

The ABC of Debt Collection in Ukraine

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The current economic situation makes any reasonable businessperson assume measures to collect old and new debts both nationally and abroad. Legal mechanisms of debt collection are quite similar in many jurisdictions. However, there are always some national peculiarities, which should be taken into account. Therefore, this article provides a basic idea of the debt collection procedure in Ukraine.

Choosing a Competent Court and Filing a Claim

Debt collection in Ukraine starts with choosing a competent domestic court. Disputes on recovery of debts shall be considered by general courts (civil litigation) or by commercial courts (commercial litigation).

In general, commercial courts exercise jurisdiction over commercial disputes arising out of commercial relations that involve legal entities and private entrepreneurs. Disputes of the same nature, however involving at least one party being an individual, shall be considered by general courts¹.

Litigation is started by submission of a statement of claim, prior to which a claimant should pay filing costs, i.e. state duty and fees for information and technical support of the proceedings. The amount of state duty shall not exceed UAH 1,700 (approx. EUR 140) for general courts and UAH 25,500 (approx. EUR 2,125) for commercial courts.

If an appeal is lodged, half of the initial state duty shall be paid.

Duration of Litigation

The general term for consideration of a claim by the court of first instance is two months; this term can be extended up to three months. A two-month period has been also set up for consideration of the case by the court of appeals and the superior courts (the Supreme Court and the Superior Commercial Court).

A decision of the court of first instance may be appealed to the court of appeals. It usually takes from 4 to 12 months to obtain an effective court decision that can be enforced in a debt collection case.

In civil litigation a decision of the court of appeals may be appealed to the Supreme Court of Ukraine, which decision may be further revised by the same court on a very limited range of grounds ("revision on exceptional grounds").

In commercial proceedings a decision of the commercial court of appeals may be appealed to the Superior Commercial Court of Ukraine. The decision of the latter may be appealed to the Supreme Court of Ukraine on a limited range of grounds ("second cassation").

A court decision can be enforced after its entry into effect. Ukrainian legislation provides for the following rules of entry of a court decision into effect:

¹ For a more detailed description of jurisdiction issues please see our article "Jurisdiction Test: Choosing the Right Court", Ukrainian Law Firms 2008



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Civil litigation (involving individuals)

- Unless a notice for an appeal has been filed, a decision shall become effective on the 11th day after announcement of the decision;
- If a notice for an appeal has been filed, but the appeal has not been lodged, the decision shall become effective on the 21st day after the notice for an appeal was filed;
- If an appeal is lodged, the decision shall become effective at the end of the consideration of the appeal by the court of appeals, unless cancelled

Commercial litigation (disputes between legal entities and/or private entrepreneurs)

- A decision shall become effective on the 11th day starting from the date when the full text of the decision was made, unless appealed;
- If an appeal against the decision has been lodged, the decision shall become effective at the end of the consideration of the appeal by the commercial court of appeals, unless cancelled

Please also note that the Supreme Court of Ukraine and the Superior Commercial Court of Ukraine can suspend enforcement of the decision, if such decision is appealed to these courts and a respective motion by the defendant is made.

After a court decision enters into effect, to receive the funds claimed a claimant should initiate enforcement proceedings. The enforcement procedure is as important as a successful litigation.

Starting Enforcement and Stages of Enforcement

To enforce a decision a local court that rendered the decision should issue a writ of execution (in civil litigation) or an enforce-

ment order (in commercial litigation), on which basis the enforcement can be started.

To start the enforcement of a court decision the respective enforcement document (writ of execution or enforcement order) should be filed with the competent State Enforcement Service authority.

An enforcement document (a writ of execution and an enforcement order) can be submitted for enforcement within 3 years from the date it was issued.

The enforcement process shall include the following stages / actions:

(i) An offer by the bailiff (an officer of the State Enforcement Service authority) to the debtor to perform the court decision voluntarily;

(ii) The bailiff's searching for and detection of the assets (cash and property) of the debtor, unless a court decision is voluntarily performed;

(iii) Attachment (seizure) of the debtor's property and/or seizure of cash on the debtor's bank accounts to secure the enforcement;

(iv) Recovery of cash from the bank accounts of the debtor to repay the debt;

(v) (if the recovered cash is not sufficient to repay the debt) Sale of the debtor's property at a public auction and further repayment of debt at the cost of the receivables from the auction.

Enforcement should be completed within 6 months starting from the date of commencement. Enforcement of a court decision on non-monetary claims (vindication of property; compelling to perform obligation, etc.) should be completed within 2 months.

Steps Raising Chances to Succeed in Enforcement

The outcome of the enforcement proceedings depends on the credit standing of the debtor and the counteractions it may take to delay or evade the enforcement (e.g. alienation of assets, self-bankruptcy, etc.).

However, efficient litigation and right choice of securing instruments would significantly increase the chances to succeed.

An interim injunction seems to be an efficient instrument that can significantly increase the chances of an actual recovery of a debt. Interim injunctions are permitted both in civil and commercial litigation. A motion for an interim injunction may be granted in cases when failure to issue an interim injunction may lead to non-enforcement of a court decision or may seriously complicate its enforcement.

Generally, interim injunctions are permitted without any previous written notification of a defendant or other parties to court proceedings and may be issued the same day the relevant motion is filed, if urgent.

One of the most efficient interim injunctions that can be exercised in debt collection procedure is seizure of cash on the debtor's accounts and attachment of debtor's assets.

A preliminary injunction becomes effective from the date it was made by the court, but can be appealed. An appeal against a preliminary injunction does not suspend its enforceability. A preliminary injunction remains effective till the final judgment secured by the injunction enters into effect, unless such injunction is cancelled by a higher court or by the court that issued the injunction.

Instruments Making the Way of Debt Collection Simpler

A foreign lawyer or a businessperson having a business in Ukraine should also keep in mind the instruments that allow skipping litigation as a stage of debt collection preceding the enforcement. One such instrument is a promissory note (an unconditional promise by the debtor to pay the creditor a determinate sum of mo-

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ney) or a bill of exchange (an unconditional order by the debtor to pay a determinate sum of money to the creditor). The peculiarity of exercising these instruments in Ukraine is that they can be issued only if the goods or services have been actually shipped or rendered. Should the debtor fail to pay the debt, the creditor may arrange for notary's protest of a promissory note (bill of exchange) for non-payment and execution endorsement (upgrading the promissory note (bill of exchange) to self-enforceable instrument not requiring a court order).

A notary's execution endorsement (a self-enforceable instrument not requiring a court order) can also be made in case the debt should be paid under the contract, which the creditor and the debtor concluded in a notarized form. Such notarized contract should contain a clause providing for the possibility to make an execution endorsement on it in case of non-payment under the contract. It is also advisable to specify in contract as precisely as possible the conditions which should be met to make an execution endorsement.

Though Ukraine's debt collection procedure looks rather simple and clear, as in any other jurisdiction, due to the unfair judicial and extrajudicial actions of the debtor, collection of a debt without engaging a domestic attorney may in practice turn out to be somewhat complicated and time consuming.