



NEWS FROM ESTONIA, LATVIA AND LITHUANIA

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Taking counsel - Where should I sue my Baltic debtor?

Agris Repss

If the debtor and the creditor both live and hold funds in the same country, there is no question about the place for suing, since the creditor will simply turn to the national courts. There are no complicated cross-border issues, and everything is settled in the same country. The situation is more complex when the parties are situated or have their assets in different countries. Then, before thinking about the substance of the case, the claimant has to consider the strategic perspective, picking the right place for the legal battlefield. He has to ensure that, after winning the proceedings in one country, he can collect the money in other countries where the respondent has it. Without this precaution, any brilliant victory in the court will be a Pyrrhic victory, the respondent being moneyless or insolvent in the respective country and the judgment nonenforceable anywhere else.

Where should I look? Since May 1, 2004, the legal act to which the creditor may turn for guidance is Regulation 44/2001 - in legal jargon known as the Brussels regulation. It should be noted that the Brussels regulation applies between all the EU countries, except Denmark, which has opted-out. The Brussels regulation lays down simple rules for jurisdiction (where to sue your debtor), recognition (how one country recognizes another's judgment) and enforcement (how to enforce the judgment in other countries). However, the Regulation only allows for recognition and enforcement of those judgments, which have been decided in accordance with its jurisdictional grounds.

What are the rules of jurisdiction? There are a number of rules for choosing the most appropriate jurisdiction for suing the debtor. If you have concluded a contract saying, "disputes on this contract shall be settled in Estonia," you have to go to the Estonian courts. If the dispute is about immovable property, you have to sue the debtor (if, for example, he has not sold to you the land according to the contract) in the country where the immovable property is situated. This rule applies even if you have contractually agreed on another place for dispute resolution. If the debt arises from a contract (for instance, a failure to deliver goods from Sweden to Latvia), the debtor may be sued in the place where the contract was to be fulfilled (that is, in Latvia).

There are several other exceptions, also giving more beneficial rules for cases of insurance or consumer claims. If no exceptions are applicable to the case, the general rule of jurisdiction states: You must sue the debtor in the country where he resides, or, if the debtor is a company, in the country where the company is registered, carries out business or from where it is controlled.

What do I do when I have received the judgment? When you have finally obtained a judgment (according to the Brussels regulation) and you know that the respondent holds money in another Baltic country, you may require the courts of that country to enforce the judgment. The first step would be to recognize the judgment, which is almost automatic and does not give the court a right to review the judgment. There are a few exceptions to this automated procedure, which basically apply to cases of major deficiencies. The second step is enforcement, carried out according to the local procedural rules.

In conclusion, if you have chosen the place to sue the debtor according to the book, the Brussels regulation entitles you to hunt him down with the judgment in any EU country (except Denmark) including all the Baltic countries.

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