



**Parliament of Montenegro
Parliamentary Institute
Research Centre**

Research paper:
**Basis of the procedure for execution of enforced satisfaction of claims
based on bank drafts - Croatian, Slovenian and Serbian experience**

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Foreword

The main precondition for the development of each economy is financial stability. However, there are several factors that are likely to influence the financial stability, and therefore impact the liquidity of industry. One of the economy liquidity indicators is certainly the indicator of enforced satisfaction of claims.

Performance of a large number of business entities is characterised by strained debtor – creditor relations which lead to the decrease in economic activities, reflected in evasion, respectively failure to meet mutual obligation requirements in a timely manner, and thus inefficiency to implement initiated procedures for the collection of claims. Issues associated with the collection of claims are a major setback to the economy, additionally hindered by the prevailing unsatisfactory performance of courts; postponing of the procedure concerning the ordering and levying of the enforcement of assets subject to enforcement, as well as the inability to collect claims on the basis of bank draft - the most common instrument for securing claims.

“In Montenegro, enforced collection entails a legal obligation and authority of the Central Bank of Montenegro to transfer the monetary assets subject to enforcement from the account of the judgment debtor to the account of the judgment creditor by operation of law, on the basis of an enforceable document, according to the day of receipt of the document. Judgement debtors may be individuals and legal entities that carry on business and have open bank accounts, as well as banks and other entities which maintain a settlement account with the Central Bank of Montenegro.”¹

Enforced collection on the basis of a bank draft may be executed on the grounds of a large number of regulations, the most important being the Law on Enforcement and Security², adopted on 27 July 2011, which defines the procedure of enforced satisfaction of claims on the basis of domestic or foreign enforceable or authentic document and securing of claims.

In the beginning of February 2014, a Proposal for a Law on Amendments to the Law on Enforcement and Security³ was submitted to the Parliament of Montenegro, which, in addition to the existing method for enforced satisfaction of claims on the basis of bank draft, stipulated in the current Law on Enforcement and Security, envisages the possibility of directly submitting the bank draft to the organisation in charge of collecting claims, ensuring that the judgement debtor’s account is locked. This shall apply only in cases when the judgement debtor is a legal entity or entrepreneur.

In order to prepare a comparative overview on legal provisions governing enforced satisfaction of claims on the basis of bank draft, with special focus on direct submission of a

¹ Webpage of the Central Bank of Montenegro

http://www.cb-mn.org/index.php?mn1=platni_promet&mn2=prinudna_naplata (11 March 2014)

² Law on Enforcement and Security ("Official Gazette of Montenegro. ", no. 36/11 of 27 July 2011)

³ Proposal for a Law on Amendments to the Law on Enforcement and Security

http://www.skupstina.me/~skupcg/skupstina/cms/site_data/DOC25/ZAKONI%20I%20IZVJESTAJI/398/398_0.PDF (11 March 2014)

request for securing of claims on the basis of bank draft to the organisation in charge of collection of claims, the Research Centre gathered and analysed data related to the procedure of enforced satisfaction of claims on the basis of bank draft as the authentic document, in the following three countries: Croatia, Slovenia and Serbia. In the course of preparation of this document, the relevant regulations governing this area were examined, more precisely, the Law on Enforcement and Security applying in the three abovementioned countries, as well as information available on the websites of central banks and financial agencies in charge of collecting claims (Croatia).

In the countries included in the research, the failure to pay a debt or failure to fulfil other obligations towards the judgement creditor creates a need for enforced satisfaction of claims of a judgement creditor, by initiating an enforcement procedure. In this case, the judgement creditor shall submit to the court a petition for enforcement (Croatia, Slovenia, Serbia) or to a Notary Public, hence initiating the enforcement procedure.

The rest of the paper provides a comparative overview of concise data in relation to the enforced satisfaction of claims on the basis of bank draft, and the possibility of directly submitting a request for enforcement of claims on the basis of bank draft (Croatia) to the organisation in charge of collecting claims.

The complete document in Montenegrin language can be found at: http://www.skupstina.me/images/dokumenti/biblioteka-i-istrazivanje/Osnove_postupka_o_izvr%C5%A1enju_prinudne_naplate_potra%C5%BEivanja_po_osnovu_mjenice_iskustvo_Hrvatske_Slovenije_i_Srbije.pdf