

Operational measures to safeguard trade and commercial debts

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Debt collection, whether from commercial entities or private individuals, is an ongoing problem in Romania. In case of cross-border matters, the process of forcing debtors to pay is even more complex and laborious¹.

Romanian law approves measures that can facilitate the collection of debts. Below, we discuss options that could be alternatives to securities such as mortgages or personal guarantees.

It's not only about actual securities – these measures should also make it easier for the creditor to get an enforcement title against the debtor and to use it as fast as possible.

Choice of the governing law

As a first step, the choice of governing law should be considered. In principle, parties can choose which law will apply to the contract². So if the parties to the contract come from different countries, they can agree on the governing law of any party's country or even another legal system.

It is usually best to choose the law of the state where any dispute stands the best chance of being settled quickly. However, in certain cases this might not be an option. In disputes over real estate, for instance, there is no such choice of governing law as, usually, real estate matters are subject to the law of the state where they are located in.

Another aspect to take into account with choosing governing law is the fact that often, the UN Convention on Contracts for the International Sale of Goods applies by default, as long as this has not been expressly excluded in the contract.

Language of the contracts and supporting documentation

Another measure is to draft the contract in the language of the chosen governing legal authority. Most countries' codes of procedure state that documents must be submitted to the court or other authorities (eg the bailiff) with a translation in the operational language of the court or authority. If parties do not submit documents in both languages, the court may usually demand a translation, which wastes time and money and carries the risk of errors. A bilingual contract is also an option, in which case it must be stated in the contract that if discrepancies arise between the two languages, the language of the governing legal system will prevail.

¹ The submission of documents requires a certified translation, a place of jurisdiction far away from home, the application of supranational legal provisions etc.

² If a contract refers to foreign elements, ie. it has a foreign reference, this is beyond dispute; for the rest, opinions vary. The description below of security measures refers exclusively to Romanian legal provisions.

Clear identification of contracting parties and securities

When the contract is signed, the parties must submit verification documents (e.g. ID cards, Commercial Register extracts, and even articles of association and similar documents). This eliminates surprises over the authority to sign and delivery addresses of the contracting parties.

Assets offered as securities should contain as many elements as possible in support. Besides the land registry entry of any real estate there should be, for example, a note of the address, owner, topographical number, surface, building etc. For motor vehicles, the registration number, the motor series, owner and similar information must be stated in the security contract.

If, in the case of late payments, there are negotiations for a mutually agreed resolution, the minutes of these meetings (especially that in which the debtor acknowledges the debts) should be signed before a notary public; a certified legal document signed in this manner can act as an enforcement title.

Securities

In Romania, promissory notes (*Ro. bilet la ordin*) are very often used as securities. The debtor undertakes to issue promissory notes to the creditor, registering the amounts owing and payment dates. If the debtor fails to make the payment, the creditor – on the due date – can submit the value papers to the debtor's bank to have the payment issued.

If the bank rejects the payment, the promissory notes then become, according to Romanian law, enforceable titles. So to safeguard the debt it is a good option to link a lien on movable or immovable goods to a promissory note from the debtor.

Conclusion

Trade and commercial relationships in Romania are, like everywhere else, safeguarded more effectively when the creditor backs up the actual securities with measures to ensure fast access to enforcement procedures. The measures indicated above are suggestions that in practice have proved to be very advantageous.

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