



EURAVOCAT LAW HANDBOOK

DEBT COLLECTION IN POLAND

From our member in Kraków



1. Amicable dispute resolution

In Poland, the pre-court stage of debt recovery is most often preceded by an attempt to resolve a dispute out of court. The court proceedings may be long and costly, which is why the

creditor often decides first to send the debtor a request for payment.

The legal provisions do not establish any formal requirements for a letter containing a request for payment. However, it should indicate in a clear manner what claim the creditor is demanding.

Therefore, the demand letter should:

specify the basic information concerning the claim (precise the legal relationship this claim arises from, the amount of the claim and the deadline by which the debtor was initially supposed to satisfy this claim),

set a time limit within which the debtor should comply with the contents of the demand, and

indicate how the claim is to be satisfied (e.g. payment into a specific bank account of the creditor).

Often, the debtor pays voluntarily however, it happens that the debtor, when receiving a demand for payment, does not comply with its contents. But instead the debtor enters into discussions with the creditor, the parties enter into negotiations that lead to an out-of-court settlement.

When concluding an out-of-court settlement, it is worth ensuring that it is drawn up in writing. In such a situation the creditor will obtain evidence of the debtor's acknowledgement of the claim and the course of the limitation period of the claim will be interrupted. Consequently, the creditor will gain additional time for possible legal action if the debtor does not pay according to

the settlement. Moreover, the creditor will have the opportunity to use a very convenient, special civil procedure for the enforcement of the claim - the prescriptive procedure (see below).

2. Judicial recovery

If amicable means of resolving the dispute do not produce the result expected by the creditor - the debtor does not satisfy the claim - the creditor often must bring an action to a court.

I. Types of procedure

The primary and most common types of litigation are:

1. the prescriptive mode,
2. the writ-of-payment procedure, and
3. the ordinary mode.

Re. 1) Prescriptive mode

This mode is very preferential for the creditor and admissible only in cases when the claim is either undisputed or very probable. Namely, the plaintiff may demand this mode only if the claim is confirmed by:

1. written acknowledgement of the debt by the defendant,
2. document issued by the public body (e.g. state, municipality, etc.)

3. bill of exchange (or cheque) signed by the debtor.

The prescriptive procedure provides for a number of facilities for the creditor. The plaintiff pays only $\frac{1}{4}$ of the court fee for the statement of claim. If the court finds the plaintiff's claim well grounded, then it issues a payment order.

If the defendant wishes to challenge the payment order issued by the court under this procedure he/she must, in principle, pay the remaining $\frac{3}{4}$ of the court fee. If the defendant does not pay this part of the court fee, the objections against the payment order will be rejected by the court and the order will become final.

In other words, in the prescriptive mode the significant part of the financial burden of the litigation rest on a debtor, not a creditor.

The obligation to pay $\frac{3}{4}$ of the court fee - especially when this fee is high - often discourages the defendant from filing groundless or poorly justified objections simply for the sake of delaying the proceedings.

A payment order issued under this procedure constitutes, as soon as it is issued, an interim injunction. Without the need of any additional costs or formalities (namely without an enforceability clause), the creditor may immediately demand the bailiff to secure the amounts awarded by the court. The bailiff seizes the debtor's bank accounts or other assets and does so usually 'by surprise', i.e. before the debtor is even aware that the creditor has sued him and before he has managed to dispose of his assets or conceal them.

In case if the defendant brings the objections against the payment order and pays his/her part of the court fee, then the court will start regular proceedings and call the parties to a hearing. The parties will be obliged to present their positions in writing and exchange the documents related to the case. After all the essential facts are established the court pronounces a verdict.

Re. 2) Writ-of-payment procedure

If the creditor cannot present to the court the obligatory documents required for the prescriptive mode, the he/she may initiate the writ-of-payment procedure.

Still, the creditor must present the documents which undoubtedly prove the existence and the amount of the claim. In such a case the court issues a payment order under the writ of payment procedure.

This procedure is less favourable for the plaintiff than the prescriptive procedure but still is simpler than the ordinary procedure.

The initiation of the action requires the plaintiff to pay the entire court fee (5% of the claim).

The payment order in this procedure does not constitute an interim injunction. If the plaintiff wishes to obtain an interim injunction, he/she must file a separate demand to this effect. He must substantiate the claim by presenting prima facie proofs confirming the claim and a risk that the debtor will not satisfy it

unless it is immediately secured. This is possible if the financial situation of the debtor is deteriorating or in case he/she is concealing the assets.

If the defendant wishes to challenge the payment order issued by the court under this procedure he/she does not have to pay any court fee. It is sufficient to simply oppose to the payment order in writing and the payment order will automatically expire. The court will start regular proceedings and call the parties to a hearing. The parties will be obliged to present their positions in writing and exchange the documents related to the case. After all the essential facts are established the court pronounces a verdict.

Re. 3) Ordinary procedure

If the creditor is not able to unquestionably prove his claim or if the court has any doubts as to its existence or amount, the court will refer the case to the ordinary procedure. The court will set a hearing, take evidence submitted by the parties (e.g. documentary evidence, examination of witnesses, expert evidence) and at the end of the proceedings it will issues a verdict.

II. Challenging the decision

A judgment rendered by the court of first instance is subject to appeal to the court of second instance.

In some cases, the judgment rendered by the court of second instance is also subject to review by the Supreme Court.

III. Charges

Litigation involves costs, which include: court fees (usually 5% of the claim), expenses related to sworn translations, expert opinions, and the cost of the representation by a professional representative (attorney-at-law).

As a rule, the losing party bears the costs of litigation. A debtor who loses a court case will therefore be obliged to reimburse the creditor for the costs incurred by the creditor.

The amount of remuneration of a professional attorney to be reimbursed is determined by the court on the basis of the rates resulting from the public regulation. These rates usually depend on the amount of the claimed amount. In some cases the rates are lower than the market prices. For this reason the winning party may sometimes not recover the full costs of the proceedings.

IV. Enforcement

On the basis of a final court decision (judgment, order for payment), the creditor may carry out enforcement procedure. To this end, a bailiff should be requested to initiate enforcement on a basis of the original of the court decision. The bailiff carries out

enforcement against any of the debtor's assets which he/she may seize.

The decisions issued by the courts in any EU Member State is automatically recognized in Poland and may be enforced without any further complex formality or cost.

3. Insolvency of the debtor

A creditor may file a bankruptcy petition against a debtor or, when bankruptcy proceedings are already pending, submit the claim.

A petition to declare a debtor bankrupt requires the fulfilment of numerous formal conditions, payment of a fee of PLN 1,000 and an advance on expenses at a flat rate. If the prerequisites for declaring bankruptcy are met, the court issues a decision on declaring the debtor bankrupt, which at the same time opens the deadline for creditors to submit their claims to the administrator. In order for a creditor to participate in bankruptcy proceedings and, at the same time, to satisfy its claims from the debtor's bankruptcy estate, it is, as a rule, necessary for the creditor to make a claim notification to the administrator within a specific time (usually 30-60 days from the declaration of insolvency). In the course of the proceedings, the administrator verifies the reported claims and, if they are legitimate, includes them in the list of claims.

The administrator's activities in bankruptcy proceedings include: determining the composition of the debtor's assets, liquidation of those assets, distribution of the proceeds among the creditors, in accordance with the principles provided for in the bankruptcy law.

In addition to insolvency proceedings, the satisfaction of the debt can also be achieved through restructuring proceedings.

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The information contained in this guide does not constitute legal advice. The guide is for informational purposes only.

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