

## Procedures for enforcing a judgment - Portugal



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### 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.

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