European payment order

Malta

1 Existence of an order for payment procedure

Maltese law provides for special proceedings with regard to unopposed claims pursuant to Section 166A of Cap 12 of the Laws of Malta (Code of Organisation and Civil Procedure)

1.1 Scope of procedure

This procedure may be used in actions where the debt does not exceed €25,000.

1.1.1 What types of claims are eligible (e.g. only pecuniary claims, only contractual claims etc.)?

Eligible claims are those for the payment of debts which are certain, liquid and due and do not entail performance of an act, and when, as stated, the amount does not exceed €25,000. When the debt is not liquid, the creditor may proceed according to this section if he limits his credit to an amount which does not exceed €25,000 and expressly renounces to any part of his claim that may exceed that amount when liquidated.

The creditor may proceed according to this section only if the debtor is present in Malta and is not a minor or an incapacitated person according to law, and the debt is not due from a vacant succession.

1.1.2 Is there an upper limit regarding the value of the claim?

Yes, the upper limit is €25,000.

1.1.3 Is the use of that procedure optional or obligatory?

The use of this procedure is optional.

1.1.4 Is the procedure available if the defendant lives in another Member State or in a third country?

No, this procedure can only be used if the debtor is present in Malta.

1.2 Competent court

The competent court for this procedure is the Court of Magistrates, Malta or Gozo (Inferior Jurisdiction), as the case may be.

1.3 Formal requirements

The creditor shall proceed by filing a judicial letter, the contents of which must be confirmed on oath by the creditor, to be served upon the debtor and which shall state clearly the cause of the claim, the reasons why the claim should be upheld, and a statement of facts in support of the claim, failing which it will be null and void. The judicial letter must also include, in order to be valid, an intimation to the debtor that if he does not reply within thirty days from service upon him of the said judicial letter by presenting a note in the record of the said judicial letter rebutting the claim, such judicial letter shall constitute an executive title.

1.3.1 Is the use of a standardised form obligatory? (if yes, where can that form be obtained?)

No standardised form exists. However it is mandatory that at the beginning of the judicial letter the following words are inserted:

"*This judicial letter is being sent pursuant to Article 166A of Chapter 12, and if you do not reply to it within thirty (30) days, it shall constitute an executive title. Therefore it is in your interest to consult a lawyer or a legal procurator without delay.*"

1.3.2 Is representation by a lawyer required?

Yes, a judicial letter must be signed by a lawyer. However the debtor wishing to answer the said judicial letter to rebut the claim does not need to be represented by a lawyer or legal procurator.

1.3.3 In how much detail do I have to describe the reason for the claim?

The reason for the claim must given in detail. In fact, the judicial letter must include the reason on which the claim is founded, the reasons why the claim should be upheld and a declaration of the factual grounds for the claim, failing which it will be null and void.

1.3.4 Is it necessary to present written evidence of the claim at issue? If yes, which documents are admissible as proof?

No, the law does not require the presentation of written evidence regarding the claim in question. However, the law stipulates that there should be a sworn statement of the factual grounds for the claim.

1.4 Rejection of application

This procedural order for payment is not made by an application but by means of a judicial letter. Therefore, the court cannot reject the claim if there is no opposition from the debtor. If the debtor opposes the claim, the creditor would not be able to recoup the amount due to him under this payment order and would thus have to file a lawsuit. It should be noted that when the debtor duly opposes the claim, the payment order cannot be reused against the debtor with regard to the same claim as was contained in the judicial letter served on the debtor.

1.5 Appeal

Appeals are not possible in this procedure. If the debtor opposes the claim, the creditor must file a lawsuit. However, if the debtor does not file his opposition within thirty days from the day of service of the order for payment (judicial letter), that order constitutes an executive title. The debtor, at this stage, can oppose this executive title within twenty days from the first service of an executive title or other judicial act. This executive title is rescinded and declared null if the court is satisfied that:

(i) the debtor was unaware of the said judicial letter because he was not duly notified; or

(ii) the judicial letter did not contain the required elements laid down in the legislation (mentioned above).

1.6 Statement of opposition

When the debtor receives the judicial letter he may reject the creditor's claim.

1.7 Effect of statement of opposition

When the debtor duly opposes the claim, the creditor is unable to pursue this procedure. Note that when the debtor duly opposes the claim, the special procedure described in this section cannot be reused against the debtor with regard to the same claim as was contained in the judicial letter served on the debtor.

1.8 Effect of lack of statement of opposition

In the absence of a statement of opposition, the creditor may continue the procedure to obtain an executive title.

1.8.1 What needs to be done in order to obtain an enforceable decision?

A judicial letter filed according to this procedure (and which has not been contested) must be registered. The applicant seeking the registration of the judicial letter qualifying as an executive title must file a legal copy of the judicial letter, including proof of service and a copy of every reply received thereto, if any, with the Registrar of Courts.

Upon receipt of the documents mentioned in sub-article (2) the Registrar must examine the documents presented and must verify whether the debtor has filed a note of reply within the stipulated time and if he is satisfied that the conditions for the registration of the judicial letter as an executive title exist, he shall proceed to register the documents presented in a register, known as the Register of Judicial Letters as Executive Titles, which shall be maintained by the Registrar for the purposes of section 166A.

1.8.2 Is this decision final or is there still a possibility for the defendant to appeal against that decision?

There is no appeal, however, an executive title obtained according to the provisions of this section may be rescinded and declared null and without effect if a request is made by means of an application in the Courts of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, filed by the debtor within 20 days from first service of the executive warrant or other judicial act issued under that title and the court is satisfied that:

(a) the debtor was unaware of the said judicial letter because he was not duly notified; or

(b) the judicial letter did not contain all the required elements.

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