

## Belarus

### Priority for Debt Repayment Changed

On October 20, 2004, Belarusian President Alexander Lukashenko issued Decree No. 10 ("Decree No. 10"), which alters the priority for applying payments to various components of outstanding debt. Under the previous system, established in the Civil Code and following custom, if a payment was not sufficient to cover the entire amount due, the amount received was applied first to the creditor's expenses arising from the receipt of payment, and then for penalty interest amounts and default fees, and lastly to the principal and regular interest amounts. Decree No. 10 switches the order of the last two categories, so that now a payment against debt is first applied to the creditor's expenses to receive the payment, and then secondly to the main debt and interest owed, and lastly to default fees and penalty interest amounts.

The new order of priority is aimed at protecting the interests of the debtor and improving the mechanism for paying back delinquent loans. It is intended to benefit both debtors and creditors, by allowing debtors to save on expenses arising from credit agreements and creditors to get their money returned faster. However, in fact it is likely to lead to decreased debtor discipline. When a payment is late, additional interest and default fees are frequently imposed (if stipulated by the agreement or legislation). A debtor may decide to repay only the amount of the principal, at which point the penalty interest ceases to accrue, and then choose not

to make any further debt payments without any risk that the amount of the debt will increase.

In fact, Decree No. 10 legalizes recent court practice. Although the Civil Code nominally regulated the priority in which debt payments were applied, in reality courts followed their own internal regulations which recommended that the amounts applied to interest payments before repayment of the loan principal be interpreted to apply to the basic interest accrued on the loan. Moreover, previously this order could be modified by an agreement between the parties to the loan agreement. Now, the priority established in Decree No. 10 is mandatory, *i.e.*, not able to be modified by an agreement between the parties, and is applied regardless of the law governing the loan agreement.

Formally, the present situation represents a conflict of norms. Belarusian legislation allows the comparative weighting of legal force (precedence) attributed to judicial acts and legislation to be understood in various ways. The Civil Code is a codified law and therefore should be considered to have greater legal force. However, the wording in the Belarusian Constitution is not very clear, and can also be interpreted to give Presidential acts more authority. Law enforcement authorities almost always follow the latter variant in determining the precedence of judicial acts and legislation. Thus, in practice, Decree No. 10 will likely prevail.

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