

## Főoldal>Bírósági eljárások>Polgári ügyek>Bírósági határozatok elismerése és végrehajtása>Bírósági határozatok végrehajtása

### Bírósági határozatok végrehajtása

Amennyiben a vitarendezés bíróságon történik, az eljárás végén két lépésnek kell megtörténnie. Először a bíróságnak ítéletet kell hoznia, majd az ítéletet a gyakorlatban is végre kell hajtani.

Ahhoz, hogy a másik féltől (az alperestől vagy az adóstól) a terhére szóló ítélet teljesítése (pl. a fizetés) kikényszeríthető legyen, a végrehajtó hatóságokhoz kell fordulni. Egyedül ezek a hatóságok rendelkeznek hatáskörrel arra, hogy az adóst fizetésre kényszerítsék, szükség esetén a rendfenntartó erők bevonásával.

A határozatok elismeréséről és végrehajtásáról szóló **Brüsszel I. rendelet (átdolgozás)** értelmében a határokon átnyúló esetekben, az Unió tagállamában hozott végrehajtható határozat birtokában lehetőség van más olyan tagállam végrehajtó hatóságához fordulni, ahol például az adósnak vagyona van, bármilyen közbenső eljárás lefolytatása nélkül (a rendelet eltérli az *exequatur* eljárást). Az adós, aki ellen a végrehajtást kérik, ellentmondással élhet a bíróságnál a végrehajtást illetően. A hatáskörrel rendelkező bíróságok, valamint a fellebbviteli bíróságok megnevezése és székhelye [itt](#) érhető el.

A végrehajtás célja általában pénzüsszegek behajtása, azonban másféle kötelezettség teljesítése is lehet (kötelezettség valaminek a megtételére vagy valamitől való tartózkodásra, például áru leszállítása, munka elvégzése vagy birtokháborítás beszüntetése).

A határon átnyúló polgári jogi jogvitákban különféle európai eljárások (úgy mint az **európai fizetési meghagyás**, a **kis értékű követelések esetében alkalmazandó európai eljárás** és az **európai végrehajtható okirat**) állnak rendelkezésre, az ítéletet azonban minden ilyen esetben a végrehajtás helye szerinti tagállam (rendszerint az adós tartózkodási helye vagy vagyonának holléte szerinti tagállam) nemzeti szabályainak és eljárásainak megfelelően kell végrehajtani.

A gyakorlatban a végrehajtás kezdeményezéséhez végrehajtható okiratra (bírósági ítélet vagy okirat) van szükség. A végrehajtási eljárásokról és az azokat végrehajtó hatóságokról (bíróság, adósságbehajtó hivatal vagy végrehajtó) a végrehajtás helye szerinti tagállam nemzeti joga rendelkezik.

**Ha szeretne részletesebben tájékozódni valamelyik tagállamról, válassza ki a kívánt ország zászlaját.**

Utolsó frissítés: 18/01/2019

A honlapot az Európai Bizottság tartja fenn. Az ezen az oldalon található információ nem feltétlenül tükrözi az Európai Bizottság hivatalos álláspontját. A Bizottság semmilyen felelősséget vagy kötelezettséget nem vállal az e dokumentumban foglalt vagy említett információk és adatok tekintetében. Kérjük, az európai oldalak szerzői jogi szabályai vonatkozásában vegye figyelembe a jogi nyilatkozatot.

## Procedures for enforcing a judgment - Belgium

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

If a debtor fails to comply voluntarily with a judgment, the claimant can enforce compliance through the courts; this is known as compulsory enforcement. It requires an enforceable title (Article 1386 of the Judicial Code), because it involves an intrusion into the debtor's personal legal sphere. Such a title will usually be a judgment or a notarial deed. Out of respect for the debtor's privacy, the title may not be enforced at certain times (Article 1387 Judicial Code). The title is executed by a bailiff.

Compulsory enforcement is usually used to recover money, but it can be applied to enforce performance of, or refraining from, an act.

Another important aspect is the penalty payment (Article 1385a Judicial Code). This is a means of exerting pressure on the person convicted in order to encourage compliance with a judgment. A penalty payment cannot, however, be imposed in certain cases: when the person has been ordered to pay a sum of money or to comply with an employment contract and when it would be incompatible with human dignity. A penalty payment is enforced on the basis of the title providing for it and no further title is therefore required.

In the case of a person ordered to pay a sum of money, the claim is enforced against the debtor's assets and is referred to as attachment. A distinction is made between the type of goods attached (movable or immovable) and the nature of the attachment (precautionary attachment and attachment in execution of a judgment). Precautionary attachment is used in emergency cases to place goods under the protection of the court: the situation is frozen in order to safeguard any subsequent enforcement. The attachée no longer has control over the goods and cannot sell them or give them away. When a debtor's goods are attached in execution of a judgment, they are sold and the proceeds are given to the claimant. The claimant has no right to the attached goods themselves, only to the proceeds from their sale.

In addition, on application of Article 1445 *et seq.* of the Judicial Code, there is also the garnishment order (see below).

In addition to normal precautionary attachment and attachment in execution of movable and immovable property, there are also special rules for attachment of ships (Articles 1467 to 1480 and Articles 1545 to 1559 Judicial Code), distraint (Article 1461 Judicial Code), replevin (Articles 1462 to 1466 Judicial Code) and attachment of unharvested fruit and crops (Articles 1529 to 1538 Judicial Code). In the rest of this document, we shall concentrate only on normal attachment.

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

Bailiffs and judges of attachments. The latter are competent to rule in disputes relating to enforcement.

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

#### 3.1 The procedure

##### 2.1.1. Precautionary attachment

For precautionary attachment, in principle the permission of the judge of attachments is required and there must be reasons of urgency (Article 1413 Judicial Code). Authorisation must be sought by an *ex parte* application (Article 1417 Judicial Code). The same application may not be used simultaneously for attachment of movable and immovable property. For attachment of immovable property, a separate request is in any case always required.

The judge of attachments will reach a decision no later than eight days after deposition of the application (Article 1418 Judicial Code). The judge may decide to refuse permission or to grant it in full or in part to the claimant. The judge of attachment's decision must be served on the debtor. The decision is issued to a bailiff, who then takes the necessary steps to serve it.

There is one important exception to this rule, in which the permission of the judge of attachments is not required: every judgment constitutes authorisation to impose precautionary attachment in respect of the sentences handed down (Article 1414 Judicial Code). Here, too, it must be a matter of urgency. The judgment simply has to be handed over to a bailiff, who will take the necessary steps to attach the goods.

Precautionary attachment may be converted into attachment in execution (Articles 1489 to 1493 Judicial Code).

##### 2.1.2. Attachment in execution of a judgment

###### A. General

Attachment in execution of a judgment may only be carried out under an enforceable title (Article 1494 Judicial Code). Judgments and deeds can only be enforced on production of the certified copy or the original, accompanied by the enacting formula laid down by Royal Decree.

The court's judgment is served on the defendant in advance (Article 1495 Judicial Code). If the enforceable title is a judgment, prior service is compulsory in any case, to notify the debtor. If the enforceable title is a deed, however, it is not necessary, because the debtor will already be aware of the title. The periods allowed for review or appeal start when the judgment is served. The appeal periods have the effect of suspending attachment in execution of a judgment (but not precautionary attachment) in cases where a party has been ordered to pay a sum of money. Provisional enforcement (judgment that is provisionally enforceable) constitutes an exception to the suspensive effect of ordinary review or appeal procedures.

The second stage in the claimant's efforts to force the sale of the property is the payment order (Article 1499 Judicial Code). This is the first act of enforcement and the last warning for the debtor, who can still avoid attachment at this stage. There is a waiting period after the payment order is issued of one day for attachment of movable property (Article 1499 Judicial Code) and 15 days for immovable property (Article 1566 Judicial Code). The order must be served on the debtor and constitutes a notice of default and demand for payment. The compulsory enforcement can only serve to recover the amounts stated in the payment order.

At the end of the waiting period, the goods can be attached. This is done by a bailiff's writ. Enforcement is therefore through the intermediary of a competent official. This official is regarded as the agent of the claimant; his function is laid down by law and he operates under judicial supervision. He has a contractual liability towards the claimant and a non-contractual liability towards third parties (under the law and on the grounds of infringement of the general duty of care).

Within 3 working days, the bailiff sends a notice of attachment to the Central Register of notices of attachment, delegation, assignment, collective debt settlement and protest (*Centraal Bestand van berichten van beslag, delegatie, overdracht en collectieve schuldenregeling en van protest*) (Article 1390, §1, Judicial Code). The notice is compulsory for attachment of both movable and immovable goods. It is not possible to carry out any attachment in execution of a judgment or procedure for dividing the proceeds without first consulting the notices of attachment in the Central Register of Notices (Article 1391, §2, Judicial Code). This rule was introduced to avoid unnecessary attachments and to reinforce the collective dimension of the attachment.

#### B. Attachment in execution of a judgment: movable goods

Attachment in execution of a judgment on movable goods requires a payment order, which the debtor has the right to oppose. Attachment is carried out by bailiff's writ and in the first instance is a precautionary measure: the goods are not moved and there is no change in their ownership and use. It is also possible to attach goods at a location other than the debtor's home and on the premises of a third party.

In the case of movable property, attachment is not limited to a single procedure only, but there is virtually no point in placing a second attachment on the same goods, given the costs involved. When it comes to the proportional division of the proceeds from the sale of the debtor's goods, claimants other than the one who carried out the attachment will be involved (Article 1627 *et seq.* Judicial Code).

An official report of the attachment will be drawn up. The goods seized will be sold at the earliest one month after service or notification of the copy of the official report of attachment. This delay is intended to give the debtor a final chance to prevent the sale. The sale must be advertised to the public by means of posters and notices in the newspapers. It is held in an auction room or on a public market, unless a request is made for another more suitable place. It is conducted by a bailiff, who writes an official report and collects the proceeds from the sale. Within 15 days, the bailiff then divides the proceeds proportionately (Article 1627 *et seq.* Judicial Code). This procedure is usually settled amicably, failing which the matter is referred to the judge of attachments.

#### C. Attachment in execution of a judgment: immovable property (Articles 1560 to 1626 Judicial Code)

Enforcement begins with service of the payment order.

The attachment is then carried out at the earliest 15 days and at the latest six months later, failing which the order ceases to be legally valid. The writ of attachment must then be transcribed into the records of the mortgage registry within 15 days and served within six months. The act of transcribing the writ makes the property unavailable and is valid for a maximum of six months. Failure to transcribe the writ makes the attachment invalid. In the case of immovable property, unlike movable property, the principle of a single attachment only applies (property that has been attached once cannot be attached a second time).

The final step is an application to the judge of attachments to appoint a notary to handle the sale of the goods and the marshalling of creditors. The debtor may lodge a statement of opposition with the judge of attachments against the actions of the appointed notary. Detailed rules on the sale of the goods are clearly laid down by law (see Articles 1582 *et seq.* Judicial Code). The sale is normally public, but on the judge's initiative or at the request of the claimant making the attachment a private sale may be possible. The proceeds from the sale are then divided between the different creditors according to the agreed order of priority (marshalling) (see Articles 1639 to 1654 Judicial Code). Disputes about the marshalling of creditors are referred to the judge of attachments.

#### 2.1.3. Garnishment

Garnishment is the attachment of claims that the debtor has on a third party (e.g. for earnings from his employer). This third party is thus the secondary debtor of the claimant making the attachment. Garnishment (*beslag onder derden*) is not the same as attaching goods belonging to the debtor but located on the premises of a third party (*beslag bij derden*).

The claim constituting the grounds for the attachment is the attachment creditor's claim on the attached debtor. The claim that is attached is the claim that the attachee has on a third party/secondary debtor.

Detailed rules on garnishment may be found in Articles 1445 to 1460 Judicial Code (precautionary attachment) and Articles 1539 to 1544 Judicial Code (attachment in execution of a judgment).

#### 2.1.4. Costs

In addition to the legal costs, there will be bailiff's costs to take into account in cases of attachment. The fees for the bailiff's official services are laid down in the Royal Decree of 30 November 1976 setting the rates for acts of bailiffs in civil and commercial matters and the rate for certain surcharges (*Koninklijk Besluit van 30 november 1976 tot vaststelling van het tarief voor akten van gerechtsdeurwaarders in burgerlijke en handelszaken en van het tarief van sommige toelagen*) (see Federal Public Service Justice (*Service public fédérale Justice/Federale Overheidsdienst Justitie*)).

### 3.2 The main conditions

#### A. Precautionary attachment

Any claimant with a claim displaying certain characteristics may exercise precautionary attachment, regardless of the value of the goods attached and the amount of the claim (see Article 1413 Judicial Code).

The first pre-condition for this type of attachment is urgency: the debtor's solvency must be in danger, with the result that the subsequent sale of the assets is jeopardised. The decision as to whether this condition is met is taken by the court on the basis of objective criteria. There must be urgency, not just at the time the attachment is made, but also when an assessment is made of the need to continue the attachment. There are a few exceptions to this condition: attachment in the case of forgery, attachment for debts on bills of exchange and execution of a foreign judgment.

A second condition for precautionary attachment is that the claimant must have a claim. If a claim is required, it must satisfy certain conditions (Article 1415 Judicial Code): it must be definitive (not conditional), payable (applies also to guarantees for future claims) and fixed (amount has been determined or can be

determined). The nature and amount of the claim, on the other hand, are immaterial. The judge of attachments decides whether these conditions have been met, but the court subsequently hearing the case will not be bound by this decision.

Thirdly, the claimant seeking precautionary attachment must be competent to do so. This is an act of control (not use) that can, if necessary, be performed by a legal representative.

The permission of the judge of attachments is required unless the claimant has already obtained a judgment (see above). However, this is not required for precautionary garnishment or distraint or for claimants who have already obtained a judgment (Article 1414 Judicial Code: any judgment constitutes an enforceable title). Notarial deeds also provide an enforceable title.

#### B. Attachment in execution of a judgment

For attachment in execution of a judgment too, an enforceable title is required (Article 1494 Judicial Code). This may be a judicial decision, an authentic instrument, a writ of execution from the tax authorities, a foreign judgment with exequatur, etc.

The claim must be set out in a deed meeting certain criteria. As with precautionary attachment, the claim must be certain, fixed and payable. The second paragraph of Article 1494 Judicial Code states that attachment made in order to obtain payment of income due in instalments will also apply to future instalments, as these fall due.

The title must also be current. The judge of attachments will not consider the title to be current if the attachment creditor is no longer a claimant or if all or part of the claim has ceased to be active (because it is time-barred or has been paid or otherwise settled).

### 4 Object and nature of enforcement measures

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

##### A. General

Only movable and immovable goods owned by the debtor may be attached. Goods belonging to a third party may not be attached, although it is irrelevant in whose possession the debtor's goods happen to be at the time. It is therefore possible to attach goods on the premises of a third party, subject to the authorisation of the court (Article 1503 Judicial Code).

The claimant may in principle recover the debt only from the debtor's current assets. Only if the debtor dishonestly renders himself insolvent is it also possible to attach his former assets. Attachment of future assets is also normally ruled out, with the exception of future claims.

The income from the goods attached in principle remains with the attachee in the case of precautionary attachment. In the case of attachment in execution of a judgment, however, the income is also subject to attachment and therefore goes to the attachment creditor.

It is possible to attach an undivided estate, but the forced sale of the property is then suspended until the estate has been divided (see, for example, Article 1561 Judicial Code). Special rules apply to spouses.

##### B. Goods eligible for attachment

The goods must be eligible for attachment. Certain goods cannot be attached. Their exemption from attachment must be because of a statutory provision, or the nature of the goods or the fact that they have a strict personal association with the debtor. It is not possible, for example, to exempt goods from attachment on the basis of the purpose. The following goods are therefore not eligible for attachment:

The goods listed in Article 1408 Judicial Code. This restriction was introduced in order to guarantee reasonable living conditions for the debtor and his family. Goods that have no sale value and are therefore of no use to the claimant.

Goods that are inalienable because they are so closely associated with the debtor personally.

Goods excluded from attachment by specific legislation (e.g. the income and wages of minors, unpublished books and music, income earned by prisoners from prison jobs).

Wages (attachment of earnings) and similar claims are usually eligible for attachment to a limited extent only (see Articles 1409, 1409a and 1410, § 1, Judicial Code). This includes, for example, maintenance payments awarded by the court to the non-culpable spouse. Certain payments, such as the minimum subsistence income, however, are entirely excluded from attachment (see Article 1410, § 2, Judicial Code). However, the restrictions on eligibility for attachment do not apply to claimants seeking to recover maintenance debt, whose claims take precedence (see Article 1412 Judicial Code).

In the past the government enjoyed immunity from enforcement actions, with the result that it was not possible to attach government property. This has now been modified slightly by Article 1412a Judicial Code.

There are special rules governing attachment of ships and aircraft (for precautionary attachment: see Articles 1467 to 1480 Judicial Code and for attachment in execution of a judgment: see Articles 1545 to 1559 Judicial Code).

##### C. *Kantonnement*

When an item is attached, the attachment usually applies to the item as a whole, even if its value exceeds the amount of the claim. This is very disadvantageous to the debtor, because the item becomes completely unavailable to him. The Belgian legislator has therefore provided for a judicial deposit arrangement (*kantonnement*): the debtor deposits a certain sum and is allowed to regain the use of his property (see Articles 1403 to 1407a Judicial Code).

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

##### A. Attachment

From the moment the goods are attached, the debtor loses the right to dispose of them. The attachment does not, however, give the attachment creditor a preferential claim. Disqualification means that the debtor is no longer allowed to alienate or encumber them. However, the goods do remain in the debtor's possession. In practical terms, there is no change in the situation; the legal situation is, however, different.

The penalty for contravening this disqualification is that the actions taken by the attachee are not binding on the attachment creditor.

This disqualification is, however, only relative, in the sense that it applies only to the advantage of the attachment creditor. Other claimants still have to tolerate fluctuations in the debtor's assets. However, it is a simple matter for them to associate themselves with the attachment that has already been granted. Disqualification is the first stage in the process of selling off the assets. The goods come under the control of the court. Attachment in execution of a judgment thus also has a precautionary function in the first instance.

##### B. Garnishment

This form of attachment removes control over the entire claim attached, regardless of the value of the claim which formed the grounds for the attachment.

The garnishee can make a partial payment (*kantonneren*). Actions that undermine the claim are not enforceable against the attachment creditor. Once garnishment has been served, there can be no further settlement between the attachee and the garnishee.

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

##### A. Precautionary attachment

Precautionary attachment is valid for up to three years. In the case of attachment of movable property and garnishment, the three-year period runs from the date of the order or writ (Articles 1425 and 1458 Judicial Code). In the case of attachment of immovable property, the date of the transcription into the records of the mortgage registry marks the start of the three-year period (Article 1436 Judicial Code).

The period may be extended if there are well-founded reasons for doing so (Articles 1426, 1459 and 1437 Judicial Code).

## B. Attachment in execution of a judgment

In the case of attachment in execution of a judgment, only the order that precedes attachment is subject to a maximum period of validity. For this type of attachment, the period is ten years in the case of movable property (the normal time limit, because no special provisions apply) and six months in the case of immovable property (Article 1567 Judicial Code). For attachment of ships, the period is one year (Article 1549 Judicial Code).

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

#### A. Precautionary attachment

If the judge of attachments refuses permission for precautionary attachment, the applicant (i.e. the claimant) may lodge an appeal against the decision with the Court of Appeal within a month. This is an *ex parte* procedure. If the attachment is allowed on appeal, the debtor has the right to institute third-party proceedings against the decision (see Article 1419 Judicial Code).

If the judge of attachments authorises precautionary attachment, the debtor or any other interested party may institute third-party proceedings against the decision. The deadline for doing so is one month and the proceedings are instituted at the court that issued the decision. The court will then rule in an adversary procedure. Third-party proceedings do not normally have suspensive effect (see Articles 1419 and 1033 Judicial Code).

Where precautionary attachment can be imposed without judicial authorisation, the debtor can appeal against it by applying to the judge of attachments to lift the attachment (Article 1420 Judicial Code). This is the procedure for opposing attachment and is dealt with as in interlocutory proceedings, if necessary in conjunction with the imposition of a penalty payment. The grounds for the claim may be the lack of urgency (Cass. 14 September 1984, Arr. Cass. 1984-85, 87).

If there is a change in circumstances, either the attachee (by summoning all parties to appear before the judge of attachments) or the attachment creditor or an intermediary (by means of an application) may apply to the judge of attachments to amend or withdraw the attachment.

#### B. Attachment in execution of a judgment

The debtor may lodge a statement of opposition to the payment order, thus contesting its legal validity. There is no statutory time limit for this, and opposition does not have suspensive effect. Grounds for opposition include procedural defects and a request for a period of grace (if the enforceable title is a notarial deed).

Debtors may lodge a statement of opposition with the judge of attachments against the sale of their goods, but this opposition does not have suspensive effect either.

Claimants other than the attachment creditor may oppose the sale price, but not the sale itself.

A third party claiming to be the owner of the goods attached may also lodge a statement of opposition with the judge of attachments (Article 1514 Judicial Code). This is a recovery procedure and does have suspensive effect.

The party wishing to have the judgment enforced receives only a single certified copy. This is issued by the registry on payment of a fee (issue fee).

Execution form:

'We, Filip, King of the Belgians,

To all those present and to come, be it known:

We order and command that all bailiffs so requested shall execute this judgment, sentence, decision, order or deed;

That Our Procurators-General and Public Prosecutors at the courts of first instance shall enforce it and that all commanders and officers of the public authorities shall lend their assistance if required by law to do so;

In witness whereof this judgment, sentence, decision, order or deed has been signed and sealed with the seal of the court or notary.'

For actions relating to the execution of the judgment or deed, the bailiff is answerable to the judge of attachments. In matters of ethics he is answerable to the public prosecutions service and the regional branch of the chamber of bailiffs.

The registry in the place where the goods are situated (Article 1565 Judicial Code). The registry provides information about the immovable property, e.g. property rights, mortgages taken out against the property.

i.e. all the parties appear in the case.

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

The Judicial Code contains various rules regarding the goods which are not eligible for attachment (Articles 1408 to 1412c of the Judicial Code).

Creditors may not pursue claims against certain tangible movable goods: which are necessary for the daily lives of attachees and their families; for the pursuit of their profession; or for the continuation of training or studies of attachees or their dependent children living at the same address (see Article 1408 of the Judicial Code). Partial exemption from attachment and assignment applies to income from work and other activities, as well as to allowances, pensions and other income.

The thresholds on which the full or partial exemption from attachment is based are set out in Article 1409, § 1, of the Judicial Code and are indexed annually.

The progressive amounts of the tranches of eligible amounts for attachment or assignment are increased if the debtor has dependent children.

The legal claim with a view to execution of the court judgment is in principle subject to the general period of limitation, i.e. 10 years.

Last update: 20/03/2017

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

## Procedures for enforcing a judgment - Bulgaria

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

Enforcement is the final stage of the judicial process. It consists of the possibility for a claimant in whose favour a judgment has been delivered to demand that the competent enforcement body take all steps within its remit and prescribed by law to satisfy the claim.

The right to enforcement arises from the existence of an enforceable claim which has not been voluntarily satisfied and an instrument permitting enforcement of that claim.

Enforcement measures include:

attachment of movable property;

attachment of immovable property;

inventory and valuation of real property;

sale of immovable property by public auction;

attachment of a debtor's bank account;

attachment of a vehicle;

repossession;

seizure of movable property;  
enforcement in respect of shares in a company;  
enforcement of a duty to surrender a child;  
enforcement in respect of marital property.

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

In Bulgaria, there are two types of enforcement officers (bailiffs):

1. State bailiffs
2. Private bailiffs.

The status of private bailiffs is governed by the Private Judicial Enforcement Act (Zakon za chastnoto sadebno izpalnenie (ZChSI)). Article 2 of the ZChSI defines a private bailiff as an officer delegated by the state to enforce private claims.

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

### **3.1 The procedure**

Under Article 404 of the Code of Civil Procedure (Grazhdanski protsesualen kodeks (GPK)), enforcement proceedings may be brought on the following grounds:

1. - res judicata judgments and orders; judgments by appeal courts; enforcement orders; judicial settlements; enforceable judgments and orders or judgments and orders declared enforceable in advance or immediately; and judgments of arbitration tribunals and settlements sanctioned by such tribunals;
2. - judgments, acts and judicial settlements delivered by courts in countries other than Bulgaria, if enforceable in Bulgaria without further proceedings;
3. - judgments, acts and judicial settlements delivered by courts in countries other than Bulgaria and the judgments and settlements delivered and sanctioned by arbitration tribunals in countries other than Bulgaria, when declared enforceable in Bulgaria.

Under Article 405 of the GPK, writs of execution are issued on the basis of a written application, with no need to serve a copy on the debtor.

Pursuant to Article 405(2) of the GPK, the following courts have jurisdiction over submitted applications:

in the cases referred to in Article 404(1) of the GPK, the court of first instance that heard the case or issued the enforcement order and, where an act is immediately enforceable, the court that delivered the judgment or issued the enforcement order;

in the cases envisaged in Article 404(2) and (3) of the GPK, the court competent to grant enforcement;

with regard to the judgments delivered by domestic arbitration tribunals and the settlements sanctioned by such tribunals in arbitration proceedings, the Sofia City Court (Sofiyski Gradski Sad).

There is a two-week time-limit for appeals against orders granting or refusing an application for a writ of execution (Article 407 of the GPK).

Under Bulgarian law an application for a writ of execution may be filed by a party other than a lawyer, including the party seeking enforcement or their representative (who may be a lawyer). There are no special filing requirements to be satisfied in order to obtain a writ of execution.

Enforcement costs are set out in the Tariff of Fees and Costs envisaged in the Private Enforcement Act (State Gazette (SG) No 35/2006).

### **3.2 The main conditions**

To set enforcement proceedings in motion, the interested party must apply in writing to a state or private bailiff, annexing a writ of execution or another enforceable instrument. The application must specify the preferred method of enforcement, which may be altered during the course of proceedings (Article 426 of the GPK).

The jurisdiction of bailiffs is governed by Article 427 of the GPK.

The bailiff must summon the debtor in writing to satisfy the claim voluntarily, which the debtor must do within two weeks of receiving the summons. The summons warns the debtor that failure to satisfy the claim will result in enforcement action. The summons must specify the attachments and seizures imposed and enclose a copy of the enforceable instrument. When summoning the debtor to satisfy the claim voluntarily, the bailiff must also specify the date on which a property inventory will be compiled and, when enforcement concerns immovable property, send a seizure notice to the property registry.

The bailiff draws up a record of any measure undertaken or performed by them.

Where the initial method of enforcement is changed, the bailiff must notify the debtor in writing of the change in accordance with Article 428 of the GPK.

Where, upon commencement of enforcement proceedings, the debtor does not have a permanent or current address on record, the district judge, acting on a motion filed by the creditor, must appoint an ad hoc representative of the debtor (Article 430 of the GPK).

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

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

Enforcement action may be taken against the following property of the debtor:

movable goods;  
wages;  
income from immovable property, including rental income, etc.;  
bank accounts;  
immovable property;  
shares and bonds issued by commercial undertakings;  
items of moveable or immovable property, including marital property.

Under Article 442 of the GPK, a creditor may pursue enforcement against any thing or receivable of the debtor.

Under Article 444 of the GPK, enforcement action may not be taken against the following:

everyday items used by the debtor and their family, as specified in a list adopted by the Council of Ministers (Ministerski savet);  
the food needed to feed the debtor and their family for one month or, in the case of farmers, until the new harvest, or its equivalent in other agricultural products;  
the fuel needed for heating, cooking and lighting for three months;  
the machinery and equipment a debtor needs in order to be able to continue to practice their occupation or profession;  
part of the land owned by the debtor (up to 0.5 ha for vineyards and other croplands and up to 3 ha for general-purpose fields, along with the machinery and implements, fertilisers, plant protection products and seeds intended for sowing for a period of one year);  
for livestock farmers, the necessary working cattle, notably two head of draught cattle, a cow, five head of sheep and goats, ten beehives and domestic fowl, along with the feed necessary to feed them until the next harvest or until they are turned out to graze;  
the dwelling owned by the debtor, if the debtor and the members of their family have no other dwelling, regardless of whether the debtor resides there. If the dwelling exceeds the housing needs of the debtor and their family, as specified in a dedicated Regulation adopted by the Council of Ministers, a share thereof is sold, provided the conditions laid down in Article 39(2) of the Property Act (Zakon za sobstvenostta) have been satisfied;  
other things and receivables protected by law against enforcement.

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

When summoning the debtor to satisfy the claim voluntarily, the bailiff must also specify the date on which a property inventory will be compiled and, when enforcement concerns immovable property, send a seizure notice to the property registry.

The attachment of movable property or a claim is imposed by compiling an inventory.

Attachment and seizure have the following effect vis-à-vis the debtor:

From the moment of their imposition, a debtor may neither dispose of the receivables or property (real or moveable) nor, on pain of criminal prosecution, alter, impair or destroy the property. These effects shall apply from the date of service of the summons to settle the debt voluntarily.

The attachment or seizure shall have the following effects vis-à-vis the creditor:

Under Article 452(1) of the GPK, any disposal of the attached movable property or receivables is invalid vis-à-vis the creditor and any joint creditor, unless the transferee can invoke Article 78 of the Property Act. The latter provision stipulates that anyone lawfully acquiring moveable property or bearer securities for consideration, even if unwittingly acquiring them from someone other than the owner, acquires ownership, unless the transfer of ownership of the movable property requires a notarial deed or notarial attestation of the signatures of the parties to the transaction. The same rule applies to the acquisition of other rights in rem to moveable property.

Where enforcement action is taken against real property, the invalidity shall have effect solely in respect of disposal transactions undertaken after the date of registration of the preventive attachment (Article 452(2) of the GPK).

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

The law sets no time-limit for the validity of these measures. They are intended to satisfy the creditor's claim, so they are valid until enforcement proceedings end.

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

The remedies available in the enforcement process are set out in Sections I and II of Chapter 39 of the GPK.

Appeals against enforcement action, including individual enforcement measures, may be lodged by the following parties:

A creditor may appeal against a bailiff's refusal to carry out the specified enforcement action and against the suspension and termination of enforcement.

The debtor may appeal against an order by the bailiff imposing a fine on the debtor and seeking to enforce it against property that the debtor considers immune, and against the seizure of movable property or the debtor's expulsion from immovable property on the grounds that the bailiff failed to give proper notice, and against orders for the payment of costs.

Third parties (not parties in the enforcement proceedings) may appeal against a bailiff's action only if enforcement is directed against things in their possession on the date of attachment, seizure or surrender.

A third party may file an appeal against the repossession of immovable property only if that third party was in possession of that property prior to the date on which the claim now being enforced was brought (Article 435 of the GPK).

Where a public auction has been held, the order awarding the property is subject to appeal by a party that paid a deposit not later than the last day of the auction, by a creditor who placed a bid in the auction without having to pay a deposit, or by the debtor, on the grounds that the auction was not conducted lawfully or that the property was not awarded to the highest bidder.

Under Article 436 of the GPK, appeals are to be filed within one week of the date of the contested action, if the party was present at the time of the action or had been summoned to attend, and in all other cases, within one week of the date of the communication. Appeals shall be lodged via the bailiff with the provincial court with jurisdiction over the place of enforcement. When an appeal is lodged, the bailiff must state the reasons for the contested action.

These appeals are examined in closed session, with the exception of those filed by third parties, which are examined in an open session to which all parties to the enforcement proceedings are summoned. Appeals are to be decided within one month.

Appeals do not suspend enforcement proceedings, but the court may decide to stay proceedings pending a ruling on the pleas in law set out in the appeal. If proceedings are stayed, the bailiff is notified without delay (Article 438 of the GPK).

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

Article 432 of the GPK sets out the different scenarios in which a court may lawfully stay enforcement proceedings on a motion of the creditor.

Last update: 19/05/2017

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

### Procedures for enforcing a judgment - Czech Republic

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

It means enforcing compliance with an obligation imposed through an enforceable title, even against the will of the person on whom the duty was imposed. If he/she fails to comply voluntarily with what the enforceable judgment imposes on him/her, the creditor may apply to a court or a bailiff for judicial enforcement or execution.

The court will order and perform enforcement with the exception of titles that are performed in administrative or tax proceedings. Thus, in civil matters, the creditor may always go to court.

The judgment creditor may also turn to a bailiff. A bailiff will enforce a judgment with authorisation from a court, with the exception of the following judgments: judgments about the care of a minor;

judgments in cases of protection against domestic violence;

judgments by institutions of the European Union;

foreign judgments.

An application for execution may, however, be submitted if the execution is to be run in accordance with a judgment on the maintenance of a minor or in accordance with a foreign judgment, where a declaration of enforceability was issued in accordance with directly applicable European Union legislation, an international treaty, or a decision on recognition.

The enforcement of a judgment through a court is regulated in Sections 251-351a of Act No 99/1963 (the Civil Procedure Code, as amended). However, Sections 492-513 of Act No 292/2013 on special court proceedings (as amended) apply to the enforcement of judgments in matters of family law.

The enforcement of a judgment through a bailiff is regulated primarily by Sections 35-73 of Act No 120/2001 on court bailiffs and enforcement activities (the Enforcement Code, as amended). A court bailiff also proceeds, in particular as regards the regulation of individual methods of enforcing a judgment, in accordance with the Civil Procedure Code.

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



In general, the general court of the defendant has jurisdiction to order and perform **the enforcement of a judgment** (Section 252(1) of Act No 99/1963 [the Civil Procedure Code, as amended]). Exceptions from this rule are determined in Section 252 of the Civil Procedure Code.

For details on the general court of the defendant, see "[Basic rules for local jurisdiction](#)" (part 2.2.1. of the information sheet "Jurisdiction – the Czech Republic").

**Execution** can be performed by courts and court-appointed bailiffs. The execution court with subject-matter jurisdiction is – in accordance with Section 45 of Act No 120/2001 on court bailiffs and enforcement activities (the Enforcement Code, as amended) – the district court. The execution court with local jurisdiction is the court in whose district the defendant has his/her permanent residence, place of residence in the Czech Republic in accordance with the type of stay for a foreigner, registered office and so on. The issue of jurisdiction is elaborated in more detail in the aforementioned provision of the Enforcement Code.

For more details, also see the question "What does enforcement mean in civil and commercial matters?"

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

#### 3.1 The procedure

##### Enforcement of a judgment

Proceedings may be initiated only upon application of the creditor, if the defendant fails to comply voluntarily with what an enforceable judgment imposes on him/her. Even without an application in accordance with Act No 292/2013 on special court proceedings (as amended), a court will order the performance of some preliminary rulings, e.g. in the matter of protection against domestic violence.

The enforcement of a judgment may be ordered only if the judgment includes the identification of the creditor and the defendant, a definition of the scope and content of the obligation for fulfilment of which the motion for enforcement was lodged, and a determination of the deadline for compliance with the obligation. If the court judgment does not contain a determination of the deadline for compliance with the obligation, it is understood that the obligation imposed through the judgment must be complied with within three days and, in the case of eviction, within fifteen days of the judgment becoming final. If, in accordance with the judgment, the obligation should be complied with by more than one defendant, and if it is divisible, the obligation – unless the judgment determines otherwise – must be complied with by all the defendants equally.

When applying for enforcement, the creditor need not be represented by a lawyer.

An application for enforcement of a judgment imposing the payment of a financial sum must be labelled with the specific method of enforcement and other prerequisites determined by law. An application for enforcement must be accompanied by a copy of the judgment furnished with confirmation of its enforceability. The court that decided on the matter as the court of first instance will furnish the judgment with this confirmation. A copy of the judgment need not be attached if the application for enforcement is submitted to the court that decided on the matter as the court of first instance.

Decisions are always made in the form of resolutions in enforcement proceedings.

A court will, as a rule, order enforcement without hearing the defendant.

Court proceedings in the Czech Republic are subject to a court fee (see Act No 549/1991 on court fees, as amended). In justified cases the Act allows exemptions from court fees.

##### Execution proceedings

Execution will be performed by the bailiff indicated by the creditor in the execution application. Acts by a bailiff are considered to be acts of an execution court. Execution proceedings are initiated on an application by the creditor or on an application by a person who demonstrates that an entitlement from a judgment passed or was transferred to him/her. They are initiated on the date when such application is delivered to the bailiff. The bailiff may begin to identify and secure the assets of the defendant only after a court issues him/her with authorisation and orders the execution.

An execution application must contain:

the identification of the bailiff who should lead the execution, identifying his/her registered office (a list of bailiffs is available on the website of the Chamber of Bailiffs of the Czech Republic (*Exekutorská komora České republiky*) <http://www.ekcr.cz/seznam-exekutoru.php&w>; bailiffs do not have locally defined jurisdiction – every bailiff may operate throughout the Czech Republic);

the identification of the matter the application applies to and its aim;

the identification of the participants, meaning the creditor, or the person who has the entitlement from the judgment, and the defendant; for natural persons this means the first name, surname, the permanent residence of the participants, or place of residence in the Czech Republic in accordance with the type of stay for a foreigner, and where applicable the birth ID number or date of birth of the participants, or for legal entities the corporate name or business name, registered office and identification number;

the exact identification of the enforceable title;

the obligation to be enforced by the execution, and information about whether – and, where applicable, to what extent – the defendant has complied with the enforced obligation;

where applicable, the identification of the evidence on which the creditor based his/her entitlement;

signature;

The original or a certified copy of the enforceable title must be attached to the execution application, furnished with confirmation of its enforceability or a copy of the notarial record with permission for enforcement, unless the enforceable title was issued by the execution court. The authority that issued the enforceable title provides confirmation of enforceability, while for settlements and agreements it is provided by the authority that approved them.

#### 3.2 The main conditions

The enforcement of a judgment (execution) can be ordered on the basis of an enforceable title, if an imposed obligation was not voluntarily complied with.

An enforceable title is:

an enforceable decision of a court or bailiff, if it recognises an entitlement, imposes an obligation or affects assets;

an enforceable judgment of a court or other investigative, prosecuting and adjudicating body, if it recognises an entitlement or affects assets;

an enforceable arbitration award (note: the Czech Republic's Supreme Court has repeatedly held that, although arbitral awards issued under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards may serve as a basis for the judicial enforcement of a decision without a special procedure, they cannot be used as an enforceable title in their own right – see Court Ruling ref. 20 Cdo 754/2018 of 12 June 2018, Court Ruling ref. 20 Cdo 5882/2016 of 16 August 2017 and Court Ruling ref. 20 Cdo 1165/2016 of 3 November 2016);

a notarial record with permission to enforce prepared in accordance with special legislation;

an enforceable judgment and other enforceable title from a public authority;

other enforceable decisions and approved settlements and documents whose enforcement is allowed by law.

If an enforceable title does not determine the deadline for compliance with an obligation, it is understood that the obligation imposed by the enforceable title must be complied with within three days and, in the case of eviction, within fifteen days of the judgment becoming final.

## Judicial enforcement

The general court of the defendant has jurisdiction to impose and enforce a judgment, to perform the activity of a court before ordering enforcement and for declarations on assets, unless Section 252 of Act No 99/1963 (the Civil Procedure Code, as amended) determines otherwise.

Enforcement may be ordered only to the extent applied for by the creditor and which, in accordance with the judgment, is sufficient for his/her satisfaction (Section 263(1) of Act No 99/1963, [the Civil Procedure Code, as amended]).

A court will reject an enforcement application if it is already clear from the application that the proceeds that would be achieved would not be sufficient even to cover the costs of the enforcement (Section 264(2) of Act No 99/1963 [the Civil Procedure Code, as amended]).

## Execution proceedings

A bailiff will carry out enforcement through authorisation by a court, with the exception of the judgments indicated above (point No 1).

A bailiff who receives an execution application will request the execution court – at the latest within fifteen days from the date of delivery of the application – for authorisation and to order the execution. The court will issue the authorisation within fifteen days, if all the legally determined prerequisites are complied with. If all the legally determined prerequisites for the performance of execution are not complied with, the court will instruct the bailiff to partially or fully reject or refuse the execution application, or to stop the execution proceedings. The bailiff is bound by such instruction.

The execution court with subject-matter jurisdiction is the district court.

The execution court with local jurisdiction is the court in whose district the defendant has, if a natural person, his/her permanent residence, or place of residence in the Czech Republic in accordance with the type of stay for a foreigner. If the defendant is a legal entity, the court with local jurisdiction is that in whose district the defendant has its registered office. If a defendant who is a natural person does not have a permanent residence or place of residence in the Czech Republic, or if a defendant who is a legal entity does not have a registered office in the Czech Republic, the court with local jurisdiction is that in whose district the defendant has assets.

Some exemptions in local jurisdiction arise from Act No 292/2013 on special court proceedings (as amended) – e.g. Section 511.

## 4 Object and nature of enforcement measures

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

Enforcement action may be taken against both movable and immovable assets, entitlements and other assets, with some exceptions.

Enforcement action may not be taken against the following in particular, in accordance with Sections 321-322 of Act No 99/1963 (the Civil Procedure Code, as amended):

items whose sale is prohibited in accordance with special legislation, or which are not subject to enforcement in accordance with special legislation;

items owned by the defendant that the defendant requires in order to satisfy his/her material needs and those of his/her family, or to perform his/her job, as well as other items whose sale would be contrary to moral rules (in particular, this means ordinary items of clothing, usual household equipment, wedding rings, and other items of a similar nature, medical supplies and other items that the defendant needs as a result of his/her illness or physical defect, cash up to the amount of twice the subsistence level for an individual in accordance with special legislation, animals not kept mainly for economic purposes and that serve as pets);

if the defendant is an entrepreneur, items he/she owns that he/she requires to perform his/her business activities (this does not apply if they are subject to a lien and if the lien is intended to recover a claim from the creditor);

technical equipment on which, in accordance with special legislation, he/she keeps records of investment instruments or stores documents relating to data in these records, and also technical equipment serving to provide data about the owners of investment instruments in accordance with special legislation;

items that the defendant acquired as replacement assets (this does not apply if the defendant has the entitlement to freely dispose of these items or if enforcement involves the recovery of a deceased person's debts or debts related to the trusteeship of items acquired as replacement assets).

The creditor may also always apply for impairment of the items listed above, if they were acquired by a defendant who - through a deliberate criminal act - caused damage through unjust enrichment through such criminal offence, if the creditor is the injured party in this criminal offence.

The following are also not subject to enforcement:

claims against a settlement which, in accordance with an insurance policy, is paid out by an insurance company, if the settlement is to be used to build a new or repair an existing building;

social care cash benefits, subsistence benefits, state social support, housing allowance, and one-off state social support and foster care benefits;

claims that the defendant acquired as replacement assets; this does not apply if the defendant has the entitlement to freely dispose of the claim or if enforcement involves the recovery of a testator's debts or debts related to the trusteeship of items acquired as replacement assets;

only two-fifths of claims from natural persons who are entrepreneurs that arise during their business activities are subject to enforcement; if, however, there is an application for enforcement of any preferential claims, three fifths thereof are subject to enforcement;

only two-fifths of royalties claims are subject to enforcement if the defendant is the author; if, however, there is an application for enforcement of any preferential claims, three fifths thereof are subject to enforcement (the same applies for claims from rights of performing artists and from the rights of the originators of industrial property).

This list represents the fundamental limitations on impairing assets through enforcement or execution. The Civil Procedure Code contains some additional specific limitations, e.g. in Section 267b.

The method of impairing matrimonial assets is enshrined in Section 262a(1) and (2) of Act No 99/1963 (the Civil Procedure Code, as amended) and in Section 42 of Act No 120/2001 (the Enforcement Code, as amended). Enforcement on assets that are part of matrimonial assets can also be ordered for the recovery of a debt that was incurred by only one of the spouses during marriage or prior to marriage. For the purposes of the enforcement order, assets that are not part of matrimonial assets only because a court decision cancelled the matrimonial assets, or reduced their existing scope, or because the scope of the matrimonial assets was contractually reduced, or a separate assets mode was arranged, or the origin of matrimonial assets was contractually determined as of the date of termination of the marriage are also considered part of the matrimonial assets of the defendant and his/her spouse.

Enforcement through deductions from wages or other income of the spouse of the defendant, through seizure from the spouse of the defendant from an account at a financial institution, the seizure of other monetary claims from the spouse of the defendant or the seizure of other assets from the spouse of the defendant, can be ordered in the case of the recovery of a debt that is part of the matrimonial assets.

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

Judicial enforcement:

The payment of a financial sum can be performed through deductions from wages, seizure, the administration of immovable assets, the sale of movable assets and immovable assets, the seizure of a manufacturing plant, and the creation of a judicial lien on immovable assets (Section 258(1) of Act No 99/1963, the Civil Procedure Code, as amended).



Enforcement imposing an obligation other than the payment of a financial amount depends on the nature of the imposed obligation. It can be performed through eviction, removing items, splitting common items, the completion of work and other performances (Section 258(2) of Act No 99/1963 [the Civil Procedure Code, as amended]).

Enforcement **through the sale of a pledge** can be performed for a seized claim through the sale of pledged movable and immovable assets, common items and sets of items, through the seizure of a pledged financial claim and the seizure of other pledged proprietary rights (Section 258(3) of Act No 99/1963 [the Civil Procedure Code, as amended]).

A bailiff, after the execution has been entered into the register of commenced executions, will assess how the execution will be performed, and will issue or cancel an execution order relating to the assets that should be affected by the execution. An execution order means an order to perform an execution in one of the ways determined by Act No 120/2001 (the Enforcement Code, as amended). In the execution order, the bailiff must choose an execution method that is not obviously inappropriate, in particular in terms of disproportion regarding the amount of the debts of the defendant and the price of the object from which the fulfilment of the debt of the defendant is to be achieved.

An execution imposing the payment of a financial amount can be performed through deductions from wages and other income, through seizure, the sale of movable and immovable assets, the seizure of a manufacturing plant, and the creation of a bailiff's lien on immovable assets, the administration of immovable assets, or through the suspension of a driving licence.

An execution method imposing an obligation other than the payment of a financial amount depends on the nature of the imposed obligation. It can be performed through eviction, removing items, splitting common items, the completion of work and other performances.

Execution through the **sale of a pledge** can be performed for a seized claim through the sale of pledged movable and immovable assets.

A ban on the disposal of assets is regulated in Section 44a and Section 47(5) of Act No 120/2001 (the Enforcement Code, as amended). Unless the bailiff decides otherwise, after the delivery of notice of the initiation of execution the defendant may not dispose of his/her assets, including real estate and assets included in the matrimonial assets, with the exception of normal business and operating activities, the satisfaction of his/her own basic maintenance needs and those of persons for whom he/she has a maintenance obligation, and the maintenance and management of assets. Any legal act through which the defendant violates this obligation is invalid. A legal act will, however, be considered valid if no objection to its validity is raised by the bailiff, the creditor, or a registered creditor in order to ensure the satisfaction of an enforced claim. The legal effects of an objection against validity will commence from the moment of effect of the legal act, if the execution order or other manifestation of the will of the bailiff, creditor or registered creditor is delivered to all participants in the legal act against which the bailiff, judgment creditor or registered creditor raised the objection of invalidity.

The defendant may not transfer assets subject to an execution order to another person, or burden or dispose of them in any other way. Any legal act through which the defendant violates this obligation is invalid.

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

These measures last until the execution is halted, the claim, its ancillary elements and the costs of the execution have been recovered, etc. The ban on disposing of assets is terminated by decision, if the defendant deposits with the bailiff an amount equal to the claim being recovered, the costs of the execution and the costs of the creditor.

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

##### **Opravné prostředky při soudním výkonu rozhodnutí:**

During judicial enforcement of a judgment, it is possible to submit an appeal in accordance with the general provisions of the Civil Procedure Code on appeals. The defendant must submit such appeal within 15 days from the delivery of the written copy of the judgment at the court against whose decision it is targeted. If it is submitted by a person entitled to do so, within the time allowed for appeal, the judgment will not come into force until an appeals court makes a final decision on the appeal (see also Section 254 of Act No 99/1963 [the Civil Procedure Code, as amended]).

During the enforcement of a judgment it is not possible, for statutory reasons, to suspend the proceedings and waive observance of the deadline. Nor is it possible to submit an action to recommence enforcement; it is, however, possible to submit an action for nullity, but only if this action attacks a final resolution of the appeals court through which an appeal was rejected or appeal proceedings terminated, as well as the final resolution of the appeals court through which the resolution of a court of first instance on the rejection of an appeal or appellate review was confirmed or changed due to delay (see also Section 229(4) and Section 254(2) of the Civil Procedure Code, as amended).

A right to assets that does not permit enforcement can be exercised against the creditor through an application to exclude such assets from the enforcement in accordance with Section 267(1) of the Civil Procedure Code.

A right to assets that form part of the matrimonial assets or, for the purposes of the enforcement order, are considered as assets forming part of the matrimonial assets of the defendant and his/her spouse, although the claim being recovered cannot be satisfied from these assets, can be exercised *mutatis mutandis* through such an application (Section 267(2) of the Civil Procedure Code).

Denial of the authenticity, amount, group or order of any of the claims registered for the distribution of proceeds or otherwise satisfied during the enforcement of the judgment must also be exercised against a creditor through an application, in statutorily defined methods of impairing assets (Section 267a of the Civil Procedure Code).

A participant may submit objections against some judicial resolutions. These are, for example, objections by the defendant relating to the inventory of assets, objections against the report on the management of a manufacturing plant, or objections to an award.

Last but not least, the defendant may, during enforcement and execution proceedings, submit an application to defer or to suspend enforcement of the judgment (execution). Deferment and suspension of the enforcement of the judgment (execution) are regulated in the Civil Procedure Code as well as in the Enforcement Code (in particular in Sections 266, 268 and 269 of Act No 99/1963 [the Civil Procedure Code, as amended] and Sections 54, 55 and 55a of Act No 120/2001 [the Enforcement Code, as amended]).

##### **Appeal in execution proceedings:**

It is possible to appeal against a decision by a bailiff in cases allowed by the Enforcement Code (cf. Section 55c).

It is possible to apply for the exclusion of an item against a decision by a bailiff on an application for the removal of an item from a list in accordance with Section 267 of the Civil Procedure Code at the execution court within 30 days from the delivery of the decision of the bailiff through which the bailiff did not comply, even in part, with the application for the removal of the item from the list. It is not possible to sell the listed movable assets between the submission of the application for the removal of the item from the list and the expiry of this deadline, and for the duration of the proceedings on the action.

A participant may submit objections against an order to pay the costs of the proceedings within 8 days from delivery of the order.

Regarding an application for the deferment or halting of execution, see the "Opravné prostředky při soudním výkonu rozhodnutí" above.

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

Following an execution order (Section 44 ff. of the Enforcement Code) the ban on disposal of assets does not apply to normal business and operating activities of the defendant, the satisfaction of his/her own basic maintenance needs and those of persons for whom he/she has a maintenance duty, and the maintenance and management of assets. The defendant may further apply to the bailiff for the ban on disposal to not apply to part of his/her assets; in this

application, the defendant must demonstrate that his/her remaining assets are clearly and undoubtedly sufficient to cover the claim being recovered, including the costs of the creditor and the costs of the execution.

The defendant also has the possibility, after a call from a court bailiff, which must contain information as to the deadline for payment and the potential consequences of failure to pay, to pay the claim being recovered as well as the deposit at reduced costs. The ban on disposing of assets (Section 44a(1) and Section 46(6) of the Enforcement Code) will terminate with compliance with the claim being recovered and the payment of the deposit. Otherwise, the bailiff will carry out the execution.

The defendant is protected especially in a situation of eviction from an apartment or other real estate in which he/she lives, in accordance with Section 65 of Czech Ministry of Justice Decree No 37/1992 of 23 December 1991 on the rules of procedure for district and regional courts (as amended). This is because if the executor, when performing eviction from real estate, a structure, an apartment or a room, finds that the person to be evicted is confined to bed through illness, or is a woman in the postnatal period or in an advanced stage of pregnancy, and that the eviction could seriously endanger the health of such person, such enforcement is not permitted; if confirmation from a physician is not submitted or if he/she is in doubt as to the correctness of such confirmation, the bailiff will seek the opinion of a medical specialist.

Some items belonging to a debtor are exempt in accordance with the Civil Procedure Code, see also the question “Jaký druh majetku může být předmětem výkonu soudních rozhodnutí?”

Last update: 04/09/2019

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

## Procedures for enforcing a judgment - Germany

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

Compulsory enforcement (*Zwangsvollstreckung*) is the procedure used to enforce a private law claim by public compulsion. The power to enforce lies with the State, which operates through its representatives by virtue of its sovereign authority.

The following enforcement measures are available to compel the debtor to satisfy an obligation imposed on him to make a payment, perform an action, etc.:

Attachment (*Pfändung*) of goods

Attachment of claims and other assets held by the debtor (in particular, attachment of earnings)

Statement of assets by the debtor (*Vermögensauskunft*)

Coercive measures (*Zwangsmassnahmen*) to ensure that actions are taken or refrained from

Forced sale (*Zwangsversteigerung*)

Receivership (*Zwangsverwaltung*)

Compulsory enforcement in Germany is regulated mainly by §§ 704 *et seq.* of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO) and by the Act on Forced Sales and Receivership (*Gesetz über die Zwangsversteigerung und Zwangsverwaltung* – ZVG).

Regulation (EU) No 655/2014, which regulates the cross-border enforcement of claims between EU Member States, is implemented in Germany by §§ 946 *et seq.* ZPO.

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

See below under question 3.

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

#### 3.1 The procedure

##### Are both judicial and non-judicial decisions enforceable?

Yes. The decisions concerned include final judgments which are no longer open to appeal or which are provisionally enforceable (§ 704 ZPO), provisional attachment (*Arrest*) and interim orders (*einstweilige Verfügungen*, §§ 929, 936 ZPO), and the other enforceable documents listed in § 794 ZPO, which include not only court orders but also settlements reached before an arbitration board (*Vergleiche vor Gütestellen*), settlements concluded by lawyers (*Anwaltsvergleiche*), and notarial deeds (*notarielle Urkunden*).

##### Is it necessary to apply for a court order authorising enforcement?

A court order is necessary for the attachment of claims and other assets held by the debtor, for coercive measures to ensure that actions are taken or refrained from, and for compulsory enforcement against immovable property under the Act on Public Auctions and Receivership.

##### Which court is competent for ordering enforcement?

For the attachment of claims held by the debtor: the local court (*Amtsgericht*) for the place where the debtor lives.

For coercive measures to ensure that actions are taken or refrained from: the appropriate court of first instance.

For forced sale and receivership: the local court for the place where the property is situated.

##### Status and powers of the bailiff

A bailiff (*Gerichtsvollzieher*) is a court officer in a *Land*, and is under the administrative supervision of the presiding judge of the local court. However, he is functionally independent in the exercise of his enforcement duties: this administrative supervision may not be used to exert influence over him. The measures taken and cost statements drawn up by the bailiff can be challenged by bringing an objection (*Erinnerung*). The same applies if the bailiff refuses to execute an order. The objection is heard by the court with jurisdiction for the enforcement.

The bailiff is responsible for enforcing judgments in civil matters in accordance with Book 8 of the ZPO. The focus is on enforcement against movable property. Here the bailiff is empowered in principle to allow the debtor to pay in instalments, and is responsible for ensuring that the enforcement procedure is brought to a timely and effective conclusion. One of his primary duties is to take from the debtor a sworn statement of assets. Other areas of competence include:

The recovery of movable and immovable property (eviction).

Overcoming resistance on the part of the debtor to actions that he is required to permit.

The service at the request of a party of documents required for the compulsory enforcement.

The enforcement of orders for provisional attachment and interim orders (where this is not a matter for the court).

The enforcement of an arrest warrant following refusal to provide the statement of assets.

##### Must the application for enforcement be made by a legal professional?

The court with jurisdiction in applications for enforcement is usually the local court, where legal representation is not compulsory.

For coercive measures to ensure that actions are taken or refrained from, an application must be made to the appropriate court of first instance, which may in certain circumstances be a higher court (the regional court (*Landgericht*)), where legal representation is in principle required.

## Costs of enforcement measures

The law provides for different methods of enforcement, depending on the claim to be secured. The different enforcement measures carry different costs:

### a. Attachment of goods

Where the right to payment of a specific sum of money has been accepted, the creditor can ask the bailiff to enforce payment. A fee of EUR 26 is payable for the attachment of the debtor's movable assets by the bailiff, in accordance with point 205 of the schedule of fees (*Kostenverzeichnis – KV*) annexed to the Bailiffs' Costs Act (*Gerichtsvollzieherkostengesetz – GvKostG*). For the sale of the attached goods, for public auction (which may be a local auction or an Internet auction accessible to the public via an auction platform), or for realisation in some other way, a further fee of EUR 52 is payable, in accordance with point 300 of the schedule of fees. A supplement for time is also charged, in accordance with point 500 of the schedule, if the report drawn up by the bailiff indicates that the execution of the official act took more than three hours. The supplement amounts to EUR 20 for each additional hour or fraction thereof. In addition, there are the bailiff's expenses, especially in the form of travel expenses (point 711 of the schedule of fees).

### b. Attachment of claims held by the debtor

An order to pay a sum of money can also be secured by an application to the court for attachment of a claim held by the debtor (e.g. to payment of earnings) and its assignment to the creditor, with payments to be deducted from the debt (*zur Einziehung*, 'for collection') or the assignment to be in settlement of the creditor's claim on the debtor (*an Zahlungs statt*, 'in lieu of payment') (§§ 829, 835 ZPO). As a rule, the attachment and assignment of a claim are applied for jointly and combined in an attachment and assignment decision. A fee of only EUR 20 is payable for the proceedings on the application, however, in accordance with point 2111 of the schedule of fees annexed to the Court Costs Act (*Gerichtskostengesetz – GKG*). Expenses, including the costs of service of the court decision, are charged separately, under Part 9 of the same schedule of fees.

### c. Taking a statement of assets

The bailiff charges a fee of EUR 33 for taking the statement of assets, in accordance with point 260 of the schedule of fees annexed to the Bailiffs' Costs Act.

### d. Enforcement against immovable property

Compulsory enforcement against the debtor's immovable property takes the form of a mortgage entered in the land register, or forced sale or receivership of the property.

For the entry of a mortgage in the land register to secure a claim, a fee is payable, in accordance with point 14121 of the schedule of fees annexed to the Court and Notaries' Costs Act (*Gerichts- und Notarkostengesetz – GNotKG*), at the rate of 1 % of the value of the claim to be secured (§ 53(1) of the Act). A table of fees for values of up to EUR 3 million is given in Annex 1.

The court fees for proceedings pursuant to the Act on Forced Sales and Receivership are determined by Part 2, Section 2, Subparts 1 and 2 of the schedule of fees annexed to the Court Costs Act. A fee of EUR 100 is payable for a decision on an application for an order for the forced sale of land or on a request to join the proceedings. There are also a fee for the proceedings as such, a fee for holding at least one auction with call for bids, a fee for concluding the sale, and a fee for distributing the proceeds; each of these fees amounts to 0.5 %. The fees for the proceedings and for holding the auction are determined by reference to the value of the property accepted by the court of enforcement (market value, § 54(1) of the Court Costs Act). The fees for concluding the sale and distributing the proceeds are determined on the basis of the successful bid, net of interest, including the value of any rights outstanding in accordance with the terms of the auction (§ 54(2) and (3) of the Court Costs Act). A table of fees for values up to EUR 500 000 is given in Annex 2. In addition to the fees, the expenses incurred in the proceedings are charged separately, in accordance with Part 9 of the schedule of fees annexed to the Court Costs Act; these include the costs payable for a surveyor's valuation of the market value of the property in accordance with the Judicial Remuneration and Compensation Act (*Justizvergütungs und entschädigungsgesetz – JVEG*) (point 9005 of the schedule of fees annexed to the Court Costs Act).

A fee of EUR 100 is payable for a decision on the application for a receivership order or on a request to join the proceedings. The receivership itself is subject to an annual fee at a rate of 0.5%, with a minimum of EUR 120 overall and a minimum of EUR 60 in each of the first and last calendar years. The amount of the fee is determined by reference to the total income from the receivership (§ 55 of the Court Costs Act).

### e. Recovery and coercive measures to ensure that actions are taken, permitted or refrained from

If the debtor is required to surrender movable property, the property must be recovered from the debtor by the bailiff and handed over to the creditor. For this official act, the bailiff charges a fee of EUR 26, in accordance with point 221 of the schedule of fees annexed to the Bailiffs' Costs Act. In addition to that fee a supplement for time is charged, in accordance with point 500 of the schedule, if the report drawn up by the bailiff indicates that the execution of the official act took more than three hours. The supplement amounts to EUR 20 for each additional hour or fraction thereof.

If the debtor is required to surrender immovable property, the bailiff has to take possession from the debtor and give possession to the creditor (eviction). A fee of EUR 98 is charged in accordance with point 240 of the schedule of fees annexed to the Bailiffs' Costs Act. Here too a supplement for time of EUR 20 is charged, in accordance with point 500 of the schedule, for each additional hour or fraction thereof, if the execution of the official act takes more than three hours. In addition, the bailiff's expenses are also charged, including the costs of necessary services provided by third parties, such as removals or the services of a locksmith.

In the proceedings before the court to compel performance of an action (whether it can be performed only by the debtor or can be performed by another person in his or her place), to permit an action, or to refrain from an action, a court fee is payable amounting to EUR 20 in each case, in accordance with point 2111 of the schedule of fees annexed to the Court Costs Act.

## 3.2 The main conditions

The creditor must be in possession of an enforceable document establishing his claim. This may be a final judgment that is no longer open to appeal or provisionally enforceable (§ 704 ZPO) or one of the documents listed in § 794 ZPO (e.g. a judicial settlements (*gerichtlicher Vergleich*), an enforcement order (*Vollstreckungsbescheid*), or a notarial deed). As a general rule the document must contain a court certificate of enforceability (*Vollstreckungsklausel*) and must be served on the debtor. A court certificate of enforceability is required only in exceptional cases for enforcement orders, provisional attachment orders and interim orders (§ 796 ZPO; §§ 929(1), 936 ZPO).

## 4 Object and nature of enforcement measures

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

The debtor's movable assets, claims and other property rights and real property can be subject to enforcement.

§ 811 ZPO specifies the movable assets that cannot be attached; the aim is to allow the debtor and his household to retain the minimum essential for personal or professional use.

Restrictions on attachment also apply to the debtor's earned income. §§ 850 *et seq.* ZPO provide for certain amounts that cannot be attached, as the debtor needs them to provide for his subsistence. Credit balances can be protected in an 'account exempted from attachment' (*Pfändungsschutzkonto*, § 850k ZPO). Certain amounts exempt from attachment are held in these accounts irrespective of the origin of the credit balance.

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

#### In relation to the debtor

Enforcement against the movable property of the debtor takes place through attachment and realisation of the attached property. Claims and rights held by the debtor against third parties are attached by order of the court of enforcement. In both cases, the attachment is an official act which leads to the confiscation of the object attached. Among other effects, confiscation deprives the debtor of control of the object.

#### In relation to third parties

If the bailiff has attached movable property belonging not to the debtor but to a third party, the third party can oppose the attachment of his property by means of a third-party objection (*Drittwiderspruchsklage*).

Where claims held by the debtor against a third party are attached and assigned, the third party may no longer pay the debtor; he can pay a claim that has been assigned to a creditor for deduction from the debtor's claim only to the creditor, and this releases him from his own debt. A third party who breaches this obligation faces the risk of an action for damages.

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

Claims that are no longer open to appeal and claims under enforceable settlements or deeds are subject to a 30-year limitation period under § 197 of the Civil Code (BGB). The creditor can commence enforcement proceedings at any time during that period.

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

There is no specific procedure under German law for granting enforcement.

The debtor can contest the measures sought against him as part of the enforcement proceedings. He can bring an objection (*Erinnerung*) against the manner of the enforcement. He can lodge an immediate complaint (*Beschwerde*) against a decision taken in proceedings where there has been no hearing. This complaint must be lodged within a period of two weeks at the court whose decision is opposed, which can reverse its own decision, or at the regional court, as appellate court.

The application for such a remedy has no immediate impact on the continuation of the enforcement proceedings initiated; there is no suspensory effect.

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

See above under question 4.

#### Annex 1

Commercial value up to EUR ...	Fee Table B EUR ...	Commercial value up to EUR ...	Fee Table B EUR ...	Commercial value up to EUR ...	Fee Table B EUR ...
500	15.00	200 000	435.00	1 550 000	2 615.00
1 000	19.00	230 000	485.00	1 600 000	2 695.00
1 500	23.00	260 000	535.00	1 650 000	2 775.00
2 000	27.00	290 000	585.00	1 700 000	2 855.00
3 000	33.00	320 000	635.00	1 750 000	2 935.00
4 000	39.00	350 000	685.00	1 800 000	3 015.00
5 000	45.00	380 000	735.00	1 850 000	3 095.00
6 000	51.00	410 000	785.00	1 900 000	3 175.00
7 000	57.00	440 000	835.00	1 950 000	3 255.00
8 000	63.00	470 000	885.00	2 000 000	3 335.00
9 000	69.00	500 000	935.00	2 050 000	3 415.00
10 000	75.00	550 000	1 015.00	2 100 000	3 495.00
13 000	83.00	600 000	1 095.00	2 150 000	3 575.00
16 000	91.00	650 000	1 175.00	2 200 000	3 655.00
19 000	99.00	700 000	1 255.00	2 250 000	3 735.00
22 000	107.00	750 000	1 335.00	2 300 000	3 815.00
25 000	115.00	800 000	1 415.00	2 350 000	3 895.00
30 000	125.00	850 000	1 495.00	2 400 000	3 975.00
35 000	135.00	900 000	1 575.00	2 450 000	4 055.00
40 000	145.00	950 000	1 655.00	2 500 000	4 135.00
45 000	155.00	1 000 000	1 735.00	2 550 000	4 215.00
50 000	165.00	1 050 000	1 815.00	2 600 000	4 295.00
65 000	192.00	1 100 000	1 895.00	2 650 000	4 375.00
80 000	219.00	1 150 000	1 975.00	2 700 000	4 455.00
95 000	246.00	1 200 000	2 055.00	2 750 000	4 535.00
110 000	273.00	1 250 000	2 135.00	2 800 000	4 615.00
125 000	300.00	1 300 000	2 215.00	2 850 000	4 695.00
140 000	327.00	1 350 000	2 295.00	2 900 000	4 775.00
155 000	354.00	1 400 000	2 375.00	2 950 000	4 855.00
170 000	381.00	1 450 000	2 455.00	3 000 000	4 935.00
185 000	408.00	1 500 000	2 535.00		

#### Annex 2

Amount claimed up to EUR ...	Fee EUR ...	Amount claimed up to EUR ...	Fee EUR ...
500	35.00	50 000	546.00
1 000	53.00	65 000	666.00
1 500	71.00	80 000	786.00

2 000	89.00	95 000	906.00
3 000	108.00	110 000	1 026.00
4 000	127.00	125 000	1 146.00
5 000	146.00	140 000	1 266.00
6 000	165.00	155 000	1 386.00
7 000	184.00	170 000	1 506.00
8 000	203.00	185 000	1 626.00
9 000	222.00	200 000	1 746.00
10 000	241.00	230 000	1 925.00
13 000	267.00	260 000	2 104.00
16 000	293.00	290 000	2 283.00
19 000	319.00	320 000	2 462.00
22 000	345.00	350 000	2 641.00
25 000	371.00	380 000	2 820.00
30 000	406.00	410 000	2 999.00
35 000	441.00	440 000	3 178.00
40 000	476.00	470 000	3 357.00
45 000	511.00	500 000	3 536.00

Last update: 25/01/2018

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJV nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

## Procedures for enforcing a judgment - Estonia

### 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 be 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 keskregistri 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 keskregistri), 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**.

Last update: 24/06/2019

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

## Procedures for enforcing a judgment - Ireland

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

There is no precise definition of enforcement in Ireland. In practical terms it amounts to the act of carrying into effect a judgment or order of a court. This enforcement action is usually sanctioned by the court prior to it being carried out.

The following are the more common means of enforcing judgments of a civil and commercial nature in Ireland:

#### Execution

This type of action involves the seizure of the goods of the judgment debtor. The Court issues an order at the request of the judgment creditor directing the County Registrar (or the Sheriff in the case of Dublin or Cork) to seize goods to the value of the judgment debt (including any legal costs incurred). These goods may then be sold in order to satisfy the debt.

#### Registration

The existence of a judgment can be brought into the public domain by its registration in the Register of Judgments in the High Court. The Register contains any judgment, regardless of whether it was obtained in the District, Circuit or High Court, which the creditor has requested be entered. The name and address of the debtor together with details of the judgment is published in some newspapers and in commercial publications such as *Stubbs Gazette*. In addition credit institutions record this information and an unpaid judgment may affect access by the debtor to finance.

#### Judgment Mortgage Affidavit

An affidavit may be sworn by the judgment creditor and upon certification of the judgment by the relevant court it may be registered against the debtor's property. The proceeds of the sale of the property must, having regard to the priority of other mortgages, be applied in discharge of the debt prior to being given to the debtor. A further step which can be taken is to apply to court for a well charging order and an order for the sale of the property.

#### Instalment Orders / Committal Orders

An application can be made to the District Court to have an order made for the payment of a judgment by way of instalments pursuant to the [Enforcement of Court Orders Acts 1926 to 2009](#). A Judge will decide, having regard to the means of the debtor, the amount of the instalment directed to be paid. A committal order is only available against natural persons and not against legal persons i.e. companies. Failing payment of an instalment order may give rise to an application for a committal order. This effectively means that you may be imprisoned if you can afford to pay but refuse to do so.

#### Attachment of Earnings

An order may be obtained by a judgment creditor directing that deductions be made directly from the wages / salary of the debtor. The effect of this is that the payment is made directly from the debtor's employer to the creditor.

#### Garnishee Order

Where a judgment creditor is aware of a debt due by a third party to the judgment debtor, an application may be made to court to have an order made directing the third party to pay a certain amount directly to the creditor. It is at the discretion of the Court whether or not to grant the order.

#### Receiver by Equitable Execution

This measure involves the appointment of a receiver by the court over, for example, proceeds of the sale of an asset by the debtor with a view to the satisfaction of the debt. The decision to appoint a receiver is at the Court's discretion.

It is important to note that the means of attempting to enforce a judgment is a matter for a judgment creditor and the legal advisors. The [Courts Service](#) does not suggest any particular course of action. This list is not intended to be exhaustive but merely outlines the common procedures used.

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

For a domestic judgment, it may be necessary to obtain the authorisation of the court which granted the judgment in order to enforce the judgment (see above). In certain cases, such as execution and registration of a judgment, an application to court is not required and an application for enforcement may be made to the court office concerned.

In the case of judgments from other EU jurisdictions, the competent court is the High Court. However, in the case of periodic maintenance payments certified as a European Enforcement Order in other EU jurisdictions, the competent court is the District Court.

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

### 3.1 The procedure

Judicial and certain non-judicial decisions are enforceable. As well as orders of the court these include judgments in summary matters entered by a Registrar in the High Court or the County Registrar in the Circuit Court.

It is often necessary to obtain the authorisation of the court which granted the judgment in order to enforce the judgment. In some cases however, such as execution and registration of judgment, an application to court is not required. The authorisation can be given by the court office concerned.

In the case of judgments from other jurisdictions to be enforced under EU Regulations, the competent court is the High Court. (or in the case of periodic maintenance payments certified as a European Enforcement Order, the District Court). The functions in relation to Regulation (EC) 44/2001 (replaced by Regulation (EU) No 1215/2012 which applies to court settlements approved or concluded on or after 10 January 2015) have been delegated to the Master of the High Court and an application can be made in open court for a declaration that a judgment is enforceable in Ireland and a subsequent Order made for its enforcement.

A judgment certified as a European Enforcement Order issued under Regulation (EC) 805/2004 is recognised as and has the same effect as a High Court judgment and is enforced accordingly. The competent court for enforcing a periodic maintenance payment certified as a European Enforcement Order is the District Court. The domestic regulations governing this process can be found in S.I. 274 of 2011.

In the case of a judgment delivered on an uncontested claim to be enforced in another EU jurisdiction, the court which delivered the judgment has jurisdiction for applications in relation to its enforcement under Regulation 805/2004 relating to European Enforcement Orders.

The application for the enforcement of a judgment is usually made to the court (or court office) by a legal practitioner although there is no necessity for a creditor to be legally represented. All court applications must be made by a local practitioner and cannot be made by post. Certain applications to court offices, such as applications for execution, registration and certification of judgment for the purposes of a judgment mortgage affidavit, may be made by post. Advice on the practice and procedure involved may be obtained by contacting the Judgments Section in the High Court at HighCourtCentralOffice@Courts.ie. The costs (fees) imposed by the Courts Service are minimal and the current fees can be located in the [Fees Orders](#) on the [Courts Service](#) website. Costs which may be incurred as a result of instructing solicitors and barristers are a matter between creditors and their legal representatives. Some or all of the costs involved in the enforcement procedure may be awarded by the court.

### 3.2 The main conditions

Section 15 of the [Enforcement of Court Orders Act 1926 \(as substituted by Section 1 of the Courts \(No. 2\) Act 1986\)](#) provides that where a debt is due on foot of a judgment order or decree, the creditor can apply to the District Court for the issue of a summons requiring the debtor to attend for examination as to his/her means by a District Court Judge. An application for an Enforcement Order must be made within six years from the date of the judgment order or decree. The creditor must produce evidence of the original debt and the debtor must complete a statement of means. Section 16 of the 1926 Act as amended by Section 9 of the 1986 Act allows evidence to be adduced and the cross examination of the debtor or creditor. An enforcement order can continue in force for a period of twelve years from the date of the relevant judgment order or decree

## 4 Object and nature of enforcement measures

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

All types of assets, with the exception of perishable goods or goods held by the debtor on a sale or return basis, can be the subject of enforcement.

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

Non compliance with a Court Order may result in the party in default being open to sanctions for being in contempt. The penalties which can be imposed by a Court include fines or imprisonment until such time as the contempt is purged. There is therefore no limit on the length of time a person can be imprisoned. This also applies to any third party who breaches the terms of a Court Order.

It is important to note that, pursuant to Section 20 of the [Enforcement of Court Orders Act 1926](#), imprisonment of a debtor for failure to comply with an instalment order does not operate as a satisfaction or extinguishment of the debt or any part thereof and does not deprive the creditor of other remedies for the recovery of debts.

Banks and other financial institutions are under the same obligations as other parties in relation to compliance with Court Orders. In circumstances not specifically covered by a Court Order regard should be had to legislation and regulations governing personal information held by such an institution (for example the [Data Protection Act 1988](#))

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

Certain orders will always state the length of time in which the party concerned has to comply with the terms of the order although this may not always be the case. A judgment is valid for a period of twelve years although some of the enforcement measures which may be granted have time limits set out in Court Rules or in legislation. An example is a High Court execution Order which is valid for one year from its issue. After this period a new execution order is required.

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

An appeal does not usually lie against the enforcement measure itself as authorised by the court office but against the substantive judgment or order upon which it is grounded. An affected party may apply to the appellate court to have the judgment or order discharged. The time limits under which appeals must be brought vary and are as follows

District Court to Circuit Court: 14 days from the judgment or order

Circuit Court to High Court: 10 days from the date of the order

Master's Court to High Court: 6 days from the date of perfection of the order or if the order was made ex parte, from notice of the said order or if refused, from the date of such refusal (one month from service of the order in the case of enforcement of a foreign judgment pursuant to Regulation 44/2001)

High Court to Court of Appeal: either 10 days or 28 days from the date of perfection of the order, depending on the nature of the case

High Court or Court of Appeal to Supreme Court: 28 days from the date of perfection of the order.

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

A judgment is valid for a period of twelve years and no action may be brought on foot of judgment after the expiration of 12 years from the date on which it became enforceable. In addition, some of the enforcement measures which may be granted have time limits set out in Court Rules or in legislation. An example is a High Court execution Order which is valid for one year from its issue. After this period a new execution order is required. A further example is

that leave of the court is required to issue a High Court execution order where more than six years have elapsed since the making of the enforceable court order.

Last update: 01/07/2015

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

## Procedures for enforcing a judgment - Greece

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

Enforcement is the enforced satisfaction of a substantive claim incorporated in an enforceable title with the assistance of the public authorities. The following means are used for enforcement:

- removal of moveable goods by force
- eviction from immovable property by force
- attachment
- imprisonment
- fines
- compulsory administration
- statements required to be made on oath.

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

As defined in the [new] Code of Civil Procedure (Articles 927-931 CCP), enforcement is exercised by an individual entitled to do so, who, on the official copy (*Apógrafa*), gives the corresponding order to a specific **bailiff** and specifies how and, if possible, the items on which the order will be enforced. In the case of seizure, they will designate as auctioneer a **notary** of the region where the seizure is to be effected. The order must be dated and signed by the beneficiary or their representative. The order gives the authority to perform all enforcement acts, unless otherwise specified therein.

The bailiff to whom the official copy is delivered with an order to execute the enforcement has the power to receive payments and give a written receipt and also surrender the official copy if the provision was fulfilled completely. The bailiff can also accept a partial payment, in which case they must give a receipt and note this on the official copy. A partial payment does not hinder the progress of enforcement.

The bailiff has the authority, if required for the purpose of enforcement, to enter the dwelling or any other premises held by the debtor, to open doors and investigate, and to open closed furniture, utensils or containers. The bailiff may request the assistance of law enforcement authorities (usually the police), which much provide assistance.

If the debtor resists during the enforcement, the bailiff may use force to counter the resistance, and call on law enforcement authorities (usually the police) for assistance.

The bailiff draws up a report for each act of the enforcement procedure. If the enforcement was not effected, the bailiff draws up a report stating the reasons. For any offence committed during enforcement, the bailiff must prepare a report and submit it to the competent prosecutor.

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

An enforceable title is a public document certifying a claim and enabling the alleged beneficiary to request compliance of the debtor with its content by means of enforcement. The conditions that must be met are the existence of the title and the validity of the claim.

#### 3.1 The procedure

Enforcement is an act of justice, the purpose of which is to provide legal protection, and not an administrative act. Applications addressed to the enforcement officers and every act of enforcement are procedural acts. The conditions which must be met for the purpose of enforcement are as follows:

- jurisdiction and competence of enforcement agents
- standing of the litigant
- competence to take part in court proceedings
- competence to act on a client's behalf
- existence of a legitimate interest
- capacity to sue and be sued
- existence of an enforceable title
- existence of a claim which can be satisfied by enforcement

It is possible to enforce both judicial and non-judicial decisions without it always being necessary to apply for a court order authorising the enforcement. The following are enforceable titles:

- final judgments by Greek courts
- rulings by Greek courts declared to be provisionally enforceable
- arbitration awards
- records of Greek courts containing a settlement or determining court costs
- notarised deeds
- payment orders made by Greek judges
- tenant eviction orders
- foreign titles declared to be enforceable
- orders and acts declared by law to be enforceable titles

Enforcement officials are divided into direct and indirect enforcement officials. Direct officials are appointed by the petitioning creditor. They are a) bailiffs, who are non-salaried public officials with the power to take action to seize goods in the debtor's possession, seize property, ships or aircraft belonging to the debtor, effect direct enforcement, arrest debtors whose imprisonment has been ordered and prepare auctions, b) notaries, or district civil court judges substituting for them, who have the power to conduct the voluntary or forced auction of the debtor's seized assets and to distribute the proceeds by drawing up a ranking list. Indirect officials are the police, the armed forces, and the bailiff's witnesses who collaborate when resistance to enforcement is offered or threatened. All these officials are responsible for any culpable breach of their obligations in the performance of their duties.

The enforcement order itself is issued by the person with the right to effect it, i.e. the claimant, or his representative, who may but need not be a lawyer. The basic costs of enforcement are as follows:

the bailiff's fee for seizure for claims of up to EUR 590: EUR 53, for claims of between EUR 591 and EUR 6 500: EUR 53 plus a 2.5 % surcharge on the amount, and for claims EUR 6 500 or more: EUR 53 plus a 1 % surcharge on the amount, capped at EUR 422 for every property, ship or aircraft seized;

the bailiff's fee for preparing each auction or repeat auction programme or summary of seizure report for claims of up to EUR 590 = EUR 53, for claims of between EUR 591 and EUR 6 500 = 2 %, and for claims of EUR 6 501 or more = 1 %, capped at EUR 210;

auctioneer's fee = EUR 30;

bailiff's fee for any other act of enforcement = between EUR 240 and EUR 400, as agreed between the bailiff and his client;

bailiff's witness fee = EUR 30 each, and EUR 60 if the witness is a bailiff;

if enforcement is cancelled, the bailiff's fees are reduced by 50 %;

EUR 0.50 for every kilometre which the bailiff and witnesses need to travel from the place where they are based in order to carry out any act;

special bailiff's fee depending on the degree of complexity of enforcement: as agreed between the bailiff and his client (this is never paid by the person against whom the enforcement is addressed);

### **3.2 The main conditions**

Substantive conditions for enforcement are:

the existence of a legitimate interest, i.e. the need for the act of enforcement and the legal protection it provides;

the validity of the claim;

The purpose of the regulation of the law on enforcement is to balance conflicting interests between creditors on the one hand and debtors or third parties on the other in the circumstances. The criteria which the courts apply in order to grant an enforcement measure are:

swift satisfaction of creditors at little cost

protection of the debtor's rights of personality and legitimate interests in general

coincidence of the creditor's and the debtor's interests as regards the need to achieve the best possible price at auction

protection of third party interests

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

The object of enforcement measures may be the debtor's property and/or the debtor himself. Enforcement measures are material acts by officials who have been given authority for this purpose; they result directly or indirectly in the satisfaction of claims with enforcement by the state. Enforcement action may be taken against the following assets:

movable property in the hands of the debtor or in the hands of the creditor or of a third party prepared to hand them over;

the debtor's property rights in rem to third party moveable property;

money;

pecuniary claims against third parties held by the person subject to enforcement;

immovable property belonging to the debtor or the debtor's property rights in rem;

ships;

aircraft;

intellectual property rights, patents, film rights.

Enforcement action may not be taken against the following:

the debtor's and his family's personal effects;

food and fuel needed by the debtor and his family;

medals, memorabilia, manuscripts, correspondence, family records and business books;

books, musical instruments, works of art;

tools, machinery, books or other items needed by persons who work for a living;

perishables;

shares in partnerships;

statutory maintenance benefits;

salary, pension or insurance benefits.

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

The debtor must comply with the decision ordering the enforcement measure, as must all third parties. If resistance is offered during enforcement, the bailiff may counter it with force and, at the same time, call the law enforcement authorities. The bailiff may recruit two adult witnesses or a second bailiff. In the event of non-compliance by the debtor:

if the debtor fails in his obligation to effect an act which may also be effected by a third person, the creditor is entitled to effect the act at the debtor's expense;

if the debtor fails in his obligation to effect an act which cannot be effected by a third person and depends solely on whether or not he is prepared to effect it, the court will order him to effect the act and, if he does not, will sentence him to a fine to the benefit of the creditor, and to imprisonment;

if the debtor is obliged to refrain from or to acquiesce in some act, the court may make any infringement subject to a fine to the creditor's benefit and to imprisonment.

None of the above cases affects the creditor's right to demand compensation provided for under substantive law for losses sustained as a result of non-compliance by the debtor. It is possible in principle for an asset to be disposed of by the debtor; if, however, it is seized, disposal is prohibited and is null and void vis-à-vis the person who had it seized and vis-à-vis the creditors who have submitted their claims.

If enforcement is directed at the debtor's bank accounts, the bank is not obliged to disclose the exact details of them to the petitioner; if, however, a document seizing monetary claims in the debtor's hands is served on a bank, disposal of the amount seized is prohibited and is null and void vis-à-vis the person who had it seized, and the bank must state within eight days of service of the deed of seizure whether the claim seized (money on deposit in bank account) exists and, if it suffices to satisfy the person who had it seized, must pay them the sum of money.

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

There is no provision in principle which imposes time limits on the petitioner; there are certain time restrictions, but these are deadlines before which specific acts cannot be validly effected rather than binding time limits, and they do not directly stipulate a point after which the petitioner can no longer take action.

The provision whereby different individual acts must be effected within a certain period after seizure or before an auction does not change the basis of the system. In order to prevent the procedure from dragging on indefinitely, there is merely an ultimate time limit of one year after which seizure or other acts cannot be effected on the basis of the same order, and an auction cannot be held on the basis of a seizure which, by reason of the expiry of this deadline, has been reversed by court decision.

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

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

The only remedy against the enforcement procedure is an application to set aside judgment by default, which may be filed by the person against whom enforcement is directed or by any creditor with a legitimate interest within 15 days of the first act of enforcement if it relates to the validity of the title or the pre-



trial proceedings; up to the final act of enforcement if it relates to the validity of any of the acts of enforcement, from the first act to the last; and six months after the final act of enforcement was effected if it relates to the validity of that act. Applications to set aside judgment by default may be also filed by a third party with a right to the object of the enforcement which has been challenged and which they are entitled to cite against the person against whom enforcement is directed without any specific deadline. The court with jurisdiction is the court in whose district the place of enforcement is located, specifically the district civil court if the enforceable title is a decision by the district civil court [*airinodlkeio*], and the single-judge court of first instance [*monomelés protodikeio*] in all other cases. The fact that an application to set aside judgment by default has been filed does not suspend enforcement; however, suspension of the enforcement procedure may be ordered by decision of the court at the request of the applicant, with or without a guarantee. This decision is communicated to the enforcement officers, who cannot effect any act of enforcement unless specifically permitted to do so in the decision.

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

The following limitations apply on enforcement, particularly regarding property seized: The following property items are excluded from seizure: (a) property having suffered direct damage, (b) shares in partnerships, (c) maintenance claims arising from law or by testamentary disposition, as well as claims for contributions of the spouses to the family needs, (d) claims on wages, pensions or insurance benefits, unless there is a pending claim for maintenance arising from law or testamentary disposition or to contribute to the needs of the family, in which case half of the property item can be seized, taking into account the amounts received by the debtor, the extent of obligations created by their marriage to meet family needs and the number of beneficiaries, (e) any kind of EU aid or subsidies in the hands of OPEKEPE as a third party, until they are deposited in the bank account of the beneficiaries or otherwise paid to them. The exemption laid down in paragraph 2 point (d) also applies when payment of the amount is made by deposit in a bank account of the debtor. The exemption applies only to the extent that the account has a balance that does not exceed, during the period from ordering the enforcement until the day of payment, the amount of the claim exempted from enforcement.

Further, the debtor has the right to appeal against the enforcement procedure with two remedies:

(a) **Application for opposition to Article 933 of the CCP**, which states that: Any objection of the person against whom the enforcement is addressed and any creditor with a legitimate interest, that concerns the validity of the enforceable title, the enforcement procedure or the claim, may be made only by notice of opposition filed with the district civil court if the enforceable title had been issued by that court, and the single-member court of first instance in all other cases. If several notices of opposition are filed by means of separate documents, the registrar must make sure that all of them are identified and heard in the same court hearing. Additional opposition grounds can only be submitted in a particular application lodged with the secretariat of the court at which the opposition is directed, under which a report is drawn up and communicated to the other party at least eight (8) days before the hearing. The discussion of the opposition must be scheduled within sixty (60) days of lodging and the summons is served to the defendant twenty (20) days before the hearing. The local competent court is the district court of the place of enforcement if other acts of the enforcement procedure follow the order served, otherwise the competent court is the court set out in Article 584. If the enforceable title is a judgment or order for payment, the objections are inadmissible to the extent applicable *res judicata* in accordance with Articles 330 and 633(2)(c), respectively. Contentions regarding the settlement of the claim must be demonstrated only in writing or by admission in court. The decision on the opposition must be delivered within sixty (60) days of its discussion.

(b) **Under Article 1000 of the CCP**, the debtor has the right to request the suspension of the auction against him. In particular, at the request of the debtor, which will not be accepted unless filed fifteen (15) working days before the day of the auction, the court referred to in Article 933, while hearing the case following the proceedings under Articles 686 et seq., can suspend the auction procedure for up to six (6) months from the original date of the auction if there is no risk of damage to the enforcement creditor and where it can reasonably be expected that the debtor will satisfy the enforcement creditor within this period or that, if this period elapses, the proceeds of the auction will be increased. This judgment must be delivered by noon of the last Monday prior to the auction and the suspension will always be granted subject to payment of: (a) any costs of expediting the auction, which will be estimated in the judgment, and (b) at least one quarter of the sum owed to the person expediting the auction. The judgment suspending the auction will be communicated to the auctioneer on the same day that it is delivered. Payment must be made by 10.00 on the day of the auction and, if no such payment is made, the auction will be carried out normally.

Last update: 16/03/2017

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

Figyelem: az oldal eredeti nyelvű változata [es](#) nemrég módosult. Az Ön által kiválasztott nyelvi változatot most készítik fordítóink.

## **Procedures for enforcing a judgment - Spain**

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

In general, civil and commercial enforcement mean that, when an enforceable decision (such as a final judgment) is not complied with voluntarily by the offender, the claimant must apply for judicial enforcement in order to ensure that the decision is complied with. Thus, in order to recover a debt that the defendant has been ordered to pay but does not do so, the claimant (creditor) applies for judicial enforcement and obtains the recovery, for instance, by way of the attachment of the debtor's current accounts or the debtor's property that, once auctioned, allows the auction proceeds to pay the amount owed to the creditor.

Enforcement is part of the response to the mandate of the Spanish Constitution of 1978, which entrusts the Judges and the Courts with the task of both judging and enforcing their decisions (Articles 117 and 118 of the Constitution). Therefore, the parties to the proceedings are under an obligation to comply with judgments and other court decisions as well as to provide the cooperation required to enforce what has been decided. It is for the Judge to ensure that these requirements are met in an appropriate way.

Enforcing a court decision means complying with what has been ordered by the court, i.e. enforcing the full right gained by the party that won the litigation. This may involve the claimant (hereafter the 'party seeking enforcement') requesting the reimbursement of a sum of money, the right to have something done or not done, or that a recognised right be fulfilled by registration in the relevant Public Registry, depending on the order.

Enforcement may be final or provisional. In the latter case and under certain circumstances, a judgment that is not yet final is enforced in order to avoid the creditor being prejudiced during the interim period (i.e. over the duration of the procedural steps of the action against that decision and while the final judgment is issued) because of the delays inherent in the proceedings (Articles 524-537 of the Code of Civil Procedure - *Ley de Enjuiciamiento Civil*).

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

Spanish legislation assigns the enforcement of judgments to Judges and Courts, in accordance with the laws and rules on jurisdiction (Article 117(3) of the Spanish Constitution).

In line with the Constitution, under the Code of Civil Procedure (Law 1/2000, 7 January 2000, BOE No 7, 8 January 2000, as amended), which regulates the enforcement procedure in civil matters, the Judge is responsible for monitoring the proper implementation of the enforcement procedure (Articles 545, 551,

552 and the corresponding provisions). It is the Judge who, on the application of the party seeking enforcement, initiates the procedure by means of the 'general enforcement order' that will be issued once the enforcement order has been reviewed. The Judge will also issue a decision if the defendant (hereafter 'the judgment debtor') raises an objection to the enforcement and initiates the specific opposition procedure to enforcement that is set out below. The Registrars (*Letrados de la Administración de Justicia*, previously called '*Secretarios judiciales*' – Court Clerks) are responsible for determining and adopting specific enforcement measures (demands for payments, attachment of the judgment debtor's goods, current accounts deductions, salaries, etc.). Once the 'general enforcement order' has been issued by the Judge, it is the Registrar who monitors the enforcement procedure and adopts the corresponding decisions, notwithstanding that in some cases an appeal may be lodged against those decisions before the Judge.

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

In general, it is necessary to have a final judgment or court decision, or any other instrument permitting enforcement (there are exceptions in which a decision is not yet final but enforceable, such as the provisional implementation of contested judgments, which is permissible under certain circumstances). In accordance with the provisions of Article 517 of the Code of Civil Procedure concerning the enforcement procedure and the instruments permitting enforcement, the enforcement application must be based on an instrument which is enforceable. Only the following instruments are enforceable:

A final judgment. Arbitration decisions and mediation agreements. Mediation agreements must have been notarially attested in accordance with the Law on Mediation in Civil and Commercial Matters (*Ley de mediación en asuntos civiles y mercantiles*).

Court decisions approving or confirming court settlements and agreements reached during the proceedings, accompanied, if necessary, by the corresponding depositions in order to provide a record of their actual content.

Authenticated public documents, provided that they are first copies. If they are second copies, they must be issued by a court order referring to the person who will suffer loss, or the person causing the loss, or they must be issued with the agreement of all the parties.

Instruments of commercial agreements signed by the parties and by a commercial broker who is a member of a professional association, who inspected them, provided that they are accompanied by a certificate in which the said broker certifies that the contract matches the entries in his register and the date of the entries.

Lawfully issued bearer or registered securities representing obligations due and the coupons, also payable, on those securities, provided that the coupons correspond to the securities and that the securities, in any case, match the receipt books.

A protest of securities forgery formulated during the matching process will not prevent the enforcement order from being issued if the items match, without prejudice to the subsequent objection to enforcement that the debtor may make, arguing that the security is forged.

Unexpired certificates issued by the bodies responsible for the registers showing the securities represented by book entries referred to by the Stock Market Law (*Ley del Mercado de Valores*), provided that they are accompanied by a copy of the public instrument representing the securities or, where applicable, the issue, where such an instrument is required by current legislation.

The certificates referred to in the previous paragraph do not expire once enforcement has been sought and ordered.

The court order setting out the maximum amount that can be claimed by way of compensation, issued in the circumstances laid down by law in criminal proceedings instituted in relation to events covered by compulsory third-party liability motor vehicle insurance.

Other procedural decisions and documents which are enforceable under this or another law.

#### **3.1 The procedure**

The application for enforcement must be made to the Judge of the Court of First Instance (*Tribunal de Primera Instancia*) which handed down the judgment or the decision to be enforced. However, if the enforceable instrument is not a judgment, i.e. if it does not result from a court decision or from a decision issued by the Registrar attached to the Court (such as in the case of authenticated public documents with notarial intervention that are enforceable), there are special rules for assigning jurisdiction to a Court, depending on various links to the case. The most common assignment criterion is the residence of the defendant. The party seeking enforcement and the judgment debtor must be advised by a barrister and represented by a solicitor, except in the case of enforcement of decisions issued in proceedings in which the intervention of said legal professionals is not mandatory.

For the rest, the procedure is set out in Articles 548 et seq. of the Code of Civil Procedure; it should be noted that the enforcement order will be issued only at the request of one of the parties and will be in the form an application, as discussed below. Once the enforcement application has been submitted to the Court, and provided that the procedural rules and requirements are fulfilled, the Court draws up the 'general enforcement order'. After the order has been issued by the Judge, the Registrar issues a decree containing the appropriate specific enforcement measures, as well as the tracing and investigation measures relating to the judgment debtor's assets that appear appropriate for the enforcement.

The above-mentioned order and decree, along with a copy of the enforcement application, are notified simultaneously to the judgment debtor, notwithstanding that certain measures may be adopted in order to prevent the creditor from possible harm.

The judgment debtor may object to the enforcement on specific grounds, either substantive (e.g. payment of the debt) or procedural (e.g. if there are errors in the enforcement), in accordance with Article 556 et seq. of the Code of Civil Procedure. In this case, an adversary procedure is initiated, permitting evidence to be examined, which concludes with the issue of an order maintaining the enforcement order or invalidating it in whole or in part. This decision is subject to appeal.

#### **3.2 The main conditions**

As stated earlier, an application for enforcement must be made at the request of one of the parties by lodging the claim containing the enforcement application. The enforcement application must contain the instrument on which enforcement is based, state the enforcement sought from the Court, the assets of the judgment debtor that can be seized, the tracing and investigation measures to identify the debtor's assets, the person or persons against whom enforcement is to be carried out, identifying them and their circumstances. If the enforcement instrument is a decision from the Registrar or a judgment or decision from the Court responsible for the enforcement, the enforcement application can be limited to the application for the enforcement order to be issued, identifying the judgment or decision to be enforced (Article 549 of the Code of Civil Procedure). In other cases, the application for enforcement must be submitted with the documents on which enforcement is based (listed in Article 550 of the Code of Civil Procedure). If the enforcement application meets the above requirements and if the instrument presented is one that allows enforcement to be ordered, enforcement will be ordered by the Judge or by decree from the Registrar, who will determine – in the case of a monetary enforcement – the amount constituting the principal amount of the enforcement, along with the amount provisionally fixed for interests and costs, without prejudice to its subsequent settlement and adjustment, and must always identify the persons concerned and the enforcement measures to be adopted.

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

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

In any case, and without prejudice to certain unattachable assets referred to below, it should always be stressed that the enforcement measures must be in proportion to the amount for which enforcement is granted, so that if they are excessive the Court can order a reduction. Additionally, if they are insufficient, the party seeking enforcement can apply for them to be complemented by broadening or increasing the measures to be adopted. Where the party seeking enforcement does not know what assets are owned by the judgment debtor, the Court may be asked to make enquiries that are carried out by the Registrar,



either directly from the Court or by submitting requests to the competent authorities. However, there is a series of scales or limitations to attachments and garnishments of wages and salaries that are listed below. Enforcement arising from an order to pay maintenance (set out in either a maintenance proceeding between relatives or in a family proceeding relating to maintenance payments owed to children) is an exception, as in these cases enforcement is not subject to the statutory scales; instead, the Court determines the amount that can be seized.

With regard to unattachable assets, Articles 604 et seq. of the Code of Civil Procedure state the following (references to the 'Court Clerk' should be read as references to the Registrar):

Fully unattachable assets. Under no circumstances may the following assets be seized:

- No 1 Assets that have been declared inalienable.
- No 2 Ancillary rights that cannot be alienated separately from the main right.
- No 3 Assets that, in themselves, have no value.
- No 4 Assets expressly declared unattachable by any legal provision.

Judgment debtor's unattachable assets. The following items are also unattachable:

- No 1 Furniture and household items, as well as the clothes of the party against whom enforcement is sought and his family that cannot be considered superfluous. In general, items such as food, fuel and others which, in the opinion of the court, are essential so that the judgment debtor and their dependents can live with reasonable dignity.
- No 2 The books and instruments needed by the judgment debtor to exercise their profession, art or trade, where their value is not proportional to the amount of the debt claimed.
- No 3 Sacred items and items used in the practice of legally registered religions.
- No 4 Amounts expressly declared unattachable by law.
- No 5 Assets and amounts declared unattachable by Treaties ratified by Spain.

With regard to the seizure of wages and pensions, the Code of Civil Procedure lays down the following precautions:

1) A salary, wage, pension, remuneration or its equivalent not exceeding the amount of the minimum wage (this is set annually by the Government) may not be seized.

2) Salaries, wages, remuneration or pensions that are higher than the minimum wage may be seized according to this scale:

- No 1 For the first additional amount up to the amount equivalent to twice the minimum wage, 30 %.
- No 2 For the additional amount up to the amount equivalent to three times the minimum wage, 50 %.
- No 3 For the additional amount up to the amount equivalent to four times the minimum wage, 60 %.
- No 4 For the additional amount up to the amount equivalent to five times the minimum wage, 75 %.
- No 5 For any amount that exceeds the above amount, 90 %.

3) If the party against whom enforcement is sought receives more than one salary or wage, all of them will be added together and the unattachable part deducted once only. Likewise, the salaries, wages, pensions, remuneration or equivalent of the spouses will be added together unless there is separation of property for the spouses, evidence of which must be provided to the Court Clerk.

4) If the party against whom enforcement is sought has dependents, the Court Clerk may reduce by between 10 % and 15 % the percentages laid down in Nos 1, 2, 3 and 4 of Article 607(2) of the Code of Civil Procedure.

5) If the salaries, wages, pensions or remuneration were encumbered with permanent or temporary deductions of a public nature pursuant to tax or social security legislation, the net amount received by the judgment debtor after those deductions will be the amount used as the basis for determining the amount to be seized.

6) The above paragraphs of this Article also apply to income from self-employed professional and commercial activities.

7) The amounts seized in accordance with this provision may be transferred directly to the party seeking enforcement, into an account previously designated by that party, if approval is granted by the Court Clerk responsible for the enforcement.

In that case, both the person or body carrying out the attachment and subsequent transfer, as well as the party seeking enforcement, must inform the Court Clerk every three months of the amounts sent and received, respectively, with the exception of any claims that may be lodged by the party against whom enforcement is sought, either because they consider the debt to be fully repaid, therefore invalidating the seizure, or because the attachments and transfers were not being carried out as stipulated by the Court Clerk.

The order issued by the Court Clerk allowing direct transfer may be challenged by bringing a direct appeal for review before the court.

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

In the case of immovable property or other assets that can be registered, the court may, at the request of the party seeking enforcement, order a preventive attachment entry to be made in the corresponding public register (usually the Property Register, which is the register for immovable property) in order to guarantee the subsequent enforcement.

In other cases, the following type of measures may be granted:

- Cash: confiscation.
- Current accounts: preservation order to the bank.
- Wages: retention order to the payer.
- Interest, proceeds and revenue: withholding by the payer, court-supervised administration or payment into court.
- Securities and financial instruments: withholding of interest at source, notification to the stock exchange or secondary market regulator (if the securities are listed on a public market) and notification to the issuing company.

Other movable property: confiscation.

In addition, with a view to ensuring that enforcement takes place, all persons and public and private bodies are required to cooperate with enforcement measures (with a warning that they may incur a fine or even be held in contempt of court if they fail to comply with the requirement). This means that they must provide the information required of them or adopt the guarantee measures in question, and they must hand over to the Court any documents and data in their possession, with no limitations other than those arising from the respect for fundamental rights or limits which are expressly laid down by law in certain cases.

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

Enforcement measures have no set duration; they remain in force until enforcement is complete. With regard to these measures, the party seeking enforcement must apply for the relevant enforcement in each case. For instance, an auction will be requested in the case of the seizure of movable or immovable property. The payment to the party seeking enforcement will be made with the money obtained from the auction. In other cases, for instance when the order consists of delivering a property to the party seeking enforcement (such as eviction for failure to pay rent), the enforcement measures will consist of returning the possession of the property to the party seeking enforcement, once the tenant in breach of contract has been evicted from the property.

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

It is not possible to appeal against the instrument granting enforcement. However, the judgment debtor may object once the enforcement has been notified. In that case, the abovementioned objection proceeding will be held. The objection may be on substantive grounds or on the basis of formal defects. These grounds of objection vary according to the instrument to be enforced (as provided in Article 556 et seq. of the Code of Civil Procedure, depending on whether it is a procedural decision from the Judge or the Registrar, an arbitration decision or a mediation agreement; maximum penalty instruments ordered in criminal proceedings relating to traffic accidents; instruments referred to in Nos 4, 5, 6 and 7 of Article 517 of the Code of Civil Procedure, as well as other enforceable documents referred to in No 9 of Article 517(2). An objection based on excessive claim and an objection based on formal defects are governed by Articles 558 and 559 respectively of the Code of Civil Procedure). It should be noted that the Court may have previously raised some of these grounds of its own motion (if the Court finds any of the clauses included in an enforcement order consisting of authenticated public documents, instruments or certificates may be unfair, it is required to act ex officio by hearing the parties on the matter and issuing a ruling thereafter). The parties may appeal against the order issued by the Court of First Instance in response to the grounds for objection. The appeal will be heard by the relevant Provincial Court (*Audiencia provincial*).

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

There is the possibility that the enforcement measure lapses. Thus, an enforcement measure based on a court judgment or decision, a decision by the Registrar approving a legal settlement or an agreement reached during the proceedings, or an arbitration decision or mediation agreement, lapses if the corresponding enforcement application is not filed within five years of the judgment or decision becoming final (Article 518 of the Code of Civil Procedure). There is also a waiting period before instituting the enforcement of procedural decisions (by the Judge or the Registrar) or arbitration decisions or mediation agreements. This period is intended to give time to the defendant to comply voluntarily with the order, and the person who wins the case is not required to apply for enforcement. Accordingly, no enforcement of procedural or arbitration decisions or of mediation agreements will be ordered within twenty days of the date on which the conviction becomes final, or on which the decision to approve the agreement or sign the agreement was notified to the judgment debtor (Article 548 of the Code of Civil Procedure). Ultimately this waiting period is intended to encourage voluntary compliance by the defendant. As explained above in 4.1, for the protection of the debtor, the Code of Civil Procedure lays down that certain assets are unattachable, as well as quantitative limits proportional to the attachments of salaries, wages, remuneration or pensions.

In property auctions, the sale to the highest bidder must be made for minimum amounts in proportion to the appraisal value of the asset or the amount of the debt. These debtor protection limits are higher if the debtor's habitual residence is auctioned (Articles 670 and 671 of the Code of Civil Procedure).


The Code of Civil Procedure also states that, as a general rule, enforcement of interest on the principal amount owed and procedural costs may not be carried out for an amount exceeding 30 % of the principal (Article 575 of the Code of Civil Procedure).

Where enforcement is carried out against the habitual residence, the costs claimable from the judgment debtor may not exceed 5 % of the amount claimed in the enforcement application (Article 575 of the Code of Civil Procedure).

In mortgage foreclosures, and for debtors whose social and financial situation is particularly vulnerable, eviction from the habitual residence is postponed. Pursuant to Articles 55 to 57 of the Insolvency Law (*Ley Concursal*), individual enforcement orders cannot be carried out against commercial companies that have been declared bankrupt, since the Judge hearing the bankruptcy proceedings has exclusive competence in relation to the enforcement against the insolvent party; this is intended to prevent some creditors from being treated more favourably than others.

Last update: 11/04/2017

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

Figyelem: az oldal eredeti nyelvű változata  nemrég módosult. Az Ön által kiválasztott nyelvi változatot most készítik fordítóink.

## Procedures for enforcing a judgment - France

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

Enforcement (implying compulsory enforcement, since voluntary compliance by the debtor with his obligations does not require proceedings) covers all proceedings permitting the carrying out of 'enforceable' obligations against the debtor's will. French law contains three categories of civil obligations: to pay, to do something or to refrain from doing something, and lastly to give or return.

The right of enforcement concerns the debtor's assets: enforcement against persons does not exist. However, a refusal to comply with certain obligations (maintenance obligations) is a criminal offence, making the debtor liable to prosecution and a prison sentence. The same applies to the fraudulent organisation of insolvency by a debtor.

The law concerning enforcement measures is based on a trilogy of paying, doing and giving.

**Obligations to pay** are enforceable by means of attachments. If the attachment concerns a sum of money, the sum attached will be assigned to the creditor (for instance, attachment of a bank account). If the attachment concerns an asset belonging to the debtor, the attachment will result in the compulsory sale of the asset and the proceeds of the sale will be assigned to the creditor, up to the limit of his claim.

**Obligations to give** or to return vary depending on the nature of the asset. In the case of movable property, the asset is seized, by way of an attachment, to be returned to the legitimate owner. In the case of immovable property, possession of the property is returned to the owner by evicting the occupant.

**Obligations to do or refrain from doing something** are enforced by means of a pecuniary penalty, which is a sum of money the debtor must pay in addition to the obligation he must perform. The sum, fixed by a judge, is calculated in proportion to the period of failure to perform (in the case of obligations to do something) or according to the number of breaches of the obligation to refrain from doing something. Since obligations to pay, to give or to return are also interpreted as obligations to do something, a pecuniary penalty may be ordered in addition to other compulsory enforcement measures.

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

**Bailiffs** in principle have a monopoly for undertaking compulsory enforcement. However, two enforcement procedures always require prior authorisation by the courts:

attachment of earned income, authorised by the district court of the place of residence of the debtor or the garnishee, if the debtor lives abroad or has no fixed residence,

attachment of immovable property, which is undertaken by the enforcement court of the place where the property is situated.

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

#### 3.1 The procedure

All enforceable titles can be the subject of compulsory enforcement measures; they are defined by Article L. 111-3 of the Civil Enforcement Proceedings Code (*Code des procédures civiles d'exécution*):

Legally binding decisions by ordinary courts or administrative courts and agreements which these courts have made legally enforceable;  
Foreign measures and judgments and arbitral awards declared enforceable by a ruling not subject to an appeal suspending enforcement;  
Extracts from official conciliation reports signed by the judge and parties;  
Notarial acts that contain a clause granting authority to enforce;  
Title issued by a bailiff in the event of non-payment of a cheque;  
Titles issued by corporate persons established under public law and described as such by the law, or decisions to which the law grants the same effects as a judgment.

**Court rulings not subject to an appeal suspending enforcement are enforceable without another judgment.** These rulings, like notarial acts, are **certified enforceable** by the clerk of the court or by the notary. There is no other intermediate procedure that permits enforcement.

In the absence of a court ruling, all creditors may obtain authorisation to proceed with **attachments or judicial liens**. The measures taken under these conditions lapse rapidly if the other party has not been notified (within eight days) and if the creditor has not initiated proceedings on the merits to obtain a court ruling endorsing his claim.

Compulsory enforcement measures relating to movable property and sums of money, as well as eviction, must be carried out by a bailiff, who is a public and professional officer, i.e. an enforcement officer appointed by the Minister for Justice. The bailiff discharges his duties under private law conditions but, in the case of enforcement, enjoys public authority prerogatives determined by precise regulation and a strictly controlled ethical code.

Attachment of immovable property is carried out by means of special proceedings before the enforcement judge of the regional court, for which the creditor must be represented by a lawyer.

Costs arising from enforcement measures are, in principle, ultimately paid by the debtor, who must pay them in addition to his debt.

These enforcement costs are subject to a scale of charges which establishes the remuneration owed to bailiffs for each enforcement measure. Under Decree No 96-1080 of 12 December 1996, the remuneration scale for bailiffs comprises a fixed amount expressed, either cumulatively or alternatively depending on the case, in fixed or proportional charges, plus, where appropriate, a charge for initiation of prosecution.

The fixed charges must be paid by the debtor. The proportional charges, calculated according to a sliding scale applied to the amounts recovered, are paid partly by the creditor and partly by the debtor.

For example, for a claim recovered of EUR 10 000, the scale of charges for some enforcement measures is as follows:

preventive attachment of bank account: fixed charge, incl. taxes: EUR 187.53

attachment of movable property: fixed charge, incl. taxes: EUR 66.98

attachment of vehicle by declaration at the prefecture: fixed charge, incl. taxes: EUR 133.95

formal notice served with a view to attachment of immovable property: fixed charge, incl. taxes: EUR 80.37

In addition to these fixed charges, there are proportional charges which, for the entire claim, amount to EUR 723.44 incl. taxes, of which EUR 121.35 is payable by the debtor and EUR 602.09 by the creditor.

### **3.2 The main conditions**

No court order is required to proceed with enforcement measures based on enforceable titles.

The criteria for authorising precautionary measures in favour of a creditor who does not yet have an enforceable title are as follows: the claim appears to be founded in principle and recovery of the claim appears to be at risk. The competent judge for ordering attachment is the enforcement judge (a judge in the regional court) or the president of the commercial court within the limits of the jurisdiction of that court.

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

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

The creditor may enforce his claim against the debtor's entire property, therefore in principle all the assets belonging to the debtor may be attached. Special rules exist depending on the nature of these assets: claims (rent, salaries, sums placed in a bank account), movable property of all kinds, immovable property and rights *in rem*, securities and contributories' rights, vehicles (land, ships, boats or aircraft), copyright, sums of money placed in a safe, etc.

The law may, however, state that certain assets may not be attached, for instance:

sums needed for maintenance (in particular a proportion of the salary fixed according to a sliding scale depending on the amount of income and dependants, re-evaluated each year),

movable goods needed for the debtor's everyday life and work, which cannot be attached unless to pay their price or if they are of significant value, assets necessary for the sick or disabled.

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

Enforcement measures on property and claims are carried out in two phases. First, the enforcement agent carries out the attachment of property or sums of money. This attachment means that the property cannot be disposed of, but the debtor remains in possession and is made custodian of it. If he misappropriates this property, he commits an offence. In the case of sums of money, they remain blocked in the account, but are immediately, albeit virtually, assigned to the attachment creditor.

The debtor is informed of the attachment. If the debtor does not inform the enforcement judge that he is challenging the attachment, the enforcement agent may proceed with the second phase of the attachment, namely seizing the property to have it sold at auction or asking the garnishee (usually the banker) to hand over the amounts attached.

The banker, called the 'garnishee', is obliged at the time of the attachment to inform the bailiff of all sums he holds for the debtor. If he fails to do so or if he hands over to the debtor the sums attached which are in his hands, the judicial penalty, at the request of the creditor, is that he shall be ordered to pay the debt instead of the debtor.

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

Enforceable titles lapse after 10 years. Enforcement measures must therefore be undertaken within that time limit (L. 111-4 of the Civil Enforcement Procedures Code).

Orders by the enforcement judge to proceed with attachments lapse if the precautionary measure is not taken within a period of three months from the order.

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

This question applies only to orders relating to attachments. In the case of enforceable titles, resort to appeal is linked to a judicial challenge of the claim itself. Once the precautionary measure has been taken and the debtor has been informed of this, the latter may challenge the conditions leading to the order before the enforcement judge who ordered the measure. A challenge may be brought before the judge provided that the attachment has not been converted into a forced sale following judicial confirmation of the claim.

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

In terms of time limits, enforceable titles in principle lapse after ten years.

Moreover, enforcement procedures must be limited to that which proves necessary to recover the claim and there must be no abuse in the choice of these measures.

Whereas the creditor can in principle attach all the goods belonging to the debtor, there are limits in the form of goods which by law may not be attached. This is the case in principle for maintenance payments, movable goods necessary for the debtor's everyday life and work, objects which are essential for a disabled person, certain social minima and family allowances, which cannot be attached. In addition, sums in a bank account exceeding the minimum income ('active solidarity income' (*revenu de solidarité active*)) cannot be attached for a single person. Finally, in principle earned income is eligible for attachment only within the limits set by a decree, which determines the attachable amount according to the debtor's earned income and dependants.

Sole proprietors, in certain cases, also benefit from special protection of all or part of their assets.

Finally, enforcement measures may be carried out only between 6:00 and 21:00 and not on Sundays and public holidays, unless prior authorisation has been given by the enforcement judge. Any attachment for an amount of less than EUR 535 in living quarters also requires prior authorisation by the enforcement judge.

#### Related links

[Legifrance](#)

[Chambre Nationale des Huissiers de Justice \(National Chamber of Judicial Officers\) website](#)

Last update: 20/03/2017

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

### Procedures for enforcing a judgment - Croatia

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

In the Republic of Croatia, enforcement proceedings are governed by the provisions of the Enforcement Act (*Ovršni zakon*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia), No 112/12, 25/13, 93/14, 55/16 and 73/17; hereinafter: OZ). This Act regulates the procedure in which courts and notaries public conduct involuntary collection of claims on the basis of enforcement title documents and authentic documents (enforcement procedure), unless determined otherwise by a special law.

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

Enforcement proceedings are conducted by courts on the basis of enforcement title documents, while notaries public conduct enforcement proceedings on the basis of authentic documents.

What constitutes an enforcement title document is provided for in Article 23 OZ, while authentic documents are prescribed by Article 31 OZ.

The Financial Agency (*Financijska agencija*) is also part of the enforcement procedure (hereinafter: Agency) - a legal entity which conducts enforcement according to the provisions of the OZ and the law governing enforcement on funds, as well as employers, the Croatian Pension Insurance Institute (*Hrvatski zavod za mirovinsko osiguranje*) and other authorities provided for by law.

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

Courts conduct enforcement proceedings on the basis of enforcement title documents, which, under the OZ, are as follows:

1. Enforceable court decisions and settlements,
2. Enforceable settlements referred to in Article 186.a of the Civil Procedure Act
3. Enforceable decisions of an arbitration court,
4. Enforceable decisions issued in an administrative proceeding and enforceable settlements reached in an administrative proceeding if it involves fulfilment of a pecuniary obligation unless otherwise provided for by law,
5. Notarial enforcement decision and notarial enforcement clause,
6. Settlements reached as a result of procedures before 'courts of honour' (*sudovi časti*) in chambers in the Republic of Croatia and settlements reached in mediation procedures in accordance with the provisions of the law governing mediation procedures,
7. Other documents determined by law as enforceable.

Enforceable documents are suitable for enforcement if they specify the creditor and debtor, the subject, type, scope and time for fulfilling the pecuniary obligation.

If the enforceable document is a decision which calls for the recovery of debt by payment or performing an action, it must also contain a deadline for voluntary fulfilment, and if the deadline for voluntary fulfilment was not specified, then the term is set by the court in the writ of execution.

##### 3.1 The procedure

A creditor initiates enforcement proceedings based on an enforceable document by submitting an application for enforcement to court. Applications for enforcement may be submitted by the creditor personally as a party in the proceedings, or via a representative. Enforcement proceedings may be instituted *ex officio*, when specifically prescribed by law.

Municipal courts have subject-matter jurisdiction in enforcement proceedings, unless otherwise provided for by law. Enforcement is conducted within the bounds defined by the writ of execution.

The writ of execution must specify the enforceable, i.e. authentic, document on the grounds of which the enforcement is conducted, the creditor and the party against whom enforcement is sought (the debtor), the claim being enforced, the means and subject of enforcement, as well as other information necessary to conduct the enforcement.

##### 3.2 The main conditions

The application for enforcement must contain the enforcement request, which will specify the enforceable or authentic document on the grounds of which the enforcement is sought, the creditor and the debtor, personal identification numbers of the creditor and the debtor, the claim the realisation of which is sought, the means needed to conduct the enforcement, and (if necessary) the subject of enforcement. The application must contain other prescribed information necessary to conduct the enforcement.

The application for enforcement on the grounds of an authentic document must contain:

1. a request for the court to order the debtor to settle the claim with any pertinent costs within eight days, and in the case of disputes involving bills of exchange and cheques within three days,
2. the enforceable application.

Therefore, the main conditions that must be satisfied for an enforcement order are: an enforceable or authentic document on the grounds of which the enforcement is ordered and an enforceable application.

#### 4 Object and nature of enforcement measures

The subject of enforcement is objects and rights that according to the law may be subject to enforcement with the aim of collecting on a claim. Enforcement is conducted to satisfy a creditor's claim on objects of enforcement that constitute an integral part of the debtor's property.

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

Debtor's assets (money, real estate, movable property, securities and participating interests) or certain non-proprietary rights of the applicant (the handing over and delivery of movable property, the vacating and handing over of real estate, the return to work, etc.) may be subject to enforcement. During the proceedings, the applicant may choose which subjects he/she wants to enforce.

Objects which are not traded may not be subject to enforcement, nor can other objects where that is prohibited by special legislation. Tax-based claims and other fees may also not be subject to enforcement.

Facilities, weapons and equipment intended for defence and facilities intended for the work of local and regional governments and judicial authorities also may not be subject to enforcement.

Whether a certain object or a right may be subject to enforcement, i.e. whether the enforcement of an object or a right has been limited, is evaluated with regard to the circumstances that existed at the time the enforcement application was submitted, unless explicitly otherwise provided for by the OZ.

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

The basic effects of enforcement measures are that the debtor's rights to dispose of their assets are restricted.

Enforcement procedures for real estate and movable property result in the sale of real estate or movable property to satisfy the creditor's claim from the amount gained from the sale.

Enforcement procedures over financial claims result in confiscation and the transfer to the creditor of the pecuniary claim, up to the amount necessary to satisfy the claim.

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

Enforcement measures are valid until the termination of enforcement proceedings, which occurs once the creditor's claim has been fully satisfied or after his or her withdrawal of the enforcement application.

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

The debtor has the right to:

- submit an appeal against an issued writ of execution, or
- lodge a complaint against a notary public decision issued on the grounds of an authentic document.

A timely and admissible appeal against a writ of execution issued on the grounds of an enforceable document does not stay the enforcement proceedings.

A timely and admissible complaint against a notary public decision issued on the grounds of an authentic document (submitted to the notary public, but ruled on by the court) redirects proceedings to a standard lawsuit (*klasična parnica*) which will continue before the court, and in which the parties, now the applicant (formerly the creditor) and the defendant (formerly the debtor), must substantiate their arguments in order to succeed in the proceedings. If the preconditions prescribed by the OZ have been satisfied, the debtor has the right to stay the enforcement proceedings.

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

The court defines the enforcement by the means and over the objects specified in the enforcement application. If several means and objects are suggested, the court, at the debtor's suggestion, limits enforcement to selected means or objects, if they are deemed sufficient to satisfy the claim.

One of the basic principles of the enforcement procedure is that, when conducting enforcement and security proceedings, the court is obliged to respect the dignity of the debtor by ensuring that enforcement is as favourable as possible.

Protection of the debtor is ensured by excluding and limiting the objects and means over which, or using which, the creditor's claim can be forcibly satisfied during enforcement proceedings, by providing the debtor with certain procedural and material guarantees during and in connection with enforcement. This protection is manifested in the acceptance of the principle of legality in determining whether enforcement is permitted, in determining the objects and means of enforcement, and in the procedure used to forcibly satisfy the creditor's claim.

There are limitations on the enforcement of real estate relating to objects that may not be subject to enforcement, as prescribed by Article 91 OZ.

There are limitations on the enforcement of movables relating to objects that may not be subject to enforcement, as by Article 135 OZ.

There are limitations on the enforcement of pecuniary claims which are prescribed by Article 173 OZ, while Article 172 OZ specifies which of the debtor's income is exempt from enforcement.

Article 212 OZ prescribes special rules on the enforcement of financial means which are exempt from enforcement or for which enforcement is restricted, while Articles 241 and 242 OZ prescribes special rules on the exemption and restriction of enforcement for legal entities.

Protection of debtors that are natural persons in enforcement procedures of pecuniary claims is provided for in Article 75 OZ, while the protection of legal entities is provided for in Article 76 OZ.

Provisions of the OZ which prescribe enforcement restrictions, i.e. which exclude certain objects from enforcement, provide protection for the debtor during the enforcement proceedings.

Last update: 11/09/2018

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

### **Procedures for enforcing a judgment - Italy**

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

Enforcement is the forced execution of court judgments and other enforceable titles (debt instruments, public deeds (*atti pubblici*) and authenticated private deeds for specific services). At this stage, which is still subject to judicial proceedings, the forces of law and order may intervene if the debtor fails to meet his /her obligations spontaneously.

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

The ordinary courts are competent for enforcement. The application for refusal of enforcement referred to in Article 47(1) of Regulation (EU) No 1215/2012 (Brussels I Regulation (recast)) must also be submitted to the ordinary courts.

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

Possession of an enforceable title is a necessary and sufficient condition for starting enforcement action. Typically, enforceable titles are provided for in law by Article 474 of the Code of Civil Procedure, and there are two types: judicial titles and extra-judicial titles. Judicial titles include judgments, acts and decisions issued by a court during or at the end of court proceedings. Extra-judicial titles include debt instruments, public deeds and authenticated private deeds created autonomously by the parties.

#### **3.1 The procedure**

Enforcement starts when the enforceable title, which must be the enforceable copy in accordance with Article 475 of the Code of Civil Procedure, and the enforcement order (*precetto*), which is an injunction on the debtor to comply within a deadline of at least 10 days and a warning that failure to do so will result in forced execution in accordance with Article 480 of the Code of Civil Procedure, are served on the debtor. The third paragraph of Article 480 provides that, in the enforcement order, the creditor must elect domicile in the municipality in which the court with jurisdiction over the enforcement is located. In the event of failure to elect domicile, appeals against the enforcement order are brought in the court of the place where the order was served, and notifications are served on the creditor at the office of the clerk to the same court. Once these formalities have been completed, the enforcement process can begin with attachment by the bailiff, who must first show the required documents mentioned above. The attachment must take place within 90 days of the date when the enforcement order was served, but no earlier than the deadline given in that order; if it does not, the enforcement order will lapse (Article 481). Legal representation is necessary at this stage.

The attachment becomes null and void if assignment or sale is not requested within 45 days of its completion.

Enforcement aims to secure the forced execution of unfulfilled obligations through the use of the forces of law and order. It may be used both for financial debts and for obligations to deliver movable property or release immovable property and for 'non-fungible' positive obligations.

### 3.2 The main conditions

A necessary and sufficient condition for initiating enforcement is possession of an enforceable title containing a right that is 'certain, of a fixed amount and due' (*certo, liquido ed esigibile*) (Article 474). The degree of 'certainty' varies depending on the title: there is obviously a greater degree of certainty with a judgment at first instance (enforceable on a provisional basis) than with a debt instrument or with transactions entered in public deeds or authenticated private deeds.

## 4 Object and nature of enforcement measures

The enforcement court issues various types of measures, normally orders (*ordinanze*), during the procedure. They range from measures necessary to lay down the rules for the proper conduct of the proceedings to measures that assign utility, e.g. the decree (*decreto*) assigning the attached property to the person who bought it at auction or who was the highest bidder.

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

The following may be subject to expropriation: a) movable property, b) immovable property, c) the debtor's claims and movable property that the debtor keeps on the premises of third parties, d) shares in companies.

Obligations to deliver movable property and to release immovable property, and fungible positive and negative obligations may also be enforced.

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

Enforcement in the case of sums of money, beginning with attachment, means that the attached money is unavailable to the debtor on whom the enforcement order was executed. All acts of disposition of that money will therefore be null and void and cannot be used to prevent enforcement.

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

The measures are enforcement measures for the purpose of satisfying claims made; they cannot therefore be used as evidence for investigations.

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

The legal system allows appeals by the debtor (and/or third parties subject to enforcement) against the acts and judgments related to enforcement procedures. Appeals can produce two different types of judgment:

- appeal against enforcement (*opposizione all'esecuzione*) (Articles 615 and 616 of the Code of Civil Procedure) where the right to proceed with enforcement (or the existence of the creditor's right to proceed with enforcement) is challenged;
- appeal against enforceable acts (*opposizione agli atti esecutivi*) (Articles 617 and 618 of the Code of Civil Procedure) where procedural errors (i.e. the legality of the documents involved in the enforcement procedure) are challenged.

Appeals against enforcement or enforceable acts, lodged before the forced execution begins, are defined as appeals against an enforcement order (*precetto*) because they are consequent on the document giving advance notice of enforcement: the appeal is brought against the enforcement order by applying to the court with jurisdiction in the matter or over the amount and over the area, in accordance with the general provisions of the Code.

If enforcement has already begun or the attachment order has already been served, the appeal against enforcement or against enforceable instruments is made by lodging a specific appeal with the enforcement court.

Third parties who claim to have rights in rem over the attached property may appeal to the enforcement court until the property is sold or assigned.

The legal provisions governing the matter are Articles 615, 616, 617, 618 and 619 of the Code of Civil Procedure.

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

In addition to items declared unattachable by special legal provisions, the following cannot be attached:

- 1) sacred objects and items used in the practice of a religion;
  - 2) wedding rings, clothes, household linen, beds, dining tables and chairs, wardrobes, chests of drawers, refrigerators, stoves and ovens, whether gas or electric, washing machines, household and kitchen utensils and a piece of furniture to hold them, sufficient to meet the needs of the debtor and his or her household; however, this does not include furniture of significant value (except beds), including valuable antiques and items of confirmed artistic worth;
  - 3) the food and fuel necessary to sustain the debtor and the other persons mentioned in the previous paragraph for one month;
- Furniture (except beds) of significant financial value (including valuable antiques and items of confirmed artistic worth) are also excluded.

Weapons and other items that the debtor must keep in order to provide a public service, decorations, letters, records and family papers in general, as well as manuscripts, except where they form part of a collection, cannot be attached.

The law also declares unattachable, *inter alia*: state-owned property, non-disposable assets owned by the state or another public body, property covered by the matrimonial property regimes, the property of ecclesiastical institutions, and religious buildings.

Enforcement action cannot succeed if the limitation period of the claim has expired fully. Limitation periods vary depending on the right in question. However, it is important to note that sometimes the law lays down a different limitation period depending on the type of instrument proving the claim on which enforcement is based. For example, the limitation period for a claim established in a court judgment is 10 years, even though for this type of claim the law generally gives a shorter limitation period.

The law has recently changed so that the court of the debtor's place of permanent or temporary residence, domicile or head office may, at the creditor's request, authorise the property for attachment to be pursued using electronic methods (Article 492-bis of the Code of Civil Procedure, as amended by [EU Decree-Law No 83 of 27 June 2015](#) (converted, with amendments, by [EU Law No 132 of 6 August 2015](#))); forms of payment in instalments have also been introduced in the case of enforcement of movable goods, as part of conversion of attached property measures (*conversione del pignoramento*).

## Related annexes

[Code of Civil Procedure \(474 - 482\)](#) (64 Kb) 

Last update: 25/02/2019



The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

## Procedures for enforcing a judgment - Cyprus

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

Enforcement means the forced implementation of the content of a judgment or order with the court's assistance and, in some cases, with the additional assistance of other competent officers/services (e.g. the Land Registry (*Ktimatológio*). A party who has obtained a court judgment or order can request that the court take enforcement measures.

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

The Courts Service (bailiffs) and the Land Registry. The authority competent for enforcement of an order to collect overdue maintenance payments is the police.

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

A judgment or order is enforceable upon its delivery. The deadline for lodging an appeal does not by itself suspend enforcement; the appellant needs to lodge a reasoned request for this purpose.

#### 3.1 The procedure

Acts not issued by a court (e.g. an arbitration decision) are not enforceable on their own, but they can become enforceable after they are declared so by a court. The court with jurisdiction to issue an order for the enforcement of an act not issued by a court or issued by a foreign court is the district court of the area where the person against whom the enforcement will be made resides, or the family court in cases of maintenance orders. Court judgments are usually enforced by the lawyer who handled the case before the court, by means of one of the enforcement methods listed in Section 3.1 below.

For the registration and enforcement of a foreign judgment under a multilateral or bilateral agreement, the procedure is undertaken by the Ministry of Justice and Public Order, as the central authority, through the Legal Service (*Nomikí Ypiresía*). In other cases the procedure may be carried out through private lawyers.

The costs of the procedure cannot be determined in advance, but are calculated by the registrar of the court based on the regulations on fees and are levied on the person against whom the judgment was delivered.

The enforcement is carried out mainly through bailiffs (*dikastikoí epidótes*), who are civil servants employed at the courts on a permanent basis. To speed up the enforcement procedure, the service of documents in all civil court cases has been entrusted to private companies since 1996, so that bailiffs can focus on the enforcement of judgments.

#### 3.2 The main conditions

In cases of enforcement of a judgment between parties in Cyprus, the criteria vary depending on the case. There must be a court judgment, delivery of the judgment that creates an obligation, and refusal/failure of the defendant to pay the sum awarded.

The criteria for an enforcement order for a judgment from a foreign country are usually specified in the corresponding agreement. A usual condition in this case is that the defendant must have been duly notified of the proceedings against him/her in the foreign country.

## 4 Object and nature of enforcement measures

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

Items subject to enforcement may include bank accounts, shares, registered vehicles, immovable property and other items. Very personal items which are essential for survival or for the pursuit of the defendant's occupation are excluded.

Enforcement measures include:

warrant of seizure and sale (*éntalma katáschesis kai pólisís*) of movable property

warrant of surrender (*éntalma parádoxis*) of movable property (if the movable property was the subject of the action, e.g. in an action for breach of a lease-purchase contract, the object of the lease-purchase)

writ of garnishment to seize assets in the hands of a third party (*éntalma katáschesis eis cheíras trítou*)

order to repay a judgment debt in monthly instalments

order to make deductions (*diátagma apokopís*) from the judgment debtor's monthly earnings (which is served on the employer for execution)

order to surrender possession (*éntalma parádoxis katochís*) of immovable property

order to sell (*éntalma pólisís*) immovable property

order to place immovable property in escrow (*mesengýisi*) (issued on request of the judgment debtor, as long as the court is satisfied that in, up to three years, the income from the immovable property can cover the judgment debt, interest and all costs)

immovable property charge (*epivárynsi*), with entry of the judgment against the property

bankruptcy

company dissolution

In the case of a maintenance order, the enforcement includes the possibility of issuing a writ of detention (*fylakistíriou éntalma*) against the debtor.

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

The debtor and any third party are obliged to comply with the judgment ordering the enforcement measure. If the debtor refuses or neglects to carry out the acts/actions specified in the order imposing the enforcement measures, an imprisonment procedure may be initiated against him for disobeying a court order.

A bank on which a garnishment order is served is required to freeze the relevant account, unless it has reason to contest this. In this case, it has to appear before the court which delivered it and provide reasons why this should not apply.

All undisputed orders become final and have the force of a court judgment.

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

Enforcement measures are valid for six months from their delivery. A judgment imposing enforcement measures is valid for six years from the date of delivery. In case of non-enforcement within that period, the judgment may be renewed by the court pursuant to Rule 40D.8 of the Civil Procedure Rules.

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

Depending on the case, it is possible to bring legal challenges, e.g. in order to suspend enforcement or to cancel an entry in the register.

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

For debtor protection purposes, any personal belongings that are essential for survival or to the pursuit of a person's occupation cannot be subject to enforcement.



Also, where the debtor is a state or public service, objects and equipment intended for a purpose essential for the general public, including equipment belonging to the armed forces and security forces, objects of artistic, archaeological, cultural, religious and historical importance and foreign exchange reserves, are exempt from enforcement.

Furthermore, execution of a warrant for the seizure and sale of movable property is carried out between sunrise and sunset.

Property that has been seized (other than money or securities) must be sold only after at least three days have elapsed from the day following the seizure, unless subject to wear and tear or if the owner so requests in writing; until the sale is completed the property must be placed in a suitable place or may remain under the care of a suitable person.

Last update: 13/05/2019

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

## **Procedures for enforcing a judgment - Latvia**

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

Enforcement is a stage in civil proceedings whereby court bailiffs enforce a ruling made by courts, other institutions or officials if a debtor (defendant) fails to comply voluntarily with such a ruling within the period of time laid down in legislation or by the court.

See "[Legal professions: Latvia](#)" on the enforcement measures a court bailiff is entitled to apply.

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

Court bailiffs enforce decisions by courts and other institutions as well as carry out other activities specified in legislation.

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

Judicial decisions are enforceable following their entry into force, except where legislation or court rulings provide for their immediate enforcement. Court bailiffs are entitled to instigate enforcement procedures on the basis of an enforcement document.

Under the procedure for court ruling enforcement, the following decisions by courts, judges and other institutions must be enforced:

court rulings and court or judges' decisions in civil cases and administrative cases;

court decisions and public prosecutors' decisions or orders in criminal cases relating to the recovery of property;

judges' or court decisions in administrative infringement cases relating to the recovery of property;

court decisions on approval of settlements;

rulings by permanent courts of arbitration;

decisions by foreign courts or competent authorities and foreign courts of arbitration in cases specified in legislation;

a court decision on the imposition of procedural sanctions – fines;

industrial dispute commission decisions;

decisions by national public service regulation authorities (hereafter referred to as 'the regulator') on disputes or settlement of arguments.

Except where specified otherwise under legislation, the following are also subject to procedures for the enforcement of court rulings:

decisions by institutions and officials in administrative infringement and law infringement cases where specified under legislation;

administrative acts relating to payments issued by authorities and officials empowered by the State;

rulings by members of the legal professions (notaries, lawyers, bailiffs) on professional remuneration, remuneration for legal assistance provided and reimbursement of expenses related to services provided, and stamp duties;

acts adopted by the Council, the Commission or the European Central Bank under Article 299 of the Treaty on the Functioning of the European Union.

Notarial deeds made under the procedure laid down in Division D1 of the Law on Notaries.

An enforcement document is:

an enforcement order issued in civil or administrative cases on the basis of a court ruling or a decision by the court or judge, or in criminal cases on the basis of a court ruling approving a settlement, a ruling by a permanent court of arbitration, an industrial dispute commission decision, a decision by the regulator on disputes or settlement of arguments, a decision by a foreign court or a foreign court of arbitration, and acts adopted by the Council, the Commission or the European Central Bank under Article 299 of the Treaty on the Functioning of the European Union;

a decision by institutions and officials in administrative infringement and law infringement cases;

a decision by a court or judge in administrative infringement cases;

an extract from a public prosecutor's decision or order in criminal cases relating to the recovery of property;

an execution order issued on the basis of an administrative act (Section 539(2)2) of the Civil Procedure Law);

a decision by a judge on the uncontested enforcement of liabilities, the enforcement of liabilities under cautionary procedures, or the voluntary sale of immovable property under auction by judicial process;

a court decision on the imposition of procedural sanctions – fines;

a bill issued by a notary, lawyer or bailiff;

a European Enforcement Order issued by a foreign court or competent authority under Regulation (EC) No 805/2004 of the European Parliament and of the Council;

a certificate issued by a foreign court or competent authority under Article 41(1) of Council Regulation (EC) No 2201/2003;

a certificate issued by a foreign court or competent authority under Article 42(1) of Council Regulation (EC) No 2201/2003;

a certificate issued by a court including a foreign court under Article 20(2) of Regulation (EC) No 861/2007 of the European Parliament and of the Council;

an order of payment issued by a court including a foreign court under Article 18 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council;

a court decision on the authorisation of the secured creditor to sell the pledged property of the debtor in legal protection proceedings (Section 37(2) of the Insolvency Law);

an extract from the decision issued by a foreign court or competent authority under Article 20(1)b) of Council Regulation (EC) No 4/2009;

an extract from the authentic instrument issued by a foreign competent authority under Article 48 of Council Regulation (EC) No 4/2009;

the uniform instrument permitting enforcement in the requested Member State established in accordance with the model set out in Annex II to Commission Implementing Regulation (EU) No 1189/2011 of 18 November 2011;

notarial enforcement deeds issued under the procedure laid down in Division D1 of the Law on Notaries;

a certificate issued by a foreign court or competent authority under Article 53 or Article 60 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

an extract from a decision by a competent authority of a European Union Member State or a European Economic Area State on imposition of an administrative fine that is related to infringements in the posting of employees and is received in the Internal Market Information System (IMI); part A of a European Account Preservation Order issued by a court including a foreign court under Article 19(1)(a) of Regulation (EU) No 655/2014 of the European Parliament and of the Council.

### **3.1 The procedure**

Judicial and out-of-court decisions are enforceable following their entry into force, except where legislation or court rulings provide for their immediate enforcement. If a voluntary enforcement period is laid down regarding execution of a court ruling and the ruling is not enforced, the court draws up an enforcement order when the voluntary enforcement period has expired. Court bailiffs are entitled to instigate enforcement procedures on the basis of an enforcement document.

An enforcement order is issued on request to the enforcement officer by the court adjudicating the case at the time. One enforcement order must be issued for each ruling. If the ruling is to be enforced at different places, the ruling is to be enforced immediately in any part of it or if the ruling is made in favour of several claimants or against several defendants, the court must issue several enforcement orders upon the request of the enforcement officer. When issuing several enforcement orders, the exact place of enforcement or the part of the ruling which has to be enforced according to the enforcement order must be specified in each of such enforcement orders; and, in case of solidary obligations, the defendant against whom the enforcement is to be implemented according to the enforcement order concerned must be indicated.

To initiate enforcement of a ruling, the enforcement order granted to the enforcement officer or their authorised representative must be submitted to a court bailiff together with a letter of application.

### **3.2 The main conditions**

The Law on Bailiffs and Regulation No 202 "Regulation regarding the record-keeping of sworn bailiffs" adopted by the Cabinet of Ministers on 14 March 2006 govern the general issues related to the activity and record-keeping of sworn bailiffs.

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

Application of enforcement measures laid down in the Civil Procedure Law in the procedure of enforcement of decisions by the court and decisions by other institutions is aimed at restricting the debtor's rights with the intention to restore the balance between the rights of the person, whose civil rights or interests protected by the law were involved, and the debtor's obligation to comply with the decision of the court (other institution).

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

Court bailiffs are entitled to take enforcement action against a debtor's movable property – including any property deposited with other persons – and intangible assets, against money owed to the debtor by other persons (remuneration for work, equivalent payments, the debtor's other income, investments in credit institutions), and against immovable property.

Certain assets specified in legislation and objects belonging wholly or partially to the debtor are not subjected to enforcement action under enforcement orders (for instance household fittings and equipment, clothing, food, books, instruments and tools required by the debtor for their day-to-day work providing the means needed for subsistence etc.).

The following objects belonging wholly or partially to the debtor are not subject to enforcement action under enforcement orders:

household fittings and equipment, clothing required by the debtor, his or her family members and persons dependent on him or her:

clothing, footwear and underwear necessary for everyday wear;

bedding accessories, nightwear and towels;

kitchen utensils and tableware required for everyday use;

furniture – one bed and chair per person, as well as one table and one closet per family;

all accessories for children.

Foodstuffs in home in the amount required for the maintenance of the debtor and his or her family members for a period of three months;

money in the amount of the minimum monthly wage for the debtor, each member of his or her family and persons dependent on the debtor, but in cases regarding the recovery of maintenance for the support of minor children or for the benefit of the Administration of Maintenance Guarantee Fund - money in the amount of 50 per cent of the minimum monthly wage for the debtor, each member of his or her family and persons dependent on the debtor;

one cow or goat and one pig per family, and feed in the amount required until new feed is gathered or until the livestock are taken to pasture;

fuel required for preparing food for the family and for heating of the living premises during the heating season;

books, instruments and tools required for the debtor in his or her day-to-day work providing the means needed for subsistence;

agricultural stock, that is, agricultural tools, machinery, livestock and seed required for the farm, together with the amount of feed required for the maintenance of livestock of the relevant farm until a new harvest. Instructions from the Minister for Agriculture determine the agricultural tools, how much livestock and the amount of feed to be regarded as necessary;

movable property which in accordance with the Civil Law is recognised to be an accessory to immovable property - separately from such immovable property;

houses of worship and ritual articles.

Similarly, the enforcement action cannot be taken on:

severance pay, funeral benefit, lump sum benefit to the surviving spouse, State social benefits, State support to a child having Coeliac disease, survivor's pension and survivor's allowance;

compensation for wear and tear of tools belonging to an employee and other compensation in accordance with laws and regulations governing lawful employment relations;

amounts to be paid to an employee in connection with official travel, transfer, and assignment to work in another populated area;

social assistance benefits;

child maintenance in the amount of minimum child maintenance stipulated by the Cabinet which on the basis of a court ruling or a decision taken by the Administration of Maintenance Guarantee Fund must be paid by one of the parents, as well as child maintenance to be disbursed by the Administration of Maintenance Guarantee Fund.

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

When enforcement action is taken against a debtor's movable assets, immovable property or income, the debtor is no longer entitled to dispose of them freely.

Where a bailiff's requirements or orders are not complied with, the bailiff draws up a deed and submits it to the court for a decision on liability. The court can impose a fine on the guilty parties – up to 360 *euro* in the case of a natural person, or up to 750 *euro* in the case of an official. An ancillary complaint on the court decision can be submitted.

In certain case categories, specific sanctions can be laid down for the non-compliance with the bailiff's requirements.

If the bailiff encounters any resistance when taking enforcement action, the police may be called to assist.

If a debtor fails to appear before a bailiff in compliance with a summons, or refuses to offer explanations or legally required information, the bailiff is entitled to take the matter to court for a decision on this person's liability. The court may adopt a decision to force the debtor to appear, and to impose a fine: up to 80 *euro* in the case of a natural person, or up to 360 *euro* in the case of an official. An ancillary complaint on the court decision can be submitted.

If it emerges that a debtor has intentionally provided false information, the bailiff must send an application to the public prosecutor.

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

An enforcement document can be submitted for enforcement within 10 years of the entry into force of a court or judge's ruling unless other periods are specified in the regulatory acts. If a court ruling imposes payment by instalments, the enforcement document remains in force for the whole period during which payments are due and the 10 year period begins from final date of each payment.

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

The enforcement procedure is initiated on the basis of a valid enforcement order issued by the court or other institution. The person obliged with a duty upon a decision by the court or other institution may appeal (contest) it under the general procedure laid down in the regulatory acts for appealing (contesting) decisions by the courts or other institutions.

Upon application by a party to the case and in view of the proprietary status or other circumstances of the parties involved, the court responsible for adjudicating a given case is entitled to adopt a decision to postpone enforcement of the ruling, to divide enforcement into instalments, or to amend the form or procedure by which the ruling is enforced. An ancillary complaint relating to a court decision to postpone enforcement of a ruling, to divide enforcement of the ruling into instalments or to amend the form or procedure by which it is enforced may be brought before a higher court within 10 days. Where circumstances hinder or prevent the enforcement of a court ruling, the bailiff is also entitled to submit to the court responsible for the ruling a proposal to postpone enforcement of a ruling, to divide enforcement of the ruling into instalments or to amend the form or procedure by which it is enforced.

A bailiff can postpone enforcement on the basis of an application by an enforcement officer or a decision by the court or a judge to postpone enforcement action or suspend sale of property, or a court decision to postpone enforcement or divide enforcement of the ruling into instalments.

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

A **creditor** or a **debtor**, by submitting a reasoned complaint, may appeal the actions of a bailiff in executing a judgment or the bailiff's refusal to perform such actions, except regarding an invalid auction, to the district (city) court according to the official appointment location of the bailiff within 10 days from the day when the appealed actions are taken or the day when a complainant, who has not been notified of the time and place of actions to be taken, becomes informed of such actions.

A complaint must be examined at a court hearing within 15 days. The debtor and the creditor, as well as the bailiff, must be notified of the court hearing.

Failure of such persons to attend must not constitute a bar for the examination of the issue.

On the basis of a reasoned request from the person submitting a complaint, a judge may take a decision on the staying of enforcement activities, prohibition to transfer money to a bailiff or creditor or debtor or the suspension of the sale of property. The decision must be implemented as soon as it has been taken.

An ancillary complaint on the court decision can be submitted.

#### **Links**

<http://www.tm.gov.lv/> – website of the Ministry of Justice

<http://www.lzti.lv/> – Council of Latvian Sworn Bailiffs

<http://www.tiesas.lv/> – portal of Latvian courts

Last update: 05/06/2019

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

Figyelem: az oldal eredeti nyelvű változata  nemrég módosult. Az Ön által

kiválasztott nyelvi változatot most készítik fordítóink.

### **Procedures for enforcing a judgment - Luxembourg**

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

If a debtor fails to comply voluntarily with a judgment, the claimant can enforce compliance. This is known as compulsory enforcement.

For a judgment to be enforceable, it must include an enforcement clause and must have been duly served or notified.

The enforceability of the judgment is put on hold for a week from the date of the judgment and/or by the effective exercise of a right of appeal, unless the decision is provisionally enforceable.

Compulsory enforcement is usually used for the recovery of money, but it can be applied to enforce performance of a specific action.

In the case of a person ordered to pay a sum of money, the claim is enforced against the debtor's assets and is referred to as an attachment.

There are, however, other more specific enforcement measures: garnishment, distraint by seizure of crops, attachment of income, attachment of immovable property, distraint, foreign attachment, replevin, attachment of earnings, attachment of inland waterway vessels and attachment in the context of the protection of intellectual rights.

The attachments most commonly used in Luxembourg are garnishment and attachment to enforce a judgment.

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

Bailiffs have sole capacity to enforce judgments that have been ruled enforceable by a Luxembourg court under Luxembourg law or by a court of another European Union Member State under EU legislation in civil or commercial matters, agreements arising from mediation in civil and commercial matters that are enforceable, and other enforceable instruments or rights.

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

##### **3.1 The procedure**

Judgments passed and instruments drawn up in the Grand Duchy

These are enforceable in the Grand Duchy with no requirement for official approval or a letter of *pareatis*, even if they are being enforced outside the jurisdiction of the court that handed down the judgment or outside the territory in which the instruments were drawn up.

Delivering the instrument or judgment to the bailiff constitutes authorisation for all enforcements other than attachment of immovable property and imprisonment, for which special authorisation is required.

Foreign decisions that are subject to a treaty or European Union legislation requiring an exequatur procedure

Judgments in civil and commercial matters passed down in a foreign State which are enforceable in that State and which, under the terms of

- the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the accession conventions of new Member States to that convention,

- the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters,
  - the Convention of 29 July 1971 between the Grand Duchy of Luxembourg and the Republic of Austria on the recognition and enforcement of judgments in civil and commercial matters,
  - the Treaty of 24 November 1961 between Belgium, the Netherlands and Luxembourg on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, as long as it is in force,
  - or the Hague Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations,
- fulfil the conditions required to be recognised and enforced in Luxembourg, are rendered enforceable in the forms laid down in Articles 680 to 685 of the New Code of Civil Procedure (*Nouveau code de procédure civile*).

Judgments in civil and commercial matters passed down in an EU Member State that are enforceable in that Member State and which according to Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters fulfil the conditions required to be recognised and enforced in Luxembourg, are rendered enforceable as laid down in that regulation.

Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, known as the 'recast Brussels I regulation', repealed Regulation (EC) No 44/2001. Regulation (EC) No 44/2001 does, however, continue to apply to decisions handed down in legal actions brought, authentic instruments drawn up or formally registered and legal transactions approved or concluded before 10 January 2015 that fall within the scope of application of that regulation.

Judgments in civil matters handed down in an EU Member State that are enforceable in that Member State and which according to Regulation (EU) No 650/2012 of the European Parliament and the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, fulfil the conditions required in order to be recognised and enforced in Luxembourg, are rendered enforceable as laid down in that regulation.

Decisions handed down in a Member State not bound by the Hague Protocol on the Law Applicable to Maintenance Obligations concluded on 23 November 2007 in the sense of Chapter IV, Section 2 of Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations that fulfil the conditions required in order to be recognised and enforced in Luxembourg, are rendered enforceable as laid down in that regulation.

Foreign decisions subject to EU legislation abolishing exequatur

On 12 December 2012, the European Parliament and the Council adopted Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, known as the recast Brussels I regulation. According to Article 36 of that regulation, a judgment given in a Member State is recognised in the other Member States without any special procedure being required (abolition of exequatur). This Regulation has applied in all EU Member States since 10 January 2015 according to the conditions laid down in that Regulation.

Decisions handed down in a Member State that is bound by the Hague Protocol on the Law Applicable to Maintenance Obligations concluded on 23 November 2007 in the sense of Chapter IV, Section 2 of Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations are recognised in Luxembourg without any special procedure being required and with no possibility of objecting to recognition.

### **3.2 The main conditions**

No attachment of movable or immovable property can be carried out unless there is an enforceable title issued under Luxembourg law, and for a due and certain claim; if the debt due is not a sum of money it is deferred, following attachment, for all subsequent proceedings, until it has been valued.

Judgments requiring a release, a deletion of a mortgage registration, a payment, or anything else to be done by a third party or on their behalf, are only enforceable by the third parties or against them, even after the objection or appeal periods have expired, on the basis of certification by the claimant's lawyer, giving the date on which the judgment was served at the home of the party against whom the judgment was passed, and on the basis of certification by the bailiff that there is no objection to or appeal against the judgment.

If the certificate shows that there is no objection or appeal, receivers, custodians and any others are bound to comply with the judgment.

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

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

Goods eligible for attachment

Only movable or immovable goods owned by the debtor are eligible for attachment, not goods belonging to a third party. It is of little importance, however, in whose possession the debtor's goods are at the time of attachment, therefore it is possible to attach goods at the premises of a third party.

Goods not eligible for attachment

Article 728 of the New Code of Civil Procedure states that, in addition to items declared to be ineligible for attachment under specific laws, the following goods may not be attached:

items that Luxembourg law declares to be immovable by purpose;

movable property such as for example a place to sleep, clothes, furniture in which to keep them, a washing machine, and tables and chairs to enable a family to eat a meal together.

These items may not be attached, regardless of the capacity of the creditor, even if it is the State, with the exception of certain debts listed exhaustively in law.

To prevent the creditor from attaching all of the debtor's means of subsistence, a Grand-Ducal regulation sets the rates for assignment and attachment of salaries, pensions and annuities. The law has provided for the attachment of protected regular income (salaries, annuities, pensions). These types of regular income may not be attached in full, but only up to a certain limit, which is determined according to brackets fixed by a Grand-Ducal regulation. Debtors therefore retain a minimum income in order to survive.

Ring-fencing

Ring-fencing aims to protect the attachée against the consequences of the unavailability of the entirety of their assets.

It enables the judge to limit the amounts garnished.

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

From the moment when the goods are attached, the debtor loses the right to dispose of them. The attachment does not, however, create any preferential right of purchase for the attaching creditor. Disqualification means that the debtor is not allowed to sell, transfer or take out a mortgage on the attached goods. The attached goods may be removed immediately. The debtor remains the owner of the attached goods until the forced sale even without retaining their possession. The situation does not change in practical terms, but rather in legal terms.

If this disqualification is contravened, the measures taken by the attachée are not binding on the attaching creditor.

That being the case, the disqualification is only relative, in the sense that it only applies to the benefit of the attaching creditor. The other creditors must still put up with fluctuations in the debtor's assets. It is, however, simple for them to share in the attachment that has already been agreed.

Disqualification is the first phase in the process of selling assets. The goods are placed under the control of the court. Attachment in execution of a judgment therefore plays a precautionary role in the first instance.

With regard to garnishment, it must be specified that this form of attachment removes all control over the entirety of the debt attached, whatever its value.

The third party attachee may, however, place a sufficient amount in deposit (ring-fencing).

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

Enforceable instruments issued under Luxembourg law do not expire and are not forfeited due to the passage of time.

Authorisations by the presiding judge of a commercial court to carry out precautionary attachments expire if the precautionary measure is not taken within the time period laid down in the order.

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

An order issued by the presiding judge of a commercial court authorising a precautionary attachment is subject to objection or appeal.

As regards an attachment to enforce a judgment, the debtor may bring an action pleading difficulty of enforcement (*action en difficulté d'exécution*) or object to the sale of the goods attached.

Third parties may also lodge an objection, i.e. to the sale of the goods attached, and request that these items be excluded for their benefit.

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

According to Article 590 of the New Code of Civil Procedure, a debtor may block a provisional enforcement if it has been ordered in a case other than those provided for by law. For this purpose, the debtor may apply to the court of appeal for a prohibition of provisional enforcement. This only applies in civil matters and is excluded in commercial matters by Article 647 of the Commercial Code (*Code de commerce*).

Article 703(2) of the New Code of Civil Procedure establishes the procedure for ring-fencing. Ring-fencing aims to protect the attachee against the consequences of the unavailability of the entirety of their assets. It enables the judge to limit the amounts garnished.

In order to prevent the creditor from attaching all of the debtor's means of subsistence, a Grand-Ducal regulation sets the rates for assignment and attachment of salaries, pensions and annuities. The law has organised the attachment of protected regular income (salaries, annuities, pensions). These types of regular income may not be attached in full, but only up to a certain limit, which is determined according to brackets fixed by a Grand-Ducal regulation. Debtors therefore retain a minimum income in order to survive.

#### **Related links**

 <http://www.legilux.lu/>

Last update: 31/01/2019

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

### **Procedures for enforcing a judgment - Hungary**

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

Enforcement is a civil non-litigious procedure through which the state exercises the fulfilment of obligations included in court and notary decisions and other documents defined by law by applying coercive measures.

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

Enforcement is ordered and executed by the court, the notary public, or other bodies and persons, in particular the following entities:

- a) the independent court bailiff,
- b) the regional court bailiff,
- c) the deputy independent court bailiff,
- d) the deputy regional court bailiff,
- e) the bailiff candidate.

The bailiff's procedure - as a civil non-litigious procedure - is identical to that of the court.

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

An enforcement order may be issued if the enforceable decision contains an obligation (penalty), is final or its interim execution has been ordered, and the deadline for performance has passed. Based on a settlement approved by the court, an enforcement order may be issued even if an appeal has been lodged against the approving order. This provision also applies to agreements approved by a notary public with the same effect as a court settlement. An enforcement order may also be issued on the basis of a judgement delivered in a procedure under Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure even if an appeal has been lodged against the judgement. An enforcement order may not be issued based on an order for payment if the clause rendering it final states that enforcement is not permitted regarding the subject of the claim.

A special rule applies to the recovery of maintenance, where enforcement can be authorised for amounts overdue by more than six months if the party seeking enforcement considers it likely that the maintenance debt is attributable to malicious conduct by the debtor or if a sound reason is provided for failure to validate the claim. When enforcing foreign decisions, the court also examines whether enforcement is allowed by law, international convention, reciprocity, or EU legislation.

#### **3.1 The procedure**

Enforcement may be ordered by means of an enforcement order. In certain cases, this is not a formal decision (but instead takes the form of an enforcement sheet or enforcement clause); in other cases, it takes the form of an order. The court or notary public issues the enforcement order at the request of the party seeking enforcement. The application for enforcement is to be submitted in the necessary number of copies using the enforcement order form. In procedures ordering payment, the application can also be submitted electronically. The application generally has to be submitted to the court or notary public proceeding in first instance. However, in certain cases Act LIII of 1994 on Judicial Enforcement ('Judicial Enforcement Act') also sets forth other rules regarding jurisdiction, e.g. for foreign decisions enforcement may be ordered by the district court at the seat of the regional court with competence according to the debtor's place of residence or principal place of business or, in absence of such, at the place of the asset subject to enforcement. In Budapest this is the Central District Court of Budapest (*Budai Központi Kerületi Bíróság*).

The application for enforcement must include information on the parties, the enforceable decision, the claim to be enforced, and as much information as possible on the debtor's assets that may be subject to enforcement.

The court or notary public immediately – no more than 15 days after receipt – examines the application in order to establish whether the case should be referred, rejected without examining the merits, or (with the exception of parties with legal representatives) returned with a request for missing information; the required measures will then be put into place. A decision will be made within 15 days of its receipt or, if missing information was requested, within 15 days of the information being submitted. If the application is justified, the enforcement order will be issued; if not, enforcement will be denied.

### 3.2 The main conditions

See point 2.

### 4 Object and nature of enforcement measures

Coercive measures restrict the debtor's financial and personal rights. Financial measures can be applied by the court and court bailiff; measures against the person can be applied by the police on the basis of a measure of the court or court bailiff. The following are the most important financial coercive measures: attachment of wages and other emoluments, seizing and selling movable property, seizing funds managed by a financial institution and blocking bank accounts, seizing the debtor's claims against third persons, seizing and selling immovable property, imposing penalties and fines.

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

The following can be subject to enforcement:

the debtor's wages, pension, or other emoluments (though certain exemptions apply to these), funds managed by a financial institution (the law provides an exemption from enforcement to natural persons up to a certain amount), movable property (however, essential goods that are exempted from enforcement by law may not be seized, e.g. essential items of clothing, furniture for the number of people in the debtor's household, medication required for the debtor's illness, etc.), the debtor's claims against third persons or the debtor's business shares, immovable property, regardless of its type, use, rights or encumbrances, and facts registered in the land register (however, immovable property that cannot be considered to form part of the debtor's assets during liquidation proceedings is exempt from enforcement).

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

Enforcement measures fundamentally restrict the debtor's right to dispose of its assets.

When movable property or a bank account is subject to enforcement, the debtor's right to dispose of the assets is terminated. If the movable property seized is impounded, it will also be removed from the debtor's possession. If immovable property is seized, the debtor may dispose of and sell the property, though it will remain encumbered with the right of enforcement.

If the debtor or any other person present displays physical resistance during the execution of an enforcement action, the bailiff will turn to the police, which may employ coercive measures against the person in order to terminate the resistance.

Any person actively hindering the proceedings of the bailiff (with force) can be held criminally liable. It is also a crime to remove a seized item from enforcement or remove the seal applied in the course of enforcement, or to break into the locked room used to store the seized, locked, or impounded item (offence of breaking a seal).

The court will impose a fine on the debtor or the person or organisation obliged to participate in the enforcement procedure if they fail to fulfil the obligations resulting from enforcement as defined by law or if they engage in conduct that impedes the enforcement measures.

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

The measures remain valid until the enforcement is successful or the measures are terminated by the bailiff or the court, or by law. Enforcement measures can be executed within the statute of limitations set forth by civil law (generally 5 years), which term starts when the final court decision is passed.

Enforcement may not be ordered for an application submitted after the limitation period has expired, and previous enforcements may not be restarted.

Similarly to court proceedings initiated in the interest of pursuing a claim, the limitation period is interrupted by any enforcement actions, following which the limitation period recommences.

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

a) Withdrawal of the enforcement sheet and deletion of the enforcement clause. If enforcement was ordered through the issuance of an enforcement sheet or clause, the sheet may be withdrawn and the clause may be deleted as a legal remedy if the enforcement order should not have been issued. The debtor or the party seeking enforcement may apply for the withdrawal of the enforcement sheet or the deletion of the enforcement clause, and the court may also order this *ex officio*. The application must be submitted to the court or notary public that ordered enforcement. There is no deadline for submitting the application: it may be submitted at any time. If the application is granted, an order is issued for the withdrawal of the enforcement sheet or the deletion of the enforcement clause; the order may be appealed.

b) Appeal against the enforcement order. An appeal may be lodged by the debtor or the party seeking enforcement against a formal order authorising enforcement. The appeal must be submitted to the court that ordered enforcement but addressed to the appeal court. The appeal court has competence in evaluating the appeal. If the merits of the order issued by the court that ordered the enforcement are correct, the appeal court will uphold the order; otherwise it will amend the order. If it finds a procedural irregularity, the appeal court will repeal the order and instruct the court that ordered enforcement to pass a new decision.

c) Appeal against an order denying issuance of an enforcement order. The party seeking enforcement may lodge an appeal against an order denying issuance of an enforcement order. The appeal must be submitted to the court or notary public that ordered enforcement but addressed to the appeal court. The appeal court has competence in evaluating the appeal. If the merits of the order issued by the court that ruled on enforcement are correct, the appeal court will uphold the order; otherwise it will amend the order. If it finds a procedural irregularity, the appeal court will repeal the order and instruct the court or notary public that ruled on enforcement to pass a new decision.

d) The bailiff performs the enforcement coercive measures independently after enforcement has been ordered; there is no need for the court's authorisation. A separate legal remedy against measures by the bailiff, known as an enforcement objection, is available. Enforcement objections may be lodged by the debtor, the party seeking enforcement, or another interested party. If the court accepts the objection, it will annul the bailiff's unlawful measures or, if the bailiff failed to act, the court will instruct the bailiff to act. Otherwise, the court will reject the objection. The objection must be submitted to the bailiff.

e) In addition to the above possibilities for remedy, enforcement can also be terminated. The Court will issue an order terminating enforcement at the request of the party seeking enforcement provided termination does not infringe upon the rights of others or unless otherwise provided for by law. Enforcement will also be terminated if the debtor fulfils the obligation, for example. The court will also issue an order terminating enforcement if it has established on the basis of public documents that the enforceable decision has been overturned by a final decision.

f) In enforcement proceedings, it is also possible for a third party with a claim to an asset seized during enforcement based on property rights or other rights that prevent sale as part of the enforcement procedure to initiate enforcement claim proceedings against the party seeking enforcement in order to secure the asset's release. If the court grants the application, it will release the asset concerned from seizure.

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

#### Suspension of enforcement:

The court that ordered enforcement may - in exceptional cases - order the suspension of enforcement at the debtor's request if the debtor is able to substantiate the legitimate circumstances justifying suspension, and if the debtor has not been previously fined during the enforcement procedure. If necessary when making the decision on suspension, the court may hear the parties.

The court will especially consider the following as legitimate circumstances that justify suspension: the number of persons the debtor is required to support and the number of persons actually supported by the debtor, the long-term or serious illness of the debtor or the debtor's dependants, and natural catastrophes that occurred during the enforcement procedure and affected the debtor.

If immovable property is subject to enforcement, suspension can be ordered on one occasion at the request of the debtor, and for no more than 6 months.

#### **Payment in instalments:**

With the exception of tax debts and public debts enforced as taxes, the bailiff may determine, at the request of a debtor that is a natural person, the conditions for paying a debt in instalments after the bailiff has taken measures to locate and seize the debtor's assets and the debtor has already paid a part of the enforceable claim. The bailiff will also inform the debtor without assets that can be subject to enforcement about the possibilities of and conditions for paying in instalments.

The bailiff draws up a report on the conclusion and contents of the instalment plan and delivers this to the parties. Within 15 days of receiving the report, the party seeking enforcement may inform the bailiff in writing if it does not agree with the contents of the instalment plan, may make recommendations for the contents of the plan and the amount of the instalments, and may request that the debtor provide security for performance. Based on the statement of the party seeking enforcement, the bailiff may modify the instalment plan conditions as set out below:

- a) the bailiff will withdraw the instalment plan if the party seeking enforcement disagrees with the instalments provided for maintenance, wages, or similar claims, if a private person seeking enforcement states that his/her livelihood is threatened by the instalment plan, or if bankruptcy, liquidation, or execution proceedings are under way against a business association seeking enforcement,
- b) in cases not covered by point (a), an instalment plan may be put in place for a maximum period of 1 year in the case of legal entities and unincorporated bodies seeking enforcement and of 6 months in the case of natural persons seeking enforcement,
- c) the bailiff may require that part-payments proportionate to the amount of the claim be made in addition to the instalment plan if this was requested in the statement of the party seeking enforcement.

The bailiff will provide the debtor with a payment plan of no more than six months with equal monthly payments if enforcement measures have been taken against the debtor's funds with financial institutions, wages and movable assets but the entire amount of the debt has not yet been recovered and

- a) no instalment plan has previously been granted,
- b) enforcement is under way against the debtor for a financial claim not exceeding HUF 500 000 or enforcement is under way against the debtor for a financial claim not exceeding HUF 1 000 000 but a lien is also registered in the land register on the debtor's residential property as security for another claim, and
- c) the debtor's residential property would have to be auctioned off to recover the claim.

The party seeking enforcement does not have to give its consent for an instalment plan; the report on the conclusion of the instalment plan has to be delivered to the party seeking enforcement as well.

The amounts deducted from the debtor by attachment must be included in the calculation of the amount settled by the debtor.

The estimated value of the residential property and its first auctioning can only be set if the debtor has failed to pay the instalments (Sections 52/A - 52/B of the Judicial Enforcement Act).

#### **Statute of limitations for the right of enforcement:**

The limitation period for the right of enforcement ends at the same time as that of the enforceable claim. The statute of limitations pertaining to the right of enforcement is generally taken into consideration on request; it may be taken into account *ex officio* if the statute of limitations for the claim on which it is based must also be taken into account *ex officio*. If the statute of limitations pertaining to the right of enforcement must be taken into account on the basis of the above, no enforcement may be ordered for an application submitted after the expiry of the limitation period, and enforcement procedures already ordered may not be continued. The statute of limitations for the right of enforcement is interrupted by any enforcement act.

#### **Restrictions:**

The amount that forms the basis for deductions from wages as part of an enforcement procedure is the amount that remains after taxes (advance taxes), health insurance and pension contributions, private pension fund membership fees, and other contributions are deducted as required by separate legislation. In general, no more than 33 % or, in exceptional cases, no more than 50 % of this amount may be deducted.

The portion of monthly wages corresponding to the minimum old age pension is exempt from enforcement. However, this exemption does not apply to enforcement for child support and childbirth costs.

No more than 33 % may be deducted from the wages paid by the employer on the basis of the employment relationship.

The deduction may be increased to no more than 50 % of the employee's wages for claims regarding the following:

- a) maintenance,
- b) claims for employee wages against the debtor,
- c) employee wages and social security services received unlawfully (Section 65(2) of the Judicial Enforcement Act).

A maximum of 33 % may be deducted from the debtor's social security pension benefits, early retirement benefits, length-of-service benefits, the ballet annuity and the transitional mining allowance (jointly: 'pension benefits') (Section 67(1) of the Judicial Enforcement Act).

The deduction may be increased to no more than 50 % of the pension benefits for claims regarding the following:

- a) child support,
- b) pension benefits received unlawfully (Section 67(2) of the Judicial Enforcement Act).

No more than 33 % may be deducted from the benefits of jobseekers (unemployment benefits, pre-retirement unemployment benefits, activity compensation benefits) for claims regarding the following:

- a) maintenance,
- b) unemployment benefits received unlawfully,
- c) cash benefits provided as part of working-age benefits received unlawfully.

The following are exempt from attachments:

- the national care allowance, cash benefits for war victims, and the life annuity due under the Act on indemnifying those unlawfully deprived of their life or freedom for political reasons,
- municipal support, extraordinary municipal support, cash benefits provided as part of working age benefits, old-age benefits, income compensation benefits for the unemployed, and care allowance,
- maternity benefits,



- invalidity annuities and personal annuities paid to the blind,
- wage supplement for health damage, temporary wage supplement, income supplement, temporary income supplement, and mining annuity for health damage,
- maintenance defined by law, including child support advanced by the court, and the child protection cash benefits based on the Act on child protection and guardianship administration,
- the educational fee, special support and family allowance paid to foster parents and aimed at supporting children placed temporarily or permanently in care or young adults in after-care,
- scholarships, with the exception of wage-type scholarships for scientific further education,
- costs reimbursed for posting, services in foreign countries and commuting to work,
- amounts serving to cover specific expenses,
- disability benefits (Section 74 of the Judicial Enforcement Act).

For funds handled by a payment service provider and due a natural person, the amount in excess of four times the minimum old-age pension may be subject to enforcement without limitation; of the amount below this limit, 50 % of the amount between the minimum old-age pension and four times the minimum old-age pension may be subject to enforcement (Section 79/A(2) of the Judicial Enforcement Act).

Even if the debtor gives consent, assets that are exempt from enforcement by law cannot be seized.

The following movable property is exempt from enforcement:

- assets that are essential for the debtor to perform its job, especially essential tools; instruments; technical, military, and other equipment; uniforms; weapons of self-defence; and means of transport (with the exceptions of vehicles),
- essential equipment for regular studies, especially textbooks, school supplies, and musical instruments,
- essential items of clothing: 3 outer garments, 1 winter coat, 1 overcoat, 3 pairs of shoes,
- essential articles of linen: 1 set with 2 sheets per person,
- furniture for the number of persons in the debtor's household: no more than 3 tables and 3 wardrobes or similar furniture, plus 1 bed or equivalent furniture and 1 chair or other equivalent furniture per person,
- essential heating and lighting equipment,
- essential kitchen and household equipment for the debtor's household, and 1 refrigerator or freezer and 1 washing machine,
- awards (honours, medals, badges, plaques) given to the debtor, if certified by documents,
- medication and medicinal and technical equipment required for the debtor's illness or physical disability, and the vehicle of a debtor with reduced mobility,
- the objects used by minors in the debtor's household which are intended for children,
- food for 1 month and fuel for heating for 3 months, as required by the debtor and the debtor's household,
- standing crops, unharvested crops and fruit,
- objects that cannot be considered to form part of the debtor's assets in liquidation proceedings,
- the cultural assets listed in the certificate specified by the Act on the special protection of loaned cultural assets, during the term of special protection (Section 90(1) of the Judicial Enforcement Act).

When the vehicle required by a debtor who is a natural person to perform his/her job is seized – unless the vehicle is impounded – it is sufficient to seize the registration card, which is sent together with a copy of the seizure report to the competent transport authority or, if the authority cannot be determined, to the authority that registered the vehicle. Unless the vehicle has been impounded, the debtor may use the vehicle until it is sold.

If the estimated value of the vehicle is less than the amount specified in the decree issued by the minister for justice in agreement with the minister responsible for tax policy, the vehicle is exempt from enforcement.

**Withdrawal of the enforcement sheet and deletion of the enforcement clause:**

If the court was in violation of the law when it issued the enforcement sheet, it must be withdrawn.

If the court was in violation of the law when added an enforcement clause to the order, the clause must be deleted.

The court will withdraw the enforcement sheet or delete the enforcement clause if it finds, at the request of the debtor, that the conditions are met for:

- refusing enforcement under Article 21 of Regulation (EC) No 805/2004,
- refusing enforcement under Article 22(1) of Regulation (EC) No 1896/2006 or Article 22(1) of Regulation (EC) No 861/2007, or
- refusing enforcement under the second subparagraph of Article 21(2) of Council Regulation (EC) No 4/2009 or Article 46 of Regulation (EU) No 1215/2012.

**Appeal against the enforcement order:**

If the court has issued an order for enforcement or, if the enforcement order differs from the application, has issued an order concerning that difference, the parties may lodge an appeal against the order. The appeal against the order does not suspend execution of the enforcement order. However, unless otherwise provided for by law, no steps may be taken to sell seized property and the amount received during the course of enforcement may not be paid to the beneficiary.

**Enforcement objection:**

The parties or other interested parties may submit enforcement objections to the court executing enforcement against an action or omission by the bailiff that causes a substantive infringement of the rules of enforcement procedures or of the rights or lawful interests of the party lodging the enforcement objection. A substantive infringement of the rules of enforcement procedures shall be understood to mean an infringement that had a substantive effect on the outcome of the enforcement procedure (Section 217(1) of the Judicial Enforcement Act).

If the contested measure meets legal requirements or does not constitute a substantive infringement, the court will uphold the contested measure and reject the objection. If the contested measure does constitute a substantive infringement, the Court will annul all or part of the contested measure or - if permitted by law and the facts required for the decision can be substantiated - amend all or part of the enforcement measure. If the objection referred to an omission, the court will instruct the bailiff to implement the measure omitted (Section 217/A(5) of the Judicial Enforcement Act).

Last update: 16/10/2017

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

**Procedures for enforcing a judgment - Malta**

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

Enforcement means that a judgement is given effect.

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

This depends on the request made. For instance, a hypothecary registration is made by the Director of the Public Registry after receiving an authenticated copy of the judgment together with a certificate from the registrar indicating that there has been no appeal from the judgment and the time for filing such an appeal has lapsed or that it is not possible to appeal from the judgment.

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

According to general law, the Code of Organisation and Civil Procedure (Cap. 12 of the Laws of Malta), the following are executive titles:

a judicial letter when the debt is certain, liquidated and due and not consisting in the performance of an act and where the amount of the debt does not exceed €25,000. This is regulated by Section 166A of the Code of Organisation and Civil Procedure;

judgments and decrees of the courts of Malta;

contracts received by a notary public in Malta, or before any other public officer authorised to receive the same, where the contract is in respect of a debt certain, liquidated and due, and not consisting in the performance of an act;

taxed bills of judicial fees and disbursements, issued in favour of an advocate, a legal procurator, a notary public, a court expert or other judicial referee or a witness, unless such taxed bills are impugned according to law;

awards of arbitrators registered with the Malta Arbitration Centre;

bills of exchange and promissory notes;

mediation agreements made enforceable by the parties in the mediation;

decisions of the Consumer Claims Tribunal.

There are also various other executive titles emanating from special laws, for instance, fiscal laws.

#### **3.1 The procedure**

The acts by means of which, according to circumstances, the executive titles may be enforced are:

warrant of seizure of movable property;

warrant of seizure of immovable property;

warrant of seizure of a commercial going concern;

judicial sale by auction of movable or of immovable property or of rights annexed to immovable property;

executive garnishee order;

warrant of ejection or eviction from immovable property;

warrant *in factum*;

warrant of arrest of sea vessels;

warrant of arrest of aircraft;

warrant *in procinctu*.

If an executive title is brought into force by means of Section 166A, the applicant for the registration of a judicial letter which qualifies as an executive title shall present to the Registrar of the Court a legal copy of the judicial letter, including evidence of service, and a copy of any response received thereto, if any.

With regard to other executive titles, the procedure varies according to their nature. This can be found in the [Code of Organisation and Civil Procedure](#), Section 252 *et seq.*

#### **3.2 The main conditions**

Conditions vary according to their nature. This can be found in the [Code of Organisation and Civil Procedure](#), Section 252 *et seq.*

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

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

Movable property is subject to enforcement, including:

stocks and shares in commercial partnerships;

licences issued by any competent authority as may be established by regulations made by the Minister responsible for justice;

insurance policies;

credit securities and any intellectual or industrial property right.

However, not subject to seizure are the following:

such clothes for daily wear, bedding and such utensils and furniture as are considered reasonably necessary for the decent living of the debtor and his family;

personal documents and books relating to the profession of the debtor, of his wife or of his children;

the registers and minute-books of notaries public;

tools and implements necessary for the instruction in or the exercise of any science or of any art of the debtor, of his wife or of his children;

animals and tools required for agriculture and any fruit either cut or not yet separated from the ground;

aircraft, exclusively appropriated to a state service, including the postal service, but excluding commercial service;

sea vessels wholly chartered in the service of the Government of Malta;

sacred vestments and vessels which are used in a consecrated church, or belonging to a priest, a religious order or any member thereof;

any property of any member of the Police Force or of the Armed Forces of Malta being arms, ammunition, equipment, instruments or clothing used by him in the discharge of his duties.

Immovable property, commercial concerns, ships, vessels and aircraft are subject to seizure.

Garnishee orders cannot be issued on:

any salary, or wages (including bonus, allowances, overtime and other emoluments);

any benefit, pension, allowance or assistance mentioned in the Social Security Act or other allowance of any person pensioned by the Government;

any charitable grant or donation made by the Government;

any bequest expressly made for the purpose of maintenance, if the debtor has no other means of subsistence and the debt itself is not due in respect of maintenance;

any sum due for maintenance whether awarded *officio judicis*, or by public deed if the debt itself is not due in respect of maintenance;

moneys which have been made available to the debtor by deed of loan for the building, construction and maintenance of houses intended as a main dwelling place for the debtor;

overdraft banking facilities excluding credit cards by means of which commercial going concerns run by the debtor are being operated;

bank guarantees and letters of credit.

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

The effect is that executive titles are enforced and through them one takes one's property according to law.

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

It depends on the case but in general it can be said that Executive Warrants remain valid until the title, on the basis of which they were issued, remains enforceable. The garnishee order cannot be extended and remains in force until it is annulled by court decree.

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

A person against whom an executive warrant is issued or any other interested person, may file an application in that court issuing the act requesting the annulment of the executive act, either in whole or in part only. The application is to be notified to the opposing party who, within ten days, shall file a reply containing all the submissions they may wish to make. The court shall rule on the application after hearing the parties. An appeal from said decree may be filed by means of an application within six days from the date on which the decree is read out in open court.

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

Judgments given by the Superior Courts may become enforceable again after ten (10) years from the date when the judgement or decree may have been enforced. Judgments of the Inferior Courts or of the Small Claims Tribunal may become enforceable again after five years have elapsed. Executive titles by means of a contract when the debt is certain, liquidated and due, actions under section 166A of Cap. 12 of the Laws of Malta, and bills of exchange and promissory notes may be made enforceable again after three years have elapsed. They are rendered enforceable again by means of an application before the competent court. The applicant shall also confirm on oath the type of debt or the claim for which they are seeking enforcement and that the debt or part of it is still due. In addition to this, in these circumstances a thirty (30) year prescription applies but this time limit may be interrupted by means of the abovementioned application.

Last update: 16/10/2017

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

## Procedures for enforcing a judgment - Netherlands

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

#### Enforcement law: general

Legal proceedings conclude with a judgment handed down by the court. In this judgment a party (debtor) may be ordered to perform its obligations to the other party (creditor). If the debtor fails to do so voluntarily, the creditor can enforce performance by taking measures under enforcement law. This area of law governs the enforcement (execution) of a judgment in which performance has been ordered by the court. To this end, it lays down statutory rules on coercive measures and how these can be applied. Court bailiffs (*gerechtsdeurwaarders*), also referred to simply as bailiffs (*deurwaarders*), are authorised to enforce judgments and are instructed to do so by creditors wishing to receive their entitlement. Two conditions must be met if you wish to take the coercive measures provided for under enforcement law: you must be in possession of an enforceable document (*executoriale titel*), such as an enforceable judgment, and this must have been served in advance on the party against whom enforcement action will be taken. The main parties involved in the enforcement process are the executor (the party requesting enforcement, the creditor), the debtor (the party against whom the enforcement action is being taken) and the bailiff (the public official responsible for taking the actual enforcement action at the executor's request).

#### Coercive measures

The principal coercive measure is executory attachment (*executoriaal beslag*). This is discussed in detail in section 2.1.

Other coercive measures are:

the incremental penalty payment (*dwangsom*);

committal to prison for failure to comply with a judicial order (*lijfswang/gijzeling*).

1. An incremental penalty payment is a monetary sum established in a court judgment that the convicted party must pay if he fails to comply with the principal obligation to be performed. This measure is mainly used in interlocutory proceedings as a means of exerting pressure. An incremental penalty payment can only be linked to a principal obligation that does not involve the payment of a monetary sum.

2. Committal to prison for failure to comply with a judicial order is a coercive measure to force a party to comply with a particular obligation. This measure is not often imposed by the courts and even when it is, it is rarely actually enforced. It is only possible if ordered by the court. The court can allow such committal to enforce judgments and decisions at the creditor's request, provided that they concern an order that does not involve the payment of a monetary sum. Committal can also be used, for example, in the case of judgments, decisions and authentic deeds under which a maintenance payment is owed in accordance with Book 1 of the Civil Code (*Burgerlijk Wetboek*), such as child maintenance (Article 585 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*)).

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

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

#### 3.1 The procedure

The procedure is described below.

#### Enforceable document

Judgments handed down by the Dutch courts (judgments, decisions and rulings), authentic deeds (notarial deeds) and certain other documents are regarded as enforceable documents. Other documents designated by law as enforceable documents are: writs of execution issued by the Public Prosecutor's Department (*Openbaar Ministerie*), writs of execution issued by the tax authorities, arbitral awards with permission for enforcement and official records of amicable settlements.

The court registrar provides the claimant and defendant who appeared in the proceedings with a copy of the judgment. If it is a final judgment containing a court order, the party who is authorised to enforce the judgment receives a copy in enforceable form. The parties are issued with a bailiff's copy (*grosse*) of the judgment free of charge. This is an authentic copy of the judgment preceded by the words 'In the name of the King' (*'In naam der Koning'*). The bailiff's copy can be identified by those words and is therefore a court judgment issued in enforceable form. Enforcement action can only be taken if this bailiff's copy has been issued. A bailiff's copy, or first authenticated copy, of a notarial deed can also be issued. By handing over this document, you authorise the bailiff to take enforcement action.

Prior to enforcement the bailiff will serve the document (bailiff's copy/first authenticated copy) on the party against whom the action will be taken. The purpose of service is to bring the judgment to the other party's attention and inform him that the creditor is demanding compliance with it.

For information on the service of enforceable documents from other EU Member States see the EU Service Regulation: [Council Regulation \(EC\) No 1348/2000](#) of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

#### Court bailiffs

Role in enforcement

The bailiff is the main party involved in enforcing judgments and always acts on the instructions of the party requesting enforcement. These instructions are given by handing over the bailiff's copy (an authentic copy of the judgment) to the bailiff. Generally speaking, the bailiff does not require any separate authorisation.

The acts the bailiff may carry out in the context of enforcement include:

- serving the enforceable document on the party against whom the enforcement action is being taken;
- demanding compliance with the obligation to perform, e.g. demanding payment of a monetary sum;
- receiving payment if the debtor does fulfil his payment obligation;
- seizing assets;
- requesting assistance from the police, if necessary (when seizing assets, for example).

#### **Bailiff's fees**

Official acts performed by bailiffs are subject to fixed fees, which may be charged to the debtor. There are no fixed fees for the creditor, which means these have to be negotiated with the bailiff. The fees that the bailiff charges to the debtor can be found in the Decree of 4 July 2001 establishing detailed rules on the official acts and fees of bailiffs, also known as the Bailiffs' Fees Decree (*Besluit tarieven ambtshandelingen gerechtsdeurwaarders*). For further information see the lists of fees for official acts (*Tarieven ambtshandelingen*) at [www.kbvg.nl](http://www.kbvg.nl).

#### **3.2 The main conditions**

The two general conditions that must be met to proceed with enforcement are:

- possession of an enforceable document;
- service of this document, prior to enforcement, on the party against whom enforcement action is being taken.

As mentioned above, executory attachment is the main coercive measure used.

There are also measures that can be taken pending the issue of an enforceable document. These can be requested before the judgment is handed down and also during or even prior to the proceedings. They are referred to as protective measures (*conservatoire maatregelen*) and function as interim measures of protection. Protective measures include pre-judgment attachment (*conservatoir beslag*), the placing of seals (*verzegeling*) and the drawing up of an inventory (*boedelbeschrijving*). This information sheet deals with executory attachment.

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

The object and nature of enforcement measures can vary. A distinction can be made between measures intended to bring about the payment of a monetary sum, the surrender of an asset, an act or an omission. The most common measure is an attachment for the recovery of money (*verhaalsbeslag*).

If the debtor's obligation involves an action rather than the payment of money or surrender of an asset, it may require the performance of an 'actual act' (*feitelijke handeling*, an act that has a legal consequence regardless of whether this was intended) or a juristic act (*rechtshandeling*, an act with an intended legal consequence). If the actual act is not linked to an individual, the creditor himself can ask the court for authorisation to bring about the situation that would have resulted from performance. If the debtor's obligation involved the performance of a juristic act, such as the acceptance of an offer, the act can be replaced by a court judgment. The court can also order the debtor to refrain from a certain course of action.

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

An executory attachment can be imposed:

- on movable property that is not subject to registration. Property subject to registration covers: real estate, ships and aircraft;
- on bearer rights or rights to order, rights to registered shares and rights to other registered securities;
- against a third party, referred to as attachment by garnishment (*executoriaal derdenbeslag*);
- on real estate;
- on ships;
- on aircraft.

As a general rule, the executor is at liberty to choose the assets on which he wishes to impose attachment.

In principle, attachment may be imposed on all of the debtor's property. However, certain assets may not be attached, such as basic necessities, e.g. clothing, food, workmen's tools, specialist literature and items used for the purposes of education, art and science. A portion of wage, maintenance or benefit payments is exempt from attachment. A protected earnings level applies in these cases to ensure the debtor has sufficient income left to provide for basic necessities.

Equally, attachment may not be imposed on assets intended for public services. The executor may impose attachment on various assets at the same time, e.g. on both movable property and real estate.

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

##### **Legal consequences of attachment of movable property that is not subject to registration**

One consequence of attachment is that any acts that the debtor performs after attachment cannot be prejudicial to the rights of the party imposing attachment. If, for example, the debtor were to sell the asset, the purchaser cannot, in principle, assert to the creditor that he is now the owner. Another consequence is that any income from the asset is also covered by the attachment.

##### **Legal consequences of attachment of shares, securities and other assets**

There are no specific legal consequences. The voting right remains with the person against whom the attachment is imposed for the duration of the attachment.

##### **Legal consequences of attachment by garnishment**

In the case of attachment by garnishment, the creditor (the party imposing attachment) imposes attachment on a third party (i.e. not the debtor), because this third party has a debt to the debtor or is holding property belonging to the debtor.

The party imposing attachment is protected against juristic acts performed by the other party. Juristic acts performed after the attachment cannot be relied upon against the party imposing attachment. Two common forms of attachment by garnishment are attachment of a bank account or of an employee's wage.

##### **Legal consequences of attachment of real estate**

Attachment of real estate is recorded in the public registers kept by the Land Registry Office (*Kadaster*). Ships and aircraft are regarded as real estate once they have been entered in the registers. On request, the Land Registry Office can perform a search of the public Real Estate, Shipping and Aircraft registers. Attachment becomes effective from the moment it is registered. Any proceeds from the real estate received after attachment are covered by the attachment. The party imposing attachment is protected against juristic acts performed by the debtor after the attachment. The disposal (sale) of the real estate cannot be relied upon against the person imposing attachment.

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

As a general rule, the authority to enforce a court judgment becomes prescribed 20 years from the day following that on which the judgment was handed down. If enforcement of a court judgment is subject to certain requirements, the fulfilment of which is not contingent upon the will of the person who obtained

the judgment, then the authority to enforce the judgment becomes prescribed 20 years from the start of the day following that on which the requirements were met.

However, the prescription period is five years for any sum that the judgment orders to be paid within a year or less. In the case of interest, fines, incremental penalty payments and other additional court orders, prescription takes effect no later than the moment when the authority to enforce the main judgment becomes prescribed, unless the prescription period is interrupted or extended.

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

##### **Enforcement disputes**

Article 438 of the Code of Civil Procedure contains general rules on enforcement disputes (*executiegeschillen*). In such a dispute the debtor may attempt to prevent enforcement. The dispute may relate, for example, to the significance and scope of the enforceable document, the impact of facts emerging after the judgment (the enforceable document), the validity of an attachment or the question of who owns the attached assets. An enforcement dispute relates solely to the matter of enforcement. The substance of the main action in which a judgment has already been handed down is not re-appraised.

In an enforcement dispute the debtor may argue that the executor is abusing his rights or that the attachment is disproportionate to the judgment, for example. The debtor (the party against whom enforcement action is being taken) cannot put forward any further substantive objections to the judgment at this stage. To do this, he must institute opposition (*verzet*), appeal (*hoger beroep*) or cassation (*cassatie*) proceedings, which are legal remedies.

##### **Territorial jurisdiction**

The court with territorial jurisdiction is the court that is competent under the general rules of law on jurisdiction.

This is either the court in the territorial jurisdiction within which the attachment has been or will be imposed, the court in the territorial jurisdiction within which the property concerned is located or the court in the territorial jurisdiction within which enforcement will take place. A competent Dutch court must be found for all enforcement actions taking place in the Netherlands.

##### **Competent court**

The District Court (*arrondissementsrechtbank*) has jurisdiction to hear all enforcement disputes, regardless of the court that pronounced the judgment to be enforced. The District Court is competent even if the Court of Appeal (*gerechtshof*) or Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*) handed down the judgment.

Enforcement disputes are usually settled in interlocutory proceedings (*kort geding*). The court may decide to suspend enforcement for a certain period or lift the attachment.

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

Last update: 01/10/2019

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

### **Procedures for enforcing a judgment - Austria**

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

Enforcement (also termed 'execution' or 'compulsory enforcement' in Austria) is where the power of the State is used to assert enforceable claims and demands.

The Enforcement Code provides for various types of enforcement:

Enforcement to recover monetary claims

Enforcement to ensure that actions are taken or refrained from

Enforcement to recover monetary claims:

In enforcement to recover monetary claims, the creditor's enforcement request must select the assets to be seized (selection of the means of enforcement); here he can choose, inter alia, between enforcement on movable goods, enforcement on receivables, in particular enforcement on salary, and forced sale of real estate by auction.

Enforcement to ensure that actions are taken or refrained from:

In enforcements to ensure that actions are taken or refrained from, the creditor must request the means of enforcement foreseen in the Enforcement Code for enforcement of the claim.

Enforcement for the purposes of injunctive relief is subject to the imposition of a fine upon request of the enforcement court when enforcement is granted. In the event of any further infringement, the enforcement court should, upon request, impose a further fine or a custodial sentence for a total period of up to one year.

To enforce an action which can be carried out by a third party, the petitioning creditor is authorised, at the request of the court, to have the action carried out at the expense of the obligated party.

The claim for an action, which cannot be carried out by a third party and whose execution is exclusively dependent at the same time on the will of the obligated party, is enforced through the imposition—at the request of the court—of a fine or a custodial sentence for a total period of up to six months on the obligated party to execute action.

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

The authorisation of enforcement lies in principle with the appropriate district court (*Bezirksgericht*).

Competent court:

Enforcement on movable goods and enforcement on receivables:

For enforcements on receivables, the court at the general jurisdiction (residence) of the debtor is responsible; for enforcement on movable goods, it depends on where the movable goods are located at the start of enforcement.

Forced sale of real estate by auction:

For the enforcement on real estate (registered in the land registry), the land registry court (*Grundbuchsgericht*) has jurisdiction.

Upon authorisation of enforcement, the proceedings should be ex officio. The enforcement process is conducted either by the judge (forced sale of real estate) or by the court official (enforcement on movable goods or enforcement on receivables). The court official is a specially trained member of the judicial staff.

The completion steps are set by the bailiffs, who are judicial staff in Austria working neither as self-employed individuals nor as representatives or vicarious agents of the petitioning creditor. They largely act alone until the success or failure of the enforcement proceedings is definite.

The creditor should be invited to submit applications only if the court or the bailiff is unable to continue the proceedings without these or if the proceedings incur costs. The creditor can, however, already provide additional information in the application: for example, in the case of enforcement on salary, he may

waive the declaration by the employer as to whether the salary exists and how much it is; in the case of enforcement on movable goods, he may waive the compulsory opening of the dwelling with locksmith's costs, if the debtor is not found.

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

#### **3.1 The procedure**

Enforcement to recover monetary claims:

The enforcement process is divided into an authorisation and an enforcement process.

The authorisation of enforcement requires an application by the creditor, in which he selects the means of execution desired for enforcement. If the creditor wishes to recover the claim from an entrepreneur, he usually chooses enforcement on movable goods and submission of a list of assets. Under this procedure, the bailiff tries to recover the payment of the claim, and if this does not succeed, he pledges the objects found. If these do not cover the claim to be recovered, he should ask the debtor to submit a list of assets in which the debtor must list his assets in full.

If the creditor wants to recover the claim from a consumer, he usually chooses enforcement on movable goods, enforcement on salary and submission of a list of assets. The creditor can choose enforcement on salary regardless of whether he knows where the debtor is employed or from whom he receives a salary. If he does not know this, he needs to know the date of birth of the debtor party; the court can then identify the payment office through the Main Association of Austrian Social Insurance Institutions. The first step is the seizure and transfer of the salary of the debtor. If this succeeds, the enforcement on movable goods takes place only upon the request of the creditor. Under this procedure, the bailiff tries to recover the payment of the claim; if this does not succeed, he seizes found objects. If these do not cover the claim to be recovered, he will require the debtor to submit a list of assets detailing his assets in full.

For the enforcement request, the creditor must use a form (E-Form 1) or make a formatted request. No representation by a lawyer is required in order to make an application for enforcement.

#### **3.2 The main conditions**

In order to be able to execute enforcement, the petitioning creditor must have an enforceable decision on an enforcement order. Furthermore, a declaration of enforceability is required, which is issued by the enforcement order authority in the court proceedings. The creditor must also know the address of the debtor; he need only give the date of birth if he wants to apply for salary enforcement, but does not know the payment office.

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

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

The debtor is liable for obligations through all its assets, insofar as these are not exempt from seizure. However, an enforcement procedure covers only those assets which the creditor wishes to seize and which he therefore specifies in the enforcement application. In enforcement on movable goods, it is sufficient to apply for the seizure of all objects in the possession of the debtor; in enforcement on receivables, the creditor has to specify the third-party debtor, while in enforcement on salary there is an exception. The creditor may state that he does not know the third-party debtor. The court can obtain this from the Main Association of Austrian Social Insurance Institutions if the creditor provides the date of birth of the debtor.

The creditor may also use the following enforcement instruments: receivables other than salary claims; or a share in a limited company of the debtor; or, if the debtor owns real estate, the petitioning creditor can claim forced creation of a lien, forced administration and forced sale by auction.

The assets of the debtor that are exempt from enforcement are listed in the subsection 'Restrictions on enforcement'.

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

The effects of enforcement measures depend on the enforcement instrument:

Enforcement on movable goods:

On the seizable objects, the bailiff establishes a lien; the former are auctioned.

Enforcement on receivables, particularly enforcement on salary:

A right of lien is established on the claim. The debtor is forbidden to dispose of his claim or, in particular, to collect it. The claim, insofar as it is seizable, is surrendered to the creditor.

Forced sale of real estate by auction:

A right of lien is established on the property. From the moment that the commencement of the auction proceedings is recorded in the land register, legal actions by the debtor concerning the property and its accessories, which do not belong to the ordinary administration, are ineffective against the creditors and the bidder. If the debtor sells the property, the authorised auction continues against the purchaser of the property.

Penal consequences are provided when an obligated party conceals, disposes of, sells or damages a part of its assets, or creates a pretext of or recognises a non-existent liability, or otherwise reduces or seems to reduce his assets and, as a result, impedes or diminishes the creditor's satisfaction through enforcement or a pending enforcement procedure. Likewise, an obligated party is punishable if he destroys, damages, defaces, renders unusable or withdraws, in whole or in part, from involvement with an object which was officially seized or taken possession of.

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

Enforcement should continue until such time as it has been successfully concluded or terminated, for instance, because the debtor has paid his debt to the creditor during the enforcement proceedings. Exceptionally, enforcement can be stopped earlier, such as when the creditor pursues enforcement on salary and the debtor changes jobs.

The Enforcement Code also allows for the enforcement process to be deferred. This can happen, in particular, if an action is brought against the invalidity or ineffectiveness of the enforcement title, if the termination of enforcement is requested, if an opposition suit is brought before the court (see under 4), if the enforcement of a decision issued by the court is contested, if a complaint is lodged against the act of enforcement, or if a waiver or amendment of the legally enforceable declaration of enforcement is sought.

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

The right of appeal is granted against the enforcement authorisation (referred to in Austria as the execution authorisation). The appeal should be addressed to the appeal court (higher regional court), but is lodged with the court of first instance (district court). The appeal should be lodged within 14 days.

Representation by a lawyer is generally required. The appeal process is a purely written procedure in which the interdiction of novation applies.

The fact that the debtor has, in the meantime, paid the claim to be recovered can be invoked with an opposition motion or an action to oppose enforcement (and not with an appeal against the authorisation of enforcement). The complaint must be lodged with the court which granted enforcement. An application for deferment of enforcement may be combined with the complaint. If the claim is legally enforced, enforcement should be terminated ex officio.

If enforcement was granted under the simplified authorisation procedure, this took place solely on the basis of the data provided by the petitioning party. In this case, the debtor can show—through an appeal—that an enforcement title covering the enforcement is missing, including confirmation of enforceability, or that the enforcement title does not correspond to the information contained in the application for enforcement. The appeal should be lodged with the court that approved enforcement in the first instance. When the appeal is lodged, the court examines whether an enforcement title covering the claim to be recovered is available. The time-limit for objections is fourteen days.



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

### Restrictions on enforcement

In general, the applicable restriction is that enforcement cannot be carried out to a greater extent than is necessary for the realisation of the claim stated in the enforcement authorisation.

The law provides for certain enforcement restrictions in favour of specific persons or associations of persons:

The property of an establishment in the service of public transport which is under state control may only be subject to appropriate enforcement measures that disrupt public transport services with the consent of its supervisory authority;

prior to the execution of enforcement against a person serving in the Federal Army or the Federal Police, a notification of the enforcement authorisation should be given to the senior officer in command of that person;

in military buildings, the execution of an enforcement requires prior notice to the commander of the building and consultation of their military attaché; enforcement proceedings against persons enjoying immunity in Austria on the basis of international law, as well as on enforcement objects and on the premises of these persons, may only be carried out by the Federal Ministry of Justice in agreement with the Federal Ministry for Europe, Integration and External Affairs;

enforcement against a municipality or a public or charitable institution may be authorised for the purpose of recovering financial claims only in respect of those assets which can be used to satisfy the creditor without affecting the public interests which it is to protect. If enforcement serves the execution of a contractual lien, this restriction does not apply.

Furthermore, for the protection of the debtor, certain assets are compulsorily exempted, for example:

Enforcement on movable goods:

Items corresponding to a modest lifestyle for personal or household use;

items necessary to train for a profession and for professional practice, as well as learning aids intended for school;

sufficient food and heating materials to cover the needs of the debtor and the family members living with him in the common household for four weeks; pets;

family pictures, letters and other papers as well as the wedding ring of the debtor;

aids to compensate for a disability and care support for the debtor or the family members living with him in the common household, as well as therapeutic substances and assistive devices which are required in the context of medical therapy;

religious objects;

cash up to the amount exempted from seizure until the next payment term of the salary following seizure, if the income of the debtor cannot be seized legally or is seizable only to a limited extent.

The bailiff may also refrain from the seizure of items of low value if it is obvious that the proceeds from the continuation or execution of enforcement will not exceed the costs of enforcement.

Enforcement on monetary claims (enforcement on salary):

Reimbursement of expenses insofar as they cover the extra costs incurred in the exercise of professional activity;

statutory aid which is granted to cover the extra costs associated with a disability or long-term care, e.g. care allowance;

statutory aid for the payment of rent or to cover other housing expenses;

family allowance;

certain statutory benefits granted on the occasion of the birth of a child, in particular the lump-sum childcare allowance;

certain types of aid that are granted by the Public Employment Service;

reimbursement of costs from statutory social security.

In particular, the following are unseizable:

Benefits in kind provided under social security laws;

the claim to the distribution of matrimonial property and matrimonial savings, insofar as it has not been recognised or judged by an agreement or settlement.

Earned income, pension benefits and statutory remuneration, which serve to compensate for temporary unemployment or a reduction in earning capacity, can be seized on a limited basis. The unseizable part ('minimum subsistence level') depends on the amount of income and the number of the debtor's maintenance obligations. The unseizable amounts, which are increased annually, are shown in the tables on the website of the Federal Ministry of Justice (<http://www.justiz.gv.at/web2013/html/default/2c9484852308c2a60123ec387738064b.de.html>). The law takes into account the special needs of the debtor or his creditor in individual cases, by allowing—on request—the unseizable allowance to be increased or reduced under certain circumstances. In the case of enforcement on account of a statutory maintenance claim, the amount of the unseizable allowance is reduced by 25% in general.

In addition, the Tenancy Act (MRG), in the case of an enforcement title on eviction from an apartment subject to the MRG, provides for the protection of the debtor in that eviction must be postponed if the tenant faces homelessness as a result.

Deadlines for enforcement

Deadlines, which are to be set within the applications for enforcement, are not provided, save in exceptional cases (eviction order pursuant to Section 575 of the Austrian Code of Civil Procedure – ZPO). However, the debtor can counter the enforcement with the objection of a statute of limitations which has already entered into force. The statutory period of limitation for claims for which there is a legally binding title of enforcement ('claims awarded by enforceable judgement') ('*Judikatsschulden*'), is generally 30 years from the date of the enforcement title coming into force. If the enforcement title is based on the rights of legal entities governed by public or private law, this limitation period is extended to 40 years. However, an exception exists with respect to services which are only to be paid in the future, provided that the general limitation provisions stipulate a shorter period of limitation.

The statute of limitations is interrupted by any legally binding enforcement authorisation and begins anew with the last enforcement step or the termination of enforcement.

In certain cases, temporary barriers are provided for a further enforcement application or the continuation of the enforcement procedure:

In the event of no seizable objects being found in an enforcement on movable goods, an application by another petitioning creditor for the authorisation of an enforcement on movable goods or authorisation of the new execution is to be granted, but only six months after the last unsuccessful execution attempt, unless a previous attempt at execution is likely to yield results;

The petitioning creditor should be entitled to lodge a claim for enforcement on salary against an unknown third-party debtor only after the approval of an enforcement on movable goods if a year has elapsed since the authorisation; this blocking period does not apply if the petitioning creditor proves that only after his application for the authorisation of an enforcement on movable goods did he learn that the debtor is entitled to seizable salary claims. The debtor is only obliged to submit a more recent list of assets if the creditor proves that the debtor has acquired assets or if more than one year has passed since submission of the list of assets.



The Enforcement Code also recognises deadlines intended to ensure rapid settlement. Thus, the bailiff has to schedule the first enforcement action within four weeks and report back to the creditor on the implementation or the obstacles within four months at the latest. The lien for forced collection, which is granted to the creditor on the basis of an enforcement on movable goods of the debtor, expires after two years if the sales procedure has not been duly continued.

Last update: 21/03/2017

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

Figyelem: az oldal eredeti nyelvű változata [PL](#) nemrég módosult. Az Ön által kiválasztott nyelvi változatot most készítik fordítóink.

## Procedures for enforcing a judgment - Poland

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

Rules on how to enforce judgements in civil proceedings, including commercial matters, are specified in the Polish Code of Civil Procedure (*Kodeks postępowania cywilnego*).

Enforcement is the use by the competent national authorities of coercive measures enshrined in law to recover payments owed to creditors on the basis of an enforceable title. Enforcement proceedings commence when an application for enforcement is lodged.

The enforceable title serves as the basis for enforcement. As a rule, the enforceable title is an enforcement order with an enforceability clause (Article 776 of the Code of Civil Procedure). This clause is not required for some court orders issued at Member State level or for the settlement agreements and official documents referred to in Article 115314 of the Code of Civil Procedure. If these judgements, settlement agreements and official documents meet the conditions set out above, they constitute an enforceable title with which creditors can apply direct to the enforcement authority.

Two types of authority are involved in enforcement proceedings:

judicial bodies – in proceedings to incorporate an enforceability clause in the enforcement order (presiding judge; district court (*sąd rejonowy*), regional court (*sąd okręgowy*) and court of appeal).

enforcement authorities – in the relevant enforcement proceedings, these are district courts and bailiffs (Article 758 of the Code of Civil Procedure).

The parties to the declaration of enforceability proceedings and the enforcement proceedings alike are the debtor and the creditor.

Polish law distinguishes between the following types of enforcement procedure:

Enforcement of pecuniary claims arising from:

- movable assets
- remuneration for work
- bank accounts
- other claims
- other property rights
- real estate
- seagoing vessels

Enforcement of non-pecuniary claims arising from:

- receivership
- sale of a business or farm

maintenance payments. The court incorporates an enforceability clause on an *ex officio* basis into the enforceable title. In such cases, the enforceable title is served on the creditor on an *ex officio* basis. In cases where maintenance is ordered, enforcement proceedings may be instituted *ex officio* at the request of the Court of First Instance which heard the case. This request is lodged with the enforcement authority with jurisdiction. The bailiff conducts an inquiry to determine the debtor's earnings, assets and place of residence on an *ex officio* basis. If this proves ineffective, the police, acting on a request from the bailiff, take appropriate steps to determine the place of residence and work of the debtor. The inquiry referred to in paragraph 1 should be carried out at intervals of not more than 6 months. If the inquiry fails to determine the income or assets of the debtor, the bailiff requests the court to order the debtor to disclose their assets. If the debtor is in arrears for more than six months, the bailiff applies on an *ex officio* basis to the National Court Register (*Krajowy Rejestr Sądowy*) for the debtor to be included on the list of insolvent debtors. Failure to implement the enforcement measure does not constitute grounds for discontinuing proceedings.

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

Pursuant to Article 758 of the Code of Civil Procedure, matters relating to enforcement fall within the remit of district courts and bailiffs acting on their behalf.

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

Pursuant to Article 803 of the Code of Civil Procedure, an enforceable title serves as a basis for enforcing the entirety of a claim as regards all categories of the debtor's assets, unless stipulated otherwise. The implementing authority is not authorised to examine the validity and applicability of the enforceable title to which this obligation applies.

As a rule, an enforceability clause is incorporated into the enforceable title.

Pursuant to Article 777, the following are regarded as enforceable titles:

- a final or immediately enforceable court judgement and settlement agreements reached in court
- a final or immediately enforceable decision by a senior judicial clerk (*referendarz sądowy*)
- other judgments, settlement agreements and legal instruments which are enforced by way of judicial enforcement
- a notarial deed whereby the debtor voluntarily complies with an enforcement measure requiring them to pay an amount or to hand over items specified by type, in the quantity indicated in the deed, or to hand over items specified individually, provided that the deed fixes a date by which this obligation must be complied with or identifies the event that must occur for enforcement to take place
- a notarial deed whereby the debtor voluntarily complies with an enforcement measure requiring payment of the amount specified in the deed or specified by an index-linking clause, where the deed identifies the event that must occur for this obligation to be complied with and the date by which the creditor may apply for an enforceability clause to be incorporated into the deed
- the notarial deed specified in paragraph 4 or 5, whereby the person who is not a personal debtor, and whose property, claim or right is encumbered by a mortgage or pledge, has voluntarily complied with the enforcement action against the mortgaged or pledged property in order to satisfy the secured creditor's pecuniary claim.

A debtor's declaration of voluntary submission to enforcement may also be made in a separate notarial deed.

Only valid court orders which incorporate an enforceability clause or are immediately enforceable (by virtue of an immediate enforceability order issued *ex officio* or at the request of either party to the proceedings) may constitute an enforceable title. A notarial deed is deemed equivalent to an enforceable title if it complies with the conditions set out in the Code of Civil Procedure and the notarial rules.

Other enforceable titles include: an extract from the list of claims in bankruptcy proceedings; a legally valid bank settlement; a plan to allocate sums obtained through foreclosure; a banking enforceable title as provided for in banking law, but only after the court has incorporated an enforceability clause; judgments handed down by foreign courts and settlement agreements reached in these courts after having been declared enforceable by the Polish court. Judgments handed down by the courts of foreign countries in civil matters which are enforceable by way of judicial enforcement are regarded as enforceable titles after being declared enforceable by the Polish court. A declaration of enforceability is made if the judgement concerned is enforceable in the country of origin and if no obstacles such as those specified in [Article 1146\(1\)](#) and (2) arise.

### 3.1 The procedure

The enforceable title serves as the basis for instituting enforcement proceedings. The court of first instance hearing the case incorporates the enforceability clause into enforceable titles handed down by a court (Article 781(1) of the Code of Civil Procedure).

Applications for an enforceability clause to be incorporated are examined by the court without undue delay, but not later than three days after submission to the body with jurisdiction (Article 781 of the Code of Civil Procedure). An enforceability clause is incorporated *ex officio* into titles issued in the proceedings which have, or could have, been instituted *ex officio*. The court incorporates an enforceability clause into payment orders issued in writ proceedings conducted electronically on an *ex officio* basis immediately after they become final (Article 782 of the Code of Civil Procedure).

As a rule, an enforcement action can be brought on request. In proceedings that can be instituted *ex officio*, the enforcement procedure can be instituted *ex officio* further to a request by the court of first instance hearing the case lodged with the court with jurisdiction or bailiff (Article 796(1) of the Code of Civil Procedure).

A request to institute enforcement proceedings may be lodged by the creditor with the district court with jurisdiction or the bailiff attached to that court. It can also be submitted by other competent authorities (a court or the public prosecutor in matters relating to the enforcement of fines, financial penalties, court fees and procedural costs payable to the Treasury).

As a rule, requests to institute enforcement proceedings are made in writing. An enforceable title must be attached.

Rules governing the collection and amount of fees are laid down in the Court Bailiffs and Enforcement Act (*Ustawa o komornikach sądowych i egzekucji*) of 20 August 1967. Pursuant to Article 43 of that Act, the bailiff charges enforcement fees for enforcing the court order and performing other actions specified in the Act.

The following enforcement fees are collected:

for enforcing an order to secure payment of a pecuniary claim, the fee is 2 % of the value of the claim for which such measures are envisaged, but may not be less than 3 % of the average monthly remuneration and not more than five times the amount of such remuneration. The fee is paid by the creditor on submission of the application for enforcement of the order to secure payment. In the event of failure to make payment when the application is submitted, the bailiff instructs the creditor to comply with the order within 7 days. The bailiff does not enforce the order until the fee has been paid (Article 45 of the Act).

In matters involving enforcement of pecuniary claims, the bailiff charges the debtor a proportional fee equivalent to 15 % of the enforced claim, but not less than 1/10 and not more than thirty times the average monthly remuneration. However, where the claim is enforced by way of bank accounts, remuneration, social security benefits or payments made under provisions governing the promotion of employment and labour market institutions, unemployment benefit, incentive pay, scholarships or training allowances, the bailiff charges the debtor a proportional fee equivalent to 8 % of the value of the enforced claim, but not less than 1/20 and not more than ten times the average monthly remuneration (Article 49 of the Act)

In matters involving enforcement of pecuniary claims resulting from the discontinuance of enforcement proceedings at the request of the creditor and on the basis of [Article 823](#) of the Code of Civil Procedure, the bailiff charges the debtor a proportional fee equivalent to 5 % of the value of the outstanding claim, but not less than 1/10 of the average monthly remuneration and not more than ten times the amount of the remuneration. However, in the event of discontinuance of enforcement proceedings further to a request lodged by the creditor before the debtor is given notice of enforcement proceedings, the bailiff charges the debtor a proportional fee equivalent to 1/10 of the average monthly remuneration.

To obtain enforcement by taking control of goods, the bailiff charges a fixed fee equivalent to 50 % of the average monthly remuneration (Article 50 of the Act) The fixed fee is equivalent to 40 % of the average monthly remuneration (Article 51) and payable in respect of:

obtaining possession of real estate and removing any movable assets therefrom; commercial and industrial businesses are required to pay the fee for each room comprising the company's premises

appointing an administrator for the real estate or business and a caretaker to supervise the real estate

removing goods or persons from premises, subject to payment of a separate fee for each room.

No separate fee is charged for removal of objects or persons from residential premises such as: hallways, alcoves, corridors, verandas, bathrooms, pantries, loggias, etc.

### 3.2 The main conditions

An enforcement action is brought by way of an application lodged by the creditor with an enforceable title attached to it. The application should name the debtor and define the manner in which enforcement is carried out, i.e. by identifying the property rights in question. For enforcement of property-related claims the Land Registry must also be indicated. In the case of enforcement involving movable assets, there is no need for detailed identification of each movable asset, since enforcement applies to all the debtor's movable assets.

## 4 Object and nature of enforcement measures

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

All items or equipment forming part of the debtor's assets can be the subject of enforcement action, such as: movable property, real estate, remuneration for work, bank accounts, a fraction of real estate, seagoing vessels and the debtor's other claims and property rights.

Articles 829 to 831 of the Code of Civil Procedure impose certain restrictions on the type of item or equipment that can be subject to enforcement. Under these provisions, the following items or equipment are exempt: personal and household effects, bedding, underwear and everyday clothing as may reasonably be required to satisfy the basic domestic needs of the debtor and his dependent family members, as well as such clothing as may be required by the debtor to perform his public or professional duties; such food and fuel supplies as are necessary to meet the basic needs of the debtor and his dependent family members for a period of one month; such tools and other instruments as may be necessary for the debtor to carry out paid work, and such raw materials as may be required for the production process for a period of one week, excluding motor vehicles.

Apart from the Code of Civil Procedure, there are also other national rules that define the types of claim that are exempt from enforcement action and the extent to which such exemption applies (e.g. the Labour Code (*Kodeks pracy*) defines the extent to which payment of remuneration for work can be enforced)

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

The enforceable title serves as a basis for enforcing the entirety of the claim regarding all of the debtor's assets, unless stipulated otherwise.

Debtors are entitled to manage their assets unless the court deprives them of that right.

Once enforcement proceedings have been instituted against **movable property**, the bailiff seizes the property and draws up a record of seizure. The effect of seizure is such that management of the seized real estate does not affect the further course of proceedings, and that enforcement proceedings regarding the seized real estate can also be brought against the buyer. However, the bailiff may, for important reasons, at any stage of the proceedings, cede control of the seized movable assets to another person, not excluding the creditor.

If an enforcement action is brought for **real estate**, the bailiff first requests the debtor to pay the debt within two weeks, failing which measures such as description and estimation of the property will be taken. Management of the real estate after seizure does not affect the further course of proceedings. The buyer can participate in the proceedings as a debtor.

Where the debtor is required to **refrain** from taking a certain course of action or interfering with action taken by the creditor, the court, further to a request by the creditor, fines the debtor if the latter fails to comply with this obligation. If the debtor fails to pay the fine, he will be detained. Thus the debtor can be imprisoned in this case if he fails to pay the fine imposed as a coercive measure.

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

The Code of Civil Procedure does not make applications for enforcement subject to time limits. However, under Polish law, claims established by a final judgment of the court or other body appointed to hear such cases, or by a judgment of the court of arbitration, or claims established by way of an agreement reached in a court or court of arbitration, or an agreement reached before a mediator and approved by the court, will be time-barred after a period of ten years, even if the period of limitation for such claims is shorter (Article 125(1) of the Civil Code (*Kodeks cywilny*)). If the claim thus approved covers time-barred obligations, any future claims will be subject to a limitation of three years.

Applications for enforcement are examined by the competent authority to determine whether they comply with formal requirements and admissibility criteria. Failure to comply with specific requirements may result in rejection of the application or discontinuance of enforcement proceedings

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

The parties to the proceedings may appeal against the court order to incorporate an enforceability clause.

The following remedies are available in enforcement proceedings:

- a complaint against action brought by the bailiff (in the district court; this also applies to omissions by the bailiff. The complaint may be lodged by a party to the proceedings or the person whose rights have violated or jeopardised by such action or omission on the part of the bailiff. It must be lodged no more than one week after the day on which the action was brought or the party or person became aware of the omission);
- an appeal against a court order to incorporate an enforceability clause (Article 795 of the Code of Civil Procedure – the time limit for lodging the appeal is calculated, in the case of a creditor, from the date on which the creditor was granted the enforceable title or the decision refusing enforcement was issued, or, in the case of a debtor, from the date on which notice was served that enforcement proceedings had been instituted);
- an appeal against a court order declaring the European order for payment enforceable (Article 7957 of the Code of Civil Procedure);
- an appeal against a court order in the event of concomitance of administrative enforcement and judicial enforcement;
- an appeal against a court order to suspend or discontinue proceedings (Article 828 of the Code of Civil Procedure);
- an appeal against a court order to restrict enforcement (Article 839 of the Code of Civil Procedure);
- a court order restricting enforcement and an appeal against that order (Article 839 of the Code of Civil Procedure);
- actions brought by the debtor to contest enforcement measures (Articles 840 to 843 of the Code of Civil Procedure);
- appeals against a court order to reimburse caretaker expenditure (Article 859 of the Code of Civil Procedure);
- an appeal against a court order concerning description and estimation activities during foreclosure;
- an oral complaint against actions taken by the bailiff in the course of auction, lodged with the supervising body (Article 986 of the Code of Civil Procedure);
- an appeal against a court order to award a contract (Article 997 of the Code of Civil Procedure);
- allegations regarding the allocation plan for amounts recovered by way of enforcement (within two weeks of giving notice to the enforcement authority which drew up the plan (Article 998 of the Code of Civil Procedure));
- an appeal against a court order concerning allegations as to the allocation plan (Article 1028 of the Code of Civil Procedure);
- an appeal against a court order instructing a debtor to appeal against a court order regarding exemption from seizure in enforcement proceedings involving the Treasury (Article 1061(2) of the Code of Civil Procedure).

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

Pursuant to Article 829 of the Code of Civil Procedure, the following are exempt:

- 1) such household effects, bedding, underwear and everyday clothing as may reasonably be required to satisfy the basic domestic needs of the debtor and his dependent family members, as well as such clothing as may be required by the debtor to perform his public or professional duties;
- 2) such food and fuel supplies as are necessary to meet the basic needs of the debtor and his dependent family members for a period of one month;
- 3) one cow, two goats or three sheep required for the subsistence of the debtor and his dependants, with a sufficient supply of feed and bedding to survive until the next harvest;
- 4) such tools and other instruments as may be necessary for use personally by the debtor to carry out paid work, and such raw materials as may be required for the production process for a period of one week, excluding motor vehicles;
- 5) in the case of a debtor receiving fixed remuneration on a periodic basis – an amount of remuneration corresponding to the part of remuneration not subject to enforcement for the period until the next payment date, and, in the case of a debtor not receiving fixed remuneration – an amount corresponding to means of subsistence for the debtor and his family members for a period of two weeks;
- 6) items or equipment necessary for educational purposes, personal papers, decorations and items used for religious practice, as well as everyday objects that can only be sold at a price significantly below their original value, but with a high utility value for the debtor;
- 7) funds held on the account referred to in Article 36(4a)(25) of the Organisation of the Market in Milk and Milk Products Act of 20 April 2004 (*Ustawa o organizacji rynku mleka i przetworów mlecznych*) (Journal of Laws 2013, items 50 and 1272);
- 8) medicinal products within the meaning of the Pharmaceutical Act of 6 September 2001 (*Prawo farmaceutyczne*) (Journal of Laws of 2008, No 45, item 271, as amended) necessary to ensure the proper functioning of a healthcare entity within the meaning of the provisions on medical activity for a period of three months, and the medical devices necessary to ensure its functioning within the meaning of the Medical Devices Act of 20 May 2010 (*Ustawa o wyrobach medycznych*) (Journal of Laws No 107, item 679; 2011/102, item 586; and 2011/113, item 657);
- 9) items or equipment necessary due to the disability of the debtor or his family members.

Pursuant to Article 831(1), the following are exempt:

- 1) payments and benefits in kind set aside to cover expenses or business travel expenses;
- 2) sums allocated by the Treasury for special purposes (in particular scholarships and support schemes), unless the enforced claim was established for these purposes or as a result of maintenance obligations;

3) resources from programmes financed by the funds referred to in Article 5(1)(2) and (3) of the Public Finance Act of 27 August 2009 (*Ustawa o finansach publicznych*) (Journal of Laws 2013, items 885, 938 and 1646), unless the enforced claim was established for the implementation of the project to which these funds were allocated;

4) inalienable rights, unless made transferable under the agreement, and the services provided can be enforced or the exercise of this right can be entrusted to another entity;

5) personal insurance benefits and property insurance claims, within the limits defined, by way of a regulation, by the Minister for Finance and the Minister for Justice; this does not apply to enforcement measures to satisfy claims arising from maintenance obligations;

6) social assistance within the meaning of the Social Assistance Act of 12 March 2004 (*Ustawa o pomocy społecznej*) (Journal of Laws 2013, item 182, as amended);

7) amounts payable to the debtor from the state budget or the National Health Fund for the provision of healthcare benefits within the meaning of the Publicly Funded Health Care Act of 27 August 2004 (*Ustawa o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych*) (Journal of Laws 2008/164, item 1027, as amended) prior to termination of such benefits, in an amount corresponding to 75 % of each payment, unless these are claims made by the debtor's employees or healthcare providers as referred to in Article 5(41)(a) and (b) of the Publicly Funded Health Care Act of 27 August 2004.

Pursuant to Article 833(1) of the Code of Civil Procedure, remuneration for work is enforceable as specified in the Labour Code. These provisions apply *mutatis mutandis* to unemployment benefits, incentive pay, scholarships and training allowances payable under provisions governing the promotion of employment and labour market institutions.

Pursuant to Article 871(1) of the Labour Code, the following amounts of remuneration are not subject to any deductions:

- 1) the minimum wage fixed under separate provisions, payable to persons employed on a full-time basis, after deduction of social security contributions and withholding taxes, minus amounts enforced by enforceable titles to settle claims other than maintenance payments;
- 2) 75 % of the remuneration specified in paragraph 1 – after deduction of cash advances granted to the employee;
- 3) 90 % of the remuneration specified in paragraph 1 – after deduction of the fines provided for in Article 108.

If the employee works on a part-time basis, the amounts referred to in Section 1 of the Labour Code are reduced in proportion to working hours.

Last update: 22/06/2017

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

Figyelem: az oldal eredeti nyelvű változata [pt](#) nemrég módosult. Az Ön által kiválasztott nyelvi változatot most készítik fordítóink.

## Procedures for enforcing a judgment - Portugal

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

An enforcement action is an action in which a creditor requests appropriate steps to be taken for the enforcement of an obligation he is due.

The entire enforcement is based on a title which determines the purpose and limits of the enforcement action.

The purpose of enforcement may be the payment of a specific sum of money, the handingover of a particular item or the obligation to do something or to refrain from doing something.

Both in the case of enforcement for the handing-over of a particular item and in the case of the performance of, or abstention from, a particular act, if the debtor does not fulfil the obligation, this will be converted into an enforcement for the payment of a sum of money, at the request of the person seeking enforcement.

In this case, if the debtor does not pay voluntarily, his assets or entitlements are seized and, in special cases, so are the assets or entitlements of third parties. This happens when the assets are linked to a loan guarantee or are the object of an action carried out to the detriment of the creditor. After that, the money is handed over directly to the creditor, or the seized assets are assigned to him, or amounts taken from income are paid, or the assets are sold and the proceeds are made over to the creditor.

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

#### Involvement of the courts

Titles are enforced as a result of a case being heard in a court.

#### Jurisdiction

In the enforcement of a decision by the Portuguese courts, the enforcement request is made as part of the proceedings in which the decision was handed down, and the enforcement is recorded in the same case file and processed independently, unless the case has subsequently gone to appeal, in which case a copy of the file is transferred.

When, in accordance with the law of judicial organisation, a specialised enforcement section is responsible for enforcement, a copy of the judgement, the application which gave rise to the enforcement and accompanying documents must be sent to this specialised section as a matter of urgency.

If the decision was handed down by arbitrators in an arbitration which took place in Portugal, the competent court for enforcement is the district court of the place where the arbitration took place.

If the case was heard at the Appeal Court or the Supreme Court of Justice or if it concerns the enforcement of a foreign judgement, the court of the debtor's domicile is competent, unless the case involves a judge, his or her spouse, descendants, ascendants or a person with whom the said judge shares the same household. In this case if the action would have been brought in the area where the judge serves, the next nearest court district has jurisdiction. In either case, the file relating to the declaratory action or a copy thereof is sent to the court competent for enforcement.

Save in specific cases provided for by law, the court of the debtor's domicile has jurisdiction for enforcement. The creditor may opt for the court of the place where the obligation is to be complied with when the debtor is a legal person or when the creditor's domicile is in the metropolitan area of Lisbon or Porto and the debtor is domiciled in the same metropolitan area.

However, if the enforcement is for the handing-over of a particular item or for the collection of a debt with a real guarantee, the respective competent courts are the court of the place where the item is to be found or the court of the place where the items used as the guarantee are situated.

When the action for enforcement should be brought in the court of the debtor's domicile and the said debtor does not have a domicile in Portugal but has assets there, jurisdiction for enforcement rests with the court for the place where these assets are located.

In cases involving several enforcements, the analysis of which falls within the jurisdiction of different courts, the court of the debtor's domicile has jurisdiction.

#### Enforcement agent

It is the responsibility of the enforcement agent to carry out all measures involved in the enforcement process which are not attributed to the court registry or are the responsibility of a judge. This includes summons, notifications, publications, database checking, seizure and registration thereof, liquidation and payments.

Even after a finding of no need to give judgement, an enforcement agent must ensure that acts arising from the case requiring his intervention are correctly executed.

An enforcement agent is appointed by the creditor seeking enforcement, who may choose from those registered on the official list. Without prejudice to his withdrawal by the body responsible for discipline, an enforcement agent may be replaced by the creditor, who must duly state the reasons for such replacement.

Where the enforcement measures involve travel that proves to be disproportionately expensive, they may be undertaken, at the request of the appointed enforcement agent and under his responsibility, by an enforcement agent in the place where they must be carried out or, in the absence of an enforcement agent, by a judicial officer.

An enforcement agent may, under his responsibility and supervision, have any material steps in the enforcement proceeding which do not involve material seizure of assets, sale or payment, undertaken by an employee in his service who is duly certified for the purpose by the competent body, in accordance with the law.

In addition to what is laid down in other legal provisions, it is the responsibility of the judicial officer to carry out measures which are the responsibility of the enforcement agent:

- a) in enforcements in which the State is the creditor seeking enforcement;
- b) in enforcements in which the Public Prosecutor represents the creditor;
- c) when the judge so decides, at the request of the creditor, based on the absence of an enforcement agent registered in the county where the enforcement is to take place and based on the manifest disproportion of the costs which would be incurred if the action were to be taken by an enforcement agent from another county;
- d) when the judge so decides, at the request of the enforcement agent, if the enforcement measures require travel involving disproportionate travel costs and there is no other enforcement agent in the place where the enforcement is to be carried out;
- e) in enforcements for a value not greater than double the limit which can be dealt with by the court of first instance, where the creditors are natural persons and the object of the enforcement are claims not resulting from commercial or industrial activity, provided that they so request in the enforcement application and pay the respective court fee;
- f) in enforcements for a value not greater than the limit applied to the Appeal Court, if the claim to be enforced is of a labour-related nature and if the creditor so requests in the enforcement application and pays the respective court fee.

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

#### **3.1 The procedure**

The following are enforcement titles:

##### **a) Court judgements**

The judgment is only considered as enforceable after becoming *res judicata*, unless the appeal lodged against it has suspensive effect.

From an enforceability point of view, official orders and any other decisions or acts by judicial authority which require compliance with an obligation are equivalent to judgements. Decisions handed down by the Court of Arbitration are enforceable in the same terms as decisions by common courts.

Without prejudice to what is laid down in treaties, conventions, Community regulations and special laws, judgements handed down by courts or arbitrators in a foreign country may only serve as the basis for enforcement after being reviewed and confirmed by the competent Portuguese court.

However, titles issued in foreign countries do not require review in order to be enforceable.

##### **b) Documents drawn up or certified by a notary or other entities or professionals with competence for the purpose, which serve to establish or recognise any obligation**

Documents drawn up or certified by a notary or other entities or professionals with competence for the purpose, in which future performance is agreed or future obligations are set out, may serve as the basis for enforcement, provided that it is proven, by a document drawn up in compliance with the clauses set out in such documents or, should such clauses be absent, a document having its own enforceability, that an act was performed for the conclusion of a business deal or that an obligation was established as a consequence of an agreement between the parties.

Any document signed on behalf of someone else only enjoys enforceability if the signature has been certified by a notary or other entities or professionals with competence for the purpose.

##### **c) Debt obligations, even though merely handwritten, provided that, in this case, the facts which constitute evidence of the underlying relationship feature in the respective document or are stated in the enforcement application.**

Debt obligations include, for example, cheques, bills of exchange and promissory notes.

##### **d) Documents to which enforceability is assigned through special provision.**

For example, applications for orders to which an enforcement clause has been appended and minutes of meetings of condominiums.

Enforcement titles are considered to include late payment interest, at the statutory rate, on the obligation therein.

Process

##### **Use of legal professionals**

Parties must be represented by a lawyer, trainee lawyer or solicitor in enforcements involving a value greater than the limit set for first instance courts, and must be represented by a lawyer in enforcements involving a value greater than the limit set for appeal courts and in enforcements of a value equal to or less than this amount, but greater than the value set for first instance courts, when any proceedings are brought that follow the terms of the declaratory process.

##### **Enforcement application**

Enforcement applications are submitted to the court preferably by electronic means but may also be submitted on paper.

Electronic submission is carried out by the legal representative by completing and sending the electronic enforcement application form which can be found at <http://citius.tribunaisnet.mj.pt/> in accordance with [Article 132 of the Civil Procedure Code](#) and in line with the procedures and instructions therein. The form must be accompanied by the requisite documents.

When a party is not represented by legal counsel, or when justifiable reasons exist preventing submission in accordance with the previous article, the enforcement application may be presented on paper to the court registry or sent by registered post or fax to the competent court using the [model enforcement application form](#) in Annex I to [Implementing Order \(Portaria\) 282/2013 of 29 August 2013](#). The form must be accompanied by the requisite documents.

The party seeking enforcement is later notified for payment, within 10 days, of the sum initially due to the enforcement agent for fees and expenses.



The enforcement application is only considered as submitted on the date that the sum initially due to the enforcement agent for fees and expenses is paid or on confirmation of the granting of legal aid in the form of the assignment of an enforcement agent.

### **Procedure**

The procedure **followed** for common enforcement of the payment of a specific sum may be either summary or ordinary.

The summary procedure is employed in enforcements based on a judicial or arbitration decision where such a decision must not be enforced in the main proceedings, on applications for an order to which an enforcement clause has been appended, on an extrajudicial title for a payable monetary obligation, guaranteed through a mortgage or lien, and on an extrajudicial title for a payable monetary obligation, the value of which does not exceed twice the limit set for the court of the first instance.

The summary procedure cannot be applied when the obligation is an alternative and the choice of fulfilment falls to the debtor or third parties, when the obligation is dependent on a suspensive condition or fulfilment by the creditor or third party, when the obligation to be enforced requires liquidation in the enforcement stage and the liquidation is not dependent on a simple mathematical calculation, when an enforcement title other than a judgement exists against only one of the spouses and the creditor claims in the enforcement application that the debt is common to both, and in enforcements brought only against the subsidiary debtor who has not waived the defence of prior recourse.

In the ordinary procedure, the preliminary intervention of the judge is secured and the debtor is served a summons before the seizure, except if the judge, at the request of the creditor, dispenses with prior summons on the debtor as there is a justified fear of losing the asset guarantee on the claim to be enforced and the case is then given due urgency.

The [common procedure for handing-over a particular item](#) (Articles 859 to 867 of the Civil Procedures Code) and for [performance of a particular act](#) (Articles 868 to 877 of the Civil Procedures Code) take the same form.

The enforcement process is dealt with electronically through IT systems supporting the activity of enforcement agents and the courts.

### **Enforcement costs**

The costs of enforcement, including fees and expenses payable to the enforcement agent, of appended proceedings and of the respective action for declaratory relief are deducted from the proceeds of the seized assets.

The costs account is kept on a continuous basis throughout the process by the court registry dealing with the enforcement, in accordance with the Litigation Costs Regulation.

Fees due to an enforcement agent and the reimbursement of his expenses, as well as debts to third parties as a result of the enforcement sale, are borne by the creditor. The said creditor may require reimbursement of these costs from the debtor in cases where it is impossible to apply the provisions of the first paragraph (costs, fees and expenses deducted from the proceeds of the seized assets).

The enforcement will not proceed until the creditor pays the enforcement agent all sums due for fees and expenses.

The creditor, debtor, the Chamber of Solicitors, the court and any third party which has a legitimate interest is entitled to be informed, preferably by electronic means, about the details of the current account for the case. This account must be kept permanently up to date by the enforcement agent.

The detailed current account for the case includes foreseeable expenses for the completion of the proceedings, more specifically expenses incurred in the cancellation of registrations.

Enforcement agents are entitled to remuneration for dealing with cases, acts carried out or procedures undertaken, in accordance with the amounts stipulated in the [table in Annex VII to Implementing Order \(Portaria\) 282/2013 of 29 August 2013](#), which include the carrying-out of acts required within the limits provided for therein.

Enforcement agents are entitled to be paid fees for services rendered and to be reimbursed for duly proven expenses.

An enforcement agent is due an additional remuneration at the end of enforcement proceedings for the payment of a specific sum, which varies depending on the sum recovered or guaranteed, the point in the proceedings at which the sum was recovered or guaranteed, and on the existence or otherwise of a real guarantee on the assets seized or to be seized.

Parties are ensured access to the current account for cases in which they are involved through IT systems supporting the activity of enforcement agents.

The enforcement agent must inform the creditor, at the start of the proceedings, and the debtor, at the point of summons, of the probable amount of his fees and expenses. This information must be recorded in the IT systems supporting the activity of enforcement agents and included in the case file.

External actions, i.e. those not carried out through the IT systems supporting the activity of enforcement agents, must be recorded in that system up to the end of the second working day after the day the action was carried out. Failure to do so will result in the enforcement agent not being reimbursed for the respective expenses.

The Chamber of Solicitors provides access on its official website to a simulator for the fees and expenses of enforcement agents. The values indicated by the simulator are merely indicative.

The amounts set in this Implementing Order (*Portaria*) are expressed in units of account (UC).

A UC is the monetary amount equivalent to a quarter of the value of the Social Support Index, rounded up to the nearest whole euro, set out in the provisions of Article 5 of the Litigation Costs Regulation and calculated on the basis of the provisions of Article 22 of Decree-Law No 34/2008.

The value of a UC in 2014 was €102.00.

### **3.2 The main conditions**

#### **As to the claim**

Enforcement begins with measures, to be requested by the creditor, with a view to making the obligation certain, due and net, should this not be the case with regard to the enforcement title.

#### **As to the creditor**

The enforcement must be brought by the person who is named as the creditor in the enforceable title. If the title is made out to the bearer, enforcement must be carried out by the title bearer.

If succession has occurred in the right or the obligation, the enforcement should be brought between the heirs of the persons named in the enforceable title as creditors or debtors. In the enforcement application itself, the applicant must set out the facts proving succession.

#### **As to the debtor**

The enforcement must be brought against the person who is named as the debtor in the enforceable title.

The enforcement of a debt backed by a real guarantee on third party assets must be brought directly against that third party if the creditor seeking enforcement wishes to enforce the guarantee, notwithstanding the fact that the debtor may also be sued immediately.

When the enforcement has been brought against the third party only and it is known that the assets burdened with the real guarantee are insufficient, the creditor seeking enforcement can, in the same process, request the continuation of the enforcement proceedings against the debtor, who will be ordered to fully satisfy the claim. When the burdened assets belong to the debtor but are in the possession of a third party, the latter as well as the debtor may be sued immediately.



In an enforcement brought against a subsidiary debtor, the assets of the said subsidiary debtor may not be seized until all of the assets of the main debtor have been seized, provided that the subsidiary debtor invokes – based on clear grounds and within the deadline for opposing enforcement, i.e. 20 days from the date of the summons – the right of surety to require execution to be directed against the main debtor.

When the common assets of a couple are seized in an enforcement brought against only one spouse, due to the fact that insufficient assets of the debtor are known, the spouse of the debtor served the summons may, within 20 days, apply for the legal separation of assets or append a certificate corroborating that this action is pending, having already been requested, under penalty of the enforcement continuing against the common assets.

When enforcement is brought against one spouse, the creditor may claim, based on clear grounds, that the debt, in a title other than a judgement, is common. In such cases the spouse of the debtor is summoned to declare, within 20 days, whether he or she accepts that the debt is common, on the grounds stated; if nothing is said, the debt is considered common, without prejudice to the lodging of an appeal.

When enforcement is brought against any of the co-holders of autonomous assets or an indivisible asset, the assets in common property or fractions thereof or specified parts of the indivisible asset may not be seized.

When enforcement is brought against heirs, only assets which have been received from the owner of the estate may be seized. When the seizure refers to other assets, the debtor may state which assets in his possession are from the estate and request the enforcement agent to lift the seizure. The request may be granted if the creditor does not object.

If the creditor objects, the debtor may only obtain the lifting of the seizure, where the inheritance has simply been accepted, if he states and proves to a judge: a) that the assets seized did not come from the inheritance; b) that he did not receive in the inheritance more assets than those stated or, if more were received, that such other assets were used to settle charges relating to the inheritance.

The debtor's assets are seized even though, through any title, they are in the possession of a third party, without prejudice however to rights which such a third party is entitled to assert vis-à-vis the creditor.

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

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

All of the debtor's assets which can be seized under substantive law may be subject to enforcement. In cases specially provided for by law, third party assets may be seized if the enforcement has been brought against that third party.

The seizure is limited to the assets necessary for the payment of the debt in question and the foreseeable costs of the enforcement, which are presumed to be, for the purpose of carrying out the seizure and without prejudice to subsequent liquidation, 20 %, 10 % and 5 % of the value of the enforcement, depending, respectively, on whether the said enforcement (a) falls within the financial remit of the district court, (b) exceeds it, without exceeding four times the value set for the appeal court, or (c) is greater than this last value.

Only objects and rights which can be evaluated in monetary terms may be seized. Assets which are not traded cannot be seized. Immovable property, movable assets, purchase rights and expectations, bonuses or income, bank deposits, jointly owned assets, and shares in companies and commercial establishments can be the object of enforcement.

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

The effects of seizure are:

Loss of the debtor's rights of possession;

Relative lack of effect of subsequent measures of disposal: rights established in the event of transfer are null and void;

Real entitlement of guarantee in favour of the creditor.

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

No validity period is laid down for such measures.

Even where the legislator establishes special validity periods, as is the case for the records of seizure of immovable property, this does not automatically cause the validity of the enforcement measures to expire as such records may be renewed for equal periods of time, without any limit to the number of renewals.

If seizable assets are not found within three months from the date of the notification sent by the registry to the enforcement agent to begin measures for seizure, the enforcement agent notifies the creditor to specify which assets he wishes to be seized in the enforcement. The debtor is also notified to provide a list of assets to be seized, stating that omission or false statements may lead to compulsory fines of 5 % of the debt per month, with a minimum overall limit of 10 CU, if a further renewal of the court enforcement occurs and the existence of seizable assets is established therein.

If neither the creditor nor the debtor provides a list of seizable assets within 10 days, the enforcement is immediately cancelled.

When the enforcement begins without a requirement to send a prior summons, the debtor is summoned; if the creditor does not provide a list of seizable assets, and the personal summons on the debtor proves ineffective, no written summons is issued and the enforcement is cancelled in accordance with the preceding paragraph.

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

The arrangements laid down for appeals in the declaratory process also apply for appeals lodged against decisions handed down in proceedings or incidents of a declaratory nature, occurring in the execution of the enforcement action.

It is possible to appeal against decisions made granting enforcement orders if the case involves an amount greater than the limit for the court in which the case is being heard and the contested decisions are unfavourable to the appealing party for an amount which is greater than half the limit for this court.

Appeal is also possible, in general terms, against:

- a) the decisions provided for in [Article 644\(2\) of the Civil Procedure Code](#), when applicable to enforcement action;
- b) decisions which determine the suspension, termination or cancellation of the enforcement;
- c) decisions on the cancellation of the sale;
- d) decisions on the exercising of the right of preference or redemption.

Appeal is always possible against an official decision refusing to accept the enforcement application, or even part thereof, as well as against an official decision rejecting a preferred enforcement application in accordance with the provisions of [Article 734 of the Civil Procedure Code](#).

Without prejudice to cases in which appeal to the Supreme Court of Justice is always admissible, the only appeal court rulings open to review, in general terms, are those handed down in liquidation proceedings not requiring simple mathematical calculation, proceedings for the verification and ranking of claims and proceedings opposing the enforcement.

In enforcement proceedings the debtor may oppose enforcement within a time limit of 20 days from the date of the summons. In the case of summary procedures, any action by the debtor to oppose seizure is combined with the opposition to enforcement.

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

There are legal limits to seizure which render some assets unseizable either totally, partially or only under certain conditions.

The following cannot be seized under any circumstances:

- a) Inalienable objects or rights;
- b) Assets in the public ownership of the State and of other public legal persons;
- c) Objects whose seizure would be offensive to good morals or would not make economic sense because their market value is insignificant;
- d) Objects specially destined for public worship;
- e) Tombs;
- f) Instruments which are essential for the disabled and objects intended for treating the sick.

The following are exempt from seizure:

Except where the enforcement is for payment of a debt with a real guarantee, the assets of the State and other public legal persons, those of entities holding public works or public service concessions, or those of legal persons of public utility which are specially assigned to purposes in the public interest; The working tools and objects essential for the pursuit of the debtor's professional activity or vocational training, except where:

- a) the debtor indicates they can be seized;
- b) the enforcement is for the payment of their purchase price or repair cost;
- c) they are seized as tangible elements incorporated in a commercial establishment.

Goods which are indispensable for any household in the house where the debtor resides, except if the enforcement is for the payment of the purchase price of the items themselves or cost of their repair.

The following cannot be seized:

Two thirds of net income, salaries, periodic amounts received as retirement pension or any other social benefit, insurance, accident indemnity or annuity, or any other payments of a similar nature which ensure the livelihood of the debtor. For the purposes of calculating the liquid part of the abovementioned payments, only contributions which are legally required are considered.

In the cases referred to in the last paragraph, the non-seizability has a maximum limit equivalent to three national minimum wages at the time of each seizure and a minimum limit, when the debtor has no other income, of the equivalent of one national minimum wage.

When the claim being pursued relates to maintenance, an amount equivalent to a full noncontributory pension cannot be seized.

In the seizure of money or of a current account bank balance, the overall amount equivalent to one national minimum wage may not be seized or, if it refers to maintenance obligations, the sum referred to above.

Weighing up the amount and the nature of the claim being pursued and the needs of the debtor and his family, the judge may, exceptionally, at the request of the debtor, reduce the part of his income which can be seized for a period which he considers reasonable. The judge may even exempt the debtor's income totally for a period of not more than one year.

Non-seizability is not cumulative for the items set out above which refer to payments of any kind, sums of money or bank balances which ensure the livelihood of the debtor.

The amount of money or the bank deposit resulting from the satisfaction of a claim for which seizure was not possible cannot be seized, in the same way as the original claim could not give rise to seizure.

Last update: 14/02/2018

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

## Procedures for enforcing a judgment - Romania

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

The enforcement provisions are set out in Articles 622-913 of the Code of Civil Procedure. The enforcement procedure is the second stage of the civil proceedings and is intended mainly to ensure the actual exercise of the right recognised by a court judgment/another enforceable document. By resorting to the enforcement procedure, a creditor who is the holder of a right recognised under a court judgment/enforceable document compels the debtor to meet those of his/her obligations as debtor that he/she has refused to meet voluntarily.

The Romanian Code of Civil Procedure sets out a list of direct and indirect enforcement measures.

Direct enforcement measures are those pertaining to the object of the debt established in the enforceable document, more specifically attachment of movable property - Articles 892-894 of the Code of Civil Procedure; attachment of immovable property - Articles 895-901 of the Code of Civil Procedure; and enforcement of an obligation to perform some action or to refrain from performing some action - Articles 902-913 of the Code of Civil Procedure (including special provisions on enforcement of judgments regarding minors - Articles 909-913) and Articles 1527 et seq. of the Civil Code. For enforcement of obligations to perform an action, the law distinguishes between an obligation that can also be executed by a person other than the debtor and an obligation *intuitu personae*.

Indirect enforcement refers to the means of obtaining the payment subject to the enforceable document through the forced sale of the debtor's property.

Examples of indirect enforcement measures are the attachment of money or the recovery (followed by the sale) of property. Another measure is the recovery of general proceeds from immovable property.

Obligations likely to be subject to enforcement are obligations to make payment, to transfer property or the use thereof, to demolish or clear buildings /plantations/works, or to yield custody of minors and to establish their residence and visiting schedule.

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

Court judgments and the other enforceable documents are executed by a judicial enforcement officer (*executor judecătoresc*) whose office is located in the jurisdiction of the court of appeal where the immovable property is located in the case of enforcement in respect of immovable goods/unharvested fruit and in the case of direct enforcement in respect of immovable property. The enforced recovery of movable goods and direct enforcement of movable property are executed by the judicial enforcement officer whose office is located in the jurisdiction of the appeal court where the debtor has his/her residence/registered office or where the property is located. If the debtor's residence/registered office is located abroad, any judicial enforcement officer is competent.

The attachment order is executed at the creditor's request by a judicial enforcement officer whose office is located within the jurisdiction of the appeal court where the debtor or a third party subject to attachment has his/her residence/registered office. If the bank accounts of a natural or legal person have been attached, competence lies with the judicial enforcement officer whose office is located within the jurisdiction of the appeal court where the debtor has his/her residence/registered office or where the bank at which the debtor opened his/her account has its head office/branch. If the debtor has several accounts open, competence for the attachment of all the accounts lies with the judicial enforcement officer at any of the locations where they have been opened. The enforcement court is the district court (*judecătorie*) in whose jurisdiction the debtor's residence/registered office is located on the date of referral to the

enforcement court. If the debtor's residence/registered office is not in Romania, competence lies with the district court in whose jurisdiction the creditor's residence/registered office is located and, if that residence/registered office is not located in Romania, with the district court in whose jurisdiction the registered office of the judicial enforcement officer in whom powers have been vested by the creditor is located.

The enforcement court deals with applications for declarations of enforceability, appeals against enforcement actions and any other issues arising in the course of enforcement, except for those that are by law within the jurisdiction of other courts or bodies.

The stamp fee for applications for declarations of enforceability is RON 20 for each enforceable document (Government Emergency Order No 80/2013 on legal stamp fees, as subsequently amended and supplemented).

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

#### 3.1 The procedure

Enforcement may be carried out only under a court judgment (final judgments, provisional enforceable decisions) or other written act deemed an enforceable document under the law (notarial authentic deeds, debt securities, arbitration awards, etc.).

As soon as he/she has received the application for enforcement filed by the creditor, the judicial enforcement officer arranges for that application to be registered. The judicial enforcement officer issues, by decision, a declaration of enforceability without summoning the parties. The declaration of enforceability enables the creditor to ask the competent judicial enforcement officer to make use, either simultaneously or successively, of all the available means of enforcement in order to exercise his/her rights, including the entitlement to the expenses of enforcement. The declaration of enforceability has effect throughout the country and also covers enforceable documents to be issued by the judicial enforcement officer in the context of the approved enforcement procedure.

Procedural documents may be served by the judicial enforcement officer either in person or through his/her procedural agent and, if this is not possible, in accordance with the legal provisions regarding summoning and service of procedural acts.

As soon as he/she has received the enforcement application, the judicial enforcement officer, by decision, arranges for the application to be registered and for the enforcement file to be opened or, where applicable, refuses to initiate the enforcement procedure, giving reasons for that refusal. The creditor is immediately notified of that decision. If the judicial enforcement officer refuses to initiate the enforcement procedure, the creditor may, within 15 days from the notification date, file a complaint to the court dealing with the enforcement proceedings.

Within not more than three days from the registration of the application, the judicial enforcement officer requests a declaration of enforceability from the court dealing with the enforcement proceedings and submits to that court, in the form of duly certified copies, the creditor's application, the enforceable document, the form of decision sought and the proof of payment of the legal stamp fee.

The application for a declaration of enforceability is handled within not more than seven days from its registration with the court by an order handed down *in camera* without the parties being summoned. The ruling may be delayed by 48 hours at most, and the reasons for the decision are to be given not more than seven days from the ruling.

The declaration of enforceability enables the creditor to ask the judicial enforcement officer who requested the declaration to make use, either simultaneously or successively, of all the available means of enforcement provided for by law in order to exercise his/her rights, including the entitlement to the expenses of enforcement. The declaration of enforceability has effect throughout the country, and also covers enforceable documents to be issued by the judicial enforcement officer in the context of the approved enforcement procedure.

The court may deny the application for a declaration of enforceability only if: the application comes within the jurisdiction of an enforcement body other than the one before which the application was in fact brought; the decision or, where applicable, the document is not an enforceable document; the document, other than a court judgment, does not meet all the formal requirements; the debt is not certain, of a fixed amount and due; the debtor enjoys immunity from enforcement; the document contains provisions that cannot be met by enforcement; other impediments.

The decision whereby the court admits the application for declaration of enforceability is not open to appeal, but it may be reviewed if the enforcement itself is contested. A decision rejecting an application for declaration of enforceability may be appealed against exclusively by the creditor and within 15 days of the decision's having been notified.

The order for enforcement, reading as follows, is added to the final part of the decision on the declaration of enforceability:

'We, the President of Romania,

hereby grant powers and instruct judicial enforcement officers to enforce the title (here are inserted the identification details of the enforceable title) for which this decision on the declaration of enforceability was issued. We instruct public law enforcement bodies to support the prompt and effective performance of all the enforcement actions, and prosecutors to insist on compliance with the enforceable title under the law. (To be inserted: the signature of the president of the panel of judges and of the clerk of the court.)'

The National Association of Judicial Enforcement officers (*Uniunea Națională a Executorilor Judecătorești*) establishes and updates, with the approval of the Minister for Justice, the minimum fees for the services provided by judicial enforcement officers. The following minimum-maximum fees for the activities conducted were set by Order No 2550/2006 of 14 November 2006 of the Minister for Justice:

*Notification and service of procedural documents – RON 20-400*

*Direct enforcement*

evictions: RON 150-2 200 for a debtor who is a natural person, RON 5 200 for a debtor who is a legal person

yielding custody of minors or establishing minors' domiciles: RON 50-1 000

visiting the minor – RON 50-500

placing in possession, establishing property boundaries, easements, transfer of property, etc.: RON 60-2 200 for a debtor who is a natural person and RON 5 200 for a debtor who is a legal person

clearance of works or buildings: RON 150-2 200 for a debtor who is a natural person and RON 5 200 for a debtor who is a legal person

*Indirect enforcement*

minimum fee	maximum fee
for debts below RON 50 000, 10 % of the amount and RON 75 plus 2 % of the amount exceeding RON 1 000	10 % for debts up to RON 50 000
for debts between RON 50 000 and RON 80 000, RON 1 175 plus 2 % of the amount exceeding RON 50 000	for debts between RON 50 000 and RON 80 000, RON 5 000 plus up to 3 % of the amount exceeding RON 50 000
for debts between RON 80 000 and RON 100 000, RON 1 775 plus 1 % of the amount exceeding RON 80 000	for debts between RON 80 000 and RON 100 000, RON 5 900 plus up to 2 % of the amount exceeding RON 80 000

for debts over RON 100 000, RON 2 500 plus 1 % of the amount exceeding RON 100 000 and RON 5 500 plus up to 0.5 % of the amount exceeding RON 400 000	for debts over RON 100 000, RON 6 300 plus up to 1 % of the amount exceeding the value of RON 100 000.
---	--

#### Attachment

for debts below RON 50 000, 10 % of the amount and RON 75 plus 2 % of the amount exceeding RON 1 000	10 % for debts up to RON 50 000
for debts between RON 50 000 and RON 80 000, RON 1 175 plus 2 % of the amount exceeding RON 50 000	for debts between RON 50 000 and RON 80 000, RON 5 000 plus up to 3 % of the amount exceeding RON 50 000
for debts between RON 80 000 and RON 100 000, RON 1 775 plus 1 % of the amount exceeding RON 80 000	for debts between RON 80 000 and RON 100 000, RON 5 900 plus up to 2 % of the amount exceeding RON 80 000
for debts over RON 100 000, RON 2 500 plus 1 % of the amount exceeding RON 100 000 and RON 5 500 plus up to 0.5 % of the amount exceeding RON 400 000	for debts over RON 100 000, RON 6 300 plus up to 1 % of the amount exceeding RON 100 000

*Refusal to pay a bill of exchange, a promissory note or a cheque* RON 150-400

*Establishment of facts and inventorying of goods:* RON 100-2 200 for a debtor who is a natural person, RON 5 200 for a debtor who is a legal person

*Selling at auction the good subject to the judicial apportionment* RON 150-2 200

*Precautionary seizure:* RON 100-1 200 for a debtor who is a natural person, RON 2 200 for a debtor who is a legal person

*Judicial seizure:* RON 100-1 200 for a debtor who is a natural person, RON 2 200 for a debtor who is a legal person

*Precautionary attachment:* RON 100-1 200 for a debtor who is a natural person, RON 2 200 for a debtor who is a legal person

*Record of offer of real value:* RON 50-350

*Confiscations* 10 % of the proceeds (min.) – 10 % of the proceeds (max.)

*Advice for preparing enforcement documents:* RON 20-200

### 3.2 The main conditions

Please see the response to Question 2.1.

The creditor and the debtor may agree that the enforcement action be taken wholly/partially against the debtor's monetary revenues alone, that the goods subject to recovery be sold by agreement or that the debt be paid by other means admissible under the law.

For a judgment delivered by a foreign court, an additional procedure is required, as appropriate, namely a decision declaring enforceability (*exequatur*).

The debtor's revenues and goods may be subject to enforcement if they can be recovered and only insofar as it is necessary in order to exercise the creditors' rights. Property subject to special circulation regimes can be recovered only in accordance with the conditions provided for by law.

As regards the debtor, there is a special condition whereby no enforcement procedure must be initiated unless the debtor has been summoned properly for each form of enforcement. There are also other specific provisions in relation to the debtor, such as those regarding minor debtors or major debtors declared as lacking legal capacity, against whom no enforcement action may be taken unless there is a guardian or a custodian.

### 4 Object and nature of enforcement measures

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

The debtor's revenues, including general revenues from buildings, amounts in bank accounts, movable and immovable goods, etc. may be subject to enforcement. Please see the answer to Question 1.

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

After the movable goods owned by the debtor or held by third parties have been identified, they are to be seized. At the judicial enforcement officer's request, the seizure may be noted in the Trade Register (*registruul comerțului*), in the Electronic Archive of Real Estate Collateral (*Arhiva Electronică de Garanții Reale Mobiliare*), in the inheritance book (*registruul succesoral*) kept by the Chamber of Notary Publics (*camera notarilor publice*) or in other public records. From the moment of seizure of goods, they are no longer available to the debtor for the enforcement period, subject to penalty with the application of a judicial fine except where the act constitutes an offence. If the amount due is not paid, the judicial enforcement officer will sell the seized goods at an auction, or by direct sale, or by other means admissible under the law (Article 730 et seq. of the Code of Civil Procedure).

The sums of money, securities or other intangible movable assets that can be recovered and that are due to the debtor or held on the debtor's behalf by a third party or that the third party will owe to him/her in the future under current legal relations are subject to attachment. All the attached sums of money and assets are frozen from the date when the attachment injunction has been sent to the third party subject to attachment. From the time of freezing until the full payment of obligations stated in the enforceable document, the third party subject to attachment will not make any payment or conduct any operation that is likely to reduce the frozen assets. If the third party subject to attachment fails to meet his or her obligations regarding the attachment, the creditor seeking payment, the debtor or the judicial enforcement officer may notify the enforcing court in order to validate the attachment. The final validation decision has the effects of an assignment of claim and constitutes a document enforceable against the third party subject to attachment. After the attachment has been validated, the third party subject to attachment deposits or pays a sum within the limits of the amount expressly indicated in the validation decision. If the third party fails to meet these obligations, an enforcement action may be brought against the third party subject to attachment based on the validation decision (Article 780 et seq. of the Code of Civil Procedure).

As regards enforcement against immovable property, if the debtor does not pay his/her debt, the judicial enforcement officer initiates the selling procedure after the declaration of enforceability has been served and has been entered in the land register (Article 812 et seq. of the Code of Civil Procedure).

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

The measures come to an end six months from the date of compliance with any enforcement action (Article 696 et seq. of the Code of Civil Procedure) if the creditor has let this period elapse without having undertaken any other recovery actions.

The limitation period is three years (Article 705 et seq. of the Code of Civil Procedure).

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

An appeal may be lodged against the actual enforcement actions; the enforceable document may be appealed against for clarification of meaning, scope or application of the document. If the enforcement action is taken under a court judgment, the debtor cannot contest it by invoking reasons in fact/in law that he /she could have brought at the trial before the court of first instance or by bringing an appeal against that judgment. A new appeal cannot be lodged by the same party for reasons that existed on the date of a first appeal.

The competent court is the enforcement court or, for clarification of meaning, scope/application of the enforceable document, the court that issued the judgment to be enforced.

The appeal may be lodged within 15 days from:

the date when the appellant was made aware of the enforcement order;

the date when the relevant interested party learned of the imposition of the attachment;

the date when the debtor was served the summons or the date when he or she was made aware of the first enforcement step.

An appeal for clarification of meaning, scope or application of the enforceable document may be lodged at any time within the period of limitation of the right to request an enforcement action. An appeal whereby a third party claims to have a right of ownership/a right *in rem* over the recovered property may be lodged within 15 days from the sale/date of transfer of the property. Failure to lodge an appeal within the above-mentioned time limit does not preclude the third party from exercising his/her right by way of a separate application.

If it sustains the appeal against the enforcement, the court, where applicable, voids the enforcement order appealed against or issues a ruling for the correction, annulment or termination of the enforcement action itself, the annulment or clarification of the enforceable document or the taking of the enforcement step compliance with which has been refused. If the appeal is rejected, the appellant may be obliged to pay compensation, upon application, for the damages caused by the delayed enforcement and, when the appeal has been lodged in bad faith, he or she is also obliged to pay a fine.

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

Certain goods and property are exempt. As regards movable property, this consists of: goods for personal use or household items indispensable for the livelihood of the debtor and his/her family; religious items; items indispensable for disabled persons and those intended for the care of sick people; food necessary for the debtor and his/her family for three months and, if the debtor lives exclusively on farming, the food needed until the next harvest; animals intended to procure the means of livelihood, and the feed needed for these animals until the next harvest; the fuel necessary for the debtor and his/her family for three winter months; personal or family letters, photographs and paintings, etc.

In addition, the debtor's wages/pension may be recovered only up to only one half of his or her net monthly wages, in the case of amounts due as a maintenance obligation, and only up to one third of the net monthly wages for other types of obligation.

If the income from work or sums of money paid regularly to the debtor that ensure his or her livelihood amount to less than the national net minimum wage, recovery may be effected only on the amount in excess of half the minimum wage.

There is one category of revenue that is excluded from enforcement, consisting of state benefits and allowances for children, payments for the care of a sick child, maternity benefits, death benefits, scholarships granted by the State, daily allowances, etc.

**Please see also the answer to Question 4.3.**

#### **Relevant links**

<http://www.executori.ro/> / <http://www.just.ro/>

Last update: 28/03/2017

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

### **Procedures for enforcing a judgment - Slovenia**

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

In the Republic of Slovenia, enforcement is uniformly governed by the Enforcement and Securing of Civil Claims Act (Zakon o izvršbi in zavarovanju – ZIZ). Enforcement means forced execution of an enforceable title by a court, which orders that a claim be performed (to give, to perform, to cease doing or to permit). Enforcement of a monetary claim is also permitted on the basis of an authentic document. Exceptionally, enforcement in family matters may involve enforcement of claims in respect of relationships.

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

Courts, specifically the local courts (okrajna sodišča), are competent to allow and execute enforcement.

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

A court allows enforcement on the basis of an enforceable title.

##### **Enforceable titles include:**

an enforceable court decision (a judgment or an arbitration award, decision, a payment or another order of a court or arbitration) and a court settlement (concluded before a court);

an enforceable notarial record; and

another enforceable decision or a document which is specified as an enforceable title by the law, a ratified and published international treaty or an European Union legal act directly applicable in the Republic of Slovenia.

An enforceable title can be enforced if it contains information about the creditor, debtor and the subject, type, scope and time for performing the obligation (Article 21(1) of the ZIZ). When an enforceable title is a decision which does not stipulate the time limit for voluntary performance of the obligation, the time limit is determined by a court in its decision of enforcement.

#### **3.1 The procedure**

Enforcement proceedings and security proceedings start upon a creditor's request. The request may be filed directly by a creditor, since representation through a lawyer is not mandatory. Usually these requests for enforcement are lodged through a lawyer who has relevant legal knowledge. A local court is competent to hear these cases. Notwithstanding provisions on territorial jurisdiction, requests for enforcement based on an authentic document are lodged with the Local Court in Ljubljana (Okrajno sodišče v Ljubljani), which rules on them. Regarding the possibility or necessity of electronic filing of applications in enforcement proceedings, please see the section on 'automatic processing'.

A court fee must be paid at the time of filing a request for, an objection to, or an appeal against enforcement. The court fee must be paid within eight days after the order for the payment of the court fee is served.

If the court fee is not paid within this time limit and there are no conditions to allow for waiving or deferring the fee or paying the fee by instalments, the filing is considered withdrawn.

When a court receives a request for enforcement, it checks whether the request contains all the required elements and then issues a decision on enforcement by which it allows the enforcement or denies the request for enforcement (for being unjustified in substance) or rejects the request for enforcement (for procedural reasons). The court serves the decision on enforcement on the creditor and the debtor when enforcement is allowed and on the creditor only when it is denied. The decision on enforcement by which an enforcement agent is appointed or a decision on appointing an enforcement agent is served by the court upon the enforcement agent, together with copies of all the documents required for executing the enforcement.

The court may allow enforcement of a monetary claim by the methods and on those objects which are stated in the request for enforcement. Before the end of enforcement proceedings, the court may, upon the creditor's request, permit enforcement through additional methods and of different objects.

The court may order enforcement by a different method than the one requested by a creditor when the alternative method would be sufficient to pay the claim. No appeal may be submitted against a decision denying a creditor's request for enforcement.

Enforcement takes legal effect before the decision on enforcement becomes final, unless the law stipulates otherwise for specific enforcement measures. The creditor may not be paid before a decision on enforcement becomes final except in a case of enforcement based on an enforceable title against the debtor's money kept at a payment institution (enforcement based on enforceable title), provided that the enforceable title is attached to the request for enforcement.

The court appoints an enforcement agent in its decisions allowing enforcement which requires direct enforcement measures.

#### **Enforcement Agents**

Enforcement agents are persons who conduct direct enforcement and security measures (they physically conduct the enforcement – i.e. they seize property, specify the security, etc.). Enforcement agents are appointed by the minister responsible for justice. Their number and place of their establishment are determined by the minister responsible for justice so that there is at least one enforcement agent per district court (okrožno sodišče) territory, while the remaining enforcement agents are assigned in district court territories according to the number of enforcement cases before local courts within each district court territory. In individual enforcement cases, an enforcement agent is appointed by a decision of a court, but the creditor has the right to nominate a particular enforcement agent. In any particular case, an enforcement agent may conduct measures in the entire Republic of Slovenia. The service of enforcement agents is a public service, which they perform as an independent activity.

Enforcement agents are responsible for any damage they cause when conducting enforcement and security measures by their actions or by failure to fulfil their obligations under the law, its implementing regulations and court orders.

In case of a serious infringement of their obligations, enforcement agents may be discharged by the minister responsible for justice.

#### **Enforcement costs**

Enforcement costs are first paid by the creditor. The creditor must also pay an advance for costs of the enforcement measures, in the amount and within the time limits determined by the court. Where the creditor does not pay the security, the court will stay the enforcement. The debtor must reimburse the creditor's costs upon the creditor's request when the costs were necessary for enforcement, including costs for searches related to the debtor's property, and costs for proceedings initiated by a court's own motion. The court must decide on costs within eight days of receiving a request.

To secure a payment for work and for recovery of costs, the enforcement agent may ask the creditor for a payment for security within a time limit and in the amount set out in the tariff. The enforcement agent must serve the notice to pay the security on the creditor in person, which must also contain a warning of the consequences if the security is not paid on time and if evidence of payment is not submitted to the enforcement agent.

The enforcement agent must also include a notice of their right to ask the court to decide about the security. Where the creditor does not agree with the method of payment, the time limit, or the amount of the security, the creditor may, within eight days of receiving the notice, submit to the enforcement agent a request for the court to decide the issue. The enforcement agent must immediately send the request to the court, which must decide on the matter within eight days of its receipt.

When the creditor does not pay the security by the method and within the time limit determined by the enforcement agent or the court, or does not submit evidence of payment, the enforcement agent so informs the court, which will stay the enforcement.

### **3.2 The main conditions**

**The first condition** for allowing enforcement is **having the basis for the enforcement. This can be an enforceable title or an authentic document** in accordance with the law.

#### **Enforceability of court decisions:**

A court decision is enforceable once it becomes final and when the time limit has passed for voluntary performance of the debtor's obligations. The time limit for the voluntary performance of the obligation starts the day after the decision was served on the debtor. It is possible for the court to allow the enforcement of only part of a decision, when that part becomes enforceable.

The court will allow enforcement on the basis of a court decision that is not yet final when the law provides that an appeal does not stay its enforcement.

#### **Enforceability of court settlement:**

A court settlement is enforceable if the claim in the settlement is due for payment. Maturity of the claim must be demonstrated in the settlement record, in a public document or a document certified in accordance with the law. If maturity cannot be demonstrated in this manner, it is demonstrated by a final decision issued in civil proceedings where the maturity of the claim is being established.

#### **Enforceable notarial record:**

A notarial record is enforceable if the debtor had agreed to its direct enforceability in the record and if the claim set out in the notarial record is due for payment. The maturity of the claim is demonstrated in a notarial record, a public document or a document certified in accordance with the law. Where the maturity of the claim does not depend on the expiry of a time limit, but rather on another fact stated in the notarial record, the notary is to notify the parties what is sufficient evidence to demonstrate that the claim is due: the creditor's written statement to the debtor that the claim is due, stating the date of maturity and evidence of service of the written statement regarding the maturity of the claim on the debtor. The notary is to notify the parties that they may authorise the notary to inform the debtor of the maturity of the claim instead of submitting evidence of service of a written statement regarding the maturity of the claim on the debtor. The creditor's written statement or the notary's notification are served by registered mail.

**The second condition** for a court to allow enforcement is **the filing of a request for enforcement**, which must contain information about the creditor and the debtor, including their respective identifying information, an enforceable title or an authentic document, the debtor's obligation, the method and object of enforcement, and other information necessary to conduct the enforcement (a request for enforcement based on an authentic document must also include a request that the court order the debtor to pay the claim, together with assessed costs, within eight days, or within three days in disputes concerning bills of exchange or cheques, from the date of service of the decision). In the request for enforcement, a creditor must clearly define the enforceable title on the basis of which the enforcement is sought and state that the declaration of enforceability was issued.

The claim must be due for payment and the time limit for the voluntary performance of the obligation must have passed (voluntary time limit).

The debtor must be clearly identified in the enforceable title or in the authentic document. In the request for enforcement, the debtor must also be identified by name and address (or established place of business). The request for enforcement must clearly state the debtor's (and the creditor's) identifying information, which differs depending on whether they are natural persons, legal entities, entrepreneurs or private individuals.

The debtor must be an existing entity (he cannot be deceased or struck off the court register). Where the request for enforcement is filed against a non-existing entity, it must be dismissed, and the entity ceasing to exist during enforcement proceedings is a reason for staying the proceedings by law (and it is not necessary to issue a special decision).

**Presumptions apply** (legal capacity) equally to the debtor and the creditor in enforcement proceedings, as they are set out in civil proceedings under the Civil Procedure Act (Zakon o pravdnem postopku), with reference to Article 15 of the ZIZ.



## 4 Object and nature of enforcement measures

The objective of enforcement measures is the payment of the creditor's claim.

**Enforcement measures for paying monetary claims are:** the sale of the debtor's movables, the sale of immovables, the transfer of the debtor's monetary claim, the redemption of other proprietary or material rights and book-entry securities, the sale of a company member's stake and the transfer of money kept at a payment institution (i.e. a bank).

**Enforcement measures for paying non-monetary claims are:** taking and delivering movables, emptying and taking immovables, substituting service at the debtor's expense, forcing a debtor to act through financial penalties, the return of a worker to work, the distribution of movables, declaration of will, and taking a child.

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

The above-listed enforcement measures allow enforcement against any object of enforcement (for any debtor's object, or proprietary or material right) unless an object is exempt from enforcement by law or the enforcement against an object is limited by law (Article 32 of the ZIZ).

**The subject of enforcement cannot include:**

objects which are not traded;

mineral resources and other natural resources;

facilities, devices and other objects essential to the State or a self-governing local community for performing their tasks, and movables and immovables used for national defence;

facilities, devices and other objects essential to the debtor for performing public service; and

other objects and rights stipulated by law (for example, money intended for supporting a child, strictly personal items, income from social assistance, parental benefit, child benefit, disability allowance, food, heating fuel, working and breeding animals, orders, medals, aids for a disabled person, agricultural land and farmers' facilities when needed for own support, etc.).

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

The main objective of all enforceable measures is the payment of the creditor's claim. The effects of enforcement measures depend on the type of enforcement measure used.

#### ENFORCEMENT FOR MONETARY CLAIMS

**Enforcement against movables** is conducted by seizing and selling the movable. The creditor obtains a lien on the seized objects.

**Enforcement against the debtor's cash receivables** is conducted by seizing and transferring the receivables. By the decision, in which the seizure of cash receivables is allowed (decision on seizure), the court prohibits the debtor to pay the debt to the debtor and the debtor to claim the receivables, including from the lien given as a security, or to dispose of the receivables in any other manner. Seizure takes effect on the day the decision on seizure is served on the debtor's debtor. By seizing the debtor's receivables, authorised by the court upon the creditor's request, the creditor obtains a lien on seized receivables.

**Enforcement against debtor's money kept at a payment institution:** By a decision on enforcement against money kept by the debtor with a payment organisation, the court orders the payment institution to freeze the debtor's money in all accounts, up to the amount payable under the decision on enforcement, and after the decision becomes final, to pay that amount to the creditor. The decision has the effect of seizure and transfer for recovery. When the decision on enforcement becomes final, the court informs the payment institution. The payment institution informs the court immediately after paying the creditor.

**Enforcement for a receivable that movables are taken or supplied or that immovables are taken** is conducted by seizing that receivable and transferring it to the creditor, followed by its sale. The transfer of the debtor's seized receivable has the effect of a transfer of the debtor's monetary receivable.

**Enforcement against other proprietary or material rights** is conducted by seizing that right and redeeming the movable. Seizure takes effect on the day the decision on seizure is served upon the debtor. In the decision of enforcement, by which the seizure is allowed, the court prohibits the debtor from disposing of the right. Upon seizure of the right, a creditor obtains a lien.

**Enforcement against book-entry securities:** Enforcement of book-entry securities traded on the stock exchange is conducted by seizure and sale of book-entry securities and by paying the creditor from the amount obtained from the sale. Seizure takes effect on the day the decision on seizure is registered in the central register of book-entry securities.

**Enforcement against a company member's stake** is conducted by registering a decision of enforcement, by selling the stake and paying the creditor the amount obtained from the sale. By the decision on enforcement, the court prohibits a member from disposing of its stake. The court serves the decision of enforcement on the company and registers it in the court register. By this registration, the creditor acquires a lien on the member's stake, having effect also against any person who subsequently acquires that stake.

**Enforcement against immovables** is conducted by registering a decision of enforcement in the land registry, by determining the value of the immovable, selling it, and paying the creditor from the amount obtained from the sale. The court registers the decision of enforcement against the immovable in the land registry. By this registration, the creditor acquires a lien on the immovable, having effect against any person who subsequently acquires proprietary right in it. A creditor who requests enforcement but has not yet acquired a lien or land debt, by registering the decision of enforcement, acquires the right of payment from the immovable before a person who later acquired a lien or a land debt.

#### ENFORCEMENT FOR NON-MONETARY CLAIMS

**The process of delivering and supplying movables** is conducted by an enforcement agent taking the object from the debtor and giving it to the creditor against a receipt.

**The process of emptying and taking of an immovable** is conducted by an enforcement agent taking the immovable for the creditor's possession after it is cleared of people and objects. The emptying and taking of the immovable is permitted eight days after the decision of enforcement is served on the debtor.

**The process of the obligation to do, to permit or to cease doing** something may be conducted in cooperation with an enforcement agent by the method determined by the court. On the basis of an enforceable title, under which the debtor must do something which can be performed by someone else, enforcement takes place by the court authorising the creditor to entrust the task to someone else at the debtor's expense or to perform it him or herself (**substitute service at the debtor's expense**). When the debtor must do something under the enforceable title which cannot be done by anyone else, the court stipulates a suitable time limit for performing this obligation in the decision of enforcement, and issues a fine if the debtor does not perform the obligation within the time limit (**forcing a debtor through a fine**).

**The return of worker to work process** is conducted by the court stipulating a suitable time limit for performing the obligations in the decision of enforcement. In the decision on enforcement, the court also issues a fine if the debtor does not perform the obligation within the time limit.

**The distribution of object process** may take place by the actual physical distribution when such a distribution is determined by enforceable title or through a sale of the object;

**The declaration of will process:** This is an obligation to give a land-registry or another type of declaration of will, as stipulated in the decision which is an enforceable title, is regarded as being performed once that decision is final.

**The process of enforcement in cases regarding custody or upbringing of children and personal contacts with children** is conducted so that the court stipulates in the decision of enforcement that a person must hand over a child. The court sets a time limit within which the child must be handed over or decides that the child must be handed over immediately. By the decision of enforcement, the obligation to hand over a child is ordered upon the person to whom the enforceable title refers, upon the person on whose will the handing-over of the child depends and upon the person who is with the child at the time the decision is issued. In the decision of enforcement, the court orders that the obligation to hand over the child takes effect against anyone with whom the child is at the time the enforcement is executed.

An enforcement court may issue a fine against a debtor who acts contrary to the court's decision, such as by hiding, damaging or destroying their property, committing acts that could cause the creditor irreparable damage or damage that is difficult to repair, hinders an enforcement agent in the performance of their enforcement or security measures, acts contrary to a decision on security, hinders an expert in their work or a payment institution, hinders an employer or another executor of the decision of enforcement in conducting the enforcement, or hinders or prohibits the inspection and evaluation of immovables. Where the debtor acts contrary to the decision of enforcement and disposes of their property, such a transaction is valid only if the legal act was for valuable consideration and if the other party acted in good faith (i.e. did not know or could not have known that the debtor did not have the right to dispose of their property) at the time of the transfer or encumbrance.

A debtor who destroys, damages, transfers or hides part of their property with the intention of preventing a payment to a creditor, and by doing so harms the creditor, is criminally liable and will be fined or receive a prison sentence of up to one year.

A bank must, upon the court's request, provide an explanation and documentation demonstrating whether and how it executed a court's decision of enforcement and how it applied the order of repaying claims as mandated by law. The bank must also send information on the debtor's bank accounts to creditors and the court. On the basis of a decision of enforcement, a bank must freeze the debtor's money held at the bank in the amount set out in the decision of enforcement and then pay this amount to the creditor.

Upon the creditor's request, a court may order a bank, which contrary to the court's decision did not execute seizure, transfer or pay the amount due, to pay this amount to the creditor instead of the debtor from the bank's own assets. In such a case, the bank is responsible to the creditor for damage caused by not acting in accordance with the decision of enforcement or for breaching the statutory provisions on the obligation to disclose information, on respecting the sequence order of payment, on the amount and the manner of paying the obligation under the decision of enforcement.

On the basis of a decision of enforcement, the debtor's employer must pay the creditor a lump sum of money or regularly pay the creditor the sums of money to which the debtor would otherwise be entitled as salary. Nevertheless, the debtor must receive no less than 76 % of the minimum salary per month. Upon the creditor's request, the court may order the employer, which contrary to the court's decision did not withhold and pay amounts due, to pay such amounts to the creditor instead of the debtor from the employer's own assets. In such a case, the employer is responsible to the creditor for damage caused by not acting in accordance with the decision of enforcement.

A debtor's debtor must declare if they recognise a receivable seized and in which amount, and if their obligation for paying the debtor's receivable is conditional on the performance of any other obligation. If they do not make a declaration or do not declare the truth, they are responsible to the creditor for the damage.

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

The time validity of a particular measure of an enforcement court depends on the nature of the measure. Enforcement proceedings (and the effects of a decision allowing enforcement) are generally resolved when the creditor's claim is satisfied. If enforcement is not feasible for legal or factual reasons, it must be resolved by staying the enforcement, which has the effect of annulling all enforcement measures except when doing so would interfere with the rights that third parties had acquired (for example, the rights of buyers to seized movables). The creditor may request that enforcement be deferred for a maximum of one year and if so, the decision allowing enforcement remains in force even when the debtor does not have any property at the time of the issuing of the decision (i.e. the existence of factual hurdles preventing the realisation of the creditor's claim).

Where there is no money available, in the case of enforcement against the debtor's receivables from the debtor's bank accounts, or the debtor cannot access the money, the bank must keep the decision of enforcement in its records for one year and pay the creditor when the money is available in the debtor's account or when the debtor obtains the right to dispose of the money. Until then, the enforcement may not be stayed.

When, during the seizure of movables, an enforcement agent finds no assets that could be the subject of enforcement, or the assets seized are inadequate to pay the creditor's claim, or the enforcement agent cannot execute the seizure because the debtor is not present or does not provide access to the premises, the creditor may, within three months of the first attempted seizure, request that the enforcement agent attempt the seizure again. Until then, the enforcement may not be stayed.

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

The debtor, the creditor, any third party with a right to the object of enforcement which prevents the enforcement, and any buyer of an object purchased in the proceedings, all have a right to file legal remedies against the decisions of the enforcement court.

The typical legal remedy against a decision of first instance is an appeal. Exceptionally, an objection may be filed against a decision of enforcement by the debtor or a third party with a right to the object of enforcement which prevents the enforcement. An objection must be justified. In the objection, the debtor or the third party must state all the facts and submit evidence on the basis of which the objection should be justified (debtor's objection). The creditor has the right to reply to the objection within eight days. A decision on the objection can be appealed.

Anyone who demonstrates that they likely have a right to the object of enforcement which prevents enforcement may lodge an objection against the decision of enforcement and request that the court declare that the enforcement against that object is not permitted (third party objection). The objection may be filed until the end of the enforcement proceedings. Where the creditor does not reply to the objection within the time limit or declares that they do not oppose the objection, the court will stay the enforcement in full or in part. Where the creditor does declare that they oppose the objection within the time limit, the court will refuse the objection. The party that had filed the objection may initiate a lawsuit within 30 days after the decision dismissing an objection due to an objection by the creditor or because it was deemed unfounded becomes final to establish whether the enforcement is allowed on the object.

An appeal and an objection may be filed with the court that issued the decision against which legal remedy is sought. As a general rule, the same court that issued the decision of enforcement decides on an objection, and the court of second instance decides on an appeal. A decision on the appeal is final.

An objection and an appeal must be filed within eight days from the service of the decision of the court of first instance. Exceptionally, an objection may be lodged after this time limit, until the end of enforcement proceedings, when the objection is based on a fact concerning the actual claim and this fact arose after enforceability of the decision and it was not possible to assert it within the initial time limit.

An objection and an appeal do not stay the execution of enforcement measures in enforcement proceedings except for the payment phase. As a general rule, the creditor cannot be paid until the decision of enforcement is final. The creditor may be paid before the decision on enforcement becomes final only in a case of enforcement based on an enforceable title when enforcement is for the debtor's money kept at a payment institution (enforcement based on

enforceable title), provided that the enforceable title is attached to the request for enforcement, except in commercial matters where the enforceable title need not be attached.

In enforcement proceedings, exceptional legal remedies are limited. An appeal against a second-instance decision denying or rejecting a request for enforcement is permitted under the conditions laid down by the law governing civil proceedings. Revision is not permitted unless otherwise provided by law.

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

Enforcement for monetary claims and for securing such claims is not permissible on objects and rights which are essential to meet the basic living necessities of the debtor and of persons the debtor is by law obliged to support, or which are essential to the debtor's pursuit of their professional activity. On some of such objects and rights, enforcement is allowed only to a limited extent.

#### **Related links**

<http://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/preciscenaBesedilaZakonov>

[http://www.mp.gov.si/si/obrazci\\_evidence\\_mnenja\\_storitve/uporabni\\_seznam\\_imeniki\\_in\\_evidence/](http://www.mp.gov.si/si/obrazci_evidence_mnenja_storitve/uporabni_seznam_imeniki_in_evidence/)

<http://www.sodisce.si/>

<https://www.uradni-list.si/glasilo-uradni-list-rs>

<http://pisrs.si/>

Last update: 03/07/2019

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

### **Procedures for enforcing a judgment - Slovakia**

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

Under Section 232(1) of Act No 160/2015, the Contentious Civil Procedure Code (*Civilný sporový poriadok*), enforceability is an attribute of a court decision establishing an obligation to comply with the decision; it consists in the option of the decision's direct and immediate enforceability by legal means. With the exception of cases involving minors, the enforcement of decisions in civil and commercial matters is governed by Act No 233/1995 on enforcement agents and enforcement proceedings, amending certain laws, as amended (the Enforcement Code) (*Exekučný poriadok*), under which only a decision that has the attribute of enforceability is an enforceable title. The Enforcement Code defines an enforceable court decision as an enforceable title if it grants a right, establishes an obligation or affects assets. Section 45 of the Enforcement Code also defines other enforceable titles on whose basis enforcement may be conducted, including enforceable titles from other countries and notarial deeds.

The enforcement of decisions in cases involving minors is governed by different legal rules and does not come under the Enforcement Code. It is covered by Section 370 et seq. of Act No 161/2015, the Non-Contentious Civil Procedure Code (*Civilný mimosporový poriadok*). This legislation applies to the enforcement of decisions:

- on the custody of a minor, visiting rights, or obligations regarding the minor other than pecuniary obligations;
- on the return of a minor abroad in the event of wrongful removal or retention;
- if any specific legislation or an international treaty to which the Slovak Republic is bound entails the enforceability of an agreement or an authentic instrument governing custody of a minor, visiting rights, or obligations regarding the minor other than pecuniary obligations.

The following account will therefore distinguish between enforcement under the Enforcement Code and enforcement under the Non-Contentious Civil Procedure Code.

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

##### **Enforcement under the Enforcement Code**

Enforcement is conducted by an enforcement agent, who is a person appointed and authorised by the state to carry out enforcement proceedings; such proceedings constitute the exercise of public power. Enforcement is conducted by an enforcement agent authorised by a court: the court assigns cases by issuing authorisation for enforcement to individual enforcement agents selected at random using technology and software approved by the Ministry so as to preclude the possibility of influencing the assigning of cases. Enforcement agents are listed on the website <http://www.ske.sk/>. Banská Bystrica District Court (*Okresný súd Banská Bystrica*) is competent for enforcement proceedings, i.e. petitions for enforcement must be directed to this court alone, regardless of the place of abode/permanent residence of the obligee or the obligor (i.e. the creditor or the debtor). Essentially, however, the court will allocate a case to an enforcement agent appointed for the regional court in whose jurisdiction the obligor's address is.

##### **Enforcement under the Non-Contentious Civil Procedure Code**

The enforcement of a decision in a case involving a minor may only be conducted by a court; the court with territorial jurisdiction is essentially the court in whose jurisdiction the minor has place of abode, as agreed by the parents or in another lawful way. If the court with territorial jurisdiction is not known, or cannot intervene in good time, the court in whose jurisdiction the minor currently resides will order and carry out enforcement. The court having territorial jurisdiction for the enforcement of an urgent measure is the court that ordered the measure; if an urgent measure is ordered by an appeal court, the court of first instance has territorial jurisdiction. The court with territorial jurisdiction for the enforcement of a decision on the return of a minor abroad in the event of wrongful removal or retention is the court of first instance.

The decision is therefore enforced by the judge himself, but the judge may authorise a judicial official to arrange for the removal of the minor. When enforcing the decision, the authorised judicial official has by law the same authority as the judge.

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

##### **3.1 The procedure**

##### **The procedure under the Enforcement Code**

Under Section 48 of the Enforcement Code the obligee (i.e. the obligee from an enforceable title; the entity to whom an enforceable decision awards a claim for payment) lodges a petition for enforcement if the obligor does not voluntarily comply with the enforceable decision. Enforcement proceedings are therefore initiated in response to a petition from the party who is entitled to request payment of the claim from the enforceable title.

As stated above, a petition for enforcement is lodged with Banská Bystrica District Court electronically, i.e. it is sent to the court's electronic mailbox on the specified electronic form, which is available from the Ministry's website. The petition must be authorised; if not, it is disregarded. If the obligee or his representative does not have an activated electronic mailbox, a petition for enforcement may be lodged via any enforcement agent. In this case the enforcement agent is an authorised representative of the obligee for service until authorisation for enforcement is issued, and in return for this the enforcement agent is entitled to a remuneration and the reimbursement of costs; the amount of the costs and how they are calculated is set out by the Ministry in an act of general application. A petition for enforcement must state the following particulars:

- (a) the court to which it is addressed;

- (b) the obligee and the obligor, if the latter is a party in the proceedings;
- (c) the obligee's representative, and if the petition is lodged by several obligees, the obligees' common representative (this refers to the obligation to appoint a common representative);
- (d) the enforcement agent, if the petition for enforcement is lodged via an enforcement agent;
- (e) the enforceable title on whose basis enforcement may be conducted, and which establishes the authorisation to lodge a petition for enforcement against the obligor; if this concerns legal succession, there must be an account of the facts establishing legal succession;
- (f) an account of the key facts and an indication of the evidence concerning the relationship with the obligor, if enforcement is to be conducted on the basis of an enforceable title that has awarded the claim from a bill or promissory note against the obligor, who is a natural person; this also applies if the authorisation to lodge a petition for enforcement has been established by means of a continuous series of endorsements;
- (g) the claim; if this is a claim for payment it should be divided into principal, recurrent incidentals, capitalised incidentals, the contractual penalty and the obligee's enforcement costs;
- (h) the obligee's bank account to which enforced payment should be remitted;
- (i) the obligee's email address for electronic communications with the enforcement agent, if the obligee does not have an activated electronic mailbox;
- (j) a declaration by the obligee on the satisfying of a condition or reciprocal obligation if what the enforceable title orders the obligor to do is tied to the satisfying of a condition or reciprocal obligation, and an indication of the evidence;
- (k) a declaration by the obligee that the obligation under the enforceable title has not been voluntarily discharged; if part of the obligation has not been discharged, this part must be declared on the day of lodging the petition for enforcement;
- (l) the date of lodging the petition.

The following must be enclosed with the petition for enforcement:

- (a) a duplicate of the enforceable title and confirmation of its enforceability, if required; any payment order issued in claim proceedings need not be enclosed;
- (b) a document establishing legal succession; if legal succession is established by law or the Business Register (*Obchodný register*) it is sufficient to refer to them;
- (c) a document from which it is evident that a condition or reciprocal obligation has been satisfied, if required by the enforceable title;
- (d) a consumer contract and all other contractual documents related to the consumer contract, including documents to which the consumer contract refers, if this concerns enforcement on the basis of an enforceable title awarding a claim from a consumer contract; this does not apply if the enforceable title is a payment order issued in claim proceedings.

If enforcement is petitioned on the basis of an enforceable title from another country, the obligee must also enclose documents in line with the type of enforceable title (Section 48(5) of the Enforcement Code).

On receiving a petition for enforcement, the court reviews it and, if it satisfies the statutory requirements, issues authorisation and serves it on an enforcement agent who will arrange for enforcement.

#### **The procedure under the Non-Contentious Civil Procedure Code**

The parties in proceedings on the enforcement of a decision are the minor, and the obligee and obligor under the enforceable title. If the obligor does not voluntarily comply with the enforceable title, the obligee may lodge a petition for the enforcement of the decision; however, under the Non-Contentious Civil Procedure Code the court may initiate proceedings on its own motion. The decision may be enforced once an order on its enforcement has been issued, and enforcement may proceed without the order being served on the parties. In enforcing the decision the court removes the minor from the person with whom the minor should not be according to the decision, and arranges for the minor to be surrendered to the person to whom the decision entrusts the minor, or the person to whom the decision grants a right to have contact with the minor for a limited period of time, or a person authorised to receive a minor who has been wrongfully removed or retained.

#### **3.2 The main conditions**

##### **Enforcement proceedings under the Enforcement Code**

The conditions for enforcement proceedings under the Enforcement Code are the existence of an enforceable title, the lodging of a petition for enforcement, and the payment of a court fee (EUR 16.50). The court fee is due on the lodging of the petition, and it may only be paid by postal transfer or bank transfer. The billing data for paying this fee are communicated automatically. The court does not call for the payment of the fee; if it is not paid within 15 days after lodging the petition, the petition is disregarded; this does not apply if the obligee is exempt from court fees, and the court will inform the obligee of this fact. After the enforcement of an entitlement to performance other than the payment of a sum of money has commenced, the obligee's enforcement agent may request that an advance be paid towards the costs of the proceedings; this does not apply if the obligee is exempt from court fees. If the obligee does not pay this advance at the enforcement agent's request within the time limit specified by the agent, which must be no less than 15 days, the enforcement agent will issue notification of the suspension of enforcement.

Under the Enforcement Code an enforceable title is an enforceable court decision if it grants a right, establishes an obligation or affects assets. An enforceable title may also be:

- (a) a decision by an institution, body, office or agency of the European Union;
- (b) an enforceable title from another country that is enforceable in Slovakia;
- (c) a notarial deed containing a legal obligation and specifying the obligee and obligor, the legal grounds, the subject and the timing of performance, if the obligor in the notarial deed has consented to enforceability;
- (d) an enforceable decision issued in arbitration proceedings, including the conciliation approved therein;
- (e) a decision on inheritance;
- (f) an enforceable decision by a public administration or regional self-government body, including a notice for a penalty that was not paid on the spot;
- (g) a payment assessment, statement of arrears for taxes and fees, and conciliation approved by the appropriate body;
- (h) an enforceable decision and statement of arrears for social security, social insurance, the old age pension scheme and public health insurance;
- (i) another enforceable decision, statement of arrears or approved conciliation that is enforceable by law;
- (j) a document issued under legislation in force in another EU Member State, if this concerns the recovery of a receivable as specified in the relevant legislation;
- (k) notification of the suspension of enforcement and a call for the payment of the costs of enforcement;
- (l) an enforceable title specified in the relevant legislation.

##### **Enforcement proceedings under the Non-Contentious Civil Procedure Code**

The only condition for the enforcement of a decision is the enforceable title itself, as the court may initiate proceedings on its own motion; the court may order the enforcement of the decision on its own motion, and the procedure to enforce an urgent measure is always ordered on the court's own motion. The obligee does not pay any court fee for the petition, as these proceedings are exempt from court fees.

## 4 Object and nature of enforcement measures

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

#### Assets subject to enforcement under the Enforcement Code

If the basis for enforcement is an enforceable title establishing an obligation to pay a sum of money, enforcement may be conducted by means of:

- (a) attachment of earnings;
- (b) ordering payment;
- (c) selling movable property;
- (d) selling securities;
- (e) selling real estate;
- (f) selling an undertaking;
- (g) an order to suspend a driving licence.

If this concerns enforcement to recover a receivable which, without the incidentals, on the day of serving the petition for enforcement is not in excess of EUR 2 000 ("low-value enforcement"), enforcement cannot be conducted by selling the real estate in which the obligor has permanent or temporary residence; this is without prejudice to the right to place a lien on the real estate. Enforcement to recover a receivable for maintenance is not considered low-value enforcement.

Enforcement by means of selling the real estate in which the obligor has permanent or temporary residence may only be conducted with the court's approval if there are several enforcement proceedings against the obligor to recover receivables that are in total in excess of EUR 2 000 and the enforcement agent can prove that the receivable cannot be recovered in any other way. A petition for the approval of the sale of the real estate referred to in the previous sentence may be lodged by the enforcement agent who placed a lien on the real estate as the first in line, and also, with this agent's written consent, by an enforcement agent whose lien was placed at a later date.

If the basis for enforcement is an enforceable title that imposes an obligation other than the payment of a sum of money, the enforcement method is governed by the nature of the obligation. It may be conducted by means of:

- (a) vacating;
- (b) confiscating or destroying items at the obligor's expense;
- (c) dividing up a shared item;
- (d) rendering work and services.

Enforcement proceedings may not affect assets or rights that under the Enforcement Code or specific legislation are not subject to enforcement, or are excluded from enforcement, or are inadmissible for enforcement. Enforcement may therefore only be conducted on lien if the obligee is the lien creditor, or if the lien creditor consents to enforcement. Enforcement may only be conducted within the scope of the claim listed in the authorisation for enforcement and the enforcement costs; this does not apply if enforcement is conducted by selling movable property that cannot be divided, or by selling real estate when the obligor does not have sufficient alternative assets from which the claim could be satisfied.

The following are not subject to enforcement:

- (a) real estate owned by the state and under the administration of an administrator according to specific legislation, other than real estate under temporary administration according to specific legislation;
- (b) state budget revenues, money on the current account of a stated-funded organisation and receivables from the legal relations establishing such revenues;
- (c) securities owned by the state, and the state's equity in legal persons;
- (d) money intended to cover the state budget deficit and the national debt;
- (e) other assets of the state, as provided for by specific legislation.

Other state assets and the assets of the Export-Import Bank of the Slovak Republic (*Exportnoimportná banka Slovenskej republiky*) are not subject to enforcement if they have been excluded from enforcement on the grounds that they are essential for the performance of the state's work, or for a public benefit purpose, or that the Export-Import Bank's assets are essential for its work. In such cases a petition to exclude items from enforcement may be lodged within 60 days following the service of notification of the initiation of enforcement. Enforcement proceedings on such state assets may only be conducted on state assets under the administration of an administrator of state assets, from whose activity the obligee's claim has been established.

#### The enforcement of a decision under the Non-Contentious Civil Procedure Code

The court removes the minor from the person with whom the minor should not be according to the decision, and arranges for the minor to be surrendered to the person to whom the decision entrusts the minor, or the person to whom the decision grants a right to have contact with the minor for a limited period of time, or a person authorised to receive a minor who has been wrongfully removed or retained. The judge may authorise a judicial official to arrange for the removal of the minor. When enforcing the decision, the authorised judicial official has by law the same authority as the judge.

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

When enforcement is initiated, the enforcement agent notifies the obligee and the obligor of its initiation and how it will be conducted, if this can be determined (before the issuing of an enforcement order), and calls on the obligor to satisfy the claim. The notification of the initiation of enforcement includes the costs in the event of the satisfaction of the obligation within 15 days following the service of this notification, as well as the costs after the elapse of 15 days following the service of this notification if the obligor has not satisfied the obligation within this time limit.

#### Effects of notification of the initiation of enforcement

##### Routine legal acts

Following the service of notification of the initiation of enforcement, the obligor must confine himself to routine legal acts within the scope in which they can be reasonably required of him in view of the amount and significance of the claim. For a legal person or sole trader, routine legal acts are legal acts that are essential to the performing of the activities that are the subject of their work or business. For other natural persons, routine legal acts are legal acts that are essential for ensuring their ordinary needs are met, and also the needs of those for whom the natural person is obliged to pay maintenance.

In particular, the following are not considered routine legal acts:

- (a) setting up a business, cooperative or other legal entity;
- (b) acquiring or transferring equity in a business, cooperative or other legal entity;
- (c) transferring or leasing real estate, or encumbering it with a third-party right;
- (d) conducting a legal act without adequate remuneration.

##### Disposal of assets subject to enforcement

Following the service of notification of the initiation of enforcement, it is not possible to dispose of assets subject to enforcement without the prior written consent of the enforcement agent, with the exception of routine legal acts. The disposal of assets in defiance of this prohibition does not affect the validity of a legal act, but such legal act is without effect for the obligee, and the obligee's claim may be satisfied in enforcement from what has been lost, and without

having to contest the legal act if it concerns the disposal of assets for the benefit of persons listed in Section 42a(3) and (4) of the Civil Code (*Občiansky zákonník*) who knew of the enforcement proceedings or must have known if they took all due care.

#### **Set-off of claims**

After enforcement has been initiated, the unilateral set-off of the obligor's claim against the obligee is disregarded, unless it is allowed by an enforceable title on the basis of which the obligor could conduct enforcement.

#### **Effects of satisfying a claim**

Following the service of notification of the initiation of enforcement proceedings, the effects of satisfying the claim only arise if the enforcement agent receives payment in the amount due. If payment is made towards the claim before the serving of notification of the initiation of enforcement proceedings, the obligee must inform the enforcement agent of such payment without undue delay.

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

The validity of these measures is not subject to any time limit.

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

##### **Suspension of enforcement and discontinuation of enforcement under the Enforcement Code**

The obligor may suspend enforcement by requesting the enforcement agent for a stay of enforcement (the agent then issues notification of the stay of enforcement), due to the following reasons on the obligor's part in particular:

- (a) a special action (*vylučovacia žaloba*) has been lodged, or proceedings are underway to determine ownership, if this concerns the assets subject to enforcement;
- (b) the obligor, who is a natural person, has made an application for instalments to be permitted, and it has been taken into consideration;
- (c) the obligor, who is a natural person, has made an application for a stay of enforcement and has declared that through no fault of his own he is temporarily in a situation where immediate enforcement could have especially severe consequences for him or members of his family;
- (d) in enforcement to recover maintenance, the obligor has paid the maintenance owing, including the obligee's and the enforcement agent's costs, has made an application for a stay of enforcement and has declared that he will voluntarily continue to pay regular maintenance via the enforcement agent;
- (e) the obligor, who has lodged a petition for the discontinuation of enforcement, has remitted security equal to the value of the claim to a special account that the enforcement agent has opened to this end.

The obligor may also request the court for a discontinuation of enforcement, for the following reasons:

- (a) circumstances since the inception of the enforceable title have resulted in the extinction of the claim;
- (b) the enforceable title has been revoked;
- (c) under specific legislation there are grounds for which the recognition or enforcement of an enforceable title from another country is inadmissible, unless the title could have been applied earlier in the proceedings;
- (d) there are other factors obstructing the enforcement of the enforceable title.

The obligor may lodge a petition having a suspensive effect with the enforcement agent only within 15 days following the serving of notification of the initiation of enforcement. In petitions for the suspension of enforcement lodged later (which do not have a suspensive effect) the obligor may only invoke factors that have arisen since that period expired. In further petitions for the suspension of enforcement, the obligor may only invoke factors that have arisen since the previous petition for the suspension of enforcement was lodged. The limitations defined in the first two sentences do not apply if there are also factors that the obligor was unable to apply earlier through no fault of his own. If the obligee consents to the discontinuation of enforcement, the enforcement agent issues notification of the discontinuation of enforcement, which is served on the parties to the proceedings and the court; otherwise within five working days following the deadline for responding, the obligee's enforcement agent lodges a petition for the discontinuation of enforcement, together with the agent's statement and any statement by the obligee, with the court that will decide on the petition.

In principle no "appeals" may be lodged against subsequent decisions by the enforcement agent and the court in enforcement proceedings, other than the lawful exemptions under the Enforcement Code.

##### **Enforcement of a decision under the Non-Contentious Civil Procedure Code**

Appeal is admissible against an order for the enforcement of a decision, and against an order rejecting a petition for the enforcement of a decision. An appeal against an order for the enforcement of a decision may only be on the grounds that the enforceable title is not enforceable, or that circumstances arising since the inception of the enforceable title have resulted in the extinction of the obligation. An appeal against an order for the enforcement of a decision is not an obstacle to the court of first instance enforcing the decision.

A court may postpone the enforcement of a decision on its own motion if the minor's life, health or development is seriously jeopardised by the enforcement of the decision. In response to a petition a court may postpone the enforcement of a decision from another country if it is contested in the country in which it was issued, until such time as a decision is taken on the appeal. A court will also postpone the enforcement of a decision if required by specific legislation.

A court will also discontinue proceedings to enforce a decision on its own motion if:

- (a) the enforceable title has not yet become enforceable;
- (b) the enforceable title has been revoked since the enforcement of the decision was ordered; if the enforceable title has been amended, the court may continue enforcing the decision according to the amended enforceable title;
- (c) the court has declared the enforcement of the decision inadmissible as there is another reason why the decision cannot be enforced;
- (d) circumstances arising since the inception of the enforceable title have resulted in the extinction of the obligation;
- (e) the obligation has been discharged;
- (f) the decision has been enforced.

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

See points 4 and 5. The enforcement agent is responsible for deciding on an enforcement method that is commensurate with the obligation enforced, and where the value of the obligor's assets attached corresponds to the value of the obligation. Enforcement may only be conducted within the scope of the claim listed in the authorisation for enforcement and the enforcement costs; this does not apply if enforcement is conducted by selling movable property that cannot be divided, or by selling real estate when the obligor does not have sufficient alternative assets from which the claim could be satisfied.

A court must also reject a petition for enforcement if:

- (a) the petition or the enforceable title is in violation of the Enforcement Code;
- (b) there are reasons for which enforcement would have to be discontinued;
- (c) either the obligee or the obligor is not the legal successor to the person listed in the enforceable title;



(d) enforcement is proposed on the basis of an enforceable title issued in proceedings in which there was a claim from a bill or promissory note and it has emerged that the claim arose in connection with a consumer contract where no account was taken of the unacceptable contractual conditions, or the restriction on or inadmissibility of using a bill or promissory note, or the fact that the contract violated the accepted principles of morality, and this has an influence on the claim;

(e) the enforceable title was issued in proceedings in which it was not possible to challenge or review any unacceptable contractual conditions, and the existence of an unacceptable condition has an influence on the enforced claim that arose in connection with a consumer contract;

(f) enforcement is to be conducted on the basis of an arbitration award issued in a consumer dispute, and:

1. the consumer arbitration agreement does not satisfy the conditions set out in specific legislation;
2. the arbitration award in the consumer dispute was not issued by an arbitrator who at the time of the arbitration proceedings was registered in the list of arbitrators authorised to decide consumer disputes;
3. the arbitration award in the consumer dispute was not issued by an established arbitration court which at the time of the arbitration proceedings was licensed to decide consumer disputes;
4. the arbitration award does not satisfy the particulars set out in specific legislation, or is unenforceable;

(g) the petition includes a claim for recurrent incidentals and has been lodged more than three years after the enforceable title became enforceable and without the obligor having been requested to pay the debt in the last three months before the lodging of the petition for enforcement, or without an agreement having been concluded with the obligor on the gradual payment of the receivable awarded by the enforceable title in the course of the three years since the enforceable title became enforceable;

(h) enforcement is proposed on the basis of an enforceable title which is a notarial deed that does not satisfy statutory requirements, or the obligation contained therein is in violation of the law or the accepted principles of morality.

In the course of enforcement the court is entitled to ask the enforcement agent for explanations or reports on the progress of each enforcement case assigned to the agent, and the agent is obliged to provide these for the court within the stated time limit. The court may also replace the agent on its own motion if the agent is in repeated or grave violation of an obligation set out in the Enforcement Code or the court's decision. Before deciding to replace the agent, the court will take into account statements by the parties in the proceedings and the enforcement agent.

Where enforcement is conducted by attachment of earnings, a basic amount may not be deducted from the obligor's monthly wage or other income; the Government defines the methods for calculating this basic amount in a regulation. If this concerns maintenance for a minor child, the basic amount that cannot be deducted from the obligor's monthly wage is 70 % of the basic amount as defined by the first sentence. If this concerns a person who works abroad and whose wage or salary is calculated for this purpose using a salary coefficient or an analogous method, the method for calculating the basic amount is defined in the same way and in the same ratio as this wage or salary.

Funds in a bank account up to EUR 165 and funds that the obligor explicitly declares are intended to pay the wages of his employees are not subject to enforcement by means of ordering payment from the bank account. If the obligor has several accounts, funds up to EUR 165 on just one bank account are not subject to enforcement.

Of the items owned by the obligor, enforcement cannot apply to those the obligor needs to satisfy his own and his family's material needs, or for his work or enterprise, and nor can it apply to items whose sale would violate the accepted principles of morality.

The following are excluded from enforcement proceedings:

- (a) ordinary items of clothing, underwear and footwear;
- (b) essential household equipment, namely the beds of the obligor and members of his family, a table, chairs according to how many family members there are, a refrigerator, a cooker, a hotplate, a heater, fuel, a washing machine, duvets and bed linen, standard kitchen utensils, a radio;
- (c) domestic animals, other than those serving for enterprise;
- (d) items belonging to the obligor that serve for his work or enterprise, up to the amount of EUR 331.94;
- (e) medical supplies and other items the obligor needs in view of sickness or physical disability;
- (f) items for which benefits in material need and benefit allowances have been provided under specific legislation; financial contributions provided under specific legislation as compensation for a serious disability, and child protection measures of a financial nature provided under specific legislation;
- (g) a motor vehicle which the obligor, who is a natural person, needs for private transport and to satisfy the needs of a natural person with a serious disability and the needs of his family or members of his household;
- (h) engagement and wedding rings;
- (i) cash up to EUR 165;
- (j) textbooks and toys.

Also excluded from enforcement proceedings are items belonging to a sole trader farming land if their loss would jeopardise the farming of agricultural land or the continuous operation of plant and animal production under specific legislation, and breeding animals, i.e. dairy cows, heifers, pedigree bulls, pedigree sows, pedigree boars, ewes and pedigree rams.

Excluded from enforcement proceedings are the saver's holding of the assets in a pension fund, and the participant's holding of the assets in a supplementary pension fund, corresponding to the amount of the employer's contributions paid for this participant and the revenues from their investments.

In force with effect from **1 April 2017**

Last update: 18/02/2019

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

## **Procedures for enforcing a judgment - Finland**

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

Enforcement refers to compulsory enforcement of an obligation as ordered by a court or other authority. In most instances, this is the enforcement of judgment debts. A further key enforcement measure is eviction, i.e. the obligation to move out of a building or part of it. The basis for an enforcement can also be an obligation to transfer certain assets to another party, obligations to do something, and injunctions against doing something. These kinds of obligations and injunctions are enforced by means of coercive measures or penalty payments, depending on the circumstances. Court-ordered seizures or other precautionary measures can also be enforced. In Finland, enforced recovery of debts falls within the scope of the enforcement authority, which is a state authority. Enforcement is an independent legal activity and local enforcement authorities are independent and impartial in their decision making.

### **Enforcement in matters pertaining to legislation regarding children**

In matters pertaining to legislation regarding children, enforcement refers to the implementation of court orders, such as handing over a child. An agreement confirmed by social services may also serve as the basis for enforcement. Another important detail is that in Finland, visitation rights are the rights of the child, not of the parent. Enforcement of a court decision concerning custody and/or visitation rights of a child is subject to the Act on the implementation of decisions on child custody and right of access (*Laki lapsen huoltoja tapaamisoikeutta koskevan päätöksen täytäntöönpanosta*) (619/1996). This Act is also applicable to enforcement of any temporary orders. Enforcement is also carried out in accordance with this Act in instances where a judgment or decision issued abroad is enforceable in Finland under Council Regulation (EC) No 2201/2003.

A bailiff may enforce an order concerning custody if the decision on the matter was issued within the last three months. In other situations, an enforcement order must be applied for from a court. A court may only reject an application concerning enforcement if the enforcement would go against the child's best interests. In the enforcement of orders concerning custody, the court obliges the other party to hand over the child to the claimant or face a penalty fine. An order may be issued for the child to be collected. In the enforcement of orders concerning visitation, the other party is obliged to permit visits and to commence other measures ordered in order to realise the visits.

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

In Finland, local enforcement authorities are responsible for enforcement. The competent local enforcement authority is determined based on the place of residence of the debtor. If no detailed information on their place of residence in Finland is available, the enforcement application may be submitted to any local enforcement authority, for example, Helsinki Enforcement Authority (*Helsingin ulosottovirasto*). Although applications are made to local enforcement authorities, their jurisdiction covers the entire country.

The contact details of local enforcement authorities can be found here: <https://oikeus.fi/ulosotto/fi/index/yhteystiedot.html>

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

### 3.1 The procedure

Enforcement requires the creditor to apply for enforcement in writing by filling in an enforcement application and providing the grounds for enforcement. There is no enforcement fee to be paid by the creditor in advance. (The enforcement application is available on the website of the Judicial Administration, [oikeus.fi](https://oikeus.fi))

<https://oikeus.fi/fi/index/lomakkeet/ulosottoasiat.html>

Bailiffs have a duty to enforce courts' judgments or other grounds for enforcement laid down in legislation and cannot question their content. In order for enforcement proceedings to commence, the creditor must have grounds for enforcement as specified in legislation, with an obligation imposed on the debtor. Bailiffs must check that the debt has not ceased to exist since the court's judgment was given, due to payment or the expiry of a statute of limitations. The right to be paid of holders of collateral rights (e.g. a mortgage) is covered by a separate provision.

### 3.2 The main conditions

In civil and commercial matters, enforcement is usually based on a judgment or ruling of a general court of law. There is no need for a specific enforcement order. General courts of law include district courts (*käräjäoikeus*) as courts of first instance and Courts of Appeal (*hovioikeus*) and the Supreme Court (*korkein oikeus*) as appellate courts. An arbitral award can also provide grounds for enforcement. In practice, one of the most important grounds for enforcement is a maintenance order confirmed by a municipal authority. On the other hand, Finland does not recognise contracts between private parties as grounds for enforcement.

Judgments that have been appealed may be enforced, if the creditor provides the security specified by the bailiff for any damage that may befall the debtor. However, the funds may not be paid to the creditor until both the grounds for enforcement and any distraint and garnishment decision are final.

The key provisions on the enforceability of judgments issued outside of Finland can be found in EU law (e.g. the Brussels I Regulation (No 44/2001) and the Brussels IIa Regulation (2201/2003)) and the convention on the recognition and enforcement of judgments in the Nordic countries.

## 4 Object and nature of enforcement measures

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

When enforcement proceedings commence, the debtor is sent a notice of filing and a demand for payment. If the debtor does not pay in accordance with the demand for payment and does not make contact regarding the payment of the enforcement fee of their own accord, the enforcement will begin with investigating and establishing the debtor's income and assets on the basis of register data.

Making bank enquiries is an essential part of this investigatory work. Most often, employment income and funds in bank accounts are garnished. Instead of withholding a sum from wages paid at regular intervals, a payment plan may also be confirmed. Measures for establishing the debtor's income and assets, as well as any further investigations, are regulated by law. Bailiffs have wide-ranging rights set out in law, enabling them to access information about the financial situation of debtors through a number of registers. Bailiffs are also obliged to seek out assets belonging to the debtor. Enforcement measures must be carried out without undue delay. For example, if the debtor receives regular income, the first payment is normally released to the creditor within two months of the commencement of proceedings. The debtor has the right to appeal, but collection of payment will not be interrupted unless ordered otherwise by a court.

Applications can be for full enforcement or limited enforcement. Creditors can also ask enforcement authorities to monitor a debt for a period of two years, through so-called passive registration, if it is not possible to collect the debt immediately. There is no need to hire a lawyer or a legal adviser for the purpose of enforcement.

All kinds of movable and immovable assets belonging to the debtor and that are not protected or within the scope of the right to exclusion, may be distrained, as may rights, receivables or objects with monetary value. If the creditor has applied for limited enforcement, only assets ascertainable from registers that do not require liquidation can be distrained. If distrained assets need to be liquidated, they are usually sold at enforcement sales, which are usually announced in local newspapers and online.

Links to sale announcements:

<https://oikeus.fi/ulosotto/fi/index/ajankohtaista/myynti-ilmoitukset.html>

<https://huutokaupat.com/ulosotto/>

The Finnish Enforcement Act (*Ulosottolaki*) also features a special provision, whereby the supervisor of an enforcement department may make a decision to disregard artificial arrangement of assets. A claim that assets belong to a third party shall not prevent the distraint of assets if:

- 1) it is found that the status of the third party is based on asset or other arrangements with a legal status that does not correspond to their true nature or purpose, taking into account the debtor's authority being equivalent to that of the owner's authority, acts equivalent to those of an owner, and benefits and other equivalent benefits enjoyed by the debtor as a result of the arrangement, and
- 2) the legal status is clearly being used to prevent enforcement or to ensure assets are kept inaccessible to creditors, and
- 3) the debt owed to the creditor is otherwise unlikely to be recovered from the debtor within a reasonable timeframe.

However, distraint may not be carried out if the third party involved in the arrangement shows clear evidence that their genuine rights could be violated by the distraint. The bailiff must consult the debtor and third party, as well as the creditor if necessary, in an appropriate way, unless doing so will render enforcement considerably more difficult.

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

Commencement of the enforcement proceedings has some effects, but garnishment and distraint bring with them significant legal effects. Once assets have been distrained, the debtor may not destroy, dispose of or pawn the distrained assets or make other decisions concerning the same to the detriment of the creditor. Any action taken in violation of this injunction has no legal power over the creditor. However, the transferee or a third party may enjoy bona fide protection. Bailiffs enjoy extensive access to information not only from the debtor but also from third parties, such as banks. Once a bank has been informed of a debtor's funds having been frozen, the bank must not release funds from the debtor's bank account to anyone except the bailiff. Paying a receivable or wages or salaries in violation of this injunction is a criminal offence.

As a result of the sale of assets carried out during the enforcement procedure, ownership rights to objects will change. Funds accrued as the purchase price will be transferred to the creditor as soon as possible.

Assets are distrained up to the amount that is necessary to pay the debt to the creditor. In cases where enforcement has been requested by several creditors or the distrained assets are subject to mortgages, for example, the funds are divided among the creditors in order of priority as set out in legislation. The fees collected by the State for enforcement are usually charged to the debtor. If the enforcement attempt fails, the creditor will have to pay a small handling fee. Similarly, a fee will be charged to the creditor for funds to be transferred. In maintenance allowance matters, a fee will not be charged and the maintenance allowance shall take priority. Payments transferred to the creditor may vary each month on the basis of fluctuations in the debtor's income and amount of debt.

Further information on enforcement fees can be found at: <https://oikeus.fi/ulosotto/fi/index/ulosotto/ulosottomaksut.html>

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

In accordance with legislation, bailiffs have an obligation to carry out their duties expeditiously and without unnecessary delay. If the debtor does not have any assets or income that can be distrained or garnished, the case will be returned to the creditor as barred due to one of the following: lacking in means, lacking in means and unknown, or informed of another, separately specified, obstacle to recovery. In such situations, details of income and assets must always be established using the principal registers. The enforcement proceedings will end, but the creditor may request that the enforcement is restarted at a later date, and in such situations the debtor's financial situation is investigated once more. For example, the creditor may request enforcement of a decision by submitting a new application in a timely manner, in order to ensure garnishment from a source such as the debtor's end of year tax rebate. The creditor may also request that the debt be entered into the so-called passive register. If, during the investigation of another case, it is revealed that the debtor has garnishable income or distrainable assets, or that they may be receiving a tax rebate, a debt entered into the passive register will be taken into consideration in the enforcement proceedings. The passive registration will remain in effect for two years from the date of the certificate of lack of means.

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

Bailiffs' enforcement measures and decisions can be appealed by anyone whose interests are affected by said measure or decision. Appeals are handled by the district court (*käräjäoikeus*). Appeals must be filed within three weeks of the date on which the decision is issued or the date on which the interested party receives notice of the decision.

Filing an appeal does not usually suspend the enforcement process, unless the court rules otherwise. If the appeal is granted, the court will overrule or amend the bailiffs' decision. In some cases bailiffs can also correct any obvious errors themselves.

If resolving an argument or claim presented in connection with enforcement requires the extensive taking of oral evidence, the matter may need to be decided in a civil proceeding in a court of law (*enforcement dispute*).

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

The legislation provides provisions on enforcement prohibitions, for example on social grounds. A number of social benefits cannot be garnished. If the debtor to the proceedings is a natural person, objects, benefits and rights separately provided for in law must be set apart from the distraint. Additionally, assets may not be distrained if, taking into account the value of the assets and other conditions, the creditor or creditors would only gain an amount considered minor following the payment of enforcement costs, enforcement fees, and debts owing on the assets.

The debtor's statutory protected portion of their income must always be taken into consideration in the garnishing and payment plans: this amount must be excluded to allow the debtor their living costs. Generally, no more than one third of a debtor's net wage or salary can be garnished. The confirmed protected portions of income, along with example cases, can be found at:

<https://oikeus.fi/ulosotto/fi/index/velallisenautosotossa/palkanulosmittaus.html>

Grounds for enforcement, where a natural person has been issued with a payment obligation, remain enforceable for 15 years (*time limit for grounds for enforcement*). This time limit is 20 years if the creditor specified in the grounds for enforcement is a natural person or if the claim is based on a crime for which the debtor was sentenced to imprisonment or community service. A court judgment or other grounds for enforcement cannot be enforced if the right conferred by the same has subsequently lapsed due to the debt having been paid or the statute of limitations having expired, or for some other reason.

For further information: <https://oikeus.fi/ulosotto/fi/index.html>

<https://valtakunnanvoudinvirasto.fi/fi/>

<http://www.finlex.fi/en/laki/kaannokset/2007/en20070705?search%5btype%5d=pika&search%5bpika%25>

Last update: 19/07/2019

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

### Procedures for enforcing a judgment - Sweden

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

##### Enforcement cases under the Enforcement Code (*utsökningsbalken*)

Enforcement is where an executive authority compels compliance with an obligation decided upon by a court or other body. Enforcement generally relates to an obligation to pay money or to move out of a home. Another type of enforcement relates to sequestration or other security measures.

Enforcement that relates to an obligation to pay is implemented through attachment. Attachment allows property belonging to the debtor to be seized. If the obligation requires a person to move, for example out of a home, enforcement is effected by way of eviction. Otherwise, enforcement generally takes the form of the enforcing authority ordering the person against whom enforcement has been requested to do something or to comply with an injunction or some other ruling. The enforcing authority may impose a fine.

##### Enforcement cases under the Children and Parents Code (*föräldrabalken*)

Enforcement under the Children and Parents Code relates to measures to carry out in practice something arising from a decision or agreement on custody, residence, contact with or surrender of children. The court that rules on enforcement may impose a fine or order collection by the police. The same rules on enforcement apply when foreign decisions are enforced pursuant to Council Regulation (EC) No 2201/2003 (the Brussels II Regulation) if the enforcement concerns the person of the child. However, if the enforcement concerns the child's property or legal costs, the Enforcement Code applies.

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

Enforcement is effected by the Swedish Enforcement Service (*Kronofogdemyndigheten*). The Enforcement Service therefore decides on, for example, attachment. A senior enforcement officer bears the overall legal responsibility for the action, while the actual enforcement is usually handled by other officials (enforcement administrators).

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

### **3.1 The procedure**

#### **Enforcement cases under the Enforcement Code**

For enforcement to be effected, there must be a judgment or other enforceable title.

The following enforceable titles may form the basis for enforcement:

a court judgment, verdict or decision,

a settlement that is confirmed by a court, or a mediation agreement which has been declared enforceable by a court

an approved criminal penalty order, an approved payment injunction or an approved order to pay a breach of regulations fine,

an arbitration award,

a written undertaking, witnessed by two people, concerning maintenance payments under the Marriage Code (*äktenskapsbalken*) and the Children and Parents Code (*föräldrabalken*),

a decision from an administrative authority to be enforced under a specific provision,

a document which is enforceable under a specific provision,

a verdict or decision from the Enforcement Service relating to an order for payment or enforcement assistance, and European orders for payment which have been declared enforceable by the Enforcement Service.

Once an enforceable title has been issued, there is no need for any further decision by a court or other authority in order for enforcement to be initiated.

A significant part of the work of the Enforcement Service consists in obtaining information on the debtor's assets. The debtor is required to provide details of his/her assets and to confirm in a schedule or under questioning, on pain of criminal charges, that the information he/she has provided is accurate. The authority may also order the debtor to provide this information on pain of a fine. The fine will be decided by the district court at the request of the Enforcement Service.

The application for enforcement may be made orally or in writing. An oral request requires the applicant (the person requesting enforcement) to appear before the Enforcement Service. A written application must be signed by the applicant or their representative.

The costs to the State in enforcement cases (administration costs) are covered by charges (enforcement fees). The administration costs are generally charged to the respondent in the case (the applicant's counterparty) when enforcement is effected, where this is possible. However, the applicant is generally liable to the State for the costs. Exceptions to the rule on the applicant's liability may be made, for example for most demands for maintenance payments.

The general rule is that a basic charge will be made for each enforceable title for which enforcement is sought. In an enforcement case relating to a claim under private law, the basic charge is SEK 600.

Other charges that may be made are preparation fees, sales charges and special charges.

#### **Enforcement cases under the Children and Parents Code**

Enforcement may be based on a decision of an ordinary court on custody, residence, contact with or surrender of children. Enforcement may also be based on an agreement on custody, residence or contact entered into by the parents and approved by the social welfare board. Foreign decisions may also be enforced in Sweden, for example a decision which is enforceable pursuant to the Brussels II Regulation.

Decisions on enforcement are taken by the district courts. The application for enforcement is usually made to the district court in the place where the child lives. If the child is not resident in Sweden, the application must be made to Stockholm district court (*Stockholms tingsrätt*).

The application may be submitted by, for example, a parent that the child is to move to or have contact with.

In dealing with the case, the court may issue a special instruction to someone in the social services to try to persuade the person who has care of the child to do what is specified in the decision or agreement voluntarily. If the matter is pressing, the court or police authority may decide that the child should be taken care of immediately. The court may impose a fine or order collection by the police in order to effect enforcement.

No charge is made for an application for enforcement under the Children and Parents Code. Either party may, however, be required to pay the other party's costs in the case. A party who has caused costs to be incurred for collecting or taking care of the child may be made to pay these costs to the State.

### **3.2 The main conditions**

#### **Enforcement cases under the Enforcement Code**

In some instances, there may be impediments to enforcement. This will be the case, for example, if the enforceable title is so vague that it cannot be used as a basis for enforcement.

Another scenario could be where the person ordered to do something by a judgment has discharged the obligation imposed by that judgment, for example to pay a given amount.

Another case could be where the person ordered to do something has a counterclaim against the applicant, i.e. lodges a set-off objection. Set-off constitutes an impediment to enforcement if the enforcement service finds that the counterclaim has been lodged by way of a valid enforceable title or is based on a written certificate of claim.

If the debtor asserts that some other matter between the parties constitutes an impediment to enforcement and this objection cannot be dismissed out of hand, enforcement may not take place either. One example might be objections to a limitation period.

If an enforceable title is revoked by a court, enforcement must be stopped immediately.

In some cases, a court may also order that an ongoing enforcement procedure should lapse (this is known as inhibition).

#### **Enforcement cases under the Children and Parents Code**

The assumption is that what is stipulated in a decision or agreement is in the best interests of the child. The court cannot re-examine the decision or agreement as part of the enforcement review, and the main alternative is to bring about voluntary compliance. If any compulsory measure is needed, the imposition of a fine is the most likely option. Physical collection can only be used as a last resort.

There may sometimes be impediments to enforcement, such as where the child is ill.

If the child has reached an age and level of maturity such that its wishes have to be taken into account, enforcement may not be effected against the child's will except where the court finds this necessary in the child's best interests. The court should also refuse enforcement if it is clear that it would be contrary to the child's best interests.

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

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

###### **Enforcement cases under the Enforcement Code**

In order for property to be attached, certain conditions must be met. The property must belong to the debtor;  
be transferable;  
have some monetary value.

Attachment may be used to claim property of any kind. The rules on beneficial property generally apply only to natural persons. Both fixed and movable property may be attached.

Movable property means not only personal possessions (e.g. cars, boats and other effects) but also assets (e.g. bank balances) and rights of different kinds (e.g. rights of use or shares in a deceased's estate).

Earnings, pensions etc. may also be subject to attachment.

Some property cannot be attached. This is the case with beneficial property. The rules on beneficial property generally apply only to natural persons.

Beneficial property refers, for example, to

clothes and other items for the debtor's personal use, of reasonable value,

furniture, domestic appliances and other equipment needed to run and maintain a home,

tools and other equipment necessary to the debtor's livelihood or professional training,

personal belongings such as medals and sporting trophies which are of such great personal value to the debtor that it would be unreasonable to attach them.

Property may also be protected against attachment under specific regulations. This could be the case with, for example, compensation.

Attachment of earnings may only apply over and above the amount that the debtor needs to maintain him/herself and his/her family.

In this regard, some claims have precedence over others. A claim relating to maintenance payments will take precedence over other claims.

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

###### **Enforcement cases under the Enforcement Code**

Once property has been attached, the debtor will not have the same control over it as before. The debtor may not make use of the property to the detriment of the applicant by way of transfer or in any other way unless the Enforcement Authority has allowed this on specific grounds after consulting the applicant.

Anyone who unlawfully makes use of attached property may face criminal penalties.

A decision on attachment confers priority rights to the property.

In an enforcement case, a third party must state whether the debtor has claims or other affairs with him or her that may be of relevance for the assessment of the extent to which the debtor has attachable property. A duty of disclosure also applies to any third party who is in possession of the debtor's property through, for example, a pledge or deposition. A bank is required, for example, to provide details of the debtor's bank accounts, safety deposits boxes or other property in the custody of the bank. Relatives and friends of the debtor also have a duty of disclosure.

Information from third parties may be requested orally or in writing and, if necessary, third parties can be called for questioning. They may be compelled to comply on pain of a fine or imprisonment.

Attached property may be compulsorily sold by the Enforcement Authority without delay. Compulsory sales are generally made through public auctions, but may sometimes be arranged privately.

Monies received in enforcement cases must be reported and paid to the applicant as quickly as possible.

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

###### **Enforcement cases under the Enforcement Code**

There is no maximum time limit to the validity of a decision on attachment. The legislation assumes, however, that attached property will be sold without delay; see 3.2.

If possible, eviction should take place within four weeks of the necessary documents reaching the Enforcement Authority.

###### **Enforcement cases under the Children and Parents Code**

A decision on enforcement takes effect immediately unless stated otherwise. It applies until determined otherwise. The order of a fine normally states that an action must be taken within a certain time, for example the child must be handed over to the applicant. A decision on enforcement in relation to contact usually states when contact may take place, and normally applies for a few months ahead.

A decision in the enforcement matter does not prevent a new application from being examined.

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

###### **Enforcement cases under the Enforcement Code**

Decisions by the Enforcement Authority are generally subject to appeal. An appeal to a district court should be submitted to the Enforcement Authority.

The person whom the decision concerns may appeal against the decision of the Enforcement Authority if it has gone against him or her. Decisions on attachment of earnings may be appealed against without limitation to a particular period. Decisions on attachment of other assets may be appealed against within three weeks of being served. Third parties may appeal against this attachment without limitation to a particular period.

The district court may decide that no enforcement action should be taken for the time being (this is called inhibition) or, if it finds specific grounds for this, that an action already taken should be revoked.

###### **Enforcement cases under the Children and Parents Code**

The decision of the district court on enforcement may be brought before the court of appeal. Appeals must be lodged in writing and submitted to the district court. The time limit for appeals is three weeks.

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

The Enforcement Code contains provisions limiting the possibility of enforcement, for example to protect the debtor. To a limited extent, the debtor can prevent enforcement taking place by objecting to it, for example because it has become time-barred. The most common examples of restrictions on enforcement are that some property and some assets are excluded from attachment out of consideration for the needs of the debtor. The attachment of material goods may, for example, exclude what is known as a 'beneficium' ('non-attachable property') such as a flat which is the debtor's permanent home and money which the debtor needs for his/her immediate maintenance. The attachment of earnings will exclude a 'reserve amount' to cover normal living expenses and the debtor's housing costs.

Last update: 16/03/2017

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

## Procedures for enforcing a judgment - England and Wales

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

Enforcement is court-sanctioned action taken to compel judgment debtors to comply with the orders of the court.

Under the legal system of England and Wales the choice of enforcement method lies entirely with the judgment creditor.

When choosing which method to use a creditor must consider whether:

- he/she is likely to get their money and court fee from the defendant;
- the defendant owes other people money or has other county court judgments;
- the defendant owns any goods or assets which can be taken and sold at auction;
- the defendant is working;
- the defendant has other earnings, such as income from investments;
- the defendant has a bank, building society or other account;
- the defendant owns property (a house); or
- anyone else owes the defendant money.

Information on the different types of enforcement measures follows. A judgment creditor should choose the one which is most likely to get him/her the money owed.

A court cannot guarantee that the judgment creditor will get his/her money back, and a court fee is payable for any action taken. Although the court will add the fee to the money the defendant already owes, the court cannot return what the creditor has paid if he/she does not get the money from the defendant.

More information can be found in a [leaflet on enforcement procedures](#).

General information for a creditor can be found in the guide [Make a Court Claim for Money](#).

General information for a debtor can be found in the following guides:

[County court judgments for debt](#)

[Respond to a court claim for money](#)

[Make a Court Claim for Money](#)

The different types of enforcement methods are:

#### **Taking control of goods (formerly known as Distraint/execution )**

The seizure of goods for possible eventual removal and sale at auction to cover the costs of a judgment debt.

To obtain enforcement by taking control of goods it is necessary to apply to the court for a warrant of control. A warrant will only help if the defendant has:

- enough goods at the address given by the judgment creditor which could be sold at auction to raise money; or
- all the money claimed for on the warrant (to stop goods being sold).

Before the court can issue a warrant, the defendant must have:

- failed to pay the amount he or she has been ordered to pay; or
- fallen behind with at least one of his or her payments.

Bailiffs cannot always remove and sell the defendant's goods. For example, they cannot remove essential household items and tradesman's tools or goods subject to hire purchase or rental agreements. The bailiff will not take the defendant's goods if they are not worth enough to pay the warrant after the costs of taking and selling the goods. Goods sold at auction often raise only a fraction of their original value. In addition the defendant's goods may also already have been seized by bailiffs acting under another warrant.

More information on warrants of control can be found on the website of the [Ministry of Justice](#).

#### **Attachment of earnings orders**

Under this method of enforcement, an order is obtained whereby a fixed sum is deducted from the judgment debtor's wages or salary regularly on the day they are paid and is forwarded directly to the judgment creditor.

The defendant must be employed by someone before an attachment of earnings order can be issued. An order cannot be made if the defendant is unemployed or self-employed. Also, the court may not be able to make an order, or may only make an order to pay it back in small instalments, if the defendant's living expenses are greater than what is earned.

More information on attachment of earnings orders can be found on the website of the [Ministry of Justice](#).

#### **Charging orders - including orders for sale and stop orders**

A charging order prevents the defendant from selling his or her assets (such as property, land or investments) without paying what is owed to the judgment creditor. The judgment creditor is paid either from the proceeds of the sale when the judgment creditor sells the property or from the proceeds of the estate when the judgment debtor dies. This process can also involve two further types of court order. First there is the order for sale, where the court can force the sale of the items of immovable property under a charging order. Secondly, there is a stop order, which prevents a judgment debtor from disposing of items of immovable property to avoid charging order proceedings being taken against him.

More information on charging orders can be found on the website of the [Ministry of Justice](#).

#### **Third party debt orders (formerly known as garnishee proceedings)**

Under this method of enforcement, an order is obtained whereby the judgment debtor's bank accounts are frozen on order of the court. An amount to cover the judgment debt is then automatically transferred to the judgment creditor in satisfaction of the debt. If there are insufficient funds in the bank accounts to cover the debt then such funds as are available are used to repay at least some of the amount owed.

More information on third party debt orders can be found on the website of the [Ministry of Justice](#).

A [video](#) provides further information.

#### **Bankruptcy proceedings**

If the amount owed is at least £5,000 a judgment creditor can also apply to make the defendant bankrupt. These proceedings can be brought in both the county court and the High Court. This can be expensive however.

#### **Orders to obtain information (formerly known as oral examinations)**

Although not in itself an enforcement method, this procedure allows for judgment debtors to be questioned for information regarding their assets, to enable the judgment creditor to make a more informed choice as to the enforcement method they would wish to use.

More information on orders to obtain information can be found on the website of the [Ministry of Justice](#).



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

The High Court, county court or magistrates court are competent for enforcement in England and Wales. The High Court and county court will produce judgments and the magistrates courts will issue liability orders to local authorities.

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

### 3.1 The procedure

It is possible to enforce both judicial and non-judicial decisions. It is not always necessary to apply for a court order authorising the enforcement. Taking control of goods proceedings can be undertaken for unpaid rent, taxes, customs and excise duties and parking fines without the need for prior judicial consent.

Both the county court and the High Court are competent for ordering enforcement in cases where they have granted judgment. It should be noted, however, that a county court bailiff cannot enforce any amount over £5000 (unless enforcing an agreement regulated under the Consumer Credit Act 1974 which can only be enforced in the county court). County court judgments for more than £5000 must be transferred to the High Court for execution by an Enforcement Officer. Enforcement Officers in the High Court cannot enforce judgments for amounts less than £600.

There is a procedure whereby judgment creditors can choose to transfer county court judgments between £600 and £5000 to the High Court for enforcement by way of execution. It should also be noted that there is no attachment of earnings procedure in the High Court; a matter has to be referred to a county court for this method of enforcement to be used.

If a claim was issued using [Money Claim Online](#) a request for a warrant of execution can also be requested online.

### The status, roles, responsibilities and powers of enforcement agents

**High Court Enforcement Officers** (formerly Sheriffs) - Since 1 April 2004, High Court Enforcement Officers have carried out enforcement of High Court writs. These are enforcement professionals who are appointed by the Lord Chancellor to carry out enforcement within certain postal districts. They have to meet numerous criteria before being considered suitable for appointment, covering such issues as qualifications, financial probity, membership of a professional association, and commitments to diversity and a suitable conduct and discipline procedure. High Court Enforcement Officers can enforce county court money judgments where the amount it is sought to enforce exceeds £600 and the creditor chooses to transfer the debt to the High Court for execution.

**County court bailiffs**, who are employees of Her Majesty's Courts and Tribunals Service and therefore civil servants, deal with enforcement of judgments and /or orders made and registered in the county courts. They enforce warrants of control, repossess land with warrants of possession and recover goods under warrants for return of goods. In addition, county court bailiffs carry out other duties, including personal service of documents and warrants of committal.

**Certificated enforcement agents** are private enforcement agents authorised by a Judge sitting in the county court. They deal with the seizing of a tenant's goods by a landlord to secure payment of rent arrears without the intervention of the court. Under a number of other Acts certificated enforcement agents are also permitted to enforce other specific debts such as council tax, non-domestic rates etc.

**Magistrates' Courts:** Civilian enforcement officers are responsible for enforcing magistrates' court orders. They can seize and sell goods to recover the amount owed under a fine or community penalty notice. They can also execute warrants of arrest, committal, detention and control issued by a magistrates' court under any one of a range of statutes, including those covering the enforcement of fines and community penalties. Some magistrates' courts may opt to contract enforcement work out to certified enforcement agents.

### Use of lawyers or other legal professionals

There is no obligation upon the creditor to make their application for enforcement through a lawyer or any other legal professional.

Enforcement procedures can be complicated, though, especially in the High Court. Creditors may want to get advice, therefore, from a solicitor, law centre or [Citizens Advice](#) before commencing an enforcement procedure.

### Scale of costs for enforcement

There are different court fees for each of the methods of enforcement. As mentioned above, although the court will add the fee to the money the defendant already owes, the court cannot return what the creditor has paid if he/she does not get the money from the defendant. The current fees for enforcement methods can be found on the website of the [Ministry of Justice](#).

### 3.2 The main conditions

As mentioned above, in England and Wales the choice of enforcement method to be used is wholly within the hands of the judgment creditor. Responsible creditors who have obtained a valid judgment through the courts and have still not been paid are entitled to enforce that judgment by the most appropriate means available to them. Therefore, as long as a valid judgment is in place and a proper application is made, the court is obliged to follow the creditor's wishes and use the method of enforcement of the creditor's choosing.

## 4 Object and nature of enforcement measures

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

Enforcement action may be taken against the following assets:

Bank accounts by use of the third party debt (or garnishee) order procedure.

Tangible movable property by use of taking control of goods.

Registered means of transport by use of taking control of goods.

Immovable property by use of the charging order procedure.

Salaries or wages by use of the attachment of earnings procedure.

The enforcement officer can only take goods which belong to the defendant or are jointly owned. The following list of goods are exempt

(a) items or equipment (for example, tools, books, telephones, computer equipment and vehicles) which are necessary for use personally by the debtor in the debtor's employment, business, trade, profession, study or education, except that in any case the aggregate value of the items or equipment to which this exemption is applied shall not exceed £1350;

(b) such clothing, bedding, furniture, household equipment, items and provisions as are reasonably required to satisfy the basic domestic needs of the debtor and every member of the debtor's household, including (but not restricted to) —

(i) a cooker or microwave;

(ii) a refrigerator;

(iii) a washing machine;

(iv) a dining table large enough, and sufficient dining chairs, to seat the debtor and every member of the debtor's household;

(v) beds and bedding sufficient for the debtor and every member of the debtor's household;

(vi) one landline telephone, or if there is no landline telephone at the premises, a mobile or internet telephone which may be used by the debtor or a member of the debtor's household;

(vii) any item or equipment reasonably required for—

the medical care of the debtor or any member of the debtor's household;



- safety in the dwelling-house; or
- the security of the dwelling-house (for example, an alarm system) or security in the dwelling-house;
- (viii) sufficient lamps or stoves, or other appliance designed to provide lighting or heating facilities, to satisfy the basic heating and lighting needs of the debtor's household; and
- (ix) any item or equipment reasonably required for the care of—
  - a person under the age of 18;
  - a disabled person; or
  - an older person;

(c) assistance dogs (including guide dogs, hearing dogs and dogs for disabled persons), sheep dogs, guard dogs or domestic pets;

(d) a vehicle on which a valid disabled person's badge is displayed because it is used for, or in relation to which there are reasonable grounds for believing that it is used for, the carriage of a disabled person;

(e) a vehicle (whether in public ownership or not) which is being used for, or in relation to which there are reasonable grounds for believing that it is used for, police, fire or ambulance purposes; and

(f) a vehicle displaying a valid British Medical Association badge or other health emergency badge because it is being used for, or in relation to which there are reasonable grounds for believing that it is used for, health emergency purposes.

Any goods which the enforcement officer takes must be likely to fetch money at auction. Enforcement officers will not remove goods if they think that they will not fetch enough to pay something towards the warrant after the cost of removing and selling them at auction have been paid.

For attachment of earnings orders the court will take into account how much the defendant needs to live on for food, rent or mortgage and essentials and to pay regular bills, such as electricity. This is called the 'protected earnings rate'. If the defendant earns more than the protected earnings rate, an order will be made.

For third party debt orders a judgment debtor who is prevented from withdrawing money from his or her account with a bank or building society and claims that he or she or his or her family is suffering hardship in meeting ordinary living expenses as a result, may apply to a court for a hardship payment order which allows one or more payments to be made to specific individuals.

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

For both debtors and third parties, the failure to comply with the requirements of court orders leads them open to sanctions for contempt. The penalties that can be imposed for contempt include "purging contempt" (that is an apology to the judge in open court), fines, and in the most serious cases imprisonment for up to 14 days.

Banks have certain obligations regarding disclosing information and attaching bank accounts. When a bank receives a third party debt order imposed upon one of its customers, the bank does not have to reveal how much money is held in the account. It can state that there is no money in the account, that there are insufficient funds to meet the whole amount but can pay some of it, or that there are sufficient funds to meet the whole amount requested. There are very strict data protection issues that govern what information other than this the bank can provide.

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

All orders state the length of time that is being given to provide relevant information or to comply with the court order, and also state the maximum penalties that may be imposed for failing to comply with a court order.

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

The court based enforcement methods (charging orders, attachment of earnings orders and third party debt orders) all involve a two-stage process. The interim stage of the process is purely a paper based judicial function, and the judgment debtor has no input to the process at this stage. However, for attachment of earnings orders and third party debt orders to progress to the final stage, there has to be a hearing to which the judgment debtor will be invited to attend where he will be able to give any reasons as to why the planned method of enforcement should not proceed. The 'final' hearing will be held at the same court as the original application for that method of enforcement was lodged (unless specifically requested otherwise). The date of the hearing will be notified to all parties well in advance, and in all cases there is a fixed minimum amount of time that must elapse between the 'interim' stage, notification of the 'final' hearing, and the 'final' hearing itself, to enable the debtor (and any relevant, directly involved third party e.g. the bank in a third party debt order case) time to prepare their case. If the date of the 'final' hearing is inconvenient for the parties, they may be able to get it postponed to a more mutually convenient date. Should this happen, the interim order will remain in place, but the order cannot be made 'final' until that hearing has been held.

For charging orders, an interim order must be served on the debtor by the creditor and unless the debtor objects the interim order is made final without the need for a hearing, unless the judge rules that a hearing is necessary. The debtor has to reply to the court within 10 days of the date of service of the hearing. If the debtor does object to the interim order, or the judge transfers the matter, the case is transferred to the original court that the judgment was made at and a hearing date will be fixed. Both creditor and debtor will attend the hearing.

There is no appeal against the decision once the court has made its order. In appropriate circumstances appeals or requests to set aside can only be made on the original judgment that gave the creditor the authority to request enforcement in the first place. Only if the judgment is successfully challenged by appeal or is set aside can the enforcement process be revoked by a court. If a challenge to the judgment is lodged after a court has authorised a creditor's request for enforcement a warrant may be suspended on application to the court. Bailiffs may not take away goods but they must continue to levy on them (that is list those that could later be seized and taken away for sale).

Provided that a creditor has made a correct application for enforcement to a court, that court cannot refuse to authorise the method of enforcement chosen by the creditor. There is, therefore, no need for the creditor to have a means of appeal against the decision granting a measure.

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

A warrant or writ of control is time limited. The warrant and writ are valid for 12 months and can be extended for a further 12 months by an order of the court. In the taking control of goods procedure a debtor must be given 7 clear days notice of enforcement to give him or her the opportunity to pay the debt and costs before the enforcement officer can take control of goods. This period can be reduced by an order of the court if there is evidence that the debtor will move assets to avoid enforcement.

An enforcement officer may not take control of goods before 6:00 or after 21:00 where the debtor is an individual.

An enforcement officer may not enter premises to take control of goods where a child or vulnerable person (whether more than one or a combination of both) is the only person present in the premises in which the goods are located.

Where the debtor is a vulnerable person the fee or fees due for the enforcement stage of taking control of goods are not recoverable unless the enforcement officer has, before proceeding to remove goods, given the debtor an adequate opportunity to get assistance and advice.

#### **Related links**

[Ministry of Justice](#)

[Civil Enforcement Association](#)

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

## **Procedures for enforcing a judgment - Northern Ireland**

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

Enforcement is the legal process by which compliance with a judgment, order or decree of the courts can be compelled.

Northern Ireland has a unique system for the enforcement of civil judgments. Most common law systems enforce judgments through ancillary orders of the courts. In Northern Ireland civil court judgments related to the recovery of money, goods and property are enforced by a central body called the Enforcement of Judgments Office which exercises both administrative and judicial functions.

The Enforcement of Judgments Office was established in 1971 and since 1979 has been administered by the Northern Ireland Courts and Tribunals Service. The powers and procedures of the Enforcement of Judgments Office are contained in the Judgments Enforcement (Northern Ireland) Order 1981 ("the 1981 Order") and the Judgments Enforcement Rules (Northern Ireland) 1981 (SR 1981/147).

The different types of enforcement methods are:

Instalment Order - This is an order for payment by instalments provided the Enforcement of Judgments Office is satisfied that the debtor has or will have the means to satisfy the whole or any part of the amount owing within a reasonable time.

Attachment of Earnings Order - This is an order directed to the debtor's employer and requires him to make periodic deductions from the debtor's wages or salary and pay these to the Enforcement of Judgments Office. This order is different from most other enforcement orders in that the Enforcement of Judgments Office has no power to make it without a prior application from the creditor. The Enforcement of Judgments Office can also suspend service of the order on the employer if it is satisfied that the debtor will make the payments voluntarily to the office

Order of Seizure - This order enables the Enforcement of Judgments Office to remove and sell some of the debtor's goods and other property. The property comes into the custody and possession of the Enforcement of Judgments Office and is charged in favour of the creditor for whose benefit the order is made.

Order Charging Land - This order is most frequently used for substantial debts and is generally used together with another enforcement method. This order by itself effects no practical enforcement of the debt; the creditor must take steps to exercise power of sale by making an application to enforce their charge to the court - There is also provision in the 1981 Order for the making of charging orders over other species of property.

Order Appointing Receiver and Order Under the Crown Proceedings Act - An order appointing receiver order operates with the Chief Enforcement Officer being appointed receiver over any payment that the debtor might be entitled. Examples of the kinds of payments suitable for an order appointing receiver order include the rents and profits of land, reversionary interests under a will, or sums due to a self-employed debtor in contract or payments due from a civil claim against another person or company.

Attachment of Debts (Garnishee) Order - An attachment of debts order requires a debtor (or "garnishee") of the judgment debtor to pay the debt to or for the benefit of the creditor instead. It confers secured creditor status on any creditor obtaining it and is applicable to debts due or accruing.

Orders for Delivery of Possession of Land - A judgment for the possession of land is enforced by an order for the delivery of possession of land and entitles the Enforcement of Judgments Office to eject any person in possession, whether the defendant or not.

Order for the Delivery of Goods - A judgment for possession of goods is enforced by an order for delivery of the goods. The goods will be taken by the Enforcement of Judgments Office and handed back to the creditor. This should not be confused with an order of seizure as the goods are not sold.

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

Enforcement of Judgments Office

Laganside House

23-27 Oxford Street

Belfast

BT1 3LA

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

#### **3.1 The procedure**

Any person entitled to enforce a judgment may, on payment of the appropriate fee, apply to the Enforcement of Judgments Office for enforcement of that judgment. An application must be preceded by a 'notice of intent to apply for enforcement' to the debtor. Where the debtor fails to settle the judgment within ten days of the date of the notice of intent to enforce the applicant may proceed to enforcement. A preliminary application may be made in cases where the balance of all sums due exceeds £3000. This enables the judgment creditor to obtain the issue of a custody warrant and a report as to the debtor's means in order to make a more informed decision about whether to proceed with enforcement.

Once an application is accepted the Enforcement of Judgments Office immediately serves on the debtor a 'custody warrant' deeming specified goods (with a few exceptions such as domestic goods) of the debtor to be in the possession and control of the Enforcement of Judgments Office so that they cannot be disposed of. A custody warrant is only discharged upon payment of the amount stated on the judgment, or where the application for enforcement is dispensed with.

The next stage in the enforcement process is the discovery of information about the debtor's means and is of fundamental importance to the determination of the enforcement application. A judgment debtor is required to give the enforcement officer such information as to his means as the officer may require. The judgment debtor is interviewed in his home or summoned to appear before a nominated officer for examination.

Upon receipt of a report from the enforcement officer, the Master (see below) or the Chief Enforcement Officer makes a provisional decision disposing of the enforcement application. Only the Master is able to make orders of seizure, garnishee and orders appointing receivers and order under the crown proceedings act. The financial and other relevant circumstances of the debtor are considered and a determination made of the best means of enforcing the judgment, or indeed whether the judgment can be enforced at all. The parties are notified and given the opportunity to make objections. If no objection is made the decision is confirmed but if an objection is made the matter is listed for hearing before the Master.

#### **The status, roles, responsibilities and powers of enforcement agents.**

The Enforcement of Judgments Office is headed by a senior officer with the status and rank of a Master (a type of judicial officer) and the staff includes the Chief Enforcement Officer (and Deputy), Nominated Officers and Enforcement Officers each allocated to a district of Northern Ireland.

The powers conferred on the Enforcement of Judgments Office to enable it to exercise its jurisdiction are set out in the 1981 Order. Of particular importance is the power to make the wide range of enforcement orders listed above. The Enforcement of Judgments Office has ancillary powers to aid the enforcement process. These include the issue of custody warrants and processes for the attendance and examination of witnesses, the examination of debtors as to their

means, including the examination of 3rd parties (who may have information about the means and assets of a debtor) and the receipt of moneys recovered in enforcement of judgments.

The Enforcement of Judgments Office also has the power to dismiss an application for enforcement. The grounds on which this may be done are not specified in the 1981 Order but will generally be when the applicant is not entitled to enforce the judgment. Where a judgment cannot be enforced within a reasonable time (by the issue of any order of enforcement) the Enforcement of Judgments Office may grant a notice and a certificate of unenforceability. The Enforcement of Judgments Office also has a broad power to stay the enforcement of any judgment either absolutely or subject to conditions.

#### **Use of lawyers or other legal professionals**

At a hearing before the Master any party or person affected by an order may appear in person or by counsel or solicitor.

#### **Scale of costs for enforcement**

The enforcement of judgments system in Northern Ireland is funded by fees paid by users. The fees payable are contained in Part 1 of the Schedule to the Judgments Enforcement Fees Order (Northern Ireland) 1996(as amended) (SR 1996/101) and depend on the amount recoverable under the judgment and the current fees can also be found on the Northern Ireland Courts and Tribunals Service website.

### **3.2 The main conditions**

The jurisdiction of the Enforcement of Judgments Office is laid down in the 1981 Order and includes the following judgments:

Money judgments including judgments of any court tier in Northern Ireland, judgments made outside Northern Ireland and registered in Northern Ireland and some judgments made under European Law for debt or damages along with some tribunal and arbitration awards

Judgments under which a person is entitled to possession of any land, mainly orders for possession in favour of mortgagees, although it is also made for private and public sector landlords

Judgments under which a person is entitled to the delivery of goods

Judgments requiring a person to pay money into court or do any act within a limited time and judgments against a company

There are some restrictions on the Enforcement of Judgments Office's power to enforce a judgment including the following:

Where the judgment can only be enforced with the leave of the court that granted it, the court's leave must first be obtained

Where enforcement has been stayed or postponed an application to enforce cannot be accepted until the stay or postponement is lifted

Where six years or more have expired since the judgment became enforceable it cannot be enforced. An application may be made to the Master seeking leave to enforce after this time.

A judgment against a person in a name or style other than his own requires the leave of the court before it can be enforced.

The decision as to which enforcement order is made is for the Enforcement of Judgments Office and no applicant can require the use of any particular method.

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

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

Enforcement action may be taken in respect of salaries or wages by use of the attachment of earnings procedure. The sum deducted is calculated taking into account the "normal deduction rate" and "the protected earnings rate". The former is the rate at which the Enforcement of Judgments Office thinks it is reasonable for the debtor's earnings to be applied to meet his liability under the judgment. The latter is the rate below which the Enforcement of Judgments Office considers the debtor's earnings should not be reduced having regard to his resources and needs.

There are four categories of property that can be the subject of a seizure order:

goods in which the debtor has a saleable interest;

money, bills of exchange, bonds and promissory notes and any other securities for money belonging to the debtor;

any life policy in which the debtor has a sole beneficial interest; and

goods of the debtor's spouse where the judgment debt relates to goods obtained or services rendered or the rent of or rates due in respect of the occupation of premises for the general use or enjoyment of the debtor and his family.

Property that is exempt from seizure includes clothes, furniture, bedding and other essential domestic goods; tools and implements of the debtor's trade to the value of £200; property held by the debtor in trust for another; and property in the hands of a receiver appointed by the court.

An order charging land may be made over any land or estate in land of the debtor and "estate in land" includes any legal or equitable estate or interest, easement, right, title, claim, demand, charge, lien or encumbrance in, over, to or in respect of the land. Charging orders and other similar orders may be made over other types of property in addition to land. Specifically these are over funds or stock in government bodies, public undertakings or companies; debentures; funds in court; and shares in private companies.

In addition to attaching to money owed to a judgment debtor by a client or customer for work or services rendered, an attachment of debts order may be made in respect of any money the judgment debtor has in a bank or building society.

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

Any order of enforcement made by the Enforcement of Judgments Office has the like force and effect as an order of the High Court. There are various ancillary enforcement powers that can be used in the event of non-compliance with an enforcement order including:

Committal to prison for up to six weeks for wilful failure to pay instalments due under an instalment order or other sum of money specified in Article 107 of the 1981 Order.

Sequestration orders that empower any person appointed as sequestrator to enter any lands which are the property of the person against whom the judgment was given; to receive, sequester and take the rents and profits of that land; and to take any other personal property of that party and keep it under sequestration until the order is complied with.

Contempts of the Enforcement of Judgments Office may be referred to the High Court which may deal with the offence as if it had been committed in that court.

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

The satisfaction of a money judgment occurs when the amount stated on the judgment is paid or satisfied. When this occurs every enforcement order made in respect of the judgment is discharged. Where an order for possession of land or for the delivery of goods has been successfully executed no further proceedings may be taken except for the recovery of the costs and expenses of enforcement.

A creditor or a judgment debtor may apply to the Enforcement of Judgments Office for an enforcement order to be set aside, discharged or varied and a hearing may take place.

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

Internal appeals are from the Chief Enforcement Officer to the Master.

External appeals lie from the Enforcement of Judgments Office to the High Court on issues of fact and law in the circumstances specified in Article 140 of the 1981 Order and otherwise to the Court of Appeal on a point of law. An attachment of earnings order is the only type of money judgment enforcement order listed in Article 140 and there is no general right of appeal against the refusal to make any particular enforcement order.

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

A number of limitations on enforcement are set out within Article 17 of the Judgments Enforcement (Northern Ireland) Order 1981 and also Rule 5 of the Judgments Enforcement Rules (Northern Ireland) 1981. Limitations exist and relate to a number of different scenarios where enforcement of a judgment is sought. The Limitations exist in order to protect the debtor from a number of different situations, such as [but not limited to]:

- a) Where leave of a court must be sought prior to the commencement of enforcement;
- b) Where the court has stayed or postponed enforcement of the judgment that would prevent enforcement of a judgment being made to the EJO;
- c) Where an application to enforce a judgment is made more than 6 years from which the date the judgment became enforceable. In this instance the creditor will seek leave from the office to enforce their judgment prior to making an application - this will be determined by the Master of the Enforcement of Judgments Office;
- d) An application for enforcement will not be accepted where more than 12 years has passed from which the date the judgment became enforceable;
- e) Where more than one application is made to enforce the same judgment. If more than one application has made, the creditor will seek leave from the Chief Enforcement Officer, prior to making a further application for enforcement of the same judgment;
- f) Where a creditor has assigned a debt to a third party after judgment has been given;
- g) Where the court has inserted a condition on the judgment that has not been fulfilled that would prevent enforcement of a judgment being made to the EJO;
- h) Acceptance of an application of enforcement where a order staying enforcement is pending under Rule 103. Leave of the Master must be made prior to any application for enforcement being made;
- i) Acceptance of an application of enforcement where an order staying enforcement on the grounds of insolvency has been made under Article 14(1);

If the EJO has certified that a judgment is unenforceable (Article 19 - 21 of the Judgments Enforcement (Northern Ireland) Order 1981) the certificate can be set aside (upon application from the creditor). This is however limited to 12 years from the date in which the certificate of unenforceability was issued).

Article 16 of the Limitations (Northern Ireland) Order 1989 sets out limitations on the enforcement of judgments (and interest) will not commence after 6 years from which the judgment became enforceable. The Master of the Enforcement of Judgments Office will take this into consideration when dealing with an application to enforce a judgment which is more than 6 years old (see Paragraph (d) above).

#### **Related links**

[Northern Ireland Courts and Tribunals Service](#)

Last update: 28/08/2018

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

#### **Procedures for enforcing a judgment - Scotland**

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

In Scotland the term diligence is used to describe a number of legal processes which can be executed against debtors in order to enforce payment of debts due to creditors. Diligence can only competently proceed on a lawful warrant such as a court decree or document of debt for payment of money or, more widely, an order of the civil courts generally including for performance or prevention of an act.

Types of diligence include arrestment of earnings, arrestment of goods or funds in the hands of a third party, attachment of goods or funds, inhibition and adjudication for debt.

##### **Adjudication for debt**

Adjudication for debt is a very old diligence against heritable property, the effect of which is judicial heritable security in favour of the creditor. This rarely used diligence is exclusively a Court of Session process. After decree of adjudication is granted, the extract decree is recorded or registered in the appropriate Scottish land register (Register of Sasines or the Land Register). The adjudicating creditor then obtains, in general, the same rights as other heritable creditors, but excluding a power of sale. It allows the creditor to raise an action to remove the debtor if he is in possession, or raise an action to receive rent money from tenants if the property is leased. It is only after a period of ten years that the creditor can apply to the court to become the owner and sell the property.

##### **Arrestment of goods or funds in the hands of a third party**

Arrestment is a diligence against moveable property belonging to the debtor which is in the hands of a third party. It operates by preventing the third party from releasing the arrested property. Subjects which can be arrested include debts, funds held in a bank account, shares, trusts estate, insurance policies, and corporeal moveable property. Corporeal moveable property in the hands of the debtor cannot be arrested, as the appropriate diligence for that is attachment.

##### **Attachment of goods**

Corporeal moveable property in possession of a debtor may be attached by a creditor and sold at auction as a means of recovering outstanding debts. However attachment cannot be used to seize certain items such as tools of trade or books required by the debtor for their profession, or vehicles which are reasonably required by the debtor and which do not exceed a specified value. Attachment also cannot be used to take possession of goods in the debtor's dwelling house, unless an order for exceptional attachment has been granted by the Sheriff at court. Attachment allows a creditor to attach money (cash including coins and banknotes in a foreign currency, postal orders, banking instruments, etc) which is held on a debtor's premises, although money in a dwelling house or on the debtor's person cannot be attached.

##### **Earnings Arrestment**

Diligence against a debtor's earnings can be executed in the form of an earnings arrestment (for enforcement of a single debt), a current maintenance arrestment (for enforcement of ailment or a periodical allowance on divorce), or a conjoined arrestment order (an order granted by the court to enforce payment of two or more of the same type of debts, at the same time).. A deduction from earnings order can also be made in terms of the Child Support Act 1991 for anyone liable to pay child support under a maintenance arrestment. On being served with an arrestment schedule, the employer must deduct an amount from the debtor's earnings calculated in accordance with statutory tables each payday and pay it over to the creditor until such time as the debt is settled or the debtor leaves the employment.

##### **Ejection or Removing from property**

Ejection may be undertaken on the authority of decrees for recovery of possession of heritable property, removing or ejection. Removing is the term used where a landlord seeks to recover possession of property from a tenant. Ejection is the remedy for removal of an occupier who does not hold title to occupy the heritable property.

### **Inhibition**

Inhibition is a personal diligence which prohibits a debtor from selling or otherwise disposing of or granting any security over their heritable property, to the detriment of the inhibiting creditor. This is achieved by registering an inhibition in the Register of Inhibitions and Adjudications. An inhibition offers comfort to the inhibitor in that the debtor will have difficulty in disposing of their heritable property, but it does not give the inhibitor any real right over the property. An Inhibition is a negative or prohibitory diligence which remains effective for a period of five years, but will terminate earlier if the inhibiting creditor agrees to discharge; usually upon satisfaction of the debt.

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

Sheriff Officers and Messengers-at-Arms are the competent authorities for enforcement in Scotland. They will be instructed by creditors to enforce court orders or warrants against debtors which are issued by Sheriff Courts or the Court of Session, as well as documents of debt registered at the Books of Council and Session for enforcement.

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

#### **3.1 The procedure**

Court orders or decrees issued by a Sheriff Court in any Sheriffdom in Scotland, or by the Court of Session, and equivalent authorities (such as a document of debt registered for enforcement), are enforceable. An extract of the decree generally bears warrant for all lawful enforcement.

Enforcement by diligence generally falls to Sheriff Officers and Messengers-at-Arms. These are independent fee paid contractors who hold a Commission from the Sheriff Principal of the Sheriffdom in which they are authorised to act. These officers are subject to the control and supervision of the court, although they are not directly employed by the court. The Debtors (Scotland) Act 1987 sets out a statutory framework for control of their admission, training and conduct in the exercise of their official functions, while the Debt Arrangement and Attachment (Scotland) Act 2002 and the Bankruptcy and Diligence etc. (Scotland) Act 2007 further regulate their functions and conduct. Additionally, all officers of court are required to execute their duties in accordance with the Constitution and Bye-Laws of the Society of Messengers-at-Arms and Sheriff Officers.

Only in some enforcement processes is it necessary to use a lawyer.

Fees charged by Sheriff Officers and Messengers-at-Arms for executing diligence are currently prescribed by the Act of Sederunt (Fees of Sheriff Officers) 2013 (SSI 2013/345) and the Act of Sederunt (Fees of Messengers-at-Arms) 2013 (SSI 2013/346). These fee tables are changed regularly.

#### **3.2 The main conditions**

The granting of a decree in the pursuer's (the person raising the action) favour is normally sufficient for executing enforcement. However most diligences also require the service of a charge for payment and the issue of a Debt Advice and Information Package before the debt can be recovered. A charge for payment is a formal demand for payment served on a debtor for the amount owed to a creditor, including any associated interest and costs. It provides the debtor with a period of fourteen days (if the debtor is within the UK) in which to make payment. If the debt is not satisfied within the period specified, the creditor may then use diligence to recover the sums due. A Debt Advice and Information Package advises debtors to obtain money advice.

In the case of an exceptional attachment order, the creditor must return to court to seek specific authorisation to attach non-essential articles kept in the debtor's dwelling house. In considering whether to make such an order the Sheriff has regard to various matters. These are the nature of the debt (and in particular whether the debt relates to any tax or duty or to any trade or business carried on by the debtor);

whether the debtor resides in the dwelling house specified;

whether the debtor carries on a trade or business from that dwelling house;

whether money advice has been given to the debtor;

whether any extension of time to pay orders or directions have lapsed; and

any agreement between the debtor and creditor for the settlement of the debt.

In particular, the Sheriff must be satisfied that the creditor has taken reasonable steps to negotiate a settlement of the debt and that the creditor has already taken steps to enforce the debt by way of an arrestment and an earnings arrestment and that there is a reasonable prospect that the sum recovered from auction of the debtor's non-essential assets would be at least equal to the aggregate of a reasonable estimate of chargeable expenses and £100.

Arrestment operates to attach property (funds and moveable goods) in the hands of a third party and secures a measure of preference for the arresting creditor. Where funds are arrested they are subject to automatic release after a period of fourteen weeks, provided that no objection has been lodged. Any objection should be lodged with the Sheriff at court, and be on the grounds that the arrestment is unduly harsh, that the Sheriff Officer has not carried out the arrestment properly, or that the arrested funds belong to a third party (or are owned by a third party in common with a debtor). For the release of arrested goods the creditor must raise an action of forthcoming which, if granted by the court, will instruct the arrestee to release the arrested goods.

In the case of adjudication, if the debt remains unpaid after ten years ("the legal"), the adjudger may convert his right into a right of absolute property. This is done by a Court of Session action known as an action of declarator of expiry of the legal. A debtor may defend an action of declarator of expiry of the legal on the grounds that the debt is paid.

An inhibition takes effect from the date on which the schedule of inhibition and the certificate of execution of the inhibition are registered in the Register of Inhibitions and Adjudications. However, where a notice of inhibition is registered in the Register of Inhibitions and Adjudication and the schedule of inhibition and certificate of execution are registered within 21 days of this notice, the inhibition will take effect from the date that notice is registered.

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

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

There is a diligence available for every type of asset, except cash in the hands of the debtor.

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

##### **Adjudication for debt**

Adjudication has the effect of a judicial heritable security in favour of the creditor. A decree of adjudication does not give the adjudger an immediate power of sale: only a power to secure the rents if the heritable property is leased, or remove the debtor if they are in possession.

##### **Arrestment of goods or funds in the hands of a third party**

The effect of an arrestment is to freeze funds and/or moveable property belonging to the debtor in the hands of a third party. The third party is prevented from using or disposing of the goods or funds or releasing them to the debtor without the creditor's consent. In order to have arrested goods released to a creditor, the creditor must raise an action of forthcoming. Arrested funds in the hands of a financial institution are subject to automatic release after a period of 14 weeks if there has been no objection. If an arrestee parts with the subjects arrested, they are liable to the arresting creditor for its value. They will also

theoretically be in contempt of court by acting in breach of an arrestment. There is a legal obligation on arrestees to disclose to an arresting creditor the existence or extent of assets attached by an arrestment. Failure to comply with this obligation may result in the Sheriff making an order requiring the arrestee to pay a sum of money to the arresting creditor.

#### **Earnings Arrestment or Current Maintenance Order**

Where an employer has been served with an earnings arrestment schedule or current maintenance order, he must deduct the calculated amount and pay it over to the creditor. If the employer does not comply with the terms, they are liable to the creditor for the amount of money that should have been paid over.

#### **Ejection or Removing from property**

A decree of ejection or removing has the effect of requiring a person to remove himself from the property specified in the extract decree. If the subject of an ejection or removal order does not voluntarily comply and remove by the date specified, Sheriff Officers may remove them and secure the property, requesting the assistance of police if necessary. A 'Charge of Removing from Heritable Property' must be served on the person to be removed, and the period of charge contained therein must have expired before a removal or ejection can take place, unless the Sheriff has dispensed with this requirement.

#### **Inhibition**

The registering of an inhibition in the Register of Inhibitions and Adjudications has the effect of preventing the debtor from selling, or otherwise disposing of, or granting a security over his heritable property to the detriment of the inhibitor. Any disposition or standard security or other deed granted by the debtor contrary to an inhibition is reducible at the instance of the inhibitor.

A decree *ad factum praestandum* is a decree to enforce the performance by the debtor of an act other than a payment of money and requires compliance. The terms of the decree must specify precisely what is to be done, and when applied for at court it is desirable that an alternative request be added for damages less compliance. Failure to comply cannot result in imprisonment unless the person who originally sought decree ("the applicant") makes an application to the court where decree was initially granted. It is then for the applicant to satisfy the court that the debtor is willfully refusing to comply with the decree. If so satisfied, the court may grant warrant for imprisonment of the respondent for any period not exceeding 6 months. Imprisonment does not operate to extinguish the obligation imposed by the decree.

#### **Money attachment**

This allows a creditor to attach and remove money (cash including coins and banknotes in a foreign currency, postal orders, banking instruments etc) which is held on a debtor's premises although money in a dwelling house and in the hands of the debtor cannot be attached.

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

#### **Adjudication for debt**

After granting the decree, the extract is recorded in the appropriate Scottish land register. The decree is then valid and only after a period of 10 years is the creditor then able to apply to the court to become the owner and sell the property.

#### **Arrestment of goods or funds in the hands of a third party**

An arrestment in execution is either successful or not. For example, an arrestment can be served on a bank but if the debtor does not have an account with that bank or has insufficient funds in any accounts, then the arrestment will not catch any funds.

#### **Attachment of goods**

An attachment only has effect until the earlier of the date which is six months after the date on which an article is attached and the date which is 20 days after the date on which the attached article was removed from the place at which it was attached. An exceptional attachment order specifies the period in which it must be executed.

#### **Earnings Arrestment or Current Maintenance Order**

The service of an earnings arrestment schedule, or a current maintenance arrestment, is either successful or not. If the debtor is not in the employment of the person on whom the schedule is served, it falls. If the debtor is in employment, it remains in force until such time as the debt is satisfied or the debtor leaves that employment.

#### **Ejection or Removing from property**

Execution of diligence following a decree of removing or ejection must be carried out without undue delay. There is no definition as to what might constitute undue delay. This is dependent on the particular circumstances of each case.

#### **Inhibition**

An inhibition prescribes after 5 years. It may be renewed on application to the court by inhibitor. A decree *ad factum praestandum* must specify exactly what has to be done and the time within which it must be done.

#### **Money attachment**

Money attachment will either be successful or not. For example if the Sheriff Officer finds no funds on the debtor's premises then the money attachment will have failed. If the Money Attachment is successful then the officer of the court (Sheriff Officers or Messengers at Arms) must before the expiry of the period of 14 days beginning with the day on which the money attachment is executed make a report to the Sheriff. The officer of the court must copy the report to the debtor and creditor. The attachment will cease to have effect if the Sheriff refuses to receive the report.

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

An employer or the debtor can apply to the Sheriff to make an order declaring a current maintenance order invalid or that it has ceased to have effect. Also, if the debtor can satisfy the Sheriff that he is unlikely to default on payment again, the Sheriff can make an order recalling it.

The debtor, the arrestee or a third party may, by notice of objection, apply to the Sheriff for an order recalling or restricting the arrestment. This notice must be given within 4 weeks of the execution of the arrestment.

An appeal can be made against any decision of a Sheriff made in relation to an attachment or exceptional attachment. The appeal can be made, only with the leave of the Sheriff, to the Sheriff Principal and on a point of law. The decision of the Sheriff Principal on such an appeal is final.

The grounds for discharge or recall of an inhibition are where the inhibition has been procedurally inept and where the decree for payment has been reduced. There is no appeal against removing or ejection once the decree is executed.

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

#### **Debtor Entering Into a Debt Solution**

Should a debtor be sequestrated or enter into a trust deed, a protected trust deed, or a debt payment programme under the debt arrangement scheme, then creditors cannot take any further diligence against the debtor, subject to certain conditions. Instead the creditor would generally have to look at placing a claim for the sums due with the debtor's trustee, or adding the debt to any debt payment programme.

#### **Moratorium on Diligence**

A moratorium on diligence is to be introduced across all statutory debt solutions in Scotland through changes to the Bankruptcy (Scotland) Act 1985 which come into force on 1 April 2015 by virtue of the Bankruptcy and Debt Advice (Scotland) Act 2014. This will mean that if an individual gives notice that they want to apply for a statutory debt solution, they will be given a 6 week period of protection from any diligence action against them by their creditors. This is



the same 6 week period as there presently is under the Bankruptcy and Diligence (Scotland) Act 2007 which introduced a moratorium on diligence for a debtor who intends to apply for or has applied for a debt payment programme, or a 6 week period from the date they intimate to the debt arrangement scheme administrator that it is their intention to apply for a debt payment programme. These 6 week moratorium periods can however be reduced or extended in certain circumstances.

#### **Time to Pay**

In granting decree against a debtor for payment of certain types of debt, the court may make a time to pay direction to the effect that the sum payable can be paid in instalments over time. Also once diligence has commenced the court may make a time to pay order. While a time to pay direction or order is in force, it is not competent to serve a charge for payment or carry out any diligence in order to enforce payment of the debt.

#### **Enforcement Time Limits**

If after the date when an obligation has become enforceable it has subsisted for a continuous period of twenty years without a relevant claim having been made and without the subsistence of the obligation having been relevantly acknowledged, then the obligation shall extinguish. Therefore if no diligence is taken on a court decree or document of debt for a continuous period of 20 years without it also having been unequivocally admitted in writing by or on behalf of the debtor, the obligation will prescribe. However where a creditor executes diligence to enforce a decree or document of debt and the debtor clearly acknowledges to the creditor that the debt still subsists, the creditor will be given another 20 years in which to seek full satisfaction of the claim against the debtor.

#### **Related links**

[Accountant in Bankruptcy](#)

Last update: 25/04/2019

The national language version of this page is maintained by the respective EJN contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJN nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

### **Procedures for enforcing a judgment - Gibraltar**

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

Enforcement is court-sanctioned action taken to compel judgment debtors to comply with the orders of the court. The choice of enforcement method lies entirely with the judgment creditor.

When choosing which method to use a creditor must consider whether:

- he/she is likely to get their money and court fee from the defendant;
- the defendant owes other people money or has other court judgments;
- the defendant owns any goods or assets which can be taken and sold at auction;
- the defendant is working;
- the defendant has other earnings, such as income from investments;
- the defendant has a bank, building society or other account;
- the defendant owns property (a house); or
- anyone else owes the defendant money.

Information on the different types of enforcement measures follows. A judgment creditor should choose the one which is most likely to get him/her the money owed.

A court cannot guarantee that the judgment creditor will get his/her money back, and a court fee is payable for any action taken. Although the court will add the fee to the money the defendant already owes, the court cannot return what the creditor has paid if he/she does not get the money from the defendant.

The different types of enforcement methods are:

#### **Seizure of goods**

Execution is the enforcement of civil court judgments by seizure of goods. To obtain enforcement by execution it is necessary to apply to the court for a warrant of execution. A warrant will only help if the defendant has:

- enough goods at the address given by the judgment creditor which could be sold at auction to raise money; or
- all the money claimed for on the warrant (to stop goods being sold).

Before the court can issue a warrant, the defendant must have:

- failed to pay the amount he or she has been ordered to pay; or
- fallen behind with at least one of his or her payments.

Bailiffs cannot always remove and sell the defendant's goods. For example, they cannot remove essential household items and tradesman's tools or goods subject to hire purchase or rental agreements. The bailiff will not take the defendant's goods if they are not worth enough to pay the warrant after the costs of taking and selling the goods. Goods sold at auction often raise only a fraction of their original value. In addition the defendant's goods may also already have been seized by bailiffs acting under another warrant.

#### **Third party debt orders**

A judgment creditor may make an application to the Supreme Court that a debt owed by a third party to the defendant be paid to the judgment creditor instead. In practice this method is used to seize funds which the defendant may have in bank accounts. If there are insufficient funds in the bank accounts to cover the debt then such funds as are available are used to repay at least some of the amount owed.

#### **Insolvency proceedings**

If the amount owed is more than £750 a judgment creditor can also apply to make the defendant insolvent. These proceedings are brought in the Supreme Court. This can be expensive however.

#### **Judgment Summons**

In the Small Claims Jurisdiction of the Supreme Court (claims up to £10000), a judgment creditor can apply for a judgment summons. The court can then impose payment of the debt due by installments which can, in certain limited circumstances, lead to imprisonment on default of payment.

#### **Orders to obtain information**

Although not in itself an enforcement method, this procedure allows for judgment debtors to be questioned for information regarding their assets, to enable the judgment creditor to make a more informed choice as to the enforcement method they would wish to use.

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

The Supreme Court is competent for enforcement in Gibraltar.

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



### 3.1 The procedure

The Supreme Court (including its Small Claims Jurisdiction) can order enforcement in cases where they have granted judgment.

In Gibraltar, Bailiffs are employees of the Court Service and therefore civil servants. They deal with enforcement of judgments and/or orders made and registered in the courts. They enforce warrants of execution, repossess land with warrants of possession and recover goods under warrants for return of goods. In addition, bailiffs carry out other duties, including personal service of documents and warrants of committal.

#### Use of lawyers or other legal professionals

There is no obligation upon the creditor to make their application for enforcement through a lawyer or any other legal professional.

Except in the Small Claims Jurisdiction of the Supreme Court enforcement procedures can be complicated. Creditors may want to get advice, therefore, from a solicitor or the Citizens Advice Bureau before commencing an enforcement procedure.

#### Scale of costs for enforcement

There are different court fees for each of the methods of enforcement. As mentioned above, although the court will add the fee to the money the defendant already owes, the court cannot return what the creditor has paid if he/she does not get the money from the defendant. For further information on applicable fees you can contact the Supreme Court Registry, 277 Main Street, Gibraltar, telephone number (+350) 200 75608.

### 3.2 The main conditions

As mentioned above, in Gibraltar, the choice of enforcement method to be used is wholly within the hands of the judgment creditor. Responsible creditors who have obtained a valid judgment through the courts and have still not been paid are entitled to enforce that judgment by the most appropriate means available to them. Therefore, as long as a valid judgment is in place and a proper application is made, the court is obliged to follow the creditor's choosing.

## 4 Object and nature of enforcement measures

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

Enforcement action may be taken against the following assets:

Bank accounts by use of the third party debt order procedure.

Tangible movable property by use of execution.

Immovable property by use of the charging order procedure.

There is no hard and fast lists of goods that are exempt from distraint action. However, there are guidelines. The bailiff can only take goods which belong to the defendant or are jointly owned.

Any goods which the bailiff takes must be likely to fetch money at auction. Bailiffs will not remove goods if they think that they will not fetch enough to pay something towards the warrant after the cost of removing and selling them at auction have been paid.

Bailiffs cannot take:

items which the defendant needs for his job or business, such as tradesman's tools or books;

essential household items which the defendant and his family need such as clothing or bedding;

items which are leased, rented or are on hire purchase agreements (including cars);

goods which may have already been seized by bailiffs acting under another warrant; or

equipment which does not belong to a business (e.g. office furniture, machinery and vehicles which are leased).

For third party debt orders a judgment debtor who is prevented from withdrawing money from his or her account with a bank or building society and claims that he or she or his or her family is suffering hardship in meeting ordinary living expenses as a result, may apply to a court for a hardship payment order which allows one or more payments to be made to specific individuals.

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

For both debtors and third parties, the failure to comply with the requirements of court orders leads them open to sanctions for contempt. The penalties that can be imposed for contempt include "purging contempt" (that is an apology to the judge in open court), fines, and in the most serious cases imprisonment for up to 14 days.

Banks have certain obligations regarding disclosing information and attaching bank accounts. When a bank receives a third party debt order imposed upon one of its customers, the bank does not have to reveal how much money is held in the account. It can state that there is no money in the account, that there are insufficient funds to meet the whole amount but can pay some of it, or that there are sufficient funds to meet the whole amount requested. There are very strict data protection issues that govern what information other than this the bank can provide.

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

All orders state the length of time that is being given to provide relevant information or to comply with the court order, and also state the maximum penalties that may be imposed for failing to comply with a court order.

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

The court based enforcement methods (charging orders, and third party debt orders) all involve a two-stage process. The interim stage of the process is purely a paper based judicial function, and the judgment debtor has no input to the process at this stage. However, for each method to progress to the final stage, there has to be a hearing to which the judgment debtor will be invited to attend where he will be able to give any reasons as to why the planned method of enforcement should not proceed. The date of the hearing will be notified to all parties well in advance, and in all cases there is a fixed minimum amount of time that must elapse between the 'interim' stage, notification of the 'final' hearing, and the 'final' hearing itself, to enable the debtor (and any relevant, directly involved third party e.g. the bank in a third party debt order case) time to prepare their case. If the date of the 'final' hearing is inconvenient for the parties, they may be able to get it postponed to a more mutually convenient date. Should this happen, the interim order will remain in place, but the order cannot be made 'final' until that hearing has been held.

There is no appeal against the decision once the court has made its order. In appropriate circumstances appeals or requests to set aside can only be made on the original judgment that gave the creditor the authority to request enforcement in the first place. Only if the judgment is successfully challenged by appeal or is set aside can the enforcement process be revoked by a court. If a challenge to the judgment is lodged after a court has authorised a creditor's request for enforcement a warrant may be suspended on application to the court. Bailiffs may not take away goods but they must continue to levy on them (that is list those that could later be seized and taken away for sale).

Provided that a creditor has made a correct application for enforcement to a court, that court cannot refuse to authorise the method of enforcement chosen by the creditor. There is, therefore, no need for the creditor to have a means of appeal against the decision granting a measure.

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

A warrant or writ of execution is time limited. The warrant and writ are valid for 12 months and can be extended for a further 12 months by an order of the court.

In the taking control of goods procedure a debtor must be given a notice explaining that his goods have been seized and that he has 5 days in which to enter into a 'walking possession' agreement with the Bailiffs. This agreement allows the debtor to retain the goods. If the debtor does not sign the agreement within 5 days the Bailiffs can remove the goods and proceed to their auction.

Last update: 01/04/2019

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.