

BANKS'S DEBT COLLECTION BY MEANS OF JUDICIAL AND NON-JUDICIAL PROCEEDINGS

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ABSTRACT

With the emergence of the Global Economic Crisis commercial banks on the Serbian market are faced with the constant increase of the problem loans. Poor payment discipline is a burning issue of the modern business which is influencing all societies all over the world. Client's constant payment delays or even complete absence of payment are resulting in radical problem connected with bank's liquidity. This is causing poor business results and, at the same time, they are not able to settle their own debts on time. It can be concluded that, all the participants on the market are entering an "enchanted circle" of nonpayment.

Key words: debt collection, banks, work out

INTRODUCTION

The basic component of the assets that most banks possess is loans, which are granted to business entity and physical entity. For this kind of institutions, loans are the main source of income and the main source of risks. The experience has shown that banks can experience collapse for many reasons, however the main reasons are usually unredeemable loans. A large proportion of problematic placements are in the banks with the domestic capital which indicate the lack of contemporary analytical and technological procedures, expertise, which at the end leads to errors in management and criminal activities. The basic purpose of this paper is to introduce the employees of the Risk Management Directorate with the course of actions in the process of takeover, analysis and the implementation of debt collection procedure by means of judicial and non-judicial proceedings, together with the coordination of activities in this process with the Legal Affairs Directorate.

COURSE OF THE PROCEDURE

The course of procedure is related to defining the settlement strategy, and afterwards the implementation debt collection by means of judicial and non-judicial proceedings. It includes:

1. Insolvent records and assignment of cases
2. Close analysis of the insolvents
3. Draft of the settlement strategy for the Risk Management Committee
4. Risk Management Committee in accordance with the suggested strategy
5. Initiation of the enforced debt collection by means of judicial and non-judicial proceeding
6. The activities during the enforced debt collection by means of judicial and non-judicial proceeding
7. Discharge of the enforced debt collection

INSOLVENT RECORDS AND ASSIGNMENT OF CASES

Insolvent records in the Risk Management Directorate precedes the **handover of the documentation**, where it is checked whether the case is complete from the aspect of documentation and implemented actions which are necessary to be completed before the transfer. Thereby simultaneously, Competent employees to whom the present debtor is appointed for monitoring, within the Directorate are designated.

The Competent associate in the department is conducting a **procedure** which consists of five components:

1. Detailed analysis
2. Contact with the client
3. Definition of the potential strategy proposal for the settlement
4. The draft decision about the strategy collection to the competent authority
5. Coordination of the activities with the Competent employees in the Representative Office

CLOSE ANALYSIS OF THE DEBTOR

Close analysis of the insolvents consist of:

1. Documentation analysis

Consist of several elements constituting of:

- a. *Analysis of the documents concerning collateral*, consists of:
 1. document verification concerning determined collateral,
 2. whether the same data is entered in relevant registers and in which order,
 3. determining the amount of claim that have higher degree of priority in relation to the bank's claim,
 4. determining the collateral value according to the previous available assessment,
 5. information about the current collateral statement and whether there has been any change (concerning property, purpose, correctness etc.)
- b. *Analysis of the submitted financial reports and data from the existing documentation about the client in the bank* (papers for the last approved placement, correspondence with the client etc.)
- c. *Analysis of the basic client information*
- d. *Analysis of the documents concerning co-debtors (warrants), if the mentioned exist,*
- e. *Analysis of the association's ownership structure, and*
- f. *Evaluation of the expenses and expected settlement period length*

Besides that, part of the analysis within the jurisdiction of the Associate is the analysis of the data concerning traffic through the account in the bank, the blockade (of structure, amount of costs etc.), as well as previous business relations with the client. In addition, especially for medium and large enterprises the analysis should include the collection of information through the public information system about the client, owners and directorate.

2. Contact with the client

The contact can be organized over the phone or a meeting in the bank can be scheduled. With the exception, if the competent representative evaluates that it is necessary, there is the possibility of client visitation. During the contact with the client, it is important to point out the seriousness of the situation in which the client is, as well as, that it is of the mutual interest to find the solution acceptable for the both parties. In the case of the bank being in the acceptable position from the aspects of the collateral (in the sense of the adequate existence or first class collateral), the consequences of the activation must be pointed out to the client understandably. When

communicating with the client, the bank must be aware that certain data can be concealed and modified by the client; therefore, the bank should direct the conversation so as to find the real client's status.

With the goal of preferable effect of collection, competent employee can perform scheduling of the meeting within the premises of the bank, client visitation, visitation of the collateral location, in the aim of gathering the information by direct insight on the spot. Besides the client visitation, the meeting can be organized with the co-debtor (warrant), to whom the debtor's position, as well as, the amount of the bank's claim must be pointed out and solutions provided. Of course, one option is joint meeting of the debtor and warrant with the bank's representatives, with the purpose of familiarizing with the situation and probable mutual confrontation. In the situation when the co-debtor (warrant) is at the same time the bank's client, close attention must be paid in order for their ability of repaying obligations not to be jeopardized (especially when the co-debtor's/warrant's obligations are higher than the claim which bank has with the primary debtor), but through negotiations the appropriate modality must be reached that will enable the collection of all bank's debts from the respective clients.

After each contact with the client, written report is constructed and it consists of all the above mentioned data kept in the client's case records and they are used as basis when formulating the strategy of collection.

DEFINITION OF THE POTENTIAL STRATEGY PROPOSAL FOR THE SETTLEMENT

Two major directions which are possible when we are talking about the collection and payment strategies are voluntary and involuntary.

Activities included in this procedure are directed towards involuntary processes in solving the problem. This represents the final option in the case when all previously undertaken activities did not result preferably, i.e. when it is evaluated that on the basis of the previously undertaken activities involuntary debt's settlement is the only option available to the bank.

One of the following preconditions must be fulfilled so that the procedure of involuntary collection against the particular debtor can be initiated:

1. that they are an active legal entity,
2. mortgage on the record in the competent registry of immobility,
3. collateral on the records in the register of collateral (for conducting the procedures of seizure of the lien assets),
4. known address of residence or debtor's home address (unless the procedure is conducted on movables),
5. written proof in the form of transcript List of properties for the provider of the promissory note.

Conditions for initiating non-judicial proceeding of data collection of the bank are:

1. mortgage on the records on the immovable property into the competent register according to the regulations of the Mortgage Law,
2. pledge on the records in the pledge register of the Serbian Business Register Agency.

Basis for initiating involuntary procedure in bank's debt collection is the consent of the Risk Management Committee.

INITIATION OF THE INVOLUNTARY DEBT COLLECTION

On the basis of the Risk Management Committee consent, competent employee in the Risk Management Directorate is preparing the documentation and submitting it to the Representative Office;

Directorate of Legal Affairs submits the Request for debt collection against the debtors which are in debt to the bank. The Request is submitted in 2 (two) copies in the written form. The Request is signed by the authorized entities from the Risk Management Committee.

Depending on whether the debtor / warrant is physical or legal entity, together with the Request additional documentation is submitted.

If the debtor / warrant is a physical entity, additional documentation which is submitted consists of:

- information about the real debtors or warrants' address and phone number;
- original copies of the filled in bills of debtor and/or warrant, if there is a warrant, in the case of debt collection being realized / or conducted on the basis of the bill as an authentic document;
- photocopies of the contract that is a legal grounds, in 3 (three) copies;
- bank's billing claims, in 3 (three) copies;
- photocopies of the Surety agreement, if the warrant exists, in 3 (three) copies;
- documentation about the property (extract/transcript of the immovable property, or the extract from the land certificate if the mortgage has been constituted as a collateral or the debtor, i.e. warrant is the owner of the immovable property – not older than 15 days from the day on which the request has been submitted).
- extract form the Register on Pledges on movable property and rights in APR – Register on Pledges, if the lien has been constituted on the movable property of the debtor, or warrant for security of the debt whose payment is requested;
- balance extract from the Central Securities Depository, if the lien has been constituted on the shares;
- extract from the Register of warehouse receipts for agricultural products, if the lien has been constituted on the warehouse receipts;
- certificate of property over the bank's shares, if the debtor, or warrant is the bank's stockholder;
- additional documentation which is of importance for the debt collection.

If the debtor / warrant is a legal entity, additional documentation which is submitted consists of:

- original copies of the filled in debtor and warrant bills, if the warrant exists in that case the debt collection is realized / or is conducted on the basis of the bill as an authentic document;
- photocopies of the contract which are a legal basis, in 3 (three) copies;
- bank's billing claims, in 3 (three) copies;
- photocopies of the Surety Agreement, if the warrant exists, in 3 (three) copies;
- documentation about the property (extract/transcript of the immovable property, or the extract from the land certificate if the mortgage has been constituted as a collateral or the debtor, that is warrant is the owner of the immovable property – not older than 15 days from the day on which the request has been submitted).
- extract form the Register on Pledges on the movable property and rights in APR – Register on Pledges, if the lien has been constituted on the movable property of the debtor, or warrant for security of the debt whose payment is requested;
- balance extract from the Central Securities Depository, if the lien has been constituted on the shares;
- extract from the Register of warehouse receipts for agricultural products, if the lien has been constituted on the warehouse receipts;
- certificate of property over the bank's shares, if the debtor, or warrant is the bank's stockholder;
- additional documentation which is of importance for the debt collection.

Admonition before court procedure is sent by the Representative Office after the Request has been admitted by the Risk Management Directorate.

ACTIVITIES DURING THE PROCEDURE OF INVOLUNTARY DEBT COLLECTION

Complete and correct request is recorder in the records within the Representative Office and a copy of the Request signed by the authorized entities in the Representative Office is submitted to the submitter of the Request – competent employee in the Risk Management Directorate.

After the complete documentation has been received in the Representative Office initiates the proceeding for debt collection. Based on the data collected the Office initiates judicial / non-judicial proceeding of the debt collection / bankruptcy proceeding, or performs the collection application of bankruptcy / liquidation, and further proceeds in accordance with the instructions given by the Risk Management Committee / Executive Board / Executive Board Director or the Risk Management Directorate.

The Representative Office has the obligation to inform the competent employee from The Risk Management Directorate in writing about the course of the procedure, with the submitting the copies from the held minutes about the hearing, that is all the appropriate documentation which is submitted for consideration, the one which he possess or can obtain (EFI, thereorganization plan draft, reorganization plan, etc.)

After the procedure for the debt collection has been initiated, certificate, report and each written document can only be issued to the debtor, that is, warrant or pledger, who addressed the bank with the request of debt balance, with the previous consent from The Representative Office. Competent employee from the Risk Management Directorate informs and requests consent from the Risk Management Committee, in the case of partial debt collection through other means, out of the initiated proceeding through which initially adapted strategy is redefined.

If, during the procedure of debt collection within the case, the expert witness has been ordered and the expert witness evidence has been delivered, the expert witness evidence is delivered for the written statement by the Representative Office to the competent employee from the Risk Management Directorate. They are obligated to deliver the statement, depending on the date of the hearing on which the relevant expert witness evidence will be discussed, at the latest 3 (three) days before the date of hearing, to the Representative Office. In the case when The Representative Office does not declare their thoughts about the expert witness evidence or any other documents requested from them in due time, the Representative Office will notify the competent court or any other competent authority, that there are no remarks about the submitted evidence.

Competent employees from the Risk Management Directorate is monitoring the proceeding against the present client and is constantly communicating with competent employees from the Legal Affairs Directorate who are conducting the present proceeding, that is, the one who is communicating with the law office conducting the procedure on the behalf of the bank. His duty is to monitor the present client from the moment of initiating the judicial or non-judicial proceeding of debt collection to the moment of payment from the sold collateral, that is resolving of the risk placements in some other way (liquidation payment, writing-off, etc.)

Considering the duration of the court proceeding, it is necessary for the competent employee to, at least once a year (more often on request), prepare a report about the course of the proceedings and the activities undertaken, as well as, expected outcomes for the clients for whom the employee is in charge of. This report will be submitted to the assistant and the director of the Risk Management Directorate that is to the Risk Management Committee.

DISCHARGE OF THE ENFORCED DEBT COLLECTION

The completed process of debt collection represents the entire or partial settlement of bank's claim (by the means of selling or taking over the collateral, that is of payment from the bankruptcy estate, or, when the competent authority or the competent employee from the bank determines it is expedient, by buying the property from the bankrupted debtor in the bankruptcy procedure with the aim of settling the bank's claims by selling the property later). After the discharge of the procedure, the competent employee from the Representative Office delivers information about the procedure in writing to Risk Management Directorate.

In the case of closure of the complete bank's claim, a warrant is issued to the competent services to enter all the necessary entries and the Risk Management Committee is informed. Afterwards, the received claims are archived according to the bank's procedures.

In the case when the debt was not paid or the debt has been paid partially, and the bank has depleted all the funds available for collecting the debt, after receiving the information from the Representative Office about the completion of the payment procedure, the information which is represented to the Risk Management Committee, about the aftermath of the collection process and the amount of collected debt is prepared, together with the suggestion of write-off for the amount of total claim variance. After the write-off has been conducted, the present debts are archived according to the bank's procedure.

CONCLUSION

The dissolute payment is something every enterprise is faced with. Because of the debtors delay in payment or non-payment the enterprise is faced with difficulties in liquidity, which causes the weakened business results and the inability for timely settlement of obligations. Debt claim is of great importance for each enterprise and it represents one of most sensitive aspects of the business management, especially in the period of market instability.

Complete communication with the debtors is conducted from The Direction of debt claim and it is performed according to the already defined scenarios which have been created depending on the industry in which the client is active, type of debtor, as well as, the situation in which the debt occurred.

It is very important that the solutions which are applied, allow the bank to lower their costs significantly and increase their business efficiency, as well as, to concentrate on their main activity and let the specialized services deal with all the concerns connected to the debts.

Non-judicial alignment is the priority. All the possibilities are depleted. The approach is friendly, but decisive, all the resources that business sector possesses are used so that wanted results are achieved, so that they can keep appropriate business relationship with the business partners, even if appropriate business relationship has been compromised.

If we take into consideration that the greatest challenge for the business sector in Serbia is the decrease in creditworthiness of the clients, as well as the demand for loans, but most importantly a high level of problematic loans, we are reaching to the conclusion that the quality of the debt claim is not a luxury but a need for all credit institutions.

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