

Securing the contract execution



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Securing the execution of contractual obligations depends on the fact whether the contracting parties in a clear and unequivocal manner regulated mutual rights and obligations. It is also important if the contracting parties agreed on a sanction if either party does not perform its contractual obligation or the contractual obligation is not performed in the anticipated manner.

The contract is the law for the contracting parties, and successful realization of contract fully depends on contractual provisions, which represents the imperative to the contracting parties. Therefore, the contract must be clear and unequivocal to the contracting parties, and as such, efficient and applicable in any possible legal situation. It is known that, when forming the contract, the basic task of a lawyer is to anticipate as many contentious situations as possible, as well as to formulate rights and obligations of contracting parties for all premises in order to protect their interests that way.

Liquidated damages

First of all, securing the execution of contractual obligations depends on the fact whether the contracting parties in a clear and unequivocal manner regulated mutual rights and obligations. It is also important if the contracting parties agreed on a sanction if either party does not perform its contractual obligation or the contractual obligation is not performed in the anticipated manner. Contractual penalties for failing to execute the contractual obligations are sometimes the main reason why the contracting parties decide to execute what

they obliged to. So, the business moral is not, as is sometimes mistakenly believed, sufficient motive to execute what they obliged to. What is more necessary to know while contracting the liquidated damages is that it is contracted under positive legislations that it cannot be contracted for financial obligations.

Cash deposit

Cash deposit is the most effective means of securing that the contract is executed, because the contracting party that has particular claim from the other contracting party, for example, in work, goods or services, is opening the pos-

sets creates damage that is reflected in income from capital that would be achieved by the contracting party that deposits funds and also the fact that there are less and less available funds in today's economic business.

Bank guarantee

Bank guarantee, the first class bank guarantee, is also one of the very effective means of securing the execution of the contract. This is effective instrument of securing payment, which represents insurance that the contractual obligations will be executed in due time within financial transactions.

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sibility to keep the amount of deposits in the case of default, which is generally agreed in the amount greater than the value of services, goods, etc.

A negative point of this means of security is the fact that the amount of deposits is useless for any other purpose, and "blocking" of these as-

By issuing the guarantee, bank guarantees to contracting party that has the claim towards the other contracting party, namely it secures the user of the guarantee out of the possibility of not executing the assumed engagements in the contract that is the bank guarantee. The specificity of this means of security is the fact that the bank is, in a way, guarantor-payer, for it



guarantees that the obligations will be executed by either the contracting party – the guarantee ordering party or the bank itself.

What is impractical is the financial unfeasibility of these assets, since the bank commissions are high and also the funds that are deposited in the bank.

Bill of exchange

The definition of the bill is – Bill of exchange is a security upon order under which its issuer (drawer) issued an unconditional order to the second party (drawee) in order to pay a certain amount of money to the user of the document, (payee) , or the issuer himself promises to make that payment. It could be simply said that it is effective means of security that is usually issued by the contracting party, that is bound under the contract to execute the contractual obligation to the other contracting party and the other contracting party is authorized, by submitting the mentioned formal documents to the bank, without indicating a specific basis,

to demand the payment of amount indicated in the bill of exchange. The method of payment of the amount on the bill is very similar to the process of execution on the basis of executive document, because the banks are bound, by activating the rights from the bill of exchange to force the transfer of funds to the account of the payee, who is usually the drawee, from all accounts of the bill drawer.

The disadvantages of this means of security is that this means is ineffective if the debtor is insolvent , that is if he deliberately brings himself in the state of insolvency for the purpose of damaging the creditors, which further has the character of the criminal act of creditor's detriment..

Mortgage

With recent changes of positive legislations and bringing into force Mortgage Law, mortgage, as the means of claim security, has took, like in the other neighboring countries, central place among the effective means of contract execu-

tion, because the process of realization has became extremely efficient and applicable. Specifically, by the given law, the mortgage has become a simple, economically optimal and efficient means of securing the execution of the contract. If the mortgage contract or pledge statement contains statements contained in the provisions of Article 15 of Mortgage Law, and if the contract or statement are endorsed in court, the creditor has the right to realize his right from the claim in much simpler way than it was before. The situation was that that the creditor was able to realize the rights of the mortgage in a way that he proved his claim in the lawsuit court procedure or executive procedure, and the given judicial procedures as we all know, was not effective. However, now, the process of realization of the rights of the mortgage transferred to Public Property Registries, and the realization period is roughly defined and is around 90 days, which is much more efficient than case processes that approximately last around 3 years. ■

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