notary public.

### **Step 3. Depending on the documents at the Creditor's disposal:**

#### **- applying to a notary public for obtaining an enforcement inscription**

If the Creditor has documents confirming acknowledgment of the debt by the Debtor (for example, an Accounts Reconciliation Statement signed by the parties or a letter from the Debtor) and the debt arose from agreements on sales, contracting or other services, carriage or storage, then from August 10, 2015 the debt can be recovered on the basis of an enforcement inscription made by a notary public.

Enforcement inscription is a document that can be enforced the same way as a court writ or enforcement order. The fee for applying to obtain an enforcement inscription is 5 percent of the amount claimed but in any case not more than 10 basic units (about 90 EUR). The fee paid by the Creditor is ordered to be collected from the Debtor in the text of the enforcement inscription.

Or

#### **- applying to the Economic Court in order to initiate writ proceedings**

In certain situations debt may be recoverable by means of writ proceedings without following the (pre-trial) claim procedure (in particular, where the amount of debt does not exceed 100 basic units, which is about 900 EUR) As a result of writ proceedings, the court issues either a writ or a ruling refusing to issue a writ. The court may also issue a writ for part of a claim.

Advantages of the writ proceedings include time efficiency (a writ is issued no later than 20 working days after applying to the court to initiate writ proceedings) and a small state fee for considering an application (the maximum amount is 5 basic units (about 45 EUR)). In addition, the parties are not summoned to trial; a writ enters into legal force immediately and constitutes an enforcement document.

Unlike in action proceedings, in writ proceedings the amount of fines and (or) use-of-money interest may not be reduced by court even if it is (under the circumstances of a particular case) disproportionate to the consequences of breach of an obligation.

Or

#### **- filing a claim in the Economic Court (in action proceedings)**

Action proceedings at the Economic Court are initiated by a statement of claim conforming to the requirements set out by law and the documents that must be attached to it. The minimum state fee for filing a statement of claim is 15 basic units (about 135 EUR).

Should the Economic Court refuse to issue a writ in writ proceedings, the case may be considered in action proceedings subject to payment of the outstanding amount of state fee and an application submitted within 15 days after the court ruling was sent to the Creditor. The court will then consider a case under the general rules of action proceedings.

After having considered the claim on the merits and as a result of action proceedings the court issues a decision. As a rule, the need to initiate action proceedings means that the parties have a legal controversy. Therefore they would usually take advantage of the advocates' assistance in order to be represented by them in court. It should be noted that it is only possible to request that the Debtor be ordered to pay the legal costs incurred by the Creditor before the trial enters into the last stage of pleadings.

## Step 4. Executing an enforcement inscription by a notary public/ a court writ / an enforcement order

Should the Creditor have a bank account in Belarus, he must make a payment request-order with the bank before applying to initiate execution proceedings.

Execution proceedings are opened and subsequently handled by an officer of the appropriate Enforcement Division subject to submitting an application and original enforcement document. An enforcement document is either an enforcement inscription by a notary public, a writ issued in writ proceedings or an enforcement order issued after a court decision enters into legal force. It should be noted that the time limit to initiate execution proceedings is six months starting from the date of issuance of a writ or enforcement order. The time limit may be extended only in case the court finds the reason for missing it justifiable.

**bnt attorneys-at-law is an international law firm based in 10 Central and Eastern European countries.**

**If you have any additional questions concerning debt collection in Belarus or need to secure the interests of your business in court, our attorneys-at-law will be happy to assist you.**

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