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## Alert on Changes to the Civil Procedure Code

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### Dispute Resolution

#### Foreword

In the past year we have witnessed what may be called a major reform of the Bulgarian civil procedure framework. It started with the significant changes to the Bulgarian Civil Procedure Code (“CPC”) effectuated in late October 2017 by virtue of the Law on Amendment and Supplement of the CPC, promulgated in issue 86 of 27 October 2017 of the State Gazette (“SG”) (“**2017 Amendment Law**”), which affected nearly all aspects covered by the CPC.

Most notably, the 2017 Amendment Law introduced major changes to the rules dealing with cassation proceedings, order for payment proceedings and enforcement proceedings. Thereafter, in May 2018, by way of the Law on Amendment and Supplement of the CPC, promulgated in issue 42 of 22 May 2018 (“**May 2018 Amendment Law**”), the national legislator, *inter alia*, introduced amendments to the CPC in order to ensure compliance of the Bulgarian procedural framework with the rules of Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (“**Regulation 861/2007**”).

The most recent amendments to the CPC took effect amid August 2018 when the Law on Amendment and Supplement of the CPC, promulgated in issue 65 of 7 August 2018 (“**August 2018 Amendment Law**”) came into force, which altered the territorial court jurisdiction applying to consumers disputes and compensation claims of harmed parties under the Insurance Code against insurance companies, the Insurance Guarantee Fund (“**IGF**”) and the National Bureau of Automobile Insurers (“**NBAI**”).

#### 2017 Amendment Law

##### Amendments to the rules concerning serving of notices and summons

By way of the amendments introduced to Art. 47 of the CPC, court officials shall now mandatorily make at least three attempts over the course of a month to serve court notices/summons to a party to proceedings developing in accordance with the CPC.

These shall be made in weekly intervals and at least one of them shall be made during non-business days. If, following the three attempts, the addressee of the court notices/summons cannot be found, or in

##### Amendments to the general rules of civil procedure

The most notable amendments to the general rules of civil procedure concern the regime of state fees due where joint claims are brought and introduce additional formal requirements applicable to statements of claim.

By virtue of the amendments to Art. 72 of the CPC, state fees on joint claims shall now take into account the interests in respect of which protection is sought and will disregard the number of parties involved. As a

case it is established that the party does not reside at its official or notified address, court officials shall place a notice informing the party of the documents addressed to it, containing also an invitation to the addressee to appear in the respective court to collect them.

If the party does not appear in the court to collect the documents within 14 days as of the placing of the notification, it shall be deemed properly notified of these and the proceedings shall continue as usual. Other changes provide that court documents may be delivered at the workplace/place of business of the party, and also that private enforcement bailiffs shall now be entitled to serve non-court documents (payment invitations, contractual notices, etc.), which up until now was placed solely within the remit of public notaries.

result, claimants shall pay a single state court fee in cases where protection of single interest is sought against multiple defendants (e.g. where payment of a monetary obligation is sought from two or more co-debtors).

Art. 129 of the CPC was also amended, and it now requires claimants bringing monetary claims to provide details in the statement of claim (and also in applications for issuance of orders for payment) of their bank accounts where they wish to receive payment. Failure to comply with this requirement is now considered an irregularity of the statement of claim, and the courts will provide claimants with a one-week term to cure it. If the claimants fail to comply, the court will terminate the proceedings on formal grounds.

## Amendments to the rules governing cassation proceedings

The 2017 Amendment Law introduced substantial changes to the rules governing the access to cassation review of appellate decisions.

Amendments were introduced in the grounds for admissibility to review on the merits of cassation appeals. Art. 280, paragraph 1, item 1 of the CPC now includes the mandatory interpretative case law of the old Supreme Court and the Supreme Court of Cassation (“**SCC**”) expressed in interpretative decisions, as well as the “non-mandatory” court authority of the SCC. In respect of the latter, Art. 290 of the CPC was accordingly amended and it now declares that decisions of the SCC on cassation appeals against judgments of appellate courts do not constitute mandatory court practice, practically implementing on statutory level exactly the opposite view to the one strictly followed by Bulgarian courts before the 2017 Amendment Law took effect.

However, this amendment has been proved to lack significant practical impact, as contradiction of appellate decisions with these “non-mandatory” decisions of the SCC preserved its status as ground for admissibility to cassation review in light of the rewording of Art. 280, paragraph 1, item 1 of the CPC. Art. 280, paragraph 1, item 2 of the CPC also saw substantial changes, and it now explicitly includes the contradiction with acts of the Bulgarian Constitutional Court and the Court of Justice of the European Union, which replaced the contradictory case law of lower-ranking courts as grounds for admissibility to cassation review.

New grounds were also included by virtue of Art. 280, paragraph 2 of the CPC. According to these, appellate decisions shall now be admitted to cassation review where they are potentially invalid

or inadmissible, or apparently unfounded. Pursuant to the new redaction of this provision, in these cases the appellate decisions shall be admitted to cassation review on the merits irrespective of whether the preconditions for admissibility under Art. 280, paragraph 1 of the CPC are satisfied.

The part of the provision providing for apparent unfoundedness of the appellate decision as a separate ground for admissibility to cassation review caused an uproar among the legal and judicial communities in Bulgaria, as initially it seemed that in that case the cassation instance would have had to form a preliminary opinion on the substance of the cassation appeal. As a reaction to this controversy, judges from the SCC sent a formal request to the Constitutional Court to examine and accordingly resolve whether this “apparent unfoundedness” ground for admissibility to cassation review is in line with the rules of the Bulgarian Constitution. The outcome of the proceedings before the Constitutional Court is currently pending.

Other notable amendments in the field of cassation proceedings concern Art. 291 of the CPC. The 2017 Amendment Law in its part amending this provision stripped the SCC of its authorities to align the case law of lower-ranking courts through its decisions rendered on a case-by-case basis. Therefore, the SCC, remaining obliged to ensure the unified application and interpretation of the law at constitutional level, shall now perform these functions solely through interpretative decisions.

### **Amendments to the rules governing order for payment procedure**

The procedure for issuance of order for payment saw substantial changes as well, especially as regards documentary orders under Art. 417 of the CPC. Under the new regime and due to the amendments to Art. 415 of the CPC, a creditor may now obtain a writ of execution based on a documentary order for payment under Art. 417 CPC only if the debtor **is personally served** with the order for payment **and does not file** an opposition against it within the terms provided by law. If the order for payment has not been served to the debtor in person, but instead *in absentia* pursuant to Art. 47 of the CPC, the court will no longer proceed to issue a writ of execution to the creditor (as it was the case before the 2017 amendments) and shall now instruct the creditor to file a claim for declaratory relief under Art. 422 of the CPC.

Another novelty to the order for payment proceedings is the provision of 414a of the

### **Amendments to the rules dealing with enforcement proceedings**

The 2017 Amendment Law introduced changes to the rules concerning enforcement proceedings, which mainly aim to provide stronger guarantees of the rights and interests of debtors in enforcement proceedings.

Most notably, the 2017 Amendment Law broadened the scope of actions of enforcement agents that may be challenged by the parties to the enforcement proceedings. For example, the CPC now explicitly provides for the debtors’ right to appeal refusals by enforcement agents to suspend or terminate enforcement proceedings and evaluations of assets when they are released for sale.

Moreover, the CPC now explicitly requires the execution methods to be proportionate to the amount of the

CPC. The provision provides for a special “mini-procedure” applying in cases where the debtor opposes to an order for payment on the grounds that he has performed the debt at issue within the terms for voluntary payment fixed in the order. In that case, the court shall notify the creditor of the opposition and shall instruct him to present a statement on the opposition within a short, 3-days term.

In case the creditor complies, the court shall review the opposition and the creditor’s statement and shall resolve the matter in closed quarters. By contrast, if the creditor does not present its statement, the order for payment shall be invalidated. The provision provides that if a writ of execution has been issued in the meantime (which is usually the case with documentary orders under Art. 417 of the CPC), it shall be accordingly invalidated in its parts corresponding to the invalidated parts of the underlying order for payment.

Notwithstanding these propositions, Art. 414a, paragraph 5 of the CPC provides that a creditor who has failed to comply with the court’s instructions ordering him to present a statement on the opposition of the debtor shall retain entitlement to file a claim for its receivables under Art. 422 CPC.

debt, and obliges enforcement agents to take into account all facts and circumstances in determining the appropriate execution method, including the conduct of the debtor during the proceedings and the risk of non-payment. In case of non-proportionate enforcement, the debtor may rely on the enforcement agent’s damages liability and seek proper compensation.

The territorial jurisdiction of enforcement agents was also altered with the view to prevent enforcement cases to be organized before enforcement agents in regions different from the region of residence of the debtor. The 2017 Amendment Law introduced other changes as well, among which new rules for enforcing over intellectual property and groups of assets of a going concern.

## **May 2018 Amendment Law**

The May 2018 Amendment Law was adopted to ensure compliance of the Bulgarian procedural framework with Regulation 861/2017 concerning procedures for small claims, and creates rules implementing this regulation. According to the new redaction of Art. 624 of the CPC, a person may now file an application for initiating a small claims procedure pursuant to Regulation 861/2007 before the regional court at the place of residence or headquarters of the debtor.

The procedure shall develop in three-instance court proceedings, with district courts acting as appellate instance courts and cassation proceedings developing before the SCC. The 2018 Amendment Law provided that applications for issuance of writs of execution based on decisions rendered within small claims proceedings shall be filed with the district court at the place of residence or headquarters of the debtor, and introduced corresponding rules concerning the suspending of the enforcement of such decisions.

The May 2018 Amendment Law created a new section 8 (eight) in the CPC, providing for rules applying to civil cases falling under the scope of application of the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (“**2007 Hague Convention**”). The new section contains rules as to the recognition and enforcement of decisions rendered in foreign countries signatories to the 2007 Hague Convention, as well as the recognition and enforcement of agreements dealing with child support.

## August 2018 Amendment Law

The most recent amendments to the CPC took effect in August 2018. They concern the territorial jurisdiction of Bulgarian courts applying to consumer disputes and compensation claims of harmed parties under the Insurance Code against insurance companies, the IGF and the NBAI.

Art. 113 of the CPC was amended and it now states that claims of or against consumers shall now be filed before the courts at the current address of the consumer, or in the lack thereof – before the courts at the consumer’s permanent address.

As far as compensation claims against insurers of parties harmed in result of occurrence of an insured event are concerned, according to Art. 115, paragraph 2 of the CPC these shall now be filed either before the courts at the place of occurrence of the insured event, or before these at the harmed party’s permanent or current address. In essence, by way of these amendments the national legislator revoked the possibility insurance claims to be brought before the respective courts at the headquarters of the insurance companies. In the reasoning to the August 2018 Amendment Law the authors of the bill stated that these amendments aim to ensure more convenience for the harmed parties by providing them with the opportunity to initiate insurance litigation at the place of their residence.

However, in the legal community circulated the view that the true motive for introducing these is the easing of the heavy workload of the courts in Sofia, which currently adjudicate more than 90% of the insurance-related disputes in Bulgaria on account of the fact that almost all insurance companies are headquartered in Bulgaria’s capital city.

**This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.**

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### DGKV Dispute Resolution & Arbitration

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