

FEBRUARY 2020

**CHANGES TO THE CODE OF CIVIL PROCEDURE AND
NEW FRAMEWORK FOR THE NOTARIAL INVENTORY PROCESS**

On the 1st January, Law no. 117/2019 of the 13th September came into force, changing the Code of Civil Procedure (CCP) in regards to enforcement proceedings, application for review and to the inventory process, approving the notarial inventory regime as well as changing the framework of procedure for settlement of monetary debts arising from contracts which value does not exceed €5,000.00.

Concerning the changes to the CCP we highlight the introduction of the possibility of lodging an extraordinary application for review of a judgement which has acquired the authority of a final decision, when it has been delivered in a lawsuit without intervention by the defendant, if such absence is due to the lack or invalidity of the notification, to an unawareness of the notification for reasons not attributable to the defendant, to the lack of challenge by reason of force majeure or when there might be civil liability by the State for damages resulting from the performance of its judicial role.

With respect to the enforcement proceedings, the absence of the defendant was also added namely as a reason for (i) opposing the enforcement of a judgement (if the absence was due to any of the reasons aforementioned), (ii) suspending the enforcement procedure and (iii) void the sale of the attached asset.

In reference to the attachment itself, the law now enables the attachment of a non permanent and non-owner-occupied property of the defendant or of business premises, as long as the attachment of other assets doesn't presumably satisfy the debt in whole within 6 (six) months, as well as it now allows the attachment of a permanent owner-occupied property (i) if, in the enforcement of a debt of less than or equal to €10,000.00, the attachment of other assets presumably doesn't satisfy the debt in whole within 2 and a half years or (ii) if, in the enforcement of a debt exceeding €10,000.00, the attachment of other assets doesn't satisfy the debt in whole within 1 year.

Where enforcement is summary and founded on an application for order to which enforcement was applied, it shall become permissible to argue defence all of which is not excluded from being argued in opposition to such order and which is detailed ahead.

We should note as well that the same law changed the framework of procedure for settlement of monetary debts arising from contracts which value does not exceed €5,000.00. Where the matter at issue is a consumer contract containing general contractual terms, the applicant should mention them in the application for order under penalty of being considered as acting in bad faith.

Notwithstanding the lack of opposition, it shall always be possible to allege as a means of defense, in the context of a judgment debtor's stay of execution (i) the misuse of the order procedure or the occurrence of *ex officio* delaying exemptions; (ii) the grounds mentioned in the CCP for the judgment debtor's stay of execution in executions based on applications for orders to which enforcement was applied; (iii) the existence of illegal or abusive general contractual terms; (iv) any *ex officio* peremptory exemption.

Along with these innovations, the inventory process was reintroduced to the CCP as a special process becoming, in certain situations, of the exclusive responsibility of judicial courts.

Law no. 117/2019 of the 13th September also introduced in the legal regime of the inventory process, regulated by Law no. 23/2013, of the 5th March, the guarantees of impartiality provided for in the CCP, and enshrined the possibility of judicial intervention, namely through the adoption of coercive measures. Although the current framework for the inventory process, as set out in Law 23/2013, of the 5th March, has been revoked by the Law under analysis, it will continue to be applicable to processes that on the 1st January 2020 are pending in notarial offices and there will continue its process.

The (new) legal regime of the inventory instituted by the Law under consideration, which returns it to the CCP, will only apply to cases initiated as from 1st January

2020, as well as to cases pending at notarial offices which must be referred to the court, following request for its intervention, as per the terms of the law.

The Annex to Law no. 117/2019 of the 13th September also published the Legal Framework for Notarial Inventory, regulating the procedure of the inventory process when not under the exclusive responsibility of the judicial courts and when it may take place at a Notarial Office.

PARES | Advogados is available to provide more detailed information on the changes to the CCP and on the new framework for the notarial inventory process that will suit the specific needs of each client, being able to offer all necessary support in matters of Civil Law and Civil Procedure Law.

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