

DEBT COLLECTION

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What is the basic legal framework for debt collection?

- Civil Code, Law no. 7850, dated 29.7.1994 as as amended
- Procedural Civil Code, Law No . 8116, datë 29.3.1996 as amended
- Law no. 8537dt. 18.10.1999“On security charges” as amended
- Law no. 10031 dt. 11.12.2008“On the private bailiff service.” as amended

Which is the debt collection procedure and its importance?

Debt collection is a legal procedure whereby the creditor fails to enable by the debtor a payment of a monetary obligation, which the latter has failed to perform wholly or partly on a defined deadline.

In which conditions should a debt collection be initiated?

First of all, there should exist a monetary obligation between a creditor and a debtor arising out of an agreement between the parties (written or not) or by the law.

Second, the debtor should have not fulfilled the payment of a monetary obligation correctly towards the creditor.

Last but not least , the debtor should be in default: i.e., has not fulfilled the monetary obligation in due time.

According to the Albania law, the debtor will be put under default after a written notification, unless:

- the debtor has stated in written form that it will not execute the obligation
- The deadline for performing the payment has passed.
- The monetary obligation arises out of an unlawful act.

What a creditor may require from the default debtor through the debt collection procedure?

According to the law in force the creditor has the right to request from the default debtor, the fulfillment of the monetary obligation , incurred interests starting from the default day and indemnification of the damages caused.

Which is the legal procedure to be followed for a debt collection?

Legal proceedings for collecting a default debt is determined by the Albanian Civil Procedure Code. This procedure may consist on a single phase or, as it happens in most of the cases, can be performed into two different phases. This depends on the title from which the unfulfilled obligation derives, is an executive title or not. The executive titles are explicitly defined by law and are:

- final court decisions for a monetary obligation, whether civil, criminal, arbitration, or issued by a foreign court or arbitration court and such decision is recognized by the state of Albania.
- Notarial acts that contain an obligation in cash, bank loan agreements and loan agreements of a financial institutions (other than banks);
- bills of exchange, checks and letters with orders that apply to them;
- other acts which under special laws are specified as executive titles.

In case that:

1. The title of the loan required to be collected is an executive title the procedure consist on a single phase, that is; compulsory execution by the bailiff's office. Compulsory execution procedure starts with the issuance of the execution order from the court and continues with a conservative seizure of a property or a bank account of the debtor.

2. the title of the loan required to be collected is not an executive title, than the procedure for the debt collection consist in two phases. The first one is submitting to the court the claim for the recognition of the debt and ordering the debtor to perform the payment. After the court accepts the claim by issuing a final decision which the later constitutes an executive title. Consequently the second phase takes place that is; compulsory execution by the bailiff's office as explained in point 1 above.

Which are the prospects of a satisfactory debt collection?

The possibility of a satisfactory debt collection depends on several factors. Initially should be mentioned the consistency of the debtors property, whether monetary, moveable or immoveable property, present or future. This due to the fact that the bigger the property subject to compulsory execution the bigger the possibility to recover the total debt.

Therefore is important in this sense the existence of the remedies of the non-performance of the obligation such as mortgages, pledge, lien etc which give to the creditor the opportunity to recover the Debt under compulsory execution defined from the debtor property or a third party.

After that the active and passive status of the debtor's properties has to be considered. Especially when the debtor has debts towards several creditors. As more creditors seek recovery of their debt on the same property, the smaller becomes the opportunity to fully recover it. This is because under the law creditors have equal rights to be compensated from the property of the debtor, except when there are legal grounds to preferences,

which are mortgages, lien, security charges. In this case, if the Debt is secured by the legal causes of preference, then the creditor has the right to be compensated on the debtor's property before other creditor without guarantee.

In case the default debtor is under bankruptcy, the law establishes other procedures for debt collection and compensation, different from the above described procedure.

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