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Cross-Border Debt Recovery

Another innovative feature developed by the European Union to facilitate businesses and the internal market is the Cross-Border Debt Recovery. This feature enables creditors who are owed a substantial amount of money to freeze the assets of these persons/debtors who owe the money to the creditors and who have their bank accounts in another member state of the European Union, which is not identical to the creditor's place of domicile.

In practice, the creditors can initiate such proceedings using the European Account Preservation Order (EAPO) in their process to gain the funds that are owed to them by the debtors. This by itself is a groundbreaking legal instrument that ensures that the debtors cannot evade their obligations towards the creditors regardless of where their funds are allocated in the European Union.

Our suggestion is that companies or creditors should utilize this procedure as part of the debt collection policy since now it's easier to be obtained between the member states as it is designed to offer fast and effective results within the EU.

European Account Preservation Procedure

This is an interim protection procedure and is applicable for monetary claims of either civil or commercial nature, and may be applied to all European Union's member states besides Denmark. It has been developed in the frameworks of the European Union's Regulation 655/2014.

The creditor need not take any actions in notifying the debtor before commencing the procedures for a EAPO; this is also a way of safeguarding that the debtor does not take any pre-emptive measures to transfer or conceal his/her (current) assets making thus recovery of the money impossible. The EAPO has also been portrayed as an action with a 'surprise effect' as it catches the debtors 'off-guard' before they manage to take action to move or spend their assets.

Nevertheless, for the EAPO to be issued the creditors need to prove the existence of a cross-border debt, meaning, the debtor owing them these amounts of

monies should not be residing or domiciled in the same member state as the creditor.

Proceedings for the issuance of such an order can be initiated irrespective if a creditor has not yet received a court judgment or settlement proving the existence of a monetary claim.

The procedure for the EAPO commences with filling the standardised form with which the creditor needs to accompany it with supporting evidence (documentation) so as to prove the existence of the cross-border debt (i.e. invoice agreement). Moreover, if a creditor does not have adequate evidence or information about the bank account where the debtors hold their assets, the name of the bank account is sufficient in commencing these proceedings. In the event that the creditor does not know the name of the bank either, according to the national legislative regimes of each country, he/she might seek such information that will be given by the country's competent authorities.



Furthermore, pursuant to the jurisdiction of each Member State, the EAPO will be issued by the country's competent authority. Looking at Cyprus' exemplar the competent authority of issuing a EAPO as per Article 50(1)(a) are the district courts and appeals for such an order can be heard by the Supreme court. Also, the country's Central Bank is the one responsible for obtaining bank account details.

Once the EAPO is issued, the relevant bank will enforce it, and following three working days, it will proclaim the overall total of the debtor's assets that have been frozen.

A debtor has merits in disputing such EAPO, provided the decision has been issued without him/her being heard. Form VII allows a debtor to seek a remedy, which can then be appealed by both parties. Likewise, the creditor can also appeal against a EAPO decision provided his/her request for such an order has been rejected.

Disclaimer:

This letter has been drafted to inform creditors or companies who are owed substantial amounts of money and wish to commence cross-border proceedings so as to gain their funds from the debtors. This though should not be considered substitution of legal advice. Those interested to learn more about this subject can contact the author of the article at: info@kaimakliotislaw.com .

The process itself might be labour-intensive, hence our offices may assist businesses or creditors who seek help in regaining their funds and initiate the proceedings for an EAPO on their behalf. Similarly, we can aid any debtor who wishes to appeal a EAPO decision or contest the issuance of such. This procedure is of vital importance and especially for businesses that are owed substantial amounts of money from debtors residing and having their bank account overseas in another European Union's jurisdiction other than the one in which the company is operating. These are the type of businesses the Cross-Border Debt recovery wants to facilitate.

Any financier or a business wishing to initiate such a proceeding our offices will remain at their disposal offering them practical legal support throughout the process of gaining a EAPO.