



Bulgaria

Narrative National Report

Author: Todor Ivanov Lukov, Enforcement Officer
(Bailiff), Bulgaria

“The content of this report represents the views of the author only and is his/her sole responsibility.
The European Commission does not accept any responsibility for use that may be made of the
information it contains.”

Table of Contents

PART I: LEGAL FRAMEWORK	5
I.1 Legislation affecting civil enforcement.....	5
I.2 Enforceable titles.....	7
I.3 Service of documents to parties and third parties	10
I.4 Legal remedies, appeal and objection.....	12
I.5 Postponement, suspension and termination of enforcement	13
I.6 Counter enforcement	14
I.7 Objects and exemptions on enforcement	15
I.8 (Court) penalties and fines	16
I.9 Access to information on the domicile and assets of the debtor	17
PART II: ORGANIZATION OF ENFORCEMENT.....	19
II.1 The status of the judicial officer	20
II.2 Supervision over enforcement	21
II.3 Access to the premises.....	22
II.4 Obstructing the judicial officer from carrying out enforcement	22
II.5 Time of enforcement	23
II.6 Mediation	23
PART III: ENFORCEMENT PROCEDURES	25
III.1 Initiation and end of the enforcement procedure	25
III.2 Enforcement against movable assets to settle pecuniary claims	26
III.3 Attachment on the bank account of the debtor.....	29
III.4 Enforcement against savings deposits and current accounts.....	30
III.5 Enforcement on immovable property	30
III.6 Enforcement against wages and other permanent pecuniary income.....	33
III.7 Attachment under the debtor’s debtor.....	34
III.8 Enforcement against shares	35
III.9 Other attachment procedures	38
III.10 Handing over movable assets	40
III.11 Enforcement in reinstatement of employee to work	40
III.12 Eviction	41
III.13 Enforcement of obligations to act, refrain from acting or suffer action.....	43
III.14 Sequestration of goods	45
III.15 Enforcement of foreign enforceable documents from non-EU States	45



PART IV: ENFORCEMENT COSTS 47

IV.1 The costs of enforcement47

PART V: LINKS, LITERATURE AND SOURCES 49



TABLE OF ABBREVIATIONS	
CPC	Civil Procedure Code
CPEA	Chamber of Private Enforcement Agents
CPIL	Code of Private International Law
IP	Intellectual property
MJ	Ministry of Justice
PEAA	Private Enforcement Agents Act
PEA	Private Enforcement Agent
SEA	State Enforcement Agent
SPA	Special Pledges Act

PART I: LEGAL FRAMEWORK

I.1 Legislation affecting civil enforcement

The Civil Procedure Code (hereinafter - CPC) establishes the basic principles for geographical and functional jurisdiction (territorial and according to worth of claim) as well as the overall system of the process of judicial execution based on civil titles. The code covers all procedural aspects from initiation of procedure, process service, enforcement instruments and items subject to enforcement in terms of assets and rights eligible for sequestration. It also regulates the stay, suspension and termination of procedural activity. Appeals, judicial review and grounds thereof are also within the scope of CPC. CPC stipulates both enforceable titles as well as underlying legal grounds.

Titles enforceable under the CPC are based on civil claims. Enforcement agents in Bulgaria also hold prerogatives to enforce public receivables based on art. 163, para. 3 of the Tax Revenue and Social Security Procedure Act. "Public dues" are set out by art. 162, para. 2 and 3 of the Tax Procedure Code as taxes, excise duties, customs duties, state and municipal taxes and fees, administrative fines, the claims of the European Union budget based on decisions of the European Commission, the Council of the European Union, the European Communities, the European Central Bank etc. Regarding local (city) taxes and fees, art. 4, para.2 of the Local Taxes and Fees Act stipulates that the compulsory collection shall be carried out by enforcement agents under the procedure stipulated by the CPC.

Private enforcement agents have authority to carry out duties under several other laws, such as the Code of Administrative Procedure and the Special Pledges Act, but their practical involvement as a measure of a caseload administered by enforcement agents under these statutes is relatively small. Thus, under the Special Pledges Act (art.35 in connection with art.18, para.4 of Private Enforcement Agents Act, hereinafter PEAA) the enforcement agent may transfer the assets subject to collateral to the creditor. The enforcement agent may also sell via auction pledged assets as well as serve, as a trustee of the proceeds, be responsible for the disbursement (art.38.39 Special Pledges Act) of monies following the order of statutory privileges of all creditors involved.

In addition to determining jurisdiction, CPC establishes titles, legal grounds and enforcement instruments. Titles enforceable under the CPC are based on civil claims. Enforcement agents in Bulgaria also hold prerogatives to enforce public receivables based on art. 163, para. 3 of the Code of Tax Revenue and Social Security Procedure Act (hereinafter Tax Procedure Code). "Public dues" are defined by art. 162, para. 2 and 3 of the Tax Procedure Code as taxes, excise duties, customs duties, state and municipal taxes and fees, administrative fines, the claims of the European Union budget on decisions of the European Commission, the Council of the European Union, the European Communities, the European Central Bank etc. Regarding local (city) taxes and fees, art. 4, para.2 of the Local Taxes and Fees Act stipulates that the compulsory collection shall be carried out by enforcement agents under the



procedure of the CPC.

With regards to enforcement agent status, prerogatives, office organization, activity monitoring and disciplinary control one has to take into an account the *dual system* of private and state judicial enforcement in Bulgaria.

The state enforcement agents (SEA) are civil servants within the system of the judicial branch. Their status and structure are stipulated by the Judicial Authority Act (JAA) (art.264-278).

Private enforcement agents (PEA) are independent legal professionals, organized within the Bulgarian Chamber of Private Enforcement Agents (hereinafter - "The Chamber"). PEA's functions and structure is regulated by the Private Enforcement Agents' Act¹. Both types of enforcement agents are subject to the same rules of procedure and procedural means concerning their enforcement prerogatives and professional activities. These are regulated by the CPC.

Unlike SEA, private enforcement agents have prerogatives under procedural laws, other than the Civil Procedure Code. Such prerogative for PEA is stipulated by the Code of Administrative Procedure, the Special Pledges Act and the Commercial Law. Under the Special Pledges Act (art.35 in connection w/t art.18, para.4 of Private Enforcement Agents Act) the private enforcement agent may transfer the assets pledged as collateral into creditor's possession, may sell pledged assets via public auction, as well as serve as a trustee in charge of the disbursement of proceeds (art.38.39 SPA) following the order of statutory privileges of all creditors to the same debtor. Relatively recent provisions of the Special Pledges Act allowed for a registered initiation of enforcement statement to acquire the power of a title, i.e., provide base for initiation of enforcement against pledged property within the scope of the SPA. The pledge creditor may assign a private enforcement agent to initiate proceedings within the meaning of art. 10, para. 2 of the SPA in connection with art. 426, para. 1 CPC. Latter enforcement cannot commence in the absence of corresponding enforcement procedure in the CPC in relation to the particular pledged asset. Alternatively, collection solely under the SPA allows the creditor to sell assets under pledge by themselves. In such instances, a PEA under art. 18, para. 4 of the PEAA, may serve just as an assignee of the secured creditor, perform the duties of a depositary and disburse proceeds.

Within insolvency proceedings under the Commercial Act to prevent dissipation, destruction or concealment of debtor's assets, the court may order the PEA to seal the premises, equipment etc. The inventory and sealing record is filed with the insolvency court. The living premises, and such necessary for continuing debtor's operations as well as stores for preserving perishable goods, shall not be sealed.

Section IV of the Code of Administrative Procedure regulates the procedure of enforcement of claims against administrative bodies within the system of both national and local government. The enforceable claims against an administrative

¹ Private Enforcement Agents Act (Prom., SGNº 43/ 20.05.2005, in force since 01.09.2005, last amended SGNº 49/29.06.2012)



body, are implemented by instructing the responsible party to act as decreed and respectively bear the statutory sanction failing to do so.

I.2 Enforceable titles

An enforceable title under Bulgarian legislation is either a writ of execution issued by a judicial authority or any other (documentary) instrument explicitly listed by a statute as formal grounds to initiate enforcement proceedings. Two basic categories of titles are described in sections I.2.1 and I.2.2 infra:

I.2.1 Titles issued and/or sanctioned by the courts of law;

I.2.2 Administrative titles such as the instruments under art. 209, para.2 of the Code of Tax Revenue and Social Security Procedure Act (CTRSSP or “the Tax Procedure Code”).

I.2.1 Titles enforceable under the CPC are based on civil claims. According to art. 163, para 4 of the Tax Procedure Code (New - SG 86/2017), however, administrative titles regulated by the latter and delegated for enforcement to enforcement agents under PEAA and JAA (as set apart from collection officials within the National Revenue Service) are also executed in accordance with the CPC procedure. Said provision is a relatively recent rule establishing an exception from a general concept that titles under CTRSSP are to be enforced under the latter code. The rationale behind that is to engage enforcement agents with the substantial case load of public dues, while facilitating them to follow “their” routine procedure rather than Tax Procedure Code rules, which are designed specifically for the hierarchical structure of the Revenue Service.

I.2.1.1 Under art. 404 of CPC, enforcement proceedings based on a writ of execution² are initiated based on legal grounds for execution as follows:

- enforceable judgments and orders; judgments by appellate courts; enforcement orders; court settlements; enforceable judgments and orders or judgments and orders declared enforceable in advance or immediately; and judgments of arbitration authority and settlements sanctioned by such authority;
- judgments, acts and judicial settlements issued by courts in countries other than Bulgaria, if enforceable in Bulgaria without further proceedings;
- judgments, acts and judicial settlements delivered by courts in countries other than Bulgaria and judgments and settlements delivered and sanctioned by arbitration tribunals in countries other than Bulgaria, when declared enforceable in Bulgaria.

The above nomenclature entails two basic categories of grounds for execution, based on which an order for enforcement may be granted:

a. Judicial decrees resulting from civil litigation, processed through two-instance

² For the purpose of present report, the term “writ of execution” is used to translate the Bulgarian term “izpalnitelen list” (Cyrillic: “изпълнителен лист”). The writ is a formal court document, which generally reproduces the court’s ruling, hence generates enforcement prerogatives for the enforcement agent to enforce the ruling.



judicial proceedings, initiated by filing of a claim and accomplished by judicial decree, based on the evidence and arguments presented to the court in open hearing.

b. Enforcement orders, based either on small claims (up to BGN 25 000), claims for repossession of an encumbered item (art. 410 CPC) or authoritative instruments explicitly stipulated by law (art. 417 CPC). Such filings are sanctioned by court in closed summary proceedings. Such “fast track” instrument shall evolve into full capacity enforcement title in absence of contestation by defendant upon service. Even contested instrument under art. 417 CPC may serve as base of a writ in case the judicial review renders defendant’s contestation void of merit. The authoritative instruments listed by art. 417 CPC include but are not limited to:

- administrative authority act, in cases where enforcement is subject to court admission;
- a document or accounting ledgers extract establishing receivables of state or municipal authority, or an extract from the bank accounting records;
- notarial deed, notarized agreement referring to monetary receivables or obligation to transfer possession;
- an extract from Special Pledges Registry for registered collateral and for initiation of execution;
- pledge agreement or mortgage deed under Art. 160 and Art. 173, para. 3 of the Obligations and Contracts Act;
- an act establishing private dues to municipality or the state in case enforcement is subject to the civil procedure;
- promissory note, bill of exchange or other securities of a warrant, as well as a bond or coupons thereon;

In all cases under sec. “b” above, the claimant may request an enforcement order and a writ.³

In the case of an instrument under art. 410 CPC, the court would issue (or reject) an enforcement order, serve it to defendant and issue a writ if no contestation is filed within the statutory term of one month from service.

In the case of an instrument under art. 417 CPC, the court would issue (or reject) both enforcement order⁴ and a writ based on a face value review of the validity of the claim

³ Although the terms “enforcement order” and “writ” may overlap in connotation, the actual title under Bulgarian Law is the writ (also “writ of execution”), which is issued based either on a judgment or on an enforcement order, which in itself could be based on an instrument under art. 417 CPC or on a small claim under art. 410 CPC. Titles described under sec.I.2.2. *infra* are a separate class of enforceable titles which entail enforcement prerogatives without being accompanied by or vested into an “enforcement order” or a “writ”.

⁴ Enforcement orders under art.418 CPC are also dubbed “orders for immediate enforcement” the reason being that they authorize enforcement agent to initiate enforcement, investigate debtor’s assets and impose restrictive measures on debtor’s property concurrently with the service of the initial notice. Only then, debtor shall formally “find out” that execution is in motion and may invoke



and the regularity of the document. Once a writ is issued, the actual enforcement process may commence. The debtor may contest the enforcement order within a month from service, which in the case of an instrument under art. 417 CPC is performed by the enforcement agent in the course of the initiated enforcement procedure.

Upon contestation of an instrument under art. 417 CPC, the court shall direct the creditor to file civil action to establish and prove one's claim and may stay the enforcement process either on the face value of the objection or upon receipt of further evidence or collateral. In the case of authoritative document under art. 417 items 1 to 9 CPC, the debtor's contestation does not automatically stay the enforcement process, unless prescribed collateral is posted. The court however may stay the process without collateral if substantial evidence indicates that the claim is not due, alternatively - the claim is based on an unfair clause in a contract concluded with a consumer or the amount of debt under a contract with a consumer is calculated incorrectly.

I.2.2 Titles originating from public dues, enforceable under the CPC by enforcement agents based on delegation stipulated by Tax Revenue and Social Security Procedure Act⁵, include:

- audit report;
- tax return for tax liabilities or mandatory social security contributions and acts for correction of tax returns;
- a decision issued by the customs authorities, regardless of an appeal;
- a penal decree which has entered into force;
- decisions, judgments and orders of the courts which have entered into force, as well as decisions of the European Commission, the Council of the European Union, the Court of Justice and the European Central Bank;

The titles listed in I.2.2 above do not require a writ for execution to be enforced.

The title is the legal source of enforcement prerogatives for enforcement agents. An enforcement agent may limit or restrain certain rights of debtor as much as and as long as the title is active and must immediately stay or cease compulsory action in case the title is respectively suspended or rendered void by a competent authority. Enforcement agent's actions must also be commensurable in terms of both quantitative dimensions and intensity of enforcement with the amount of the debt as well as the extent of debtor's compliance. Exceeding these standards of professional moderation (established both by law and in terms of professional ethics and tradition)

objection. Enforcement orders under art.410 – 411 CPC are served on debtor by the court and if not contested, are followed by a writ, which then is filed with enforcement agent's office, hence enforcement shall ensue subject to absence of contestation by (the already notified) debtor.

⁵ Under art. 163(4) Tax Revenue and Social Security Procedure Act in cases where public receivables are assigned for enforcement to an enforcement agent, the collection is enforced under the rules of the Civil Procedure Code.



may invoke respective sanctions resulting from disciplinary action, lawsuit for damages or both.

I.3 Service of documents to parties and third parties

The manner of process service to parties in Bulgaria in the context of judgment (or other title) enforcement, would significantly vary depending on the nature of the addressee. It makes a substantial difference whether the addressee is a legal person or a physical person, as well as whether it carries certain quality such as being a registered commercial entity, sole business proprietor or an attorney-at-law representing an addressee.

Service of legal documents within the enforcement process varies in terms of type of notice as well depending on due deadlines for either objection or voluntary compliance by the defendant.

In all cases of judicial decrees (or other judicial instruments per Art. 404 CPC), both into force, or in instances where preliminary enforcement is granted, the competent court shall issue a writ of execution by request of the entitled party (Art. 404 – 406 CPC). The ruling granting (or rejecting) the request is subject to an appeal within a 2-week deadline, by claimant – counted from the date of the notice of the ruling by the court and by defendant - from the date of the receipt of a notice for voluntary compliance, served by the enforcement agent.

A request for an enforcement order (as an alternative of filing a civil action) may be filed in instances of pecuniary claims for sums up to BGN 25 000, or for restitution of replaceable items, as well as certain movables under lien, in cases where the matter is under the jurisdiction of the courts of first instance. If there are no legal obstacles (listed in art.411, para 2) the court shall issue an enforcement order in closed session within 3 days, which must be served to debtor by an officer who is an employee of the court. The notice contains an invitation to debtor to comply (satisfy the debt or perform due action under the order) within two weeks. Within a month from service the debtor may object, the legitimate substance of the objection being the validity of the claim (in entirety or in part). In such case claimant must pursue his interest via filing a civil action against debtor.

Valid service of a notice⁶ for voluntary compliance (summons) is a prerequisite for lawful enforcement. The notice shall identify the creditor with a name and an address and warn the debtor that a failure to satisfy the debt within two weeks, would lead to an enforcement action. The imposed attachments or arrests must be stated. The notice must be accompanied by a copy of the enforceable act. When procedure is based on an enforcement order, the debtor is invited to comply with the service of

⁶ The term “notice” is considered by the author eligible in terms of general perception. In Bulgarian language, the connotation of the term is closer to “invitation”. Although the term “summons” is generally applicable where a court demands one’s presence and/or action, within the enforcement process the debtor is rather “notified” than “summoned”. Such conclusion may be derived from the general principle in enforcement stating that a debtor must “bear” the enforcement action rather than “cooperate”.



the order. In the case the order has been served on the debtor by the court, no new deadline for voluntary compliance is extended. In the latter case, instead of a notice for voluntary compliance, a notice of the enforcement action initiated and a copy of the writ of execution is served.

When one enforcement method is replaced by another, the enforcement agent must serve the debtor with a notice describing any new attachments.

Enforcement agents in Bulgaria are competent to serve notices within the context of the enforcement procedure (Chapter 38 CPC). Enforcement agents may also serve judicial documents, in instances of an explicit authorization by the court in a civil action (Art.42, para 2 CPC), as well as service of extrajudicial papers pertaining to civil matters (Art.18, para 5 PEAA).

The general principle - which is considered most authoritative, and reliable by the courts as a matter of fact, as well as of law - is the service to the addressee in person. The service is performed via notices on paper. That basic rule is mandatory for the initial notice of enforcement, which is accompanied by a copy of the enforceable title. The addressee would either sign the server's copy upon identification or refuse to do so. The addressee's refusal to formally acknowledge the service is then certified by a formal notice and the signature of the process server. Such service would be considered legitimate under the law. Should the party in concern not be found at their registered address, certain categories of persons of a lawful age, such as family members as well as others duly registered on the same address, employers, employees and such, may validly accept the service, noting their obligation to forward the documents to the addressee. Service to legal entities as well as representing attorneys is straightforward in procedural terms. Attorneys-in-law are not allowed to reject service. Legal entities are served at their registered address according to the respective public register. In both cases if a suitable recipient of the documents is nowhere to be found, a formal notice of the service is posted at the address and the recipient is considered duly served after the expiration of a 14 days period designated for the latter to visit the office of the enforcement agent and obtain the papers.

Most procedural complications arise in the case when a physical person (in most cases - the debtor) could not be found at their registered addresses (given that no other person would accept an "in lieu" service) or does not have a registered address in the country at all. In accordance to art. 47 in connection with art. 430 CPC, when it is formally established that the debtor cannot be found, the enforcement agent appoints of a "special representative" of the debtor. The latter, being an attorney-at-law, designated for the purpose by the respective bar association, acts as a legal representative in absentia of the debtor for all procedural purposes including but not limited to process service.

In terms of technological alternatives to the "in-person" process service via phone, fax or at an electronic mail address is foreseen by the law. Such means are stipulated by the procedural law, but rather as secondary or "auxiliary" means of notification. Their application is pre-conditioned by urgency and, as far as e-mail service is concerned, upon the explicit consent of the debtor to be notified at a specific e-mail address. Such



means of service are not applicable in the case of the initial notification (notice for voluntary compliance) because the entire concept of the debtor's rights in the Bulgarian legal doctrine is based on their knowledge of the grounds for the enforcement procedure and all the legal parameters of the claim. In general terms, all kinds of notification other than an "in-person" service to (a physical person) debtor or a certain third party consenting to transfer the notice, carries the potential burden of proof on behalf of the enforcement agent in case the validity of the service is challenged. Corporations and other civil persons are obliged by law to maintain registered office. Therefore, legal presumption of a valid service at the address of such office is established in cases where the indebted entity is either not found at the registered address or there is no one on site to accept service.

Each procedural notice contains certain requisites prescribed by law (CPC) and regulation. The statutory elements of the procedural documents are mandatory in all cases and for all categories of enforcement agents to the extent that the omission of an element may lead to the annulment of a procedural act based on a faulty notification.

Serving extrajudicial documents by a private enforcement agent is stipulated by art. 18, para 5 of the Private Enforcement Agents Act. The prerogative encompasses service of any "summons, notices and replies" related to civil matters. There are no explicit procedural rules defining the service, hence the officer's verification that a document is served would be credited unless proven faulty to a competent authority.

In terms of legislative alternatives for efficient automated service of documents, the legislation and all relevant statutory provisions provide extremely limited means for electronic service. The law (CPC art. 42 sec.4, art. 44 sec.3) provides an option for service via e-mail, only in case where an addressee (a party involved in a civil action) provides the e-mail address by their own will on a case-by-case basis.

1.4 Legal remedies, appeal and objection

As a general principle, an enforcement agent in Bulgaria holds enforcement prerogatives based on enforceable titles⁷ issued either by a court of law or by an administrative authority recognized by law as a source of enforceable acts. Therefore, an objection to an enforceable title as a matter of legal substance is directed either to the issuing authority or to the competent court with respective controlling jurisdiction.

In the context of the enforcement procedure, certain nomenclatures of enforcement agent's acts are subject to an appeal. While an objection relevant to the substance of the claim, vested in a title, may render the title void entirely or in part, hence remove the grounds for enforcement, any revocation of an enforcement action, based on a faulty procedure, may be remedied by a repetition of the same action in strict adherence with the procedural law and the instructions of the reviewing court.

⁷ A title is deemed "enforceable" either at a point of procedure where all venues of appeal are exhausted and deadlines thereof – expired, or judgments and enforcement orders that are subject to preliminary or immediate enforcement granted by a court.



A court ruling granting (or rejecting) an application for a writ of execution may be appealed by either party within a two-week term from service.

The enforcement order in itself is not subject to appeal except in the part relating to the filing costs, but the debtor may object to the substance (amount, grounds) of the debt (or default claimed), satisfaction of which is sanctioned by the order. The objection renders the presumably undisputed matter of the debt a subject to dispute, which ultimately shall be resolved in the court processing the civil action filed by the creditor.

The claimant may appeal on procedural grounds:

- the enforcement agent's refusal to perform the requested enforcement action;
- the suspension, termination and conclusion of enforcement.

The debtor may appeal on procedural grounds:

- a punitive fine, imposed by the enforcement agent;
- directing the execution on the property which they consider to be exempt from enforcement by statute;
- the removal of the movable property or their removal from the property due to the fact that they have not been duly notified;
- designating a third party as manager-ad-hoc of an inventoried property if the requirements of the law or the test of a conflict of interest are not met;
- the enforcement agent's refusal to suspend, terminate or end enforcement;
- costs of enforcement.

Both parties may appeal on procedural grounds the refusal of the enforcement agent to re-evaluate the property subject to enforcement, as well as the enforcement agent's ruling for disbursement of funds resulting from the enforcement.

1.5 Postponement, suspension and termination of enforcement

Enforcement is a complex process directed at debtor's assets, which may be suspended, postponed or terminated either by request of the creditor or upon occurrence of certain circumstances prescribed by law. The court may also rule for a stay of enforcement in the context of appellate or a cassation filing aimed to repeal the judgment on which the writ of execution is based. It is within court's prerogatives to suspend the enforcement when an appeal of the enforcement action is brought in for a review. In any case, the court's consideration with regard to suspension would include an assessment of the merits of the complaint and the evidence presented.

The debtor has the right to object an enforcement action directed at certain property items, estate, etc. which are exempt by law or suggest an alternative collateral instead of the one subjected to enforcement. In both latter cases, the enforcement agent is obliged to formally consider debtor's request, stop the enforcement against that particular asset should there be sufficient grounds, and redirect procedure as appropriate. The enforcement agent must also suspend the process in case the debtor



(physical person) pays 20% of the debt and make a formal pledge to pay the remainder in monthly installments of 10% each.

The courts have substantial prerogatives to suspend enforcement in proceedings where the title is challenged both via an appeal as well as in the context of a civil case filing aiming to prove that the debt is paid, statute of (time) limitation is applicable or the title is not in force, but preliminary enforcement has been ruled. In an instance where a third person has raised a claim on property under enforcement and there is sufficient evidence that such claimant's rights precipitate the rights claimed by the creditor initiating the case, suspension is also a likely option.

Enforcement agent bears the duty to terminate the case under one of the following conditions:

- the debtor has provided a receipt in proof of payment prior to initiation of the enforcement case;
- the writ of execution has been annulled by the court;
- the court has repealed the act on which the writ of execution was based;
- selling the sale of the debtor's property defined by claimant has proved ineffective and no other property (subject to sequestration) can be found;
- a judgment honoring a claim disputing the enforcement either by the debtor or a third party has entered into force;
- the claimant has not requested enforcement actions for a period exceeding two years, child support (alimony) cases being an exception.

1.6 Counter enforcement

Bulgarian legislation does not provide for "counter enforcement" within the same enforcement procedure, namely within the same enforcement case. The matter of the reparation to the debtor of monies and/or assets collected as result of enforcement based on repealed (at certain point of the procedure or after accomplishment thereof) or annulled title is generally resolved either via issuance of a "reverse" writ of execution or by stipulating the right to a claim against any party which has obtained payments based on a void (retroactively) title. A "reverse" writ may be enforced by any enforcement agent with proper jurisdiction.

In Bulgarian law, the matter of "counter execution" against the creditor in the same procedure (within which the parties are defined as creditor and debtor respectively), is related to the protection of a debtor who has been subject to enforcement based on an enforcement order (order for immediate enforcement) in case of subsequent invalidation of the order. In case the enforcement is based on a judgment which has entered into force (or other grounds under Article 404 CPC) or stabilized administrative acts subject to enforcement, the compensation of the debtor for the material loss suffered from execution is a potential (new) claim against the creditor for the amount obtained from the enforcement process based on the revoked title.

The Civil Procedure Code (SG No.59 of 20.07.2007) introduced the order for



immediate enforcement on the basis of a document. The difference from the enforcement order under Art. 410 CPC (small claim) is that the debtor's objection does not suspend the enforcement process initiated on the basis of the order (with the exception of the case of Article 417, item 10). Despite continuing enforcement, though, upon the debtor's objection, the claimant bears the obligation to file a claim in court under Art. 422 related to art. 415 CPC, to prove the existence of the disputed debt. Therefore, the question of the protection of the debtor against enforcement arises in cases where such claim is revoked, hence the order altogether with the writ of execution previously issued by the court is invalidated.

The question of the protection of the debtor also arises in cases of preliminary enforcement admitted by the court in civil action, where the final act of the court of a first instance has not yet entered into force. Due to the effect of the preliminary enforcement, until eventual revocation of the enforceable act by a higher court, the debtor may suffer pecuniary damage from the enforcement. If the claim is subsequently rejected by an enforceable decision, the court of second instance, which delivered the decision, shall issue a "reverse" writ of execution to the debtor against the claimant for the recovery of the sums or property received on the basis of the preliminary execution of the annulled judgment plus the costs of enforcement (Art. 245, Para. 3 CPC).

The writ of execution in favor of the debtor aims to recover the claimant's money, which has been wrongfully redeemed. Art. 422, para. 3 of the Civil Procedure Code explicitly refers to the procedure for issuance of a reverse writ, provided in Art. 245, para. 3, pron. 2 CPC. This possibility is provided in cases where the claim under Art. 422 Art. 415 CPC has been revoked by an enforceable decision, i.e.: after the debtor's objection, the creditor filed a claim, but the latter has been revoked as groundless.

1.7 Objects and exemptions on enforcement

Certain property rights as well as income and receivables are exempt from enforcement based on principles of civil procedure such as humanity and social protection. In terms of non-transferable entitlements under statute and case law,⁸ certain categories of income such as child support, alimony and stipend for regular education are exempt from execution. Bulgarian procedural law explicitly provides for the exemption of personal monthly income up to the amount of the minimum wage, while remuneration for work, both in the form of wages and other compensation and pension above the minimum wage are subject to deduction to an extend varying depending on the amount of the income. The condition whether debtor supports dependent children or not is also relevant.⁹ A relatively recent

⁸ Supreme Court Decision 91-54-General Assembly of Civil Collegium, Bulgarian Civil Procedure Law, 9th edition, CIELA, 2012, pg.997

⁹ Under art. 446, art.1 CPC a debtor's income exceeding the minimum wage (MW) is subject of executory deductions under the following conditions:

the debtor receives a monthly remuneration amounting to between the MW and twice the MW - one third if without children and one quarter if there are dependent children;

- the debtor receives a monthly remuneration amounting to two times the MW and four times the MW - one second if without children and one third if there are dependent children;



provision (art. 446a. SG No. 86/2017) of CPC has warranted that the above outlined categories of income are protected also in case of attachment of debtor's bank account.

In terms of securing one's livelihood¹⁰, the law provides exemptions for a nomenclature of chattel, land and sources of sustenance based on a variety of criteria:

- debtor's (and debtor's family's) personal assets as defined by a decree of the Council of Ministers;
- the necessary food for the debtor and his family for one month, and for farmers - until a new crop;
- a three-month supply of heating, cooking and lighting fuel;
- the machinery, tools, supplies and books needed individually by the debtor practicing a liberal profession or a craft;
- set acreage of farming land for farming debtors and corresponding farming equipment, as well as annual supply of fertilizers, plant protection officers, and seed;
- set number of cattle, beehives and poultry, as well as the corresponding food supply;
- debtor's (or debtor's family members') residence under set conditions for living space;
- other debtor's property and receivables as provided by law. In that regard, the rules of exemption protect certain categories of incidental or regular social aid granted by state or municipal authorities.

1.8 (Court) penalties and fines

Art. 93 CPC foresees a general prerogative of the enforcement agent to impose a fine of BGN 50 up to BGN 300 for procedural defaults such as:

- non-compliance with summons or a request for evidence directed to a witness, an expert or a third party when appearance or presentation is mandatory;
- impeding access to auctioned items for examination;
- failure to comply with other instructions of the enforcement agent.

An enforcement agent's ruling imposing a fine is subject to an appeal before the district judge (first instance court). Once confirmed, the fine constitutes a public due, subject to collection by the National Revenue Agency.

- the debtor receives a monthly remuneration of more than four times the MW - the upper limit above twice the MW, if without children, and the upper limit above twice and half the minimum wage, if there are dependent children.

The monthly remuneration is determined after deducting the taxes due and the mandatory social security contributions.

¹⁰ Applicable only to physical persons.



The law provides for increased and eventually repeated (for each default) fines of BGN 200 in the case of non-compliance with a writ of execution ordering certain action or transfer of a child in the context of enforcement of parental rights. In case where refraining from an action has been adjudicated, debtor's failure to comply is sanctioned with a BGN 400 fine. An enforcement agent's ruling imposing these fines is subject to an appeal before the provincial court judge (court of second instance).

A specific punitive measure targets defaulting bidders on a public auction administered by the enforcement agent. In case a bidder fails to pay the offered price, bidder's 10% deposit is forfeited. The amount is directed to satisfaction of the debt. While a creditor with a claim exceeding the amount of the due deposit holds the privilege to participate in the auction without posting 10% of the initial price, failure to pay the offered price would result in the reduction of their claim with 10% of the initial price.

I.9 Access to information on the domicile and assets of the debtor

I.9.1 Databases on debtor's assets

The following databases within the respective public registers contain information on persons' and entities' property, receivables, entitlements and other assets, representing potential subject to enforcement for persons' and entities' debts. Some of the data within these registers is freely available for the public (Registry Agency), other is granted to officials including enforcement agents in accordance with and to the extent of their statutory prerogatives.

- Commercial Register and Register of non-profit legal entities. Contains data regarding business activity, shareholders and management, financial reports and other relevant information under the respective regulatory legislation.
- Register of Bank Accounts and Safe Deposit Boxes hosted by the Bulgarian National Bank.
- National Population Database. Contains detailed civic data of physical persons related to domicile, civil and social status, family relations, etc.
- National Revenue Agency Database – any data related to taxable trade, added value, and income of entities and persons.
- The Registry Agency Database hosts (besides later integrated Commercial Register, Register of non-profit legal entities and BULSTAT Register) and administers the National Land Register consisting of all land records indicating property rights, transfer of property and encumbrance thereof. A single, centralized electronic system “Cadaster and Property Register” is maintained by the agency. The system consists of digitalized maps of the national territory based on specific statutory status of the urban, rural, aquatic, surface and sub terrain infrastructure etc.
- BULSTAT Register includes all legal entities and branches of foreign persons who are not traders. Persons with liberal professions as well as those engaged in artisan activities are also eligible for registration.



- The Register of Matrimonial Property Relations contains record of property arrangements (prenuptial agreements and marital contracts) related to marriage and cohabitation.
- National Social Security Institute Database administers data related to the social security status of natural persons, register of labor contracts and related withholdings due by employers, as well as social security dues of self-employed individuals, pension entitlements.
- Central Registry of Special Pledges.

The Special Pledges Act (SPA) regulates pledging assets as collateral for commercial credit operations as well as enforcement against such collateral. Registry consists of records of contracts and corresponding collaterals including, but not limited to:

- Special pledges contracts (SPC) on movable property, except for aircrafts and ships;
 - SPC on receivables;
 - SPC on totality of receivables, equipment, materials, non-cash securities, etc.
 - SPC on a future crop for the current or the next economic year;
 - SPC of a commercial enterprise;
 - Pledges under the Mortgage-backed Bonds Act;
 - Sales contracts with retention of ownership until payment of the price;
 - Leases, distraints of property under Art. 4 of SPA, attachments of secured claims, etc.
- Motor vehicle automated database within the Ministry of Interior;
 - Firearms automated database within the Ministry of Interior;
 - Ship Register within the Ministry of Agriculture, Food and Forestry;
 - Agricultural and forestry machinery database within the Ministry of Agriculture, Food and Forestry;
 - Register of civil aircrafts registered in the Republic of Bulgaria within the Ministry of Transport, Information Technology and Communications.

1.9.2 Obligation to provide information

The rule of art. 431 of CPC provides for a broad prerogative of the enforcement agent to access to debtor's information hosted and administered by judicial and administrative authorities (both central and local). The enforcement agent may inquire and obtain information related to the enforcement procedure, as well as request copies and extracts of documents. Unlike public institutions, private entities (including banks) bear far more limited duty to provide information related to debtors' assets. Under the rule of art.508 CPC, within a week of the receipt of an attachment

notice, any third person must notify the enforcement agent of the following:

- Whether debtor's attached receivables are acknowledged, respectively of the readiness to pay;
- Whether there any claims against the same receivables;
- Whether there are debtor's receivables subject to attachment on other writs and in this case based on what claims;
- Whether the third person transfer sums to the debtor's bank account, in which bank and in what amount.

In general, there is no obligation for the debtor to cooperate with the enforcement, but rather to comply. The enforcement agent does not have a direct prerogative to request information from the debtor, neither does the latter bear any formal duty to provide such. On the condition that no sufficient debtor's assets eligible for enforcement are found in the context of the enforcement inquiry, the enforcement agent may file a request to the district court to summon the debtor. In the context of the ensuing court procedure, the debtor is obliged to declare their entire property and income.

I.9.3 Security of information and confidentiality

Enforcement agents have the obligation to protect all personal data obtained and/or disclosed in the course of performing their duties. According to art. 16 -17PEAA, PEA's access to the debtor's personal data is subject to the requirements of the enforcement process. The office records (archives) of the enforcement agent are inviolable and no one has the right to access them without the consent of the PEA, except in the cases provided for by law. The person who has access to the official archive of the enforcement agent is bound by confidentiality under the statutory conditions applicable to enforcement agents or to the respective confidentiality rules pertinent to the duties of judges, prosecutors, attorneys, monitoring government inspectors, auditors etc.

Enforcement agents are registered administrators of personal data within the meaning of Art.3, para 2 of the Personal Data Protection Act. In order to perform their duties in full capacity, an enforcement agent must apply to the Personal Data Protection Commission for registration and license as an administrator of personal data. The Commission monitors their compliance with confidentiality rules both upon complaint and by its own initiative and has the prerogative to investigate infringements and levy sanctions for violations of the law.

An enforcement agent may process and apply information of the debtor's domicile, assets, liabilities and related encumbrances and easements as long as such information is relevant and up-to-date. The legitimacy of such usage is not necessarily limited within the context of a case but rather depends on whether the information is utilized to satisfy legitimate enforcement title(s).

PART II: ORGANIZATION OF ENFORCEMENT



II.1 The status of the judicial officer

The current legal framework of Bulgaria provides for a dual system of judicial enforcement: state enforcement agents (SEA) within the structure of the district courts and private enforcement agents (PEA) who are independent legal professionals, licensed by the Minister of Justice and organized within the Bulgarian Chamber of Private Enforcement Agents.

The state officer's jurisdiction is limited to the jurisdiction of the district courts, their office being part of the court's structure. PEA's jurisdiction encompasses the territorial jurisdiction of the respective provincial court. There are 28 provincial courts in Bulgaria. The quota for PEA for a certain district is 1 PEA per 30,000 people for the respective district.

The status and structure of the two types of enforcement agents is regulated as follows: by the Judicial Authority Act (art. 264-278) for the SEA and Private Enforcement Agents Act for the PEA. The Civil Procedural Code of (CPC) regulates both types of enforcement agents with regards to the procedural rules concerning their enforcement prerogatives and the procedural instruments of their professional activity. In terms of the right to information pertinent to cases, prerogatives to enforce, due cooperation and support by authorities as well as job related functional immunity, the status of SEA and PEA is the same.

State enforcement agents are salaried civil servants. Private enforcement agents are independent professionals, their prerogatives, office structure and functionalities subject to stipulation by PEAA and respective provisions. For income as well as for source of financial support of their operations, PEA rely on fees regulated by a tariff. The PEA are protected by partial functional immunity warranting unhindered performance of their duties. PEA cannot be arrested in the course of and in connection with performing their official duties, felony charges against them being an only exception. In case of a PEA being arrested or charged for a felony, the Minister of Justice and the PEA's Chamber must be notified. The files and records of the PEA is inviolable and no one has the right to access without the enforcement agent's consent, except in cases provided for by law. Files may be moved out from the office premises only in copy and by explicit ruling of a judge or public prosecutor.

Art. 29, para 1 of PEAA foresees the obligation of private enforcement agents to abide by rules of professional ethics. A Code of Ethics establishes the professional ethics standards for the private enforcement agents. The code is an "in-house" act, i.e., internal regulations of the Chamber adopted by the General Assembly of the Chamber. Non-compliance with the rules of ethics constitute grounds of disciplinary action against the defaulting officer. Professional conduct subject to regulation by the Code of Ethics includes, but is not limited to:

1. Independence and impartiality of the PEA;
2. Relations with parties and participants in the procedure;
3. Relations with creditors;



4. Adequacy and proportionality of the enforcement;
5. Access to data and data processing;
6. Granting/controlling information;
7. Conflict of interests;
8. Public conduct of PEA;
9. Relations with third parties and institutions;
10. Relations with media and media appearances;
11. Inadmissible practices;
12. Professional solidarity, relations with other PEA;
13. Deputies and employees of the PEA;
14. Relations and cooperation with auditing authorities and government agencies;
15. Unfair competition;
16. Good faith case administration; complaints administration;
17. Financial transparency and accountability; good faith account management.

Within the framework of the above referenced standards, as well as within the limitations of their territorial jurisdiction, PEA in Bulgaria operate as competitors among themselves.

The private enforcement agent bears the disciplinary responsibility for the culpable failure to fulfill his/her obligations under the law and the bylaws of the Chamber. The disciplinary sanctions envisaged by PEAA are:

1. Reprimand;
2. Fine of amount from BGN 1000 to 10 000;
3. Formal warning for a temporary suspension;
4. Suspension for a term of one to five years;
5. Permanent revocation of license. This sanction may be imposed on a PEA against whom there are three or more disciplinary sanctions, at least one of which is suspension under item 4.

II.2 Supervision over enforcement

Art. 426 of the Bulgarian Civil Procedure Code (CPC) states that the enforcement agent commences the enforcement procedure upon the request of the interested party on the basis of a submitted writ of execution or another act, subject to execution, that the creditor has to indicate the manner of enforcement measures to be undertaken in their request and that they may also request other measures during the procedure.



Being state employees, the liability for any procedural omission or irregular action of the state enforcement agents is born by the state, therefore the state would not grant to the state enforcement agents the right of a “professional initiative”. That is the reason why state officers do not have the prerogative to undertake enforcement (both protective measures and direct execution) without an explicit request by the creditor.

Private enforcement agents are licensed by the Minister of Justice (MJ) and are subject of control by a dual administrative system. The State Inspectorate within the MJ is the government controlling authority. The Ethical Commission and a Disciplinary Board within the Chamber of PEA are the guild bodies in charge of monitoring, control and implementation of disciplinary measures. PEA may conduct and direct the enforcement procedure by their own initiative upon general authorization by a creditor according to article 18¹¹ of PEAA. They are liable for any professional misconduct and illegal action that has ensued damages with their entire property (the latter not precluding potential disciplinary and/or criminal liability).

II.3 Access to the premises

It is a general principle, established both by law and case law, that the debtor is not necessarily obliged to actively cooperate, but rather to comply with and bear the enforcement action. The latter, also by default, cannot be directed toward the debtor’s person, but against the debtor’s property and assets except those protected by law. An enforcement agent in Bulgaria may initiate enforcement against a debtor’s property including such in premises under lock, only in case that there is as sound professional assessment that the debtor is duly notified. The notice must contain description of the enforcement method as well as the time the action is scheduled for. The law (art. 431 of the CPC) grants explicit authority to an enforcement agent to conduct a forced entry and search into the debtor's premises whenever the enforcement agent deems it to be justified under the procedural rules. When the debtor’s premises are entered by force, the enforcement agent is entitled to police assistance. A locksmith service may be used to open the premises. It is within the enforcement agent’s professional duties to avoid unnecessary damage therein. All procedural actions related to a forced entry are to be recorded by the enforcement agent in the inventory record. The law prescribes that all adequate measures for safeguarding the debtor’s property are taken.

II.4 Obstructing the judicial officer from carrying out enforcement

Government agencies, municipalities, organizations and citizens are obliged to provide assistance to the enforcement agent, when such is requested. The police authorities must, upon request, assist the officer if the performance of his/her functions is obstructed. The enforcement agent has the right of access to information in any database administered by state or municipal agency with regard to the debtor’s property. Enforcement agents make inquiry of information related to the execution, as well as request copies of relevant documents.

¹¹ Private Enforcement Agents Act.



In cases when then debtor's personal presence is necessary and the latter does not appear despite being summoned, the enforcement agent may order police action to ensure the debtor's presence.

From the moment of receipt of the notice of attachment of certain item or property the debtor is barred from selling, giving away, or in any way adversely altering or destroying restricted property under jeopardy of criminal liability. After it has been inventoried, the property is usually left in the debtor's possession, until the time of auctioning. The debtor must manage the property with due diligence and keep it in the same condition as it was entrusted to him/her. If the debtor does not uphold the property well or interferes with the inspection of potential bidders, the enforcement agent may remove the debtor from the property and assign its management and safekeeping to another person.

The debtor does not have a direct obligation either to cooperate with enforcement or to provide information therewith. The law provides for an option that the debtor is summoned before court on the enforcement agent's request to formally declare to the judge their property and assets in their entirety. Such option however is provided under the condition that no debtor's property or assets were established by the enforcement agent's investigation. Due to the formality of such prerequisite as well as the practical inefficiency in summoning procedures, this option is rarely invoked.

According to art. 270, para 1 of the Criminal Code, obstruction of an enforcement agent's duties is a felony charge, punishable by imprisonment.

II.5 Time of enforcement

Bulgarian legislation does not provide certain time and day frame during which enforcement agents are authorized to carry out enforcement. Under normal circumstances, enforcement operations would be conducted within regular business hours. The working hours of both SJO and PEA are the working hours of their court of jurisdiction, i.e., from 8:30 am to 5:00 pm. Understandably, field work such as inventorying property and assets located away from the enforcement agent's office, handing over a child according to a judgment ruling on parental rights and other enforcement operations of a specific nature, cannot be strictly limited to business hours. Therefore, business hours as well as official holidays do not limit the procedural soundness of enforcement agent's operations, as long as the debtor is notified as prescribed by law. In certain situations (service of notices and summons) the law prescribes that attempts to contact the debtor must be made on the debtor's "day off", the latter term referring to such time when he/she would presumably be at home, depending on his/her vocation or other established routine.

There are not fixed terms or deadlines of the duration of the enforcement process on any certain case. The law (art. 433, para1, item 8 CPC) stipulates that a case must be terminated if the creditor has not requested enforcement actions for a period exceeding two years, maintenance (alimony, child support etc.) cases being an exception.

II.6 Mediation



There is no regulatory emphasis on mediation as far as enforcement agent professional duties are concerned. In practice, however it is an important venue for streamlining the enforcement process as well as for achieving effective enforcement placing rights and interests of both parties in balance. Art. 18, para. 2 of the PEAA stipulates that by delegation of the parties, the private enforcement agent may, in connection with the enforcement proceedings, mediate in order to reach an agreement between them. The law is not clear on the practical achievement and then implementation of such delegation "by the parties" (which by default would probably exclude a valid authorization by just one party) and the case law has not brought any light on the matter ever since. The fact that said parties, being a creditor and a debtor whose civil or business relationship has deteriorated to the level of directing enforcement powers on one's property or assets, does not make the process of formal mediation (and authorization thereof) any clearer. Although a formal assignment of mediation powers, as prescribed by law (especially by the debtor) is rather an exception, the PEA is bound by both practical and ethical considerations to employ a mediation approach. That is essential at an impasse where both parties lack pragmatic assessment and, in many cases, legal literacy to evaluate their own standing in a complex procedure charged with potentiality of a conflict. According to art. 6, para 1 of the Ethical Code, the PEA bears an obligation to clearly and accurately explain to the parties the legal consequences of their actions. Hence, it is customary for the enforcement agent to inform the debtor of the options and terms of payments in installments or any other agreeable scheme. The enforcement may be stayed upon submittal of written request by the creditor. There is no need of supporting arguments or presenting evidence to support the request. Usually, enforcement proceedings are suspended in such manner in the course of pending negotiations between the parties to settle.

The enforcement agent must suspend enforcement without the consent of the creditor if the debtor (physical person), before the beginning of the auction of an attached property, pays 20% of the debt, and makes a written pledge for monthly installments of 10%. This is a one-time option to stay and a defaulting debtor cannot benefit from it again. Any different suggested schedule for deferred payment by the debtor should be forwarded to the creditor for review and consent. Such process inherently involves both formal knowledge and professional sensitivity and often represents a dynamic practical implication of mediation, which contributes greatly to the effectiveness of the enforcement process. Although governed by pragmatism and professional tradition rather than by formal statute, mediation is often the most welcome alternative to a stalemate resulting from verbatim procedural approach.

That set aside, enforcement agents in Bulgaria do not have a formal professional duty to mediate between parties, the assumption being that as far as parties have exhausted all judicial venues to settle, there is no justifiable reason to delay the application of justice during the enforcement process yet again. There are no formal procedural rules for mediation in the context of an enforcement case. It is important however to emphasize that procedural legislation provides for sufficient mechanisms to reach a settlement agreement in court prior to enforcement as well as in the course



of dealing with an administrative authority competent to issue enforceable titles.

PART III: ENFORCEMENT PROCEDURES

III.1 Initiation and end of the enforcement procedure

Judicial enforcement is initiated by filing a petition accompanied by a writ of execution (or other enforceable document – see I.2.1.1 supra). In the case of a writ issued on the basis of an order for immediate enforcement, the order and the document(s) on the basis of which the order has been issued must accompany the petition. The filing is made before the office of the enforcement agent having territorial jurisdiction according to art. 427 CPC. A writ of execution is issued by the court of first instance based on the judicial or arbitration authority acts indicated in art. 404 CPC (see I.2.1 supra). These acts are either entered into force or their preliminary enforceability has been proclaimed by a court of law. Once a writ of execution is issued, its enforceability is presumed unless rendered void by an explicit judicial act. The administrative titles described in I.2.2 supra constitute enforceable titles without being accompanied by a writ of execution. No other certificates for enforceability are recognized as enforceable titles, issued by a Bulgarian national authority to be enforced in Bulgaria. This does not include enforceable titles provided by the legislation of the EU.

In any case, other than the writs based on enforcement orders under art. 410 CPC, after opening a file, the enforcement agent has to notify the debtor of the enforcement against him/her by serving a notice for voluntary compliance. With regard to an order under art. 410 CPC, the debtor is notified by the court which has issued the order. As described in I.2.1.1 supra, the debtor may file an objection within a month from the service.

The initial (filing) petition must state the manner of execution, i.e., the restrictive measures and the respective assets (movables, realty, receivables etc.) upon which it will be imposed. The filing creditor may employ one or several enforcement approaches or in the case of a private enforcement agent, he/she may authorize the PEA to investigate the debtor's assets and determine the enforcement method. State enforcement agents do not have the prerogative to undertake enforcement (both protective measures and direct execution) by their own discretion, i.e., without an explicit request by the creditor. The rationale behind such division of prerogatives is that while the PEA is personally liable for professional omission or malpractice, the liability for any such default on behalf of the SEA is borne by the state. Presently the Bulgarian state has not granted the professional "discretionary initiative" prerogative to that particular civil office.

The creditor may request the enforcement agent to impose an attachment on property (or movables) of the debtor located in an area outside the enforcement agent's territorial jurisdiction. After the attachment is recorded, and in case that there are not eligible assets subject to enforcement in the initial case jurisdiction, the enforcement agent must transfer the enforcement file to a colleague with territorial jurisdiction with the purpose of inventorying and eventually auctioning the property.

In cases a debtor's claim on receivables owed to the debtor by a third party with



domicile (or headquarters) located in another judicial district is subject to enforcement, the enforcement file is not to be transferred.

Upon request of the creditor the enforcement file may be transferred and further processed by another enforcement agent in the same area of jurisdiction. Both the debtor and the liable third party must be notified of the file transfer. The costs related to the transfer of the case are born by the creditor.

III.2 Enforcement against movable assets to settle pecuniary claims

Enforcement against movable assets is a sequence of several consecutive actions, namely: attachment, inventory, appraisal and public sale (auction). The CPC provides that the attachment of a movable asset must be effected through inventory by the enforcement agent. From a statutory point of view, the attachment is accomplished by setting the description of the item in the inventory record, regardless of whether the debtor is notified of the fact. Attachment may also be imposed by sending a notice of the attachment to the debtor on the condition that the item is definitively individualized.

The attachment and inventory of the debtor's assets are executed upon the request of the creditor. A private enforcement agent has the prerogative to levy attachment and direct an inventory by their own discretion if the creditor has granted an authorization under Art. 18 of the Private Enforcement Agents Act, i.e., to solely determine the manner of enforcement.

It is vital for the legitimacy of the process that the enforcement agent definitively determines that any movable item (or any number of such) subject to enforcement is owned by the debtor. A statutory assumption provides that a movable item in the debtor's factual possession indicates property of the latter. The logic behind such provision is that very few categories of movable items (such as motor vehicles, farming equipment, firearms etc.) are subject to mandatory registration (i.e., the owner is known to the public). In the absence of such assumption, it would be extremely hard to gather sufficient evidence of the debtor's ownership. The debtor's statements that certain items in their possession are not actually theirs are irrelevant for the validity of the attachment. A diligent enforcement agent should, however, take notice of that and act in consideration of all evidence available on sight. A third party's property claim concerning an attached item must be recorded in the file record. Any third party claiming aggrieved property rights is entitled to a formal complaint thereof with the corresponding officer's obligation to rule on it and if the ruling is challenged, to forward the complaint to the competent court.

The kind of movable assets, being attached by a simple notice, containing their registry identification are motor vehicles (including specialized ones such as farming, construction, toll etc.), floating vessels and airplanes, as well as cattle subject to registration. In the case of a statutory register, the notice of attachment served on the debtor, must be accompanied by a notice to the corresponding agency maintaining the registry database.

Individualizing movables in the file record ensues the legal consequences of an



attachment. From that point on, there is a ban to either transfer the property rights on them or dispose of them and any such transfer bears no effect as far as the creditor's right to invoke enforcement against the asset ("relative invalidity"). In practical terms, once the item is attached and then transferred by the debtor, the enforcement shall proceed against such asset regardless of any third person's possession or claim.

An inventory record is carried out at the location of the debtor's movables, not necessarily in the debtor's presence. The debtor however, must be formally notified of the time and date of the inventory. The enforcement agent must appoint a date for the public sale of the assets, as long as the creditor has so requested, or the private enforcement agent has been given the authority under Art. 18 PEAA. Once the attachment is imposed, the enforcement agent must assign the safekeeping of the movables, an act that proves to be crucial to the effectiveness of the enforcement in practical terms. A prudent keeper would facilitate the sale by maintaining the item in the condition in which it was appraised and granting access to potential bidders. Should safekeeping be conducted in bad faith, it could render the enforcement fruitless. Although an item under distraint is left to debtor for safekeeping by statutory default, the enforcement agent holds the discretionary prerogative to grant the safekeeping either to the creditor or to a third party.

Joint ownership of assets raises specific procedural issues in the context of the enforcement process. The law provides certain opportunities for the non-indebted joint owner to keep the property by partially paying the debt as well as some protection to the effect that the value corresponding to the joint owner property rights is disbursed to him/her rather than to his/her co-owner's creditors. In this context, spousal joint property is subject to further regulation.

There are two types of property between spouses – individual for each spouse (owned before the marriage, inherited etc.) and joint matrimonial property over assets acquired during the marriage. Unless otherwise formally agreed (by duly registered agreement¹²), all property rights acquired during the marriage as a result of joint contribution, belong jointly to both spouses, regardless of in whose name they were acquired.

The creditor of one of the spouses may recover their claim by enforcement on assets, which are joint matrimonial property. In such case the law provides an option for termination of joint matrimonial property. The non-indebted spouse must be notified about such enforcement. In the case of assets subject to joint property, the law provides they are sold in their entirety, while half the price is disbursed to the non-debtor spouse. It must be noted that this arrangement is not applicable to jointly owned real estate, subject to enforcement, where only the proportionate share owned by the debtor is to be attached, inventoried and auctioned.

The creditor is not obliged to exhaust all options related to the debtor's personal

¹² Any agreed property relations between the spouses (other than presumed joint matrimonial ownership) are subject to registration according to Art. 19 of the Family Code.



property as a prerequisite to attach joint property. At the same time, the non-debtor spouse may propose the debt to be enforced against the debtor's personal property. In such case the proceedings against the joint property are ceased and eventually continued if the alternative has proven to be insufficient to satisfy the debt. The non-debtor spouse may even move to prevent the enforcement against the auctioned matrimonial property, if before the beginning of the auction (in the case of movables), or before the deadline for filing written offers (in case of public sale of real property) he/she pays the value of the debtors share to the enforcement agent's special account. The non-indebted spouse may also take part in the auction and bid. He/ she holds the privilege to acquire the property at the highest bidding price.

The sale of movable property can be carried out by four alternative methods – by a retail establishment, via the respective commodity market, depending on the specific item(s), through open auction via direct bidding and according to the rules of a public sale of a real property.

While selling the debtor's property in a retail store or through commodity market is rare, auctions with direct bidding are regularly used as a selling method and prove to be quite effective. A common feature of the first three selling methods is that the creditor is not entitled to purchase the property by offsetting the debt, as provided for in Art. 461 of CPC. Should the creditor, initiating the enforcement, decide to partake in the sale, he/ she must pay full price, which is then distributed (alongside the proceeds of other debtor's goods) among all creditors of said debtor. If the item is on public sale, the creditor may file an offer and ultimately pay the remaining part of the bidding price should it exceed what he/ she is owed.

The starting bidding price on open auction or public sale is 85 percent of the value of the movable assets. The time and terms of the auction must be publicly announced. The auction is conducted by the enforcement agent who announces the respective article, the bidding call and the "hammer price". If the auction fails because of lack of bidders, the unsold items are to be released from distraint.

Movable property valued above BGN 5,000, motor vehicles, ships and aircrafts are to be sold in the context of enforcement according to the rules of a real estate public sale. For items below BGN 5,000, the public sale method is optional, depending on the enforcement agent's discretion or the express request of the parties¹³. The transfer of ownership of an item sold via auction or public sale takes effect upon payment, and the keeper of the article is immediately notified.

The proceeds disbursement method depends on the number of creditors (claimants) in one case. If there is one claimant in the process, the enforcement agent would pay

¹³ Public sale of real estate in Bulgaria is a very formal and resource consuming procedure lasting on average no less than 40 days from the date of the inventory. It demands thorough announcement and notification to multiple parties and institutions, safekeeping that guarantees both the preservation of the asset and liberal access to it by any interested party for viewing. Formal offers, subject to statutory regulation are tendered to the court clerk's office and, when qualified by the enforcement agent, potential buyers may participate physically (or via an attorney) in an open bidding in designated premises of the district court.



him/her, deducting the fees and costs related to the enforcement procedure. The payment is to be recorded on the back of the writ of execution as reduction of the debt.

In an instance of more than one claimant, a formal act of allocation of the proceeds must be drafted and presented to all entitled parties, the latter being officially summoned for this purpose. If the amount has come from the attachment of a third obliged person (employer, bank, etc.) or voluntarily paid by the debtor - the distribution includes all claimants in the enforcement case. The allotment follows strict rules of entitlement related to statutory privilege. Thus, creditors with recorded collateral, such as mortgage or lien, are to be satisfied prior to other creditors with no such collateral. Under certain conditions, municipal and state tax and revenue authorities hold a privilege related to taxes and/or other public dues.

The debtor and the creditors have the right to appeal the allocation before the Provincial Court.

III.3 Attachment on the bank account of the debtor

Attachment of receivables is one of the most commonly used methods of debt enforcement. The main types of attachments are of bank account, salary or pension and attachments on receivables owed to debtor by a third party.

The attachment may be imposed at the request of the creditor or at the discretion of the private enforcement agent, if the creditor has granted authorization under Art. 18 PEAA.

To locate the debtor's account the enforcement agent files an electronic inquiry with the Register of the Bulgarian National Bank (BNB). The Register would inform the enforcement agent of the respective banks and debtor's accounts maintained there, but not of the amounts; the latter being protected data under the law.

The attachment on the debtor's funds is imposed on the bank (considered by the CPC a third liable person for the amounts available) from the day of service of the notice for attachment pursuant to Art. 507 CPC. The attachment is imposed within the limits of the debt. Within seven days of the service, the bank must inform the enforcement agent whether it accepts the attachment, whether it shall pay entirely or in part, and whether there are previously imposed attachments on the same account(s). If the bank does not dispute its obligation, the respective amount must be transferred to the enforcement agent's special account. As of the day of the receipt of the notice, the bank bears the obligations of a keeper of the debtor's attached receivables.

In the notice of attachment the enforcement agent should inform the bank that deductions should not be made in the presence of non-sequestrable sums, within the meaning of Art. 446 of the Civil Procedure Code, and the amount of the minimum wage up to date at the time of the deduction, as well as other incoming non-sequestrable amounts. An explicit liability rule is stipulated as a sanction for disproportionate excess of the attachment of funds compared to the amount of debt under the title. Non-sequestration of the income received by the debtor, as well as of



social assistance and subsistence benefits under another regulatory act, are protected even if such funds are deposited into a bank account, but no longer than one month before the attachment. Henceforth such funds are considered savings rather than subsistence and are subject to enforcement. The attachment would not take effect with respect to pension income up to the amount of the minimum wage, except for debts arising from maintenance obligations (alimony, child support etc.). When it is evident that the source of the funds is salary or wage, the bank should not execute the attachment up to the amount of the minimum wage except for maintenance obligations.

In case of an obstacle to pay the amounts under attachment, the bank must notify the enforcement agent, and must specify if the debtor's pension or job-related income is deposited in the respective account. Within one week of receipt of the notice of the debtor's objection for the existence of non-seizable income, the enforcement agent must notify the bank about the part to be transferred, pursuant to Art. 446 CPC. In case there are more than one standing attachment orders, the bank shall proceed with payments following the sequence of entry of said orders.

III.4 Enforcement against savings deposits and current accounts

There is not separate legal framework regulating the enforcement against savings deposits and current accounts other than these described in section III.3. For the issue, please refer to section III.3 *supra*.

III.5 Enforcement on immovable property

Enforcement on any real property in Bulgaria, not limited to plots of land within urban areas, agricultural land, forests as well as buildings (and premises within) is conducted by the enforcement agents. It commences with imposing an attachment (distrain) and is concluded with the transfer of the auctioned property - the disbursement of the proceeds from the public sale. The prerogatives of the enforcement agent are limited within the powers granted by the title (as described in I.2 *supra*) as well as subject to compliance with the statutory debtor's protection (see I.7 *supra*). Unlike other European jurisdictions, notaries are not involved in the public sale or in the finalization of property transfer, banks are not authorized to disburse money constituting the price of the auctioned property and judges (with the exception of adjudicating an appeal) are not involved in the imposition of the distrain.

Enforcement on immovable property begins with the imposition of attachment (distrain). The moment from which the attachment is deemed effective is the entry into the record of the Registry Agency. Any transfer of ownership, as well as legal encumbrances after that moment are deemed void against the right of the creditor (who has invoked the attachment) to enforce against the property. Despite strict rules for local jurisdiction, any enforcement agent administering a valid title may impose an attachment on a property across the country. For the purpose of inventorying, appraising and selling the property, the file must be transferred to an enforcement agent with local jurisdiction over the location of the property. The competent enforcement agent must formally and unequivocally ascertain that the property was



owned by the debtor at the time of the attachment.

An inventory is scheduled upon the creditor's request or by discretion of the private enforcement agent, if authorized under Art. 18 of PEAA. The inventory notice may also be incorporated into the notice for voluntary compliance. The property must be individualized by the relevant cadastral parameters or other specific relevant description pursuant to the title of ownership of the debtor. The debtor must be notified of the date. The inventory is valid, regardless of the presence of the parties, as long as they (and explicitly the debtor) are formally notified.

There are minimal statutory requisites for legal soundness of the inventory record such as legal description and present condition of the property, ownership title and legal encumbrances, due taxes, initial auction price, third parties, claims, etc.

The appraisal of the property is conducted by a licensed appraiser appointed by the enforcement agent. In practical terms, the appraiser is present on site at the time the inventory is conducted, observing the actual condition of the property, considering both betterments and defects. Regardless of their presence, the parties may object to the appraisal within seven days. The party challenging the established value must suggest another licensed expert and pay the cost of another appraisal. Given two or more different appraisals in one case, the value is set as the average (arithmetical mean) of all appraisals. The starting sale price is 80 percent of said value, but cannot be lower than the value established by law for taxation purposes (given that such value threshold exists¹⁴).

The procedural rules put a particular emphasis on the public announcement of the sale, as a guarantee that the realty market is aware of the sale and so are the parties with legitimate interest and/or claims thereof. The sale notice contains a set minimum of mandatory requisites such as owner, description of the property, mortgage(s), whether there are limited rights *in rem* or filed claims at the time of the imposition of the attachment, etc. The starting price and the exact period during which written offers can be filed (30 days duration "from-date-to-date") must be stated as well. The announcement must be posted at the designated places in the enforcement agent's office, in the building of the provincial court, in the municipal and/or mayoral office of the respective administrative district, and on the property itself. Publication on the website of the provincial court as well as in the Public Sales Register of the Chamber of Private Enforcement Agents (sales.bcpea.org) is also mandatory, if the file is handled by a PEA one day prior to the beginning of the sale. Viewing time for potential buyers is established. A deposit of 10% of the starting price is paid by each applicant to the enforcement agent's special account. Bidding creditors do not pay such deposit if the amount of their claim exceeds said 10%. The bidding offer must be in writing with specific designation and contents. Pricewise, the offer cannot be less than the starting price and not in excess of 30% of it. Sealed offers are submitted and registered by the clerk's office of the district court with local jurisdiction. On the appointed day and time, the enforcement agent opens the offers in the designated court premises

¹⁴ Not all real property in Bulgaria is taxed (e.g., agricultural land is exempt), hence valuation estimates are not universal for all plots of land and/or estates.



and creates an auction record for the enforcement file. In case of more than one offer, attending applicants are invited to make their verbal bids, each consecutive bid being limited to the amount of the statutory deposit of 10%. All bidding calls are recorded in the minutes. The highest bidder is declared a buyer and is invited to pay the remainder of the price (minus deposit) within 14 days. Deposits of the other bidders are subject to refund, but a refund would take place only after payment-in-full by the declared buyer. If the latter fails to meet this obligation, their deposit is forfeit by the enforcement agent to satisfy the debt, and the next highest bidder in line is declared a buyer and respectively invited to pay. The procedure would continue until the bid price is paid.

Enforcement on joint property bears similarities with the procedure concerning joint ownership described in III.2 supra. The law, however, introduces certain specifics for real property subject to enforcement. Enforcement against jointly owned real estate is performed by an inventory of the entire property, but only the proportionate share, owned by the debtor, is to be attached and eventually auctioned. The non-indebted joint owner (in many cases a relative, with property rights resulting from inheritance or marriage) is to be notified. Such joint owners are granted certain privileges either to acquire the entire property by joining the auction or to state their will that the property is sold in entirety, hence attracting more bidders and ultimately achieving a higher price.

A non-debtor spouse (with stake in the property) may prevent the sale, should he/she pay the part of the initial price equal to debtor's share before the beginning of the public sale. By paying the debtor's share, the non-debtor spouse acquires sole ownership.

The distribution (allocation) of the proceeds amongst the creditors follows the same procedural rules as described in part III.2 supra. In the instance where the bidding creditor is declared a buyer (in case of a single creditor), the enforcement agent must state in the record the amount payable by the creditor, deducting the amount owed by the debtor from the final price. In case the achieved auction price is less than the amount of debt per title, the enforcement agent presents the buying creditor with the amount of taxes and fees due to acquire the property.

In case of more than one creditors, the enforcement agent must draft an act of "preliminary" allocation stating the proportionate amounts (corresponding to each of the joint creditors' claims), which the bidding creditor who has been the declared buyer, must pay respectively to each joint creditor. Said act of allocation is subject to an appeal and, once in force, binds the declared buyer to pay the sums allotted to the entitled parties within seven days.

Failure to pay the selling price in all instances described above would result in the creditor-buyer's liability for damages as well as for the costs related to the sale. The defaulting buying creditor's claim is reduced with the amount of the deposit (10% of the initial price), and the next bidder in line is proclaimed a buyer. If there are no other bidders left, the property is put up for a new sale.

Upon payment of the price by the buyer, the enforcement agent issues an act of entitlement in the name of the buyer, effectively transferring the ownership of the auctioned property. Said act is subject to appeal by the debtor and by all participants in the public sale within 14 days from notification. Once into force, the buyer acquires all the rights that the debtor had on the property. Any rights acquired by third parties on the property cannot be validly claimed against the buyer if those rights cannot be validly pressed against the creditor. The act of entitlement is to be recorded in the Registry Agency database.

III.6 Enforcement against wages and other permanent pecuniary income

Attachment on the salary or other periodic income of the debtor is imposed by sending an attachment notice to the employer or (in case of a pension) to the National Social Security Institute (hereinafter NSSI). The debtor must also be formally notified. The attachment may be imposed at the request of the creditor or at the discretion of the private enforcement agent under authorization pursuant to Art. 18 PEAA. Information whether the debtor has a valid employment contract or a pension can be obtained by the enforcement agent through the NSSI database.

regular salary or any form of compensation for work such as income derived as a freelancer, as well as based on managerial contracts, audit and control contracts, relate bonuses etc. could be subject to income attachment.

Certain (non-seizable) income is protected under statute as stated in I.7 supra. The law (Art. 446 CPC) limits enforcement deductions on the debtor's income to guarantee certain sustenance minimum. The debtor's family status shall be taken into account. The deduction for enforcement purposes is made of the entire "net" income, i.e., remuneration (including basic salary, supplementary premiums, bonuses, etc.) minus statutory tax and social security dues.

If the title is legally grounded on a maintenance obligation (child support, alimony, etc.) the entire income is sequestered; hence, the protection of the rules for non-seizable minimum do not apply.

Within seven days of the notice of attachment, the employer (or the pension department respectively) must inform the enforcement agent whether they accept the attachment, whether they are ready to pay it in whole or in part, as well as whether there are previously imposed attachments thereof. The invitation to provide this information is contained in the attachment notice. If the payer does not dispute the obligation to pay the debtor, being a third liable party, they shall transfer the due payment to the enforcement agent's special account. From the moment of receipt of the attachment notice, the employer (or the pension department), bears the obligations of a keeper of debtor's receivables.

Certain practical problems arise in the instances of simultaneous attachments of the income and of the bank account in which the debtor receives said income. The result would be a "doubled" deduction on the same grounds. Such adverse development is a result of the enforcement agent's lack of awareness about the funds kept in the attached account, in terms of source and amount; the latter is protected information



under the Credit Institutions Act. In such cases, the debtor is advised to submit an account statement, indicating the amounts and their source. Upon receipt, the enforcement agent would consider releasing the funds, which are protected by law.

III.7 Attachment under the debtor's debtor

Attachment on the debtor's receivables from a third party can be imposed at the request of the creditor who would define any such amounts due to the debtor. Under authorization under Art. 18 PEAA, a private enforcement agent may attach the debtor's receivables, representing money due to the latter by a third party. The source of information about the debtor's receivables may vary widely, though in practical terms with traders (being debtors) the enforcement agent may obtain information from the Revenue Service for invoiced goods and services to clients, whose payments to the debtor are pending. The attachment would take effect by serving an attachment notice to the third obliged party as well as a notice to the debtor. Within seven days of service, the third party should inform the enforcement agent whether the attachment is accepted, whether the party is ready to pay it entirely or in part, and whether there are previously imposed attachments. The invitation to provide this information is contained in the attachment notice. In case the third party does not dispute the obligation, a payment of the amount due to the debtor must be paid to the special account of the enforcement agent. In case certain goods or other tangible assets are owed to the debtor and these are subject to attachment, the debtor's debtor must hand them over to the enforcement agent or to a duly designated keeper. From the day of receipt of the notice, the debtor's debtor bears the obligations of a keeper in respect of the attached debtor's receivables and/or assets.

The legal effect of the attachment with regard to the parties in the enforcement case is the debtor's inability to validly (from the perspective of the creditor's legal rights) dispose of his/her entitlement to the attached receivables. After receipt of the enforcement agent's notice, the debtor cannot transfer, forgive, pledge or novate the claim, or offset it with a counterclaim. Any such action would not affect the creditor's rights to claim the attached receivables. The creditor's right to invoke the liability of the third party who is in debt to the debtor, should the latter transfer the attached interest to anyone other than the enforcement agent (or other duly designated person) will also be preserved. In addition, the debtor cannot pursue the claim over an attached interest in court or settle it without the involvement of the creditor. However, the attachment by itself does not suspend the limitation period after which the attached debt is considered written off, until it has been assigned for collection or instead of a payment.

Procedural law provides alternative mechanisms to satisfy the debt in case of non-payment by third persons owing to the debtor. These are *assigning the debtor's claim for collection* and *awarding the claim instead of a payment*.

The creditor is entitled to request from the enforcement agent to formally assign the debtor's claim to him/her for collection or instead of a payment. The enforcement agent would formally rule so if the third party with obligation to the debtor would not pay or dispute the claim. The enforcement agent's order is not subject to appeal and

grants the creditor legitimate status of a procedural substitute for the debtor. The creditor may pursue the claim through all necessary filings on behalf of the debtor and may take any legal action to collect. In case of effective collection, the entitled creditor must deposit the sums in the enforcement agent's special account for allocation and disbursement.

The attachment of the receivable assigned for collection may be general - on all claims of the debtor toward a third party - but the assignment itself must be made in relation to a specific (individualized) claim. Assigning a claim for collection is rarely used in practice because the law provides that all collection costs be borne by the designated claimant. There is no privilege in favor of the designated claimant compared to the other joint creditors in the initial enforcement case. Art. 513 CPC adds an extra burden; the creditor to whom the claim is assigned is liable for all damages, which are a direct and immediate consequence of any delayed action on the assigned claim.

The assignment of a claim instead of payment carries the practical effect of a compulsory cession. The enforcement agent acts on behalf of the debtor and transfers the claim to the creditor. The transfer itself has the effect of both changing the owner of the claim and of automatically offsetting the creditor's claim against the debtor in the enforcement case. Assignment instead of payment is a formal ruling of the enforcement agent at the request of the creditor. The third party (indebted to debtor) must be notified. The assignment takes effect from the moment of the notification. After the assignment, the debtor's claim to the creditor is considered satisfied if the two receivables are equivalent in value, otherwise they are offset to the amount of the lesser one. The legal consequences are that the debtor no longer has a claim, and the creditor, respectively, acquires the same rights against the third party which the debtor previously held. The assignment of a claim instead of payment is not included in the enforcement agent's acts, which are subject to appeal.

In either case, assigning for collection or instead of payment, the third party's response of recognition of the claim is irrelevant to the validity of the assignment. Whether the claim exists and whether the payment has not been made should be taken into account at the moment in which the claimant proceeds to pursue the claim, and, respectively, to collect on it.

III.8 Enforcement against shares

III.8.1 Enforcement against material securities¹⁵

The rationale behind this enforcement instrument is to employ the respective value of the debtor's shares in the capital of certain corporation as means to satisfy the debt. In practical terms, however it is hardly an effective method, much less widely used. That is due to the limitations of the Bulgarian stock trading in general as well as due to lack of tradition in that particular commercial area.

¹⁵ "Material securities" means shares in the capital of a joint stock company. Verbatim translation of the term used in CPC is "available precious documents (or papers)" which relates to the fact that that this particular type of stocks is printed on paper or that (as is the general case) their availability is manifested by "temporary certificates", the latter denoting the issuance of certain number of stocks.



A major hindrance to the effectiveness of the method is posed by the statutory requirement for physical seizure of the documents denoting shares by the enforcement agent. The debtor's cooperation is seldom and not effectively warranted. Attachment of material securities is accomplished through inventory and depositing in a bank. In case the securities are not found in the debtor's possession, the officer shall invite the debtor to deliver those within two weeks. Upon the debtor's default, the enforcement agent shall authorize the creditor to file a request for the annulment of the securities with the court. Upon a decree of annulment of the material securities, the enforcement agent may proceed with a public sale of the corresponding capital shares according to the rules for a real estate auction. If debtor presents the securities to the court or in a bank, the annulment proceedings shall be terminated and the securities shall be transferred to the enforcement agent.

When an attachment on registered¹⁶ shares or bonds is under way, the enforcement agent must notify the respective company. The attachment is effective for the company from the moment the attachment notice has been received. The attachment encumbers all property rights denominated by the securities under distraint. If the enforcement agent is unable to physically locate the debtor's registered shares or bonds, when the debtor has not submitted them voluntarily, the company shall be formally ordered to issue duplicates for the purpose of enforcement. A failure to act would ensue a penalty in the form of a fine on the defaulting manager or executive body. The procedure of judicial annulment of material securities described above is then applicable to registered shares and bonds.

Following the attachment, the creditor may request either an assignment of the claim on the securities for collection or instead of a payment or, alternatively, a public sale of said securities.

The material securities (individual or in packages) are auctioned by the enforcement agent in accordance with the rules for public sale of immovable assets under CPC.

III.8.2 Enforcement against dematerialized securities

Dematerialized securities owned by a debtor could be subject to enforcement through attachment followed by (alternatively): a public sale or the mechanism of assigning debtor's pecuniary rights denominated by the securitized instruments for collection or instead of a payment, described in III.7 supra. The attachment is attained by sending an attachment notice to the Central Depository, whilst simultaneously informing the company. The Central Depository shall immediately notify the regulated stock exchange in charge of trading the securities under seizure. In the instance of government securities, the notice of attachment is sent to the authority keeping record of the respective securitized instruments.

The attachment is effective from the moment of service of the attachment notice and places under distraint all property rights denominated by the securitized instruments.

¹⁶ Unlike the "material securities" whose ownership is manifested by the fact of the simple possession, the owner of registered shares or bonds is recorded in the respective company ledger as well as in the Commercial Register.



The registering authority must inform the enforcement agent within a week about the type of the debtor's securities, whether there are other attachments imposed thereof as well as about the claims on which they are based. Upon attachment, dematerialized securities are at the enforcement agent's disposal. If securities are actively traded on the stock exchange, the sale shall follow the established rules of the respective market.

III.8.3 Enforcement against debtor's corporate shares

The debtor's corporate shares as subject to enforcement provide efficient means for the satisfaction of the debt, provided that the company is operational and its business assets are substantial compared to the debt of the shareholder. Although a corporation *per se* is not liable for the debts of the respective shareholder, the law provides a way for the creditors to pursue a claim against a corporation, and indirectly towards other shareholders, with the ultimate purpose to satisfy the debt within the limits of the debtor's share.

The creditor of a shareholder may attach his/her debtor's shares by filing an attachment notice with the Registry Agency. The Agency shall inform the company.

The enforcement procedure varies depending on the type of company and the extent of the liability of the shareholders. In that regard, the two types of shareholders are those with liability (related to the obligations of the company), which is limited to the value of the owned shares, and shareholders (potentially) liable without such statutory limitation.

In the case of a shareholder whose liability is not limited by statute, if enforcement against the debtor's personal assets has not been effective for a statutory period of 6 months, the enforcement agent may impose an attachment on the liquidation share of the debtor and serve (to the company and to the other shareholders) the creditor's statement for termination of the company. The company must assess its capital by preparing an *ad hoc* balance sheet and respectively transfer the worth of the indebted shareholder's liquidation share to the enforcement agent's special account. The termination of the corporation then depends on the arrangements in its article of incorporation, the alternative being the cancelation of the indebted shareholder's participation. The creditor may further obtain the enforcement agent's authorization to file a lawsuit for the termination of the company with the provincial court. In case of a remaining debt and ongoing enforcement proceedings, the court may declare termination and consequent liquidation of the corporation.

In case of a shareholder with limited liability by statute (either in a solely owned Ltd. Co. or in a Ltd. Co. with more than one shareholder), the enforcement agent serves the company the creditor's statement for termination. After expiration of the statutory deadline (given that the company does not pay the debt entirely, even if it pays to the enforcement agent the estimated value of debtor's share) the enforcement agent would authorize the creditor to file a lawsuit for the termination of the company with the provincial court. The court would reject the termination if the company has paid to the creditor the *pro rata* value corresponding to the debtor's

share in co.'s capital according to an *ad hoc* balance sheet.

III.9 Other attachment procedures

III.9.1 Enforcement against pledged commercial enterprise in its entirety or in part

A private enforcement agent by authorization of a creditor holding a special pledge as a collateral, may sell the debtor's pledged commercial enterprise in its entirety (or a subdivision thereof), as stipulated by art. 15 and 16 of The Commercial Act. When selling separate elements (functional subdivisions, branches etc.) of an enterprise, these must be explicitly defined and individualized, as per art. 46, para 1 of the Special Pledges Act.

The creditor holding a special pledge as a collateral (or an appointed proxy manager) is entitled to satisfy their claim by utilizing the income generated by the pledged property or business, e.g., by renting real estate or part of the commercial enterprise, leasing movable assets and/or other legitimate ventures. Such operations cannot be performed by the enforcement agent. Private enforcement agents' prerogatives in the above context are limited to handing over the pledged movables, transfer of possession of the commercial enterprise and/or part of it consisting of real estate, as well as (given certain statutory prerequisites) to perform enforcement under the rules of CPC.

III.9.2 Enforcement against industrial property (IP) rights

Rights related to trademarks, patents, utility models, industrial designs, integrated circuit topology or certificates for plant variety and/or animal breed are legitimate subjects to enforcement, should the debtor's entitlement be formally established. The sale of the aforementioned rights is conducted by the enforcement agent under the rules of a real estate public sale. The initial bidding price is determined according to art. 468 and 485 of CPC (see III.5 supra).

In order to secure the claim of the creditor, the enforcement agent may impose an attachment on the IP right of the debtor. In order for the attachment to take effect, besides being served to the debtor, it must be entered in the official IP register maintained by the competent government authority. The attachment takes effect for the owner of the IP or the licensee from the date of receipt of the notice of attachment, and for any third party from the date of its entry into the relevant register. Upon accomplishment of the sale, the transfer of the IP rights shall be entered in the state register at the request of the buyer or the enforcement agent, accompanied by an Act of entitlement to the right acquired. A certificate is issued to the new holder.

In case of enforcement against industrial property objects, the rules of art. 21 of the Trademarks and Geographical Indications Act, art. 4 of the Law on Patents and Registration of Utility Models, art. 24 of the Industrial Design Act, art. 19 of the Law for the Topology of the Integrated Circuits and art. 6 of the Law for Protection of the New Varieties of Plants and Breeds of Animals shall be applied accordingly.

III.9.3 Sale of a pledged property under the provisions of art. 10, para. 2 of the SPA

in connection with art. 426, para. 1 of the Civil Procedure Code

Enforcement actions are carried out according to the provisions, stipulated in the Civil Procedure Code. An invitation for voluntary compliance is sent to the debtor with a notice of attachment of the property. Following inventory of the asset under pledge, a public sale is carried out, under the rules of CPC for the respective kind of assets.

The pledged property is transferred to the buyer immediately after the payment of the price. The appointed guardian shall be informed henceforth and must hand over the assets (grant access to the premises/estate) to the buyer upon notification. In case of a sale of a real estate, the ownership is transferred by an Act of entitlement issued by the private enforcement agent.

The proceeds from the sale are distributed by the private enforcement agent following the rules of art. 460 of the CPC in connection with art. 136 Obligations and Contracts Act. Enforcement agent's act of allocation of proceeds is presented to all entitled parties and is subject to an appeal and judicial review under the provisions of the CPC.

III.9.4 Sale under art. 18, para. 4 PEAA

The private enforcement agent may sell pledged property as collateral for debt under the rules of SPA based on an assignment by the pledge creditor, exercising the creditor's right to obtain satisfaction from the value of the property encumbered as per pledge agreement. In such case, the proceedings represent a private civil matter, respectively the private enforcement agent acts in his/her capacity of a professional marketer of encumbered assets, rather than a public official.

The process shall commence by a pledge creditor filing a petition to initiate proceedings under the SPA by selling a property under pledge with respective authorization pursuant to art. 18, para. 4 PEAA. The creditor addresses a petition (with official extract from the Central Pledges Registry (CPR) attesting to the registered pledge and filed statement to commence execution on the pledged property) to the private enforcement agent's office. The pledge creditor must also present evidence for the notification of the pledge debtor with regards to the initiation of proceedings.

Property under pledge is sold via auction with a starting price determined either by the private enforcement agent or an expert in the respective field, depending on the conditions in the assignment agreement. If the value of the property is indicated in the SP Registry record, bidding may begin from there. A formal notice for the sale must be published and sufficiently disseminated following the established standards of trade. The auction must be formally recorded, including the minutes reflecting the process of bidding and the appointing of a buyer in the person of the highest bidder. The actual title attesting to the property transfer would depend on the specifics of the auctioned article (set of commodities, complex of assets etc.). If the pledged assets are motor vehicles or a commercial enterprise (the whole or a functional subdivision), a sale agreement shall be signed with the designated buyer. If the asset is a real estate, the statutory form of property transfer is a notarial deed, processed and duly recorded by a licensed notary public. In case a business (commercial enterprise as a complex of assets) is auctioned, some of the assets being real estate, the form of



transfer is still a sale agreement (contract), yet a mandatory requisite for the validity of the sale is the recording of said document in the Property Register of the Registry Agency.

Proceeds from the sale are distributed by the private enforcement agent in his capacity of a depositary (art. 18, para. 4 PEAA), under the rules and in the order stipulated in the Special Pledges Act. The depositary shall draw up a list of creditors entitled to the pledged property on the basis of the data in the relevant register, defining the amount and the order of privileges of each claim. The list is brought to the attention of the pledgor, the debtor and the entitled claimants by the private enforcement agent and announcement in the respective register is entered. Interested parties may file objections within two weeks. With consideration of the objection, the depositary prepares and announces a final list with the disbursements. The latter is subject to an appeal before the competent district court at the domicile of the pledgor. The court's ruling is subject to review under Art. 278 of the CPC. Upon final judicial sanction of the list or entry into force (if not appealed), the depositary enforcement agent must finalize the factual distribution. Any remainder of the amount collected must be handed over to the pledgor, if within 14 days from the announcement he/she presents a certificate for absence of public dues under art. 87, para. 6 of the Tax and Social Security Procedure Code.

III.10 Handing over movable assets

The object of the claim under the present section is an individualized movable assessed, particularly defined to be repossessed by creditor. Accordingly, the debtor's failure to deliver after due notification shall be followed by a forcible seizure by the enforcement agent and a transfer of possession to the claimant. Should the asset be found in the possession of a third party (regardless whether in physical possession or located on the third person's premises, estate etc.), the enforcement agent must investigate whether said party claims ownership over the article of its own right, or exercises factual possession for the debtor. In the former case, the enforcement agent does not have prerogative to repossess the item, since the third person does not have the capacity of a debtor according to the title. If the third person exercises only factual possession for the debtor, the item can be taken by the enforcement agent and respectively handed over to the claimant.

If the article could not be found or has perished (entirely or in part), the debtor is liable for its value, which is then collected from him/her through the respective procedural means. If the value of the item is not indicated in the writ of execution, it shall be determined by the enforcement agent who has the power to conduct interviews with the parties as well as with witnesses and experts in the relevant field. The enforcement agent's ruling for the equivalent value is subject to an appeal within two weeks from its issuance. Judicial review (upon an appeal) is conducted at an open hearing after summoning the debtor and the claimant. The ruling of the provincial court may be appealed before the court of appeals, whose ruling is final.

III.11 Enforcement in reinstatement of employee to work



This instrument is a judicial remedy against unlawful dismissal from work. Generally, in Bulgaria, it does not involve exercising prerogatives by an enforcement agent or processing an enforcement case. The claim for reinstatement may be brought to court independently after the dismissal has been found unlawful in a separate lawsuit. In most cases, however, the action for recognition of the dismissal as unlawful and for reinstatement are filed and processed by the civil court simultaneously. While filing for reinstatement, the employee shall pledge readiness to continue with their former duties.

Should the claimed award be granted by the court, the employee shall have the right to assume the position held before the unlawful dismissal, hence the employment relationship shall be reinstated as if it had never been terminated. Job termination shall be struck from the employee's record as unlawful. A favorable judicial award for the employee would also retroactively reinstate the period after the dismissal as an accrued work experience as well as time served for social security purposes. A favorable decision grants an employee the right to assume the position previously held, but does not generate a respective obligation to said employee. In case the claimant (through the duration of the lawsuit) is no longer interested in continuing the employment relationship, the latter shall be terminated. Otherwise, the claimant must assume their position within two weeks from the notification for reinstatement.

The violation of the obligation stemming from a judgment for reinstatement by not actually allowing the employee to their former workplace on behalf of employers is not uncommon. Such factual hindrance may result to inability of the reinstated employee to assume duties within the statutory deadline, thus creating grounds for a disciplinary dismissal. To demonstrate a bona fide attempt to begin work after reinstatement (given formal or other hindrance), a reinstated employee may file an application with the employer's office stating their will to assume duties within the statutory deadline. If obstructed from doing so, the awarded claimant may employ the services of either a notary public or a private enforcement agent to officially serve the application to proceed with the job.

The employer's liability in case of continuing lack of compliance consists of a duty to compensate the employee with the amount of the gross wage for a period beginning with the scheduled appearance until the day the worker is actually allowed at the workplace.

III.12 Eviction

"Eviction" or "entry into possession" as would be the direct Bulgarian translation, in the context of the enforcement procedure under CPC, is a process of removing a party (either physical or legal person) altogether with any family members and/or employees, any personal belongings thereof, as well as any other items bearing either substantive or symbolic meaning of possession on behalf of the person against whom (or which) the title for eviction is issued.

Eviction may be based on either of the following grounds for execution:

- writ of execution based on a judgment in a civil suit;



- writ of execution based on an order for immediate enforcement, issued on the basis of a notarial act, agreement or other contract, where the obligation for transferring of certain property has been duly witnessed and officially certified by a notary public;
- act of entitlement issued by an enforcement agent with regard to an auctioned property, which has entered into force.

Outside the scope of judicially sanctioned titles for evictions, enforcement agents hold a prerogative to evict a pledgor under art. 35, para. 2 of the Special Pledges Act. Instead of a title, in this case, the enforcement prerogative is based on the pledgee's filed statement to commence execution on the pledged property. Should practical compulsion prove necessary, it could be employed under the applicable provisions of the CPC.

Eviction proceedings are initiated by formal notification of the debtor (person/entity obliged to vacate premises per title) to comply voluntarily, by removing themselves (family members or members of staff included) as well as all and sundry items representing and/or symbolizing the debtor's presence or possession within 14 days. A formal record is drafted by the enforcement agent for the fact of the vacation, noting that the claimant has been granted unrestricted access to all premises, the entire territory of a plot or an estate, etc. The debtor may comply in person or via proxy. If the debtor is duly notified, the entry into procession may also be conducted in the debtor's absence. The invitation for voluntary compliance must state the date and time of the eviction and transfer of possessions. The enforcement agent should consider the deadline and/or the period for voluntary compliance, while scheduling the date for eviction. In practice, any diligent enforcement agent would assess the logistical aspects of the removal and grant an adequate time frame for the debtor to comply. Any relevant humanitarian aspect must be considered too. If at the appointed time it becomes apparent that the debtor has not been informed of the date of eviction, the enforcement agent should postpone it to another date.

In case of non-compliance, the enforcement agent is entitled to invoke police presence and support as well as to employ locksmiths or technical experts to gain access to the premises or overcome physical obstacles. Although not explicitly stipulated by law, humanitarian considerations, legal tradition and (under specific relevant circumstances) relevant case law, may grant sufficient grounds for the postponement of the eviction. General examples of such "factual extensions" would be inability of an elderly debtor, debtor and family in dire economic situation, i.e., unable to find an alternative lodging, as well as sick debtor in need of healthcare. In such cases, although not directly required by law, a diligent enforcement agent would exercise their powers to inform the competent social care authorities, locate relatives, or just grant extension till weather conditions become favorable for the debtor to look for a shelter. All such considerations, however, must be carefully balanced in a context of mediation with the claimant, who is ultimately the entitled party exercising a judicially sanctioned right to obtain possession.

In the event that the debtor unlawfully regains possession, the claimant does not need



to pursue a new legal action to be reinstated, but rather request a new eviction within the same enforcement case.

Eviction ensues heavy consequences on the legal sphere against the addressee of such enforcement measure. Accordingly, procedural law envisages sufficient mechanisms for protection against unlawful eviction. The defense of a party subject to eviction would vary depending on the grounds as described above, in the second paragraph of the present section.

In case of an eviction based on judicial decree resulting from a civil lawsuit, the defendant's arguments are considered exhausted once the court had issued its final act, which has entered into force, either because an appeal has not been lodged or because all legitimate options of an appeal have been exhausted. The only reason of such eviction to be revoked would be technical – in case the debtor has not been duly notified 14 days ahead of the removal from property.

Understandably, the legal force and stability of an eviction title are valid against the debtor designated by the title. If a third party claiming their own rights of possession objects the eviction, the enforcement agent must take into consideration the moment since which such party claims possession. A third party who has assumed possession after the filing of the civil action resulting in the judgment being enforced, shall be evicted under the title based on said judgment. Alternatively, a third party who is able to present to the enforcement agent evidence of property entitlement, which derogates the rights of the claimant, shall be granted a three-day grace period to request suspension of the enforcement from the court. Upon review and consideration of the evidence, the court may grant suspension as well as a 7-day period for filing a civil action in the competent court based on the subject matter to prove their right of possession. After the expiration of said term, the third person's privilege to challenge the eviction is forfeited. If the eviction of a third party is annulled, the same enforcement agent must perform a "reverse" entry into possession. For the reverse entry into possession to be made, there is no need of a new writ of execution or a court decision, other than the one rendering the eviction void. In this case, the enforcement agent should inform the claimant about the circumstances and return the entitled party into the property.

III.13 Enforcement of obligations to act, refrain from acting or suffer action

II.13.1 Enforcement of duty to perform a replaceable action

Subject to enforcement herewith is a non-pecuniary action (refraining from action) or sequence of actions on behalf of a debtor. Such due behavior is defined in a judicial decree. In practical terms, since such prescribed conduct is predominantly related to removal (entirely or in part) of unlawful construction, reconstruction, or other alterations of previously existing structures (premises, fences, plumbing/sewer infrastructure) or, in other cases, repeated conduct infringing someone else's legal rights or privileges, the judicial document is often accompanied by an expert's technical scheme indicating the lawful structure (or any *status quo* before the infringement) or the scope or lines limiting or directing the due action (refraining from



such action).

The procedure is initiated by the claimant's petition accompanied by a writ of execution based on said judicial decree. The availability of the expert's scheme is not necessarily a prerequisite to the validity of the enforcement filing. A prudent enforcement agent would, however, request that from the claimant in order to warrant diligent process in full compliance with the judgment. A notice for voluntary compliance within 14 days shall be served to the debtor. Absence of such compliance would lead to scheduling of enforcement measures; however, it would be only reasonable for a diligent enforcement agent to take into account (based on one's own expertise or consulting an expert) what the adequate time for performing the task at hand would be, and in fact whether 14 days would be sufficient amount of time for a *bona fide* debtor to comply. Given lack of compliance on behalf of the debtor, the claimant has the right to perform the action him/herself - the related costs being ultimately owed by the debtor - after formal authorization on behalf of the enforcement agent. Although not explicitly stipulated by CPC, professional prudence (as well as potential liability for damages) dictates that specialized construction (or other) operations such as removal of buildings, altering parts of infrastructure and such, or other activities requiring specialized knowledge, skills or equipment, are to be assigned to a licensed professional (company or person). The enforcement agent shall be informed about the projected cost for due consideration. The authorization for substitutive action by the enforcement agent is a formal ruling. It shall contain sufficient description of the motives justifying the substitution, the scope of the activity to be executed, as well as the amount of expenses to be incurred. The enforcement agent (or a deputy) must supervise the adjudicated action and draft a record of minutes for the file.

In the case of substitutive action performed by the claimant, the latter shall advance the cost, which subsequently shall be reimbursed to him/her at the expense of the debtor. The creditor also has the procedural option to file a request with the court for an order for advance payment of the costs by the debtor.

Compliance with adjudicated refraining from action is statutorily warranted by imposing a fine of BGN 400 for each instance of non-compliance. In practical terms achieving a stable sanction which would withstand an appeal, and, potentially, judicial reversal, requires that each occasion of non-compliance is duly documented for the file record by the enforcement agent and possibly corroborated by non-partial witnesses. Although the law does not necessarily require witnesses on site while the infringement is established, recorded and sanctioned, the reviewing court is at liberty to admit witnesses to rebut the facts ascertained in the record of minutes. The enforcement agent is not a party to the appeal proceedings (with few exceptions when judicial discretion dictates otherwise). Such practical specifics as well as the dimensions of the cost for an enforcement agent being present on site especially in remote locations or out of business hours, occasionally makes the practical implementation of the enforcement measure described above problematic.

II.13.2 Enforcement of duty to perform an irreplaceable action



If the adjudicated action cannot be performed by another person but depends solely on the will of the debtor, the enforcement agent, at the request of the claimant, applies coercive action in the form of fines, should the debtor fail to comply within the granted period for voluntary compliance. The amount of the fine may vary depending on the circumstances but cannot exceed BGN 200 in one instance. The amount of time granted for compliance must be appropriate and consistent with the complexity of the task at hand. The law prescribes an option of consecutive fines of the abovementioned amount until the adjudicated action is accomplished.

The enforcement agent's rulings on the authorization of the claimant and on the imposition of fines are subject to appeal and review by the competent provincial court following the procedure described in I.4 supra.

III.14 Sequestration of goods

The implied interpretation of the “sequestration of goods”, could refer to relevant Bulgarian enforcement procedures, such as the procedure of taking away movable assets or goods, which are in possession of the debtor, to hand over to the claimant (for details see III.10 supra).

If sequestration of goods is seen as enforcement against the debtor’s tangible assets, the procedure followed could be related to enforcement against movable assets to settle pecuniary claims (for details, see III.2).

Sequestration could also be related to enforcement procedures against assets subject to special pledge (see III.9).

III.15 Enforcement of foreign enforceable documents from non-EU States

Bulgarian CPC does not regulate the recognition and enforcement of judgments, judicial decrees, acts of courts and/or arbitration authorities of equal ranking (with jurisdiction recognized by the respective national legislation) of countries other than EU Member States. The stipulations of Art. 621 et seq. of the CPC cannot be applied by analogy, since the procedure therein is based on the principle of the harmonization of the law in the EU Member States. Hence, the EU legal framework includes coherent provisions, which all EU Member States (including Bulgaria with regards to its civil procedure) shall apply.

The recognition and enforcement of judicial acts, decrees of courts and/or arbitration authorities with authoritative jurisdiction (hereinafter “an act of foreign jurisdiction”) in accordance with the respective state’s legislation as well as other enforceable documents from non-EU States in Bulgaria are subject to a separate procedure stipulated by the Code of Private International Law (CPIL).

In Part Four, Chapter 12, Articles 117 to 124, the CPIL sets out the procedure for recognizing and allowing the enforcement of foreign court rulings and other acts originating from non-EU countries. According to Art. 117 CPIL, the judgments and authentic acts of foreign courts and other authorities shall be eligible for recognition and enforcement when:

- The foreign court or competent authority exercises jurisdiction by the

standards of the Bulgarian law. The sole fact of nationality (or registered domicile) of the plaintiff in disputes *in rem* shall not by itself justify jurisdiction.

- The defendant's entitlement to due process and legal defense has been warranted by proper service of the civil action, all parties have been duly summoned, and fundamental standards of defense in accordance with Bulgarian law have not been breached;

- No *res judicata* in the form of a judgment of a Bulgarian court based on the same claim exists. In same line of logic, no eligibility of recognition would exist if proceedings based on the same facts, the same cause of action, and involving the same parties, are initiated in a Bulgarian court prior to the filing in the foreign court, which issued the act whose recognition (or enforcement) is sought.

A general eligibility standard of compliance with the "Bulgarian public order" is also a statutory consideration for the recognition of a foreign judgment. Understandably, the Code refers to a criterion of public morals rooted in the national legal tradition and its implementation, rather than to political dimensions of the national public order.

Should the act of foreign jurisdiction comply with these standards, it shall be processed for recognition by the competent Bulgarian authority where filed. Should the conditions of recognition be disputed, a civil action to assert said conditions may be brought to the Sofia City Court. The Sofia City Court is always the court with jurisdiction to admit the enforcement of an act of foreign jurisdiction.

The application has to be accompanied by a copy of the act of foreign jurisdiction subject to enforcement, authenticated by the issuing court and by a certificate thereof that the act has entered into force. The documents must be authenticated via a certificate by the Ministry of Foreign Affairs of the Republic of Bulgaria. The court would review and verify the compliance with all due standards. The defendant in the proceedings for recognition and enforcement of the act of foreign jurisdiction cannot invoke violations of due process service and the right to defense, if the defendant had missed such opportunity with the foreign court. The court shall not re-examine the merits of the disputed matter resolved by the foreign court.

The debtor may plead in defense satisfaction of the debt that has occurred after the entry into force of the act of the foreign jurisdiction. The debtor may not invoke such defense, claiming payment, after the court ruling admitting enforcement of the foreign act has taken effect.

The Bulgarian CPIL provides for recognition of the legal consequences of foreign writs of enforcement and/or protective measures, given that the latter are issued by a body of jurisdiction which holds "international competence" under the Bulgarian law and if they do not contradict, yet again, with Bulgarian public order. In practical terms, in a case of a civil claim brought to a Bulgarian court for recognition of a foreign enforcement and/or protective act, issued in a Non-EU country, given that there are no other international instruments in the relevant field (signed and ratified by Bulgaria



and the respective foreign state), the CPC does not provide means for the recognition and the enforcement of said act(s). Thus, the procedure for recognition under Chapter 4 of CPIL, subject to the provisions of art. 117 of the Code shall apply.

The filing must include a copy of the foreign enforcement and/or protective act, authenticated by the issuing court and a certificate thereof that the act has entered into force. An authentication via a certificate by the Bulgarian Ministry of Foreign Affairs must also be accomplished. The court shall review and verify the compliance with all due standards and shall then rule whether it recognizes (or not) the foreign act and whether (or not) allows for the act to be subject to enforcement in Bulgaria. The court shall not re-examine the merits of the disputed matter in the exequatur proceedings.

A mandatory case law ruling¹⁷ asserts that the court in charge of the proceedings should take into account the ruling of a foreign court judgment which has been submitted by a party to the case given that the prerequisites under art. 117 CPIL are met and that there is no dispute concerning them between the parties. In substance, this represents an incidental recognition of the foreign judgment within the meaning of art. 118 CPIL.

PART IV: ENFORCEMENT COSTS

IV.1 The costs of enforcement

Due to the fact that Bulgaria maintains a dual system of enforcement agents - state enforcement agents, who are salaried civil servants within the system of the district courts, and private enforcement agents, who are self-employed professionals licensed by the Minister of Justice - there are two sources of regulation of their fees¹⁸, both based on the same provisions of the Civil Procedural Code. Both tariffs are similar in concept (nature and structure of fees). As such, the amount of the fees is practically the same.

According to the tariff there are two basic types of fees: fixed (“simple”) fees, which are collected for a certain procedural action (opening a case, serving summons, etc.) and “proportional” fees, which are fees based on performance, i.e., based on the estimated value of inventoried property or amounts collected as result of enforcement. There are also “additional” fees meant to compensate enforcement operations performed during holidays and outside regular business hours.

The tariff also establishes “functional” criteria for the fees by dividing them into “advance” fees, i.e., payable by the creditor before the performance of the requested enforcement action, and fees payable afterwards. Fixed fees, proportional fees (with

¹⁷ Bulgarian Supreme Court of Cassation, Civil Collegium under Art. 290 Civil Procedure Code - Ruling № 248 of October 26, 2012, Civil Action № 241/2012.

¹⁸ Fees and costs incurred by state enforcement agents are regulated by Art. 30 - 58a of the Tariff for state fees collected by the courts under the Civil Procedure Code (Decree of Council of Ministers No. 38 of February 27, 2008, promulgated, SG No. 22 of February 28, 2008), while fees and costs of private enforcement agents are set out in the Tariff for fees and expenses to the Private Enforcement Agents Act (Decree of Council of Ministers No 92 of 19.04.2006, prom. 35 of April 28, 2006).



the exception of the fee under item 26 of Tariff), and additional fees are defined as advance fees.

The fee under item 26 of Tariff of PEA (the same fee stipulated under item 53 of the Tariff for state fees) is a proportional fee based on the collected amount and in practical terms is calculated and deducted from the collected amount upon disbursement. The fee is the major source of compensation for the costs and resources incurred in the enforcement process and plays the role of “incentive” or “success” fee. It is a complex two-component fee determined by an ascending scale:

- a) (based on interest) up to BGN 100: BGN 10;
- b) from 100 to 1000 BGN: 10 BGN + 10 % for the amount exceeding 100 BGN;
- c) from 1000 to 10 000 BGN: 100 BGN + 8 % for the amount exceeding 1000 BGN;
- d) from BGN 10,000 to BGN 50,000: BGN 820 + 6 % for the amount exceeding BGN 10,000;
- e) from BGN 50,000 to BGN 100,000: BGN 3220 + 4 % for the amount exceeding BGN 50,000;
- f) over BGN 100,000: BGN 5220 + 2 % for the amount exceeding BGN 100,000.

Art. 80 of PEAA explicitly provides for payment of advance fees in advance of each enforcement action for which they are due. In practical terms, however, that proved to be a hindrance to effective enforcement in many cases, when enforcement action has been planned, notices served, payments invoiced and requested, respectively agreed and approved by the creditor yet not technically transferred to the enforcement agent’s account due to a variety of reasons including, but not limited to, technicalities of corporate decision-making and payment processing. According to Interpretative Decision No. 2 of 2015 of the Supreme Court of Cassation (hereinafter Decision No. 2 of 2015) failure to pay the advance fees does not procedurally undermine the respective enforcement action, but systematic non-collection of advance fees is considered a disciplinary violation on behalf of the enforcement agent. On the other hand, CPC art. 433, para.1, item 6 provides that the enforcement proceedings shall be terminated in case due advance fees and enforcement costs are not paid, except in cases of explicit exemption from payment by law. Although art. 433 is rarely invoked in practice, the termination of the proceedings on that particular ground is subject to the discretion of the enforcement agent processing the case, and, respectively, of the court which supervises the enforcement agent’s denial to a request to terminate the case. Advance payment of fees by the creditor has been subject to professional debate in Bulgarian jurisprudence for the reason that it would increase the creditor’s discretion with regard to whether and to what extent enforcement action shall be taken. Art. 79 CPC provides that the costs of enforcement shall ultimately be borne by the debtor as a general principle. In case enforcement fees are not paid by the creditor, they are collected from the debtor. In this context, lasting concerns for overburdening the debtor with costs and fees have recently been



addressed by the legislature with the provisions of art.73a. (New - SG 86/2017) CPC, which establishes an absolute limit on the cost of enforcement of small debts, as a percentage of the minimum wage (the latter being used as adjustable measurement of the cost of living)¹⁹. Relevant case law (Decision No. 2/2015) has limited the costs which could be deducted from the proceeds of an auctioned property strictly to fees and costs related to enforcement measures (research, arrest, appraisal, safekeeping, etc.) concerning that particular property. Costs attributable to the enforcement process in general cannot be reimbursed from such proceeds.

PART V: LINKS, LITERATURE AND SOURCES

- Professor Angel Kalaydzhiev – "Law on Obligations" – 7th Revised and Supplemented Edition, Sibi, 2016
- Professor, Dr. Zhivko Stalev, Professor, Dr. Aneliya Mingova, Professor, Dr. Ognian Stamboliev, Associate Professor, Dr. Valentina Popova, Ch. Assistant Professor Ruzja Ivanova - Bulgarian Civil Procedure Law, 9th edition, Ciela, 2012
- Delyan Nikolov, Dimitar Ivanov, Enforcement proceedings under the Civil Procedure Code and the Special Pledges Act, Second Revised and Supplemented Edition, Ciela, 2017
- Civil Procedure Code - <https://lex.bg/laws/ldoc/2135558368>
- Special Pledges Act - <https://www.lex.bg/laws/ldoc/2133897734>
- Obligations and Contracts Act - <https://lex.bg/laws/ldoc/2121934337>
- Private Enforcement agents Act - <https://www.lex.bg/laws/ldoc/2135503796>
- Tariff for fees and expenses to the Private Enforcement agents Act <https://www.lex.bg/laws/ldoc/2135523067>
- Tax Revenue and Social Security Procedure Act - <https://www.lex.bg/laws/ldoc/2135514513>
- Judicial Authority Act - <https://www.lex.bg/laws/ldoc/2135560660>
- Code of Private International Law - <https://www.lex.bg/laws/ldoc/2135503651>
- Commercial Act - <https://www.lex.bg/laws/ldoc/-14917630>;
- Trademarks and Geographical Indications Act -

¹⁹ Art. 73a. (New - SG 86/17) (1) The total of all enforcement fees at the expense of the debtor in one enforcement case may not exceed for a debt in the amount of:

1. up to 10 percent of the minimum wage - 30 percent of the minimum wage;
2. from 10 to 20 percent of the minimum wage - 40 percent of the minimum wage;
3. from 20 to 50 percent of the minimum wage - 50 percent of the minimum wage;
4. from 50 percent to one minimum wage - 70 percent from the minimum wage;
5. from one to two minimum wages - 80 percent of the minimum wage;
6. from two to three minimum wages - 90 percent of the minimum wage.

...

(3) In cases where the total under para. 1 is reached, the fees for any new enforcement actions, requested by the creditor, are payable by the creditor and not subject to collection from the debtor.



<https://www.lex.bg/laws/ldoc/2134680576>

- Patents and Registration of Utility Models Act -

<https://www.lex.bg/laws/ldoc/2133079553>

- Industrial Design Act - <https://www.lex.bg/laws/ldoc/2134680577>

- Topology of the integrated circuits Act -

<https://www.lex.bg/bg/laws/ldoc/2134680578>

- Protection of the new varieties of plants and breeds of animals Act -

<https://www.lex.bg/index.php/bg/mobile/ldoc/2133895169>

- Labour Code - <https://www.lex.bg/laws/ldoc/1594373121>