

Debts Collection

It can be considered that the main reason of lack of payment is due to indebtedness. It may come, *per si*, from circumstantial financial difficulties, and many times for unforeseen reasons, or even from reasons, that might be, condemnable, namely, instalment compliance delays, that results in insufficient income to deal with the assumed commitments.

However, indebtedness should not be confused with non-compliance, or over-indebtedness.

The indebtedness is what the family income in a year can endure in terms of gains, the non-compliance, is, however, the inability to comply what you have forced yourself to pay, and, the over-indebtedness are the objective and circumstantial reasons for the non-payment of your obligations, because the income are insufficient.

1. Effects of the non-compliance for the creditor

When the debtor doesn't properly accomplish the instalment to which he is obliged, no matter what the cause, falls into default.

Given the default, the creditor can:

- 1 - demand the specific compliance of the instalment, with compensation, for the delay (817 + 798 CC);
- 2 - demand the termination of the contract, requiring also the payment to compensation (801/2 CC).

The creditor can demand the compliance of the instalment increased by accrued interest, or even terminate the contract and demand the total compliance, increased by interest and damage that the non-compliance may have caused.

2. Extrajudicial Collection

2.1. Collection by the creditor.

Usually, the creditor tries, to the exhaustion, all the means that he has available, to achieve the compliance of the instalment or the payment of the debt, namely, the telephone, the email, the personal contact and even, sometimes, sending a letter. But, the most of the times, those attempts show up frustrated.

2.2. Collection by a Lawyer

Therefore, the creditor must enlist the services of a lawyer, which will start all the means available to convince the debtor to accomplish the instalment or pay the debt. Normally, sending a registered letter, with acknowledgement receipt to the debtor, allows that this one is willing to comply / pay or achieve a deal with the creditor.

3. Injunction

The injunction is a procedure that allows to a creditor of a debt to have a judicial document which enables resorting to a judicial proceeding of execution to recover from the debtor the amount that he owes him.

After the presentation of the injunction application by the creditor, the possible debtor is notified of this application and, if he doesn't oppose to it, the referred enforceable title is issued. In case he opposes, the proceeding is sent to court, continuing as declarative proceeding, in summarised form.

The injunction can only be applied in cases the debt is equal or lower than € 15.000 or a debt that results from a commercial transaction (but in this last case,

only when the contract was not celebrated with a consumer), and has as advantages being a fastest and cheapest proceeding.

The application of the injunction can be presented in paper or computer file in anywhere in the country, at the competent courts in any circuit courts to receive. In all the cases, the application is sent, electronically, to the National Counter of Injunctions or through the platform Citius.

The fact that being an electronic procedure allows the tracking of the procedure's evolution electronically by the users, dispensing travels. It allows also that, in the end of the procedure, and in case it is issued an executive force, this is formed and available electronically, being accessible for the applicant through the website of the Ministry of Justice. A unique reference is assigned to each executive force, which will allow its consultation by the applicant and by any other entity to whom the applicant provides such reference.

4. PEPEX - Pre-executive extrajudicial procedure

This new procedure is based on conducting researches to the several data bases and with the banks, to ascertain the existence of attachable assets. This work is conducted by the enforcement agent, by an informatics platform, in which they can confer the following entities:

Revenue and Customs Authority; Social Security; Civil Registry; National Company Registrar; Land Registry; Commercial Registry; Registry of movable goods (vehicles, ships, aircrafts); Public List of Enforcement Proceedings; Computer System Support Activity of Enforcement Agents (SISAAE).

In the event they are not found attachable assets or rights, the creditor may demand a notification from the debtor to, within thirty days, and under penalty of being included in the debtors list: pay the debt, increased by accrued interest, possibly due taxes and fees of the enforcement agent; conclude a payment agreement with the creditor; indicate attachable goods (in this case the creditor

has thirty days to demand the conversion into executive procedure); or oppose the procedure.

If the debtor doesn't answer and doesn't take any of the measures predicted in the Law, within 30 days, his name will be included in the public list of enforcement proceedings, in which there are listed all the debtors that don't have any attachable assets and were already submitted to debts recovering actions.

To guarantee that the extrajudicial procedure is fast, the law predicts that it is not suspended during judicial break.

5. Enforcement Proceedings

The enforcement proceedings presuppose the existence of an Executive Enforcement previous to its commencement. Are Executive Enforcements:

- Sentence;
- Injunction enforcement;
- Payment agreement, among other documents, duly authenticated;
- Securities issued by Credit.

When exists an executive force, it advances with an Enforcement Procedure which occurs in court and has the intervention of an enforcement Agent.

With the enforcement proceedings, it is intended to assure that the credit already granted to the creditor, by way of securities, mentioned above.

In the enforcement proceedings, attachment procedures are made, being started by the easiest achievement monetary (bank account balance, rents from which the debtor holds, credits which the debtor has to receive). When these goods are not found or are insufficient, the attachment moves to the pledge of immovable goods, vehicles and movable goods.

Achieved sufficient assets to secure credit of the creditor/ execution creditor, the procedure moves to the award or sell of the attached goods and the amount to recover will include the judicial fees. Once recovered the amount of the debt, it is delivered to the creditor and the procedure ends.

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