

### 1 What does 'enforcement' mean in civil and commercial matters?

Enforcement in civil and commercial matters means using the debtor's assets to satisfy the claim set out in the enforceable title, or obliging the debtor to deliver a person or to perform or refrain from performing a certain operation.

### 2 Which authority or authorities are competent for enforcement?

Bailiffs (kohtutäiturid) – contact details available [here](#).

### 3 What are the conditions under which an enforceable title or decision may be issued?

#### 3.1 The procedure

A court decision is enforced:

(1) after its entry into force;

A court judgment enters into force when it can no longer be contested in any manner other than by the review procedure (teistmismenetlus). If a court judgment is lawfully appealed, its entry into force will be suspended. If it is partially appealed, the part of the judgment which is not appealed will enter into force. If a judgment is appealed as regards a part that does not relate to the determination of procedural expenses, the part of the judgment by which the amount of procedural expenses is determined will also not enter into force. A court judgment which has entered into force is binding on the participants in proceedings to the extent to which the claim filed in the action or counteraction is resolved on the basis of the circumstances behind the action, unless otherwise provided by law.

A judgment is enforced on the basis of an application by the claimant.

(2) prior to its entry into force if the court has declared that it is subject to immediate enforcement.

A judgment declared immediately enforceable is enforced before it enters into force. The court declares a judgment immediately enforceable either in the judgment itself or by a ruling.

Judgments are enforced on the basis of an enforceable title.

Enforceable titles in civil and commercial matters may include the following:

judgments and rulings in civil matters which have entered into force or are subject to immediate enforcement;

decisions by courts of foreign states, which are recognised or subject to enforcement without recognition;

decisions of arbitration boards permanently operating in Estonia and decisions of other arbitration tribunals which are declared enforceable;

decisions made by a labour dispute committee (töövaidluskomisjon) or lease committee (üürikomisjon), which have entered into force.

An exhaustive list of enforceable titles is provided in section 2 of the [Code of Enforcement Procedure \(Täitemenetluse seadustik \(TMS\)\)](#).

If an enforceable title is not executed voluntarily, an enforcement procedure can be initiated on the basis of an application by the claimant.

Claims arising from the enforceable titles provided by law are enforced under the Code of Enforcement Procedure. The enforcement of enforceable titles is conducted by bailiffs, unless otherwise prescribed by law.

A bailiff conducts enforcement proceedings based on an application by a claimant and an enforceable title. A bailiff conducts enforcement proceedings regardless of any application by a claimant if the enforceable title is a decision on the payment of the bailiff's fee or on ordering payment of the enforcement expenses, and in other events provided by law.

An enforcement file setting out the enforcement actions and notices sent in chronological order is opened for an enforcement matter. The documents received and issued by the bailiff in the enforcement matter or copies thereof are preserved in the enforcement file.

If the conditions for commencing enforcement proceedings are fulfilled, the bailiff will deliver an enforcement notice to the debtor. Upon delivery of an enforcement notice to a debtor, enforcement proceedings are deemed to have commenced.

A bailiff must deliver the enforcement notice to a debtor, and to participants in the enforcement proceedings a statement of seizure of property, an auction report, his or her decisions on complaints filed against his or her actions, and other documents provided by law.

If no term is specified by law or a court decision for voluntary compliance with an enforceable title, such term will be set by the bailiff. The term may not be shorter than 30 days, unless otherwise prescribed by the Code of Enforcement Procedure. With the consent of the claimant, the bailiff may set a term of over 30 days for voluntary compliance with an enforceable title.

A bailiff is required to immediately take all measures permitted by law in order to enforce an enforceable title, collect information necessary for enforcement proceedings and explain to participants in enforcement proceedings their rights and obligations.

A bailiff may postpone an enforcement action on the basis of an application by the claimant or a corresponding court decision or when the person conducting the enforcement proceedings changes.

On the basis of an application by a debtor, a court may stay enforcement proceedings or extend or defer enforcement if it would be unfair on the debtor to continue with the proceedings. In doing so the interests of the claimant and other circumstances must be taken into account, including the debtor's family and economic situation.

#### 3.2 The main conditions

Prerequisites for enforcing an enforceable title:

A court decision which has entered into force or a decision by a labour dispute committee or lease committee which has entered into force and marked as having entered into force is accepted for enforcement. No mark of entry into force is appended to a decision subject to immediate enforcement.

In enforcement proceedings with respect to the assets of a spouse, the assumption is made, to the benefit of the claimant, that a movable asset in the possession of the spouse who is the debtor or in the joint possession of the spouses is in the ownership of the spouse who is the debtor. The bailiff may seize and sell such movable assets. In the case of an item which, due to its nature, is suitable for the personal use of only one of the spouses, it is presumed that the item belongs to the spouse who should use the item considering its nature.

Making a claim for payment on the joint property of spouses is permitted with the consent of the spouse who is not a debtor or if the enforceable title requires both spouses to perform the obligation. A claimant may demand that joint property be divided and a claim for payment be made on the part of the joint

property belonging to the debtor. The limitation period for an action requesting property division is one year from the date the enforcement proceedings for satisfying the claim out of the separate property of the debtor failed.

In order to make a claim for payment on property owned by a partnership, an enforceable title applying to all partners is required.

If a debtor dies during enforcement proceedings, the proceedings will continue in respect of the debtor's estate, unless otherwise prescribed by law.

If an enforceable title also applies to the legal successor of the claimant or debtor indicated therein, a bailiff will accept the enforceable title for enforcement if the legal succession is proven to the bailiff by a court decision, an extract from a public register or a notarised document. The same applies where a court decision made with regard to a possessor of an item under dispute is enforced and the possessor of the item changes after the court decision is made.

If the falling due of a claim indicated in an enforceable title depends on the expiry of a term, the arrival of a due date or the fulfilment of a condition, enforcement actions may be commenced after the expiry of such term, arrival of such due date or fulfilment of such condition.

If enforcement proceedings depend on the security to be provided by the claimant, the proceedings may only start if it has been certified in a written document that the security has been provided and a copy of the document has been delivered to the debtor or is being delivered to the debtor together with the enforcement notice.

If the execution of an enforceable title depends on the claimant simultaneously performing an obligation to the debtor, the bailiff may not commence enforcement proceedings until the claimant's obligation has been performed or, if the claimant or bailiff has made an offer to the debtor for the claimant to carry out the obligation, until the debtor's unreasonable refusal to accept such performance or the debtor's delay in the acceptance thereof for other reasons. If a claimant needs a right of succession certificate or any other document for compulsory enforcement, the claimant may, instead of the debtor, request that a notary public or an administrative agency issue it. In doing so the claimant must present the enforceable title.

## **4 Object and nature of enforcement measures**

### **4.1 What types of assets can be subject to enforcement?**

A claim for payment can be made against the movable and immovable property and against the proprietary rights of the debtor. If the debt has arisen due to the failure to pay child support, a court may, in the course of enforcement proceedings, suspend certain rights of the debtor and permits issued to the debtor or prohibit the issuance thereof.

### **4.2 What are the effects of enforcement measures?**

#### **Making a claim for payment against movable property:**

If a claim for payment is made against movable property, such property will be seized and sold. As of seizure, the debtor may not dispose of the property seized. The claim of a claimant together with penalties for late payment and other collateral claims the extent of which is indicated in the enforceable title will be satisfied out of the funds received from the sale of the property. Movable property will not be seized if it can be presumed that the funds to be received from the sale of the property to be seized would only be enough to cover enforcement expenses. A bailiff will transfer the funds paid to the official bank account of the bailiff as a result of compulsory enforcement out of a debtor's assets (hereinafter referred to as *enforcement revenue*) to the claimant within ten working days of the receipt of the funds.

If a financial claim is filed against the state or a local government, a claim for payment will be made against money. If making a claim for payment against money has not succeeded within a reasonable period of time, the claim for payment will be made against things.

As of the moment of seizure the claimant holds a lien on the item seized. A lien on the seized assets grants a claimant the same rights as a lien established on the basis of a contract or any statutory lien, unless otherwise provided by law.

A bailiff sells the seized movables at a public electronic or oral auction at which the right of pre-emption cannot be exercised. On application by a claimant or a debtor, a bailiff may sell the seized items in a manner different from an oral or electronic auction if the auction has failed or it can be presumed that the item cannot be sold at an auction or the presumed enforcement revenue to be received from auction of the item is significantly smaller as compared to the enforcement revenue to be received when selling the item in any other manner.

A bailiff distributes the enforcement revenue received from the sale of items between claimants and other persons entitled to such revenue in the order in which liens were obtained or according to an agreement made between the claimants. The amount that remains after the covering of enforcement expenses and satisfaction of claims will be returned to the debtor. If the enforcement revenue received is not sufficient to satisfy all claims and claimants are unable to reach an agreement as regards the distribution of funds, a bailiff will distribute the enforcement revenue between the claimants participating in the enforcement proceedings pursuant to a distribution plan. Enforcement expenses are deducted from the revenue to be distributed pursuant to the distribution plan.

#### **Making a claim for payment against immovable property:**

If a claim for payment is made against immovable property, such property will either be seized and sold or it will be subjected to compulsory administration in which case the claim of a claimant will be satisfied out of the proceeds of compulsory administration. A claim for payment may be made against immovable property if a debtor is entered in the land register as its owner or the debtor is a universal successor of the owner entered in the land register. A claim for payment made against immovable property is also made against items covered by a mortgage.

In order to seize immovable property, a bailiff will make a record of the immovable property, its fixtures and any other items covered by a mortgage, prohibit their disposal and have a note of this prohibition entered in the land register. When seized, immovable property remains in the possession of a debtor and, the debtor can administer and use it within the limits of regular management, unless the property is subjected to compulsory administration. As of seizure, the debtor may not dispose of the property seized. If, upon seizure of immovable property, the seizure also extends to movable property, such movable property may be disposed of within the limits of regular management. Immovable property is sold either at a compulsory auction or by the debtor under the supervision of a bailiff for which the prior consent of the claimant is necessary.

Immovable property is subjected to compulsory administration on the basis of an application of a bailiff, claimant or debtor. A compulsory administrator has the right to take possession of immovable property on the basis of a ruling which appoints him or her as the administrator. An administrator has the right and obligation to perform all transactions and acts which are necessary for the preservation of the condition and for the regular management of the immovable property. Compulsory administration will be terminated by a decision of a bailiff after the claim of the claimant is satisfied.

A bailiff distributes the enforcement revenue received from the sale and compulsory administration of immovable property between claimants and other persons entitled to such revenue on the basis of their rankings indicated in the land register and in the order of seizure or on the basis of an agreement made between the claimants. Enforcement expenses are deducted from the enforcement revenue to be distributed pursuant to the distribution plan.

#### **Making a claim for payment against proprietary rights:**

A claim for payment may be made against a debtor's account. A credit institution issues information to a bailiff concerning the existence or absence of an account. An account is seized on the basis of an instrument of seizure and to the extent indicated therein. To the extent of the amount seized pursuant to the instrument of seizure, the funds in the account are transferred to the official bank account of a bailiff unless the enforceable title is a ruling on securing an action other than a ruling on securing an action concerning a claim for child support made during court proceedings. If, at the moment of seizure, the account of the debtor does not hold funds to the extent indicated in the instrument of seizure, the funds paid to the account after the moment of seizure will also

deemed to be seized up to the outstanding amount. The funds paid to the account after the moment of seizure are transferred to the official bank account of a bailiff until the instrument of seizure is executed. If a bailiff delivers an instrument of seizure of an account of a debtor to a credit institution for execution, the instrument of seizure will also be deemed effective in respect of accounts to be opened by the debtor in the future.

A claim for payment may be made against securities. In order to seize securities listed in section 2 of the Estonian Securities Register Maintenance Act (väärtpaberite keskreistri seadus), a bailiff will instruct the registrar to enter a note of prohibition on the disposal of rights and obligations. A security is seized as of its freezing in the register. A bailiff sells securities according to the provisions regarding the making of claims for payment against movables. A bailiff has the right to register a registered security in the name of a purchaser and submit the necessary applications therefor instead of a debtor. A bailiff will present a bill of exchange, cheque or a bond for payment if the security permits this.

A claim for payment may be made against a share in a private limited company. If a share in a private limited company is not entered in the register maintained by the central securities depository (väärtpaberite keskreister), the share will be deemed seized pursuant to the procedure provided for the seizure of movable assets. A bailiff informs the management board of the private limited company of the seizure. A bailiff sells a share in a private limited company according to the provisions regarding the making of claims for payment against movable assets. The bailiff who sold a share will send a notice concerning the transfer of the share in the form established by the Minister in charge of this domain to the registrar of the commercial register (äriregister) within two days of the auction.

In addition to the above, a claim for payment can also be made against financial obligations performed to third parties, a membership of a building association, a portion of a partner in a partnership property, an inalienable right and other proprietary rights.

#### **Restriction of rights in the event that child support is owed:**

If a debtor fails to regularly pay child support within three months in the course of the enforcement proceedings initiated for the collection of such support and a bailiff has been unable to collect it out of the assets of the debtor, a court may, with the consent of the claimant and based on an application by the bailiff and having first warned the debtor, issue a ruling by which the following rights and permits are suspended for an undefined term:

hunting rights;

right to drive motor vehicles;

weapons permits and permits to acquire weapons;

right to drive recreational craft and personal water craft;

fishing licence.

If a court suspends the validity of a right or permit of the debtor or both of them, it will, by the same ruling, also prohibit the granting of the respective right or permit or both. A court may suspend several aforementioned rights and permits at the same time and prohibit the granting of them.

By a ruling, a court will reinstate a right or the validity of a permit of a debtor and allow the debtor to be granted a right or a permit again on application by the debtor if:

the debtor has paid child support for at least three months;

the debtor has agreed with the claimant on a payment schedule and kept to it for at least three consecutive months;

the refusal to reinstate a right or to again permit the granting of a right would be unfair to the debtor;

the obligation to pay child support has expired.

#### **4.3 What is the validity of such measures?**

The limitation period for claims recognised by a judgment which has entered into force and for claims arising from a court settlement or any other enforceable title is ten years. The limitation period commences as of entry into force of the judgment or issue of any other enforceable title but not before the claim falls due.

The limitation period for a claim for the performance of recurring obligations, with the exception of claims for the fulfilment of child maintenance obligations, is three years for each separate obligation regardless of the legal basis for the claim. The limitation period commences as of the end of the calendar year when the claim corresponding to the obligation falls due. The limitation period for a claim for the performance of child maintenance obligations is ten years for each separate obligation.

If a debtor dies during enforcement proceedings, the proceedings will continue in respect of the debtor's estate, unless otherwise prescribed by law.

Before the expiry of the term for the renunciation of an estate or the acceptance of succession, enforcement proceedings on the basis of a claim against an estate may be conducted only in respect of the estate. In this case, no claim for payment regarding obligations personally owed by the successor may be made against the estate.

If an enforceable title also applies to the legal successor of the claimant or debtor indicated therein, a bailiff will accept the enforceable title for enforcement if the legal succession is proven to the bailiff by a court decision, an extract from a public register or a notarised document. The same applies where a court decision made with regard to a possessor of an item under dispute is enforced and the possessor of the item changes after the court decision is made.

#### **5 Is there a possibility of appeal against the decision granting such a measure?**

A participant in enforcement proceedings may file a complaint with a bailiff against a decision or the actions of the bailiff when executing an enforceable title or refusing to perform an enforcement action, within ten days of the day on which the complainant becomes or should have become aware of the corresponding decision or action, unless otherwise provided by law.

A participant in proceedings may file an appeal against a decision of a bailiff made regarding a complaint to a county court in the jurisdiction of which the bailiff's office is located within ten days of the delivery of the decision. An appeal against a decision or activities of a bailiff cannot be filed with a court without filing a complaint with the bailiff beforehand.

An appeal against a ruling of a judge may be filed in enforcement proceedings, unless otherwise provided by law.

Participants in proceedings may also file an appeal against the ruling of a county court on suspension of a right and validity of a permit issued to a debtor and on prohibition to grant a right or a permit to him or her pursuant to the procedure provided for in the [Code of Civil Procedure \(tsiviilkohtumenetluse seadustik\)](#). Appeals may be filed against a circuit court ruling on the appeal against a county court ruling.

A debtor may file an action against a claimant for declaration of compulsory enforcement on the basis of an enforceable title to be inadmissible, in particular for the reason that the claim has been satisfied, postponed or set off. Satisfaction of the action does not affect the validity or legal force of the enforceable title. Such objections will be admissible only if the grounds on which they are based arise after the entry into force of the court decision. Such action may be filed until the end of enforcement proceedings (section 221 of the Code of Enforcement Procedure).

A third party who has the right to an object of compulsory enforcement which prevents the compulsory enforcement, especially the right of ownership or a limited real right, may file a claim for release of the property from seizure or for declaration of the compulsory enforcement inadmissible for other reasons with a court in the jurisdiction of which the compulsory enforcement is conducted.

Within 30 days of the delivery of a report on an auction, a participant in enforcement proceedings may file an action with a court for the declaration of the auction invalid if property has been sold to a person who did not have the right to purchase it or if the auction was conducted on the basis of a void seizure or

other essential conditions of the auction were violated. If an auction is declared invalid, the debtor may demand that a purchaser release a sold item pursuant to section 80 of the [Law of Property Act \(asjaõigusseadus\)](#) or, if this is impossible, file a claim on the basis of the provisions of unjust enrichment; a participant in proceedings may demand that a bailiff compensate for damage according to the Bailiffs Act (kohtutäituri seadus).

#### **6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?**

The conduct of enforcement proceedings are regulated by the Code of Enforcement Procedure. Restrictions on the seizure of property are set out in subsection 53(1) which stipulates that it is prohibited to seize more of the property of a debtor than necessary for the satisfaction of a claim of a claimant and for covering the enforcement expenses, unless it is impossible to satisfy the claim of the claimant in any other manner. Seizure is invalid and no legal consequences arise from seizure upon material violation of procedural provisions concerning seizure, particularly if:

- (1) property is seized without a valid enforceable title;
- (2) no enforcement notice has been delivered to a debtor;
- (3) property is seized by a person not authorised to do that;
- (4) a debtor has, to a substantial degree, not been notified of his or her rights in enforcement proceedings and this has caused a violation of the rights of the debtor (section 55 of the Code of Enforcement Procedure).

The **list of items not subject to seizure** is given in section 66 of the Code of Enforcement Procedure. The following items cannot be seized or sold in the course of enforcement proceedings:

- (1) personal effects of a debtor and household effects, kitchenware, clothes, bedding, beds and other things used for domestic purposes which are essential to satisfy household needs, taking into account the amount of the debt of the debtor;
- (2) at least one technical device which ensures that a debtor is able to exercise the right to receive information which is prescribed in subsection 44(1) of the Constitution of the Republic of Estonia (Eesti Vabariigi põhiseadus);
- (3) foodstuffs necessary for a debtor and his or her family for one month and heating material necessary for heating the dwelling throughout one heating period or, if there is no such supply by the time of enforcement and acquisition of such supply is not ensured in any other manner, a sum of money necessary for the acquisition of said supply;
- (4) farming equipment, cattle, fertilizers and primary agricultural products of a person engaged in agriculture which are essential for a debtor to maintain him or her and his or her family until the next harvest;
- (5) items essential to continue the economic or professional activities or the employment or service relationship of a natural person;
- (6) books and other objects used by a debtor or his or her family member for studies or worship activities;
- (7) accounting records, family records, wedding rings, orders and decorations belonging to a debtor;
- (8) artificial limbs, spectacles and other medical devices necessary due to a physical disability, which are used by a debtor or his or her family member;
- (9) objects necessary for a funeral in the family of a debtor;
- (10) the museum collections of state museums, municipal museums and museums of legal persons in public law and objects belonging to such collections, and the state museum collections or objects the use of which is granted to a foundation;
- (11) archival documents;
- (12) other items the seizure of which is in conflict with the law or good morals;
- (13) state assets in restricted commerce and items which the state or a local government being a debtor needs for the performance of public duties and the transfer of which is contrary to public interests. Before a corresponding decision is made, the opinion of a representative of a competent ministry or agency must be heard.

Items specified in clauses (1), (2), (4) and (5) above may be seized if compulsory enforcement is demanded by a seller on the basis of a financial claim secured by an ownership reservation due to the sale of these items. Items necessary for worship as per clause (6) above may be seized if such items are used in a manner which is contrary to good morals or punishable.

Under section 67 of the Code of Enforcement Procedure, animals kept at home for non-commercial purposes may not be seized. On the basis of an application of a claimant, a court may permit the seizure of an animal of high value if the prohibition on seizure significantly violates interests of the claimant which override the interests of animal protection or the legitimate interests of a debtor.

**Restrictions regarding any seizure of income** are set out in sections 131 and 132 of the Code of Enforcement Procedure. A claim for payment cannot be made against the following income:

- (1) state family benefits;
- (2) social benefits for disabled persons;
- (3) social benefits [within the meaning of the Social Welfare Act \(sotsiaalhoolekande seadus\)](#);
- (4) compensation paid on the basis of subsection 351(3) of the [Artificial Insemination and Embryo Protection Act \(kunstliku viljastamise ja embrüokaitse seadus\)](#);
- (5) unemployment allowances, grants, transport and accommodation benefits and business start-up subsidies paid via the Estonian Unemployment Insurance Fund (Eesti Töötukassa);
- (6) compensation paid for causing of a bodily injury or health disorder, except compensation for lost income and compensation for non-patrimonial damage;
- (7) work ability allowance;
- (8) statutory alimony;
- (9) parental benefit;
- (10) health insurance benefit within the meaning of the [Health Insurance Act \(ravikindlustuse seadus\)](#), except benefits for temporary incapacity for work;
- (11) state pension to the extent provided by law;
- (12) support on release from prison.

If making a claim for payment against other assets of a debtor has not led to or presumably will not lead to complete satisfaction of a claim of a claimant and if seizure is fair considering the type of the claim and the size of income, a claim for payment may be made against income specified in clauses (6)–(9) above on application by the claimant. If possible, a bailiff will hear the debtor before making a decision.

Income will not be seized if it does not exceed the amount of minimum wages prescribed for one month or a corresponding proportion of income for a week or day.<sup>[2]</sup> If a debtor maintains another person or pays alimony to him or her as per the law, the amount not subject to seizure will be increased by one-third of the minimum monthly wages per dependant (unless a claim for child support is the subject of compulsory enforcement). Of income exceeding the amount not subject to seizure, up to two-thirds of an amount equivalent to five times the minimum wages and all the income which exceeds an amount equivalent to five times the minimum wages may be seized, provided that the amount subject to seizure does not exceed two-thirds of the total income (this is not applicable if a claim for support is the subject of compulsory enforcement).

Pursuant to section 133 of the Code of Enforcement Procedure, **a bailiff will, on application by a debtor, annul the seizure of the account of the debtor within three working days to the extent which guarantees the debtor income not subject to seizure** (restrictions prescribed by sections 131 and 132 of the Code of Enforcement Procedure). If income of more than one month is transferred to a debtor's account, a bailiff will, within three working days and on the basis of an application of the debtor, annul the seizure of the account to the extent which guarantees the debtor income not subject to seizure per each prepaid month following the restrictions provided for in sections 131 and 132 of the Code of Enforcement Procedure. If the period for use of the income transferred to the debtor's account cannot be determined, a bailiff will guarantee the debtor income not subject to seizure for one month. Until resolution of the application, a bailiff may suspend transfer of funds to claimants from a seized account and release the account from seizure to the extent which is required to maintain a debtor and his or her family members.

[2] Pursuant to subsection 1(1) of Regulation No. 139 of the Government of the Republic of 18 December 2015 the minimum monthly wages for full-time employment are **430 euros** starting from **1 January 2016**, and pursuant to subsection 1(2) of the same Regulation, the minimum monthly wages for full-time employment are **470 euros** starting from **1 January 2017**.

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