

Top 5 Ways to Recover Debt in Belarus

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Writ proceedings is a separate type of judicial proceeding, according to which the court considers claims without trial and summoning the parties. In the framework of the writ proceedings, in particular, the requirement to recover money may be considered if it is recognized or not disputed by the debtor (for example, when the debtor did not respond to the pre-trial claim, signed an accounts reconciliation statement, another document confirming his debt).

there is no need to observe the pre-trial order of settlement of the dispute, including the one provided for by the agreement;

the case is considered by the court within a period of about 1 month from the date of submission;

the court decision on the case comes into force from the moment of its issuance;

a small amount of state duty (maximum – 7 base units or about 75 euros);

lower cost of legal assistance of a representative (court hearings on the case are not held);

foreign companies can also use the mechanism of writ proceedings, but the debtor must be located in Belarus;

the mechanism of writ proceedings can be used even if there is an arbitration agreement with regard to the dispute, as well as an agreement on the transfer of the dispute to a foreign state court (a propogation agreement);

if the court refused to rule on the case within the framework of writ proceedings, it is possible to initiate the case adjudication in action proceedings in a simplified manner.

With the help of a notary writ of execution, the debt can be recovered out of court. After receiving the writ, the creditor can directly apply to the executive bodies and collect the debt from the debtor compulsorily. Notaries make executive inscription in respect of debt connected with contracts of sale, transportation, work and labour, services, rent. However, for this the debt should be recognized by the debtor (for example, the debtor signed the accounts reconciliation statement, recognized the debt in the response to the pre-trial claim), as well as the originals of the documents (in the case of the supply contract, for example, the original contract, the way bill, the document in which the debtor recognizes debt).

there is no need to observe the pre-trial order of settlement of the dispute, including the one provided for by the agreement[1];

the notary issues a writ of execution on the day of appeal to him (with this document you can directly address to the executive bodies);

a small amount of state duty (no more than 10 base units or about 105 euros);

low cost of legal assistance of a representative (in essence, you only need to prepare the required package of documents and apply to a notary);

foreign companies can also apply to a notary for writ of execution, but the debtor must be in Belarus;

you can apply for a writ of execution to any notary, not only at the location of the debtor.

Action proceedings is the standard and most universal way to collect the debt. This method presumes court hearings on the case with representatives of the claimant and the respondent (usually 2-4 hearings, including the preparatory one), which slows down the process of making a decision on the case and increases the costs of the parties. Nevertheless, action proceedings in Belarus, especially in comparison with the countries of the Anglo-American legal family, has a number of advantages in terms of speed and cost.

the court should rule on the case within 2-3 months from the date of submission; and the decision will enter into force within 15 days from the date of issuance[2];

the time for consideration of the motion for provisional measures is 3 days from the date of submission (it can be submitted jointly with the claim);

a relatively small amount of state duty (the exact amount of state duty can be calculated using our calculator);

the costs of legal assistance are of procedural nature, and, therefore, there is no need to pay additional state duty in order to recover them from the other party.

№ 4 Conciliation and Settlement Agreements

The fact that the dispute has already been brought before the court is not an obstacle for the parties to resolve it by themselves. This can be done by concluding a conciliation or settlement agreement after the institution of the case in court. Moreover, practice shows that sometimes, in order to come to some common solution of the dispute, it is necessary to “push” the other party, go to court and try to come to an agreement in court.

the parties themselves choose the conditions of dispute resolution, and the final outcome is never a “surprise” for the parties;

the other party understands the seriousness of the situation and is more willing to resolve the dispute peacefully;

the claimant is given back 25% of the state duty (in the case of conclusion of a settlement agreement) or 50% of the state duty (in the case of conclusion of a reconciliation agreement);

the services of a conciliator are free of charge, because, in most cases, the conciliator is a court employee;

confidentiality: a conciliator cannot be witness with regard to the facts that he/she became aware of in connection with participation in the conciliatory procedure (if both parties did not give their written consent to do this);

the probability of saving business relations between the parties is higher, since there is no losing party as such, and the parties themselves choose the conditions for the resolution of the dispute.

The parties can agree to settle the dispute between themselves through mediation – negotiations of the parties with the participation of the disinterested person (mediator). Mediation can take place both before and after the initiation of the case in court. As a result of mediation, the parties can conclude a mediation agreement, which, if necessary, can be enforced compulsorily.

confidentiality: during the conduct of mediation, as the confidentiality of all information relating to mediation is preserved, unless the parties agree otherwise (in particular, the mediator has no right to disclose information relating to mediation that became known to him/her during its conduct);

cost: as a rule, the cost of a mediation procedure (fee of a mediator and representatives of the parties) is much less than the cost state court adjudication. If the parties decided to settle the dispute through mediation after the case has been brought before court, the court returns the state fee;

the ability to enforce the agreement of the parties concluded on as the result of mediation (mediation agreement);

the opportunity to go beyond the scope of the suit and consider in a mediation agreement claims that were not originally stipulated in the suit;

efficiency: the term for resolving a dispute depends only on the parties and on their desire to find a mutually acceptable way to resolve the conflict;

the probability of saving business relations between the parties is higher, since there is no losing party as such, and the parties themselves choose the conditions for the resolution of the dispute.

All in all, Belarus has effective legal instruments to recover the debt. Not all of them are available in the context of a particular case, and, of course, each of them has its drawbacks too. Nevertheless, in our opinion, the “key”, taking into account the Client’s priorities (speed, cheapness, convenience, security) can be found in each of the case.

[1] There is only a formal requirement to send a written warning to the debtor (you can send it by e-mail). However, you do not need to wait for any response to this warning.

[2] If a foreign person participates in the case, that does not have an administrative body, branch, representative office or legal representative in Belarus, the time of case adjudication may be extended up to 13 months from the date of submission the claim to the court.