

Legal protection for lienholders

Act LIII of 1994 on Judicial Enforcement emphasizes **the opportunity for involvement** of the lien holder in the enforcement procedure, under a separate heading. The priority objective of legislation on involvement is that **the interests of lien holder effectively prevail before its own enforcement procedure was initiated**. The lien on pledged property would be ceased by the registration of the right of enforcement of other creditors and, as a consequence, by a possible sale, and therefore it would jeopardize the claims recovery of the lien holder.

As a consequence of the provision, satisfaction priority of lien holders may be enforced through the involvement even when the claim secured by a lien has not expired yet. In the interest of standardization of practices, the Act determined that the fact of the seizure confers the right to satisfaction.

If another creditor, also requesting execution seizes the movable property encumbered in favour of the lienholder or wishes to seize an immovable property encumbered in favour of the mortgagee, the lienholder for his own protection may request involvement in the enforcement procedure within fifteen workdays following receipt of seizure notification of a movable property or following the appraisal of the value of an immovable property. The court **shall suspend the enforcement procedure** within three (3) workdays from the date of the receipt of the relevant request.

In order to prevent abuses, however, seizure **shall not constitute grounds** for the exercising of the right of satisfaction **in certain cases** if the lien holder is a relative of the debtor or a legal person, with which he is associated by way of majority control or if the lien was created between the economic operator and its members.

After the lien holder has submitted the request for involvement, the debtor and the creditor requesting enforcement have to declare within eight (8) days from the date of the receipt of the court's request whether they wish to contest the legal ground and the amount of claim secured by lien. If the legal grounds or the amount is disputed and sufficient proof is provided to render the allegations propable, the court shall by order reject the lien holder's request for involvement. In examining probabilities, the court shall examine whether the proofs submitted by the creditor requesting enforcement and the debtor are suitable grounds for the lien holder's request to be rejected. The order of the court may be subject to appeal. At the same time, if the debtor or the creditor requesting enforcement has not responded to the request or has acknowledged the existence and the amount of the claim, it may not be able to enforce his position to the contrary during appeal either.

If the request for involvement was rejected by a final order, the lien holder may take a legal proceeding for the permission of involvement in the enforcement procedure. If the lienholder takes the legal proceedings within eight (8) workdays and provides relevant proof, the suspension of the enforcement procedure remains in force and the pledged property may not be sold until the closing of the proceedings. The court shall separately judge in a proceedings initiated at a later date whether they consider necessary to suspend the enforcement procedure.

According to explanation of the Act, the goal of involvement is to ensure that long-term loan agreements secured typically by such lien have to be terminated in fewer cases on the grounds that the



lien no longer provides sufficient protection to the lienholder for the recovery of his claim. This would also relieve the courts and lead to the reduction of the costs of the enforcement.

The operative provision takes the interests of the lien holders into consideration and it offers protection in the enforcement procedure by ensuring involvement but meeting with time limits is necessary to the opportunity for effective application afforded by the law and the compilation of declarations and submissions in appropriate context is necessary on the part of lien holder, the debtor as well as the creditor requesting enforcement.