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Since our founding in 1990, a Meritas firm’s membership is obtained by invitation only and is sustained by strict adherence to our uncompromising service standards. With more than 180 law firms spanning over 90 countries we offer superior legal service worldwide, coupled with the personal attention, proven value and localized expertise.

No matter how simple or complex the legal matter, clients always have the flexibility to choose how they want to work with Meritas.

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INTRODUCTION

This guide provides an overview of recovering proceedings for claims across Europe. Notwithstanding the EU initiatives to facilitate the recovery of a monetary claim in another EU Member State, experience teaches that calling upon counsel from the jurisdiction where the debtor resides is appropriate, if not required.

Local counsel shall be able to assess the creditworthiness of the debtor and are best placed to assess whether conservatory measures can be obtained to secure the recovery of the claim. Failing to do so risks rendering the time, effort and money for recovering a claim a bad business decision.

After an insight into the two relevant EU Regulations, this guide offers an overview per EU Member State, on the principles of asset tracing, conservatory measures, recovery proceedings for undisputed claims and enforcement measures.

Assess
the Creditworthiness
of the Debtor

Assess
whether Conservatory
Measures can be Obtained

EU REGULATIONS FOR RECOVERING CLAIMS ABROAD

The EU provides for a number of regulations to facilitate litigation and debt recovery throughout the EU. Next to the general Brussels Regulation on jurisdiction and enforcement, the lesser used EEO Regulation on the European Enforcement Order for uncontested claims and the Regulation on the European Small Claims Procedure, two EU regulations should be highlighted, as they offer national procedures that have a significant impact on enforceability in another Member State:

   - The EAPO Regulation aims to facilitate cross-border debt recovery in civil and commercial matters. It allows creditors in an urgent need for protective measures to freeze some or all of the funds on cross-border bank accounts of their debtors.
   - The EAPO Regulation allows creditors to preserve funds in bank accounts under essentially the same conditions in all Member States. The EAPO would be issued in an ex parte procedure, that is, without the debtor’s knowledge.
   - The creditor can apply for the EAPO prior to obtaining a judgment on the merits of the case or when he has already obtained a judgment, court settlement or authentic instrument requiring the debtor to pay the creditor’s claim.
   - Note that in a Member State only a seizure of bank accounts held outside that Member State can be requested for under the EAPO. Seizures on bank accounts held in the Member State where the seizure is sought should be done by the judicial proceedings of that Member State.
   - Because the actual seizure must be done via the local procedural rules of the Member State where the bank account is held, it might be more appropriate to obtain the seizure in the Member State concerned. Moreover, the EAPO provides for information sharing on the bank accounts held in the Member States. As most of the Member States have no database available, this impacts the efficiency of this tool. For all those reasons, input from a local counsel will be necessary before starting the seizure procedure under the EAPO.

   - The EOP Regulation provides for a simplified, quick and cost-efficient way for cross-border debt collection and claims for payment.
   - The EOP Regulation applies to uncontested claims for payment in both civil and commercial matters. The EOP applies to claims whereby at least one of the parties resides in a Member State different from the Member State where the application for the EOP is made.
   - The application for the EOP is based on a standard form, which is attached to the EOP Regulation. The court will examine whether the conditions have been met, e.g. the cross-border nature of the claim and the jurisdiction of the court. If the conditions have been met, an EOP will be issued within thirty days following the application.
   - The EOP will be automatically recognised and enforceable in other Member States. The EOP will be served upon the debtor according to the procedural rules of the Member State of the debtor, after which the debtor has 30 days to file a statement of opposition.
   - In case of an opposition, ordinary civil proceedings before the courts of the Member State in which the EOP was issued must be started.
   - This tool is only effective, if the debt is indeed uncontested. As the opposition proceedings equals ordinary court proceedings on the merits, the application of this instrument might slow down the recovery process.
   - Therefore, consideration on the strategy must be given before using the EOP instrument.
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Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?

There is no asset registrar or database in Austria. The following tools are, however, available:
- Edict database (Insolvency database): Certain court decisions, e.g., compulsory auctions in regard to immovable property or the institution of bankruptcy proceedings, get publicly announced via edict. The main decisions concerning personal insolvency and compulsory auctions are publicly available on the internet (www.edikte.justiz.gv.at).
- For real estate, an excerpt from the land registry (based on the domicile of your debtor) provides you with an overview of the real estate relating to which the debtor has any right in rem and whether mortgages are vested on the property.

Conservatory Seizure

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

Generally, all assets owned by the debtor are seizable movable assets - including shares, bank accounts and third-party claims - and real estate. In some instances, such as religious assets or goods that are necessary to meet basic needs for individual persons, are specifically excluded by law.

Execution to seize (§ 370 EO): The seizure of money claims is possible on the basis of final judgments, court orders in non-adversary proceedings and payment orders of domestic civil court orders which are not yet enforceable, under certain conditions and upon request. It must be granted to the court that, without this, the execution would be considerably more difficult or frustrated. The available means of execution are limited to the seizable movable goods, the implementation of a lien in the land registry, the sequestration and the seizure of third party claims.

Besides, one can request an interim injunction, if an execution to seize is not possible according to law.

3. What type of claims can be secured with a conservatory seizure?

Execution to seize: All money claims, irrespective their origin, that are certain, due and payable. Normally, one cannot request for a conservatory seizure to secure a future claim, i.e. a claim that is not yet due. Though, it is possible to seize undue claims for support or undue annuities based on personal injuries together with the executory seizure of already due claims, as long as those claims will be due within a one-year’s period of time.

Interim injunctions: Not limited to money claims, but can only be requested if the creditor is not able to start the ordinary execution proceedings in order to seize the assets of the debtor.

4. What about the urgency requirement?

The creditor must demonstrate that, in the absence of the seizure, the recovery of his claim is seriously jeopardized. One case of application that is explicitly mentioned by law is if the court order had to be enforced in another state in order to secure recovery. This does not apply to EU member states or states within the Lugano-Treaty.

Exeuctive Seizure

8. How is a payment order enforced?

An executory seizure requires an enforceable title, such as a judgment on the merits. A judgment from a Member State of the EU is enforceable within the EU without any exequatur proceedings being required.

The executory seizure is performed by a bailiff. Before proceeding with the executory seizure, the bailiff will serve a final notice to the debtor. Depending on the means of execution, the bailiff can enforce the execution within around 2-4 weeks after the opponent was notified.

Recovery of Uncontested Claims

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?

In addition to the procedure provided by the EOP Regulation, it is possible under Austrian law to recover uncontested monetary claims that are due and payable, without legal proceedings being necessary. If the debtor does not have access to the execution registry anymore due to data protection issues. Therefore, an overview of all the executory seizures that have already been made on the assets of the debtor is no longer accessible.

Since 2009, lawyers do not have access to the execution registry anymore due to data protection issues. Therefore, an overview of all the executory seizures that have already been made on the assets of the debtor is no longer accessible.

In some cases (§ 371 EO) one does not have to substantiate the urgency requirement at all. The same applies to creditors who deposit a security in the amount set by the courts.

5. What is the procedure to obtain a seizure? What is the typical time frame?

A request, setting out the claim and urgency requirement and including all documentary evidence, must be filed to the competent court. The Seizure Judge / Law Enforcement Officer must decide as fast as possible. The requesting party has to compensate the proceedings’ costs in the first place.

6. Are there any language requirements?

The request, the documentary evidence and everything has to be in German language. If the documentary evidence is in another language, a translation of the document must be included.

7. Is it required to start proceedings on the merits?

It is not legally required that proceedings on the merits (at the time of the conservatory seizure) are already initiated by the requesting party. Nevertheless, the requesting party has to define the time frame that should be covered by the interim injunction requested.
Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

All assets owned by the debtor: moveable assets - including shares, bank accounts and third-party claims - and real assets. In some instances, such as some assets from government bodies, or goods necessary to provide in basic needs for consumers, are specifically excluded by law.

3. What type of claims can be secured with a conservatory seizure?

All claims, irrespective their origin, that are certain, due and payable. One cannot request a conservatory seizure to secure a future claim, i.e. a claim that is not yet due.

4. What about the urgency requirement?

The creditor must demonstrate that, in the absence of the seizure, the recovery of his claim is seriously jeopardized.

In practice, Courts already accepted as evidence of urgency:
• The amount of the claim is (very) high in relation to the financial situation of the debtor;
• There are indications that the debtor only has assets that can easily be transferred or moved, e.g. the debtor has no real estate, and thus limits (the possibility to ensure) the future debt recovery;
• The seizure might not be allowed if the creditor has not taken any timely initiative to secure his claim, and thus has created the urgency himself.

5. What is the procedure to obtain a seizure? What is the typical time frame?

A unilateral (“ex parte”) petition, setting out the claim and urgency requirement and including all documentary evidence, must be filed with the competent Seizure Judge. The Seizure Judge must decide within 8 calendar days following the filing of request. If the judgment is positive, the bailiff can perform the seizure, based on prior authorization from the judge. The executory seizure is performed within the EU without any exequatur requirements.

6. Are there any language requirements?

The petition, the documentary evidence and the notifications by the bailiff should be in Dutch or French, depending on the competent court. If the documentary evidence is in another language, a translation of the document must be included.

7. Is it required to start proceedings on the merits?

Although starting proceedings on the merits is not the case at the time of the conservatory seizure, it is not a legal condition, some Seize Judge imposes the creditor to do so within a certain time frame (mostly 1 month) as a condition to maintain the seizure.

8. How is a payment order enforced?

An executory seizure requires an enforceable title, such as a judgment on the merits. A judgment from a Member State of the EU is enforceable by the EOP Regulation, it is possible under Belgian law to recover.

9. Is it possible in your jurisdiction to recover uncontestable claims and to obtain an enforceable title without a court intervention?

In addition to the procedure provided by the EOP Regulation, it is possible under Belgian law to recover uncontested monetary claims that are due and payable via a bailiff, without legal proceedings being necessary. The bailiff must be instructed to recover the uncontested claim by an attorney-at-law, who will act as a first judge to determine the uncontested nature of the claim.

If the debtor does not (timely) contest the claim or does not respect the payment terms that were agreed upon, the bailiff will confirm this in a declaration, which can be declared enforceable, i.e. an enforceable title, upon request of the bailiff and can be used to proceed with executory seizures.
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?

The following registers provide public information on assets:

- Property Register: Contains information on ownership and other in rem rights, some real estate lease agreements, mortgages, court claims regarding in rem rights, certain documents regarding inheritance rights and others;
- Central Register of Special Pledges: Contains information about registered pledges on movables, receivables, machinery and equipment, aggregates;
- Central Depository: Contains information about dematerialized shares, including registered pledges on them;
- Commercial Register: Contains information about companies and sole traders. Attachments on company shares or registered pledges on company shares or company’s enterprise are publicly available;
- Central Register of Exequatur Proceedings: Contains information whether the debtor is a contractor under a public procurement agreement.
- Patents Office: Contains information about industrial property rights.
- Public Procurement Register: Contains information whether the debtor is a contractor under a public procurement agreement.

In addition, the following information could be obtained as well participation in EU-funded programmes; pending enforcement procedures against a company; pending and closed court proceedings with the participation of a particular company / natural person, although some limitations apply.

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

All assets owned by the debtor - movable assets, shares, bank accounts, receivables from third parties, industrial property, can be subject to a conservatory seizure. Some assets owned by government bodies, municipalities and some medical institutions, as well as assets necessary to provide for the basic needs of natural persons, are specifically excluded by law.

3. What type of claims can be secured with a conservatory seizure?

All kinds of claims, irrespective of their origin.

4. What about the urgency requirement?

The law prescribes such a requirement. Courts, however, tend to assume that the requirement is met unless otherwise indicated by the creditor’s statements and the presented written evidence.

5. What is the procedure to obtain a seizure? What is the typical time frame?

A petition is filed with the court. The judge shall issue a decision within the same day – in practice, it usually takes a day or two. Payment of a monetary guarantee (security) to the court’s deposit bank account is usually a precondition for allowing the seizure. Once the guarantee is paid, the court will issue a security order. The creditor must present the order to the bailiff for enforcement. Depending on the measure allowed by the court, enforcement may be fulfilled either by the bailiff or by the Registry Agency or another competent authority.

6. Are there any language requirements?

All documents must be in Bulgarian. If a document is drafted in another language, a translation into Bulgarian must be provided.

7. Is it required to start proceedings on the merits?

Yes, it is. The court determines the term within which the claim on the merits must be filed. The term could not be longer than one month as of allowing the seizure.

The executory seizure is performed by a bailiff. Seizure of assets can be effected before the debtor has been served the notice for voluntary payment.

Executory Seizure

8. How is a payment order enforced?

An executory seizure requires an enforceable title, such as a judgment on the merits, a payment order issued according to a special procedure (see below), a court agreement, etc. Judgments of second-instance courts are enforceable as a rule. A judgment issued in an EU Member State is enforceable within the EU without any exequatur proceedings being required.

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?

A court intervention is necessary in any case. Nevertheless, there is a simplified court procedure designated for uncontested claims – the payment order procedure. It allows a creditor to file with the court a petition for issuing a payment order against the debtor. If the petition is supported by certain documents prescribed by law, the court will issue an order which is immediately enforceable. The debtor will be notified by the bailiff who enforces the order. If the petition is not supported by such documents, the court will still issue a payment order and serve it to the debtor, but this order will not be enforceable unless the debtor fails to contest it.

In both cases the debtor will have the chance to contest the claim. If the claim is contested, the creditor must establish its existence and amount in a regular court procedure initiated within a specific term. Otherwise, the enforcement procedure will be terminated.
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?

For physical persons there is no asset registry as such. However after commencement of legal action searches of the Lands registry may be made by filing an application with the District Lands Registry or the Central Lands Registry.

Lands Registry or the Central Lands Registry.

For legal persons (private companies, public companies, partnerships and business names / Joint Ventures a search may be conducted at the Registrar of Companies. A short form search showing shareholders, directors, secretaries, and registered office together with changes relating to the same may be conducted on line. A full search comprising of all the above plus audited accounts for companies may be carried out at the offices of the Registrar of Companies by prior appointment.

All the above searches relate only to legal persons.

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

All assets owned by the debtor, including moveable assets, shares, bank accounts, third-party claims and real estate. In some instances, such as some assets from government bodies, such as the motor vehicles used by Ministers, Works of Art etc are excluded by law.

3. What type of claims can be secured with a conservatory seizure?

All claims, irrespective their origin, that are certain, due and payable. Under certain circumstances, future claims (i.e. claims that are not yet proven to be due) can also be secured with an interim order (injunction) or a more seizing the case of unconditional / without contestation bank guarantees / share pledge agreements or mortgages can be collected in the circumstances indicated by the underlying contract / agreement / instrument.

4. What about the urgency requirement?

An urgency requirement exists where an application for a conservatory seizure or restraint of assets is applied for on an ex parte basis.

Additionally all ex parte applications must show that there is a serious issue to be tried that the applicant has good prospects of success and that unless the interim order is granted there is a real possibility that justice will not be administered – e.g. that assets may be hidden or dissipated and thereby defeat execution.

5. What is the procedure to obtain a seizure? What is the typical time frame?

An ex parte or by summons application must be made in the District Court that has jurisdiction. These are made contemporaneously with the filing of a legal action or another originating process. They are not permitted by way of a mere petition requesting only the injunction / seizure up to the date of conclusion of the main action.

In urgent cases the judge may give leave for the matter to come before him on the same day and may issue an interim order which is returnable within three or four working days so as to allow the respondent to show why the injunction should not stand.

An ex parte application is made upon affidavit which must make a full and frank disclosure of all relevant facts both for and against the application and show that there is a serious issue to be tried, that the applicants has good prospects of success and that unless the interim order is granted there is a real possibility that justice will not be administered – e.g. that assets may be hidden or dissipated and thereby defeat execution.

6. Are there any language requirements?

The proceedings must be in an official language. The official languages are Greek or Turkish. Exhibits may be in English which is widely understood by the judges but the court may request that an exhibit that is not in an official language should be translated into an official language.

7. Is it required to start proceedings on the merits?

Yes see above.
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?
   Basic information on the assets of individuals is available from several public registers. Requests for detailed information contained in some public registers are subject to a charge in accordance with the valid legislation.

   • Cadastre of Real Estates – it is possible to use this register to verify the real estate owners, encumbrances with collateral or other limitations. If a seizure of real estate is imposed, it is possible to use this register to determine basic information regarding the debt being recovered and the bailiff. Detailed information from this register is subject to a charge.
   • Commercial Register – contains information on whether a certain individual is a partner / shareholder in a company or a member of its board of directors; whether the individual’s share is subject to distraint or collateral. All information from this register is provided free of charge.
   • Insolvency Register – contains information on individuals and companies for which declaration of insolvency was filed. All information from this register is provided free of charge.
   • Industrial Property Office – contains information on the owners of rights for registered trademarks, industrial designs, and patents. Majority of useful information from this register is provided free of charge.
   • Central Register of Enforcements – contains information on individuals whose assets were subjected to distraint. All information from this register is subject to a charge.

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?
   The conservatory seizure can limit disposal of any part of the debtor’s assets or impose an obligation regarding the same if there are concerns that enforcement of the creditor’s claims may be compromised in the future by distraint. The conservatory seizure can only be used for assets or rights that could be subject to distraint, and in a reasonably necessary extent. The conservatory seizure cannot be generally used to prohibit debtors from disposing of all of their assets. A court of law can impose necessary limitation on individuals other than the debtor if this is reasonable (e.g. on a bank to limit the disposal of the money in the debtor’s account).

3. What type of claims can be secured with a conservatory seizure?
   All creditors’ claims can be secured this way.

4. What about the urgency requirement?
   As present, the urgency requirement is an essential prerequisite for the court of law to award the entitlement for the costs of proceedings to the plaintiff if successful. The legislation specifies that it is sufficient for the plaintiff to document during the proceeding that an urgency requirement was sent to the debtor at least seven days prior to filing a lawsuit.

5. What is the procedure to obtain a seizure? What is the typical time frame?
   Prior to filing an application for conservatory seizure, the plaintiff must pay a court fee and give security to the court’s satisfaction in accordance with the court’s decision in a form of a schedule. If the decision in a form of a schedule. If the judgment of court becomes legally effective, the bailiff then independently carries out all necessary actions in order to secure the debtor’s assets and enforcement of the judgment voluntarily, then it is possible to commence recovery of the obligations through distraint. The creditor appoints a bailiff from a list and files an application for the bailiff’s authorisation by the court.

Executory Seizure

8. How is a payment order enforced?
   As soon as the payment order or the judgment of court becomes legally effective, the court of law will indicate this fact on the decision in a form of a schedule. If the debtor fails to pay or fails to satisfy the judgment voluntarily, then it is possible to commence recovery of the obligations through distraint. The creditor appoints a bailiff from a list and files an application for the bailiff’s authorisation by the court.

Recovery of Uncontested Claims

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?
   The creditor may conclude an agreement with the debtor in a form of a notarial deed, by virtue of which the debtor undertakes to redeem the debt within a certain time limit and, at the same time, agrees that this notarial deed consequently becomes powers

   • Notarial Register of Collaterals and the List of Documents regarding the Marital Property Regime – contains information on the right of lien for assets and rights other than immovable assets and rights and information on deeds by virtue of which the spouses alter the statutory rights and duties pertaining to community property. All information from this register is subject to a charge.

   In addition to the above registers, information on the assets and solvency of individuals can also be obtained from credit bureaus maintained by banks, insurance companies and other financial institutions. However, this information is generally subject to a charge and in most cases, provided exclusively to members who participate in the creation or administration of the register.

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   6. Are there any language requirements?
   All deeds and documents must be in Czech.

   7. Is it required to start proceedings on the merits?
   Yes, if a lawsuit is not filed at the time of filing the application, the court of law will, together with issuing the conservatory seizure, order that the plaintiff file a lawsuit within the time limit specified by the court, or the court can limit the validity of the conservatory seizure.

   8. How is a payment order enforced?
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Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?

There is no asset registrar or database in Denmark. The following tools are, however, available:
- For real estate, an excerpt from the land registry (based on the domicile of the debtor) can be obtained online on the Danish Registration Court’s website. The excerpt provides an overview of the real estate, its value as deemed by the tax authorities and purchase value, and whether mortgages are vested on the property.
- For motor vehicles, an excerpt from the vehicle registry can be obtained online on the Danish Registration Court’s website (based on the name and birthdate / business registration number of the debtor). The excerpt provides information about the car brand, model and registration number as well as any registered charges.
- If the debtor is a legal entity, it will likely be obliged to publicize its annual report online on the Danish Business Authority’s website. The annual report can be reviewed for an insight of the debtor’s financial assets. The degree of detail in the annual report depends on the size of the legal entity.
- For other financial information about the debtor, the personal registry can be reviewed online. In the registry, it is possible to gather information about, e.g. floating charges for legal entities, and prenuptial agreements for natural persons.

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

All assets owned by the debtor are subject to a conservatory seizure: tangible assets, including real estate, machinery and cash, and intangible assets, including patents, trademark and goodwill. Some assets such as ships and planes are specifically regulated by law if the debtor is a natural person. Assets cannot be seized to an extent that would deprive the debtor of basic needs for him or her or their household. Real property is always subject to a conservatory seizure. The same rules apply in regards to executory seizures.

3. What type of claims can be secured with a conservatory seizure?

All monetary claims and claims that can be converted into monetary claims can be secured with a conservatory seizure. It is not possible, however, to secure a claim if it likely does not exist.

Executory Seizure

8. How is a payment order enforced?

An executory seizure requires an enforceable title, such as a judgment on the merits. A judgment from an EU Member State is enforceable within the EU without any executory proceedings being required.

The executory seizure is performed by the bailiff court. The creditor must file a petition for executory seizure. The bailiff court will hereafter convene a meeting on which executory seizure will be registered in the debtor’s asset(s). The executory seizure entitles the creditor to have the asset(s) sold at an auction and receive the proceeds. A petition for an auction can be made if the debtor has not paid the creditor or appealed the executory seizure within four weeks after the executory seizure was made.

Recovery of Uncontested Claims

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court instance?

Claims of up to DKK 100,000 (approximately €13,500) (exclusive interests) may be recovered directly with the bailiff court without prior proceedings at the civil courts. Petition must be submitted to the relevant bailiff court on a special form. It is a condition that the debtor be given 10 days to pay the debt before the petition is submitted. The bailiff court will serve the petition to the debtor who will be given 14 days to contest the claim. If the debtor does not (timely) contest the claim, the bailiff court confirm this in a declaration, which can be declared enforceable, i.e. an enforceable title, upon request of the bailiff and can be used to proceed with executory seizures.

9. What type of claims can be secured with an executory seizure? What is the typical time frame?

A written petition setting out the claim, factual circumstances and urgency requirement and including the necessary documentary evidence, must be filed with the competent bailiff court.

The bailiff court may require that the creditor post security for any damages that the debtor would suffer as a consequence of the conservatory seizure, including a wrongful conservatory seizure. A security will often be required if the creditor’s claim is not fully proven.

The debtor will usually be notified of the time and place for the proceedings. The bailiff court may decide to complete the proceedings without notifying the debtor mainly if the creditor’s opportunity for recovery is materially worsened by such notification.

6. Are there any language requirements?

The petition must be in Danish. The bailiff court can decide to accept documentary evidence in another language but will usually require a translation.

7. Is it required to start proceedings on the merits?

Yes. A lawsuit must be filed within a week after the conservatory seizure. If the lawsuit concerning the claim is to be filed with a foreign court, the deadline is two weeks, and a similar lawsuit must be filed in Denmark as well within this time.
Asset Tracing

1. What kind of information on assets is publicly available? How is it obtained?
   There are no general asset registers or databases in England or Wales. There are however resources available to help determine what assets an individual holds.

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?
   England and Wales have opted out of the EAPO Regulation (EU Reg. 655/2014). However, it is possible to apply for an asset freezing injunction, known as a freezing order, from the courts in England and Wales.

   In principle, all types of assets can be subject to a freezing order. The assets should not be perishable, but may be intangible. Examples of tangible assets include bank accounts, shares, motor vehicles, and land; and an example of intangible assets is goodwill. The frozen assets may be jointly owned, or may be held by a third party for the benefit of the debtor.

   Freezing orders should not cause the respondent to cease trading. Corporate respondents should be permitted to pay their employees and trade creditors. Individual respondents should be permitted to meet their living expenses and reasonable legal costs.

   A freezing order is not a form of security and does not provide any proprietary right to the frozen assets. Other creditors of the debtor may enforce judgments against the frozen assets.

Conservatory Seizures

3. What type of claims can be secured with a conservatory seizure?
   The applicant must have a cause of action, that is, an underlying legal or equitable right. The possibility of a future cause of action is not sufficient.

4. What about the urgency requirement?
   The applicant must prove there is a “risk of dissipation” – namely that either: (i) there is a real risk that a judgment or award will go uninsured; or (ii) that unless restrained by a freezing order, the respondent will dispose or dispossess of his assets other than in the ordinary course of business; or (iii) that unless restrained by a freezing order, assets are likely to be dealt with in such a way as to make enforcement of any award or judgment more difficult, unless those dealings can be justified for normal and proper business purposes.

5. What is the procedure to obtain a seizure? What is the typical timeframe?
   A freezing order is obtained by way of application supported by written evidence in the form of an affidavit. As an application for a freezing order is generally in the first instance made without notice to the respondent, the applicant must disclose all matters that are material to the court in deciding whether to grant the order.

6. Are there any language requirements?
   Any foreign language document on which reliance is placed in the application will need to be translated into English.

7. Is it required to start proceedings in the merits?
   Yes, although it is not necessary for proceedings to have been issued at court if an undertaking is given to do so shortly thereafter.

Exe cutory Seizure

8. How is a payment order enforced?
   An executory seizure, known in England and Wales as an execution, requires an enforceable judgment and gives court bailiffs the authority to take goods from the debtor’s home or business.

   A request is submitted to the appropriate court to enforce the judgment or order and is assigned to a bailiff as an enforcement officer. The bailiff will then usually send the debtor a letter stating that a warrant has been issued and that they must pay within seven days. If the debtor pays, the court will send the money to the applicant. If the debtor does not pay, the bailiff will call at the address provided within 15 days of the warrant being issued and identify goods which can be sold. The bailiff can only take goods which belong to the defendant, or are jointly owned.

   Other forms of enforcement are available.

Recovery of Uncontested Claims

9. Is it possible to recover uncontested claims and to obtain an enforceable title without a court intervention?
   Other than under the EOP Regulation, there is no procedure in England and Wales to recover uncontested claims without a court intervention.

In relation to real estate, searches can be undertaken through the Land Registry to identify properties owned and any charges, including mortgages, registered against them. A bankruptcy search can also be carried out against individuals through the Land Registry website. A search of Companies House can provide information on an individual’s shareholdings, as well as general information regarding the financial position of companies and other registered entities.

To determine whether a debtor has any other outstanding or previous judgments or fines issued against them, a search of a register may be made.
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?

There is no general asset register or database in Finland. The following tools are, however, available:

- For real estate, an excerpt from the Land Register (based on the domicile of the debtor) can be obtained online. The excerpt provides an overview of the real estate, its size and ownership.

- For motor vehicles and vessels/boats, there are also specific registers which provide information on ownership, model, registration, brand and date of use.

- If the debtor is a legal entity, annual reports should be available at the Trade Register (the law requires that they are handed in annually but some companies neglect this duty).

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

All assets owned by the debtor can be subject to conservatory seizure. This includes both tangible assets, such as real estate, machinery, cash, vessels and vehicles etc., and intangible assets such as patents, trademarks etc.

If the debtor is a natural person, assets cannot be seized to an extent that would deprive the debtor of basic needs for the debtor’s household. The same rules apply in regards to executory seizures.

3. What type of claims can be secured with a conservatory seizure?

All monetary claims and claims that can be converted into monetary claims can be secured with a conservatory seizure. This right to a specific object can also be secured.

The seizure requires that the applicant / creditor can prove its claim to a certain degree of likelihood. For normal monetary claims degree of likelihood is somewhat low (seizure is granted as long as the claim is not clearly unfounded based on evidence or the law).

Executory Seizure

4. What about the urgency requirement?

The applicant creditor must argue that there is a risk that its claim is endangered by the actions of the debtor (assets are to be removed abroad or otherwise getting rid of). The evidentiary requirement here is not high; usually a claim of danger is enough.

Ex parte orders without hearing the debtor are possible in urgent matters.

5. What is the procedure to obtain a seizure? What is the typical time frame?

A written application setting out the claim, factual circumstances and urgency requirement, including the necessary documentary evidence, must be filed with the competent local district court. If the application is accepted, the court renders the order and thereafter the order still needs to be executed by the enforcement authority for it to be effective.

The enforcement authority will require that the creditor posts a security for any damage that the enforcement of the order might cause the debtor. The amount of the security usually corresponds in some way to the amount seized. Only exceptionally can a creditor be exempt from posting a security (e.g. if it would be unreasonable).

In urgent cases, a seizure can be obtained very quickly within a couple of hours to a couple of days depending on the complexity of the case.

6. Are there any language requirements?

The applications to the court or to the enforcement authority must be in Finnish or Swedish, which are the official languages in Finland. Evidence can be submitted in other languages as well (usually English). The court can demand that such evidence is translated to Finnish or Swedish.

7. Is it required to start proceedings on the merits?

Yes. Main proceedings must be filed within a month after the final seizure decision of the court (not the ex parte order, if such is rendered).

Recovery of Uncontested Claims

8. How is a payment order enforced?

An executory seizure requires an enforceable title, such as a judgment on the merits. A judgment from an EU Member State is enforceable within the EU without any exequatur proceedings being required.

The executory seizure is performed by the enforcement authority. The creditor must file an application for executory seizure. The enforcement authority will thereafter proceed with seizing any assets of the debtor that can be found in order to cover the creditor’s receivable. The executory seizure entitles the creditor to have the asset(s) sold at an auction and receive the proceeds.

A seizure does not provide any priority if the debtor is declared bankrupt as the assets of the debtor are turned over to the bankruptcy estate.

Recovery of Uncontested Claims

9. Is it possible to recover uncontested claims and to obtain an enforceable title without a court intervention?

No. Normal monetary claims need a court order before they can be enforced. Some claims, such as taxes and other governmental charges or floating charges of companies are also registered in a public register. The enforcement order is required to influence the debtor’s assets. If the debtor is a natural person, assets cannot be seized to an extent that would deprive the debtor of its basic needs for the debtor’s household.
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?

There is no asset register or database in France. The following tools are, however, available:

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

All assets owned by the debtor: movable assets, tangible or intangible assets – including shares, bank account and third-party claims – real estate and business capital. In some cases, some assets of government bodies or goods necessary to provide for basic needs (chairs, tables, beds…), are specifically excluded by law.

3. What type of claims can be secured with a conservatory seizure?

All claims, provided that they are well-founded.

4. What about the urgency requirement?

The creditor does not have to demonstrate any urgency in the debt collection. He only has to demonstrate a risk to his debt collection.

The indications he can rely on are:

- Default of payment
- Insolvency
- Serious financial difficulties
- For real estate matters, an excerpt from the land registry (based on the residency of your debtor) and from the mortgage registry provides you with an overview of the real estate in respect of which the debtor has rights and, whether or not, the properties are subject to mortgages.
- Under the provisions of the French Civil Code, the party that possesses movable goods is deemed to be the owner.

Executory Seizure

5. What is the procedure to obtain a seizure? What is the typical time frame?

Authorization for a conservatory seizure must be requested from a Court.

The creditor is required to present a petition before a Court. This request has to be justified by:

- a promissory note
- an accepted bill of exchange
- a cheque
- an accepted bill of exchange
- a promissory note
- a written lease contract
- a claim that appears to be founded
- the interim evaluation of the claim
- the risk of lawsuits
- and any evidence

The creditor has to deliver a document to the bailiff confirming the grant of the conservatory seizure. Prior authorization from the Court is not needed when the creditor is already holding:

- an enforcement order
- a court judgment even if not already being executed within three months of the Court order.

6. Are there any language requirements?

The petition evidence and the notifications by the bailiff have to be in French. If the evidence is in another language, the documents are required to be translated.

7. Is it required to start proceedings on the merits?

Even though the introduction of proceedings on the merits is not a condition for a conservatory seizure, the creditor must introduce such a step within a month (in most cases) of the conservatory seizure. Otherwise, the conservatory seizure will be released upon request of the debtor.

The claim must be certain, of a fixed amount and due and payable.

The executory seizure is performed by a bailiff.

French law allows the recovery of uncontested monetary claims that are due via a bailiff without further legal proceedings. Nevertheless, there is no executory force in such a procedure. It can only be used to make an impression on the debtor and as a more reliable proof of the refusal of the debtor to pay his debts. It is also possible to resort to a collection agency under the same restrictions as mentioned above.

FRANCE

Contact
Bignon Lebray
Paris, Lille, Lyon, Aix-Marseille
www.bignonlebray.com

JACQUES GOYET
Partner
T: +33 1 44 17 17 44
E: jgoyet@bignonlebray.com

FRÉDÉRIC COULON
Partner
T: +33 1 44 17 69 37
E: fcoulon@bignonlebray.com

JULIEN LECAT
Partner
T: +33 4 42 66 05 00
E: jolecat@bignonlebray.com
1. What kind of information on the assets is publicly available? How is it obtained?

There is no general public asset register or database in Germany. However, valuable information can be obtained from the public commercial register ("Handelsregister" containing legal and economic facts about tradesmen and companies) and land register ("Grundbuch" on real estate and rights regarding it). Besides, economic information may be obtained through private registers like Creditreform (economic information desk and debt collection agency).

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

In general, all movable (cash, vessels, jewelry, etc.) and immovable (real estate and pertaining rights) assets owned by the debtor can be subject to a conservatory seizure.

Exemptions exist, e.g. for items of private persons, which are essential for their work or basic needs.

The same applies for executory seizures.

3. What type of claims can be secured with a conservatory seizure?

Monetary claims or any claim that may become a monetary claim can be secured. A claim under a condition precedent can be sufficient, as long as it has a present asset value.

4. What about the urgency requirement?

There is an urgency requirement insofar as the applicant has to argue that without the seizure executing a title will be impossible or heavily hindered.

5. What is the procedure to obtain a seizure? What is the typical time frame?

The applicant has to submit a request specifying his claim and the reason for the urgency of a conservatory seizure.

No full proof has to be provided but it is sufficient to establish facts from which both may be presumed.

The request can be presented to the competent court in writing as well as verbally.

The typical time frame for obtaining a court decision is rather short, usually no more than a few days. From then on you have one month to seize the assets.

6. Are there any language requirements?

The official language used in court is German. It is within the judge's discretion to accept documentation in other languages if it is understood by the court.

7. Is it required to start proceedings on the merits?

Yes, upon request by the debtor the court sets a deadline for the applicant to bring suit.

If this deadline expires to no avail, the debtor can apply for having the conservatory seizure suspended.

8. How is a payment order enforced?

An executory seizure requires an enforceable title, such as a court decision, with an executory clause as well as service of such title to the debtor. Different ways of enforcement exist, depending on whether movable, immovable or other assets are the object of the seizure. E.g. the court would have to be involved in an attachment of bank accounts while a bailiff would carry out a seizure of movable assets (by firstly labelling and then commercializing them).

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?

With the so called "Mahnverfahren" (accelerated court proceedings) an enforceable title can be obtained rather quickly for uncontested claims.

Without court intervention, an enforceable title may be obtained in a notarial deed, where the debtor expressly submits to immediate debt enforcement.

Asset Tracing

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Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

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With the so called "Mahnverfahren" (accelerated court proceedings) an enforceable title can be obtained rather quickly for uncontested claims.

Without court intervention, an enforceable title may be obtained in a notarial deed, where the debtor expressly submits to immediate debt enforcement.
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?
   
   There is no publicly available asset registrar or database in Greece, the following tools are however available:
   
   • As far as real estate property is concerned, a creditor may obtain information on the real estate of the debtor, the rights in rem and whether mortgages are vested on the property, from the local National Land Registry Offices or from the local Cadastral offices, as applicable. It must be noted, however, that the above information is limited to the territorial scope of the respective office.
   • From the General Commercial Registry one may obtain information on the holdings of the debtor in commercial companies apart from shares listed in the stock exchange and bearer shares in general.
   Information in relation to the stock exchange shares may be obtained only after an enforcement procedure has been brought against the debtor, through the relevant application to the Central Securities Depository.

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure?
   
   All debtor’s assets, whether movable or immovable – including shares, bank accounts and third-party claims - can be subject to a conservatory seizure, regardless if they are held by the debtor or by a third party. Exempt from seizure are goods which are deemed to be absolutely necessary for the basic needs of the debtor and those of his family. Also exempt from seizure may be the working tools and objects which are essential for the debtor’s professional activity. The same applies to executory seizure.
   
   Furthermore, objects subject to immediate damage, shares in personal associations, claims of alimony, salaries, pensions or other social benefits as well as insurance benefits and EU subsidies / grants are also in whole or in part, as applicable, excluded from conservatory seizure. This also applies to executory seizure.

3. What type of claims can be secured with a conservatory seizure?
   
   All pecuniary (and convertible to pecuniary) claims due and payable may be secured with a conservatory seizure. Under certain circumstances, also future or conditional claims can be secured with an interim order.

4. What about the urgency requirement?
   
   The creditor must demonstrate either the existence of “imminent risk”, threatening the claim or an “urgent situation”. This exists typically as per case law, in the case of deterioration of the debtor’s financial state and the risk of alienation from his assets, as indicated from constant imposing of liens on the assets, recent transfers of assets etc.

5. What is the procedure to obtain a seizure? What is the typical time frame?
   
   An application shall be filed with the Court secretary, setting out (i) the requested protective measure, (ii) the likely existence of the claim based on a summary of the facts of the case, (iii) the alleged imminent risk or urgent situation threatening the said right or claim and (iv) the monetary value of the claim.
   
   The petition can be filed either before, during or after the commencement of the proceedings on the merits. There is no typical timeframe provided for the decision on a petition for a conservatory seizure (or protective measures in general). All such petitions within two months to be effective. The debtor may lodge an opposition against the payment order within 15 business days from the service. As a general rule, the enforcement procedure is not stayed unless specifically requested with the opposition and ordered by the Court. Based on an enforceable payment order, an executory sequestratory order may be requested.
   
   A judgment from a Member State of the EU is enforceable within the EU without any exequatur proceedings being required. The execution is performed by a bailiff. Before proceeding with the execution, the bailiff will serve a final notice unto the debtor to pay within three (3) working days. If the debtor does not pay the total amounts due, the enforcement process shall continue.

Executory Seizure

8. How is a payment order enforced?
   
   An executory sequestratory order requires an enforceable title, such as a judgment on the merits or a “payment order” namely a title issued by the judge under a shorter ex parte procedure for claims proved in total by written documents. After its issuance, the payment order is considered an enforceable title and should be served on the defendant.

Recovery of Uncontested Claims

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?
   
   Apart from the procedure provided by the EOP and EAPO Regulations, notarised documents may also constitute enforceable titles.
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?
   There is no general asset registry in Hungary in the sense that one could obtain a list of assets another person or entity owns. The following tools are, however, available:
   • Database of Annual Financial Reports: companies are obliged to publish their annual financial reports. The annual reports are publicly available and include notes to the financial statements (which are also to be published) may contain specific information as to what assets a company owns.
   • Land registry: a creditor may only search this database to verify if a certain real property is owned by the debtor and if the real property is encumbered with mortgage. A search in the other direction is not an option. This means that a search which would list the real properties one person owns is not possible. (Court executors may conduct such search though).
   • Collateral registry: One can conduct a search as to whether the assets of a company or private individual are encumbered with lien, mortgage, retention of title etc. This will not give an exhaustive list of assets, either.

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?
   All assets owned by the debtor: moveable assets - including shares, bank accounts and third-party claims - and real estate.
   Certain assets are exempted from seizure: the purpose of these exemptions is to ensure a certain minimum level of livelihood to the debtor. These include, inter alia, the means which are essential for the debtor to exercise his profession, essential articles of clothing, medicine etc. The same exemptions apply in case of conservatory and executory seizures.

3. What type of claims can be secured with a conservatory seizure?
   Security measures (such as conservatory seizure) are available to secure claims granted in decisions which are not yet enforceable or the resolution is final and binding, but the relevant payment has not yet become due. In addition, conservatory seizure may also be applied for in ongoing litigation or arbitral proceedings. In this case, the claimant is required to prove the existence, quantum and the due nature of its claim with an authentic public instrument (a notarial deed) or a private document, with full probative force as defined by Hungarian Law.

4. What about the urgency requirement?
   The creditor must demonstrate that in the absence of the seizure, the recovery of his claim is seriously jeopardized. It is to be noted that the courts in Hungary are very reluctant to order provisional measures and in this respect they tend to be biased in favour of the respondent, even though by law the level of proof is lower than in the litigation itself.

5. What is the procedure to obtain a seizure? What is the typical time frame?
   A petition to order security measures is to be filed either with the court competent for the execution or with the court where the lawsuit is initiated (if the petition is filed in an ongoing litigation). If the basis for the seizure is increased by three. The party requesting the seizure is required to set out the claim and urgency requirement in the petition and attach all documentary evidence.

6. Are there any language requirements?
   The petition and the documentary evidence should be in Hungarian. If the documentary evidence is in another language, a translation of the document must be included.

Conservatory Seizure

8. How is a payment order enforced?
   If an enforceable payment order (see below) or judgment in place and the respondent failed to comply with the payment deadline set out therein, then the claimant can apply for execution. The court (or the notary issuing the payment order) will appoint the court executor, who will then be in charge of collecting the payment. The court executor may cash the claim from the bank account of the debtor, order that a certain part of the payments due to the debtor be retained or sell the debtor’s assets. Sale of real properties are subject to certain restrictions and are generally allowed only if all other measures were unsuccessful. Once the debtor learns that these executory measures are ordered, he may decide to pay the claim out of his own accord any time.

Exeuctive Seizure

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?
   A procedure similar to the one described in the EOP regulation is in place in Hungary. One can file a petition online (or in person at the offices of a notary public) requesting that the debtor is ordered to pay the money the creditor claims. Notaries are authorized to issue such orders. No evidence is to be filed at this point to substantiate the claim. If the debtor fails to contest the order within 15 days of its receipt, then the payment order becomes legally binding and enforceable. These payment orders have the same legal effect as judgments. (If the debtor does contest the claim, then the proceeding will convert into a regular lawsuit.) In addition to the above, if the claim is not only uncontested but also acknowledged in the form of a notarial deed, then this notarial deed is enforceable without a preliminary court proceeding, provided that such deed contains the minimum information set out by law.

Recovery of Uncontested Claims
1. What kind of information on the assets is publicly available? How is it obtained?

There is no general asset registrar or database in Ireland. The following tools are available:

- Land and Deeds Registries: there are centralised land and deed registries where searches can be conducted against lands to identify owners and whether charges or securities are registered against the properties.
- Companies Office: searches can be undertaken to ascertain if there are charges registered against assets of a company.
- Credit Bureau: individual credit searches.
- Judgments searches: to ascertain whether judgments have been registered against a person or entity.

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

There is no generally available procedure for seizure of assets in advance of obtaining a judgment. Application can be made to the High Court for injunctive relief to freeze assets if there is available evidence of an attempt to move or dissipate assets with an intention of avoiding a judgment.

3. What type of claims can be secured with a conservatory seizure?

Generally in respect of claims for recovery of sums due and owing.

4. What about the urgency requirement?

The creditor must demonstrate that assets are being moved or dissipated with an intention to avoid a judgment. The court must be satisfied that unless the order is made, the recovery of the claim is seriously jeopardised.

5. What is the procedure to obtain a seizure? What is the typical time frame?

A unilateral (“ex parte”) application on affidavit to the High Court for injunctive relief to freeze assets or for conservatory seizure. If the court grants the order, that order must be served on all affected parties.

The court will normally give directions in relation to such service.

6. Are there any language requirements?

Proceedings are conducted in English. If any evidentiary documents are in another language, a translation of the documents must be provided.

7. Is it required to start proceedings on the merits?

Yes, proceedings will be commenced by way of summons, detailing the claims being made and the orders being sought from the court.

8. How is a payment order enforced?

Once a judgment is obtained, a number of steps can be pursued to enforce judgment depending on the circumstances. These include:

- registration and publishing of the judgment,
- using the sheriff to seize assets,
- application for installment order or attachment against earnings order,
- registration of a judgment mortgage against land of the debtor,
- appointment of a receiver.

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?

Proceedings must be commenced. Where the claim is not contested, judgment can be obtained through the court offices, by lodging the necessary application and grounding affidavit. Judgment will issue without further court application.
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?

There is no asset registrar or database in Italy. The following tools are, however, available:

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

All assets owned by the debtor: moveable and immovable. In some instances, such as Public Administration assets or goods necessary to provide basic needs for consumers, assets are specifically excluded. Such rules apply also to executory seizure.

3. What type of claims can be secured with a conservatory seizure?

All claims where there is fumus boni iuris. It is possible to request a conservatory seizure to secure a future claim, for example a claim subject to a condition precedent.

4. What about the urgency requirement?

The creditor must demonstrate “the justified fear of losing the security” of his claim during the time necessary to file and complete an ordinary action ending by a condemnation of the counterparty (periculum in mora). Courts generally accepts as evidence of urgency the following circumstances:

Executory Seizure

8. How is a payment order enforced?

An executory seizure requires an enforceable payment order. The executory seizure is performed by a bailiff. Before proceeding with the executory seizure, a notice to pay within ten days must be notified to the debtor. If the debtor does not pay the total amounts due within ten days, the bailiff will proceed with the executory seizure. Afterwards the goods attached are sold under the coordination of the Judge of Execution and the creditor is then authorized to receive the proceeds of such sale.

5. What is the procedure to obtain a seizure? What is the typical time frame?

A unilateral (“ex parte”) petition, setting out the claim and urgency requirement and including all documentary evidence, must be filed with the competent Judge.

The petition can be filed either before or after the commencement of the proceedings on the merits. If filed before, the judge could decide, if requested, by ex parte motivated decree, when summoning the opposing party might prejudice the execution of the seizure. In this event, the Judge schedules the hearing for the appearance of the parties within 15 days, assigning a mandatory term to the claimant for serving the petition and the decree.

A hearing at the presence of the parties always takes place prior to the final judgment, which can confirm, modify or set aside the ex parte decree, if any, previously issued.

The typical time frame is 2 months from the filing of the petition. If the judgment is positive, it can be executed by a bailiff. Please note that the judgment can be appealed.

For any kind of seizures it is necessary to obtain a prior authorisation from the judge.

6. Are there any language requirements?

The petition and the notifications should be in Italian. If the documentary evidence is in another language, the judge can, but is not obliged to, appoint a translator. Usually if such language is English, or in any case understandable by the judge, no appointment is made.

7. Is it required to start proceedings on the merits?

Yes, in case of pre-trial petition and if the judgment is positive. The term is assigned by the judge in the judgment, maximum 60 days. If the proceedings on the merits is not started by such term, the judgment and the seizure are no longer effective.

Recovery of Uncontested Claims

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?

No. Only cheques, promissory notes and bills of exchange are, in some circumstances, directly enforceable. Normally informations enabling to be obtained on positions held within companies (i.e.: director, president, vice-president, etc.). Private investigators could also be used and are normally retained to provide an “asset dossier” of the debtor.
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?

There are no general asset registers or databases that are publicly available in Luxembourg.

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

All types of assets that are not perishable can in principle be subject to a conservatory seizure. However, tangible assets may be subject to a conservatory seizure only if the cause of action is of a commercial nature (article 550 of the New Code of Civil Procedure).

All types of intangible assets such as bank accounts and shares that are held by third parties can be subject to a conservatory seizure according to a specific procedure (articles 693 to 718 of the New Code of Civil Procedure).

Real estate can also be subject to conservatory seizure (articles 809 to 887 of the New Code of Civil Procedure). Executory seizure can be performed on all types of assets owned by a debtor. However, certain assets are excluded such as basic furniture owned by the debtor (i.e. clothing, tables and chairs), are assets that cannot be seized.

3. What type of claims can be secured with a conservatory seizure?

In principle all type of claims that are certain, of a fixed amount and due, can be secured with a conservatory seizure. Tangible assets may nevertheless be secured even if the claim is as of the date of the seizure, not yet of a fixed amount and if the claim “appears to be certain”. A future claim that is not due cannot be secured with a conservatory seizure.

4. What about the urgency requirement?

Urgency is specifically required by article 550 of the New Code of Civil Procedure by any means. The claimant must also prove that without the seizure there is a risk that the tangible assets will be misappropriated by the debtor. In other words, the claimant must prove that he may lose the possibility of obtaining payment (or corresponding value) for his claim.

5. What is the procedure to obtain a seizure? What is the typical time frame?

An unilateral petition, setting out the claim and including all documentary evidence, must be filled with the competent Court.

The competent Court takes an order (“ordonnance”) in the following days which will either authorize or refuse the seizure. Such order must be notified by a bailiff to the debtor or the third party seizure (such as a bank) in order to execute the seizure.

An appeal can eventually be introduced by the debtor to oppose the seizure order, or by the claimant if the Court refuses to order the seizure (however, this is rather unusual).

Executory Seizure

8. How is a payment order enforced?

An executory seizure requires an enforceable title, such as a judgment on the merits. Under the EU Regulation No 1215/2012, a judgment from a Member State of the EU is enforceable within the EU without any exequatur proceeding being required.

The executory seizure is performed by a bailiff. Before proceeding with the executory seizure, the bailiff will serve a final notice on the debtor to pay within 24 or 48 hours, failing to which the bailiff will proceed with the seizure.

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?

It is possible under Luxembourg law to obtain a payment order for uncontested claims.

If the amount of the claim is €10,000 or less, the claimant must address a unilateral request of payment to the competent court, with supporting evidence (invoice and formal notice). The Court will then issue a payment order. If the debtor does not pay the requested amount, nor oppose this order within 15 days, the claimant can request a title that can be enforced by a bailiff. If the debtor opposes the payment order, the Court will schedule a Court hearing and the case will be pleaded orally. The Court will then render a decision on the merits.

There is a similar procedure for claims above €10,000 which however does not allow the claimant to obtain a judgment on the merits but only an interim order.
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?

There is no asset registrar or database in the Netherlands. The following tools are, however, available:
  - For shares in privately owned companies, an excerpt from the Chamber of Commerce provides you with information about sole shareholders. No information on shareholders is available when the shares are being held by two or more different holders.
  - For real estate, an excerpt from the land registry provides you with an overview of the real estate relating to which the debtor has any right in rem and whether mortgages are vested on the property.
  - It must be noted that as per the Dutch Civil Code, the party that possesses moveable goods is deemed to be the owner.

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

All assets owned by the debtor, including movable assets, shares, bank accounts, third-party claims and real estate. In some instances, such as some assets from government bodies, or goods necessary to provide in basic needs for consumers, are specifically excluded by law.

3. What type of claims can be secured with a conservatory seizure?

All claims, irrespective their origin, that are certain, due and payable. Under certain circumstances, also future claims (i.e. claims that are not yet due) can be secured with a conservatory seizure, for example future claims under a lease agreement.

4. What about the urgency requirement?

In general, there is no such requirement under Dutch procedural law. However, in the request for the required leave to levy the seizure, the claimant should demonstrate to the judge that his request is proportional, i.e. that the claim cannot be secured by putting in place seizes that are less of a hindrance to the defendant. Furthermore, when requesting seizure on real estate or certain other types of assets, the claimant needs to demonstrate that there is a risk that the defendant will remove or dissipate his assets from the jurisdiction. The judge will only examine this matter very briefly.

5. What is the procedure to obtain a seizure? What is the typical time frame?

A unilateral (“ex parte”) petition, setting out the claim and including all documentary evidence, must be filed with the President of the competent District Court. The petition, the documentary evidence and the notifications by the bailiff are, however, available:

- For real estate, an excerpt from the land registry provides you with an overview of the real estate relating to which the debtor has any right in rem and whether mortgages are vested on the property.

Executive Seizure

8. How is a payment order enforced?

An executory seizure requires an enforceable title, such as a judgment on the merits. A judgment from a Member State of the EU is enforceable within the EU without any exequatur proceedings being required. The executory seizure is performed by a bailiff. Before proceeding with the executory seizure, the bailiff will serve a final notice onto the debtor to pay the debt within two days. If the debtor does not pay the total amounts due within this period, the bailiff can proceed with the seizure (and subsequently the sale of the attached goods) to cash the claim.

Recovery of Uncontested Claims

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?

Apart from the procedure provided by the EOP Regulation, it is not possible under Dutch law to recover uncontested monetary claims that are due and payable via a bailiff, without legal proceedings being necessary. This is only different in case the monetary claims from authentic instruments that are already enforceable themselves (such as certain notarial deeds).
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?

There is no general asset register or database in Poland. However, the following tools are, however, available:

- Land and Building Register: The information in this register is public. To obtain various information about the property (e.g., its value, its owner's domicile), you can verify this by using data disclosed in this register.
- Land and Mortgage Register: The information in this register is public. An excerpt from the land and mortgage register (based on the domicile of your debtor) provides you with an overview of the real estate relating to which the debtor has any property in rem rights and whether mortgages are vested on the property. This can be obtained online.
- National Courts Register: Contact one of the National Courts to obtain this information.
- Companies' register:
  - If you believe that your debtor is a partner in a partnership, you can obtain various information about it (e.g., partners, registered office, etc.). This can be obtained online.
  - If you believe that your debtor holds shares in a private limited liability company, you can obtain various information about it (e.g., shareholders, registered office, etc.). This can be obtained online.
  - If you believe that your debtor holds shares in a private joint-stock company, you can obtain various information about it, except for shareholding structure. This can be obtained online.

- Registered pledge register:
  - If you believe that your debtor has established a registered pledge on a particular asset, you can verify this using data disclosed in this register.

- Central Register of Vehicles: You can file a request for information about the debtor's car (registration number, brand and year of construction). To obtain this information, you have to provide documents proving your legal interest in obtaining this information.

- Request for disclosure of property items if the debtor's property attached in enforcement proceedings appears insufficient to satisfy the enforced claim or if the creditor proves that the enforcement did not satisfy all his claims. The creditor may request that the debtor be ordered to submit a list of his assets and property.

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

All movable assets owned by the debtor: movable property, movables unrelated to work, bank account receivables, other receivables, or other property rights. The debtor’s immovable property may be encumbered with compulsory mortgage. The debtor’s ship or ship under construction may be encumbered with maritime mortgage. It is also possible to establish receivership over an enterprise, agricultural farm or plant constituting part of the enterprise or over part of the enterprise or the agricultural farm. In the executory seizure, in some instances, such as some assets from government bodies, or goods necessary to provide in basic needs for consumers, are specifically excluded by law.

3. What type of claims can be secured with a conservatory seizure?

All claims, pecuniary and non-pecuniary.

4. What about the urgency requirement?

Strictly speaking, there is no such thing as urgency requirement in the provisions concerning the conservatory seizure. Still, the applicant must show that his claim is probable and there is also legal interest. Legal interest exists if the lack of security or injunction will hinder such performance or otherwise make the ultimate decision impossible or significantly hinder the achievement of that goal.

5. What is the procedure to obtain a seizing? What is the typical time frame?

There is an ex parte proceeding. A motion setting out the claim, factual circumstances and legal interest, including the necessary documentary evidence, must be filed with the competent court. It is possible to secure a claim that is not due as soon as it becomes due before the hearing is closed. One cannot request a conservatory seizure to secure a claim that may arise in the future.

6. How is a payment order enforced?

An executory seizure requires any enforceable title, such as a judgment on the merits. After obtaining the enforceable title, the creditor should file an application to commence enforcement proceedings with a competent court or a bailiff.

Recovery of Uncontested claims

9. Is it possible to recover uncontested claims without a court intervention?

Generally, no. It is visible, but requires a special instrument to be drawn by a notary in advance. The instrument needs to be formally authorized by the court, i.e., turned into an enforceable title. Applications for a writ of enforcement shall be heard by the court within three days.

In theory, a motion shall be heard promptly, but not later than within one week. In practice, however, the courts usually decide upon the motion within a month from filing. If the judgment is positive and enforceable by way of enforcement, the provisions on enforcement proceedings apply accordingly to the enforcement of the order except that the court shall ex officio issue a writ of enforcement in the order granting security or injunction. An application to commence enforcement proceedings should be filed with the competent court or bailiff.

Are there any language requirements? The motion and the attached evidence should be in Polish. Translations are required.

Is it required to start proceedings on the merits? Yes, once the motion has been granted. When granting security or injunction before main proceedings are initiated, the court shall set a time limit for filing of the claim. If the time limit is not observed, the security will expire. Such time limit may not exceed two weeks.
Asset Tracing
1. What kind of information on the assets is publicly available? How is it obtained?
There is no public access assets search database available. The information about the debtor’s seizable assets may only be obtained by an enforcement agent through the available databases under an enforcement procedure brought against the debtor. Notwithstanding this, the applicant may request at the relevant register certified information regarding any specific asset that he is aware of, such as vehicles, real estate, shares in companies, etc.

Conservatory Seizures
2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?
All of the debtor’s assets can be subject to a conservatory seizure. Only inalienable objects or rights, assets from government bodies or especially intended for public worship, or whose seizure would be offensive to good manners or would not make economic sense due to its insignificant market value, tombs, instruments which are essential for the disabled and objects intended for treating the sick and pets are specifically excluded by law. Also exempt from seizure are the working tools and objects essential for the debtor’s professional activity or vocational training, except if:
- i. the debtor indicates they can be seized;
- ii. the enforcement is for the payment of their purchase price or repair costs; or
- iii. they are seized as elements incorporated in a commercial establishment.

3. What type of claims can be secured with a conservatory seizure?
Only credit claims may be secured with a conservatory seizure, provided that the applicant produces evidence about:
- i. the likely existence of his right (fumus boni juris) and
- ii. the alleged fear of losing the asset guarantee (periculum in mora).

4. What about the urgency requirement?
The applicant must produce evidence of a serious and concrete risk that the lack of seizure could compromise the credit recovery in a main lawsuit, e.g., there is the risk of the debtor becoming insolvent, or the debtor’s assets being sold, hidden or even destroyed.

5. What is the procedure to obtain a seizure? What is the typical time frame?
The applicant must submit an initial application to the court providing summary proof of (i) the likely existence of his right (fumus boni juris) and (ii) the alleged fear of losing the asset guarantee (periculum in mora). All testimonial and documentary evidence must be submitted with the application. The application must also identify the debtor’s assets to be seized. The seizure is ordered ex parte (i.e., without hearing the other party), provided that the legal requirements are deemed to be satisfied. Following the seizure, the debtor is notified to (i) appeal against the order if he considers that, in light of the facts, it should not have been granted or (ii) lodge an opposition if he wishes to put forward facts or produce evidence not taken into account by the court that may remove the grounds for the conservatory measure or cause it to be reduced. All protective measures are regarded as urgent, taking priority over any other non-urgent judicial acts, and must be decided at first instance within two months at most; or, if the defendant does not have to be summoned, within 15 days.

6. Are there any language requirements?
All statements, applications and evidence must be produced in Portuguese.

7. Is it required to start proceedings on the merits?
Upon request, the judge may relieve the applicant’s burden of bringing the main action if the material acquired in the proceedings has led him to believe that the safeguarded right is real and the nature of the measure decreed is appropriate to reach final settlement of the dispute. Otherwise, the applicant must file the main action within 30 days from the date on which he was notified that the decision seizure order became final and unappealable.

Executory Seizure
8. How is a payment order enforced?
Depending on the enforcement title and/or the amount of the receivables, the enforcement procedure starts with the debtor’s summons or with the seizure of his assets. Normally, all measures involved in the enforcement procedure are carried out by an enforcement agent, acting under the supervision of the judge. After being summoned, the debtor may lodge an opposition within the following 30 days. As a general rule, the enforcement procedure is not stayed unless the debtor offers to provide any type of guarantee (which should include principal, late payment interests and estimated court costs). The debtor may also lodge an opposition against a specific seizure within the following 20 days from the date of the seizure’s notification. Under the enforcement procedure, the debtor’s assets will be sold to pay the receivables and all the court costs.

Recovery of Uncontested Claims
9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?
Portugal has a national order for payment procedure, under which the debtor is notified to pay the overdue debt (plus interest and certain expenses) within the following 15 days or to lodge an opposition to the procedure. If the debtor does not lodge an opposition, the order for payment procedure is converted into a normal recovery action.

Guide To Debt Collection In Europe
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?

There is no general asset register or database in Slovakia. The following tools are, however, available (official registers):

- Land and Building Register: The information in the land and building register is public. If you believe that real estate belongs to your debtor, you can obtain various information about the property (e.g. its owner, its owner's domicile, if there are any pledges on the property).

- Commercial Register:
  - If you believe that your debtor is a partner in a partnership, you can obtain various information about it (e.g. partners, registered office, etc.). This can be obtained online.
  - If you believe that your debtor holds shares in a private limited liability company, you can obtain various information about it (e.g. shareholders, registered office, etc.). This can be obtained online.

- If you believe that your debtor holds shares in a private joint-stock company, you can obtain various information about it, except for shareholding structure. This can be obtained online.

- Notarial Register of Pledges:
  - If you believe that your debtor has established a registered pledge on a particular asset, you can verify this using data disclosed in this register.

- Commercial Gazette:
  - The Commercial Gazette contain information on natural persons or legal entities that they are obliged to publish in the Commercial Gazette. If you believe your debtor is in bankruptcy or restructuring proceedings, you can do a search online.

- Register of Financial Statements:
  - If all the conditions are further fulfilled, if the required person agreed to pay the sum. The required also has the right to dispute the basis of the enforcement order. Hence, the bailiff shall issue a notice of the commencement of enforcement proceedings, by which he shall (i) notify the authorized and the required (person/entity required to pay the sum) on the commencement of enforcement and the method and (ii) order the required person, the legal reason, object and time of fulfillment, if the required person agreed with the enforcement.

- Natural persons that are entrepreneurs and legal entities are obliged to file their financial statements to the relevant tax office, which are then publicly available in the Register of Financial Statements.

- Central Register of Enforcements:
  - If you believe that your debtor is subject to any enforcement proceedings, you can verify this on the basis of a request to the register.

- Registers of Debtors of Social Insurance, Health Insurance and Taxes:
  - If you believe that your debtor owes money for social or health insurance or taxes, you can do a search via the relevant registers of these authorities.

- It is also possible to obtain information on the creditworthiness of natural persons or legal entities through various registers held by private companies. These usually gather information from the above registers and one can obtain reports on the debtors.

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

Slovak law does not specify which assets exactly can be subject to conservatory seizure (securing measure). It generally states that it can be any items, rights, or property values of the debtor. Likewise, it does not specify, which assets are excluded. The following is exempt from conservatory seizure: certain assets of the state, basic amounts that must not be executed from the wages of the required, amounts of up to €165 in the bank account of the required and funds that are on the basis of a express representation of the required to be used to pay the wages of the employees to the payment date closest to when the execution order was delivered to a bank, certain social benefits, VAT under specific conditions, tangible assets that are used or related to conducting business, assets that are in the possession of the required and deemed necessary for the basic needs of the debtor and his family or assets, whose sale would be in contradiction with moral principles.

3. What type of claims can be secured with a conservatory seizure?

Only pecuniary claims.

4. What about the urgency requirement?

The applicant must provide a description of the concern that enforcement may be jeopardized.

5. What is the procedure to obtain a seizure? What is the typical time frame?

The procedure is initiated on the basis of an application by the applicant that must be filed to the relevant district court. As stated above, the application must, inter alia, contain a description of the concern that enforcement may be jeopardized.

A conservatory seizure shall be issued within 30 days from the delivery of the application to the relevant district court.

6. Are there any language requirements?

The court proceeding shall be in Slovak. All applications must be either in Slovak or translated into Slovak.

7. Is it required to start proceedings on the merits?

No, it is possible to issue a conservatory seizure before, during and after proceedings on the merits.

Exeuctive Seizure

8. How is a payment order enforced?

An executory seizure (order) requires an enforceable payment order. After obtaining the enforceable payment order, the authorized must file an electronic application to the District Court of Banská Bystrica to commence enforcement proceedings, which shall then generally under the conditions of the relevant register.

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?

It is not possible to recover uncontested claims without a court intervention. It is however possible to obtain an enforceable title without a court intervention. Such would be a notarial document – notary minutes, which would contain the legal obligation, the authorized and required persons, the legal reason, object and time of fulfillment, if the required person agreed with the enforcement.

Recovery of Uncontested Claims

It is not possible to recover uncontested claims without a court intervention. It is however possible to obtain an enforceable title without a court intervention. Such would be a notarial document – notary minutes, which would contain the legal obligation, the authorized and required persons, their legal reason, object and time of fulfillment, if the required person agreed with the enforcement.
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?

There is no asset registry or database in Spain. The following sources are, however, available:

• Real estate, an excerpt from the Land Registry which provides a description of the real estate owned by the debtor including any mortgages, rentals and charges registered against it.

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

All type of assets owned by a debtor: tangible, intangible, movable and immovable, including real estate, machinery, bank accounts, trademarks and patents and credits. Where the debtor is a natural person, assets and income used to cover basic living needs of the debtor and his/her dependents cannot be seized. The same applies to executory seizures.

3. What type of claims can be secured with a conservatory seizure?

All claims, provided that the competent Court is satisfied of certain requirements, namely: (i) a good and arguable case “fumus boni iuris”; (ii) there is evidence of the existence of a risk of dissipation of assets to the point that the final decision on the merits may not be executed; (iii) a security freezing or attachment order over its assets; (iv) there is a need for immediate or in the short term, and interim measures request. A Court hearing, with the presence of the parties, takes place prior to the judgement, which can confirm, modify or revoke any interim measures previously granted. If the judgement is positive, it can be executed, upon the party’s request, provisionally, if the judgement is appealed, or definitively if the judgement is final. In many cases, a previous search of the assets of the debtor is necessary to be carried out through the Courts and upon request of the claimant to find out any debtor’s asset to seize or execute.

Executory Seizure

4. What about the urgency requirement?

In emergency situations, the Courts may order conservatory seizure “ex parte”, within one to three days but the Courts should usually request from claimant a security deposit.

5. What is the procedure to obtain a seizure? What is the typical time frame?

The general rule under the Spanish Civil Procedure Law is that interim measures (assets attachment and seizure, court administration of assets and companies etc.), are usually granted upon a party’s request and after a hearing takes place where both parties can defend their respective positions and present the relevant evidence. However, interim measures can be extraordinarily accorded “ante causam” and with no hearing or without even notifying the defendant if they are required for urgent reasons which must be sufficiently evidenced. Therefore, the requesting party is required to demonstrate: the reasons for the urgency and the reason why the notice to the defendant, thus the call to a hearing would imply an additional risk to the general risk required under an ordinary interim measures request.

Recovery of Uncontested Claims

6. How is a payment order enforced?

An executory seizure requires an enforceable payment order. If the debtor fails to satisfy the judgment within 30 days, and upon request, the Court clerk shall issue an order to move proceedings forward and shall contact the financial institutions, public registry, and any other entities or persons so that they shall provide the list of any assets and rights of the debtor which they know of. As a result, enforcement proceedings will be more efficient and faster when the debtor’s assets can be identified.

The assets shall then be attached in the following order: (i) cash or bank accounts of any kind; (ii) credits and rights realizable immediately or in the short term; (iii) securities or other financial instruments admitted for negotiation on an official secondary securities markets; (iv) gold and works of art; (v) income in cash, regardless of its source and the reason for its accrual; (vi) interest income and revenues of any kind; (vii) movable property or livestock, shares, debentures or securities not admitted to official listing; and company shares; (viii) real estate, moveable property, and rights of the debtor which they know of. All claims, provided that the competent Court is satisfied of certain requirements, namely: (i) a good and arguable case “fumus boni iuris”; (ii) there is evidence of the existence of a risk of dissipation of assets to the point that the final decision on the merits may not be executed; (iii) a security freezing or attachment order over its assets; (iv) there is a need for immediate or in the short term, and interim measures request. A Court hearing, with the presence of the parties, takes place prior to the judgement, which can confirm, modify or revoke any interim measures previously granted. If the judgement is positive, it can be executed, upon the party’s request, provisionally, if the judgement is appealed, or definitively if the judgement is final. In many cases, a previous search of the assets of the debtor is necessary to be carried out through the Courts and upon request of the claimant to find out any debtor’s asset to seize or execute.

The typical time frame to obtain a seizure order is 2 months from the petition.

6. Are there any language requirements?

Yes. The petition must be filed in Spanish or other official language of the region (e.g. Catalan, Basque). Documentary evidence must also be filed in Spanish or any other official language of the competent Court and, if the judge or the court’s secretary’s requirement, it needs to be translated into Spanish (or any other official language). The judge or the court’s secretary’s requirement, it needs to be translated into Spanish (or any other official language).

7. Is it required to start proceedings on the merits?

Yes, either simultaneously with the seizure process or in case of “ante causam” interim measures, within a term of 30 days from the date the Court has granted the requested measure.

9. Is it possible in your jurisdiction to recover uncontested claims without a court intervention?

Other than under the EOP Regulations, until 2015 there was no procedure in Spain to recover uncontested claims without a Court intervention. Since October 2015, the claim for payment can be made within 30 days, and upon request, the Courts may order conservatory seizure “ex parte”, within one to three days but the Courts should usually request from claimant a security deposit.

The assets shall then be attached in the following order: (i) cash or bank accounts of any kind; (ii) credits and rights realizable immediately or in the short term; (iii) securities or other financial instruments admitted for negotiation on an official secondary securities markets; (iv) gold and works of art; (v) income in cash, regardless of its source and the reason for its accrual; (vi) interest income and revenues of any kind; (vii) movable property or livestock, shares, debentures or securities not admitted to official listing; and company shares; (viii) real estate, moveable property, and rights of the debtor which they know of. All claims, provided that the competent Court is satisfied of certain requirements, namely: (i) a good and arguable case “fumus boni iuris”; (ii) there is evidence of the existence of a risk of dissipation of assets to the point that the final decision on the merits may not be executed; (iii) a security freezing or attachment order over its assets; (iv) there is a need for immediate or in the short term, and interim measures request. A Court hearing, with the presence of the parties, takes place prior to the judgement, which can confirm, modify or revoke any interim measures previously granted. If the judgement is positive, it can be executed, upon the party’s request, provisionally, if the judgement is appealed, or definitively if the judgement is final. In many cases, a previous search of the assets of the debtor is necessary to be carried out through the Courts and upon request of the claimant to find out any debtor’s asset to seize or execute.

The typical time frame to obtain a seizure order is 2 months from the petition.
Asset Tracing

1. What kind of information on the assets is publicly available? How is it obtained?
   
   There is no official registry or database for assets of a debtor in Switzerland. The following tools are, however, available:
   
   - For real estate, an excerpt from the local land registry (at the place of the real estate) can be obtained. The excerpt only gives basic information on the property and the name of the owner but not, for instance, on mortgages. No search by owner name is possible.
   
   - In a limited number of Cantons an extract from the tax register can be requested which provides basic figures of taxable income and assets but not their composition or location. A tax payer can request the tax authority to block his data so that information will be provided only in exceptional cases.
   
   - A very common and frequently used instrument to assess the financial situation of a debtor is to request an extract from the debt enforcement register which provides detailed information of debt enforcement procedures started in the last 5 years. This reveals nothing about the assets but at least gives an indication of whether the debtor already has a poor track record of honoring his financial obligations.
   
   - It must be noted that legal entities are not required to publish annual reports or make them otherwise available to third parties, with the exception of companies listed at a stock exchange.

Conservatory Seizures

2. What assets can be subject to a conservatory seizure? Does the same apply to an executory seizure?

   Generally all assets held by the debtor are subject to seizure, with the exception of assets that cannot (reasonably) be realized. This includes any type of moveable assets, real estate, intangible assets and claims, in particular also wages. If and to the extent assets and income of a natural person are used for basic needs and those of persons dependent on him / her, they cannot be seized. The same applies to executory seizures.

3. What type of claims can be secured with a conservatory seizure?

   Money claims can be secured only if specific requirements are met, namely (i) if there are certain elements set out in the law which indicate that the enforcement of a claim may be endangered or difficult (e.g. the debtor hiding assets or not being resident in Switzerland) or (ii) if there is an enforceable title for execution, in particular a judgment or similar title.

   Conservatory measures for non-monetary claims depend very much on the type of claim and may only aim at facilitating later enforcement, yet not amount to an enforcement before a judgment is rendered. Generally, the creditor must be able to show that his claimed right is likely to be violated and that this may cause harm that cannot easily be repaired. E.g. for real estate subject to a dispute, a blocking order can be registered in the land register.

4. What about the urgency requirement?

   There is no urgency requirement for monetary or non-monetary claims. Only if non-monetary claims are to be dealt with in unilateral (ex parte) procedures, urgency must be shown.

5. What is the procedure to obtain a seizure? What is the typical time frame?

   Monetary claims are dealt with in an ex parte procedure, setting out the procedure is possible.

Exeuctive Seizure

8. How is a payment order enforced?

   An executory seizure requires an enforceable payment order. The same is issued at the request of the creditor and, if opposed to by the debtor, the claim is reviewed in summary proceedings by a court who will either set aside the opposition or confirm it, thus forcing the creditor to start ordinary proceedings (or to abandon his claim). The payment order will be confirmed if there is written proof of debt with signature of the debtor or an enforceable title, such as a judgment. Foreign judgments do not require formal recognition proceedings (exequatur), yet a separate procedure or a separate request in the same procedure is possible.

   The executory seizure is carried out by the local debt enforcement office.

Recovery of Uncontested Claims

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?

   The way to enforce a money claim always starts with a payment order issued by the local debt enforcement office. Only if that remains without the debtor’s opposition (which rarely ever happens) can enforcement proceed without court intervention.
1. What kind of information on the assets is publicly available? How is it obtained?

There is no general asset registry or database in Turkey. However, the following tools are available:
- Land Registry Records are publicly available. However, there is no online database. One can look into the land registry records by going in person to land registry office, at the location of the estate in question. It should be noted however that it is not possible to carry out a general research based on the debtor. A search in the land registry records must be originated from the real estate in question.
- Motor Vehicle Registry records are also publicly available. However, there is no online database. Just as it is the case with the land registry records, a general research cannot be conducted based on the debtor. In order to conduct a research on motor Vehicle Registry records, information on the vehicle is needed.

2. What assets can be subject to a conservatory seizure? Are any assets excluded from a conservatory seizure? Does the same apply to an executory seizure?

All assets owned by the debtor can be subject to conservatory seizure. This includes both tangible assets, such as real estate, machinery, cash, vessels and vehicles etc., and intangible assets, such as patents, trademarks etc.

If the debtor is a natural person, assets that might deprive him of his basic needs cannot be seized. There are also certain exceptions foreseen for some professions and person of certain status, such as agriculturists, retired persons etc.

The above apply for executory seizures as well.

As per the Maritime Section of the Turkish Commercial Law, a conservatory seizure on a vessel can only be attached for maritime debts.

3. What type of claims can be secured with a conservatory seizure?

Any pecuniary due debt that is not secured by a pledge, can be subject to conservatory seizure. A conservatory seizure can also be applied even if the debt is not yet due, in case the debtor does not have any legal residency in Turkey or if there is a risk that the debtor might hide or eliminate his/her assets.

4. What about the urgency requirement?

The creditor must produce evidence of a serious and concrete risk that the lack of seizure could compromise collection of debt (for example, risk of insolvency, assets being sold or hidden etc.).

5. What is the procedure to obtain a seizure? What is the typical time frame?

A written application setting out the claim, including factual circumstances into the debt, the urgency of the matter, together with the documentary evidence, must be filed with the competent local court.

If the court accepts the application, it renders a decision for an order for seizure that needs to be executed by the enforcement authority.

The Court would require the creditor to deposit a security for any damage that the enforcement of the order may cause the debtor. The creditor can be exempted from depositing a security for the seizures based on debts secured by court decision or a similar certificate.

The debtor must apply to the competent enforcement office for the attachments of liens within ten days following the date of the conservatory seizure ruling registered by the Court. Otherwise the conservatory seizure ruling will ipso facto become null and void.

6. Are there any language requirements?

The applications to the courts and the enforcement offices must be in Turkish. Also the evidences must be submitted in Turkish. If there are certain evidences in other languages, their translations into Turkish, should be submitted.

7. Is it required to start proceedings on the merits?

The creditor must file a lawsuit or initiate enforcement proceedings within seven days from the date on which the conservatory seizure is attached to the assets of the debtor.

8. How is a payment order enforced?

An enforcement proceeding should be initiated before the enforcement offices. If the debt is an unsecured pecuniary claim, a payment order has to be sent to the debtor, allowing him a period of seven days to pay the outstanding amount. Upon receipt of the payment order, the debtor can either pay the amount or object to the payment order. If objected, the enforcement proceeding stops. In order to continue with the proceeding, the creditor has to file a lawsuit to annul the objection and prove that the debtor owes the outstanding amount to the creditor. If the objection is annulled and becomes definite, the creditor can proceed with the enforcement and attach liens over the assets of the debtor and proceed with the enforced sale of the said assets.

9. Is it possible in your jurisdiction to recover uncontested claims and to obtain an enforceable title without a court intervention?

Unless the debt is secured with a bank letter of guarantee, the creditor has to apply to judicial authorities to collect even uncontested debts.

Conservatory Seizures

Exe cutory Seizure

Recovery of Uncontested Claims

Asset Tracing