



GAIN IN SPAIN: FIGHTING BACK DEBT (II)

Welcome to our second and final part in our article on how to cope with bad credit in Spain and seek judicial remedy. Our previous article dealt with the issues of obtaining a favourable judgement against the debtor; now we will take a step further: how to enforce our judgement.

C.- Ejecutivo proceeding

We will analyze four issues:

- 1.- Requirements needed to enforce a judgement
- 2.- Seizure
- 3.- Sale of seized assets
- 4.- Special proceedings

1.- Requirements needed to enforce a judgement

A sentence granting an enforcement act can be used as a warrant of execution over a debtor. When a creditor serves an enforcement act upon

their debtor, the debtor has a total of 10 days in which he can oppose the sentence. If he does not oppose during this time period, then the case passes on to the next phase: seizure of the debtor's assets.

The following are a list of types of warrants of executions:

- a) Convicting sentences against a debtor.
- b) Notarized documents, which demonstrate the contractual obligation between the parties.
- c) Cheques, promissory notes and bills of exchange.

2.- Seizure

The debtor can choose which assets will be seized. If they do not volunteer certain assets to be seized, then the court will decide for them. This can be time consuming as the court

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will have to conduct a judicial investigation into which assets should be seized.

The following shows which types of assets or rights must be seized first in descending order:

- a) Money and current accounts;
- b) Short term credits;
- c) Jewelry and art work;
- d) Income;
- e) Interest Credits;
- f) Personal property and shares;
- g) Real estate;

3.- Sale of seized assets

The judge's secretary is in charge of organising the sale of the seized assets. He must make sure that the assets are sold in appropriate order.

4.- Special proceedings

There are special proceedings to enforce debt payments when the creditor's warrant of execution is a cheque, bill of exchange or promissory note. These cases are subject to what is known as the proceso cambiario. The cases are heard in the Court of First Instance where the debtor is resident.

The advantages of the proceso cambiario are that the proceeding is fast and effective and before the debtor's assets are seized, the proceeding prevents their use or realisation to assure that they are available for seizure (embargo preventivo de bienes). The

debtor has 10 days to defend a claim made by the proceso cambiario. The judge determines which assets should be seized, in this way assuring that the creditor will have his credit satisfied. If the debtor decides to oppose the judge's decision, the judge should then resolve the subject within 10 days.

The statute of limitations for a proceso cambiario is 6 months for cheques, 3 years for promissory notes and bills of exchange and 5 years for regular enforcement proceedings.

Another important feature of any judicial proceeding are court fees. Until now, creditors who do not pay Spanish Income Tax or Corporate Tax (mainly non-resident companies or individuals) are not subject to these court fees. However, the Spanish Government has announced it will eliminate this exception.

Finally, companies must remember at all times an important formula: debt + time = tragedy. So the best attitude is to know what your options are and take swift action when needed.

