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**Guide for**  
**DEBT COLLECTION**  
**PROCESS**  
**In Serbia**

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**Publication**

*Timely debt collection is an essential precondition for a company's liquidity, it affects money flows, the realization of investment plans, business development. Unsettled claims are a significant burden on the company's liquidity and prevent it from focusing on its core activities. Their negative impact is primarily financial, but they also demand that the company's management reallocate resources to the debt collection process or hire outsourced service providers to manage this issue.*

*Unfortunately, we are often seeing that a considerable number of claims are not paid within their due date for various reasons. Mainly, due to economic factors (deteriorating liquidity of the debtor), but sometimes also due to poor business ethics of the debtor.*

*Over the last years, we have seen an increase in the number of claims that have fallen out of their due dates, which has become somewhat a practice in the business operations of Serbian companies. The average number of days needed for voluntary payment amounts to 200 days, while the European average is significantly smaller. Adding to this a conclusion of conducted studies – that the creditors are often reluctant in collecting their claims through court proceedings, it is clear that business activities suffer significant challenges. We have especially noted the discouraging effect of various, often high, and sometimes unpredictable expenses in the debt collection process that the creditors are facing (in the Serbian court-governed debt collection process creditors are obliged to initially pay for costs of the collection process, but the debtor will be obliged to compensate them if the debt collection process was successful). In the end, when we consider the potential longevity of the procedure itself, i.e., the fact that the outcome of the procedure, which is a successful debt collection, is not always certain, it is clear why creditors are reluctant to start court proceedings leading to a debt collection.*

*Thus, we have prepared this Guide intending to explain to all interested people the debt collection process in Serbia and offer acceptable solutions that will lead to a successful debt collection process, with as few expenses as possible and within an optimal period.*

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# I Section —

## The initial stage of Debt collection - SOFT COLLECTION

Debt collection in the initial stage represents a voluntary payment of the debt without initiating court or other formal debt collection processes. Avoidance of long-lasting and potentially expensive procedures of enforced debt collection is the most significant advantage of early debt collection.

In this stage, the process of debt collection is conducted by taking actions such as checking the status of the debtor (its liquidity, assets, etc.), sending oral and written payment requests, sending official Notices before the lawsuit, informing the debtor about the amount of the claim, deadlines for its voluntary payment, as well as of potential consequences that further delay in payment may impose on them.

At this stage, you can negotiate with the debtor about potential rescheduling in payment due dates – e.g., enabling the debtor to pay the debt in installments, forgiving accumulated interest, and similar. Also, you can request from the debtor to provide collateral for his debt (promissory notes, pledge over movable or immovable property, etc.), which is usually done through a formal written agreement with the debtor.

### **Monitoring the debtors**

*For successful debt collection, permanent monitoring of the debtors is of paramount importance. It enables the creditors to be promptly informed about all significant changes in the debtor's business operations (to be informed about issues such as the debtor's liquidity, status changes, changes in business, blocked accounts, and so on).*

*Regular monitoring ensures that the creditor can react promptly and increases the possibility for collection, even in cases of threatening insolvency of the debtor. The establishment of an automatized and regular monitoring system over the debtors can enable the creditor to react within a couple of hours since the first signs of the debtor's insolvency arise, and thus to be one of the first creditors in line for settling their claim (e.g., by submitting promissory note given by the debtor to the bank for collection of claim).*

*To avoid burdening the existing company's resources on performing those tasks it is recommendable to use an external solution for establishing a system of automatized monitoring and reporting about the status of the debtors in real-time.*

In the following table, you can see recommended order of steps in the process of soft collection >

<b>SOFT COLLECTION</b>		
<b>MONITORING THE DEBTORS</b>	<b>WHAT do you need to do?</b>	Checking of the debtors' status (its activity, assets, obligations, liquidity).
	<b>WHEN do you need to do it?</b>	In the initial stages of the debt collection process, and not later than before taking any actions which may cause financial expenses in the process of debt collection.
	<b>What is the PURPOSE?</b>	Assessing the possibility for debt collection, as well as choosing the debt collection strategy (whether it is reasonable to negotiate with the debtor or it is necessary to act promptly because the debtor's liquidity is jeopardized).
	<i>As successful debt collection largely depends on the timeliness of actions, it is recommended to establish a system of regular monitoring of the debtors, regardless of whether they are late with a payment or not. That way you can ensure adequate and prompt response in case of deterioration of debtors' liquidity. and increase the level of possibility for successful debt collection.</i>	
<b>INFORMAL COMMUNICATION WITH THE DEBTOR</b>	<b>WHAT do you need to do?</b>	Within 1-3 days since the debtor passes the payment due date.
	<b>WHEN do you need to do it?</b>	Establish direct communication with the debtor through phone, e-mail, and other appropriate means for communication so you can "remind" the debtor of the existence of the due debt and ask that it is settled as soon as possible.
	<b>What is the PURPOSE?</b>	Making informal pressure on the debtor to settle the debt as soon as possible.
	<i>Depending on the situation, it can be recommendable to allow the debtor an additional deadline of a couple of days to settle the debt. Also, it would be good to define with the debtor the precise due date for this postponed payment.</i>	
<b>WRITTEN PAYMENT REQUEST</b>	<b>WHAT do you need to do?</b>	Within 1-3 days since the additional period that was agreed upon with the debtor in informal communication passed.
	<b>WHEN do you need to do it?</b>	It is necessary to send to the debtor a formal written request (via email or post) to settle the debt immediately.
	<b>What is the PURPOSE?</b>	Making formal pressure on the debtor to settle the debt as soon as possible.
	<i>Depending on the situation, it can be recommendable to allow the debtor an additional deadline of a couple of days to settle the debt. Also, it would be good to set the precise due date for this postponed payment.</i>	
<b>FINAL NOTICE</b>	<b>WHAT do you need to do?</b>	Within 1-3 days since the additional period outlined in the written payment request passed.
	<b>WHEN do you need to do it?</b>	It is necessary to send to the debtor a formal written and final Notice via recommended post to settle the debt within 3 days.
	<b>What is the PURPOSE?</b>	Make clear to the debtor that this is the final Notice before starting the enforcement procedure and explaining to the debtor the consequences that will occur in the case that the enforcement procedure is initiated (initiation of a court procedure, asking for accumulated interest rate, court fees, Public enforcement Agent's fees, Attorney fees, potential blockade of his bank accounts, seizure of his property and other consequences that will jeopardize his business activities).
	<i>It is recommendable that starting from this phase the process of debt collection is handled by an attorney so that the intention of pursuing collection of the debt and all the consequences that can occur for the debtor are clearly stated.</i>	

## II Section —

# Debt collection through ENFORCEMENT PROCEDURE

Debt collection through enforcement procedure is the most common way for enforced debt collection in situations when the debtor refuses to voluntarily settle its debt. Debt collection through enforcement procedure can be done either through enforcement procedure based on the credible document (such as an invoice) or based on the enforceable document (such as an enforceable judicial decision or court settlement).

Both mentioned enforcement procedures have in common that:

- a) They are both initiated by the Motion for enforcement submitted to the competent court;
- b) The competent court, based on the submitted Motion for enforcement issues a Writ of execution, and that after that
- c) The process of debt collection is conducted by the competent Public Enforcement Officer (PEO), chosen by the creditor in the Motion for enforcement.

Certain specifics exist for monetary claims arising from utility services and related activities where the decision on the submitted Motion for enforcement is issued by the competent PEO, instead of the court, as well as for monetary claims towards the debtors which are direct or indirect beneficiaries of the budget funds (e.g. Republic of Serbia, autonomous province, unit of the local government), where the competent PEO, designated by the Chamber of the PEO's shall decide upon submitted Motion for enforcement.

As the enforcement procedure inevitably causes certain expenses, it is important to mention that the creditors need to pay upfront certain expenses, but that they can request that those expenses be refunded by the debtor. Thus, a successful debt collection procedure shall include a refund from the debtor of the expenses that the procedure caused, conditioned that the creditor timely, within prescribed deadlines, requested a refund of those expenses. However, as the creditor shall, in most cases, be obliged to pay upfront expenses of conducting enforcement procedure, please note that they will, as a rule, include the **following expenses**:

- a) **Court fee** for the Motion for enforcement which is to be paid when submitting the Motion for enforcement and whose amount depends on the value of the claim and it can be checked [here](#) (in Serbian language only),
- b) **Attorney fee** for compiling a Motion for enforcement if the creditor hired an attorney to compile Motion for enforcement. This fee is to be paid by the official [Attorney Fee Tariff](#),
- c) **Advance payment to the PEO**, by the [PEO's Tariff](#) and which payment is a precondition so that the PEO would start working on the process of debt collection,
- d) **Reward to the PEO**, which is to be paid after the PEO successfully collected the claim from the debtor (which will include, as a rule, successful collection of the above-mentioned expenses as well), and is determined by the [PEO's Tariff](#) and it can afterward be demanded from the debtor as well.

### Did you know that:

*You can demand from the debtor payment of a special compensation for overdue payment of his monetary obligation in commercial transactions in the fixed amount of RSD 20.000,00, and that this right of the creditor is independent of the right of the creditor to seek payment of accumulated interest on the principal debt as well as compensation of expenses?*

## **1. Specifics of enforcement procedure initiated based on the credible document (e.g., invoice, promissory note...)**

The Creditor can initiate enforcement procedure, i.e., submit to the competent court Motion for enforcement based on one of the types of credible documents prescribed by the Enforcement Act. The most common credible document used to submit Motion for enforcement is an invoice with a delivery note or other appropriate evidence that the debtor has been previously informed about his obligation.

Aside from invoices, the Enforcement Act defines other types of credible documents which can be used as legal grounds for submitting a Motion for enforcement. For example, those documents, include promissory notes, checks, interim or final payment certificates concerning construction works completed, bank guarantees, and letters of credit.

Please note that every type of the mentioned credible documents, to be suitable that based on it the Writ of execution is issued, must fulfill formal criteria specific for each of the mentioned types of documents. For example, the invoice must contain all the elements prescribed by the Act on accounting, a promissory note must be issued by the Act on promissory notes, and so on. If this condition is not fulfilled, the court will refuse to issue the Writ of execution based on the submitted Motion for enforcement.

After the court, based on the submitted Motion for enforcement, issues a Writ of execution, the designated PEO shall deliver it to the creditor and the debtor.

From the moment when the debtor receives Writ of execution, he has 8 days (the Act can in some cases prescribes a longer or shorter period) to either:

- Settle the debt stipulated in the Writ of execution or to
- File an Objection against the Writ of execution.

If the debtor files an Objection against a Writ of execution issued based on a credible document this will temporarily prevent the further process of debt collection until the Court decides upon the submitted Objection. However, there are certain cases (e.g., case when the Writ of execution is issued based on a promissory note) when submission of the Objection won't prevent the further debt collection procedure.

If the Court finally dismisses or rejects the Objection as groundless, the PEO shall continue with the enforcement procedure, i.e., the procedure of debt collection.

If, however, the Court decides to adopt the Objection of the debtor, the case shall be delivered to the litigation department of the competent court so that this court can finally decide on the justification of the creditor's claim towards the debtor, and enforcement procedure shall be paused until litigation procedure in front of the competent court is finished. This solution is prescribed because the court in the enforcement procedure does not deal with the validity of the grounds of the creditor's claim, i.e., with determining facts about the claim, only with formal requests of the procedure for issuing the Writ of execution. If the debtor makes his objections plausible, the court shall adopt his objection and refer the case to further proceedings in front of the competent court's litigation department, which will render the final decision on the existence of grounds of the creditor's claim.

### ***Practical tip:***

*To secure successful debt collection and minimize the chances that the debtors file unsubstantiated Objections on the Writs of execution, it is of paramount importance to secure complete documentation proving the grounds of the claim and its amount during the very course of cooperation with the debtors, and before the moment of initiation of the enforcement procedure.*

*For example, if the debtor signs the delivery note when receiving goods, or if during the cooperation confirms reception of the invoice or its validity, and those documents are submitted together with the Motion for enforcement, the same shall discourage the debtor from filing objections to such documented claim of the creditor.*

*In that case, the debtors shall be reluctant to prolong the procedure with baseless claims because the outcome won't be favorable for them and the expenses that they will eventually need to bear would be significantly higher.*

## **2. 2. Specifics of enforcement procedure initiated based on the enforceable document (e.g., court verdict, court settlement, pledge)**

The main specific of an enforcement procedure based on an enforceable document, as compared to an enforcement procedure initiated based on a credible document, is that, in this procedure, the potential appeal of the debtor on the Writ of execution will not suspend the further enforcement procedure. The PEO shall be obliged to continue with the enforcement procedure, i.e., with the collection of the debt even if the debtor appeals on the issued Writ of execution.

To start this type of enforcement procedure, the creditor must possess an enforceable document prescribed by the law. The most common document used as an enforceable document is the final court verdict. Aside from the court verdict, this enforcement procedure can be initiated also based on other types of enforceable documents such as other enforceable judicial decisions, extract from the pledge registry, mortgage contract and pledge statement, reorganization plan in the bankruptcy procedure, confirmed by a court ruling, notary documents having the power of the enforceable document and so on.

This procedure can also be conducted when the enforcement procedure initially started as an enforcement procedure based on a credible document (e.g., invoice), but due to the debtor's Objection, the litigation court finally decided that the debt is different from what was initially requested through Motion for enforcement. Then the court issues a verdict by which it finally decides on the grounds and the amount of the creditor's claim and based on such verdict as an enforceable document the creditor can initiate a new enforcement procedure.

### ***Did you know that:***

*Even before securing the enforceable document, if there is a present danger that the debtor can prevent the creditor to collect his claim (e.g., by selling or transferring its property to another person), the creditor can seek an injunction to secure his possibility to collect the debt. Those injunctions, for instance, include prohibition for the debtor to sell, transfer or burden his movable or immovable property and similar.*

## III Section —

# Debt collection through BANKRUPTCY PROCEDURE

Through the course of its business operations, the company can face various difficulties (losses caused by poor business decisions and similar). Those problems can lead to a bankruptcy procedure being initiated against the company. In case of bankruptcy of the debtor, creditors, as a rule, can collect their claim solely through the bankruptcy procedure. The reason for that solution lies in one of the basic principles of the bankruptcy procedure and that is securing equal treatment of the bankruptcy creditors, and the most favorable collective settlement for bankruptcy creditors. On the other hand, even the bankruptcy procedure knows certain differences in the treatment of various categories of creditors. For example, secured creditors, i.e., the creditors that have constituted a proper pledge on the debtor's property shall be entitled to priority in the distribution of the proceeds from the realization of such assets securing their right.

Unfortunately, bankruptcy procedures in Serbia are still characterized by significant insecurity regarding the chances of successful collection and by their longevity. Thus, the possibility of a successful debt collection through bankruptcy procedure needs to be analyzed with great caution so that the right strategy for securing the most favorable outcome with as few expenses as possible is chosen.

Bankruptcy can be initiated by a Petition for declaring the bankruptcy procedure of the debtor. This petition can be submitted by the debtor himself, but also by his creditors and its liquidator.

A precondition for declaring bankruptcy procedure is that there is at least one existing ground for debtor's bankruptcy prescribed by the Act:

- Permanent insolvency;
- Pending insolvency;
- Over-indebtedness or
- Failure to comply with the adopted reorganization plan or if the reorganization plan was put into effect fraudulently or unlawfully.

The bankruptcy procedure is governed by the competent court. A significant role in it, besides the judge, has the bankruptcy administrator, the creditors' assembly, and the creditors' committee.

The creditor of the debtor over whom bankruptcy was declared gains the status of the party in the proceedings by timely submitting his claim in the bankruptcy procedure and thus secures the possibility for the collection of its claim towards the debtor.

It is important to note that the bankruptcy procedure is characterized by preclusive deadlines and that the Claim must be submitted within prescribed deadlines calculated from the day when the Notice of opening of bankruptcy procedure was published in the Official Gazette of the Republic of Serbia. If the claim was submitted after the deadline prescribed by the law the same will be rejected as untimely. On the other hand, the court can, by the Decision on opening the bankruptcy procedure establish a shorter deadline for submitting claims. If the creditor misses this shorter deadline but submits his claim within a deadline prescribed by the law, the same would be taken into consideration, but the creditor would need to compensate for the expenses caused by omitting the deadline determined by the court.

Having in mind all the specifics of the bankruptcy procedure and especially the existence of preclusive deadlines by which omission the party loses its right, the possibility to participate in the bodies of the bankruptcy procedure, the possibility to ask for the seclusion of certain property from the bankruptcy procedure, existence of secured claims, and so on, we consider that the assistance of qualified counselor in this procedure is more than desirable to secure efficient collection.

**Expenses of the procedure.** When it comes to expenses of participating in the bankruptcy procedure, the creditors should expect the following expenses:

**a) Court fees:**

- **Fee on the Petition for declaring bankruptcy procedure**, which is to be paid only by the person submitting the Petition, and not by every creditor, and which is to be paid when submitting the Petition (at the time of writing of this Publication this fee amounts to RSD 980,00, or something less than EUR 9,00);
- **Fee on submitting the Claim to the Court**, which is to be paid by the creditors when submitting their Claim and which is to be set between RSD 980,00 and 3.900,00 (EUR 9,00 and EUR 33,00) depending on the value of the claim;

**b) Advance payment, which should be paid solely by the person submitting the Petition for declaring bankruptcy procedure, and not by every creditor.** This advance payment varies between RSD 50.000,00 to RSD 1 million (EUR 420,00 to EUR 8.500,00). We stress that the paid advance payment is considered an expense of the bankruptcy procedure and that is repaid as a priority payment from the debtor's property right after determining that the expenses of the bankruptcy procedure secured by the advance payment can be settled from the debtor's property, except in the case when the judge finds that the Petition for declaring bankruptcy procedure is groundless and that there is no reason to declare bankruptcy, when accrued expenses of such a procedure, by the order of the court, shall be covered from the advance payment.

***Did you know that the bankruptcy procedure cannot be conducted over:***

- ***Entrepreneurs***, because they are considered as natural persons registered for the performance of certain business activities and they are responsible for their obligations with their entire property;
- ***Legal entities established by the Republic of Serbia, autonomous province, or local municipality***, and which are funded solely or primarily through transferred public income or from the budget income of the Republic, province, or municipality, because for their obligations are responsible their founders, i.e., owners.

# Other ways for collection of SECURED CLAIMS

In this part of the Publication, we shall elaborate on some other ways for collecting claims that, although not that common in practice, can lead to an efficient and swift collection of the debt, without the need for conducting long-lasting court procedures.

A precondition for governing those procedures is the existence of appropriate means for securing the collection of the claim (mortgage on immovable property, pledge over movable property, and similar).

### **1. Out-of-court procedure for debt collection based on an enforceable mortgage**

A precondition for this procedure of debt collection is that the creditor has secured its claim toward the debtor by inscribing an enforceable mortgage on the debtor's or the third person's immovable property to secure the creditor's claim towards the debtor. Inscription of this type of mortgage enables the creditor to collect his claim by organizing a private sale of the property, without the need to previously seek the protection of his claim from the court.

Mortgage on the property can be inscribed either based on a contract or a debtor's mortgage statement which both must be made under the Serbian Mortgage Act. A mortgage Contract, i.e., a Mortgage statement must contain all the mandatory elements prescribed by the mentioned Act for them to be enforceable. In that case, the creditor can, if the debtor fails to settle its debt in due time, collect its claim from the value of the mortgaged property, regardless of who is in current possession or who is the owner of the real estate at the moment of foreclosure.

The foreclosure procedure is initiated by sending the Notice (First Notice) in written form to the debtor and to the owner of the mortgaged property (if it is a different person) at the same time. If, within 30 days from the date of the reception of the Notice the debt is not settled, the creditor shall send to the debtor and the owner of the mortgaged property a Notice on sale of the property and at the same time submit it to the State Register and Cadaster with a request to inscribe the Notice on foreclosure in favor of the creditor on the property. Further, the Register shall within 7 days starting from the date of reception of the request inscribe the notice in the Cadaster and send its Decision on the inscription of the Notice on foreclosure to the creditor, debtor, and the owner of the mortgaged property. Inscription of the Notice on foreclosure and the Decision of the Register contains:

- Explicit authorization to the creditor that he is allowed when the Decision becomes final, but not before the expiry of the period of 30 days since the day of issuing the Decision to sell the property by the provisions of the Mortgage Act;
- Prohibition to the owner of the property to dispose of the mortgaged property in any way.

Please note that the owner, the debtor, and the creditor are entitled to file an appeal to the competent authority against the Decision on inscribing the Notice on foreclosure within 15 days starting from the date of its reception. The appeal shall be adopted if the debtor or the owner submits to the register uncontested written evidence that the (a) claim does not exist; (b) that the mortgage does not exist; (c) that the debt is not yet due for payment or that (d) the debt has been settled. The decision issued on appeal is final and enforceable and against it, no legal remedy is allowed.

If the debtor does not pay the debt before the Decision on inscribing the foreclosure notice is final, and that Decision has been issued before more than 30 days, the creditor can based on that Decision, start selling the mortgaged property either through auction or through negotiations with potential buyers. One potential way for foreclosure does not exclude the other.

## **2. Out-of-court procedure for selling the pledged property (movable property) by the Law on pledge right over movables inscribed in the Register**

The essence of this pledge right is that it can be established without transferring possession of the pledged property to the creditor. This represents a significant benefit for the pledgor because he can still have immediate possession over the property, keep it and use it and most often (unless otherwise agreed) collect income from it. The creditor, on the other side, has security as the pledge is inscribed in the publicly available Registry of Pledges governed by the Business Register Agency, and then, even in the case that the debtor sells the property the creditor can collect its claim by selling the property regardless of the fact who is the owner of the property at the time of sale.

This type of pledge right can be constituted by a Pledge Agreement by which the pledgor obliges himself towards the pledgee to provide him security for his claim by inscribing the pledge on the pledgor's movable property in the Pledge Registry.

The creditor in whose favor the pledge has been inscribed in the Registry can collect his claim from the value of the pledged property before other creditors if his claim is not settled within the due date. Also, if the debtor does not settle the debt within the due date, the creditor acquires the right to immediate possession of the property, by the provision of the law.

When the debt becomes due for payment, the creditor, i.e., the pledgee gains the right to collect his claim from the value of the pledged property (principal debt, accrued interest, and expenses regarding the debt collection procedure). In that case, the creditor is obliged to deliver to the Pledge Registry a Notice of intention to collect its due claim from the value of the pledged property so it can be published and so that the foreclosure notice can be inscribed in the Pledge Registry. It is important to mention that the pledgee needs to send that Notice at the same time both to the debtor and to the pledgor when they are not the same person, and to the person who is currently in possession of the pledged property.

The procedure of sale shall commence upon expiry of 30 days starting from the day when the Notice was published in the Pledge Registry. Upon expiry of the mentioned period, the creditor can start with the court or out-of-court procedure of sale of the pledged property.

Out-of-court sales can be realized if that sale method is contracted by the Pledge Agreement. Excerpt from the Pledge Registry with inscribed Notice on sale allows the creditor to conclude a sale and purchase agreement of the pledged property in the name and on behalf of the owner of the property. This can be done either through an auction or by selling the property at a market price. It is important to note that either of the mentioned methods for sale must be contracted in the Pledge Agreement.

## **3. Out-of-court procedure for selling the pledged property (movable property) by the Law on Obligations**

This possibility for out-of-court sale is prescribed by the Law on Obligations in the case of a commercial contract. The main difference from the previous type of pledge is that, in this case, possession over the pledged property is physically transferred when the agreement is concluded and thus the pledgee acquires the pledge right when the item that is the object of the pledge is given to him.

The creditor can sell the pledged property on a public auction after eight days following the Notice to the debtor and the pledgor when they are not the same person, that he will activate the pledge because the debt was not settled within the due date.

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