


## Procedures for enforcing a judgment - Poland

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### 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 1153<sup>14</sup> 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:

1. a final or immediately enforceable court judgement and settlement agreements reached in court
2. a final or immediately enforceable decision by a senior judicial clerk (*referendarz sądowy*)
3. other judgments, settlement agreements and legal instruments which are enforced by way of judicial enforcement
4. 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
5. 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

6. 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<sup>1</sup> 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:

1. 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).
2. 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)
3. 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.

4. 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:

1. 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
2. appointing an administrator for the real estate or business and a caretaker to supervise the real estate
3. 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 795<sup>7</sup> 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 87<sup>1</sup>(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.

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