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*Please note that this translation is a consolidated text version including amendments published in the Official Gazette no. 88/2005.*

## **EXECUTION ACT**

### **Part One**

### **Title One**

### **BASIC PROVISIONS**

#### **Content of the Act**

#### Article 1

(1) This Act regulates the procedure in which courts and notaries public conduct involuntary collection of claims on the basis of enforcement title documents and trustworthy documents (execution procedure) and the procedure in which courts and notaries public conduct the securing of claims (security procedure), unless determined otherwise by a special law.

(2) This Act regulates material and legal relations that are established on the basis of execution procedures and security procedures from paragraph 1 of this Article.

#### **Meaning of Specific Terms**

#### Article 2

The below terms used in this Act shall have the following meanings:

1. the term "claim" means the right to a payment, the performance of an action, the refrainment from an action, or some sufferance,
2. the term "execution creditor" means the person who has started an execution proceeding to execute on a claim and the person for whose benefit this procedure has been started in the line of duty,
3. the term "security creditor" means the person who has started a security proceeding to secure a claim and the person for whose benefit the procedure has been started in the line of duty,
4. the term "execution debtor" means the person against whom the claim is executed,
5. the term "security debtor" means the person against whom the claim is secured,

6. the term "party" means the execution creditor and the execution debtor, and the security creditor and the security debtor,
7. the term "participant" means a person who is not a party in the execution or security proceeding and who takes part in it, because it involves decision-making about his right or because he has legal interest to do so,
8. the term "writ of execution" means a decision by which the motion for execution is accepted either fully or partially or by which execution is ordered in the line of duty,
9. the term "ruling on security" means a decision by which the motion for security is accepted either fully or partially or by which security is ordered in the line of duty,
10. the term "execution administrator" means an employee of the court who at the order of the court directly undertakes certain actions in the execution procedure or in the security procedure,
11. the term "agriculturalist" means a person whose prevailing source of income is agricultural production,
12. the term "bank" means a bank and any other legal person performing payment transactions,
13. the terms "document legalised by a notary public" or "legalised document" mean a document on which the signature is legalised by a notary public or any other person or body vested with public powers.

### **Initiating the Procedure**

#### Article 3

- (1) The execution procedure is initiated further to a motion filed by the execution creditor, and the security procedure further to a motion by the security creditor.
- (2) When a specific body or a person who is not the holder of a specific claim is authorised by law to initiate a procedure to collect on or secure the claim, in the procedure such body or person have the position of execution creditor or security creditor.
- (3) The execution procedure and the security procedure are also initiated in the line of duty whenever that is expressly provided by law.
- (4) If the procedure is initiated further to a motion by a body or a person who is not the holder of the claim, or in the line of duty, in order to collect on or secure the claim of a person such person may participate in the procedure with the powers of the execution creditor or the security creditor, but may not take actions that would prevent the implementation of the procedure initiated further to the motion by the body or the person, or in the line of duty.
- (5) If the body or the person from paragraph 4 of this Article decides to withdraw a motion that initiated the procedure, that is, if the court decides to suspend the procedure initiated in the line of duty, the person with respect to whose claim the procedure was initiated may take over the procedure. Such person shall give a statement on taking over the procedure within fifteen days from the date of service of the notification about the withdrawal of the motion or the intention to suspend the procedure.

(6) When by operation of law a body or a person is obliged to deliver to the court an enforcement title document or notify it in some other way about the existence of reasons to initiate an execution procedure or a security procedure in the line of duty, such body or person does not have the position of a party in such procedures.

### **The Means and the Object of Execution and Security**

#### *Article 4*

- (1) The means of execution and security are enforcement actions, that is, security actions, or a system of actions which by operation of law serve to procure involuntary collection or security on a claim.
- (2) The object of execution and security are things and rights that according to law may be subject to execution with the aim of collecting on a claim or securing it.
- (3) Enforcement actions or security actions may be also carried out directly against the execution debtor, security debtor and other persons in accordance with this Act.
- (4) The object of execution may not be things outside trade or other things regulated as such in a special law.
- (5) The object of execution may not be claims arising out of taxes and other fees.
- (6) The object of execution may not be facilities, weapons and equipment meant for defence.
- (7) Whether a thing or a right may be subject to execution, that is, whether execution on a thing or right is restricted is evaluated based on the circumstances existing at the time of submitting the motion for execution, unless expressly provided otherwise by this Act.

### **Restrictions on the Means and the Object of Execution and Security**

#### *Article 5*

- (1) The court orders execution or security with the means and on the objects that are stated in the motion for execution or the motion for security.
- (2) If a number of means or objects of execution or security are proposed, upon the motion of the execution debtor or the security debtor, the court shall limit the execution or security only to some means or objects, if they are sufficient to collect on or secure the claim.
- (3) If a legally effective writ of execution cannot be enforced using a specific means or on a specific object, the execution creditor may propose new means or a new object for the purpose of collecting on the claim. In that case, the court adopts a new writ of execution and proceeds with the execution procedure based on such judgment. Execution ordered in the previous writ of execution shall be suspended if the execution creditor withdraws the motion for execution that resulted in the writ of execution in question or if other reasons determined by law are satisfied.
- (4) If the execution creditor fails to submit the motion from paragraph 3 of this Article within two months from the notification of the court about the inability to implement execution, execution shall be suspended.

(5) The execution creditor shall be deemed to have submitted the motion from paragraph 3 of this Article within the deadline from paragraph 4 of this Article if he requests the issuance of an indicative declaration or an indicative list of property. After the indicative declaration or the indicative list of property is deposited, the execution creditor shall be obliged to issue a motion for execution specifying a different means or another object of execution within a further period of two months. To the contrary, execution shall be suspended.

(6) An appeal against the new writ of execution from paragraph 3 of this Article may not be filed for any reasons on the grounds of which it could have been filed against the previous writ of execution.

(7) An appeal against the new writ of execution from paragraph 3 of this Article may be filed after the expiration of the deadline only if the reasons, because of which it is filed occurred after the time period when they could no longer be voiced within the term for appeal against the previous writ of execution.

(8) With respect to court fees, the motion and the writ of execution from paragraph 3 of this Article shall not be regarded as a new motion and a new writ.

(9) The ordering of execution with a new means or on a new object and its implementation shall be regarded as a new execution case in the valuation of the scope of the judge's workload.

### **Protecting the Dignity of the Execution Debtor and the Security Debtor**

#### Article 6

In carrying out execution and security procedures, care shall be taken to protect the dignity of the execution debtor or the security debtor, and that the execution or security are as least unfavourable as possible.

### **Submissions, Hearings and Files**

#### Article 7

(1) In the execution procedure and in the security procedure, the court acts further to submissions and other communications.

(2) The court holds hearings in the cases laid down in this Act or whenever it deems the holding of a hearing purposeful.

(3) The court may make an official note about the hearing, in place of the minutes.

(4) The court shall interview a party or a participant in the procedure outside the hearing if that is provided in this Act or if it holds that is necessary in order to clarify specific questions or give a statement about a motion made by the party.

(5) Absence of one or both parties and a participant from the hearing or failure to comply with the summons of the court for the purpose of an interview shall not prevent the court from taking further actions.

(6) In the execution procedure and in the security procedure, there is no stay of the procedure.

(7) Submissions in the execution procedure are filed in a sufficient number of copies for the court and for the counter-party.

## **Delivery**

### **Article 8**

(1) Delivery to a legal person entered in the court or any other register is made at the address given in the motion. If the delivery to the address from the motion is not successful, delivery shall be made at the address of the registered office entered in the register. If the delivery is not successful at that address either, the writ that should have been delivered shall be displayed on the court bulletin board. Delivery shall be deemed executed on expiration of the eighth day from the placement of the writ on the court bulletin board.

(2) The provisions of paragraph 1 of this Article shall apply also to natural persons performing a specific registered activity (tradesmen, individual merchants, notaries public, attorneys, doctors, etc.) whenever the delivery to such persons is made in connection with the activity in question.

(3) If deliveries to specific persons, based on their request and approval by the president of the court, are made within the court building, communications addressed to such persons by the court are deposited in special pigeon-holes in a room designated for such purpose within the court. Delivery is made by an officer of the court. Communications delivered by way of the pigeon-hole may not be available to persons to whom they are to be delivered before they sign the delivery note. Communications are delivered in sealed envelopes, in which delivery is carried out via the postal office. All communications deposited in the pigeon-hole have to be taken over at the moment of taking them out of the pigeon-hole.

(4) Any writ delivered in the way described in paragraph 3 of this Article shall have written on it the day when it is placed in the pigeon-hole of the person to whom delivery is made in this way. If the writ is not collected within a period of eight days, delivery shall be made by post or in some other way provided by law.

(5) The presiding judge shall withdraw the approval referred to in paragraph 3 of this Article if it is determined that the person to whom the approval has been granted does not collect communications regularly or that he has made attempts at abusing this method of delivery.

(6) Where this Act provides that delivery or any other action is done by a notary public, the delivery or action is done in such a way that the notary public, at the request of an authorised person or body, via the post or directly, delivers the writ and draws minutes of this, a legalised copy of which shall be forwarded to the court.

## **Adjourning the Procedure**

### **Article 9**

In the event of an execution procedure or a security procedure being adjourned, upon the motion of a party or in the line of duty, if this is necessary in order to protect the rights and interests of one of the parties, the court shall appoint a temporary representative to the party with respect to whom the reason which has caused the adjournment occurred, and the procedure shall be continued even before the reason in question terminates.

## **Composition of the Court and of the Decision**

### Article 10

- (1) In the first instance and in the second instance, the execution procedure and the security procedure are conducted and decisions made by a single judge.
- (2) If a decision on involuntary satisfaction or security of claims is to be made in a civil, criminal or some other judicial proceeding, such decisions are made by the court as composed for the handling of the given judicial proceeding.
- (3) Decisions in the execution procedure and in the security procedure are rendered by the court in the form of a ruling or a conclusion.
- (4) The conclusion serves to give an order to the execution administrator to carry out certain actions and to decide about the best way to administer the procedure and about certain other issues as expressly provided in this Act.

## **Legal Remedies**

### Article 11

- (1) An appeal may be filed against a ruling made in the first instance, unless provided otherwise in this Act.
- (2) An objection may be filed against a writ of execution on the basis of a trustworthy document.
- (3) An appeal must be made within a period of eight days of the day of delivery of the first instance ruling, unless provided otherwise in this Act.
- (4) An appeal does not postpone the enforceability of a ruling, unless provided otherwise in this Act.
- (5) It is not permissible to exercise a legal remedy against a conclusion.
- (6) If an appeal against a ruling is allowed, the court shall forward the file with the appeal to the court of second instance if it is not authorised to act in line with the provision of Article 47, paragraph 1 of this Act. If the enforcement of execution may be continued until the adoption of a decision by the second-instance court, the first-instance court shall forward a copy of the file with the appeal to the second-instance court. Until a decision on the appeal is made by the second-instance court, the court of first instance shall take whatever actions it is authorised to take before the legal effectiveness of the contested ruling, unless provided otherwise in this Act.

## **Revision on Points of Law, Retrial and Restoration of a Prior Status**

### Article 12

- (1) In the execution procedure and in the security procedure, only revision on points of law from Article 382, paragraph 2 of the Civil Procedure Act (OG 53/91, 91/92, 112/99, 88/01 and 117/03) is allowed. Retrial is not allowed, except in the case from Article 54, paragraph 7 of this Act.

(2) Restoration of a prior status is allowed only because of missing the deadline for appeals and objections.

### **Urgency and the Order of Proceeding**

#### Article 13

(1) In the execution procedure and in the security procedure, the court is obliged to act urgently.

(2) The court is obliged to work on cases in the order it has received them, unless the nature of the claim or special circumstances require that the court proceed differently.

### **Costs of the Procedure**

#### Article 14

(1) Costs of the procedure in connection with determining and enforcing execution and security are borne in advance by the execution creditor or the security creditor.

(2) The execution creditor or the security creditor is obliged to advance the costs within a period determined by the court. The court shall suspend execution or security if the costs are not paid in advance within the set period, and without it execution and security cannot be carried out. If only the costs of taking a specific action, on which action the carrying out of execution is not dependant, are not advanced, then such action shall not be carried out.

(3) Costs of the procedure initiated by the court in the line of duty shall be advanced by the court out of its funds.

(4) The execution debtor or the security debtor are obliged to indemnify the execution creditor or the security creditor from the costs required to enforce execution or security.

(5) The execution creditor or the security creditor are obliged to indemnify the execution debtor or the security debtor from any costs incurred by them unfoundedly.

(6) An application for the recovery of costs has to be submitted at the latest within thirty days from the completion of the procedure.

(7) Costs of the procedure are determined by the court in the execution procedure and, upon the motion of the party, it also orders execution so that these costs can be recovered.

(8) The execution creditor or the security creditor may require in the motion for execution or in the motion for security that, for the collection of foreseeable costs of the procedure, execution be ordered against the execution debtor or the security debtor. On the basis of this kind of writ of execution, the court shall carry out measures by which, for the benefit of the execution creditor or the security creditor, rights are obtained to parts of the property of the execution debtor or the security debtor to ensure future recovery of the costs of the procedure.

## Security Deposit

### Article 15

(1) Where this Act prescribes the giving of a security deposit, it is given in cash. Exceptionally, the court may permit the giving of a security deposit in the form of a bank guarantee, securities having value on the stock exchange, and valuables whose value is easily ascertainable on the market and which can be quickly and easily turned into cash.

(2) The Republic of Croatia, municipalities, towns and counties, and state bodies are not obliged to give a security deposit when they are parties to a procedure.

(3) The counter-party obtains a statutory lien on the items given as a security deposit. In the event of non-materialised securities being offered as a security deposit, the court shall forward a legalised statement by the person giving the security deposit to the central depository agency without any delay to the effect that such person agrees on the registration of a statutory lien, the purpose of such registration being to secure the claim with respect to which the security deposit is given, with the aim of registering the statutory lien, with accurate designation of the quantity and type of securities, and the identity of the lien debtor and the lien creditor.

(4) If the court decides in the execution procedure or in the security procedure on the right of the counter-party to receive compensation of damages or costs of the procedure relating to the action with respect to which the security deposit was given, at his motion the court shall also decide in the same ruling on the payment of the claim out of the security deposit.

## Fines and Terms of Imprisonment

### Article 16

(1) Where this Act lays down a fine as a means of execution or security, such fine may be issued against natural persons in an amount from HRK 1,000 to 30,000, and against legal persons in an amount from HRK 10,000 to 100,000. Imprisonment laid down in this Act is from fifteen days to three months. During a procedure, the court may sentence the same person to several prison terms for different punishable deeds, while the sum total of prison terms in any procedure may not be more than six months.

(2) If a legal person is fined, the court shall also fine the responsible persons within the legal person if it determines that these persons have by their action or omission brought about the punishable deed committed by the legal person.

(3) If the court threatens a person with a fine in accordance with this Act, and such person does not abide by the order of the court, the court shall issue such punishment against the person in question, and, where necessary, threaten with new punishments and issue them until the person complies with the order of the court.

(4) If a natural person who has been fined does not pay the fine in the period set by the court, this fine shall be replaced by a prison term in line with the rules of criminal law on the replacement of a fine by a prison term. The sum total of prison terms that a person may be sentenced to by way of replacement of fines cannot amount to more than six months in the same procedure, unless provided otherwise in this Act.

(5) Where this Act lays down that a prison term may be issued as a means of execution or security, such punishment may be issued on an individual basis in the duration of up to three months, where the sum total of individually issued prison terms in the same execution procedure may not exceed six months, unless provided otherwise in this Act.

(6) The court may threaten legal persons with fines, and the responsible persons in the legal person and other natural persons with fines or prison terms, or impose a fine against the legal person, or fine or imprison the responsible persons in the legal person or other natural persons:

1. if they undertake certain actions contrary to the order or prohibition of the court with the intention of concealing, damaging or destroying the property of the execution debtor or the security debtor,
2. if they commit acts of violence or acts by which the rights, security and dignity of the execution creditor and the security creditor or other persons participating in the execution procedure or the security procedure can be seriously damaged or threatened,
3. if they undertake any actions against the order or prohibition of the court that can lead to irreparable or nearly irreparable damages to the execution creditor or the security creditor,
4. if they undertake any actions hindering the court, the execution administrator or other authorised persons in the enforcement of enforcement actions or security actions,
5. and in other cases laid down by law.

(7) Imprisonment referred to in paragraph 6 of this Article may last at most thirty days on the basis of the one decision ordering it. During the same procedure, the same person may be imprisoned again, where necessary. The total duration of imprisonment for any person during the same procedure may not be more than six months.

(8) The court shall fine a natural person up to HRK 5,000 and a legal person up to HRK 20,000 if in their submission they offend the court, a party or another participant in the procedure. The representative of a party may also be fined if he is found to be in contempt of the court. The provisions of paragraphs 1 to 5 of this Article apply accordingly to the fine.

(9) (Repealed by the decision of the Constitutional Court of the Republic of Croatia).

(10) A prison term imposed according to the provisions of this Act shall be executed according to the procedure for enforcing prison terms issued in criminal proceedings.

(11) The court shall enforce fines and prison terms in the line of duty, and the costs of enforcement shall be borne by the state budget.

(12) A fine and a prison term within the meaning of the provisions of this Act have no effect on the criminal responsibility of persons who are fined or imprisoned during an execution procedure or a security procedure, but the punishment to which someone is sentenced according to the provisions of this Act shall be counted as part of the punishment issued in a criminal proceeding.

(13) The court may threaten persons as defined in paragraph 6 of this Article with a fine or imprisonment even if there is reasonable concern that the legal or natural person might do some punishable action as defined in paragraph 6, points 1 to 5 of this Article, where such persons may be ordered or prohibited to undertake certain actions.

(14) In the choice of a punishment or the threat of a punishment, or the choice of the kind of punishment, the court shall apply a milder punishment if the same ends can be attained by it.

(15) The court issues rulings on punishments involving fines and prison sentences. An appeal against the ruling may be filed within three days. The court of the second instance has to render a decision about the appeal against the ruling within a period of three days.

(16) The appeal from paragraph 15 of this Article postpones the enforcement of the ruling.

### **Indicative Declaration and Indicative List of Property**

#### Article 16a.

(1) If any objects whose handover or delivery is subject to execution could not be found at the execution debtor, the execution debtor has to give a statement in court, upon the motion of the execution creditor, as to their whereabouts, that is, that he does not have them or that he does not know where they are (indicative declaration).

(2) If execution involving the collection of a monetary claim is unsuccessful, because the objects of execution were not found or because the objects found are not sufficient to settle the execution creditor's claim in view of their negligible value, or because the objects are encumbered by third party pledges, or because other persons demand the objects for themselves, the execution debtor has to submit to the court, upon the motion of the execution creditor, a list of his property (indicative list of property). The execution debtor is obliged to draw and submit the list to the court in two copies with the relevant enclosures within the term set by the court in the ruling from paragraph 7 of this Article.

(3) In the list from paragraph 2 of this Article, the execution debtor has to specify:

1. the location of things that make up his property,
2. the location and the identity of the owner of other people's property on which he has certain proprietary rights,
3. the identity of the person against whom he has a monetary or some other claim,
4. any other rights that make up his property,
5. whether he has money on accounts and with whom,
6. whether he receives salary or pension, that is, whether he generates any other regular or occasional income,
7. whether he has any other property.

(4) In the list from paragraph 2 of this Article, the execution debtor has to include information about the legal and factual foundation of his rights with respect to each piece of the property from paragraph 3 of this Article, as well as the evidence, especially documents, which may serve to corroborate the list. If necessary, the court may request the execution debtor to provide any other data based on which the property might be found.

- (5) In the statements from paragraphs 1 and 2 of this Article, to be signed in court, the execution debtor shall confirm that the information provided by him is accurate and complete and that he has not failed to mention any of his property.
- (6) The minister of justice shall prescribe a form for the statements from paragraphs 1 and 2 of this Article.
- (7) The court gives its opinion on the motion for giving an indicative declaration and an indicative list of property in a ruling, in which he threatens the execution debtor with a fine if he fails to comply with the order of the court (Article 16).
- (8) The indicative declaration is given publicly at a hearing in court.
- (9) A hearing in court shall also be held in order to review and confirm the indicative list of property.
- (10) A summons for the public hearing from paragraphs 8 and 9 of this Article is delivered to the execution debtor and the execution creditor, and the notification about the hearing shall also be published on the court bulletin board. The minutes shall be drawn on the hearings.
- (11) If the execution debtor fails to appear at the hearings from paragraphs 8 and 9 of this Article and fails to give a well-founded reason for his absence or if he refuses to give an indicative declaration or the indicative list of property, the court shall fine him and threaten with new fines to be issued against him until the execution debtor complies (Article 16).
- (12) The provisions from paragraphs 1 through 11 of this Article shall apply accordingly to the responsible persons of the execution debtor who is a legal person.
- (13) With the aim of gathering information about the property in question, upon the motion of the execution creditor the court may hear other persons as witnesses or request testimonies by other persons or bodies.
- (4) If the execution creditor makes probable that the situation has changed significantly, the court may re-instruct the execution debtor to give an indicative declaration or an indicative list of property according to the rules from the previous paragraphs of this Article.
- (15) The execution debtor and the responsible persons of the execution debtor who is a legal person are held responsible for giving untrue or incomplete indicative declarations or indicative lists of property just as for a false testimony in a court procedure.
- (16) The persons or bodies from paragraph 13 of this Article are held responsible for giving inaccurate or incomplete information just as for a false testimony in a court procedure.

### **Duty to Provide Information About the Debtor**

#### Article 16 b

- (1) Upon the motion of a person claiming that he intends to initiate an execution procedure or a security procedure, the Croatian Pension Insurance Institute is obliged to provide information within eight days whether a natural person is an insured person with the Croatian Pension Insurance Institute, under what grounds (employment, freelancing, trade or an independent agricultural

activity) and with whom, that is, whether he receives pension, disability payment or any other regular receipts on which it keeps records.

(2) Upon the motion of a person claiming that he intends to initiate an execution procedure or a security procedure, the Ministry of the Interior is obliged to provide information within eight days based on its motor vehicle records whether a person is registered as the owner of a motor vehicle, as well as information about the kind, brand, type, model, year of production, registration number, and burdens on the vehicle, if any.

(3) Upon the motion of a person claiming that he intends to initiate an execution procedure or a security procedure, the Financial Agency is obliged to provide information within eight days about the regular business account of the business entity, and if he has several, about the regular business account the entity designated as the account for the enforcement of any orders on the payment of legal obligations and public revenues, orders for the collection of securities and security instruments, and orders with respect to the enforcement of court decisions and other enforcement title documents (main account).

(4) At the request of the court, the person claimed by the execution creditor to be a debtor of the execution debtor or to have some of his property is obliged to provide a statement within eight days whether the execution debtor has a claim against him, that is, whether he has any of his property.

(5) The person filing the motion from paragraphs 1, 2 and 3 of this Article is obliged to identify the claim with respect to whose execution or security he intends to initiate the execution procedure or the security procedure in the motion for providing information, and enclose a document on which it is based.

(6) The persons and bodies from paragraphs 1 through 4 of this Article may not inform the debtor about the filing of a motion for providing information about his property.

(7) The execution creditor is entitled to receive compensation of any damages incurred as the result of a violation of the duty from paragraphs 1 through 4 and paragraph 6 of this Article.

### **Enforcement of Foreign Judgments**

#### Article 17

Execution based on a foreign judgment may be recognised and enforced in the Republic of Croatia only if the judgment meets the conditions for recognition and enforcement laid down in an international treaty or law.

### **Execution on the Property of a Foreign State**

#### Article 18

Property of a foreign state in the Republic of Croatia may not be subject to execution or security without a prior approval by the Ministry of Justice of the Republic of Croatia, unless the foreign state consents to such execution or security.

## **Applying the Provisions of Other Laws**

### **Article 19**

(1) The provisions of the Civil Procedure Act apply accordingly to the execution procedure and to the security procedure, unless provided otherwise in this Act or any other law.

(2) The provisions of laws regulating real rights or relations subject to the law of obligations apply accordingly to the material and legal requirements and consequences of carrying out execution procedures and security procedures.

## **Part Two**

### **EXECUTION**

#### **Division One**

#### **COMMON PROVISIONS**

#### **Title Two**

#### **ENFORCEMENT TITLE DOCUMENTS AND TRUSTWORTHY DOCUMENTS**

##### **Grounds for Ordering Execution**

#### **Article 20**

The court orders execution only on the basis of an enforcement title document or a trustworthy document, unless provided otherwise in this Act.

##### **Enforcement Title Documents**

#### **Article 21**

Enforcement title documents are:

1. an enforceable court decision and an enforceable judicial settlement,
2. an enforceable arbitration award,
3. an enforceable decision rendered in the administrative procedure and an enforceable settlement reached in the administrative procedure if they are related to the satisfaction of a monetary obligation, unless provided otherwise by law,
4. an enforceable notarial decision and an enforceable notarial deed,
5. settlement reached in procedures before courts of honour with various chambers in the Republic of Croatia,
6. any other deed regulated as an enforcement title document by law.

## **Decisions and Settlements**

### Article 22

- (1) Court decisions under this Act are judgments, rulings, payment orders and other decisions rendered in court and arbitration procedures, and judicial settlements are settlements reached in procedures before such courts.
- (2) Under this Act, a decision rendered by an administrative body is a ruling and conclusion rendered in an administrative procedure by the body of state administration or a legal person vested with public powers, and an administrative settlement is a settlement reached in an administrative procedure before such body, that is, before such person.

## **Enforceability of Decisions**

### Article 23

- (1) A court decision instructing the fulfilment of a claim on payment or performance is enforceable if it has become legally effective and if the term for voluntary fulfilment has expired. The term for voluntary fulfilment runs from the date of delivery of the decision to the execution debtor, unless provided otherwise by law.
- (2) A court decision instructing the fulfilment of a claim on sufferance or non-performance (failure to act) is enforceable if it has become legally effective, unless the enforceable deed specifies a special term during which the execution debtor has to comply with his obligation.
- (3) A decision adopted in an administrative procedure is enforceable if it has become enforceable according to the rules regulating the procedure in question.
- (4) Based on an enforceable decision that has become enforceable only in one part, execution may be ordered only with respect to such part.
- (5) Execution shall be ordered based on a court decision that has not become legally effective and a decision rendered in an administrative procedure that has not become final if provided by law that the appeal or any other legal remedy does not postpone execution.

## **Enforceability of First-instance Court Decisions**

### Article 23 a

- (1) First-instance court decisions instructing a natural person not performing a registered activity to settle a claim whose principal does not exceed HRK 1,000, that is, instructing a natural person performing a registered activity in a legal matter connected to such activity, or a legal person to settle a claim whose principal does not exceed HRK 5,000, become enforceable within eight days from the date of delivery to the person ordered to execute payment. An appeal against such decisions does not postpone execution.
- (2) If the court decision orders one of the persons from paragraph 1 of this Article to only reimburse costs of the procedure in an amount not exceeding the amounts mentioned in that provision, an appeal against such decision on reimbursing the costs does not postpone execution.

## **Enforceability of Settlements**

### Article 24

- (1) Court or administrative settlements are enforceable if the claim which has to be fulfilled has become mature.
- (2) The maturity of a claim is demonstrated by the minutes on settlement or by an official document or by a legalised document.
- (3) Any maturity that may not be demonstrated in the manner from paragraph 2 of this Article is demonstrated by a legally effective decision rendered in a civil action procedure establishing maturity.
- (4) Based on settlement that has become enforceable only in one part, execution may be ordered only with respect to such part.

## **Enforceability of a Notarial Deed**

### Article 25

- (1) Notarial deeds are enforceable if they have become enforceable according to special rules regulating enforceability of such a document.
- (2) Execution based on a notarial deed that has become enforceable only in one part may be ordered only with respect to such part of the notarial deed in question.

## **Suitability of Enforcement Title Documents for Execution**

### Article 26

- (1) An enforcement title document is suitable for execution if it specifies the creditor and the debtor, and the subject, type, scope and time for fulfilling an obligation.
- (2) If an enforcement title document is a decision instructing the fulfilment of a claim on payment or performance, it has to specify the term for voluntary fulfilment.
- (3) If an enforcement title document from paragraph 2 of this Article does not specify a term for voluntary fulfilment, the term is set by the court in the writ of execution.
- (4) In the event from paragraph 3 of this Article, the court shall condition the proposed execution on the execution debtor not fulfilling his obligation within the set term.
- (5) If under an enforcement title document the creditor is authorised to determine the scope or time of fulfilling the claim, the creditor shall determine the scope or time of fulfilling the claim in the motion for execution.
- (6) If under an enforcement title document a third party is authorised to determine the scope or time of fulfilling the claim, such person shall be deemed to have determined the scope or time of fulfilling the claim if it has done it in an official document or a document legalised by a notary public.

## **Determining and Collecting Default Interest**

### Article 27

- (1) If after a decision is adopted, settlement reached or a notarial deed drawn the rate of default interest changes, upon the motion of any party the court shall issue a ruling ordering the payment of default interest at the changed rate for the time period with respect to which the change relates. The motion for adopting such a ruling may be filed until the conclusion of the execution procedure.
- (2) If the payment of default interest on procedural costs is not specified in the enforcement title document, the court shall order the payment of such interest in the writ of execution, upon the motion of the execution creditor, at the rate prescribed from the date of adopting the decision or concluding the settlement to payment.
- (3) Upon the motion of the execution creditor, the court shall order payment of default interest on the costs of the execution procedure and the security procedure at the rate prescribed from the date on which the costs were incurred, that is, paid, to the date of payment.
- (4) Deleted.

## **Trustworthy Documents**

### Article 28

- (1) Trustworthy documents under this Act are invoices, bills of exchange and cheques with the protest clause and return invoices whenever that is required to establish a claim, official documents, excerpts from business books, legalised private documents and documents regarded as official documents under special regulations. Calculation of interest is also regarded as an invoice.
- (2) A trustworthy document is suitable for execution if it specifies the creditor and the debtor, and the subject, type, scope and time for fulfilling a monetary obligation.
- (3) When it is not visible from a trustworthy document whether and when a claim has become mature, execution shall be ordered if the execution creditor specifies the date of maturity of the claim in the motion for execution, and if he has indicated the date of its maturity.

## **Transferring Claims or Obligations**

### Article 29

- (1) Execution is ordered at the motion and in favour of a person who is not specified in the enforcement title document as the creditor if he can prove by a public or legalised private document that the claim has been transferred or passed to him in some other way. If the transfer cannot be proved, the transfer of a claim is proved by a legally effective decision adopted in a civil action procedure.
- (2) The provision of paragraph 1 of this Article applies accordingly to execution against persons not specified as the debtor in the enforcement title document.

## **Conditional and Reciprocal Obligations**

### Article 30

(1) If an obligation of the execution debtor established in the enforcement title document is conditioned upon prior or simultaneous fulfilment of an obligation by the execution creditor or upon the occurrence of a condition, the court shall order execution upon the motion of the execution creditor if he states that he has fulfilled his obligation, that is, that he has ensured its fulfilment or that the condition has occurred.

(2) If the execution debtor states in the legal remedy against the writ of execution that the execution creditor has not fulfilled his obligation or that he has not ensured its fulfilment or that the condition has not occurred, the court shall decide on the fulfilment of the obligation by the execution creditor, that is, on the occurrence of the condition in the execution procedure, unless the relevant decision depends on the establishment of disputable facts.

(3) If the decision from paragraph 2 of this Article depends on the establishment of disputable facts, the court shall decide on the legal remedy from paragraph 2 of this Article in the execution procedure if the facts are well-known, if their existence can be determined by applying rules on legal presumptions or if the execution creditor proves the fulfilment or the ensuring of his obligation, that is, the occurrence of the condition by an official document or by a private document legalised by a notary public. In all other cases, the court shall suspend the procedure.

(4) The execution creditor shall be deemed to have fulfilled his obligation, that is, ensured its fulfilment if the object of the owed performance was deposited as a court or notarial deposit, unless that is contrary to the content of his obligation established in the enforcement title document.

(5) The execution creditor who fails to prove in the execution procedure, in accordance with the provisions of the previous paragraphs of this Article, that he has fulfilled his obligation, ensured its fulfilment or that the condition has occurred, may initiate litigation proceedings, so that it might be established that pursuant to the enforcement title document he is authorised to demand unconditional execution for the purpose of realising his claim.

## **An Alternative Obligation at the Choice of the Execution Debtor**

### Article 31

(1) If the execution debtor has the right to choose between several objects of his obligation based on an enforcement title document and fails to make the choice within the term for voluntary fulfilment, and does not fulfil his obligation, the execution creditor shall determine the object that is to be used to fulfil the obligation in the motion for execution.

(2) The execution debtor has the right to choose even after the motion for execution is submitted, but the right terminates as soon as the execution creditor achieves even partial settlement in accordance with his motion.

(3) The execution creditor has the right to receive compensation of the costs of the execution procedure that has been suspended, because the execution debtor fulfilled his obligation by using another object after the initiation of the procedure in accordance with the provisions of paragraph 2 of this Article.

## **An Alternative Authorisation of the Execution Debtor**

### Article 32

(1) An execution debtor instructed to fulfil an obligation based on an enforcement title document, but with the right to be exempt from the fulfilment of that obligation by making some other performance specified in the enforcement title document, may execute such performance until the execution creditor achieves but a partial settlement by involuntary fulfilment of the owed obligation.

(2) The execution creditor has the right to receive compensation of the costs of the execution procedure suspended after initiation, because the execution debtor fulfilled the alternative performance specified in the enforcement title document instead of the owed obligation in accordance with the provisions of paragraph 1 of this Article.

## **Certificate of Enforceability**

### Article 33

(1) If the motion for execution is submitted to a court that did not decide about the claim in the first instance, it is necessary to enclose the enforcement title document to the motion, either the original or a legalised transcript, which has to contain the certificate of enforceability, that is, trustworthy document.

(2) The certificate of enforceability is issued by the court or the body that decided about the claim in the first instance.

(3) Any certificate of enforceability that was issued, although the conditions laid down by law for its issuance were not fulfilled shall be repealed by the same court or body in a ruling, further to a motion or in the line of duty.

(4) Arbitration courts do not issue certificates of enforceability of their decisions, unless provided otherwise by law. With respect to the legal remedy available to the execution debtor, the court conducting the execution procedure shall review whether the arbitration award is enforceable or not, and depending on the outcome of the review, decide on the legal remedy itself or forward the matter to another competent court (Article 47).

(5) Notaries public issue certificates of enforceability of their documents by themselves. With respect to the legal remedy available to the execution debtor, the court conducting the execution procedure shall review whether conditions for issuing such a certificate were fulfilled, taking into account statements by persons authorised based on the document to confirm the occurrence of circumstances on which the acquisition of the characteristic depends (Article 26, paragraphs 5 and 6). If the court establishes that conditions for issuing a notarial certificate of enforceability were not fulfilled, the certificate shall be repealed by a ruling in the execution procedure.

(6) The municipal court in whose area the registered office of the notary public is located decides on the motion for repealing the certificate of enforceability issued by the notary public on his document, submitted outside the execution procedure, in ex-parte proceedings.

## **Subject-matter Jurisdiction**

### Article 33 a

(1) Municipal courts have subject-matter jurisdiction to order execution, unless adjudication in such matters is expressly entrusted to some other court, body or person.

(2) Commercial courts have subject-matter jurisdiction to:

1. order execution based on decisions rendered and settlements reached in procedures in which they adjudicated in the first instance,
2. order execution based on domestic and foreign arbitration awards rendered in disputes with respect to which they have subject-matter jurisdiction in the civil action procedure,
3. order execution from Article 252.h, paragraph 2 of this Act in disputes with respect to which they have subject-matter jurisdiction in the civil action procedure,
4. order execution based on debentures and blank debentures for the purpose of collecting on claims in mercantile relations.

(3) Courts having jurisdiction to order execution are also authorised to act further to legal remedies filed against writs of execution and other decisions they rendered with respect to a motion for execution. They are also authorised to decide on other issues during the procedure before the court having jurisdiction to enforce execution commences with the enforcement of execution.

## **Territorial Jurisdiction**

### Article 33 b

Territorial jurisdiction provided in this Act is exclusive.

## **Title Three**

### **FILING A MOTION FOR AND ORDERING EXECUTION**

#### Article 34

Deleted.

## **Motions for Execution**

### Article 35

(1) Motions for execution have to include a request for execution specifying the enforcement or trustworthy document serving as basis for demanding execution, the execution creditor and the execution debtor, the claim whose fulfilment is demanded, and the means by which execution is to be enforced and, if necessary, the object with respect to which it is to be enforced. The motion also has to include other prescribed data required to enforce execution.

(2) Motions for execution based on trustworthy documents have to include:

1. a request for the court to order the execution debtor to settle the claim with any pertinent costs within eight days, and in the case of disputes involving bills of exchange and cheques within three days from the delivery of the ruling, and
2. a request for execution from paragraph 1 of this Article.

(3) In a ruling, the court shall dismiss any motion for execution that does not contain all the data from paragraphs 1 and 2 of this Article, and shall not ask the proponent to supplement or correct it.

### **Withdrawing and Restricting the Motion**

#### Article 36

(1) Throughout the procedure, the execution creditor may withdraw a motion for execution either fully or partially, without any approval being required from the execution debtor.

(2) In the event from paragraph 1 of this Article, the court shall suspend the execution.

(3) The execution creditor may submit a new motion for execution after withdrawing a motion.

### **Writs of Execution**

#### Article 37

(1) Writs of execution have to specify the execution or trustworthy document based on which execution is ordered, the execution creditor and the execution debtor, the claim, the means and object of execution, and any other data necessary to enforce execution.

(2) In a writ of execution based on a trustworthy document, the court:

1. instructs the execution debtor to settle the claim with any pertinent costs within eight days, and in the case of disputes involving bills of exchange and cheques within three days from the delivery of the ruling, and
2. orders execution for the purpose of involuntary collection of the claim.

(3) Writs of execution do not have to include an opinion (explanation) and may be issued by placing a stamp on the motion for execution.

(4) Writs of execution have to include instructions about the legal remedy.

(5) The court shall not dismiss a motion for execution based on a legally effective court decision, judicial settlement or a document legalised by a notary public in the line of duty only because the documents did not include a certificate of enforceability at the time of decision-making, that is, the court shall not dismiss a request for execution only because the claim specified in the documents has not become enforceable.

(6) A ruling either fully or partially dismissing or rejecting a motion for execution has to include an opinion (explanation).

## **Delivery of Writs of Execution**

### Article 38

- (1) Writs of execution are delivered to the execution creditor and the execution debtor.
- (2) Writs dismissing or rejecting motions for execution rendered before the execution debtor was provided an opportunity to give a statement about it are delivered only to the execution creditor.
- (3) Writs of execution based on enforcement title documents are delivered to the bank or the central depository agency with which the execution debtor's accounts are kept and to other persons and bodies whenever necessary for execution purposes before they become legally effective.
- (4) Writs of execution based on trustworthy documents are delivered to the persons and bodies from paragraph 3 of this Article only after they become legally effective.
- (5) Writs of execution on chattels rendered based on enforcement title documents are delivered to the execution debtor when taking the first enforcement action, unless provided otherwise by this Act.
- (6) Writs of execution on chattels rendered based on trustworthy documents are delivered to the execution debtor before the enforcement of execution commences (Article 40, paragraph 3).
- (7) If the court that rendered the writ of execution does not have jurisdiction to enforce execution, it shall forward its writ of execution to the court having jurisdiction to enforce execution.

## **Title Four**

### **ENFORCING EXECUTION**

#### **Subject-matter Jurisdiction**

### Article 39

- (1) With respect to the enforcement of execution, the court having subject-matter jurisdiction is the court of the same kind as the court having subject-matter jurisdiction to decide about the motion for execution, unless provided otherwise by law.
- (2) Municipal courts have subject-matter jurisdiction to enforce execution based on writs of execution based on trustworthy documents, except in cases where commercial courts have subject-matter jurisdiction.
- (3) Commercial courts have subject-matter jurisdiction to enforce execution based on writs of execution based on trustworthy documents in disputes where they have subject-matter jurisdiction in the civil action procedure.
- (4) Commercial courts are authorised to entrust the enforcement of execution for the purpose of collecting monetary claims on real estate and chattels and execution for the purpose of realising non-monetary claims to municipal courts.

(5) The court enforcing execution is authorised to decide on all issues regarding the conducting of the execution procedure and on all issues arising with respect to the conducting of the execution procedure with respect to which it is decided in the relevant procedure under this Act, and on the request for compensation of procedural costs submitted later in the procedure (Article 14, paragraph 6).

### **Execution Based on Legally Ineffective Writs of Execution**

#### Article 40

- (1) Execution is carried out even before a writ of execution becomes legally effective, unless provided otherwise by this Act for specific enforcement actions.
- (2) Claims shall be collected involuntarily even before the writ of execution becomes legally effective, unless provided otherwise in this Act.
- (3) Execution ordered based on a trustworthy document is enforced only after the writ of execution becomes legally effective.

### **Limitations on Execution**

#### Article 41

Execution is enforced within the limitations imposed in the writ of execution.

### **Time of Execution**

#### Article 42

- (1) Execution is enforced on business days, during daytime.
- (2) The court may order execution to be enforced on a non-business day or during the night if there is a well-founded reason for doing that.

### **Work by Execution Administrator**

#### Article 43

- (1) During the search of the execution debtor's apartment or clothing that he is wearing and during other enforcement actions, the execution administrator is obliged to proceed with due respect for the person of the execution debtor and members of his household.
- (2) Two adult witnesses or a notary public have to be present at enforcement actions in the execution debtor's residence when the execution debtor, his legal representative, proxy or an adult member of his household are not present.
- (3) On the premises of a legal person, execution is carried out in such a way that the execution administrator, before proceeding with an enforcement action, asks the representative of the legal person to be present during the enforcement of execution or to appoint some other person to be present. If the representative of the legal person refuses to behave in line with the request of the execution administrator or if the execution administrator does not find him on the premises of the

legal person during the undertaking of the enforcement action, the work shall be carried out in the presence of two adult witnesses.

(4) If an enforcement action has to be carried out in a room which is locked, and the execution debtor or his representative is not present, or will not open the premises, the execution administrator shall open the premises in the presence of two adult witnesses or a notary public.

(5) The execution administrator shall draw special minutes concerning the performance of enforcement actions as defined in the provisions of paragraphs 2 to 4 of this Article, which shall be signed by the invited witnesses or the notary public.

### **Obstructing the Execution Administrator in His Work**

#### Article 44

(1) The execution administrator is authorised to remove any person obstructing the enforcement of execution, and depending on the case seek help of the police and the judicial police. The police and the judicial police are obliged to behave in line with the order of the execution administrator. The execution administrator may order the use of force against any person obstructing execution, if necessary.

(2) The court may issue measures laid down in Article 16 of this Act against any person obstructing execution.

### **Irregularities in the Enforcement of Execution**

#### Article 45

(1) In a submission, any party or a participant may request the court to remedy any irregularities made by the execution administrator in enforcing execution.

(2) In a conclusion, the court may revoke any unlawful and irregular actions by the execution administrator.

### **Title Five**

## **LEGAL REMEDIES AVAILABLE TO PARTIES AGAINST WRITS OF EXECUTION**

### **1. Legal Remedies Against Writs of Execution Based on Enforcement Title Documents Appeals Against Writs of Execution**

#### Article 46

(1) The execution debtor may file an appeal against the writ of execution:

1. if the document used as the basis for adopting the writ of execution is not an enforcement title document,
2. if the document has not become enforceable,

3. if the enforcement title document was repealed, nullified, altered or in some other way placed out of force, that is, if it has lost its efficiency in some other way or if it has been established that it has no effect,
4. if the parties have agreed in an official document or a document legalised by a notary public drawn up after the enforcement title document has come into being that the execution creditor shall not seek execution on the basis of the enforcement title document, either permanently or for some given period of time,
5. if the period during which execution can be demanded according to law has expired,
6. if execution is ordered on an object that is exempt from execution, or on which the possibility of execution is limited,
7. if the execution creditor is not authorized to seek execution on the basis of an enforcement title document, that is, if he is not authorised to seek execution against the execution debtor on the basis of it,
8. if some condition determined in the enforcement title document is not fulfilled, unless provided otherwise by law,
9. if the claim has ceased on the basis of a fact that came about at a time when the execution debtor could no longer make it known in the procedure in which the decision was rendered, that is, after the conclusion of a court or administrative settlement or the drawing, confirmation or legalisation of a notarial deed,
10. if the realisation of the claim is postponed, prohibited, altered or in some other way prevented, even for a definite period of time, on the basis of a fact that came about at a time when the execution debtor could no longer make it known in the procedure in which the decision was rendered, that is, after the conclusion of a court or administrative settlement or the drawing, confirmation or legalisation of a notarial deed, or
11. in the event the claim from the enforcement title document is barred by the statute of limitations.

(2) In the appeal from paragraph 1 of this Article, the execution debtor may voice new facts and new evidence if they concern the reason because of which it is expressly permitted and because of material violations of the provisions of the execution procedure.

(3) The court may establish new facts concerning the reason from paragraph 1, points 7, 9, 10 and 11 of this Article only in accordance with the provisions of Article 48 of this Act.

(4) An appeal is permitted, because of violations of the rules on subject-matter and territorial jurisdiction.

(5) With respect to the appeal from paragraph 1 of this Article, in the line of duty the court takes care of the reasons from paragraph 1, points 1, 3 and 5 of this Article and of the circumstance that in the event from paragraph 1, point 6 of this Article execution is ordered against the objects from Article 4, paragraphs 4 and 5 of this Act. The court also takes care in the line of duty of erroneous application of substantive law and material violations of the execution procedure when the provisions of the Civil Procedure Act provide they shall be subject to such care.

(6) The execution creditor may contest the writ of execution in an appeal if the writ of execution stepped outside his request and because of the decision on procedural costs.

(7) An appeal by the execution debtor against the writ of execution does not postpone the enforcement of execution, unless provided otherwise by this Act.

#### Article 46 a

Deleted.

### **Adjudicating on Appeals**

#### Article 47

(1) Further to an appeal against a particular writ of execution, the court of first instance may accept the appeal if it evaluates that it is founded and alter the writ of execution either fully or partially and reject the motion for execution, or repeal the writ of execution and dismiss the motion for execution, or declare that it does not have subject-matter or territorial jurisdiction and assign the case to the competent court, except in the cases from Article 48 of this Act.

(2) In the cases from paragraph 1 of this Article, the court of first instance shall revoke the executed actions, except where it has declared that it does not have jurisdiction, assigning the case to the competent court. The court to whom the case is assigned as competent may revoke the enforcement actions if it evaluates that would be necessary in order to ensure proper enforcement of execution.

(3) If it evaluates that an appeal is not founded, the court of first instance shall forward the case to the court of second instance.

(4) In order to verify whether the claims in an appeal are founded, the court of first instance may interview the parties and other participants and perform other investigations, if necessary.

(5) The court of first instance is obliged to render and dispatch the ruling from paragraph 1 of this Article within thirty days. Within that term, in the event from paragraph 3 of this Article, it is obliged to forward the case to the court of second instance.

(6) The court of second instance is obliged to render and dispatch the ruling on an appeal within sixty days from the date of receiving it.

(7) An appeal against the ruling from paragraph 1 of this Article is permissible, and the court of first instance does not have any powers from that provision against such appeal.

### **Instruction to Initiate Litigation Proceedings Further to an Appeal**

#### Article 48

(1) If an appeal is voiced for the reasons from Article 46, paragraph 1, point 7 and point 9 through 11 of this Act, the court of first instance shall forward the appeal to the execution creditor, so that he could declare himself within eight days.

(2) If the execution creditor acknowledges the existence of any reasons for the appeal, the court shall suspend the execution procedure.

(3) If the execution creditor disputes the existence of the reasons or does not declare himself within the term of eight days, the court of first instance shall render a ruling without any delay, instructing the execution debtor to initiate litigation proceedings within fifteen days from the legal effectiveness of the ruling, in which the execution debtor is to demand that execution be declared impermissible on the grounds of the reason from paragraph 1 of this Article, because of which he filed the appeal.

(4) By way of derogation from the provision of paragraph 3 of this Article, the court shall not instruct the execution debtor to initiate litigation proceedings, but shall accept his appeal, revoke the performed actions and suspend the execution if he proves that it is well-founded by an official document or a document legalised by a notary public, that is, if the facts on which his appeal is based, because of the reason from paragraph 1 of this Article are generally known or may be established by applying the rules on legal presumptions.

(5) The rules on litigation which the execution debtor is instructed to initiate with respect to an appeal after the expiration of the term apply accordingly to initiating and conducting the litigation proceedings from paragraph 3 of this Article (Article 51).

(6) The fact that the execution debtor has been instructed to initiate litigation proceedings from paragraph 3 of this Article or that he has initiated it does not prevent the enforcement of execution and the realisation of the claim of the execution creditor, unless provided otherwise by this Act.

(7) If an appeal is filed, because of one of the reasons, inter alia, from Article 46, paragraph 1, point 1 through 6 and point 8 of this Act, the court of first instance shall forward a copy of the file to the court of second instance if it holds the appeal not to be founded on the grounds of such reasons (Article 47), so that the court of second instance could decide on the appeal with respect to the reasons in question (Article 11, paragraph 6).

(8) If the execution debtor files an appeal against a ruling instructing him to initiate litigation proceedings, the court of first instance shall forward the appeal to the court of second instance, so that the process of decision-making about the appeal in question and about the appeal against the writ of execution could take place at the same time.

(9) If the court of first instance has already forwarded a copy of the file to the court of second instance with respect to the appeal from paragraph 7 of this Article, it shall inform the court of second instance about that fact when forwarding a copy of the file with respect to the appeal against the ruling instructing the execution debtor to initiate litigation proceedings.

(10) In the event from paragraph 4 of this Article, the execution creditor who holds that he is authorised to propose execution based on a specific enforcement title document, may file an action requesting the point to be established in separate litigation proceedings.

Article 48 a

Deleted.

Article 48 b

Deleted.

## **Appeals After the Expiration of the Term**

### Article 49

- (1) The execution debtor may submit an appeal against the writ of execution even after it becomes legally effective, because of the reasons from Article 46, paragraph 1, point 7 and points 9 through 11 of this Act if he could not voice the reason, because of well-founded reasons within the term for appeal against the ruling.
- (2) The appeal from paragraph 1 of this Article may be submitted until the completion of the execution procedure.
- (3) In the appeal from paragraph 1 of this Article, the execution debtor is obliged to voice all reasons from paragraph 1 of this Article, which he may voice at the time of submitting it. The court shall dismiss any appeal submitted after the expiration of the term if it is based on reasons which the execution debtor could have voiced in the appeal previously submitted.
- (4) The submission of the appeal from paragraph 1 of this Article does not prevent the enforcement of execution and the realisation of the claim of the execution creditor, unless provided otherwise by this Act.

## **Reply Briefs**

### Article 50

- (1) The appeal from Article 49 of this Act shall be forwarded to the execution creditor without any delay, who may declare himself about it within eight days.
- (2) When it receives the reply brief or when the term for a reply brief expires, the court shall schedule a hearing in order to discuss the appeal or render a ruling without holding a hearing, except in the case from Article 51 of this Act.
- (3) In the ruling on the appeal, the court shall either dismiss or accept the appeal, except in the case from Article 51 of this Act. If it accepts the appeal, the court of first instance shall recall the performed actions and suspend the execution.
- (4) The foundedness of an appeal is evaluated based on the situation at the time of deciding about the appeal.

## **Instruction to Initiate Litigation Proceedings**

### Article 51

- (1) If the ruling on the appeal from Article 49, paragraph 1 of this Act depends on the establishment of a disputable fact, the court shall instruct the execution debtor to initiate litigation proceedings within fifteen days from the date the ruling becomes legally effective and demand that that execution be declared impermissible, except in the case from paragraph 2 of this Article.
- (2) If the ruling on the appeal from paragraph 1 of this Article depends on the establishment of disputable facts whose existence the execution debtor proves by an official document or a document legalised by a notary public, that is, if they are generally known or if their existence may be established by applying rules on legal presumptions, the court shall decide on the foundedness of

the appeal in the execution procedure. If the appeal is accepted, the court shall act in accordance with the provision of Article 50, paragraph 3 of this Act, and if it does not accept the appeal, it shall instruct the execution debtor to initiate litigation proceedings.

(3) The execution debtor may base the action by which he initiates litigation proceedings only on the reasons voiced in the appeal with respect to which he was instructed to initiate litigation proceedings.

(4) If the execution debtor is instructed to initiate litigation proceedings further to an appeal submitted subsequently, after the expiration of the term, he is obliged to voice reasons for the appeal in the litigation proceedings he was instructed to initiate if the main hearing has still not been concluded.

(5) If the execution debtor fails to comply with the provision of paragraph 4 of this Article, the court shall dismiss the action.

(6) Based on a legally effective judgment establishing that execution is not permissible, the court having jurisdiction to decide on the appeal shall revoke the performed actions and suspend the execution upon the motion of the execution debtor.

### **Right of the Execution Debtor to Compensation of Damages**

#### Article 52

(1) If execution is enforced based on a writ of execution against which the appeal from Articles 48 and 49, paragraph 1 of this Act has been submitted before the main hearing in the first-instance civil action procedure is concluded, the execution debtor may alter the action until the conclusion of the main hearing, without the consent by the execution creditor as the plaintiff, by requesting the court to instruct the execution creditor to return what he unfoundedly acquired by execution and to compensate any damages suffered as the result, including the costs of execution in which the execution creditor collected on his claim.

(2) Damages to which the execution debtor is entitled include the difference between the value of the liquidated object of execution and the price at which it was liquidated.

(3) The execution debtor is entitled to interest on the monetary amounts from paragraph 1 of this Article if the execution creditor gained money out of his property without foundation, that is, by liquidating parts of the property of the execution debtor.

### **2. Legal Remedies Against Writs of Execution Based on Trustworthy Documents An Objection Against the Writ of Execution Based on a Trustworthy Document**

#### Article 53

(1) The execution debtor may file an objection against the writ of execution based on a trustworthy document within the term of eight days, and in the case of disputes involving bills of exchange and cheques within three days, unless he is disputing only the decision on procedural costs.

(2) The writ of execution based on a trustworthy document, when it is contested in the objection from paragraph 1 of this Article only in the part ordering execution, may be contested only because of the reasons, because of which the writ of execution based on an enforcement title document may be contested by an appeal (Article 46).

(3) The writ of execution based on a trustworthy document may be contested by an appeal in the part ordering execution after the expiration of the term (Article 49), because of the reasons mentioned in Article 46, points 7, 9, 10 and 11 of this Act only if the fact on which the objection is based occurred after the adoption of the writ of execution.

### **Procedure Relating to an Objection Against the Writ of Execution Based on a Trustworthy Document**

#### Article 54

(1) If an objection against the writ of execution adopted on the basis of a trustworthy document filed by the execution debtor does not specify which part of the writ of execution is being contested, it shall be deemed that the execution debtor is disputing the writ of execution in its entirety.

(2) If the writ of execution is contested in its entirety or only in the part instructing the execution debtor to settle the claim, the court to whom the objection was submitted shall place the writ of execution out of force in the part ordering execution and revoke any performed actions, and the procedure shall be continued as with respect to an objection against the payment order, and if the court does not have subject-matter jurisdiction for that, it shall forward the case to the court having jurisdiction.

(3) If the writ of execution is contested only in the part ordering execution, any further procedure shall be continued as a procedure further to an appeal against the writ of execution adopted on the basis of an enforcement title document.

(4) If the objection from paragraph 3 of this Article is accepted, the part of the writ of execution instructing the execution debtor to settle the claim shall have the force of an enforcement title document based on which execution may be demanded once again.

(5) If the execution debtor contests the writ of execution only partially in the part instructing the execution debtor to settle the claim of the execution creditor, the court shall issue a conclusion establishing that the uncontested part of the writ of execution has become legally effective and enforceable and shall proceed with the enforcement of execution only in the part declared legally effective. The court shall issue a conclusion ordering separation of the procedures, so that the procedure with respect to the contested part of the writ of execution is to be continued in the manner provided in paragraphs 2 and 3 of this Article. In that case, the court shall duplicate the file, so that the conclusion on separating the procedures could be enforced.

(6) Any objection against the writ of execution has to include an opinion (explanation).

(7) If the execution debtor does not file an objection against the part of the writ of execution by which he is ordered to settle the claim, he may demand retrial with respect to that part of the writ of execution according to the rules of civil action procedure.

(8) If the court that received the motion from paragraph 6 of this Article does not have jurisdiction to render a decision according to the rules of civil action procedure, it shall assign the case to the court having jurisdiction, so that it could render a decision about the motion.

## **Title Six**

### **OBJECTIONS BY THIRD PARTIES**

#### **Preconditions for an Objection**

##### Article 55

- (1) Any person claiming to have a right on the object of execution that prevents execution may submit an objection against execution, demanding execution on the object to be declared impermissible.
- (2) The objection may be filed until the execution procedure is concluded. Submission of an objection does not prevent the enforcement of execution and the realisation of the claim of the execution creditor.
- (3) The court shall forward the objection to the execution creditor and the execution debtor and instruct them to declare themselves about the objection within eight days.

#### **Initiating Litigation Proceedings**

##### Article 56

- (1) If the execution creditor does not issue a statement about the objection within the prescribed term or if one of the parties opposes the objection, the court shall instruct the filer of the objection in a ruling to initiate litigation proceedings against the parties within a term of fifteen days, requesting the pronouncement of execution on the object of execution not permissible, unless the filer proves the foundedness of his objection by a legally effective judgment or some other official document or document legalised by a notary public, that is, if the facts on which the objection by the third party is based are not generally known or if they may be established by applying the rules on legal presumptions.
- (2) If the filer of the objection proves the foundedness of the objection by a legally effective judgment or some other official document or document legalised by a notary public, that is, if the facts on which the objection by the third party is based are not generally known or if they may be established by applying the rules on legal presumptions, the court shall decide on the objection in the execution procedure.
- (3) The filer may initiate litigation proceedings even after the expiration of the term set by the court until the execution procedure is concluded, but in that case he is obliged to bear any costs incurred by missing the deadline.
- (4) In the litigation proceedings from paragraph 1 of this Article, the third party may request the court to establish the existence of his right if any of the parties is contesting it.

##### Article 56 a

Deleted.

## **When It is Not Possible to Request Execution to be Pronounced Impermissible**

### Article 57

- (1) By way of derogation from Article 55, paragraph 1 of this Act, any person who co-owns chattels that are the object of execution may not demand execution with respect to his share to be pronounced impermissible, but is entitled to settlement from the proceeds of the sale before the execution creditor and other persons whose claims are settled in the execution procedure and before the recovery of the costs of the execution procedure.
- (2) The person from paragraph 1 of this Article is entitled to request that the item which is the object of execution be assigned to him if he deposits an amount corresponding to the value of the execution creditor's share in the item.
- (3) The court shall instruct the person from paragraph 1 of this Article whose share in the item which is the object of execution is contested to initiate litigation proceedings against the execution creditor, and also against the execution debtor, if he is also disputing his right, to prove the right in question, except if he can prove his right in the execution procedure by a legally effective judgment, official document or private document with the power of an official document.
- (4) Initiation of litigation proceedings in line with the provisions of paragraph 3 of this Article does not prevent the enforcement of execution or settlement of the claim of the execution creditor.
- (5) If the person from paragraph 1 of this Article can prove his right by a legally effective judgment, official document or private document with the power of an official document, the court shall act as if his right is not contested.
- (6) The fact that the court has not regarded the right of the person from paragraph 1 of this Article as contested within the meaning of the provisions of paragraphs 3 and 5 of this Article shall not affect the right of the execution creditor or the execution debtor to exercise their rights against such person in separate litigation proceedings.

## **Title Seven**

### **COUNTER-EXECUTION**

#### **Reasons for Counter-execution**

##### **Article 58**

(1) After the execution is enforced, in the same execution procedure the execution debtor may request the court to instruct the execution creditor to return to him what he received as the result of execution:

1. if the enforcement title document is repealed, altered, nullified, placed out of force by a legally effective decision or if it is determined to be without effect in some other way,
2. if the execution debtor settled the claim of the execution creditor during the execution procedure out of court, so that the claim of the execution creditor was settled twice,
3. if the writ of execution is repealed by a legally effective decision and the motion for execution dismissed or rejected, that is, if the writ of execution was altered by a legally effective decision,
4. if the execution performed on a specific object of execution was declared impermissible.

(2) The court shall not accept the motion from paragraph 1 of this Article if there have been such real or legal changes that the execution creditor can no longer return what he received as the result of execution.

(3) If the execution creditor has collected a specified monetary amount by execution, in the motion for counter-execution the execution debtor may demand payment of statutory default interest from the date of collection of the amount.

(4) The execution debtor may exercise his right to compensation of damages for the reasons from paragraph 1 of this Article in a separate action.

(5) The motion for counter-execution from paragraph 1 of this Article may be submitted within three months from the date the execution debtor learns about the reason for counter-execution, and at the latest within one year from the instigation of the execution procedure.

(6) The execution debtor may not exercise his claim in litigation proceedings before the expiration of the term from paragraph 5 of this Article, except in the case from paragraph 2 of this Article.

(7) If the execution procedure is instigated in the line of duty, counter-execution is not permissible, and the execution debtor may exercise his rights in a separate action.

#### **Procedure Further to a Motion for Counter-execution**

##### **Article 59**

(1) The court shall deliver the motion from Article 58 of this Act to the execution creditor and instruct him to declare himself with respect to the motion within eight days.

(2) If the execution creditor objects to the motion for execution within the term from paragraph 1 of this Article, the court shall decide on it after the hearing. If the execution creditor does not declare himself with respect to the motion within the term, the court shall evaluate whether to decide on it without holding a hearing.

(3) In the ruling accepting a motion, the court shall instruct the execution creditor to return to the execution debtor what he received as the result of execution within fifteen days.

### **Writ of Counter-execution**

#### Article 60

(1) Based on a legally effective and enforceable ruling instructing the execution creditor to return to the execution debtor what he received as the result of execution, the court shall order counter-execution in a ruling based on the motion filed by the execution debtor.

(2) Counter-execution is performed further to the provisions of this Execution Act.

### **Title Eight**

#### **DEFERMENT, SUSPENSION AND COMPLETION OF EXECUTION**

##### **1. Deferment of Execution**

##### **Deferment of Execution Upon the Motion of the Execution Debtor**

#### Article 61

(1) Upon the motion of the execution debtor, the court may defer execution either in part or as a whole if the execution debtor makes probable that he would suffer irreparable or nearly irreparable damages as the result of execution, or if he makes probable that such deferment is necessary to prevent violence:

1. if a legal remedy has been filed against the decision based on which execution was ordered,
2. if a motion for restoration of a prior status has been filed in the procedure in which the decision was adopted based on which execution was ordered or a motion for retrial,
3. if an action has been filed for the overturning of the verdict of the arbitration court on the basis of which the execution was ordered,
4. if an action has been filed to have the settlement or a notarial deed on the basis of which the execution was permitted repealed, or an action for the ascertainment of its nullity,
5. if the execution debtor has made an appeal from Article 48 or 49 of this Act or an action from Article 48 or 51 of this Act against the writ of execution,
6. if the execution debtor has made an appeal against a ruling confirming the enforceability of the enforcement title document, or if he has made a motion for the repetition of the proceeding in which this ruling was made,

7. if the execution debtor or a participant in the procedure demands rectification of irregularities made in the implementation of execution,

8. if the execution, according to the contents of the enforcement title document, depends on simultaneous fulfilment of an obligation by the execution creditor, and the execution debtor has refused to fulfil his obligation because the execution creditor has not fulfilled his obligation or shown any willingness to do so simultaneously.

(2) The court shall render the decision on the motion for deferment after the execution creditor is provided an opportunity to declare himself about it, unless the circumstances of the case require otherwise.

(3) Upon the motion of the execution creditor, the court may condition deferment on the provision of appropriate security. The execution creditor may make such a motion even after the ruling on deferment is rendered.

(4) If the execution debtor does not post security within the term designated by the court, which may not be longer than fifteen days, he shall be deemed to have abandoned his motion for deferment, and the court shall render a ruling on continuation of the execution procedure.

(5) During the deferment, no enforcement actions shall be taken.

(6) Without prejudice to the provisions of paragraph 5 of this Article, in the case of execution regarding settlement of a monetary claim, actions based on which the execution creditor acquires statutory lien or the right to collect on the object of execution shall be performed even after the adoption of the ruling on deferment of execution. Upon the motion of the execution creditor, assessment of the object of execution shall be performed also.

(7) If it refuses the motion for deferment, the court shall proceed with execution even before the ruling rejecting the motion becomes legally effective.

### **Deferment of Execution Upon the Motion of the Execution Creditor**

#### Article 62

(1) Upon the motion of the execution creditor, the court shall defer execution either in part or as a whole if the enforcement of execution has not begun, for the duration of the time period proposed by the execution creditor.

(2) If the enforcement of execution has begun, and the execution debtor has declared himself against deferment within the time period designated by the court, the court shall reject the motion for deferment.

### **Deferment Upon the Motion of a Third Party**

#### Article 63

(1) Upon the motion of a person requesting execution on a specific object to be declared impermissible, the court shall defer execution with respect to such object if the person makes probable the existence of his right and that as the result of enforcement of execution he would suffer irreparable or nearly irreparable damages, provided that such third party initiates litigation proceedings as instructed within the designated term (Article 56).

(2) In the event from paragraph 1 of this Article, upon the motion of the execution creditor, the court may condition deferment on the provision of appropriate security.

(3) The provision from Article 61, paragraph 4 of this Act shall apply accordingly to the case from this Article.

### **Posting Security in Place of Deferment**

#### Article 64

The court shall reject a motion for deferment if within the term designated by the court the execution creditor posts security for any damages which the execution debtor or a third party might suffer as the result of enforcing execution.

### **Deferment Based on Agreement by the Parties**

#### Article 64 a

If the execution creditor agrees with the motion of the execution debtor on deferring execution, that is, if the execution creditor and the execution debtor agree with the motion of a third party on deferring execution, the court shall order deferment without evaluating whether the pre-requirements are satisfied.

### **Duration of Deferment**

#### Article 64 b

(1) If execution is deferred, because the execution debtor or a third party have filed a legal remedy, that is, an extraordinary legal instrument, deferment shall last until the procedure further to such legal remedy or instrument is concluded.

(2) In other cases in which the execution debtor motions for deferment, depending on the circumstances of the case the court may designate the duration of deferment.

(3) Where deferment is proposed by the execution creditor, the court shall defer execution for the proposed time period, but not for a period exceeding six months.

(4) If in the event from paragraph 3 of this Article the execution creditor does not propose continuation of deferment before the expiration of the term of such deferment, the court shall suspend execution.

#### Article 65

Deleted.

### **Continuing the Deferred Procedure**

#### Article 66

(1) Deferred execution shall continue in the line of duty after the time period for which it was deferred expires.

(2) Upon the motion of the execution creditor, the court may proceed with execution even before the expiration of the time period for which it was deferred if the execution creditor makes probable that the reasons for such deferment have ceased or if he posts security.

(3) Upon the motion of the execution creditor, the court shall proceed with execution even before the decision by the competent first-instance body on dismissing or rejecting a legal remedy or instrument further to which execution was deferred becomes legally effective or final.

## **2. Suspension and Completion of Execution**

### **Suspension of Execution**

#### Article 67

(1) Unless provided otherwise in this Act, execution shall be suspended in the line of duty if the enforcement title document is repealed, altered, nullified or in some other way placed out of force by a legally effective decision or if it has been determined in some other way that it has no effect, that is, if the certificate of enforceability is repealed.

(2) Execution shall be suspended if it becomes impossible or cannot be enforced for other reasons.

(3) Upon the motion of the execution debtor, execution shall be suspended if the court establishes that after the expiration of the term for appeal the enforcement of execution covers objects not included in the writ of execution, and which are exempt from execution or if the possibility of execution on them is limited.

(4) The deadline for filing an objection, because of the reasons from paragraph 3 of this Article is eight days and it begins on the day on which the execution debtor finds out that execution includes an object, which is exempt from execution, that is, on which the possibility of execution is limited. After the expiration of the term of thirty days following the taking of the action that included the objects from paragraph 3 of this Article, it is no longer possible to file the motion from that provision.

(5) The ruling suspending execution shall revoke all enforcement actions performed, provided such ruling does not impinge upon the acquired rights of third parties.

### **Completion of Execution**

#### Article 68

(1) The procedure of execution shall be regarded as completed after the decision dismissing or rejecting a motion for execution becomes legally effective, after the enforcement action by which execution is completed is performed or after execution is suspended.

(2) In a ruling, the court establishes completion of execution after the last enforcement action is performed.

**Division Two****EXECUTION FOR THE PAYMENT OF MONETARY CLAIMS****Title Nine****GENERAL PROVISIONS****Scope of Execution on Monetary Claims**

## Article 69

Execution whose aim is to collect on a monetary claim is ordered and enforced within the scope required to settle such claim.

**Protecting the Execution Debtor Who is a Natural Person**

## Article 70

- (1) Execution whose aim is to collect on a monetary claim may not be enforced on the assets and rights of a natural person who does not perform a registered activity, and which are essential to satisfy the basic living needs of the execution debtor and those of persons he is obliged to support in accordance with law.
- (2) Execution whose aim is to collect on a monetary claim from a natural person who performs a registered activity may be enforced on his entire property, except on the assets and rights on which execution could not be enforced if such person did not perform a registered activity and on the assets and rights that he needs to perform the registered activity if such registered activity is its main means of support.
- (3) In execution whose aim is to collect on a monetary claim from a natural person who performs a registered activity, the provisions of Article 202 of this Act apply accordingly.
- (4) The provision of paragraph 1 of this Article shall not apply in cases where this Act lays down special rules on exemption from execution or on limitation of execution on specific assets or rights.
- (5) Real estate used for residential or business purposes shall not be regarded as assets essential to satisfy the basic living needs of the execution debtor and those of persons he is obliged to support in accordance with law or to perform an independent activity that is his main means of livelihood, unless provided otherwise by law.

**Protecting the Activities of Legal Persons**

## Article 71

- (1) Execution whose aim is to collect on a monetary claim from a legal person may not be enforced on the assets and rights of legal persons if the assets or rights are required to perform the registered activity.

(2) The provision of paragraph 1 of this Article shall not apply in cases where this Act lays down special rules on the order of execution, on exemption from execution or on limitation of execution on specific assets or rights.

### **Protecting the Execution Creditor**

#### Article 72

(1) If based on a legal transaction with the execution debtor the execution creditor acquires a lien or a related right on an asset or right in order to secure his claim, which he demands to be settled against the object, the execution debtor may not object to such execution by referring to the reasons from Article 70, paragraph 1, and Article 71, paragraph 1 of this Act and to other provisions of this Act on exemption from execution or on limitation of execution, except the provisions from Article 4, paragraphs 4, 5 and 6 of this Act.

(2) The execution debtor may not object to execution on an asset or right by referring to the provisions of Article 70, paragraph 1, and Article 71, paragraph 1 of this Act and to other provisions of this Act on exemption from execution or on limitation of execution, except the provisions from Article 4, paragraphs 4, 5 and 6 of this Act, if the asset or right was acquired from the execution creditor who by initiating the procedure demands settlement of his claim, arising out of such acquisition.

### **Order of Settlement of Several Execution Creditors**

#### Article 73

Several execution creditors demanding settlement of their monetary claims from one and the same execution debtor and on the same object of execution shall be settled in the order in which they acquired the right to be settled out of the object, unless provided otherwise by law.

## **Title Ten**

### **EXECUTION ON REAL ESTATE**

#### **1. General Provisions**

##### **Jurisdiction**

#### Article 74

The court in whose area the real estate is located shall have territorial jurisdiction to decide on the motion for execution on real estate and to enforce such execution.

##### **Enforcement Actions**

#### Article 75

Execution on real estate is enforced by entering a recordation on execution in the land register, by establishing the value of such real estate, by selling the real estate and by settling the claims of execution creditors out of the proceeds of the sale.

## **Real Estate as Object of Execution**

### Article 76

- (1) Unless provided otherwise, the object of execution may be only real estate as a whole determined according to the rules regulating ownership and other real rights, and land registers.
- (2) If with respect to some real estate there is co-ownership (the proportional co-owned part of the real estate), such part of real estate may be an independent object of execution with respect to which the rules of this Act on execution on real estate are applied accordingly.
- (3) If on some real estate there is the right to build, such right, where there is a building constructed on the real estate, may be an independent object of execution with respect to which the rules of this Act on execution on real estate owned by the execution debtor are applied accordingly.
- (4) If with respect to some real estate or a proportional share of it there is the right of usufruct, such right may be an independent object of execution, where the execution debtor may satisfy his claim from the fruits that the right provides on the basis of a legal relationship (rent, lease), with respect to which the rules of this Act on execution on rights are applied accordingly.

## **Proof of Title and Right to Build**

### Article 77

- (1) Next to the motion for execution on real estate, the execution creditor is obliged to submit a land registry certificate as proof that the real estate is entered as the property of the execution debtor.
- (2) If the right on real estate from paragraph 1 of this Article is entered in the land register in the name of some other person, and not the execution debtor, the motion for execution may be accepted only if the execution creditor submits a document suitable for the entry of the execution debtor's right.
- (3) If the real estate is not entered in the land register, the provisions of Article 125 of this Act shall apply accordingly.

## **Execution Where Following the Acquisition of a Lien or Right to Settlement the Owner of Real Estate Changes**

### Article 77 a

If the person entered in the land register as the owner of the real estate changes after the execution creditor acquires a lien or any other right on the real estate by entry in the land register, which authorises him to collect on the claim by selling the real estate, the execution creditor is entitled to request execution against the new owner directly for the purpose of collecting on his secured claim based on the enforcement title document against the person who was the owner of the real estate at the time when he acquired the right and the land registry certificate proving the transfer of ownership from the former owner to the new owner.

### Article 78

Deleted.

## **Recordation of Execution**

### Article 79

- (1) As soon as the writ of execution is rendered, the court shall request in the line of duty the recordation of execution to be entered in the land register.
- (2) By the recordation, the execution creditor acquires the right to settle his claim out of the real estate (right to settlement) even if a third party acquires the right of ownership on the real estate at a later date.
- (3) After execution is recorded, it is no longer permitted to enter any change relating to the right of ownership or any other real right based on the right to dispose by the execution debtor, regardless of the time of disposing.
- (4) Change of the owner of the real estate pending an execution procedure does not prevent the procedure from continuing against the new owner as the execution debtor. All actions taken before that remain in force and the new owner may not take any actions in the procedure that the former owner would not be able to take had the change of ownership not taken place.
- (5) Upon the motion of the execution creditor, the court shall render a ruling on continuing the execution procedure against the new owner as the execution debtor in the procedure. The new owner does not have the right to appeal against such ruling.
- (6) The execution creditor who proposes execution without having acquired a lien previously acquires the right to settle his claim out of the real estate by recordation of execution in the land register before the person who acquires a lien or right to settlement on the real estate at a later date.

## **Joining an Execution Procedure**

### Article 80

- (1) After the recordation of execution is entered in the land register, a separate execution procedure may not be performed to settle some other claim of the same or some other execution creditor on the real estate in question.
- (2) The execution creditor whose claim is subject to subsequent execution on the same real estate joins the execution procedure that has been initiated already.
- (3) An execution procedure that is already initiated may be joined only before the ruling adjudicating the real estate to the purchaser becomes legally effective.
- (4) The court shall inform the execution creditor in whose favour the recordation was made at an earlier date about the joinder.
- (5) Reasons because of which execution is not permitted in favour of certain out of several execution creditors in whose favour execution is being enforced on the same real estate, that is, reasons for suspending execution with respect to certain out of several execution creditors have no effect on the enforcement of the procedure in favour of other execution creditors.
- (6) If the reason for deferment concerns only one out of several execution creditors, execution shall not be deferred, but when rendering the ruling on settlement the court shall order deferment of

settlement of the execution creditor in question until the procedure with respect to him is continued. Funds ear-marked for settling the claim of the execution creditor in question shall be deposited by the court until the procedure continues. If the procedure does not continue, the funds shall be used to settle other execution creditors, that is, they shall be handed over to the execution debtor.

### **Liens**

#### Article 81

- (1) In execution procedures on real estate, the claims of lien creditors who have not proposed execution are also settled.
- (2) Liens registered on real estate cease on the date the ruling adjudicating the real estate to the purchaser becomes legally effective even if the claims of lien creditors are not fully settled.
- (3) The purchaser of real estate and the lien creditor may agree, at the latest at the sale hearing, that the lien should remain on the real estate even after the ruling adjudicating the real estate becomes legally effective, and that the purchaser should take over the debtor's debt towards the creditor in an amount which he would receive in the execution procedure. In that case, the purchase price is reduced by the amount of the assumed debt.
- (4) The purchaser and the lien creditor conclude the agreement from paragraph 3 of this Article in the form of judicial settlement in the execution procedure or in the form of a notarial deed.

### **Servitudes, Proprietary Charges and the Right to Build**

#### Article 82

- (1) Servitudes, proprietary charges and the right to build on real estate do not cease once the real estate is sold.
- (2) Personal servitudes entered in the land register before the right with respect to whose settlement the execution is enforced do not cease once the real estate is sold either.
- (3) Other personal servitudes and proprietary charges cease once the ruling adjudicating the real estate becomes legally effective.
- (4) The provisions of Article 81, paragraphs 3 and 4 of this Act shall apply accordingly to personal servitudes from paragraph 3 of this Article.

### **Business Lease Contracts and Residential Lease Contracts**

#### Article 83

- (1) Business lease contracts or residential lease contracts concluded and entered in the land register before the acquisition of a lien or right to settlement with respect to whose fulfilment the execution is demanded do not cease once the real estate is sold. The purchaser takes the place of the business lessor or residential lessor as of the moment of acquiring title to the real estate.
- (2) Business lease contracts or residential lease contracts not entered in the land register before the acquisition of a lien or right to settlement with respect to whose fulfilment the execution is

demanded cease once the ruling adjudicating the real estate to the purchaser becomes legally effective.

(3) Business lessees and residential lessees from paragraph 2 of this Article are not entitled to demand compensation of damages in the execution procedure.

### **Visiting the Real Estate**

#### Article 84

(1) In its conclusion on sale, the court shall designate the time when any parties interested in purchasing the real estate may visit the real estate, and through the execution administrator ensure undisturbed visit to the real estate.

(2) Based on well-founded reasons, the court shall enable any person interested in purchasing the real estate who files such a request to visit the real estate outside the hours from paragraph 1 of this Article, if necessary in the presence of the execution administrator. The cost of such visit to the real estate outside the designated hours shall be borne by the requesting person.

(3) If the execution debtor or other persons prevent or hinder the visit to the real estate, the court shall order the execution debtor and such persons to be removed from the real estate during the visit. The ruling on removal is enforced by the execution administrator, and if necessary assisted by the police.

(4) The court may order measures from Article 16 of this Act against the person from paragraph 3 of this Article.

### **Securing the Real Estate**

#### Article 85

(1) In order to prevent damages to the real estate, enable its appraisal, examination/visit, protection, etc., upon the motion of the execution creditor, the court may:

1. order either temporary or permanent removal of the execution debtor and any other person from the real estate,
2. entrust the securing of the real estate to the execution creditor or a third party,
3. order any other measures needed to protect the real estate or enable undisturbed enforcement of execution.

(2) The court may order measures laid down in Article 16 of this Act against the persons who prevent or hinder undisturbed enforcement of execution.

(3) The execution creditor is obliged to advance any funds needed to enforce the measures from paragraph 1 of this Article, except for the funds needed to enforce detention.

## **2. Exemption from Execution**

### **Real Estate that May Not be an Object of Execution**

#### Article 86

- (1) Agricultural land and farm buildings of an agriculturalist to the extent required for his support and the support of his nuclear family members and other persons whom he is obliged to support under law may not be an object of execution.
- (2) The provision of paragraph 1 of this Article does not apply in cases from Article 72 of this Act.

## **3. Determining Real Estate Value**

### **Manner of Determining Value**

#### Article 87

- (1) The value of real estate is determined by the court at its discretion in the form of a conclusion after a hearing where parties shall be enabled to declare themselves about the matter and enclose any corresponding written evidence. The court may request any data about the situation on the real estate market from the tax administration/authority, if deemed necessary.
- (2) In determining the value of real estate, the court shall take into account the fall of its value because certain rights and burdens are to remain on it even after the sale.
- (3) If the parties determined the value of real estate in a court or out-of-court agreement on the basis of which a lien or some other corresponding right on the real estate was acquired in order to secure a claim that needs to be settled, such value shall be taken as relevant, except if the parties agree otherwise in a court procedure at the latest by the adoption of the conclusion on sale (Article 90).
- (4) The provision of paragraph 3 of this Article shall not apply if there are any lien creditors, persons having the right to settlement or personal servitudes entered in the land register that are to cease once the real estate is sold, and who are to be settled in the enforcement of execution on the real estate before the execution creditor who motioned for execution, except if they come to such an agreement at the latest by the adoption of the conclusion on sale (Article 90).

### **Manner of Determining Value**

#### Article 88

The court determines the value of real estate in the conclusion on sale.

### **Objection of Insufficient Coverage**

#### Article 89

- (1) Any person entitled to be settled out of the proceeds of the sale of the real estate, and ranking before the execution creditor in the order of priority may propose execution to be suspended if the determined value of real estate does not cover even partially the amount of claim of the execution creditor.

(2) The motion to suspend execution may be filed within eight days from the date of delivery of the conclusion on sale.

(3) Depending on the circumstances of the case, the court shall evaluate whether the sale is purposeful in view of the probable amount of partial settlement of the execution creditor who motioned for execution.

(4) If the execution from paragraph 1 of this Article is suspended, procedural costs are borne by the execution creditor who initiated the execution procedure.

#### **4. Selling the Real Estate**

##### **Conclusion on Sale**

###### Article 90

(1) After the procedure determining real state value is concluded, the court renders a conclusion on selling the real estate in which it determines real estate value and establishes terms and conditions of sale, and the time and place of the sale if the sale is to be in the form of an auction.

(2) The conclusion on sale shall expressly mention the possibility that its value may be finally determined at the hearing for sale.

(3) The conclusion on sale is made public by placement on the court bulletin board and in any other usual manner.

(4) Upon the motion of any of the parties, the conclusion on sale shall be published in the media if the party advances the required funds.

(5) The court may authorise the party to publish the conclusion on sale at its cost in the media, that is, to inform real estate agents about the conclusion.

(6) At least thirty days has to pass from the placement of the conclusion on sale on the court bulletin board to the date of the sale.

(6) The conclusion on sale is delivered to all parties, lien creditors, participants in the procedure, persons who have the right of first refusal and to the competent tax administration/authority.

##### **Right of First Refusal**

###### Article 91

(1) Any person having statutory or contractual right of first refusal that is entered in the land register has priority over the best bidder if immediately on conclusion of the auction he states that he is to purchase the real estate under the same conditions.

(2) If the real estate is sold by direct dealing, before the sale the court shall call on the holder of the registered right of first refusal, that is, the holder of the statutory right of first refusal who informed the court about his right before hand to declare himself for the record in court within a specified period of time whether he shall exercise his right.

## **Manner of Sale**

### Article 92

- (1) Real estate is sold at oral public auctions.
- (2) Hearings for the sale of real estate are held in the court building, unless ordered otherwise by the court.
- (3) Hearings for the sale of real estate are held before a single judge, but the court may entrust the holding of the hearing to a notary public in the conclusion on sale.
- (4) Parties, lien creditors and the holders of personal servitudes and proprietary charges that are to cease once the real estate is sold may come to an agreement at the latest by the sale of the real estate at the public auction that the sale of the real estate should be performed by direct dealing within a specified period of time through a person authorised for trading in real estate, execution administrator, notary public or in some other way.
- (5) The bill of sale by direct dealing is concluded in written form. The bill of sale is concluded on behalf and for the account of the execution debtor by the person entrusted with the sale based on the conclusion by which the court authorises such person to conclude the bill of sale. Signatures of the parties concluding the bill of sale have to be legalised by a notary public.
- (6) The bill of sale from paragraph 5 of this Article has legal effect as of the date the ruling on adjudication becomes legally effective.

## **Conditions of Sale**

### Article 93

- (1) The conditions of sale, next to other data, have to include:
  1. a more detailed description of the real estate with its corresponding parts,
  2. an indication of the rights that do not cease by sale,
  3. an indication whether the real estate is free from persons and objects, that is, whether the execution debtor lives in the real estate with his family or whether it was leased,
  4. the value of the real estate from the conclusion on sale,
  5. the price at which the real estate may be sold and who is obliged to pay taxes and fees regarding the sale,
  6. the term within which the purchaser is obliged to deposit the purchase price,
  7. the manner of sale,
  9. the amount of security, the deadline within which it has to be submitted, with whom and how,
  9. special conditions to be met by the purchaser in order to acquire the real estate.

(2) The deadline within which the purchaser is obliged to deposit the purchase price may not be longer than six months from the date of sale, regardless whether the price is paid in a lump sum or in instalments.

(3) In the conditions of sale, the court shall determine that the real estate is also to be adjudicated to purchasers who offer a lower than the offered price if the purchasers who offered the higher amount do not deposit the purchase price within the designated term.

### **Providing Security**

#### Article 94

(1) In a public auction, only persons who previously submitted a security deposit may participate as purchasers.

(2) In the sale by direct dealing, the purchaser posts security as a court or notarial deposit.

(3) Next to the persons who are under this Act not obliged to post a security deposit in the execution procedure, the execution creditor upon whose motion the execution was ordered and the holders of rights entered in the land register that are to cease once the real estate is sold are not obliged to post a security deposit if their claims reach the amount of the security deposit and if in view of the order of priority and the established value of the real estate the amount could be settled out of the purchase price.

(4) Offerors whose offer is not accepted shall receive the security deposit back immediately after the public auction is concluded.

### **One Offeror**

#### Article 95

(1) An auction hearing shall be held even if there is only one offeror participating in it.

(2) Upon the motion of the party or any other persons being settled in the execution procedure, the court or the notary public may order, depending on the circumstances of the case, that the sale hearing is to be deferred if there is only one offeror.

### **Who May Not be the Purchaser**

#### Article 96

The purchaser may not be the execution debtor, the judge or any other person participating officially in the sale procedure or a person who under law may not acquire real estate that is the object of execution.

### **Sale Price**

#### Article 97

(1) At the first auction hearing, the real estate may not be sold below the value of two-thirds of its established value (Article 87).

- (2) At the second auction hearing, the real estate may not be sold below the value of one-third of its established value.
- (3) At least thirty days has to pass from the first to the second hearing.
- (4) If the real estate is not sold at the second auction hearing either, the court shall suspend the execution.
- (5) The provisions from previous paragraphs of this Article apply accordingly if the real estate is sold by direct dealing.
- (6) At the latest at the second auction hearing and if the real estate is not sold at that hearing either, the execution creditor may propose the establishment of a lien on the real estate in his favour in order to secure the claim with respect to whose settlement the execution was ordered (Article 257 through 260). Special fees are not paid for such a motion. The order of priority with respect to such lien of the execution creditor is calculated from the date of acquisition of the right to the settlement (Article 79, paragraph 2, Article 107, paragraph 3).
- (7) The suspension of execution does not prevent the initiation of a new execution procedure for the purpose of settling the same claim on the same real estate.

### **Auction Hearing and Adjudication**

#### Article 98

- (1) Once he establishes that the conditions for holding an auction hearing are met, the judge or the notary public makes the announcement that the auction is to take place.
- (2) The auction is concluded ten minutes after the placement of the best offer.
- (3) After the auction is concluded, the judge or the notary public establishes which offeror offered the highest price and whether he meets conditions to receive the real estate.
- (4) The court has to adopt a written ruling on the adjudication of the real estate (ruling on adjudication), which is displayed on the court bulletin board.
- (5) The ruling from paragraph 4 of this Article shall be deemed delivered to all persons to whom the conclusion on sale is delivered and to all parties participating in the auction on expiration of the third day from its placement on the bulletin board. Such persons have the right to receive an official copy of the ruling in the court's clerk office.
- (6) In the ruling on adjudication, the court shall determine that the real estate is also to be adjudicated to purchasers who offered a lower price, in the descending order, if the purchasers who offered a higher price do not deposit the purchase price within the term designated or to be designated. In that case, the court shall adopt a special ruling on adjudication to each subsequent purchaser who satisfies the conditions to receive the real estate, in which it shall set the term for depositing the purchase price. In the ruling, the court shall firstly invalidate adjudication to the purchaser who offered the higher price.
- (7) Minutes are kept at the sale hearing.

## **Adjudication in the Event of Sale by Direct Dealing**

### Article 99

- (1) In the event of sale by direct dealing, the court shall adopt a ruling on adjudication of the real estate sold by direct dealing after it establishes that the conditions for legal validity of the sale are met.
- (2) The ruling on adjudication is displayed on the court bulletin board and is delivered to all persons to whom the conclusion on sale of the real estate to the purchaser is delivered.

### Article 99 a

- (1) The parties have the right to appeal against the ruling on adjudication.
- (2) Persons who participated in the auction as offerors also have the right to appeal against the ruling on adjudication of the real estate sold at the auction.

## **Depositing the Purchase Price**

### Article 100

- (1) The purchaser is obliged to deposit the purchase price in court or with a notary public within the term set in the conclusion on sale.
- (2) If the purchaser fails to deposit the purchase price within the designated period, the court shall pronounce the sale invalid and set a new sale, under the conditions set for the sale that was pronounced invalid.
- (3) The security deposit shall be used to pay the cost of the new sale and settle the difference between the purchase price achieved at the previous and the new sale.
- (4) If the purchaser from paragraph 2 of this Article is a person who is exempt from the obligation to post a security deposit, the court shall order such person in a ruling, upon the motion of any of the parties or other participants in the procedure, to deposit an amount with the court corresponding to the amount of the security deposit from which he is exempt. An appeal against such a ruling does not postpone execution. Upon the motion of any of the parties or participants in the procedure, the court shall order execution based on the ruling in the same execution procedure. The collected amount shall be used in accordance with the provision of paragraph 3 of this Article. Execution may also be ordered on the amount the person would get at the settlement of creditors.
- (5) The purchaser from paragraph 4 of this Article may participate at the new auction for the real estate only if he posts the security deposit to be determined for the auction in question.

## **Exemption from the Obligation to Deposit the Purchase Price**

### Article 100 a

- (1) The execution creditor who is both the purchaser and the sole creditor who is to settle his claim out of the purchase price is not obliged to deposit the purchase price if it is in the same amount as his enforceable claim or less.

- (2) If the purchase price is more than his enforceable claim, the execution creditor is obliged to deposit the difference.
- (3) The provisions of paragraph 1 and 2 of this Article also apply when the purchaser is a person whose claim is settled in the execution procedure before all other creditors who have the right to be settled out of the same purchase price, where such person is obliged to deposit the amount of the purchase price corresponding to the sum of procedural costs refundable primarily to other persons who are settled out of the purchase price (Article 106).
- (4) The court may decide that the purchaser who is a person entitled to receive settlement of his claim out of the purchase price does not have to deposit a part of the purchase price with respect to which it may be presumed safely that it will be covered by the amount to be allocated to him under the ruling on settlement.
- (5) In the ruling on adjudication, the court decides on exempting the purchaser from depositing the purchase price under the provisions of paragraphs 1 through 4 of this Article upon the request of the purchaser filed at the latest at the auction hearing.

### **Entry of the Right of Ownership, Deletion of Any Rights and Burdens and Handover of the Real Estate to the Purchaser**

#### Article 101

- (1) In the ruling adjudicating the real estate, the court shall determine that after the ruling becomes legally effective and after the purchaser deposits the purchase price, the right of ownership on the adjudicated real estate is to be entered in his favour in the land register, and any rights and burdens on the real estate that cease after the sale are to be deleted.
- (2) If the purchaser and the persons whose rights on the real estate should cease after the sale (Articles 81 and 82) have come to an agreement that their rights on the real estate shall remain even after the ruling adjudicating the real estate becomes legally effective (Articles 81 and 82), the court shall order in the ruling on adjudication that the rights shall not be deleted on entry of the right of ownership in favour of the purchaser in accordance with paragraph 1 of this Article.
- (3) The land registry court shall make the entries from paragraphs 1 and 2 of this Article based on a legally effective ruling adjudicating the real estate and a certificate by the court of execution that the purchaser has deposited the purchase price in accordance with the ruling. In the event from Article 118, paragraph 4 of this Act, the court shall issue the certificate only after the purchaser deposits the remaining part of the purchase price in accordance with the ruling on settlement.
- (4) After the ruling adjudicating the real estate becomes legally effective and after the purchaser deposits the purchase price, the court shall adopt a conclusion on handover of the real estate to the purchaser.

### **Securing a Loan on the Adjudicated Real Estate**

#### Article 101 a

- (1) If the purchaser has to take a loan in order to pay the purchase price, upon the motion of the purchaser, in the ruling on adjudication the court shall order that, after the ruling on adjudication becomes legally effective and after the purchase price is deposited, an entry shall be made in the land register at the registering of the right of ownership in favour of the purchaser with respect to

the lien on the real estate whose purpose is to secure the claim arising out of the loan in favour of the grantor in accordance with the security agreement.

(2) If the loan is secured by fiduciary transfer of ownership on real estate, in the ruling from paragraph 1 of this Article the court shall order that after the ruling on adjudication becomes legally effective and after the purchase price is deposited the right of ownership of the purchaser is to be entered in the land register firstly, and only then the transfer of ownership to the grantor, with a recordation that the transfer is made by reason of security.

(3) Entry of the lien or the transfer of ownership for the purpose of security shall be made based on a legally effective ruling on adjudication and a certificate by the court that the purchase price has been deposited.

### **Protecting the Rights of the Purchaser**

#### Article 102

Repealing or changing of the writ of execution after the ruling adjudicating the real estate becomes legally effective does not have any impact on the right of ownership of the purchaser acquired further to the provisions of Article 101 of this Act.

#### Article 103

Deleted.

## **5. Settling Creditors**

### **Commencement of Settlement**

#### Article 104

The court begins with the settlement of creditors after the ruling adjudicating the real estate to the purchaser becomes legally effective and after the purchaser deposits the purchase price.

### **Persons Being Settled**

#### Article 105

The sale price is used to settle creditors upon whose motion the execution was ordered, lien creditors, even when they have not registered their claims, persons who have the right to receive compensation for personal servitudes and other rights that cease after sale, the Republic of Croatia and municipalities, towns and counties on the grounds of taxes and other fees.

### **Priority Settlement**

#### Article 106

(1) Proceeds of the sale are used to settle primarily, in the following order:

1. costs of the execution procedure relating to court fees and advances paid to execute enforcement actions;
2. taxes and other mature fees for the last year against the real estate sold.

(2) The claims from paragraph 1, point 2 of this Article are settled if they were registered at the latest at the hearing for division of property and if they can be proved by an enforcement title document.

(3) The time set in paragraph 1, point 2 is calculated until the date of adopting the ruling adjudicating the real estate.

### **Settling Other Claims**

#### Article 107

(1) After the claims from Article 106 of this Act are settled, the next in line to be settled are claims secured by a lien, claims by execution creditors upon whose motion the execution was ordered, and compensation for personal servitudes and other rights that cease after sale.

(2) The provision of paragraph 1 of this Article applies accordingly to the settlement of junior liens (senior mortgage) and other rights burdening the rights being settled.

(3) The creditors from paragraph 1 of this Article are settled in the order of acquiring their liens and the right to settlement of execution creditors who proposed the execution, that is, according to the order of entries of personal servitudes in the land register, and if the order of priority was assigned, the creditors from paragraph 1 of this Article are settled in accordance with such order of priority.

(4) Any costs and interest for the three years preceding the adoption of the ruling adjudicating the real estate to the purchaser determined in the enforcement title document are settled in the same order as the main claim.

(5) The cost of the execution procedure, except the costs settled by priority (Article 106, paragraph 1, point 1), are settled in the same order as the main claim.

(6) After the claims from paragraph 1 of this Article are settled, the next in line to be settled are claims mentioned in Article 106, paragraph 1, point 2 of this Act for the time period in which they are not settled according to the provisions of that Article. After that is settled the interest from paragraph 4 of this Article for the time period in which it is not settled under that provision, and in the same order as the main claim.

### **Amount of Compensation for Personal Servitudes and Other Rights Terminating After Sale**

#### Article 108

(1) If the holders of rights and creditors who rank after them in the order of priority for settlement do not come to an agreement regarding the amount of compensation for personal servitudes or other rights terminating after sale, the amount of compensation is to be determined by the court, who is to take into account in particular the time period over which the rights would extend, their value and the age of the holders of such rights.

(2) The purchaser and the holder of the right of personal servitude may come to an agreement that the purchaser is to take over the servitude, and that the amount of compensation, determined in accordance with paragraph 1 of this Article, is to be deducted from the purchase price.

## **Pro Rata Settlement**

### Article 109

Several claims with the same order of priority are settled pro rata to their amount if the proceeds of sale are not sufficient for full settlement.

## **Contesting Claims**

### Article 110

Any person being settled out of the sale price may contest the existence of a claim of another person, its amount and order of settlement if such claim has effect on the settlement of his claim, at the latest by the hearing for division of property.

## **Instructing the Party to Initiate Litigation Proceedings**

### Article 111

(1) The court shall instruct any person contesting a claim to initiate litigation proceedings within a specific period of time if the relevant decision depends on contested facts, unless such person bases his contention on a legally effective judgment, an official document or a private document with the meaning of an official document. If the person contesting a claim substantiates the contention by a legally effective judgment, an official document or a private document with the meaning of an official document, the court shall decide about the contention in the execution procedure. The court shall also decide about the contention in the execution procedure if the facts upon which the adoption of a decision is dependant are not disputable.

(2) If it accepts the contention, the court shall direct the person whose claim is contested to initiate litigation proceedings.

(3) If the person contesting a claim makes the existence of reasons for contention probable, the court shall postpone the adoption of a ruling on settlement of the person until the litigation is concluded. Without prejudice to the foregoing, the court may condition the adoption of a ruling on settlement and the settlement of the person on a security deposit.

(4) The amount relating to the contested claim shall be posted as a court or notarial deposit.

(5) If the person instructed to initiate litigation proceedings does not provide proof that it has initiated litigation proceedings within the designated term, it shall be deemed that the claim has not been contested, that is, that the person has abandoned its demand to have his claim settled in the execution procedure.

(6) Any judgment adopted in the litigation proceedings on a contested claim has effect against the execution debtor and all creditors.

(7) The provision of paragraph 4 of this Article has no effect on the right of the person instructed to initiate litigation proceedings to initiate litigation proceedings against the person whose claims he contested, that is, against the person who contested his claim even after the completion of the execution procedure.

(8) Upon the motion of a person whose claim is contested, the court may condition the postponement of a ruling on settlement and the settlement of the claim of such person on an appropriate security deposit for the damages the person might suffer because of the deferred settlement. If the person contesting the claim does not submit an appropriate security deposit within the designated term, it shall be deemed that the claim has not been contested.

(9) Any person whose claim is contested has the right to receive compensation of damages which he has suffered as the result of the unfounded contention of his claim, if it was done solely to harm such person or hinder him in the exercise and realisation of his rights.

## **6. Special Provisions on the Manner of Settling Certain Claims**

### **Immature Claim**

#### Article 112

(1) Any claim of the lien creditor that is still not mature by the date of adopting the ruling on settlement for which no interest is agreed shall be paid after deducting the amount corresponding to statutory interest from the date of adopting the ruling on settlement to the date of maturity of the claim in question.

(2) Immature claims for which interest is agreed shall be paid together with the amount of agreed interest calculated until the date of adopting the ruling on settlement.

### **Immature Claims on Occasional Income**

#### Article 113

(1) Claims on occasional income on the basis of legal maintenance, damages due to impaired health or reduced ability to work and damages for lost maintenance due to the maintenance provider's death, which are secured by a pledge, and which fall mature after the date of adopting the ruling on settlement, are settled upon the express request of the creditor.

(2) The claims from paragraph 1 of this Article are calculated in the same manner as compensation for personal servitudes.

### **Claims Subject to a Condition Precedent**

#### Article 114

(1) The amount of a claim that is subject to a condition precedent which is secured by a lien shall be extracted and placed in court or notarial deposition, and paid when the condition precedent is satisfied or when it is certain that the condition for termination shall not be satisfied.

(2) If the condition precedent is not satisfied or if the condition for termination is satisfied, the extracted amount of the purchase price shall be used to settle creditors whose claims have not been settled fully or have not been settled at all, and if there are no such creditors or if the entire amount is not exhausted after their settlement, the amount, that is, the rest of the amount shall be handed over to the execution debtor.

## **Conditional Registration of Liens and Recordation of Disputes**

### **Article 115**

(1) If the land register contains an entry with the conditional registration of a lien, and the person in whose favour the conditional registration is entered proves that a procedure for justifying the conditional registration is pending, that is, that the term for initiating the procedure has not expired yet, the claim to which the conditional registration relates shall be settled in the same way in which claims subject to a condition precedent are settled.

(2) Any claim with respect to which the land register contains a recordation of dispute for the purpose of deleting a lien or a recordation of another dispute is settled in the same way in which claims subject to a condition for termination are settled.

### **Joint Liens**

#### **Article 116**

Claims secured by a joint lien whose creditor demanded settlement out of one of the pieces of real estate encumbered in that way shall be settled in accordance with the provisions of this Act, unless land registry law provides otherwise with respect to joint liens.

## **7. Hearing for Division of Property, Ruling on Settlement and Deletion of Rights and Burdens**

### **Hearing for Division of Property**

#### **Article 117**

(1) After the ruling adjudicating the real estate to the purchaser becomes legally effective, the court sets a hearing for division of property of the purchase price.

(2) Next to the parties, persons who based on the state of the file and data from the land register have the right to be settled out of the amount are also summoned to the hearing.

(3) In the summons, such persons shall be cautioned that the claim of any creditor who does not appear at the hearing shall be taken into consideration based on the situation in the land register and the file and that they may contest another person's claim, its amount and the order of settlement at the latest at the hearing for division of property.

(4) The settlement of creditors and other persons who have filed requests to be settled are reviewed at the hearing.

### **Ruling on Settlement**

#### **Article 118**

(1) The court decides about the settlement of execution creditors and other persons entitled to be settled in a ruling after the hearing, taking into consideration data from the file and the land register and any facts established at the hearing.

(2) In adopting the ruling from paragraph 1 of this Article, the court shall take into consideration only those claims with respect to which the writ of execution has become legally effective at the latest on the date of the hearing for division of property.

(3) If there are any claims with respect to which the writ of execution has not become legally effective at the latest on the date of the hearing for division of property, such claims shall be settled after the writ of execution becomes legally effective out of what remains of the purchase price, if anything, and the rest shall be returned to the execution debtor.

(4) In the event from Article 100 a of this Act, in a ruling on settlement the court shall establish that the claim of the purchaser settled in the execution procedure has been settled fully or partially by set-off against the execution debtor's claim for the payment of the purchase price. If the purchase price is higher than the amount to which the purchaser is entitled according to the ruling on settlement, and what the purchaser paid according to the ruling on adjudication (Article 100 a, paragraph 5) does not cover the entire amount of the purchase price that the purchaser is obliged to deposit, the court shall set a term in the ruling on settlement in which the purchaser is obliged to deposit the difference. If the purchaser does not deposit the difference within the term, the court shall pronounce the ruling on settlement and the ruling on adjudication out of force and the sale invalid, if the conditions for adopting a ruling from Article 98, paragraph 5 are not satisfied.

(5) The parties and all persons who had the right to settlement out of the purchase price have the right to file an appeal against the ruling on settlement.

(6) An appeal against the ruling on settlement postpones payment.

### **Deletion of Rights and Burdens**

#### Article 119

If in the ruling on adjudication the court omitted to order that rights and burdens are to be deleted in the land register, except those to remain on the real estate even after the real estate is handed over to the purchaser or which the purchaser has taken over, the purchaser may propose that the court order deletion of the rights and burdens in the same execution procedure.

## **8. Legal Position of the Execution Debtor and Third Parties After the Sale of the Real Estate**

### **Losing the Right of Possession on Real Estate**

#### Article 120

Once the real estate is sold, the execution debtor loses the right of possession on real estate and is obliged to hand such real estate over to the purchaser immediately after delivery of a conclusion on handover of the real estate to the purchaser, unless the law or an agreement with the purchaser provides otherwise.

### **Vacation of Premises by the Execution Debtor**

#### Article 121

(1) In the motion for execution by the sale of real estate, and even at a later stage until the handover of the real estate to the purchaser, the execution creditor may also demand the real estate to be

vacated and handed over to the purchaser based on the conclusion on handover of the real estate to the purchaser.

(2) In the event from paragraph 1 of this Article, the court shall order in the writ of execution that the real estate is to be vacated and handed over to the purchaser after the ruling on handover of the real estate to the purchaser becomes legally effective.

(3) After the conclusion on handover of the real estate to the purchaser is adopted, upon the motion of the purchaser the court shall proceed with the execution with the aim of vacating and handing over the real estate to the purchaser.

(4) The execution from paragraph 3 of this Article is enforced according to the rules of this Act on execution by vacation and handover of real estate.

(5) In the execution procedure from paragraph 4 of this Article, the purchaser acquires the position of an execution creditor by submitting the motion from paragraph 3 of this Article.

### **Motion for Vacating the Premises Prior to the Conclusion on Handover**

#### Article 121 a

(1) In the motion for execution or later in the course of the procedure, the execution creditor may propose that the execution debtor vacate the premises and that the real estate be handed over to the execution creditor for safekeeping even before the adoption of the conclusion on sale of the real estate to the purchaser if he posts a security deposit for any damages that might be incurred by the execution debtor by impermissible purchase of the real estate or by suspension of execution, because of reasons for which the execution creditor is responsible. The amount of the security deposit is determined by the court at its discretion, after it enables the execution debtor to declare himself about the matter within the term of eight days.

(2) The provisions of Article 226 of this Act apply accordingly to the vacation of premises by the execution debtor from paragraph 1 of this Article.

#### Article 122

Deleted.

### **Vacation of Premises by the Business Lessee and Residential Lessee**

#### Article 123

(1) After the conclusion on handover of the real estate to the purchaser is adopted, upon the motion of the purchaser the court shall order the business lessee or residential lessee to hand the real estate over to the purchaser within the term that may not be less than three months and in the same ruling order involuntary execution by vacation of premises and its handover to the purchaser if the business lessee or residential lessee fails to hand it over within the designated term.

(2) The court shall proceed with involuntary execution from paragraph 1 of this Article upon the motion of the purchaser after the ruling from the said paragraph becomes legally effective and after the deadline from the ruling expires. Execution is enforced based on the rules of this Act on execution by vacation and handover of real estate.

(3) The deadline for handing over the real estate to the purchaser from paragraph 1 of this Article begins after the service of the ruling to the business lessee or residential lessee and does not stop if an appeal is filed.

(4) In the procedure from paragraphs 1 and 2 of this Article, the purchaser has the position of an execution creditor.

(5) The provision of Article 121 a, paragraph 1 of this Act applies accordingly to vacation by business lessee or residential lessee.

### **Vacation by Other Persons**

#### Article 124

(1) After the conclusion on handover of the real estate to the purchaser is adopted, upon the motion of the purchaser the court shall order other persons who do not have a valid written legal foundation to use the real estate to hand it over to the purchaser without any delay, and in the same ruling order execution against the same persons by vacation and handover of real estate.

(2) The court of execution shall proceed with the enforcement of execution from paragraph 1 of this Article immediately after the ruling from the said Article is adopted. An appeal does not postpone execution. Execution is enforced according to the rules of this Act on execution by vacation and handover of real estate.

(3) In the procedure from paragraphs 1 and 2 of this Article, the purchaser has the position of an execution creditor.

(4) The provision of Article 121 a, paragraph 1 of this Act applies accordingly to vacation by the persons from paragraph 1 of this Article.

### **9. Applying the Provisions of This Title in Areas Where There Are No Land Registers**

#### Article 125

(1) In areas where there are no land registers, the legislation applicable in the area in question with respect to documents that have to be enclosed as evidence to the motion for execution as proof of ownership on real estate that is the object of execution, but also legislation as to in which official records or in what way the writ of execution on real estate is to be entered, apply accordingly.

(2) If proof of ownership cannot be obtained for any reason in accordance with the legislation applicable in the area in question, the execution creditor is obliged to indicate in the motion for execution, in place of proof of ownership, the place where the real estate is located, its name, borders and surface area.

(3) In that case the court shall make a list of attached real estate with respect to the real estate proposed in the motion for execution, and summon the execution creditor, the execution debtor and persons with whose real estate the real estate in question borders to the attachment list hearing.

(4) Minutes about the attachment list are displayed on the court bulletin board.

(5) The court shall publish an announcement about the attachment list in the Official Gazette, in which it shall indicate the court publishing the announcement, the number of the case, information

about the parties and about the real estate on which the execution is enforced, and information as to where and when the hearing at which the real estate was listed was held, as well as when the minutes on the attachment list were displayed on the court bulletin board. In the announcement, the court shall call on all interested parties to notify the court either in writing or orally about any reasons why the execution cannot be conducted against the real estate.

(6) The provisions of this Article shall apply in the area where there are land registers if the land register was destroyed or if the real estate is not entered in the land register.

(7) The provisions of this Article shall apply when the real estate is registered in the cadastre in the name of the execution debtor if the registered owner or his inheritors confirm in a statement legalised by the competent authority that the execution debtor owns the real estate that is the object of execution.

## **Title Eleven**

### **EXECUTION ON CHATTELS**

#### **1. General Provisions**

##### **Territorial Jurisdiction if the Location of the Chattels is Known**

###### *Article 126*

(1) The court in whose area the chattels are located, as indicated in the motion for execution, has territorial jurisdiction to decide about the motion for execution against chattels and to enforce execution.

(2) The provision of paragraph 1 of this Article applies accordingly even when the execution is initiated in the line of duty.

##### **Territorial Jurisdiction if the Location of the Chattels is Not Known**

###### *Article 127*

(1) The execution creditor may propose that the court is to adopt a writ of execution against chattels, not indicating their location.

(2) The court in whose area the permanent residence or, subordinately, the temporary residence of the natural person or the registered office of the execution debtor who is a legal person has territorial jurisdiction to decide about the motion from paragraph 1 of this Article.

(3) The execution creditor may submit a writ of execution in the event from paragraph 1 of this Article to any court having territorial jurisdiction in whose area the execution debtor's chattels are located, with the motion for the court to enforce execution.

## **Exemption from Execution**

### Article 128

(1) The following may not be an object of execution:

1. clothing, shoes, underwear and other personal usage items, bed linen, cookware, furniture, cooking stoves, refrigerators, washing machines and other items used in the household if the execution debtor and members of his household need them to satisfy the standard of living enjoyed in their community,
2. food and firewood for the execution debtor and members of his household for a period of six months,
3. working and breeding livestock, agricultural machines and other working tools that an execution debtor - agriculturalist needs to maintain his farm to the extent necessary to sustain him and the family living with him in the same household, as well as seeds to be used on the farm and food for the livestock for a period of four months,
4. tools, machines and other items that the execution debtor who is a trader or an individual merchant needs to perform his registered activity, and raw materials and fuel for a period of three months of work,
5. items that an execution debtor who performs independently a registered notarial, lawyer's, doctor's, pharmacist's, scientific, artistic or any other professional activity as an occupation would need,
6. ready cash of the execution debtor based on claims exempt from execution and ready cash of the execution debtor who has regular monthly earnings up to the monthly amount exempt from execution, pro rata to the time until the next time he receives the earnings,
7. decorations, medals, commemorative war ribbons and other decorations and recognitions, wedding rings, personal letters, manuscripts and other personal documents of the execution debtor, family photographs, personal and family documents and family portraits,
8. aids of an invalid or any other person with physical disability that he needs to perform basic daily tasks.

(2) Postal parcels or postal monetary remittances addressed to the execution debtor may not be an object of execution before they are delivered.

(3) It may be provided in law that other chattels may also not be an object of execution.

## **Enforcement Actions**

### Article 129

(1) Execution against chattels is enforced by attaching, appraising, seizing, dispatching, entrusting them to the care of the court, execution creditor or a third party, selling them and settling the execution creditor out of the proceeds of the sale.

(2) The execution creditor is obliged to indicate in the motion for execution whether he wants the seized chattels to be entrusted to his care or to the care of a specific third party, unless the chattels in question are chattels that are deposited as a court or notarial deposit (Article 133, paragraphs 4 and 5).

(3) Any motion for execution that does not propose one of the enforcement actions in accordance with the provisions of paragraphs 1 and 2 of this Article shall be dismissed by the court without asking the execution creditor to remedy or supplement it.

## **2. Attachment and Appraisal of Chattels**

### **Notification of Attachment**

#### Article 130

(1) The execution administrator shall hand over the writ of execution to the execution debtor before proceeding with the attachment and ask him to pay the amount with respect to which execution was ordered, with interest and costs.

(2) The execution creditor shall be notified of the time and place of attachment and of what needs to be provided for dispatching and storing the chattels (Article 133 a).

(3) Absence of the execution creditor does not prevent the enforcement of attachment.

(4) Any absent party shall be notified of the attachment performed.

### **Object of Attachment**

#### Article 131

(1) Attachment is carried out by drawing an attachment list.

(2) Chattels in the possession of the execution debtor and his chattels in the possession of the execution creditor may be included in the list.

(3) Primarily chattels that are proposed by the execution creditor shall be included in the list.

(4) The execution debtor is deemed to possess chattels that he has on his person, that is, those which are on or in his real estate, in the apartment in which he lives or on the business premises that he leases.

(5) Spouses are deemed to be co-owners in equal parts of all chattels found in their house, apartment, business premises or some other real estate.

(6) The chattels of an execution debtor in the possession of a third party may be included in the list only if such third party gives his approval.

(7) If a third party does not give his approval to the list, the court shall transfer the right of the execution debtor to hand over the chattels to the execution creditor, upon his motion.

### **Extent of the Attachment List**

#### Article 132

- (1) The list shall comprise as many chattels as are needed to settle the claim of the execution creditor and the costs of execution.
- (2) The list shall comprise primarily those chattels with respect to which there are no objections regarding the existence of any rights that might prevent execution and chattels that are the easiest to cash in, where the statements of the present parties and third parties shall also be taken into account.

### **Safekeeping the Listed Chattels**

#### Article 133

- (1) The execution administrator shall take the listed chattels from the execution debtor and hand them over to the execution creditor or a third party for safekeeping in accordance with the writ of execution, unless provided otherwise in the ensuing provisions of this Article.
- (2) The execution creditor bears the hazard of destruction or damage to the chattels entrusted for safekeeping to the execution creditor or a third party, unless the destruction or damage is the result of force majeure.
- (3) It shall be marked on the listed chattels left to the execution debtor for safekeeping that they have been confiscated.
- (4) Cash, securities and any valuables shall be deposited as a court or notarial deposit.
- (5) Other more valuable chattels, if they are suitable for such manner of safekeeping, shall also be deposited in court or notarial deposition.

### **Procedure for Submitting Chattels for Safekeeping**

#### Article 133 a

- (1) The execution creditor is obliged to procure everything necessary to ensure proper dispatch of the chattels (means of transport, man power, equipment, food and water for livestock during transport, etc.) and such accommodation of the chattels that is to keep them safe against any damages, decay or deterioration in general, except the one that would occur as the result of regular wear and tear.
- (2) As a rule, animals shall be placed in stables or at some other location that offers protection, safekeeping and food, as well as the necessary care, milking, etc.
- (3) Before the chattels are seized and dispatched, the execution administrator shall examine whether the conditions for their accommodation in accordance with the provisions of paragraphs 1 and 2 of this Article are fulfilled. The execution administration shall draw the corresponding minutes.
- (4) The execution administrator shall follow the seized chattels to the location where they shall be placed for safekeeping. He shall draw the corresponding minutes, which have to be signed by the person to whom the chattels are submitted for safekeeping.

(5) If the execution creditor fails to ensure everything necessary for dispatching and accommodating the chattels in accordance with the provisions of paragraphs 1 and 2 of this Article, the seizure and dispatch of the chattels shall be postponed for a period of time proposed by the execution creditor, but not for a period longer than three months.

(6) If the execution creditor fails to ensure everything necessary for dispatching and accommodating the chattels by the following hearing for their seizure and dispatch, execution shall be suspended.

### **Prohibition to Use the Listed Chattels**

#### Article 134

(1) The execution debtor is prohibited to use the seized items.

(2) The prohibition is entered in the writ of execution with a warning to the execution debtor with respect to criminal and legal consequences of acting contrary to the prohibition.

### **Acquiring Liens**

#### Article 135

(1) The execution creditor acquires a lien on the listed chattels on the basis of the attachment list.

(2) If the list is made in favour of several execution creditors, the order of priority with respect to the lien acquired by the list or by an annotation in the minutes on the attachment list is determined based on the date of making the list, that is, based on the date of making the annotation.

(3) If the chattels are listed simultaneously in favour of several execution creditors, the order of priority is determined based on the date on which the court received the motion for execution, and if the motions for execution were received on the same date, the liens take the same order of priority.

(4) If the motion for execution was sent by registered mail, the date of being submitted at the post office is deemed as the date of being received by the court.

### **Unsuccessful Attempt at Attachment**

#### Article 136

(1) If during the attachment procedure no chattels that might be an object of execution are found, the court shall notify the execution creditor who was not present during the attachment thereof.

(2) The execution creditor may propose attachment to be repeated in the period of three months from the date of delivery of the notification, that is, from the date of attempted attachment.

(3) If the execution creditor does not propose attachment to be repeated within the period from paragraph 2 of this Article or if in the repeated attachment no chattels are found that might be an object of attachment, the court shall suspend the execution procedure.

## **Appraisal**

### Article 137

- (1) An appraisal of the chattels, except if they are to be handed over to an official commission agent for sale, are to be made at the same time with an attachment list.
- (2) The appraisal is made by the execution administrator if the court has not ordered the appraisal to be done by the court appraiser or a special expert.
- (3) The official commission agent shall appraise the chattels handed over to him for sale.
- (4) Any party may propose the appraisal to be made by an expert if the court has not ordered it. If the court accepts the motion, the cost of expertise shall be advanced by the filer of the motion within the term set by the court. If the advance is not paid within the term, the filer of the motion shall be deemed to have abandoned his motion.
- (5) The court decides about the motion from paragraph 4 of this Article in a conclusion.
- (6) The cost of expertise from paragraph 4 of this Article is to be borne by the filer of the motion, regardless of the outcome of the execution procedure.
- (7) Any party may propose to the court within an eight-day term following the appraisal that the court should determine a lower or higher value of the seized chattels than the appraised value or order a new appraisal. The court decides about such a motion in a conclusion.

## **Minutes on the Attachment List and Appraisal**

### Article 138

- (1) Minutes are made on the attachment list and on the appraisal.
- (2) The minutes have to specify, inter alia, the seized chattels and their appraised value, and statements by the parties and participants in the procedure, as well as statements by third parties on the existence of any rights that prevent execution.

## **Annotation Instead of an Attachment List**

### Article 139

If after the attachment list is made, execution is ordered against the seized chattels with the aim of settling other claims of the same execution creditor or the claims of some other execution creditor, a new list and appraisal of the chattels shall not be made, but the information from the later writ of execution shall be annotated in the continuation of the minutes.

## **3. Selling the Chattels**

### **Time of Sale**

#### Article 140

- (1) The sale of seized chattels may be carried out only after the writ of execution becomes legally effective, unless the execution debtor agrees that the sale may be carried out before that or in the

case of chattels that spoil quickly or if there is danger of substantial decrease in their price or if the execution creditor posts a security deposit for any damages that he would be obliged to refund to the execution debtor in the event that the writ of execution does not become legally effective.

(2) The court decides about the sale before the writ of execution becomes legally effective in a conclusion.

(3) At least fifteen days has to pass from the date of the attachment list and the date of the sale.

(4) The sale may be carried out even before the expiration of the term from paragraph 3 of this Article for the reasons mentioned in paragraph 1 of this Article.

### **Manner of Sale**

#### Article 141

(1) Chattels are sold in an oral public auction or by direct dealing. The manner of sale is determined by the court in a conclusion, where the court takes care that the chattels are sold to the best bidder.

(2) The public auction is led by the execution administrator. In a conclusion, the court may entrust the conducting of the auction to a notary public.

(3) The sale by direct dealing is conducted by and between the purchaser on one hand and the execution administrator or the person performing commission activities on the other. The execution administrator sells the chattels on behalf and for the account of the execution debtor, and the person performing commission activities on his own behalf and for the account of the execution debtor.

(4) The sale by auction shall be ordered in the case of more valuable chattels, and if it may be expected that they are to be sold at a higher price than the appraised value.

(5) The sale of chattels shall be announced timely on the court bulletin board, and it may also be announced in the manner anticipated for announcing the sale of real estate.

(6) The execution creditor and the execution debtor shall be notified of the place, date and hour of sale.

### **Purchase Price**

#### Article 142

(1) At the first auction, the chattels may not be sold below two-thirds of their appraised value. They may not be sold below that price either during the term ordered by the court for the sale by direct dealing.

(2) If the price from paragraph 1 of this Article is not achieved at the first auction, the court shall order a new auction upon the motion of the party at which the chattels may be sold below that price, but not below one-third of the appraised value.

(3) The provision of paragraph 2 of this Article applies accordingly when the seized chattels could not be sold by direct dealing at the price from paragraph 1 of this Article within the term set by the court.

(4) The motion for another auction or for the sale by direct dealing may be submitted by the party within the term of fifteen days from the first auction, that is, from the expiration of the term set by the court for the sale by direct dealing.

(5) The court shall suspend the procedure if none of the parties proposes another auction within the set term, that is, a new sale by direct dealing, or if the chattels are not sold at the new auction or by direct dealing within the new period set by the court.

### **Obligations and Rights of the Purchaser**

#### Article 143

(1) The court is obliged to deposit the purchase price and take over the chattels immediately after the auction or the sale by direct dealing is concluded.

(2) If the purchaser fails to submit the purchase price, the auction shall be deemed unsuccessful. The purchaser is obliged to compensate any damages incurred by the parties as the result of his withdrawal, of which the court decides in the execution procedure upon the request of the parties.

(3) The parties and the purchaser have the right to an appeal against the ruling from paragraph 2 of this Article.

(4) The execution administrator shall hand over the chattels to the purchaser even if he has not deposited the purchase price if the execution creditor agrees to that at his own peril up to the amount he would be entitled to out of the proceeds. If the purchaser fails to deposit the purchase price within the set term, the execution creditor may request the court to order the purchaser in the same procedure to pay the price and propose execution against him based on the same ruling.

(5) In any of the cases, the purchaser becomes the owner of the purchased chattels by their takeover.

(6) The purchaser shall not have rights arising out of liability for any defects in the chattels.

### **4. Selling the Chattels Through the Certified Commission Agent**

#### **Certified Commission Agents**

##### Article 143 a

(1) The sale of chattels seized in the execution procedure may be entrusted to a certified commission agent.

(2) The minister competent for the economy, with the approval by the minister competent for environmental protection, physical planning and construction, shall establish conditions for the performance of activities of the certified commission agent in an ordinance:

1. accommodation space for specific types of chattels (building material, loose cargo, certain finished products and semi-finished products, raw materials, solid, liquid and gaseous fuels, motor vehicles, vessels, furniture, technical goods, lighting, eating utensils, clothing, shoes, books, manuscripts, works of art, etc.),

2. personnel equipped for classification, deposition, safekeeping, maintenance, display, giving of notifications, announcements, sale, accounting or book-keeping activities,

3. means of transport and man power to dispatch the seized chattels, etc.

(3) Live animals and substances that spoil easily may be handed over to the commission agent for the purpose of sale only if he has adequate accommodation space and other conditions for keeping, feeding, caring and milking the animals, that is, for storing substances that spoil easily (refrigerators, etc.).

(4) The commission agent may procure the accommodation space, means of transport and man power to perform the activities through contracts with other natural and legal persons (e.g., lease contracts, transport contracts, man power contracts, etc.).

### **Organising and Implementing the Activities of a Certified Commission Agent**

#### Article 143 b

(1) The activities of a certified commission agent are organised and implemented by the Croatian Chamber of the Economy.

(2) The Croatian Chamber of the Economy shall organise public commission shops for performing the activities of a certified commission agent for the area of one or several counties, depending on the number of execution procedures against chattels, their nature, quantity, value and financial feasibility.

(3) Upon the motion of the Croatian Chamber of the Economy, the ministry competent for the economy may permit the Croatian Chamber of the Economy to entrust the activities of a certified commission agent in a specific area or for some of the activities of certified commission agent in a specific area, based on a tender procedure, to a natural or legal person meeting the conditions for the performance of the activities of certified commission agent. The Croatian Chamber of the Economy shall conclude a contract on such entrusting of activities with the selected commission agent, on prior approval by the minister competent for the economy.

(4) The permit to perform the activities of a certified commission agent is submitted for a specific public commission shop or the certified commission agent from paragraph 3 of this Article to the Croatian Chamber of the Economy by the office of state administration in the county competent for the economy, in whose area the registered office of the public commission shop, that is, certified commission agent is located.

### **Controlling the Work of Certified Commission Agents**

#### Article 143 c

(1) The office of state administration in the county competent for the economy, and in whose area the registered office of the certified commission agent is located, conducts overall control over the work of certified commission agents.

(2) The execution judge in charge of the case controls the work of certified commission agents in specific execution cases against chattels.

(3) The provisions of paragraphs 1 and 2 of this Article do not exclude the right of administrative bodies under special regulations to control the business operation of the certified commission agent.

(4) The office of state administration in the county competent for the economy shall take away the permit from Article 143 b, paragraph 4 of this Act from the Croatian Chamber of the Economy for a specific public commission shop or the certified commission agent from Article 143 b, paragraph 3 of this Act if it is established that they no longer meet conditions to perform the activities of certified commission agent, that is, that they have committed a material breach of their duties to take over the chattels for safekeeping and sale.

### **Rights and Duties of the Commission Agent**

#### Article 143 d

(1) The commission agent has the right to ask for an advance coverage of costs that he is to have in connection with the chattels that he is to take over. The execution creditor is obliged to pay the advance to the commission agent. If the execution creditor does not deposit the advance, the commission agent is not obliged to take over the chattels for safekeeping. If the court establishes that the commission agent has had a well-founded reason to refuse to take over the chattels for safekeeping, it shall suspend the execution procedure.

(2) The commission agent is entitled to a fee for the actions performed and to receive compensation of costs.

(3) The minister competent for justice adopts the tariff determining the amount of compensation of costs and the fee for the performance of public commission actions.

(4) The commission agent acquires a statutory lien on chattels handed over to him to be sold in order to cover the costs and the fee from paragraph 1 of this Article, regardless of to whom the chattels belong and whether the enforcement actions based on which the chattels were handed over are valid or not. In the order of priority, the lien in question comes before the lien of other persons on the chattels.

(5) The commission agent is obliged to take over the seized chattels which he is authorised to sell (Article 143.h, paragraph 4) if the execution creditor is ready to pay the advance. Only exceptionally, if there is not enough space or in the event of extraordinary circumstances, the commission agent may refuse to take over certain chattels.

(6) The commission agent is accountable to the execution creditor for any damages incurred by the execution creditor as the result of unfounded refusal to take over the chattels for safekeeping and sale.

(7) The commission agent is obliged to conscientiously, in accordance with the rules of the profession, take over, classify, safe-keep, insure, maintain and display the chattels, issue notifications about them, announce their sale, sell them and distribute the proceeds.

(8) The commission agent is accountable to the parties for any damages incurred by them as the result of a violation of his duties from paragraph 7 of this Article.

## Liability Insurance

### Article 143 e

- (1) The commission agent is obliged to contract liability insurance up to an amount to be determined by the minister competent for justice in view of the type of chattels he is authorised to sell and the expected turnover.
- (2) The commission agent is obliged to extend the liability insurance contract at the latest one month before the expiration of the preceding insurance period and without any delay notify the office of state administration in the county competent for the economy in whose area his registered office is located.
- (3) The competent office of state administration shall take away the licence of any commission agent who fails to extend the insurance contract in accordance with the provision of paragraph 2 of this Article.

### Article 143 f

- (1) If specific chattels are not sold within two months after the moment of being delivered to the commission agent even if the price was reduced to two-thirds of the appraised value, the court shall reduce the value of such chattels to one third of the appraised value.
- (2) If specific chattels are not sold in a further one-month period, the court shall suspend the execution, and notify the execution debtor that he may take over the chattels within a term of 15 days. If the execution debtor does not take over the chattels within such term, the court shall order the commission agent to return them to him, and the execution debtor shall be ordered in a ruling to repay any delivery costs.
- (3) The execution debtor may file an appeal against the ruling on compensation of costs from paragraph 2 of this Article.

## **Entrusting the Sale of Chattels to the Commission Agent (not deleted or amended in 2005)**

### Article 143 .f

- (1) Chattels are delivered to the commission agent upon the motion of the execution creditor.
- (2) The execution creditor may include the motion from paragraph 1 of this Article in the motion for execution or during the procedure.

## **Displaying and Publishing Information about Chattels**

### Article 143 g

- (1) The commission agent is obliged to exhibit the chattels in a way that enables any interested parties to examine them during the working hours of the commission agent.
- (2) The commission agent is obliged to mark the exhibited chattels by a number under which they are registered in the books of the commission agent, based on which it is possible to determine to whom they belong, that is, in which execution procedure they were seized.

(3) The chattels have to include data about their quality and size, as well as the price. It shall be specifically indicated whether they have been tested, that is, whether tests may be done.

(4) The commission agent may issue a special warranty for any defects.

(5) The commission agent may publish data about the chattels that he is to sell on bulletin boards, catalogues, in the media, the Internet and in other appropriate ways, and also indicate the manner and time when they may be examined and when they are going to be sold.

### **Sale of the Chattels**

#### Article 143 h

(1) In accordance with the conclusion of the court, chattels are sold at a public auction or by direct dealing.

(2) Chattels auctions at the commission agent's are chaired by the notary public.

(3) Only persons who have posted a security deposit may participate in the auction.

(4) Chattels auctions may be held outside the working hours, and on Saturdays.

### **Handover of the Purchase Price**

#### Article 143 i

(1) After the chattels are sold, the commission agent shall hand them over to the purchaser as soon as he pays the purchase price.

(2) The commission agent shall use the purchase price to settle first of all any costs of depositing and selling the chattels, and his fee, and then pay the remaining amount to the account of the court, indicating the designation of the execution case with respect to which the chattels were sold. The commission agent shall send to the court an excerpt from the notarial minutes from the auction and the calculation of costs and the fee.

(3) In a ruling, the court shall approve the calculation or instruct the commission agent to pay the difference to the account of the court after it gives an opportunity to the parties to declare themselves with respect to the calculation filed by the commission agent.

(4) An appeal against the ruling from paragraph 3 of this Article may be filed by the parties and by the commission agent.

(5) An appeal by the commission agent from paragraph 4 of this Article postpones the enforceability of the ruling.

## **5. Sale of Motor Vehicles**

### **Acquiring the Lien**

#### Article 143 j

- (1) The court orders execution on a motor vehicle for the purpose of settling a monetary claim based on an enforcement title document and a police administration certificate that the execution debtor is the owner of the motor vehicle (Article 16 b, paragraph 2).
- (2) The court forwards a copy of the writ of execution to the police administration with which the register of vehicles is maintained, so that the recordation of execution could be made.
- (3) The court shall also forward a copy of the writ of execution to the register of creditors' claims subject to court and notarial security on chattels and rights, so that an appropriate entry could be made.
- (4) The execution creditor acquires the lien on a motor vehicle by the recordation of execution.
- (5) The order of priority of liens from paragraph 3 of this Article is calculated from the date of delivery of the writ of execution to the police administration.
- (6) After the execution is recorded, it is not permissible to enter any changes of the right of ownership on the motor vehicle or burdens on the vehicle based on the right to dispose by the execution debtor, regardless of the time of disposing. Any disposing made contrary to this prohibition has no legal effect.

### **Seizure, Safekeeping and Appraisal of Motor Vehicles**

#### Article 143 k

- (1) Within a period of three months from the service of the writ of execution on the motor vehicle, the execution creditor is obliged to propose seizure of the motor vehicle, specify the location of the motor vehicle and ensure the required means of transport and man power to take the action. If the execution creditor does not propose seizure of the vehicle within the above term, the court shall suspend the execution.
- (2) The execution administrator conducts the seizure of the motor vehicle based on the conclusion by the court. When seizing the motor vehicle, the execution administrator shall remove the plates from the motor vehicle.
- (3) The seized motor vehicle is handed over for safekeeping to the execution creditor or a third party in accordance with the writ of execution.
- (4) If the motor vehicle is entrusted for safekeeping to the commission agent, its appraisal and sale shall be performed by the commission agent in accordance with the provisions of Article 143.g through 143.m of this Act.

## **Sale of the Motor Vehicle**

### Article 143 l

- (1) Motor vehicles are sold at oral public auctions or by direct dealing, in accordance with the conclusion of the court on the manner of sale, without indicating the registration plate number or the chassis number.
- (2) Only persons who have deposited the security deposit may participate at the auction as purchasers.
- (3) If an auction is held for several vehicles, the person intending to participate in the purchase of a specific vehicle is obliged to post a security deposit which shall be determined for such purchases in the conditions of sale.
- (4) The participant in an auction may request to participate in the auction anonymously, by proxy.
- (5) In the event from paragraph 4 of this Article, the participant in an auction shall receive a special number with which to participate. Data about such purchasers is an official secret.

## **Handover of the Motor Vehicle to the Purchaser**

### Article 143 m

- (1) The purchaser is obliged to deposit the purchase price and take over the motor vehicle immediately after the auction or sale by direct dealing is concluded. The provisions of Article 143, paragraphs 2, 3, 4 and 6 of this Act apply accordingly.
- (2) In the event from paragraph 1 of this Article, the court shall authorise the purchaser in a conclusion to request the police administration in the place where he has permanent residence or registered office to enter the right of ownership on the purchased motor vehicle and issue the vehicle card and the traffic licence based on the conclusion. The conclusion has to include all data necessary to issue the vehicle card and the traffic licence.
- (3) The conclusion from paragraph 2 of this Article shall not be delivered to the execution debtor if the purchaser participated in the purchase anonymously, and it shall be removed from the file and kept in the same way as other court documents protected as an official secret.
- (4) The purchaser becomes the owner of the motor vehicle once it is entered in the register of motor vehicles with the competent police administration.
- (5) By a special conclusion, the court shall order deletion of the right of ownership of the execution debtor on the sold vehicle from the register of the police administration in which it was entered, and deletion of the lien entered in the register of creditors' claims subject to court and notarial security on chattels and rights. The conclusion shall order deletion of the rights of other persons to the motor vehicle that cease by sale.

## **Ordinance on Keeping the Register of Motor Vehicles**

### Article 143 n

The minister competent for the interior shall regulate the keeping of the register of motor vehicles in a special ordinance, in such a way that data in accordance with the preceding provisions of this Section may be entered in it.

## **6. Settling the Claims of Execution Creditors**

### **Settling the Claim of a Sole Execution Creditor**

#### Article 144

(1) If the claim of a sole execution creditor is to be settled out of the sale price, the court shall order in a ruling that the following be settled out of the proceeds of the sale in the order as follows: costs of the procedure, costs determined in the enforcement title document, interest from the date of selling the chattels and the main claim.

(2) Any amount remaining after the settlement shall be handed over to the execution debtor, if there are no obstacles.

### **Settling the Claims of Several Execution Creditors**

#### Article 145

(1) If several execution creditors are to be settled in the execution procedure, that is, if next to the execution creditor there are other persons whose rights terminate following the sale of the chattels and whose claims are also to be settled, they shall be settled out of the sale price in the order in which they have acquired the lien or some other right that terminates after the sale, unless the law lays down priority in settlement with respect to certain claims.

(2) Creditors in the same order who cannot be settled fully out of the sale price are settled pro rata to the amounts of their claims.

(3) Costs of the execution procedure, costs specified in the enforcement title document and interest have the same order of settlement as the main claim.

(4) In adopting the ruling on settlement, the court shall take into account only those claims with respect to which the writ of execution has become legally effective by the date of selling the listed items.

## **7. Applying the Provisions on Execution Against Real Estate**

### Article 146

The provisions of this Act on execution against real estate apply accordingly to the execution against chattels, unless provided otherwise in this Title.

## **Title Eleven a**

### **REGISTER OF REAL ESTATE AND CHATTELS SOLD IN THE EXECUTION PROCEDURE**

#### **Keeping the Register**

##### Article 146 a

- (1) The Croatian Chamber of the Economy keeps the register of real estate and chattels sold in the execution procedure. The register is maintained on all real estate sold in the execution procedure, and on chattels if their appraised value exceeds HRK 50,000.00.
- (2) The register on real estate from paragraph 1 of this Article includes data on the parties, the cadastral plot, the cadastral municipality, the surface area, and the address of the real estate, what the real estate is, what size its specific parts are, its appraised value, other conditions of sale and the auction hearing.
- (3) The register on chattels from paragraph 1 of this Article includes data on the parties, data that may be used to identify the chattels if it is a specific item, that is, its type, quantity and quality in the case of items specified by class and quantity based on the data from the minutes from attachment, on the appraised value of the chattels, other conditions of sale and the auction hearing.
- (4) The register shall specify the location, the time and the way in which the item may be examined.
- (5) The register is public. Data entered in the register shall be made available on the Internet.

#### **Delivery and Entry of Data**

##### Article 146 b

- (1) The court conducting the execution procedure is obliged to deliver the data from Article 146 a, paragraphs 2 and 3 of this Act to the Croatian Chamber of the Economy. If the sale is performed through a certified commission agent, the certified commission agent is obliged to deliver the data on the writ of execution against the chattels, the parties, the subsequently appraised value of the chattels, the conditions of sale, the time of the auction and the way in which the chattels may be examined to the Croatian Chamber of the Economy without any delay.
- (2) The Croatian Chamber of the Economy is obliged to register the required data on real estate and chattels sold in the execution procedure without any delay.

## **Title Twelve**

### **EXECUTION ON THE EXECUTION DEBTOR'S MONETARY CLAIMS**

#### **1. General Provisions**

##### **Territorial Jurisdiction**

###### Article 147

(1) The territorial jurisdiction to adjudicate on motions for execution on an execution debtor's monetary claims and for the implementation of this execution shall lie with the court on whose territory the execution debtor has permanent residence, if the execution debtor does not have permanent residence in the Republic of Croatia, the jurisdiction shall lie with the court on whose territory the execution debtor has temporary residence.

(2) If the execution debtor does not even have temporary residence in the Republic of Croatia, the jurisdiction shall lie with the court on whose territory the execution debtor's debtor has permanent residence, if neither this person has permanent residence in the Republic of Croatia, the jurisdiction shall lie with the court on whose territory the execution debtor's debtor has temporary residence.

(3) The provisions referred to in paragraphs 1 and 2 above which relate to the permanent residence of a natural person shall apply accordingly to the seat of a legal person.

##### **Exemption from Execution**

###### Article 148

The following are exempt from execution:

1. income on the basis of legal maintenance, damages due to impaired health or reduced, i.e. lost, ability to work and damages for lost maintenance due to the maintenance provider's death,
2. income on the basis of compensation due to physical injury according to the regulations on disability insurance,
3. income on the basis of social security,
4. income on the basis of temporary unemployment,
5. income on the basis of child benefit,
6. income on the basis of scholarships and aid to pupils and students,
7. income of soldiers and students of military schools,
8. compensation for the work of convicts, save for claims on the basis of legal maintenance and claims for damages caused by the criminal action of the convict,
9. income on the basis of distinctions and commendations.

## **Restriction of Execution**

### Article 149

(1) The execution on salary, on compensation instead of salary, on compensation for reduced working hours and on compensation for reduced salary and retirement benefit, for the payment of claims on the basis of legal maintenance, damages due to impairment of health and reduced, i.e. lost, ability to work and the compensation of damage for lost maintenance due to the death of the maintenance provider, can implemented out up to the amount of one half, and for the payment of claims on any other basis up to the amount of one third of the salary, compensation instead of salary or pension.

(2) If the execution debtor receives a guaranteed salary in line with a collective bargaining agreement or law, the execution for the payment of claims referred to in paragraph 1 above can be implemented up to the amount of one third, i.e. one quarter, of such salary.

(3) The provision referred to in paragraph 1 of this Article shall be applied to the salary of military personnel and to the salary of persons in the military reserve during the time spent in the military service.

(4) Execution on the income of disabled persons on the basis of financial compensation for physical injury and payment for the care and nursing of another person can be implemented only for the payment of claims on the basis of legal maintenance, the damages for impaired health or reduced, i.e. lost, ability to work, and damages for lost maintenance due to the death of the maintenance provider, and then up to the amount of one half of such income.

(5) Execution on income on the basis of an agreement on life-long maintenance and life-long livelode and on incomes on the basis of a life insurance agreement can be carried out only on the part that surpasses the amount of the highest permanent social welfare that is paid out in the region in which the execution debtor has his residence.

## **Actions of Execution**

### Article 150

(1) The execution on monetary claims shall be carried out by attachment and transfer, save if otherwise provided for in this law for individual cases.

(2) A motion for execution can put forward the request that only attachment of the monetary claim be carried out, but in this case the execution creditor shall, within a period of three months from the day when he has been served the ruling on attachment, i.e. the day when he has been served the notification of the execution debtor's response or the fact that he has not made a response in the given time, file a motion for the transfer of the claim.

(3) If the execution creditor fails to file such a motion within the set time limit, the execution shall be suspended.

## **Scope of Execution**

### Article 151

(1) Attachment and transfer of monetary claims can be ordered and implemented only in the amount necessary for the payment of the execution creditor's claim, save if an indivisible claim is in question.

(2) If several execution creditors seek execution on the same claim that is divisible, attachment and transfer shall be ordered in appropriate amounts, separately for the benefit of each execution creditor.

## **2. Attachment of Claims**

### **Effect of Attachment**

#### Article 152

(1) Attachment shall be carried out by serving the writ of execution on the execution debtor's debtor by which the execution debtor's debtor is prohibited from settling the execution debtor's monetary claim, and the execution debtor is prohibited from collecting such claim or disposing of it and the lien provided as its security.

(2) Attachment shall be carried out on the day when the writ of execution has been served on the execution debtor's debtor.

(3) The execution creditor shall, by attachment, obtain rights of lien on the execution debtor's claim.

(4) The execution debtor's debtor has no right of appeal against the ruling on attachment.

### **Attachment of Claims Based on Securities**

#### Article 153

(1) The attachment of monetary claims based on securities transferable by endorsement or for the realisation of which the security itself is necessary, shall be carried out by the execution administrator taking the securities from the execution debtor and surrendering them to the court or notary public. The attachment shall be carried out by seizing the securities from the execution debtor.

(2) Legal actions necessary for the preservation of or effecting the rights under the securities referred to in paragraph 1 above, shall be carried out on the execution debtor's behalf by the execution administrator pursuant to a conclusion of the court.

(3) The attachment of monetary claims based on shares for which share certificates have not been issued and on registered shares with share certificates shall be carried out by serving the writ of execution on the joint stock company. In this case the provisions of Article 152 hereof shall apply as appropriate.

## **Prohibition of Claims on Savings Deposits**

### Article 154

(1) By way of derogation from the provisions of Article 153 hereof, the attachment of claims on savings deposits with a bank or other legal person can be carried out without the prior seizure of the execution debtor's savings book.

(2) If the execution creditor does not dispose with the necessary information on the execution creditor's savings deposit, he can propose to the court to pass a ruling by which it shall temporarily attach all the execution debtor's savings deposits with a certain legal person (motion for provisional attachment).

(3) The court shall, by a ruling on provisional attachment, ask the legal person to provide information on the execution debtor's savings deposits.

(4) The legal person shall be obliged to provide the requested information to the court without delay and shall not be permitted to inform the execution debtor that such information has been requested.

(5) The court shall, upon the receipt of the requested information, inform the execution creditor of it, who shall, within a period of eight days, file a motion for execution on a certain savings deposit or on certain savings deposits. Upon such a motion, the court shall pass a ruling on the attachment of a certain savings deposit or certain savings deposits and put aside the ruling on provisional attachment of the savings deposits.

(6) The motion for provisional attachment referred to in paragraph 2 hereof and the motion referred to in paragraph 5 hereof, shall, in the sense of the provisions on court fees, be regarded as one motion.

(7) If the savings book has not been previously seized from the execution debtor, the attachment of a certain savings deposit shall be deemed to be carried out on the day the ruling on the provisional attachment was served on the legal person with which such a savings deposit is kept.

(8) The legal person with which the savings deposit is being kept has the right to seek recovery of costs incurred in providing the services referred to in this Article. The request for recovery of costs may be filed within fifteen days from the day the action was taken. Such costs make part of the execution proceedings' costs.

## **Lien on Interest**

### Article 155

A lien obtained over a claim on which interest accrue shall relate to interest falling due after the attachment.

## **Order of Priority**

### Article 156

(1) The order of priority of the liens of several execution creditors shall be determined according to the date of the receipt of the motion for execution.

(2) If the motion for execution is sent by registered mail, the date of delivery to the post office shall be deemed as the date of filing the motion for execution with the court.

(3) If the motions for execution of several execution creditors are received at the court on the same day, their liens shall have the same order of priority.

(4) Claims with the same order of priority shall be settled proportionally, if they cannot be settled in their entirety.

(5) If, due to carrying out the execution on a monetary claim, the rights of lien and other rights obtained before the commencement of the proceedings cease, the order of priority in settlement of such rights shall be determined according to the regulations on the order of priority of such rights as regulated outside of execution proceedings.

### **Declaration of the Execution Debtor's Debtor**

#### Article 157

(1) The court shall, upon the execution creditor's motion, ask the execution debtor's debtor to render, within a period set by the court, his statement on whether he admits the attached claim and its amount, and whether he is willing to settle it, and whether his obligation to pay this claim is conditional upon the fulfilment of some other obligation.

(2) The execution creditor may join the motion for the declaration of the execution debtor's debtor with the motion for execution or file it by a special submission after such motion, but at the latest before the transfer of the claim.

(3) The declaration of the execution debtor's debtor shall be delivered to the execution creditor without delay.

### **The Responsibility of the Execution Debtor's Debtor**

#### Article 158

(1) The execution debtor's debtor shall be responsible to the execution creditor for the damage caused by failing to render his statement or by giving false or incomplete statements.

(2) The court shall caution the execution debtor's debtor of such responsibility.

### **Attachment of Claims Secured by Liens Registered in Public Registers**

#### Article 159

(1) The attachment of a claim secured by a lien entered into a land register or other public register in which rights on real estate are registered shall be carried out by the entry of the attachment into this register.

(2) The entry shall be done ex officio, with an indication that the attachment, on the basis of which a lien has been obtained on the claim, has been ordered for the purpose of settling the execution creditor's claim.

(3) If there are several execution creditors, the order of priority of their claims shall be determined according to the time of entry.

### **3. Transfer of Claims**

#### **a) General Provisions**

##### **Types of Transfer**

###### **Article 160**

(1) An attached claim shall be transferred to the execution creditor in accordance with his motion, for collection or instead of payment.

(2) The execution creditor is bound, already in the motion for execution, to ask to have the claim transferred to him for collection or instead of payment, save if otherwise provided for by this Act. The court shall decide on the kind of transfer in the writ of execution.

(3) The execution debtor's debtor shall be summoned, whether in the writ of execution or by a special ruling on the transfer, to deposit with the court the due amount by effecting payment to a special account and notifying the court thereof.

##### **Special Conditions for the Transfer of Indivisible Claims**

###### **Article 161**

(1) A claim based on securities transferable by endorsement or for the realisation of which the prior submission of securities is necessary, or which can not be divided with respect to transfer or realisation due to other reasons, may be transferred only in their full amount.

(2) If several execution creditors have filed their motions for transfer on various days, the court shall transfer the claim to the execution creditor who first submitted the motion, and if several execution creditors filed the motion on the same day, the claim shall be transferred to the execution creditor with the highest claim.

##### **Implementation of Transfer**

###### **Article 162**

(1) The transfer of a claim shall be implemented by serving the ruling by which the transfer is ordered on the execution debtor's debtor.

(2) The transfer of claims based on securities transferable by endorsement or for the realisation of which prior submission is necessary, shall be implemented when the court affixes its statement of transfer on such securities and surrenders securities with such statement to the execution creditor.

##### **Execution Debtor's and Execution Creditor's Obligations**

###### **Article 163**

(1) The execution debtor shall be obliged to provide, within the time limit set by the court, at the request of the execution creditor to whom the claim has been transferred, explanations necessary to

the execution creditor for the realisation of such claim and surrender to him the documents relating to such claim.

(2) The execution creditor to whom part of the claim has been transferred shall be obliged to, if the execution debtor so asks, within the time limit set by the court, provide security that he shall return the documents that relate to the claim after the realisation of such claim.

(3) The court shall, at the proposal of the execution creditor, carry out the execution for the surrender of documents against the execution debtor if he fails to surrender them himself.

(4) The execution creditor may, by bringing an action, demand the surrender of documents kept with third parties, provided that the execution debtor would have had the same right.

(5) The court shall make a note on the document to be given to the execution creditor that the transfer of the claim for which execution was ordered has been carried out.

### **Deposition of Money With the Court or the Notary Public**

#### Article 164

(1) The execution debtor's debtor who has been served a writ of execution or a special ruling on transfer, shall fulfil his obligation by depositing money with the court that is carrying out the execution or with a notary public.

(2) If, for the collection of the transferred monetary claim, the execution creditor has had to institute court or other proceedings, the court or the body conducting the proceedings shall, in the decision in which it accepts the execution creditor's motion, order the execution debtor's debtor to deposit the due amount with the court conducting the execution.

(3) On the basis of a decision in which the execution debtor's debtor is ordered to deposit the amount due with the court that is carrying out the execution, i.e. with the notary public, at the proposal of the execution creditor to whom the claim has been transferred, the execution shall be carried out against the execution debtor's debtor and the money collected in this execution shall, after the payment of the costs of the proceedings, be transferred ex officio to the court carrying out the execution. The court is to be informed of such remittance.

### **b) Transfer for Payment**

#### **Execution Creditor's Authorisations**

#### Article 165

(1) The transfer of a claim for payment shall authorise the execution creditor to seek settlement of the amount stated in the writ of execution or in the special ruling on transfer from the execution debtor's debtor, if such amount is due, to undertake all actions necessary for the preservation and realisation of the transferred claim and to avail himself of the rights related to the lien provided as security for such claim.

(2) The transfer of a claim for payment shall not authorise the execution creditor to enter into a set-off at the execution debtor's expense, to cancel the execution debtor's debt or to otherwise dispose with the transferred claim, nor to enter into an agreement with the execution debtor's debtor that a decision on the claim, should it be contested, should be reached by an arbitration.

(3) The execution debtor's debtor can only raise the same objections against the execution creditor on whom the claim has been transferred for payment which he would have been able to raise against the execution debtor.

(4) The assignment of a transferred claim, undertaken by the execution debtor after the transfer, shall not effect on the rights of the execution creditor acquired by the transfer.

### **Transfer for Payment of a Claim Entered into a Public Register**

#### Article 166

The transfer for payment of a claim entered into the land register or other public register into which title on real estate is entered, shall be entered ex officio.

### **Conditionality of the Obligation of the Execution Debtor's Debtor by Surrender of Things**

#### Article 167

(1) If the obligation of the execution debtor's debtor to pay a claim depends on the execution debtor's obligation to surrender to him a certain thing in the execution debtor's possession, and this obligation is determined by a legally effective judgement, the court shall, at the proposal of the execution creditor to whom the claim has been transferred for collection, order the execution debtor to surrender the thing to the court for transfer to the execution debtor's debtor.

(2) The court shall, upon the execution creditor's proposal, carry out execution for the surrender of things against the execution debtor who has not surrendered a thing.

### **Informing the Execution Debtor on an Action for the Settlement of a Transferred Claim**

#### Article 168

An execution creditor who has filed an action for the collection of a transferred claim shall, without delay, inform the execution debtor of the instituted litigation. Otherwise he shall be liable for damages sustained by the execution debtor by this oversight.

### **Lateness in Collection of Transferred Claim**

#### Article 169

(1) An execution creditor who fails to care for the collection of a transferred claim shall be liable for damages incurred to another creditor who has a lien or some other right to be settled from the claim.

(2) The court may, in the case referred to in paragraph 1 above, at the other creditor's proposal, revoke the decision on the transfer of the claim to the disorganised execution creditor and transfer the claim to another creditor.

### **Payment to the Execution Creditor**

#### Article 170

(1) An execution creditor to whom the claim has been transferred for collection shall be paid from the funds deposited with the court or the notary public.

(2) Payments to the execution creditor and other persons whose rights cease with the implementation of execution shall be carried out by the appropriate application of the provisions of Articles 144 and 145 hereof.

### **c) Transfer in place of Payment**

#### Article 171

(1) An attached claim shall be transferred to the execution creditor by transfer instead of payment up to the transferred amount, with the effect of assignment of the claim with compensation.

(2) If the transferred claim is secured by a lien entered in the land register or some other public register in which rights on real estate are entered, the court shall, ex officio, transfer the execution debtor's rights to the execution creditor and delete the lien entered in favour of the execution debtor.

(3) The execution creditor to whom the claim has been transferred in place of payment shall collect the claim according to the rules applicable to claims transferred for payment, provided that the money obtained by the realisation of the claim is paid directly to the execution creditor, save in the case referred to in paragraph 4 above.

(4) It shall be considered that an execution creditor to whom a claim has been transferred in place of payment has been settled by the sole transfer, in the amount of the claim, save if several execution creditors or other creditors who are paid by the transferred claim have taken part in the execution proceedings. If such persons take part in the execution proceedings, the execution creditor to whom the claim has been transferred in place of payment shall be considered to be the execution creditor to whom the claim has been transferred for payment.

(5) The circumstance that the claim has been transferred to the execution creditor in place of payment does not effect the execution debtor's responsibility for the truthfulness and collectability of the transferred claim.

## **6. Special Provisions on Execution on Pay and Other Permanent Monetary Income**

### **Application of the Provisions of this Title**

#### Article 172

The provisions of sections 1 to 3 of this Title shall apply on the execution on pay and other regular money income, save if otherwise provided for by the provisions of this section.

### **Writ of Execution**

#### Article 173

(1) The writ of execution on pay shall determine the attachment of a certain portion of the salary and order the employer who pays the execution debtor's salary to pay, i.e. keep paying, the amount for which execution has been determined to the execution creditor, upon the legal effectiveness of such writ of execution.

(2) The writ of execution shall also apply to any increase in pay which might occur after the delivery of the writ of execution.

## **Execution When Several Persons Enjoy the Right to Maintenance**

### **Article 174**

(1) If the right to legal maintenance, i.e. the right to an income due to the loss of maintenance caused by the death of the maintenance provider, is claimed from the same execution debtor by several persons, and if the total amount of their claims exceeds the amount of the salary that can be subject to execution, the execution shall be ordered and carried out in favour of each of these execution creditors in proportion to the amounts of their respective claims.

(2) If, after the implementation of execution on pay or on some other regular money income has begun, a new motion for execution on the claim referred to in paragraph 1 above is filed, the court shall sua sponte amend the previously reached writ of execution in the sense of paragraph 1 above and determine the amount which shall be paid to individual execution creditors in the future.

(3) In the case referred to in paragraph 2 above, the writ of execution shall be delivered to a previous execution creditor as well, who shall have the right of appeal against such writ of execution.

## **Place of Payment**

### **Article 175**

(1) Claims for which non-cash payments are not prescribed shall be collected by the execution creditor directly at the till at which the execution debtor's salary is paid.

(2) The execution creditor has the right to require that the retained amount is paid to him by post at an address provided by him or to a certain account with a bank, with a deduction for the costs of the transfer.

## **Termination of Work**

### **Article 176**

(1) When the execution debtor's employment terminates, the execution ruling shall also have an effect against any other employer with whom the execution debtor enters into an employment contract, from the day on which that employer is served the writ of execution.

(2) The execution debtor's prior employer shall be obliged to deliver the writ of execution, without delay, to the new employer by registered mail with a return delivery note and inform the court of this.

(3) The prior employer shall, if he is not cognizant of the new employer, without delay inform the court about the termination of the employment contract. The court shall inform the execution creditor of this and set a deadline within which he shall be obliged to acquire information on the new employer.

(4) If the execution creditor fails to inform the court of the new employer within the set deadline, the court shall suspend the execution.

## **Employer's Liability for Failed Attachment and Payment of Due Instalments**

### Article 177

- (1) The execution creditor may put forward a motion for the court to pass a ruling in the execution proceedings ordering the employer to pay to him all the instalments which he failed to attach and pay in accordance with the writ of execution.
- (2) The motion referred to in paragraph 1 of this Article may be put forward by an execution creditor before the termination of execution proceedings.
- (3) The execution creditor may, on the basis of a legally effective ruling referred to in paragraph 1 above, seek execution against the employer in the same execution proceedings.
- (4) An employer who failed to act in accordance with the writ of execution or who failed to act in accordance with Article 176, paragraphs 2 and 3 of this Act, shall be liable for the damages so incurred to the execution creditor.

## **Attachment Upon Execution Debtor's Consent**

### Article 178

- (1) A debtor may, by way of a legalised document, render his consent that his salary be attached, partially or in full, for the collection of the creditor's claim, and that payments be made directly to the creditor in the manner stipulated in such document. Such document shall be issued in one copy, it shall have the meaning of a legal action referred to in Article 72, paragraph 1, hereof and the legal effect of a writ of execution.
- (2) The creditor shall deliver the document referred to in paragraph 1 above to the employer with the effect of delivery of a writ of execution, by registered mail with a return delivery note or by way of a notary public.
- (3) By way of derogation from the provisions of paragraph 1 above, attachment on the basis of the debtor's consent shall have no effect on the implementation of execution on pay for the settlement of claims on the basis of legal maintenance, damages due to impaired health or reduced, i.e. lost, ability to work, and damages for lost maintenance due to the death of the maintenance provider.
- (4) The document referred to in paragraph 1 above shall have the authority of an enforcement title document pursuant to which execution against the debtor may be sought on other objects of execution as well.
- (5) The provisions referred to in paragraphs 1 to 4 above shall apply, as appropriate, to a guarantor who has rendered the consent referred to in paragraph 1 above.

## **Application of the Provisions of this Section**

### Article 179

The provisions of this section shall, as appropriate, apply to execution on other execution debtor's regular monetary incomes.

## **7. Execution on a Claim Against an Account with Banks and other Legal Persons Carrying out Payment Operations**

### **Determination of the Execution and Delivery of the Writ of Execution**

#### Article 180

(1) Execution on a monetary claim that the execution debtor has against a giro account, a foreign currency account and other accounts with banks, shall be determined so that a bank shall be ordered by a writ of execution to pay the amount for which the execution is determined to the execution creditor. This ruling shall have the effect of a writ of execution by which the attachment of a monetary claim and the transfer for payment are ordered.

(2) The writ of execution referred to in paragraph 1 above shall specify the execution debtor's account number from which payments shall be made and the execution creditor's account number to which such payments shall be made, or some other way of effecting payment.

(3) The writ of execution shall simultaneously be served on the execution creditor, the execution debtor and the bank. If, upon delivery of the writ of execution, there are no funds exceeding the amount for which execution has been ordered available in the execution debtor's account, the bank may not make any payments upon the execution debtor's order from his account to third parties.

(4) The execution debtor may ask for deferment of execution. The court shall pass its decision on the motion for deferment of execution, filed within the deadline set for filing an appeal against the writ of execution, within eight days. If it adopts this motion, it shall forthwith deliver the ruling on deferment to the bank. The ruling on deferment may, if necessary, be notified to the bank by fax, or in some other appropriate manner. Such ruling shall be delivered to the bank regardless of this notification.

(5) If the bank does not receive a ruling on deferment of execution, a ruling repealing the writ of execution or a ruling on the suspension of execution, within thirty days from the date of receipt of a legally ineffective writ of execution, it shall pay the attached amount to the execution creditor.

(6) The execution creditor shall, upon the delivery of a writ of execution to the bank, obtain rights of lien over the execution debtor's claim against the bank to pay funds from its account, up to the amount of the claim in execution. The bank may not, as long as such execution creditor's right of lien subsists, effect any payments from the execution debtor's account under any orders received prior to or after receiving the writ of execution, save if creditors have, under such payment orders, obtained rights of lien on the execution debtor's claim against the bank.

(7) The provisions of Article 154 hereof shall apply, as appropriate, to the execution referred to in paragraph 1 above.

### **Implementation of Execution**

#### Article 180 a

(1) It shall be considered that the execution has been implemented upon the delivery of the writ of execution to the bank (Article 180, paragraph 3). In this case the provision of Article 68, paragraph 2 of this Act shall not apply.

(2) The bank is obliged to notify the court and the execution creditor, within eight days of the receipt of the writ of execution, that there are no or that there are not sufficient funds in the account to implement the writ of execution in full.

(3) The provisions of Article 206 hereof shall apply as appropriate.

(4) If the execution creditor's claim has not been settled within six months from the delivery of the writ of execution to the bank, and if he fails to propose another means and object of execution, the court shall suspend the execution.

(5) Possible disputes between parties, i.e. between the parties and the bank, on whether the bank has acted in full compliance with the writ of execution, and especially on whether the execution creditor's claim has been settled in fully, shall be resolved in civil proceedings.

### **Obligation to Supply Information on Accounts**

#### Article 181

(1) The execution debtor shall be obliged to deliver, upon the execution creditor's written request, written information on all his accounts and the legal persons with which he keeps such accounts, within eight days from the receipt of this request.

(2) The bank shall be obliged to deliver information on the execution debtor's giro account, foreign currency account or other account upon the court's request.

### **Responsibility of the Bank**

#### Article 182

The provisions of Article 177 hereof shall apply, as appropriate, to the bank's liability for failing to comply with the writ of execution.

### **Attachment of Accounts on the Basis of Debenture Bonds**

#### Article 183

(1) A debtor may, by way of a document on which his signature has been notarized, render his consent that all of his accounts which he keeps with banks be attached for the collection of a certain creditor's claim and that payments from such accounts be made directly to the creditor in the manner stipulated in such document. Such document shall be issued in one copy and it shall have the effect of a legally effective writ of execution by which claims on accounts are attached and transferred to the execution creditor for settlement.

(2) Other persons may, at the same time with the debtor or subsequently, assume the obligation to the creditor in the capacity of joint debtors. This may be done by rendering a written statement which contains their notarised signatures, and which materially corresponds to the debtor's statement, in the document referred to in paragraph 1 above or in the additional documents related to this document.

(3) The document referred to in paragraphs 1 and 2 above shall be delivered to the bank by the creditor with the effect of delivery of a legally effective writ of execution, directly to the registry office, by registered mail with a return delivery note or by way of a notary public.

(4) The creditor may transfer his rights from the document referred to in paragraph 1 above to other persons by a document on which his signature is notarised, in which case such persons acquire the rights that the creditor had under such document.

(5) The creditor may, at his own choice, on the basis of the documents referred to in paragraphs 1 and 2 above, require from the bank, in the manner provided for in paragraph 3 above, payment of his claim from the debtor or joint debtor, or from the debtor and the joint debtor, and the bank shall be obliged to effect payment to the creditor if there are funds available in the debtors' accounts or immediately notify the creditor that it is not possible to effect payment. The provisions of Article 211 hereof shall apply as appropriate when it is not possible to effect payment.

(6) The creditor may ask the bank to return to him the document referred to in paragraph 1 above if his claim has not been fully settled. In this case the bank shall indicate on such document from which account what amount of costs, interest and principal have been paid. If the creditor has fully settled his claim pursuant to the document referred to in paragraphs 1 and 2 above, the bank shall notify the debtor and the joint debtor of this and deliver the document to him upon his request.

(7) The documents referred to in paragraphs 1 and 2 above shall have the capacity of an enforcement title document pursuant to which execution against the debtor or joint debtors may be sought on other objects of execution as well.

(8) The provisions of Article 178, paragraph 3, of this Act shall apply as appropriate to the execution referred to in paragraph 1 above.

#### **Attachment of Accounts on the Basis of Blank Debenture Bonds**

##### Article 183 a

(1) A debtor may, by way of a document on which his signature has been notarized, render his consent that all of his accounts which he keeps with banks be attached for the collection of a creditor's claim, the amount of which shall be subsequently entered into the document, and that payments from such accounts be made in the manner stipulated in such document directly to the creditor stipulated in the document or to a creditor who shall be subsequently stipulated (blanc debenture bond). Such document shall be issued in one copy.

(2) The document referred to in paragraph 1 above, with subsequently entered amount of claim and information on the creditor, shall be delivered to the bank by the creditor with the effect of delivery of a legally effective writ of execution, directly to its registry office, by registered mail with a return delivery note or by way of a notary public. Upon the delivery of such document the claim against the account shall be attached and transferred to the creditor.

(3) The provisions of Article 183, paragraph 2 and paragraphs 4 to 8, of this Act, shall apply, as appropriate, to blanc debenture bonds as well.

(4) The form and the content of the document referred to in paragraph 1 above, with an indication of maximum amounts which may be entered into the various types of this document, shall be prescribed by the Minister of Justice.

## **Application of the Provisions of this Title**

### **Article 184**

The provisions of sections 1 to 3 of this Title shall apply, as appropriate, to execution on claims against an account with a bank or other legal person that carries out payment operations, save if otherwise provided for by the provisions of this section.

## **Title Thirteen**

### **EXECUTION ON CLAIMS TO SURRENDER OR DELIVER CHATTELS OR ON CLAIMS TO SURRENDER REAL ESTATE**

#### **1. General Provisions**

##### **Territorial Jurisdiction**

### **Article 185**

The territorial jurisdiction to adjudicate on motions for execution on the execution debtor's claim to surrender a certain chattel or real estate to him or to deliver a certain quantity of chattels to him, and to implement the execution, shall lie with the court on whose territory these things are located.

##### **Actions of Execution**

### **Article 186**

An execution on the execution debtor's claim referred to in Article 185 hereof shall be carried out by attachment of this claim, its transfer to the execution creditor and its sale.

##### **Effect of Transfer**

### **Article 187**

The transfer of an attached execution debtor's claim shall have the effect of the transfer of the execution debtor's monetary claim for payment.

##### **Immature Execution Debtor's Claims and an Action Against the Execution Debtor's Debtor**

### **Article 188**

(1) When the execution creditor's claim has not yet fallen due, the court shall order the surrender of the thing upon maturity.

(2) Even before the legal effectiveness of the ruling on the transfer of the claim, the execution creditor may file an action against the execution debtor's debtor who is not willing to surrender the things and demand the surrender, if he has no enforcement title document on the obligation to surrender.

(3) If the writ of execution does not become legally effective or if it subsequently becomes repealed or amended, the civil court shall reject the action referred to in paragraph 2 above.

## **Application of Provisions on Execution on Monetary Claims**

### Article 189.

The provisions on execution on monetary claims shall apply, as appropriate, to the execution on claims to surrender or deliver chattels or to surrender real estate, save if otherwise provided for by the provisions of this Title.

## **2. Chattels**

### **Surrender for Safekeeping**

#### Article 190

(1) The court shall, in the ruling ordering the transfer of the execution debtor's claim, order the execution debtor's debtor to surrender chattels to which the claim relates to an official person or some other person for safekeeping.

(2) The provisions of Article 133 of this Act shall apply, as appropriate, to safekeeping.

### **Sale of Things and the Settlement of the Execution Creditor**

#### Article 191

The sale of things surrendered to the execution administrator or keeper in the sense of the provisions of Article 190 hereof and the payment of the execution creditor, shall be conducted in accordance with the provisions of this Act on to the execution on chattels.

## **3. Real Estate**

### **Surrender to the Execution Creditor**

#### Article 192

(1) The court shall, in the ruling ordering the transfer of the execution debtor's claim, order the execution debtor's debtor to surrender the real estate to which the claim relates to the execution creditor.

(2) The execution creditor shall be obliged to manage the real estate in the name and for the account of the execution debtor with due care, and submit to the court, upon its request, an overview of the management.

### **Sale and Settlement of the Execution Creditor**

#### Article 193

(1) The execution creditor may, in order for his claim to be settled, within a time limit which may not be longer than thirty days from the day the real estate was surrendered to him, propose to the court the sale of the real estate.

(2) If the execution creditor fails to propose to the court the sale of the real estate within the set deadline, the court shall suspend the execution.

(3) Real estate shall be sold and the execution creditor settled in accordance with the provisions of this Act on the execution on real estate.

## **Title Fourteen**

### **EXECUTION ON SHARES WITHOUT SHARE CERTIFICATES AND ON EQUITY SHARES IN COMPANIES**

#### **Territorial Jurisdiction**

##### Article 194

The territorial jurisdiction to adjudicate on motions for execution on shares without share certificates and on equity shares in companies, and for the implementation of the execution, shall lie with the court on whose territory the seat of the joint stock company, i.e. other company, is located.

#### **Actions of Execution**

##### Article 195

(1) Execution on shares without share certificates shall be conducted by attachment of the shares, their appraisal, sale and settlement of the execution creditor.

(2) Execution on an equity share in a company shall be conducted by attachment of the share, its appraisal, sale and settlement of the execution creditor.

#### **Attachment of Shares**

##### Article 196

(1) The attachment of shares without share certificates shall be done by serving the writ of execution on the joint stock company which keeps the book of such shares. By attachment, the execution creditor shall obtain a lien on the share.

(2) A joint stock company referred to in paragraph 1 above shall enter into the book of shares that the registered share is attached on the same day when it was served the writ of execution. It shall be obliged to, without delay, inform the court of the entry that has been made or the reasons for which it was not possible to do this. The joint stock company has no right of appeal against a writ of execution.

(3) After being served the writ of execution the joint stock company referred to in paragraph 1 above may not, with respect to the attached shares, make any entries in the book of shares on the basis of the execution debtor's disposal of the shares. It shall be obliged to, without delay, inform the court of any change with respect to the attached shares, especially regarding compulsory execution for collection of some other claim or regarding the security of any such claim.

(4) A joint stock company referred to in paragraph 1 of this article shall be liable for the damage that might be incurred to the execution creditor because it has failed to act in accordance with the provisions of paragraphs 2 and 3 above. The members of the management and other responsible persons of the joint stock company shall also be personally liable for the damage. A caution on the liability of the joint stock company, of the members of the management and of other responsible

persons of the joint stock company, shall be entered into the writ of execution. The execution creditor may, up to the end of execution proceedings, ask the court to adjudicate on his application for damages within these proceedings. On the basis of a legally effective ruling on the application for damages the execution creditor may seek compulsory execution against the joint stock company, the members of its management board and other responsible persons. After the termination of execution proceedings, an execution creditor may realise his claim for compensation of damages by bringing an action.

(5) If it deems it necessary, the court shall, at the execution creditor's motion, threaten the joint stock company and the members of its management board with a monetary fine or imprisonment, if they fail to act in accordance with the provisions referred to in paragraphs 2 and 3 above.

(6) The execution debtor is prohibited to dispose of attached shares. A caution on this ban and the criminal consequences of infringing it shall be entered into the writ of execution.

(7) The provisions of Article 154 hereof shall apply, as appropriate, to the execution on a share for which no share certificate has been issued.

(8) The court may, by a conclusion, order a joint stock company to enable the execution administrator to inspect the book of shares and other documents of the company. Penal measures set out in this Act can be applied against a joint stock company, the members of the management board and other responsible persons who prevent or distract the execution administrator. The court shall be obliged to take all possible measures to preserve the confidentiality of the data obtained according to the regulations on the safekeeping of business secrets.

### **Assessment and Sale of Shares and Settlement of the Execution Creditor**

#### Article 197

(1) An attached share can be sold at an auction or by direct agreement. The execution administrator, or a person authorised to sell shares whom the court has entrusted with the sale, shall sell the share by direct agreement. The execution administrator and the person authorised to sell the shares shall enter into an agreement on the sale of shares in the name and for the account of the execution debtor, pursuant to a conclusion of the court authorising them to do so.

(2) If the share is sold at an auction or by direct agreement, it previously has to be assessed. The execution administrator shall ascertain the market value of the share via an expert witness or an authorised appraiser. A person authorised to sell shares, whom the court has entrusted with the sale, determines the price of sale himself, paying attention to market conditions.

(3) The assessment, the ascertainment of the selling price and the sale of the share, and the execution creditor's settlement, shall be done with the appropriate application of this Act's provisions relating to execution on chattels.

### **Execution on an Equity Share in a Company**

#### Article 198

The provisions of Articles 196 and 197 of this Act shall apply, as appropriate, to the execution on an equity share in a company.

## **Title Fourteen a**

### **EXECUTION ON SECURITIES ENTERED IN THE ACCOUNTS OF THE CENTRAL DEPOSITORY AGENCY**

#### **Territorial Jurisdiction**

##### Article 198 a

(1) The territorial jurisdiction to adjudicate on motions for execution on dematerialized securities, i.e. shares, bonds, finance papers, treasury notes, commercial papers, certificates of deposit and other series securities (hereinafter referred to as “securities”) that are entered into the accounts of the Central Depository Agency or other agency (hereinafter referred to as “Agency”), and for the implementation of this execution, shall lie with the court on whose territory the permanent residence or seat of the execution debtor in the Republic of Croatia is located.

(2) When the execution debtor is the Republic of Croatia or other legal persons with public authorities that act throughout the entire territory of the country, the jurisdiction for the execution referred to in paragraph 1 above shall lie with the court on whose territory the execution creditor has its permanent residence or seat in the Republic of Croatia. If the execution creditor does not have its permanent residence or seat in the Republic of Croatia, the territorial jurisdiction for determining and implementing the execution against the said legal persons shall lie with the court on whose territory the seat of the Agency, with whose accounts the securities subject to execution are entered, is located.

#### **Actions of Execution**

##### Article 198 b

The execution on securities shall be conducted by attachment of the securities, their appraisal, sale and the execution creditor’s settlement.

#### **Attachment of Securities**

##### Article 198 c

(1) The attachment of securities entered into the Agency’s accounts shall be done by serving the writ of execution on the Agency, with the appropriate application of the provisions of Article 196, paragraphs 2 to 6 and paragraph 8, of this Act. By attachment, the execution creditor shall obtain a lien on the securities, which, in the writ of execution, must be defined by quantity, type and gender (if dematerialized shares are in question), i.e. with an indication of the sign under which they are kept with the Agency.

(2) If securities which are the object of execution are debt securities (bonds, treasury notes, financial papers, certificates of deposit and other securities with a monetary obligation), the court shall also serve the writ of execution on the issuer as the execution debtor’s debtor. In this case the provisions of Articles 152 to 155 of this Act shall apply as appropriate.

(3) If the securities have been entered into the owner’s position registered with a member participant, i.e. authorised company (Article 35 of the Securities Market Act), the agency shall,

without delay, inform the court of the impossibility of attachment and with which authorised company the securities are registered.

#### Article 198 d

(1) If the execution creditor does not have at his disposal the information on the quantity, type and gender, i.e. sign, of the execution debtor's securities that are entered into the accounts of the Agency, he may propose to the court to pass a ruling by which it shall provisionally attach all securities entered into all accounts of the execution debtor with the Agency at the owner's position registered with the issuer (motion for provisional attachment).

(2) The court shall, by the ruling on provisional attachment, ask the Agency to provide, within eight days, information on the type and sign of the execution debtor's securities entered into the accounts kept with the Agency, the registration of the owner's position, the gender, quantities, real rights and holders of such rights, the limits to real rights and, if possible, of their market value on a regulated public market or stock exchange, with an indication of the trade on the basis of which this value was assessed.

(3) The agency may not inform the execution debtor that the information referred to in paragraph 2 above have been sought.

(4) Upon receipt of the required information, the court shall inform the execution creditor of it and he shall, within eight days, propose the execution on securities defined by quantity, type and gender, i.e. by the sign of the securities. The court shall, upon such motion, pass a writ of execution on certain securities and repeal the ruling on provisional attachment of securities referred to in paragraph 2 above.

(5) The motion for provisional attachment referred to in paragraph 1 above and the motion for attachment referred to in paragraph 4 above shall, in the sense of regulations on court fees, be considered as one motion.

(6) It shall be considered that the attachment of securities referred to in paragraph 4 above has been carried out upon the service of the ruling on provisional attachment, referred to in paragraph 2 above, to the Agency.

(7) The Agency has the right to recovery its costs incurred by undertaking the actions referred to in the provisions of this Article. The Agency can file the request for recovery of costs to the court within fifteen days from the date of performance of an action. These costs shall make part of the costs of execution proceedings.

(8) The provisions of the previous paragraphs of this Article shall apply, as appropriate, to authorised companies that, in accordance with the Securities Market Act, provide operations related to custody of shares.

#### **Assessment and Sale of Securities and Settlement of the Execution Creditor**

#### Article 198 e

(1) The court shall, in the writ of execution referred to in Article 198 d, paragraph 4, of this Act, regardless of the execution creditor's motion, appoint an authorised person who shall be entrusted with the assessment and sale of the attached securities.

(2) The authorised person shall, pursuant to the ruling referred to in paragraph 1 above, in his own name and for the account of the person entered as their owner into the Agency's accounts, i.e. the authorised company's custody books, try to undertake the sale of the attached securities on the stock exchange or at the regulated public market, by way of carrying out a public auction at the stock exchange or in some other manner provided for by the law. If this person fails to do so within thirty days, he shall inform the court of this and continue the sale attempts until ordered otherwise by the court.

(3) The moneys achieved by the sale of securities shall be remitted to the court's account determined in the writ of execution referred to in Article 198 d, paragraph 4, hereof.

(4) When the securities have been sold pursuant to the writ of execution the Agency shall act as if the sale has been done upon their owner's order.

### **Appropriate Application of the Provisions on Execution on Chattels**

#### Article 198 f

Save if otherwise provided for by the provisions of this Title, the provisions of this Act on execution on chattels shall apply, as appropriate, to the execution on securities entered into the accounts with the agency.

## **Title Fifteen**

### **EXECUTION ON OTHER PROPERTY OR REAL RIGHTS**

#### **Territorial Jurisdiction**

##### Article 199

(1) The territorial jurisdiction to adjudicate on motions for execution on patents, technical advancements, usufruct or some other right of the execution debtor and for the implementation of the execution, shall lie with the court on whose territory the permanent residence of the execution debtor is located, if the execution debtor does not have permanent residence in the Republic of Croatia, the jurisdiction shall lie with the court on whose territory the execution debtor's temporary residence is located.

(2) The provisions of paragraph 1 above relating to permanent residence shall apply to the seat of a legal person as well.

(3) The territorial jurisdiction to adjudicate on the execution on shares with share certificates shall be determined in accordance with the provisions of this Act on the execution on chattels.

#### **Actions of Execution**

##### Article 200

The execution on rights referred to in Article 199 hereof shall be carried out by attachment of these rights and their liquidation in accordance with the provisions on the sale of chattels.

## **Title Sixteen**

### **SPECIAL PROVISIONS ON EXECUTION ON THE PROPERTY OF LEGAL PERSONS**

#### **1. Exemption from Execution and Restriction of Execution**

##### **Real Estate**

###### **Article 201**

(1) Real estate used as office space and real estate not built on or real estate refurbished for the performance of strictly special activities shall not be considered as things that are necessary for the legal person to conduct its activities. If the same real estate (e.g. a building) is being used as office space and for carrying out a special activity, execution can be carried out on the part of the building being used as office space.

(2) Real estate built or refurbished for the performance of strictly special activities can be the object of execution if their alienation will not halt the execution debtor's business activities, especially if what the execution debtor obtains from the business activities carried out in this real estate can be made up by procurement from the market or if business premises in which the same activity can be done can be leased on the market.

(3) Real estate that serve for the performance of one of the execution debtor's several activities, the alienation of which will not stop the execution debtor's other activities or businesses, shall not be considered as things essential for the carrying on of his business.

#### **Chattels and Rights of Legal Persons Carrying Out their**

##### **Activities In Order to Make Profit**

###### **Article 202**

(1) Execution against legal persons carrying on their business in order to make profit can be ordered on the following chattels and rights:

1. cash and securities, without restriction;
2. ready made products and semi finished products meant for sale, without restriction;
3. raw materials, semi finished products meant for processing and production materials (oil, lubricant and the like) above the amount necessary to the execution debtor for an average month's production, if these things cannot be regularly procured on the market and if they are necessary for the proper continuation of production;
4. other chattels not necessary for the performance of the execution debtor's business;
5. patents, technical advances and other rights, without restriction.

(2) The court shall, upon a legal remedy lodged by the execution debtor against a writ of execution, if the object of execution has been determined in such writ of execution, determine whether the

conditions for restriction of execution referred to in paragraph 1, subparagraph 3 of this Article, have been met, i.e. upon the execution debtor's motion after certain things have been attached by individual actions of execution. The execution debtor shall file this motion within a period of eight days from the day of carrying out the action of execution.

(3) It shall not be considered that a chattel is necessary for the performance of an execution debtor's business activities if it serves for carrying on a business activity provided by other persons on the market with appropriate chattels, or if they can be hired on the market.

(4) It shall not be considered that a vehicle is necessary to a legal person that performs transport activities, i.e. leases out vehicles, save if the activities of this person shall be reduced by more than two thirds due to the execution on this vehicle.

### **Chattels and Rights of Other Legal Persons**

#### Article 203

(1) Execution against a legal person not carrying on its business in order to making profit can be ordered on its rights and chattels that are not essential for carrying on its business.

(2) In the case referred to in paragraph 1 above, the provisions of Article 202, paragraph 1, subparagraphs 1, 4 and 5 and paragraphs 3 and 4 of this Act shall be apply as appropriate.

### **Scope of Execution on Monetary Funds in the Account of a Legal Person**

#### Article 204

(1) Execution to realise a monetary claim against a legal person can be carried out on all funds in its accounts with a bank and on the Kuna equivalent of the foreign currency funds that it has in its foreign currency account.

(2) Execution cannot be ordered on funds in the account of the State, municipalities and cities kept with banks or on the Kuna equivalent of foreign currency funds that these persons have in their foreign currency account, if these funds are necessary for the carrying out of these legal persons' principal tasks.

(3) The provision of paragraph 2 above shall also apply to the bodies of the legal persons referred to in the said provision.

(4) The court shall, upon the objection of a legal person or body referred to in paragraphs 2 and 3 above, hear the parties and, when necessary, produce other evidence on the circumstances upon which the application of the provisions of paragraphs 2 and 3 above depends.

(5) The court shall, after the checking referred to in paragraph 4 above, by a ruling determine the amounts up to which the execution for the collection of the execution creditor's claim can be carried out at certain intervals.

(6) An appeal against the ruling referred to in paragraph 5 above shall not delay its implementation.

## **2. Execution on Funds in the Account of a Legal Person with a Bank**

### **Territorial Jurisdiction**

#### Article 205

(1) The territorial jurisdiction to adjudicate on motions for execution on funds in the execution debtor's accounts with a bank and for the implementation of the execution shall lie with the court on whose territory the execution debtor's seat is located.

(2) When the execution debtor is the Republic of Croatia or other legal persons with public authorities that act throughout the entire territory of the country, the jurisdiction for the execution referred to in paragraph 1 above shall lie with the court on whose territory the execution creditor has its permanent residence or seat in the Republic of Croatia. If the execution debtor does not have its permanent residence or seat in the Republic of Croatia, the territorial jurisdiction for the execution against the Republic of Croatia shall lie with the court in Zagreb, and the jurisdiction for the execution against other legal persons with public authorities shall lie with the court on whose territory their seat is located.

### **Order of Collection**

#### Article 206

(1) The bank shall carry out the collection successively, according to the time of receipt of the writ of execution.

(2) The bank shall keep special records of the chronology of writs of execution, by the date and time of their receipt, and it shall issue to the execution creditor, upon his request, a certificate of the position of his claim in this order.

(3) The bank may not carry out the execution debtor's order before the settlement of the claim determined in the writ of execution, save if otherwise provided for by a special law.

(4) A document for which this is foreseen by a special law shall be equal to a writ of execution.

(5) If the execution is postponed upon the execution debtor's request, an appropriate amount of funds shall be separated in order to keep the order of collection. So separated funds may only serve for the settlement of a claim for whose collection they have been separated.

(6) The bank shall be responsible to the execution creditor for damage it incurs to him by violating the provisions of this Act on the scope, order and manner of settling the execution creditor's claim.

(7) The court shall decide in civil proceedings on the request for compensation of damages referred to in paragraph 6 above.

### **Designation of Accounts**

#### Article 207

(1) The execution creditor shall be obliged to demand in the motion for execution that the execution be carried out on monetary claims in all execution debtor's Kuna and foreign currency accounts with all banks with which the execution debtor keeps accounts, with an indication of the number

and the bank with which the execution creditor's keeps the account for ordinary operations that he has determined to be the account for the payment of statutory obligations and public income, for the collection of securities and payment instruments and orders pursuant to the execution of court's decisions and other enforcement title documents (the main account).

(2) If the account referred to in paragraph 1 above is closed, the bank that has received the ruling shall determine the number of the execution creditor's new main account and deliver the writ of execution to the bank that keeps this account, such bank shall be obliged to act upon it as if it received it directly from the court.

(3) In his motion for execution the execution creditor may ask the court to provisionally attach, by the writ of execution, all the execution debtor's claims against accounts that serve for the performance of payment transactions as designated in such motion, up to the amount of the claim for the collection of which the execution has been ordered.

(4) The court shall, pursuant to the motion referred to in paragraph 3 above, pass a ruling on the provisional attachment of all the execution debtor's claims against his accounts as stated in such motion, up to the amount of the claim for the collection of which the execution has been ordered and serve it on all the banks with which they are kept.

(5) The provisions of Article 154 hereof shall apply, as appropriate, to the case referred to in paragraphs 3 and 4 above.

### **Writ of Execution**

#### Article 208

(1) The bank with which the execution debtor keeps his main account (Article 207, paragraph 1) shall be ordered, by a writ of execution on monetary claims against accounts with banks, to transfer the amount for which the execution has been ordered to the execution creditor from this account and, if necessary, from all execution debtor's Kuna and foreign currency accounts kept with that bank, or, if there will not be sufficient funds on these accounts for the settlement of the execution creditor's claim, from all his accounts kept with other banks, in compliance with the provisions of this Act.

(2) Other banks who keep the execution debtor's accounts shall be obliged to, upon the request of the bank that keeps the execution debtor's main account (article 207, paragraph 1), notify this bank of funds in the accounts that they keep.

(3) It shall be considered that the execution debtor's claims against accounts with other banks referred to in paragraph 2 above are attached upon the receipt of the request referred to in paragraph 2 above, save if those claims have not been previously provisionally attached (Article 207, paragraph 5).

(4) Other banks referred to in paragraph 2 of this Article shall, upon the order of the bank referred to in Article 207, paragraph 1, of this Act, transfer the funds from the accounts they keep to the main account of this bank, in compliance with that order.

(5) The provisions of Article 180, paragraphs 4 and 5, shall apply, as appropriate, to the implementation of the provisions of this article.

## **Occasional Giving**

### Article 209

- (1) If the bank that performs payment transactions for the execution debtor has been ordered by a writ of execution to pay certain amounts at certain intervals, this bank shall perform the payments in compliance with the order contained in the writ of execution.
- (2) In the case referred to in paragraph 1 above, the order of collection of all future instalments shall be calculated according to the time of receipt of the writ of execution.
- (3) The bank shall keep special records of the writs of execution that order future occasional payments.

## **Hold of Executions**

### Article 210

- (1) A bank that performs payment transactions for the execution debtor and has received a writ of execution on the funds in the execution debtor's account, shall hold the execution up on the execution creditor's request.
- (2) In case of a hold referred to in paragraph 1 above, funds shall not be detached.

## **Procedure in Cases when there are no Funds in the Account**

### Article 211

- (1) If, at the time when a bank has been served the writ of execution, there are no funds available in the execution debtor's account, this bank shall keep the writ of execution in its records and effect the transfer when funds do come into the account.
- (2) The bank referred to in paragraph 1 above shall inform the court within eight days of there being no funds in the account. If it fails to do so it shall be liable for the damage sustained by the execution creditor.
- (3) The provisions of Article 180 hereof shall apply, as appropriate, to the implementation of this Article's provisions.

## **Execution on Joint and Several Execution Debtors**

### Article 212

- (1) If, on the basis of an enforcement title document, two or more execution debtors are jointly and severally liable, the court shall, at the proposal of the execution creditor, pass a single writ of execution against them.
- (2) If all execution debtors keep their accounts with the same bank, collection shall be effected from all those accounts at the same time by debiting the same amount from every account, provided that the sum of these amounts may not exceed the amount of the execution creditor's claim in execution. If the funds in the execution debtors' accounts are not sufficient to effect immediate collection,

collection shall be done from any account as necessary in order to settle the execution creditor's claim as soon as possible.

(3) If the accounts of the joint and several execution debtors are kept with various banks, the court shall serve the writ of execution on the one that keeps the execution debtor's account which was first stated in the motion for execution. This bank shall act in compliance with the provisions of paragraph 2 above with respect to the execution debtor whose account it keeps.

(4) If it shall not be possible to fully collect the execution creditor's claim in compliance with the provisions of paragraph 3 above, the bank that was served the writ of execution shall act in compliance with the provisions of Article 208, paragraph 2 to 5, of this Act.

(5) The provisions of Article 207 hereof shall apply, as appropriate, to the implementation of this Article's provisions.

#### Article 213

Deleted.

### **Execution on Funds in a Foreign Currency Account**

#### Article 214

If the execution is being carried out in order to collect a Kuna claim, the funds from the execution debtor's foreign currency account shall be calculated into Kuna at the exchange rate which the legal person with whom the account is kept would have used to calculate the amount in Kuna upon his request and payments shall be done under rules applicable to payments from Kuna accounts.

### **Appropriate Application of this Section to Natural Persons who Perform a Registered Activity**

#### Article 215

The provisions of Articles 205 to 215 hereof shall apply, as appropriate, to execution on funds of natural persons who perform a registered activity.

### **3. Appropriate Application of other Provisions of this Act**

#### Article 216

If the provisions of this Title do not expressly provide otherwise, other provisions of this division shall apply, as appropriate, to the execution against legal persons for the collection of monetary claims.

### **Division Three**

## **EXECUTION FOR THE REALISATION OF NON-MONETARY CLAIMS**

### **Title Seventeen**

#### **Territorial Jurisdiction**

##### **Article 216 a**

(1) The territorial jurisdiction to adjudicate on motions to adjudge judicial penalties shall lie with the court on whose territory the execution debtor's permanent residence or seat in the Republic of Croatia is located, if the execution debtor does not have his permanent residence or seat in the Republic of Croatia, the territorial jurisdiction shall lie with the court of the execution creditor's permanent residence or seat in the Republic of Croatia.

(2) If both parties have neither their permanent residence nor seat in the Republic of Croatia, the territorial jurisdiction shall lie with the court on whose territory the execution debtor's property, on which execution can be carried out for payment of judicial penalties, is located.

### **JUDICIAL PENALTIES**

#### **Adjudging Judicial Penalties**

##### **Article 217**

(1) When the debtor fails to fulfil, within a set time limit, some of his non-monetary obligations to do (facere), to tolerate (pati) and to omit (non-facere), ordered by a legally effective judgement, judicial settlement or notarial document, the court shall, in execution proceedings, at the proposal of the creditor as execution creditor, order a suitable additional time limit to the debtor as execution debtor and adjudge that the debtor shall, if he fails to fulfil his obligation within the additional time limit, be obliged to pay to the execution creditor a certain amount of money for every day of delay or any other unit of time (judicial penalty), starting from the expiry of this time limit.

(2) The additionally ordered suitable period of time referred to in paragraph 1 above shall start to run from the serving on the execution debtor of the first instance ruling by which this period is ordered. An appeal does not have any effect on the course of this period.

(3) If the execution debtor fulfils his obligation at the latest within a period of fifteen days after the legal effectiveness of the ruling referred to in paragraph 1 above, the court may, in the same execution proceedings, at the execution debtor's request filed within eight days from the day of fulfilment, reduce the amount of penalties awarded, taking account of the purpose for ordering their payment. The filing of this request shall not produce any effect on the ordering and implementation of execution on the basis of a legally effective ruling on payment of judicial penalties referred to in paragraph 1 above.

(4) Payment of judicial penalties can be sought after until execution for the realisation of a non-monetary claim has been filed for on the basis of an enforcement title document.

(5) The right to judicial penalties shall terminate from the day of filing a motion for execution referred to in paragraph 4 above. Compulsory collection of judicial penalties due to this date may be sought in the sense of the provisions of Article 208 hereof.

(6) If the execution referred to in paragraph 5 above is suspended, the execution creditor's right to seek judicial penalties shall be renewed.

(7) If the time limit within which execution can be sought under law has expired, the adjudication of judicial penalties can not be sought. If the motion for adjudication of judicial penalties has been filed within the statutory time limit, the obligation to pay judicial penalties shall exist until the execution debtor performs the due obligation.

### **Execution for the Collection of Awarded Penalties**

#### Article 218.

On the basis of a legally effective ruling on the payment of judicial penalties referred to in Article 217 hereof, the court shall, in the same execution proceedings in which it has made this ruling, at the proposal of the creditor as execution creditor, pass a writ of execution for the compulsory collection of the penalties awarded.

## **Title Eighteen**

### **EXECUTION FOR SURRENDER AND DELIVERY OF CHATTELS**

#### **Territorial Jurisdiction**

#### Article 219

The territorial jurisdiction to adjudicate on motions for execution for the surrender of one or more defined things or for the delivery of a certain quantity of replaceable things and for the implementation of execution shall lie with the court on whose territory the things are located.

#### **Execution for the Surrender of Defined Things Kept by the Execution Debtor**

#### Article 220

(1) The execution for the delivery of one or more defined things kept by the execution debtor shall be carried out so that the execution administrator shall seize these things from the execution debtor and surrender them to the execution creditor with a receipt.

(2) Execution shall be carried out in the manner referred to in paragraph 1 above also when things are kept by a third party who is willing to surrender them over to the execution administrator.

(3) If a third party is not willing to surrender things, the execution creditor may propose to the court to transfer to him the execution debtor's claim against such third party for the surrender of things.

(4) The provisions of this Act on execution on a claim to surrender or deliver chattels shall apply to the procedure following the proposal referred to in paragraph 3 above.

## **Execution for the Surrender of Defined Things that could not be found with the Execution Debtor or Third Party**

### Article 221

(1) If the things are not found either with the execution debtor or with a third party, the court shall, in the same proceedings, at the motion of the execution creditor, assess the value of these things and by a ruling order the execution debtor to pay the amount of this value to the execution creditor within a given time limit.

(2) The execution creditor may put forward the motion referred to in paragraph 1 above within eight days from the notification that the things were not found. If the execution creditor fails to put forward the motion within the said deadline, the court shall suspend the execution.

(3) On the basis of a ruling referred to in paragraph 1 above, the execution creditor may, even before it becomes legally effective, propose in the same proceedings execution for the collection of the awarded amount. This motion has to be put forward no later than fifteen days from the legal effectiveness of the ruling referred to in paragraph 1 above.

(4) If the motion referred to in paragraph 3 above is not put forward within the said time limit, the court shall suspend the execution and set aside the ruling referred to in paragraph 1 above and other actions that have been undertaken.

(5) The execution creditor may join the motion for the passing of a ruling referred to in paragraph 1 above together with a motion for execution referred to in Article 220, paragraphs 1 and 2 of this Act, in which case the execution under Article 220 hereof and the procedure referred to in this Article shall be carried out simultaneously. The court may order the execution in the sense of paragraph 3 above and begin its implementation, but it can not implement the liquidation of the attached parts of the execution debtor's property or transfer funds from his accounts before it is determined that the execution referred to in Article 220, paragraphs 1 and 2, of this Act could not have been carried out.

(6) If the execution referred to in Article 220, paragraphs 1 and 2 of this Act, is carried out, the court shall sua sponte suspend the execution and set aside the ruling referred to in paragraph 1 above and all other actions that have been undertaken in the sense of paragraph 5 above. In this case the execution creditor shall pay the costs caused by filing the motion referred to in paragraph 5 above.

(7) The parties have the right of appeal against the ruling referred to in paragraph 1 above.

## **Execution for the Delivery of Replaceable Things kept with the Execution Debtor or Third Party**

### Article 222

If the obligation to deliver a certain quantity of replaceable things kept with the execution debtor or third party has been determined under an enforcement title document, the execution shall be carried out in the same manner laid down for the surrender of defined things.

**Execution when Replaceable Things are not found  
neither with the Execution Debtor nor with a Third Party**

Article 223

(1) If things are not found neither with the execution debtor nor with a third party the execution shall be carried out with the appropriate application of the provisions of Article 221 hereof. When assessing the value of things, the need for them to be acquired somewhere else shall be taken into consideration.

(2) If there is a change in the replaceable thing's value during the execution proceedings, the execution creditor may ask the court for a new evaluation and order the execution debtor to pay the difference in value. In this case the provisions of Article 221 hereof and paragraph 1 above shall apply, as appropriate.

**Right to Claim Damages**

Article 224

The provisions of this Title do not interfere with the execution creditor's right to claim, in civil proceedings, compensation for damages incurred to him due to the failure to effect surrender or delivery of things.

**Title Nineteen**

**EXECUTION FOR THE VACATION AND SURRENDER OF REAL ESTATE**

**Territorial Jurisdiction**

Article 225

The territorial jurisdiction to adjudicate on motions for the vacation and surrender of real estate and for the implementation of execution shall lie with the court on whose territory the real estate is located.

**The Manner of Carrying Out Execution**

Article 226

(1) Execution for the vacation and surrender of real estate, referred to in Article 225 hereof, shall be conducted so that the execution administrator shall, upon removing persons and things from the real estate, surrender the real estate into the execution creditor's possession.

(2) The vacating and surrender of real estate can be started after the elapse of eight days from the day of serving the writ of execution on the execution debtor even before it becomes legally effective. If the execution debtor could not be properly served at his last known address nor in the way provided for by the provisions of Article 8, paragraphs 1 and 2 of this Act, the court shall, without delay, appoint a temporary representative for him, on whom the writ of execution shall be served.

- (3) If necessary, the court shall impose fines or order the imprisonment referred to in Article 16 hereof against persons who obstruct the implementation of the execution.
- (4) At the request of the court the police and social services shall provide all help necessary in the implementation of the actions referred to in paragraph 1 of this Article.
- (5) The provisions of Article 43 hereof shall apply on the implementation of the execution.
- (6) The necessary labour and means of transport for the implementation of the execution must be provided by the execution creditor at the execution administrator's request of which the execution creditor must be informed at least eight days before the implementation of the execution.

### **Removal of Chattels**

#### Article 227

- (1) Chattels removed from the real estate shall be surrendered to the execution debtor or, if he is not present, to an adult member of his household.
- (2) If no persons to whom chattels can be surrendered are present, or if they refuse to accept them, things shall be surrendered to another person for safekeeping at the execution debtor's expense. The execution creditor shall ensure the presence of such other person to whom removed things shall be surrendered. The execution creditor may himself take over the execution debtor's things for safekeeping.
- (3) The execution administrator shall surrender the removed things to the safekeeping of another person or to the execution creditor. The court shall confirm the execution administrator's action with a conclusion. The court may, subsequently by a conclusion, order that the things be confided to some third party in place of the person they were surrendered to.
- (4) The court shall notify the execution debtor of the surrender to another person and of the safekeeping costs, if this is possible, and grant to him a suitable time limit within which he can ask for the surrender of things upon payment of the safekeeping costs.
- (5) Together with the notification referred to in paragraph 3 above the court shall caution the execution debtor that the things shall, after the lapse of a certain period of time, be sold and the costs of safekeeping and sale settled from the sales price.

### **Sale of Chattels**

#### Article 228

- (1) The court shall sua sponte order the sale of things for the execution debtor's account if he fails to ask for their surrender within the granted period of time and fails to reimburse the safekeeping costs.
- (2) The part of the price achieved by the sale remaining after covering the costs of safekeeping and the sale of the things shall be deposited with the court or a notary public to the execution debtor's benefit.
- (3) The sale of things shall be carried out in compliance with the provisions of this Act on to the sale of chattels.

## **Execution for the Recovery of Procedural Costs**

### **Article 229**

- (1) In order to recover the costs of the execution proceedings, the execution creditor may, in the motion for execution, request that the execution on the execution debtor's chattels which are to be removed from the real estate, is ordered together with the execution referred to in Article 225 hereof.
- (2) The execution referred to in paragraph 1 above shall be ordered and implemented in compliance with the rules on execution on the execution debtor's chattels for the settlement of monetary claims.
- (3) The ruling on the recovery of the execution proceeding's costs referred to in Article 255 hereof is an enforcement title document pursuant to which the execution creditor may seek execution within the same or in special execution proceedings.

## **Title Twenty**

### **EXECUTION TO OBTAIN A CLAIM ON PERFORMANCE, TOLERATION OR NON-PERFORMANCE**

#### **Territorial Jurisdiction**

### **Article 230**

If the execution debtor is obliged under an enforcement title document to perform or tolerate certain actions or restrain himself from certain actions, the territorial jurisdiction to adjudicate on the motion for execution and for the implementation of enforcement shall lie with the court on whose territory the execution debtor has to fulfil the obligation under the enforcement title.

#### **Execution for the Fulfilment of an Obligation to do that can be Performed by Another Person**

### **Article 231**

- (1) The execution for the fulfilment of an obligation to do that can be done by another person shall be carried out so that the court authorizes the execution creditor, within a set time limit, to entrust another person, at the execution debtor's expense, to fulfil the obligation or to fulfil it himself.
- (2) In a motion for execution the execution creditor can propose that the court by a ruling orders the execution debtor to deposit in advance a certain amount necessary for the payment of costs that will arise from the performance of the action by the other person or by the execution creditor. The amount of the sum will be freely determined by the court, taking into consideration, if possible, an estimate of costs of a person authorised to perform such actions that the execution creditor will append to the motion for execution.
- (3) The court shall, at the execution creditor's or execution debtor's proposal, pass a final ruling on the amount of costs referred to in paragraph 2 above. If it is subsequently shown that, pursuant to the ruling referred to in paragraph 2 above, more funds were obtained from the execution debtor than were necessary to cover the costs of performing the action and paying for the execution proceedings, the court shall, at the execution debtor's proposal, return the difference to the

execution debtor, if it disposes of the funds obtained from the execution debtor, or order the execution creditor to return the difference, within a specified time limit, from the funds placed at his disposal.

**Execution for the Fulfilment of an Obligation to do  
that can be Performed only by the Execution Debtor**

Article 232

- (1) If the obligation determined in an enforcement title document can be fulfilled only by the execution debtor, the court shall, by a ruling, set a suitable time limit for its fulfilment.
- (2) In the writ of execution the court shall simultaneously threaten the execution debtor that it shall impose a monetary fine on him in accordance with the provisions of Article 16 hereof if he fails to fulfil the obligation within the set deadline.
- (3) If the execution debtor fails to fulfil the obligation within the set deadline, the court shall, at the execution creditor's proposal, by a ruling impose the threatened monetary fine on the execution debtor. In this ruling the court shall set a new deadline to the execution debtor for the fulfilment of his obligation and threaten to impose a new monetary fine, larger than the one previously threatened, if he fails to fulfil the obligation within the new deadline.
- (4) When determining the monetary fine within the prescribed limits the court shall take account of the significance of the action that the execution debtor was obliged to perform and to other circumstances of the case.
- (5) An execution debtor who has fulfilled his obligation within the time limit set by the court is obliged to forthwith notify the court thereof and submit doubtless evidence to that effect. The following shall be considered as doubtless evidence: an execution creditor's notarized written statement stating that the action has been performed, minutes by the notary public or the minutes made by the execution administrator on the performance of the action, the findings and opinion of an expert witness that the action has been undertaken, surrender of the work carried out by the performance of the action into deposit with the court or notary public and the like. If not, it shall be considered that the action has not been done.
- (6) Before pronouncing the monetary fine the court shall give the execution debtor the possibility to make his statement, and if necessary, hold a trial hearing for the presentation of evidence.
- (7) If an action that can be done only by the execution debtor does not depend exclusively on his will (e.g., the creation of a certain work of art and the like) the execution creditor has no right to seek the execution referred to in paragraph 1 above but only damages.

**Execution for the Fulfilment of the Obligation to Tolerate or Not to Do**

Article 233

- (1) If the execution debtor is obliged, on the basis of an enforcement title document, to tolerate the performance of some work or refrain from doing it, the court shall, at the proposal of the execution creditor who claims that the execution debtor acts against his obligation, in its ruling order the execution debtor to behave in accordance with his obligation and threaten him with a monetary fine or imprisonment, in line with the provisions of Article 16 hereof, if he continues such behaviour. The execution debtor may, in the legal remedy against the writ of execution, contest the execution

creditor's claim that he has acted against his obligation determined in the enforcement title document. The court can, if necessary, in response to the legal remedy, order a hearing for the presentation of evidence and questioning the parties.

(2) At the execution creditor's proposal and after it has determined that the execution debtor has been acting against his obligation even after the passing of the ruling referred to in paragraph 1 above, the court shall impose on the execution debtor the previously threatened monetary fine or prison sentence and simultaneously threaten with a new monetary fine or prison sentence if he again acts contrary to his obligation.

(3) If the execution debtor has been ordered already in the writ of execution to act in accordance with his obligation under the threat of monetary fine or imprisonment, it shall be considered that the conditions for imposing a monetary fine or the imprisonment referred to in paragraph 2 above have been fulfilled if the execution debtor has acted against his obligation after the writ of execution has become legally effective.

(4) If the execution debtor acts contrary to his obligation after being issued a court order, the execution creditor is obliged to propose to the court to impose a monetary fine or prison sentence on the execution debtor within 15 days from learning of such behaviour and however not later than one year from the violation of the obligation. The said time limits shall run separately for each individual action contrary to the obligation.

(5) The execution debtor shall be given the opportunity to give his statement on the execution creditor's proposal to impose on the execution debtor a monetary fine or prison sentence. The court shall, if necessary, hold a hearing for the presentation of evidence.

(6) The court shall, at the execution creditor's proposal, pronounce a monetary fine or prison sentence on the execution debtor and threaten him with new penalties until he ceases to act contrary to his obligation. The total term of the prison sentences replacing the pronounced monetary fines on the basis of the same writ of execution, i.e. the total sum of prison sentences which may be pronounced to the execution debtor on the basis of the same writ of execution, can not exceed six months.

(7) The court shall, at the execution creditor's proposal, by a ruling order the execution debtor to provide security for damage, if the execution creditor proves probable that he will sustain damage by the execution debtor's continued acting contrary to his obligation. The amount and term of security shall be determined by the court according to the circumstances of the case. The court shall, on the basis of the ruling on providing security, order the execution before the writ becomes legally effective.

(8) The execution creditor can withdraw the proposal for the imposition of an individual monetary fine or prison sentence up to the moment the decision to impose these penalties becomes legally effective. In this case it shall be considered that the proposal for the imposition of these penalties has never been made. The costs of the procedure caused by a withdrawn proposal will be borne by the execution creditor, save if otherwise agreed upon by the parties.

(9) The court shall execute the monetary fine and the imprisonment *sua sponte* upon the legal effectiveness of the ruling by which they were pronounced.

(10) Proceedings started upon the proposal referred to in paragraph 1 above shall be considered as concluded upon the legal effectiveness of the writ of execution. Proceedings started by a proposal

for the imposition of a monetary fine or imprisonment shall be considered as new proceedings, however, a new writ of execution shall not be made in these proceedings, but only the rulings referred to in paragraphs 2 and 6 above. The security ordered in the sense of the provision of paragraph 7 above shall remain in force with respect to all the proceedings referred to in paragraphs 1, 2 and 6 above, save if otherwise provided for by the ruling in which the security is ordered.

(11) The court shall, upon the parties' request, decide on the costs of each of the proceedings in the sense of paragraph 9 above, in the respective proceedings.

### **Execution for the Establishment of a Prior Status**

#### Article 234

(1) If changes that are not in compliance with the execution creditor's rights have emerged due to the execution debtor's behavior against the obligation contained in the enforcement title document, the court shall, upon the execution creditor's request, authorize him to establish, alone or, if necessary, with the help of the execution administrator, the prior status at the expense and hazard of the execution debtor.

(2) With respect to depositing the amount necessary to cover the costs of establishing a prior status and determining the final amount of such costs, the provisions on the costs of execution of an action that can be performed by another person instead of the execution debtor, shall apply.

(3) If the changes referred to in paragraph 1 above occurred after the adoption of the writ of execution, the court shall act in accordance with provision of paragraph 1 above only after it determines that the change has been caused by the execution debtor's behaviour.

### **Repeated Trespassing**

#### Article 235

(1) If execution has been carried out on the basis of an enforcement title document passed in proceedings on trespassing or if the execution debtor has willfully fulfilled his obligation, but subsequently again commits trespassing, in essence not differing from the previous one, the court shall, at the execution creditor's motion and on the basis of the same enforcement title document, if this document prohibits such future behavior, pass a new writ of execution for the establishment of the prior status, and, if necessary, threaten the execution debtor with the imposition of a monetary fine on him if he repeats the trespassing. In this case the provisions of Article 233 hereof shall apply, as appropriate.

(2) The execution creditor can put forward a motion for the passing of the ruling referred to in paragraph 1 above already in the first motion for execution on the basis of a ruling on trespassing under which the execution debtor is prohibited from repeating such actions.

(3) The execution creditor can file the motion for execution referred to in paragraph 1 above within thirty days from learning of the repeated trespassing and at the latest within one year after the repeated trespassing.

## **Right to Claim Damages**

### Article 236

The provisions of this Title do not interfere with the execution creditor's right to claim in a litigation damages incurred to him due to the execution debtor's behaviour against his obligation determined in an enforcement title document.

## **Title Twenty One**

### **EXECUTION FOR RETURNING THE EMPLOYEE TO WORK OR EMPLOYMENT**

#### **Territorial Jurisdiction**

##### Article 237

The territorial jurisdiction to adjudicate on motions for execution, on the basis of enforcement title documents by which the employer is ordered to take an employee back to work and to take a member of the execution debtor's body back into employment, shall lie with the court on whose territory the seat of the employer is located.

#### **Time Limit for filing Motions for Execution**

##### Article 238

The motion for execution referred to in Article 237 hereof can be filed within 30 days from the day when the execution creditor obtained the right to file such motion.

#### **The Manner of Carrying Out Execution**

##### Article 239

(1) Execution on the basis of an enforcement title document by which the employer is ordered to take an employee back to work or employment shall be conducted by imposing monetary fees according to the provisions of Article 16, paragraphs 2, 3, 4, 9, 11, 12 and 15 of this Act.

(2) Monetary fines shall be pronounced in compliance with the provisions of this Act on the execution for the fulfilment of an obligation that can be done by the execution debtor only.

#### **Compensation for Wages when Employees are Returned to Work**

##### Article 240

(1) An execution creditor who has filed an application to be returned to work, i.e. employment, can propose that the court makes a ruling in which it shall order the execution debtor to pay him, in lieu of wages, the monthly amounts due from the legal effectiveness of the decision until he is back at work again and to order execution for the collection of the amounts awarded.

(2) A motion for compensation can be joined with a motion for execution for returning to work or it can be filed subsequently before the end of the execution proceedings.

(3) A ruling in which the motion for compensation is accepted has the effect of a ruling by which the existence of the execution debtor's obligation is determined and the effect of a writ of execution. This ruling can be carried out before it becomes legally effective.

(4) The execution debtor can propose that the ruling referred to in paragraph 3 above be put out of force, if the circumstances pursuant to which it was passed changed after its passing.

(5) The monthly compensation for wages shall be ordered in the amount that the execution creditor would have made had he been at work. The monthly compensation includes the payment of taxes and contributions on the basis of wages.

(6) The execution creditor can also realize his right to compensation in special proceedings before the competent court.

(7) If the court has partially accepted the request for the payment of compensation, it shall instruct the execution creditor to realise the remainder in proceedings before a competent court.

## **Title Twenty Two**

### **EXECUTION BY ENTRY OF RIGHTS INTO PUBLIC BOOKS**

#### Article 241

Deleted.

#### Article 242

Deleted.

#### Article 243

Deleted.

#### Article 244

Deleted.

#### Article 245

Deleted.

## **Title Twenty Three**

### **EXECUTION BY DIVISION OF THINGS**

#### **Territorial Jurisdiction**

##### *Article 246*

The territorial jurisdiction to adjudicate on motions for execution by division of shared real estate, bequest or other shared things and for the implementation of this execution shall lie with the court on whose territory the thing is located.

#### **Physical Division**

##### *Article 247*

- (1) The court shall order the physical division of a shared thing if such division has been foreseen by the enforcement title document.
- (2) Depending on the circumstances of the case, the judge or the execution administrator shall carry out individual actions of physical division.
- (3) The court shall summon the participants to be present at the implementation of the division.
- (4) The court shall, if necessary, order expert evaluation.

#### **Division by Sale**

##### *Article 248*

If, on the basis of an enforcement title document, the shared thing should be sold for the purpose of its division, the sale shall be carried out in the manner provided for by this Act for the execution on real estate or chattels, save if the parties reach different understandings on individual issues.

#### **Determining the Manner of Division by a Court Ruling**

##### *Article 249*

- (1) If the manner of division has not been determined in the enforcement title document or if the parties have not reached an understanding on it, the court before which the execution proceedings are running shall decide, in compliance with the rules on property law, whether the division shall be physical or by sale.
- (2) The division shall be carried out by sale if it is determined in execution proceedings that the physical division, determined in the enforcement title document, is not possible or is possible only by significant decrease in the thing's value.

## **Costs of the Proceedings**

### **Article 250**

- (1) The costs of implementing execution in compliance with the provisions of this Title shall be borne by all participants in proportion to the value of their share in the shared thing.
- (2) Any party that has caused special costs shall compensate them to the parties who have sustained such costs.

## **Title Twenty Four**

### **REALIZATION OF THE CLAIM TO ISSUE A STATEMENT OF WILL**

#### **Unconditional Claim**

##### **Article 251**

- (1) If the execution debtor is obliged, under a decision which has the capacity of an enforcement title document, to issue a statement of will, it shall be considered that he has issued the statement when this decision becomes legally effective.
- (2) If the execution debtor is obliged, under a judicial settlement or administrative settlement or notarized document, to issue a statement of will, it shall be considered that he has issued the statement on the day when his obligation falls due.

#### **Conditional Claim**

##### **Article 252**

If the fulfilment of the claim to issue a statement of will depends on the fulfilment of some obligation by the execution creditor or on some other condition, it shall be considered that the execution debtor has issued this statement when the execution creditor fulfils his obligation or when some other condition is met.

## **Division Four**

### **PARTICIPATION OF NOTARY PUBLICS IN EXECUTION**

#### **Competence of Notary Publics**

##### **Article 252a**

Notary publics shall decide on the motion for execution on the basis of a trustworthy document in compliance with the provisions of this Act.

### **Submitting the Motion for Execution to the Notary Public**

#### Article 252 b

- (1) The execution creditor can submit a motion for execution on the basis of a trustworthy document to the notary public of his choice and seek that he passes a writ of execution on the basis of this document.
- (2) If the motion for execution on the basis of a trustworthy document is filed to the court in place of to the notary public, in accordance with paragraph 1 above, the court shall dismiss such motion.

### **Content of the Motion for Execution**

#### Article 252 c

- (1) The execution creditor can, in the motion for execution, propose that execution is ordered on one or more objects of execution.
- (2) The execution creditor can, in the motion for execution, propose that execution for the collection of a certain claim is ordered generally on the execution creditor's assets, without stating the means and the object of execution.

### **Procedure Upon the Motion**

#### Article 252 d

- (1) If the notary public assesses that the motion for execution is permitted and founded, he shall pass a writ of execution on the basis of a trustworthy document and serve it on the parties.
- (2) If the notary public assesses that the motion for execution on the basis of a trustworthy document is not permitted, is not in order (Article 35, paragraph 3) or founded, he shall forward the case to the competent court (Article 252 j) to pass a decision.
- (3) In the case referred to in paragraph 2 above the court shall order execution on the basis of a trustworthy document if it assesses that the motion for execution is permitted, in order and founded.

### **Objection Against a Writ of Execution on the Basis of a Trustworthy Document**

#### Article 252 e

- (1) The execution debtor can lodge an objection against the writ of execution on the basis of a trustworthy document to the notary public who has issued it.
- (2) A notary public who has received an untimely or unpermitted objection against the writ of execution issued by him, shall forward the file for the passing of a decision on the objection to the competent court (Article 252 j) that shall pass the ruling on dismissal of such objection.
- (3) A notary public to whom a timely and permitted objection against a ruling issued by him is lodged shall forward the file to the competent court to carry out the procedure upon the objection (Article 252 j) that shall, upon such objection, pass the decisions referred to in Articles 53 and 54 hereof.

## **Certificate of Legal Effectiveness and Enforceability**

### Article 252 f

(1) A notary public shall, at the execution creditor's request, affix the certificate of legal effectiveness and enforceability on the writ of execution passed by him, if he does not receive an objection within eight days from the expiry of the time limit for lodging an objection.

(2) A notary public can affix the certificate of legal effectiveness and enforceability on the writ of execution referred to in paragraph 1 above, even when the objection is lodged within the time limit of eight days from the expiry of the time limit for lodging an objection, if he assesses that it is obviously not timely.

(3) In the case referred to in paragraph 2 above the notary public shall act in accordance with the provision of Article 252 e, paragraph 2 of this Act.

(4) The notary public shall hand over the writ of execution with the certificate of legal effectiveness and enforceability to the execution debtor.

## **Out of Court Execution**

### Article 252 g

(1) An execution creditor may, on the basis of a legally effective and enforceable writ of execution (Article 252 f, paragraph 1) by which execution is ordered on claims against an account with a bank or in general on the execution debtor's assets, directly ask the bank that keeps the main account of an execution debtor who is a legal person (Article 207) or the account of an execution debtor who is a natural person to pay from the execution debtor's account the amount necessary to settle his claim, for the realisation of which the execution was ordered.

(2) An execution creditor may, on the basis of a legally effective and enforceable writ of execution (Article 252 f, paragraph 1) by which execution is ordered on the execution debtor's permanent monetary income or in general on his assets, directly ask the employer or other payer of the permanent monetary income to pay to him the amount necessary to settle his claim, for the realisation of which the execution was ordered. The payer of the permanent monetary income shall, when acting in compliance with the writ of execution, pay attention that the rules on the limits of execution on wages are observed.

(3) The execution creditor shall, by handing over the writ of execution to the bank, i.e. the payer of the permanent monetary income, obtain a lien on the execution debtor's claim against an account with a bank, i.e. his claim against the payer of the permanent monetary income.

(4) The bank and the payer of the permanent monetary income shall, on the basis of a writ of execution referred to in paragraphs 1 and 2 above, act as they would on the basis of a writ of execution delivered to them by the court.

(5) An execution debtor may, during an out-of-court execution, lodge to the competent court (Article 252 j) an appeal against the writ of execution after the expiry of the time limit (Article 49), ask the court to postpone the execution (Article 61), i.e. take before it other actions to which he would otherwise have been entitled during court execution.

## **Court Execution**

### Article 252 h

(1) On the basis of a legally effective and enforceable writ of execution by which the execution is ordered on another object and not a claim against an account with a bank or on the permanent monetary income, an execution creditor can ask the court with jurisdiction (Article 252 j) to implement execution on this other object.

(2) An execution creditor may, on the basis of a legally effective and enforceable writ of execution by which execution is ordered on claims against an account with a bank or on permanent monetary income, i.e. in general on the execution debtor's assets, ask the court with subject matter jurisdiction (Article 33 a, paragraph 2, subparagraph 3) to order execution on an object of execution on which out-of-court execution can not be sought. In this case the court shall act as if it was asked to order execution by different means and on a different object of execution (Article 5, paragraph 3).

(3) In the case referred to in paragraph 2 above, the territorial jurisdiction shall lie with the court which would have had territorial jurisdiction to order execution on this object of execution on the basis of an enforcement title document.

## **Execution Debtor's Complaint**

### Article 252 i

(1) An execution debtor may, in proceedings before the court referred to in Article 252 h hereof, within eight days from receiving notification of the commencement of execution implementation, file a complaint that he has lodged a timely objection against the writ of execution issued by a notary public. If the court determines that the objection has been lodged within due time, it shall act in accordance with the provisions of Article 54 hereof.

(2) If the court determines that the objection against the writ of execution has not been filed at all, it shall dismiss the complaint, and if it determines that the objection against the writ of execution has not been filed within due time, it shall reject the complaint and dismiss the objection.

(3) The court's notification to the execution debtor of the beginning of execution implementation shall contain instructions on the right to complain.

(4) The execution debtor may, in proceedings before the court, file an appeal after the expiry of the time limit (Article 49).

(5) The execution debtor may file a complaint referred to in paragraph 1 above to the court with jurisdiction (Article 252 j) even in the case of an out-of-court execution referred to in Article 252 g hereof.

## **Court with Jurisdiction**

### Article 252 j

(1) In the cases referred to in Article 252 d, paragraph 2, Article 252 e, paragraphs 2 and 3, Article 252 g, paragraph 5, Article 252 h, paragraph 1 and Article 252 i, paragraph 5, of this Act the court with subject matter jurisdiction shall be the municipality court on whose territory the seat of the

notary public to whom the motion for execution on the basis of a trustworthy document has been submitted, or who has issued a writ of execution on the basis of such document, is located.

(2) By way of derogation from the provisions of paragraph 1 above, the subject-matter jurisdiction shall lie with the commercial court on whose territory the seat of the notary public to whom the motion for execution, i.e. who has issued a writ of execution on the basis of a trustworthy document, is located, if the ordering of execution has been asked for or if the execution is ordered in disputes that fall within the subject-matter jurisdiction of commercial courts in civil action procedures.

(3) Delivery under the provisions of Article 8, paragraph 1, of this Act shall be done on the bulletin board of the municipality court on whose territory the seat of the notary public who has issued the writ of execution on the basis of a trustworthy document is located.

### **Application of Rules on Execution on the Basis of Trustworthy Documents**

#### Article 252 k

The provisions of this Act on ordering execution on the basis of trustworthy documents and on legal remedies against writs of execution issued pursuant to such documents shall apply to the procedure of ordering notary public execution on the basis of trustworthy documents.

### **Rights of Notary Publics to Remuneration and Recovery of Expenses**

#### Article 252 l

(1) Notary publics have the right to remuneration and recovery of expenses in compliance with the Tariff on Remuneration and Recovery of Notary Publics' Expenses in Enforcement Proceedings, adopted by the minister in charge of justice, for carrying out work in execution proceedings.

(2) The remuneration and recovery of expenses paid to a notary public by an execution creditor are part of execution costs. The notary public shall give to the execution creditor a breakdown of such expenses.

(3) Court fees shall not be paid for ordering execution under the provisions of this part of the Act.

(4) Court fees shall be paid for implementing the execution in sense of the provisions of Article 252 h hereof.

## **P a r t T h r e e**

### **SECURITY**

#### **Title Twenty Five**

### **GENERAL PROVISIONS**

#### **Application of Provisions on Execution**

#### Article 253

The provisions of this Act on execution for the realisation of claims shall apply, as appropriate, to the provision of security for a claim from this part of the Act.

## **Means of Security**

### Article 254

Only the means foreseen by this or some other law can be ordered as means for the provision of security.

## **Subject-Matter Jurisdiction**

### Article 254 a

(1) Municipality courts are competent to order and implement security, save if this has been entrusted to some other court under law.

(2) Commercial courts are competent to order and implement security in cases in which they are competent to order execution.

## **Impermissibility of Security**

### Article 255

Security is not permitted for things and rights that according to this Act can not be the object of execution, save if otherwise provided for by the provisions of this part of the Act.

## **Jurisdiction to Order Security Ex Officio**

### Article 256

The jurisdiction to order and implement security ex officio shall lie with the court with jurisdiction to decide on the security creditor's motion, save if otherwise provided for by law.

## **Title Twenty Six**

### **SECURITY BY COMPULSORY CREATION OF RIGHT OF LIEN ON REAL ESTATE**

## **Territorial Jurisdiction**

### Article 257

(1) The jurisdiction to decide on motions for security of monetary claims by compulsory creation of rights of lien on real estate shall lie with the court that keeps the public book in which the entry has to be carried out.

(2) The jurisdiction to implement the security shall lie with the court that keeps the public book for this real estate.

## **Requirements for Creation**

### Article 258

The security creditor has, on the basis of an enforcement title document which determines the monetary claim, the right to seek security for this claim by creating a lien on the security debtor's real estate.

## **Manner of Creating a Lien**

### Article 259

- (1) A lien on real estate entered into the land register shall be created by entry.
- (2) When entering the right of lien the enforceability of the claim, for the security of which the entry has been ordered, shall be registered in the land register.
- (3) If the security creditor has already, before the claim has become enforceable, acquired a lien for this claim on the basis of contract on the same real estate or if the lien has been conditionally registered, the court shall, at the motion of the security creditor, order that the enforceability of the claim be recorded in the land register.
- (4) If the security debtor is not entered in the land register as the real estate's owner, the security creditor shall, together with the motion, submit a document suitable for the entry of the security debtor's right of ownership.

## **Effect of Entry and Recordation**

### Article 260

- (1) The entry of a lien and the recordation of a claim's enforceability have such effect that execution on this real estate can be implemented also against third parties who acquire this real estate subsequently.
- (2) In the case referred to in paragraph 1 above, execution on real estate shall be ordered against the person entered as owner, and this on the basis of an enforcement title document pursuant to which the lien and the recordation of enforceability were entered in the land register and the land register excerpt from which it arises that this person has been entered as owner after the entry of the lien and the recordation of enforceability.

## **Title Twenty Seven**

### **JUDICIAL AND NOTARIAL SECURITY BY LIEN ON THE BASIS OF AN AGREEMENT OF THE PARTIES**

#### **1. Judicial Security for a Monetary Claim by Creation of a Lien on the basis of an Agreement between the Parties**

##### **Territorial Jurisdiction**

###### Article 261

The territorial jurisdiction to adjudicate on motions for security for the security creditor's monetary claims on the security debtor's things and rights and for the implementation of security, shall be determined by the appropriate application of the provisions of this Act on the territorial jurisdiction of the court in execution proceedings for the collection of monetary claims on individual types of objects of execution.

##### **Motion for Security**

###### Article 262

The security creditor and the security debtor may, for the purpose of providing security for a security creditor's monetary claim by obtaining a lien on certain objects of security, consensually ask the court to order and implement, to the security creditor's benefit:

1. registration of a lien on the security debtor's real estate,
2. attachment of real estate not entered into land registers, in accordance with the rules on the implementation of execution for collecting monetary claims on these real estate,
3. attachment of the security debtor's chattels,
4. attachment of the security debtor's monetary claim,
5. attachment of part of the security debtor's income under an employment contract,
6. attachment of part of the pension, disability benefit or compensation for lost income,
7. attachment of the security debtor's claim against a bank account or savings book,
8. attachment of the claim to surrender or deliver chattels or to surrender real estate,
9. attachment of other property or real rights,
10. attachment of share certificates and other securities and their delivery for safekeeping,
11. attachment of shares for which share certificates have not been issued and of equity shares in companies,
12. attachment of securities kept with the Agency.

## **Hearing upon Proposal and Agreement between the Parties**

### **Article 263**

(1) At the proposal of one or both parties the court shall schedule a hearing at which it shall enter in the minutes an agreement of the parties on the existence of the security creditor's claim and its maturity date and their agreement that, by applying the provisions on security referred to in Article 262 hereof, depending on the object of security, this monetary claim shall be secured by creating a lien. The parties may, in the agreement, determine the value of the object of security, which shall, in the execution proceedings, be the basis for determining the value of the object of security for the purpose of its liquidation.

(2) The signed minutes on the parties' agreement referred to in paragraph 1 above shall have the authority of a judicial settlement.

(3) The monetary claim referred to in paragraph 1 above may also be expressed in the Kuna equivalent of a specific amount expressed in a foreign currency.

(4) The parties can also secure a security creditor's non-monetary claim by stipulating its monetary equivalent in the agreement referred to in paragraph 1 above. The security shall be ordered and implemented in order to secure the monetary equivalent of a non-monetary claim. Save if otherwise agreed by the parties in the agreement referred to in paragraph 1 above, the non-monetary claim shall not terminate with the making of this agreement.

(5) After the non-monetary claim referred to in paragraph 4 above matures, the security creditor may, at his own choice, seek execution for the realisation of the non-monetary claim or execution for the collection of its non-monetary equivalent. If in execution proceedings for the collection of a monetary equivalent of a non-monetary claim the security creditor is settled at least in part, his non-monetary claim shall terminate in its entirety and it shall be considered that the security creditor only has a monetary claim against the security debtor that is equivalent to the unsettled part of the monetary equivalent of the non-monetary claim.

## **Determinability of the Amount and the Claim's Maturity**

### **Article 263 a**

(1) The claim referred to in Article 263, paragraph 1, of this Act should be determined or determinable.

(2) It shall be considered that a claim is determinable if the agreement referred to in Article 263, paragraph 1, of this Act contains an indication of the approximate amount of a future claim that is secured with respect to a specific legal relationship or more legal relationships of the parties or if the creditor or a third party are authorised to subsequently determine the amount of the claim emerged up to the approximate amount and the time of its maturity.

## **Ordering and Implementing Security**

### **Article 264**

(1) The court shall, on the basis of the agreement referred to in Article 263 hereof, by a ruling order the security measures referred to in Article 262 hereof and undertake all necessary actions for their implementation, in compliance with the provisions of this Act on actions of execution by which, in

execution for the collection of a monetary claim, rights of lien are obtained on certain objects of execution.

(2) The ruling referred to in paragraph 2 above shall have the authority of a ruling on security.

(3) The security creditor shall, upon the implementation of the actions of security referred to in paragraph 1 above, obtain a lien on a certain object of security.

### **Application of Other Provisions of this Act**

#### Article 265

The provisions of Articles 259 and 260 hereof shall apply, as appropriate, to the securing of a monetary claim by creation of lien on the security debtor's real estate on the basis of an agreement between the parties.

### **Publication of Advertisement**

#### Article 266

(1) The court shall publish an advertisement on the implementation of security for the obtaining of a lien on real estate not entered into land registers and on other objects of security referred to in Article 262 hereof, in the "Official Gazette" and, where necessary, in other media.

(2) The advertisement shall make mention of the court that has carried out the security, the number of the file, the parties, the secured claim and the object of security. The object of security should be defined in such a way that its identity can be ascertained without difficulty. If the objects of security are specially marked during the implementation of the security, the marks through which the marking was done shall also be mentioned.

(3) The parties shall advance the costs of the advertisement within a time limit set by the court. If the parties do not advance the costs within this period, the court shall suspend the security proceedings and set aside the actions that have been undertaken.

### **Determination and Implementation of Execution**

#### Article 267

(1) The court shall, at the security creditor's motion, when it determines that the agreement of the parties referred to in Article 263 hereof has become enforceable, for the purpose of settling the security creditor's secured monetary claim, by a ruling order and implement execution on the security debtor's things on which he has a lien on the basis of an agreement of the parties, in accordance with the provisions of this Act on execution on things, i.e. execution on creditor's rights.

(2) The ruling referred to in paragraph 1 above shall have the authority of a writ of execution.

(3) The recordation of execution on real estate shall have legal effect from the day of entry of the lien on real estate in the security proceedings.

(4) In execution proceedings for the collection of monetary claims secured by a lien in accordance with the provisions of this Title, the actions by which the lien is obtained shall not be repeated but shall have legal effect from the day of obtaining the lien in the security proceedings.

(5) The provisions of this Act on the execution debtor's protection, on exemption from execution and on limits to execution on particular objects of execution shall not apply to the execution proceedings referred to in paragraph 1 above.

### **Security by Obtaining a Lien on Things and Rights of Other Persons**

#### Article 268

(1) If the other person agrees that a lien be created on his thing or right for the purpose of securing a security creditor's monetary claim, this person shall be summoned to a hearing referred to in Article 263 hereof, and the court shall enter into the minutes of this hearing, into the parties' agreement on security, his statement of agreement.

(2) The signed minutes referred to in paragraph 1 above shall have the authority of a judicial settlement also against the person who has granted his agreement that a lien be created on his thing or right.

(3) A lien on a third person's item shall be obtained in the same way that a lien is acquired on the security debtor's thing.

(4) The security creditor may, on the basis of the minutes referred to in paragraph 1 above, in order to collect the secured claim, directly propose execution against the person from that provision on the item on which a lien was obtained for the purpose of securing his claim.

(5) The provision of Article 267 hereof shall apply, as appropriate, to the case referred to in paragraph 4 above.

### **2. Notarial Security for a Monetary Claim by Creation of a Lien**

#### **Creation of a Lien on the Basis of a Notarial Document**

#### Article 269

(1) An agreement of a creditor and a debtor that in its contents coincides with the agreement of the parties referred to in Article 263, paragraph 1, hereof, made in the form of a notarial document or a private document legalized as to content, that also contain the debtor's statement of agreement that, for the purpose of securing a creditor's particular monetary claim, a lien may be obtained on some item of his by undertaking the actions referred to in Article 262, subparagraphs 2 to 12, of this Act by a notary public in place of a court, shall have the same effect as the minutes referred to in Article 163, paragraph 2, of this Act.

(2) The actions referred to in Article 262, subparagraphs 2 to 12, of this Act by which a lien is obtained on the security debtor's items shall be carried out by a notary public in the same manner envisaged for the court, provided that the notary public may undertake all actions for the performance of which the parties' co-operation is necessary only with the agreement of the parties.

(3) The actions of a notary public undertaken without the agreement of the parties in cases in which their collaboration is necessary for their undertaking (e.g. a list of attached real estate not entered

into land registers, list of attached chattels, list of attached share certificates and other securities and the like) shall not have legal effect.

(4) A notary public shall make minutes on every action that requires the parties' collaboration and have the minutes signed by both parties. If the parties do not sign the minutes, it shall be considered that they did not agree on undertaking the action. The signed minutes shall have the effect of an agreement admitting the legal effect of the undertaken action.

(5) The rules on the official territory and seat of notary publics shall apply when assessing which notary public is authorised to undertake individual actions of security.

### **Notarial Document as Basis for Judicial Security**

#### Article 270

If the debtor, after preparing a notarial document or legalizing as to content a private document referred to in Article 269, paragraph 1, hereof, declines to cooperate in the implementation of the actions by which, in the sense of the provision referred to in Article 169, paragraph 2, hereof, a lien is supposed to be created, the creditor may, on the basis of these documents, ask the court to carry out the actions of providing security. In this case, the provisions of Article 267 hereof shall apply, as appropriate.

### **Application of Provisions on Judicial Security**

#### Article 271

(1) The provisions of Article 262 to 268 hereof, save for the provision of Article 267, paragraph 1, hereof on the writ of security, shall apply, as appropriate, to notarial security.

(2) A debtor may realize his objections against notarial security in a special litigation in which he shall challenge the agreements referred to in Article 269, paragraphs 1 and 4, hereof.

(3) Third parties may realise their objections against notarial security in a procedure before the court referred to in Article 272 hereof, according to the rules applicable to putting forward these objections against judicial security referred to in section 1 of this Title.

### **Delivery of Files to the Court**

#### Article 272

(1) With respect to any implemented security in the sense of the provisions of this section, a notary public is obliged to deliver to the court a counterpart of the notarial document or private document legalized as to content referred to in Article 269 hereof and authenticated copies of all other documents from the file.

(2) The court referred to in paragraph 1 above shall be the court with jurisdiction for the security, had it not been entrusted to the notary public.

## **Title Twenty Eight**

### **JUDICIAL AND NOTARIAL SECURITY BY TRANSFER OF OWNERSHIP OF THINGS AND TRANSFER OF RIGHTS**

#### **1. Judicial Security**

##### **Territorial Jurisdiction**

###### *Article 273*

The court with territorial jurisdiction to adjudicate on motions for security of monetary claims by the transfer of ownership of things and transfer of rights, shall be determined by the appropriate application of the provisions of this Act on the court's territorial jurisdiction in execution proceedings for the realisation of monetary claims on individual types of objects of execution.

##### **Agreement on Security by Transfer of Ownership or Transfer of Rights**

###### *Article 274*

(1) One or both parties may ask the court to schedule a hearing and to enter into the minutes of this hearing their agreement on the transfer of ownership of some of the security debtor's things to the security creditor for the purpose of securing a security creditor's particular monetary claim, or to transfer for that purpose onto the security creditor some of his rights. Future claims may also be secured.

(2) The agreement should contain a provision on the maturity of the claim, i.e. on the manner of determining its maturity. The security debtor may also be a person against whom the security creditor does not have the claim that is being secured.

(3) The agreement referred to in paragraph 1 above may also relate to the securing of non-monetary claims, in which case the claim's monetary equivalent value has to be determined in the agreement. The security creditor can choose, after the maturity of the non-monetary claim, whether he shall seek execution for the compulsory realisation of a non-monetary claim or, under the provisions of this Title, realise his rights as if the transfer of ownership of property or transfer of rights has been done for the purpose of securing the monetary equivalent value of a non-monetary claim.

(4) The agreement referred to in paragraph 1 above shall have the effect of a judicial settlement.

(5) It is possible to enter into the agreement referred to in paragraph 1 above the security debtor's statement of consent that the security creditor may directly, pursuant to the minutes, seek against him enforcement for the surrender of the object of security into possession after the secured claim's maturity. The minutes containing such statement is an enforcement title document.

##### **Determinability of the Claim's Amount and Maturity**

###### *Article 274 a*

(1) The claim referred to in Article 274, paragraph 1, hereof should be determined or determinable.

(2) It shall be considered that the claim is determinable if the agreement referred to in Article 274, paragraph 1, hereof contains the approximate amount of the future claim being secured with regard to a particular legal relationship or more legal relationships of the parties and if the creditor or a third person are authorised to subsequently determine the claim's amount emerged up to the approximate amount and the time of its maturity.

(3) The parties may stipulate some other manner of subsequently determining the claim's amount and maturity in the agreement referred to in Article 274, paragraph 1, hereof.

### **Special Reference to Agreements on the Transfer of Ownership of Real Estate**

#### Article 274 b

(1) When ownership of a real estate entered into the land register is transferred by the agreement referred to in Article 274, paragraph 1, hereof, this agreement should contain the security debtor's statement of consent that the transfer can be directly executed in the land register on the basis of the agreement.

(2) Parties may, on the basis of the minutes referred to in Article 274, paragraph 1, hereof and the security creditor's statement referred to in paragraph 1 above, seek transfer of real estate entered into the land register with a recordation that the transfer is carried out for the purpose of securing a particular security creditor's claim.

### **Acquiring Ownership of Property not entered into Land Registers,**

#### **i.e. Acquisition of Ownership**

#### Article 274 c

(1) A security creditor shall become the owner of a real estate not entered into the land register by depositing with the court the agreement referred to in Article 274, paragraph 1 hereof.

(2) A security creditor shall become the owner of chattels by signing the minutes referred to in Article 274, paragraph 1, hereof.

(3) It shall be considered that the transfer has been completed by signing the minutes referred to in Article 274, paragraph 1, hereof.

(4) By way of derogation from the provisions of paragraph 3 above, the ownership of, and the rights arising from, dematerialised securities shall be acquired in accordance with the provisions of Article 128 of the Securities Market Act, in the moment of their entry into the security creditor's dematerialized securities account with the Central Depository Agency, to which the agreement referred to in Article 274, paragraph 1, hereof shall be delivered for this purpose.

(5) An advertisement on the transfer of real estate not entered into the land register, chattels and rights shall be published in the "Official Gazette" with an indication of the court making the advertisement, the file number, the parties, the real estate or chattels whose ownership is transferred, i.e. the rights being transferred, and a notification that the transfer has been carried out for security reasons. Real estate, chattels or rights shall be marked so that they can be easily identified.

## **Subsequent Security Agreements**

### Article 274 d

(1) The security creditor and security debtor may, after entering into the agreement referred to in Article 274 hereof, reach an agreement on one of the methods of concluding such agreement, that the transferred ownership of property, i.e. transferred ownership of rights, serve also as security for some other security creditor's claim against the security debtor.

(2) In cases referred to in paragraph 1 above, it shall be recorded into the land register, on the basis of a subsequent agreement of the parties referred to in paragraph 1 above, that the ownership of real estate has been transferred for the purpose of securing some other claim as well.

(3) The order of priority for securing the claim referred to in paragraph 2 above shall be calculated by the time, assumed under land registry rules as relevant, for the entry of a subsequent recordation.

## **Right to Use Things or Exercise Rights**

### Article 274 e

(1) If the agreement referred to in Article 274, paragraph 1, hereof or the subsequent agreement of the parties made in the form of a public document or private document on which the parties' signatures are authenticated by notary public does not provide otherwise, the security debtor shall still be authorised to use the thing whose ownership has been transferred to the security creditor, i.e. exercise the right transferred to the security creditor.

(2) It can be foreseen by the agreement referred to in Article 274, paragraph 1, hereof or the subsequent agreement of the parties made in the form of a public document or private document on which the parties' signatures are authenticated by notary public, that the security creditor uses the things or exercises the rights transferred to him.

(3) The manner in which the security creditor shall use the thing or exercise the right, or how the benefit therefrom shall be calculated, must be defined in the agreement referred to in paragraph 2 above. The benefit shall be set-off with the expenses whose recovery the security creditor is entitled to claim, with the interest owned to him and finally with the principal, save if otherwise provided for under the said agreement.

## **Security Creditor's Right to Sell the Object of Security**

### Article 274 f

(1) The security creditor is authorised to sell the property or right transferred to him upon the maturity of his claim.

(2) If the security creditor sells the property or right transferred to him before the maturity of the claim, such sale is legally valid. The security creditor shall be liable to the security debtor for damages incurred by such sale.

(3) The security creditor may liquidate the object of security only through a notary public. If the object of security are dematerialized securities listed on an exchange or regulated public market, the notary public may entrust their liquidation to an authorised company that shall carry out the sale in compliance with the provisions of Article 66 of the Securities Market Act.

(4) When objects of security are sold in accordance with the provisions of the previous paragraphs, taxes and other levies on the transfer of this security from the security creditor to the buyer shall be paid; the security creditor shall not pay taxes and other levies on the previous transfer of the object of security from the security creditor to him (Article 277 b, paragraph 1).

(5) The circumstance that the sale of property or rights to which the security creditor was not authorised is legal shall not exclude the criminal liability of the persons who participated in such sale.

### **Manner of Selling the Object of Security**

#### Article 274 g

(1) The rules on selling, i.e. on liquidating, objects of security as objects of execution in execution proceedings shall apply, as appropriate, to the sale referred to in Article 274 f, paragraphs 1 and 2, hereof, with respect to the manner of its implementation and especially with regard to the price.

(2) The notary public shall send to the security debtor a notification of the sale of the object of security and every auction to the address stated in the agreement referred to in Article 274, paragraph 1, hereof. The sale shall be conducted regardless of whether the notification has been delivered to the security debtor.

(3) On the basis of the undertaken auction and after the sales price has been paid up, the notary public shall, in the name of the security creditor, enter into a sales agreement for the object of security with the buyer, in the form of a notarial document. When real estate are being sold, this agreement shall expressly state that the buyer, when registering his right of ownership in the land register, is authorised to seek deletion of the recordation stating that the real estate has been transferred to the security creditor for the purpose of security.

(4) When the object of security are dematerialized securities whose sale the notary public has entrusted to an authorised company (Article 274 f, paragraph 3) such company shall conduct the sale in accordance with the provisions of the Securities Market Act, in its own name and for the account of the security creditor. The authorised company shall notify the notary public of such sale.

### **Assuming Possession of a Thing**

#### Article 274 h

If the security debtor has agreed, in the agreement referred to in Article 274, paragraph 1, hereof or in some other document on which his signature has been authenticated by notary public, that the security creditor may, on the basis of such document, seek against him execution for the purpose of vacating and surrender of real estate or chattels into possession, the security creditor is authorized to seek such enforcement only for the purpose of selling such things in accordance with the provisions of Article 274 g hereof.

### **Security Debtor's Right to Encumber the Real Estate with Mortgage**

#### Article 274 i

(1) The security debtor is authorised to encumber the transferred real estate with a mortgage in favour of some other creditor without the security creditor's consent, save if the security creditor's prohibition of encumbrance has been entered into the land register on the basis of the agreement

referred to in Article 174, paragraph 1, hereof or subsequent agreement between the parties made in one of the forms foreseen for the conclusion of such agreement.

(2) In the case referred to in paragraph 1 above, the mortgage shall be recorded into the land register on the basis of the security debtor's appropriate document, if it could have been recorded on the basis of such document had the transfer of ownership not occurred.

(3) The creation of the mortgage referred to in paragraph 1 above shall not deprive the security creditor of the right to dispose of the real estate as if the mortgage against it had not been recorded.

(4) In the case of out-of-court sale of real estate referred to in Article 274 f and 274 g hereof, the notary public conducting the sale is obliged to notify the new mortgagee and the security debtor of this at the address stipulated in the security agreement entered into with these persons. The sale shall be conducted regardless of whether such notification has been delivered to these persons.

(5) First to be settled from the sales price is the security creditor's claim and then a creditor's claim secured with mortgage. The notary public shall hand over the remaining amount to the security debtor.

(6) The buyer of the real estate referred to in paragraph 5 above is authorised to seek the deletion of the mortgage referred to in paragraph 1 above when recording his right of ownership on the basis of the sales agreement referred to in Article 274 g, paragraph 3, hereof, save if the buyer has agreed otherwise with the mortgagee.

### **Security Creditor's Obligations With Respect to the Transferred Claim**

#### Article 274 j

(1) Save if otherwise provided for under the agreement referred to in Article 274, paragraph 1, hereof, the security creditor is obliged to:

1. undertake measures necessary for the preservation of the transferred claim;
2. collect interest or other periodic claims. Amounts so collected shall be set-off with the expenses to whose recovery the security creditor is entitled, then with the interest owed to him and finally with the principal;
3. collect the transferred claim, i.e. accept its fulfilment, upon maturity. By settling the transferred claim, the security creditor shall acquire ownership of the thing by whose transfer the claim has been settled. If the object of the transferred thing is money, i.e. debt securities (Article 2, paragraph 3 of the Securities Market Act), the security creditor shall, at the security debtor's request, deposit the collected amount with the court or notary public, but if his secured claim has already matured, the security creditor may retain the owed amount of money and surrender the rest to the security debtor.

(2) The debtor of the claim transferred to the security creditor for security may raise the same objections against the security creditor that the debtor of this claim could raise against the assignee in case of assignment of this claim, save when ownership over debt securities is transferred as security.

## **Other Effects of Transfer**

### Article 275

Deleted.

## **Right of Discharge**

### Article 276

In the case of execution or bankruptcy against a security creditor, an object of execution or sale in bankruptcy is a right obtained by the security creditor on an object of security. In case of the object of security's sale, a buyer shall obtain the legal status of a security creditor.

## **Security Creditor's Rights in Case of Security Debtor Falling Late**

### Article 277

(1) In place of instituting the liquidation of objects of security in compliance with the provisions of Article 274 f hereof, the security creditor is authorised to ask the security debtor through a notary public, after the secured claim matures, to inform him, within thirty days, through the same notary public, if he requires that the transferred object of security be liquidated through the notary public, and caution him on the legal consequences of failing to respond (paragraph 7).

(2) The security debtor is obliged to determine, in the notification referred to in paragraph 1 above, a minimum sales price at which the object of security may be sold, appoint the notary public who shall conduct the sale and attach his statement of willingness to conduct the sale and that he shall, from the proceeds acquired by the sale, first settle the security creditor's claim with interest and expenses and the sales tax.

(3) The lowest price that the security debtor may determine may not amount to less than the secured claim, increased by interest and the security creditor's expenses which shall, as foreseeable, accrue or rise before the expiry of the time limit within which the notary public is obliged to sell the object of security, the foreseeable taxes and other contributions.

(4) Upon receipt of the notification and the attachments referred to in paragraph 2 above, the security creditor shall, within fifteen days, authorise the notary public referred to in paragraph 2 above to sell the object of security under the conditions provided for in the security debtor's notification. The security creditor, i.e. debtor, shall undertake all other actions required by the notary public that enable the sightseeing of things, i.e. familiarization with the rights, if the property is in his possession, i.e. if he possesses the appropriate documents and information on the content of rights. The security creditor shall advance the sales expenses determined by the notary public. If not, the sale shall not be conducted.

(5) The time limit within which the notary public shall conduct the sale of the object of security shall not start to run before the security creditor undertakes the actions referred to in paragraph 4 above.

(6) When the notary public fails to sell the object of security within three months from the date when the security creditor authorised him to do so, it shall be considered that the security debtor has waived the right to seek the sale of the object of security. A notary public shall, within eight days, issue a certificate on the failure of the sale.

(7) When the security debtor fails to act in accordance with the provisions of paragraphs 1 and 2 above, i.e. when the notary public fails to sell the object of security in compliance with the provision of paragraph 5 above, it shall be considered that the security creditor has become the rightful owner of the thing, i.e. the holder of the rights, transferred to him as security – for the price corresponding to the amount of the secured claim with interest, expenses and taxes. In that case, the security creditor is obliged to settle taxes and other contributions in compliance with the law (Article 277 b, paragraph 4).

(8) The security creditor shall, in cases referred to in paragraph 7 above, be issued a certificate that he has become the rightful owner, i.e. holder of rights, because:

1. the security debtor has failed to request within the set deadline that the sale of the object of security be conducted through a notary public (paragraph 2) – notary public referred to in paragraph 1 above;

2. the notary public who has been entrusted with the sale of the object of security has failed to sell the object of security within three months - notary public referred to in paragraph 6 above.

(9) When, in cases referred to in paragraph 7 above, the security creditor becomes the rightful owner of the thing or holder of rights, it shall be considered that the secured claim has been settled when the security creditor becomes the rightful owner, i.e. holder of rights.

(10) The security creditor may give up on implementing the procedure in compliance with the previous provisions of this Article up until the notary public sells the object of security. Should the security creditor do so, he shall be obliged to recover the costs incurred by the security debtor, notary public and other persons in this procedure.

(11) When the security creditor becomes the rightful owner of the thing, or holder of the right (paragraph 7), he shall be authorised to seek, on the basis of the notary public's certificate of this, execution for the surrender of the thing into possession, or the undertaking of other actions for acquiring the authority to freely exercise the rights, the rightful holder of which he has become.

(12) When the security creditor becomes the rightful owner of a real estate (paragraph 7) he shall be authorised to seek the deletion of mortgage on such real estate recorded in accordance with the provisions of Article 274 i hereof, on the basis of the notary public's certificate that he has become the rightful owner of real estate.

### **Right to Return of Ownership or Rights**

#### Article 277 a

When the security debtor fulfils his obligation to the security creditor in due time, or if the secured claim terminates in some other way, save by the security creditor becoming the rightful owner of the thing, i.e. holder of the right, (Article 277, paragraph 7), the security creditor is obliged to forthwith return the ownership of the thing, i.e. the right, to the security debtor.

## **Taxes and Other Contributions**

### Article 277 b

- (1) Sales tax, value added tax or other taxes and contributions otherwise paid on the transfer of ownership of things and transfer of rights for other purposes, shall not be paid on the transfer of ownership of things or on the transfer of rights for the purpose of creating security.
- (2) Taxes and other contributions shall not be paid when ownership of things or rights are returned (Article 276).
- (3) The provisions of paragraphs 1 and 2 above shall not apply to court fees paid for the appropriate entries into land registers.
- (4) In the case referred to in Article 277, paragraph 7 hereof, the time limit within which the security creditor is due to report that he has become the rightful owner of a thing or holder of a right transferred to him for the purpose of creating security (Article 277), shall be calculated from the day when the security creditor received the notary public's certificate that he has become the rightful owner of the thing or rightful holder of the right.

## **Liquidation of the Object of Security at the Security Debtor's Request**

### Article 277 c

- (1) The security debtor shall also be entitled to seek the object of security's liquidation after the secured claim matures.
- (2) The appropriate rules on liquidation of the objects of security by the security creditor shall apply to the liquidation of the object of security.
- (3) The security debtor shall advance the expenses of selling the object of security referred to in paragraph 1 above.

## **Appropriate Application of the Provisions of this Section**

### Article 278

- (1) The provisions of this Section shall apply, as appropriate, to the transfer of shares not entered on accounts kept with the Central Depository Agency or equity shares in companies.
- (2) A share referred to in paragraph 1 above or an equity share shall be transferred by conclusion of an agreement referred to in Article 274, paragraph 1, hereof. The court shall notify, without delay, the company, i.e. the Agency, of any transfer in order for it to carry out the transfer in the appropriate books, i.e. accounts, with a recordation that the transfer has been made for security purposes.
- (3) The transferor of the share shall not lose his voting rights or rights to participate in profit by the transfer of the shares or equity share referred to in paragraph 1 above for the purpose of creating security, until the security creditor becomes the rightful holder of the share or equity share, i.e. until they are sold or otherwise alienated, save if otherwise provided for in the agreement referred to in Article 274, paragraph, hereof.

(4) The provisions of this Section on security on real estate shall apply, as appropriate, to other objects of security over which rights are obtained by their entry into public registrars in which these objects are kept.

Article 278 a

Deleted.

**2. Notarial Security**

**Appropriate Application of the Provisions on Judicial Security**

Article 279

(1) The provisions of Articles 274 to 278 hereof shall apply, as appropriate, to notarial security of claims by transfer of ownership of things, transfer of rights, i.e. transfer of shares or equity shares in companies.

(2) A notarial document or private document legalized as to content of appropriate contents shall replace the agreement referred to in Article 274, paragraph 1, hereof.

(3) A notary public shall undertake only actions by which ownership of thing to which parties agree is transferred.

(4) The authorisation of a notary public to undertake individual actions of security shall be determined in accordance with the rules on the official seat and territory of notary publics.

(5) The provisions of Article 271, paragraphs 2 and 3, hereof, shall apply, as appropriate, to this case of notarial security.

**Title Twenty Nine**

**SECURITY BY PRELIMINARY EXECUTION**

**Territorial Jurisdiction**

Article 280

The territorial jurisdiction to adjudicate on motions for preliminary execution and for implementing such execution shall lie with the court that would have had jurisdiction for execution on the basis of an enforcement title document.

**Requirements for Ordering the Execution**

Article 281

In order to provide security for a non-monetary execution that can not be secured by a conditional registration in a public book, the court may, on the basis of a judgment reached in civil proceedings, order a preliminary execution if the execution creditor shows probable the danger that, due to the deferral of execution until the judgment becomes legally effective, execution would be impossible or significantly more difficult and if he provides security for the damage that the execution debtor might incur due to such execution.

## **Procedure upon Motion for Preliminary Execution**

### **Article 282**

- (1) Before it decides on the execution creditor's motion, the court shall hold a hearing in order to discuss the motion and the security deposit.
- (2) If the parties do not reach an agreement on it, the court shall, if it accepts the motion for execution, at its free discretion order the amount of the security deposit and the time limit within which it has to be provided. The implementation of the execution can not begin before the security deposit is provided.
- (3) If the security deposit is not provided within the set time limit, the court shall suspend execution.
- (4) If special circumstances of the case so require, the court can order execution and set the amount of the security deposit and start with the implementation of the execution as soon as the security deposit is made, even before the execution debtor has been given a chance to make his statement on the motion.
- (5) The court may, at the request of an execution debtor who shows that it is probable that he would sustain irreparable or almost irreparable damage, reject the motion for execution or condition its rejection on the provision of adequate security within a set time limit. If the execution debtor fails to provide the security within the set time limit, the court shall adopt a writ of execution.
- (6) The court may, upon the objection of an execution debtor who was not been give a chance to make a prior statement on the execution creditor's motion, suspend execution if the execution debtor could sustain irreparable or almost irreparable damage by its implementation or condition the suspension with the provision of a security within a set time limit. If the execution debtor fails to provide security within the set time limit, it shall be considered that he has withdrawn his objection.

## **Title Thirty**

### **SECURITY BY PRELIMINARY MEASURES**

#### **Territorial Jurisdiction**

##### **Article 283**

The territorial jurisdiction to adjudicate on motions for security by preliminary measures and for the implementation of such measures shall lie with the court that would have had jurisdiction for execution on the basis of an enforcement title document pursuant to which the security was ordered.

#### **Requirements for Ordering Preliminary Measures**

##### **Article 284**

- (1) A preliminary measure shall be ordered for the purpose of securing a monetary claim on the basis of:
  1. a decision of a court or administrative body that has not yet become legally effective;

2. a settlement made before a court or administrative body, if the claim determined therein has not yet matured;
3. a notarial decision or notarial document, if the claim determined therein has not yet matured. (2) The court shall, on the basis of the documents referred to in paragraph 1 above, order a preliminary measure if the security creditor shows probable the danger that the realisation of the claim would be made impossible or significantly more difficult without such security.

### **Presumed Danger**

#### Article 285

(1) It shall be considered that the danger, in the sense of Article 284 hereof, exists if the ordering of a preliminary measure has been proposed on the basis of:

1. a payment order or writ of execution on the basis of a trustworthy document issued pursuant to a public document or a document legalised by a notary public, bill of exchange and cheque, against which an objection has been raised in due time;
2. a judgment reached in criminal proceedings on a property law claim against which a retrial is possible;
3. a decision that has to be executed abroad;
4. a judgement on the basis of an admission against which an appeal has been lodged;
5. a settlement referred to in Article 284, paragraph 1, subparagraph 2, hereof, that is challenged in the manner provided for by the law;
6. a notarial document referred to in Article 284, paragraph 1, subparagraph 2, hereof, that is being challenged in the manner provided for by the law.

(2) In cases referred to in paragraph 1, subparagraphs 4 and 5, above, the court may, at the security deposit debtor's proposal, condition the preliminary measure with the security deposit creditor's provision of security for damage that the security deposit debtor might sustain by its ordering.

(3) The court shall, in the cases referred to in paragraph 1 above, reject the motion for security by preliminary measure, i.e. revoke a certain preliminary measure and suspend proceedings if the security deposit debtor shows probable that the danger does not exist or that it has terminated.

### **Securing a Claim Whose Instalments Have Not Matured**

#### Article 286

(1) Security by a preliminary measure for not yet matured instalments of a claim on the basis of legal maintenance, a claim on the basis of damages for lost maintenance due to the death of the maintenance provider or a claim on the basis of damages for lost health or lost or reduced capacities to work, shall be ordered only for instalments that shall mature in one year.

(2) In cases referred to in paragraph 1 above, it shall be presumed that the danger exists if execution has already had to be carried out against the security debtor for the collection of a mature instalment or if such execution has been proposed.

## **Types of Preliminary Measure**

### Article 287

(1) The court can order the following as preliminary measures:

1. conditional registration of a lien on a security debtor's real estate or on a right recorded on the real estate;
2. any security measure referred to in Article 262, subparagraphs 2 to 12, hereof;
3. prohibit the bank from paying to the security debtor or third party, at the security debtor's order, from his account an amount for which a preliminary measure has been ordered.

(2) The court may, at the security debtor's proposal, with respect to the circumstances of the case, order two or more preliminary measures, if necessary. The court can, if the conditions provided for under this Act are met, in addition to a preliminary measure, also order some interim measure.

(3) By the implementation of a preliminary measure, the security creditor shall obtain a lien on the object of security.

(4) The amount of the security debtor's money with the bank, for which a ban of payment has been ordered, may not be transferred from this account while the ban lasts, save for the payment of the secured claim.

## **Sale of Attached Chattels and Transfer of the Security Debtor's Claim**

### Article 288

(1) The court shall order the sale of attached chattels susceptible to fast deterioration or if there is a danger from the fall in price of such things.

(2) The sale of listed items shall be conducted in compliance with the provisions of this Act on execution on chattels.

(3) If a preliminary measure by attachment of a claim has been ordered, the court can, at the security creditor's or security debtor's proposal, order the transfer of the attached claim to the security creditor for collection or some other realisation, when there is a danger that it will not be possible to collect or otherwise realise this claim or that the right to compensation from third persons will be lost.

(4) The amount obtained by sale of a real estate or collection of a claim shall be kept in court or notary public deposit until the preliminary measure is suspended or until the security creditor motions for execution, and at the latest thirty days after the claim has become enforceable. Other benefits gained by the realisation of the claim shall be deposited into court or notary public deposit, if this is possible, or their safekeeping shall be ordered in some other manner until the suspension of the preliminary measure, i.e. until the security creditor motions for execution, but at the most for thirty days after the claim has become enforceable.

## **Ruling on Ordering Preliminary Measures**

### Article 289

- (1) A ruling ordering a preliminary measure must contain, amongst other things, an indication of the amount of the claim being secured, with interest and expenses, the security measure and the time for which it is being ordered.
- (2) The time for which a preliminary measure is ordered can last no longer than 15 days after the conditions for execution have been met.
- (3) If the time referred to in paragraph 1 above has elapsed before the decision on the basis of which the preliminary measure has been ordered becomes enforceable, the court shall, at the security creditor's proposal submitted to the court before the expiry of the period for which the preliminary measure has been ordered, extend this time provided that the circumstances under which this measure was ordered have not changed.
- (4) The ruling on ordering a preliminary measure must contain an explanation.

## **Revocation of a Preliminary Measure**

### Article 290

- (1) The court shall, at the security debtor's proposal, suspend the proceedings and set aside the actions that have been undertaken if:
  1. the security debtor deposits with the court the owed amount of the claim being secured, with interest and expenses;
  2. the security debtor shows that it is probable that the claim has, at the time of reaching the ruling on ordering a preliminary measure, already been settled or sufficiently secured;
  3. it has been finally determined that a claim has not arisen or that it has terminated;
  4. the decision on the basis of which the preliminary measure was ordered is revoked in connection with legal remedy, i.e. if a judicial settlement or notarial document on the basis of which the preliminary measure was ordered has been put out of force.
- (2) The court shall suspend the proceedings and set aside the actions that have been undertaken if, within fifteen days from the expiry of the time for which the preliminary measure has been ordered, the conditions for compulsory execution have not been met.
- (3) In the cases referred to in paragraph 1, subparagraphs 2, 3, and 4, and paragraph 2 above, the security creditor is obliged to recover the expenses that the security debtor incurred due to the ordering and implementation of preliminary measures.
- (4) In the cases referred to in paragraph 3 above, the security debtor may claim damages from the security creditor in the security proceedings, at the latest within thirty days from the termination of the proceedings, and after that in litigation proceedings.
- (5) The court shall determine the existence and the amount of damage referred to in paragraph 4 above by a ruling in security proceedings.

(6) An appeal against the ruling referred to in paragraph 5 above shall not postpone the execution.

### **Suspension in Case the Security Creditor does not seek Execution**

#### Article 291

If the requirements for execution for the collection of a secured claim have been met before the expiry of the time for which the preliminary measure has been ordered, the court shall, at the security debtor's proposal, suspend the proceedings and set aside the actions that have been undertaken if the security creditor fails to submit a motion for execution within fifteen days from these conditions coming into existence.

### **Title Thirty One**

#### **INTERIM MEASURES**

##### **1. General Provisions**

##### **Territorial Jurisdiction**

#### Article 292

(1) Before instituting litigation proceedings or some other judicial proceedings on a claim that is being secured, the territorial jurisdiction to adjudicate on motions for security by interim measures shall lie with the court that would otherwise have had jurisdiction to adjudicate on motions for execution. The territorial jurisdiction to implement interim measures shall lie with the court that would otherwise have had jurisdiction to implement the execution.

(2) After instituting the proceedings referred to in paragraph 1 above, the jurisdiction to adjudicate on motions for security by interim measures shall lie with the court before which the proceedings have been instituted. If the circumstances of an individual case so justify, the motion may also be filed with the court referred to in paragraph 1 above.

(3) The court which would have had jurisdiction to adjudicate on a motion for execution on the basis of an enforcement title document rendered in administrative proceedings shall also have jurisdiction to adjudicate on motions for ordering interim measures after the termination of such proceedings.

### **Motion for Ordering an Interim Measure**

#### Article 293

(1) An interim measure may be proposed before the institution or during the course of judicial or administrative proceedings and after these proceedings terminate, until the execution is implemented.

(2) In a motion for ordering an interim measure a security creditor must put forward a request in which he shall exactly indicate the claim that he wants to secure, determine the type of measure he seeks and its duration and, when necessary, the means of security by which the interim measure shall be compulsorily realised and the object of security, with the appropriate application of the rules of this Act on the means and object of execution. The motion must contain an indication of the

facts on which the request for ordering an interim measure is founded and propose evidence that corroborate these statements. The security creditor is obliged to attach these evidence, if possible, to the motion.

### **Ruling on Ordering an Interim Measure**

#### Article 294

- (1) The court shall, if this is necessary due to the type of measure and purpose to be achieved by it, in a ruling on ordering an interim measure, at the security creditor's proposal, also order the means by which it should be compulsorily realised and the object of security, with the appropriate application of the rules of this Act on determining the means and the object of security in a writ of execution.
- (2) If it is, in order to realise the order or the prohibition declared in the ruling on ordering an interim measure, necessary to subsequently order the compulsory means referred to in paragraph 1 above or to add new means to the ones already ordered or replace them with others, the security creditor may propose, in the same proceedings, that these means be ordered on the basis of the orders or prohibitions already declared.
- (3) Rulings on ordering interim measures shall have the authority of a writ of execution.
- (4) The provisions of this Act on writs of execution shall apply, as appropriate, to the rulings referred to in paragraph 2 above.
- (5) The rulings referred to in paragraphs 1 and 2 above must have an explanation.
- (6) The court shall apply the provisions of paragraphs 1 to 4 above as appropriate when ordering an interim measure ex officio.

### **Permissibility of an Interim Measure**

#### Article 295

- (1) An interim measure may be ordered for the purpose of securing immature and conditional claims.
- (2) An interim measure is not permitted if the conditions for ordering a preliminary measure by which the same effect of security can be achieved have been met.

## **2. Interim measures for Securing Monetary Claims**

### **Requirements for Ordering Interim Measures**

#### Article 296

- (1) An interim measure for securing a monetary claim may be ordered if the security creditor shows probable the existence of the claim and the danger that without such a measure the security debtor shall prevent or make significantly more difficult the collection of the claim by alienating his property, concealing it or disposing of it in some other way.

(2) A security creditor does not have to prove the danger referred to in paragraph 1 above if he shows probable that the security debtor would sustain only inconsiderable damage by the proposed measure.

(3) It is considered that the danger referred to in paragraph 1 above exists if the claim has to be realised abroad.

### **Types of Interim Measures for the Purpose of Securing Monetary Claims**

#### Article 297

(1) For the purpose of securing a monetary claim any measure can be ordered through which the purpose of such security can be achieved, in particular the following:

1. to prohibit the security debtor to alienate or encumber chattels, to seize these things and confide them to the security creditor or other person for safekeeping;
2. to seize and deposit cash, securities and the like with the court or notary public;
3. to prohibit the security debtor to alienate or encumber his real estate or real rights that are registered on the real estate in his favour, with a recordation of this prohibition in a land register;
4. to prohibit the security debtor's debtor to voluntarily fulfil his obligation to the security debtor and to prohibit the security debtor to receive the fulfilment of this obligation, i.e. to dispose of his claims;
5. to order a bank to refuse payment from the security debtor's account to the security debtor or third party at the security debtor's order, in the amount for which the interim measure has been ordered.

(2) A lien shall not be obtained by an interim measure.

(3) It shall be considered that the prohibitions referred to in paragraph 1 above have been implemented when served on the person to whom they have been issued, i.e. to the land registry department of the court.

(4) The alienation and encumbrance of chattels referred to in paragraph 1, subparagraph 1, above, carried out by the security debtor contrary to the prohibition shall produce no legal effect, save if the rules on the protection of a bona fide buyer should be effected.

(5) The effect of the recordation of a prohibition referred to in paragraph 1, subparagraph 3, above, lies in the fact that the security creditor can propose execution for the collection of his claim when it becomes enforceable on real estate recorded in the land register or on a right recorded on a real estate, to which the prohibition refers, irrespective of whether after this prohibition a third party, on the basis of the voluntary disposition of the security debtor, acquired and registered in the land register some right of his. The security creditor can motion for execution on real estate or some right recorded on real estate directly against the person who is recorded as the owner of the real estate, i.e. the holder of a real right recorded on the real estate, on the basis of an enforcement title document by which his claim against the security debtor is determined and for the security of which the prohibition has been recorded and evidence that the person against whom execution is proposed acquired the ownership of the real estate, i.e. the right on the real estate, after the recordation of the prohibition.

(6) The effect of the prohibitions referred to in paragraph 1, subparagraphs 4 and 5 above, lies in the facts that the security creditor may, in litigation proceedings, claim damages against the security debtor, i.e. bank and other bank, who have inflicted damage on him by acting contrary to the ban. The security creditor shall also have other rights against these persons under the general rules of the law on obligations on prohibited and illegal actions.

(7) Where necessary, the court may order the measures provided for in Article 16 hereof.

### **3. Interim Measures for Securing Non-Monetary Claims**

#### **Requirements for Ordering Interim Measures**

##### Article 298

(1) For the purpose of securing a non-monetary claim an interim measure can be ordered if the security creditor shows probable the existence of his claim, and if:

1. he shows probable the danger that the security debtor would, without this measure, prevent or make significantly more difficult the realisation of the claim, in particular by altering the current state of things, or
2. he shows probable that the measure is necessary in order to prevent violence or emergence or irreparable damage that is threatening.

(2) The provisions of Article 296, paragraphs 2 and 3 hereof shall apply when determining interim measures for securing non-monetary claims.

#### **Types of Interim Measures for Securing Non-Monetary Claims**

##### Article 299

(1) For the purpose of securing a non-monetary claim any measure can be ordered through which the purpose of such security can be achieved, in particular the following:

1. to prohibit the alienation and encumbrance of chattels against which the claim is directed, their seizure and confiding them for safekeeping with the security creditor or third party;
2. to prohibit the alienation and encumbrance of shares or equity shares against which the claim is directed, with a recordation of the ban in the book of shares or equity shares; where necessary in the court minutes; to prohibit the use or disposition of rights on the basis of such shares or equity shares; to confide shares or equity shares to the management of a third party; to set up an interim management board in the company;
3. to prohibit the alienation and encumbrance of other rights against which the claim is directed and to confide the management of these rights to a third party;
4. to prohibit the alienation and encumbrance of a real estate against which the claim is directed or real rights recorded on the real estate against which the claim is directed, with a recordation of the ban in the land register; to seize the real estate and confide it to the security creditor or third party for safekeeping;

5. to prohibit the security debtor's debtor to surrender a thing, transfer a right or undertake any other non-monetary obligation against which the claim is directed to the security debtor;

6. to prohibit the security debtor to undertake any actions which might inflict damage to the security creditor and to prohibit any alterations on the things against which the claim is directed;

7. to order the security debtor to undertake certain actions necessary to preserve chattels or real estate or to preserve the current state of things;

8. to authorise the security creditor to retain the security debtor's things that are kept with him and to which the claim refers, until the litigation is finally settled;

9. to authorise the security creditor to undertake certain actions or obtain certain things alone or by proxy, especially for the purpose of restoring a prior status;

10. to temporarily return the employee to work; to pay compensation during a work dispute, if this is necessary for his upkeep and the upkeep of persons whom he is obliged to support under the law.

(2) Where this is needed to prevent the emergence of irreparable damage or hardly reparable damage, violence or if this is, for some other important reasons, necessary to secure law and order, the court may order a measure that shall temporarily regulate the dispute between the parties.

(3) It shall be considered that the prohibitions referred to in paragraph 1 above have been implemented when served on the person to whom they have been issued, i.e. to the land registry department of the court or other register.

(4) The effect of the recordation of a prohibition referred to in paragraph 1, subparagraph 4, above, lies in the fact that by the entries made in the land register on the basis of a voluntary disposition of the security debtor, after the entry of the recordation of prohibition, rights on the real estate or on the right entered on the real estate may be obtained in relation to the security creditor only if the security creditor is finally rejected with his request in proceedings instituted by him in order to realise the claim for the security of which the recordation has been made. On the basis of an enforcement title document that he obtained in proceedings instituted against the security debtor for the realisation of a claim that has been secured by the entry of the recordation of prohibition and evidence that a person who has obtained a certain right on a real estate or on a right entered on a real estate on the basis of a voluntary disposition of the security debtor has obtained this right after the entry of the recordation of prohibition, the security creditor can seek execution for the realisation of his right determined in an enforcement title document directly against this person.

(5) The effect of the prohibitions referred to in paragraph 1 above, save for the one referred to in paragraph 4 above, lies in the facts that the persons against whom the prohibition has been issued shall be liable to the security creditor for the damage inflicted to him by acting contrary to the prohibition after being served with it. The persons against whom the prohibitions have been issued can release themselves of their liability by depositing with the court the objects to which the prohibition relates, if these objects are suitable for this, or by confiding them to a warden or manager determined by the court at their proposal.

(6) The provisions of Article 297, paragraphs 3 and 4 hereof shall apply, as appropriate, to interim measures for the securing of non-monetary claims.

## **4. Common Provisions**

### **Security Deposit in Place of Interim Measure**

#### Article 300

- (1) The security deposit creditor may, in a motion for the ordering of an interim measure, or subsequently, state that he shall be satisfied with the provision of a security deposit by the security debtor instead of an interim measure.
- (2) The provision of a security deposit in place of an interim measure can also be ordered at the security deposit debtor's motion. The circumstance that the security deposit debtor has put forward a motion for the provision of a security deposit shall not postpone the implementation of the security deposit until a decision is made on this motion.
- (3) If the security deposit debtor provides a security deposit, the court shall suspend proceedings and set aside the actions that have already been undertaken.

### **Security Deposit as a Condition for the Ordering of an Interim Measure**

#### Article 301

- (1) The court may order an interim measure at the security creditor's proposal even when he has not shown probable the existence of a claim and danger, if he has previously, within a time limit set by the court, provided security for damage that the security debtor might incur by the ordering and implementation of an interim measure. If the security creditor does not provide the security deposit within the set time limit, the court shall reject the motion for security.
- (2) The court can, at the security debtor's proposal and depending on the circumstances of the case, act in accordance with paragraph 1 above even when the security creditor has shown probable the existence of the claim and the danger. If the security creditor does not provide the security within the set time limit, the court shall suspend the proceedings and set aside the actions that have been undertaken. The circumstance that the security debtor has asked for the provision of security does not postpone the implementation of the security proceedings until the court reaches a decision on his proposal.
- (3) Security shall be ordered before the expiry of the time limit within which the security debtor may, in the security proceedings, claim damages.

### **Ordering Several Interim Measures**

#### Article 302

- (1) The court can, regarding the circumstances of the case, order several interim measures, if this is necessary.
- (2) If in a given case it is possible to order several interim measures, the court shall order the one which is most suitable in order for the purpose of the security to be achieved, and if they are all equally suitable, the court shall order that which is least onerous to the security debtor.

### **Time for which an Interim Measure is Ordered**

#### Article 303

- (1) The ruling by which an interim measure is ordered shall also order the duration of this measure and if the measure is ordered before an action has been filed or some other proceeding instituted it shall also order the time limit within which the security creditor must bring an action, i.e. motion for institution of other proceedings, in order to justify the measure.
- (2) The court shall, at the security creditor's proposal, extend the interim measure's duration, provided that the circumstances under which the measure was ordered have not changed.
- (3) A proposal referred to in paragraph 2 above can be filed only before the expiry of the time limit for which the temporary measure is ordered.

### **Legal Remedies**

#### Article 304

- (1) An appeal against the ruling on a motion for the issuance of an interim measure is permitted within eight days from the service of the ruling. This appeal shall not be sent to the other party for answer.
- (2) The court of second instance shall reach and send a ruling on the appeal referred to in paragraph 1 above within thirty days from the day of its receipt.
- (3) The time limit for filing an appeal or the appeal itself do not postpone the implementation of the interim measure.

### **Revocation of an Interim Measure**

#### Article 305

- (1) If the security creditor does not bring an action within a certain time limit, or if he does not institute any other proceedings for the justification of the interim measure or if the time for which the interim measure was ordered has expired, the court shall, at the security debtor's proposal, suspend the proceedings and set aside the actions that have been undertaken.
- (2) At the security debtor's proposal the proceedings shall be suspended and the undertaken action revoked if the circumstances due to which the measure has been ordered have subsequently been changed so that it is no longer necessary.

### **Compensating the Security Debtor's Damage**

#### Article 306

- (1) The security debtor has the right to claim from the security creditor damages he incurred by an interim measure which has been determined as unfounded or which the security creditor failed to justify.
- (2) In such case the provisions of Article 282, paragraphs 4, 5 and 6, Article 290 and Article 291 hereof shall apply, as appropriate.

## **Application of Provisions on Security by Preliminary Measures**

### **Article 307**

The provisions of Article 285, paragraph 3, Articles 288 and Article 289, paragraphs 2 to 4, hereof shall apply, as appropriate, to the procedure of providing security by interim measures.

### **Article 307a to 307s**

Deleted.

## **Part Five**

### **PENALTY CLAUSES**

#### **Offences**

##### **Article 307t**

(1) Fines amounting from HRK 10,000.00 to 50,000.00 shall be imposed on an execution debtor who fails to provide, at the execution creditor's written request, written information on all of his accounts and the legal persons with which they are kept (Article 181, paragraph 1).

(2) A fine amounting from HRK 2,000.00 to 10,000.00 shall be also imposed for an offence referred to in paragraph 1 above on the responsible person of the legal person or state body.

#### **Special Reference to Employer's Offences**

##### **Article 307u**

(1) Fines amounting from HRK 50,000.00 to 200,000.00 shall be imposed on an employer who, even after the adoption of a writ of execution, in compliance with the order contained in an enforcement title document, fails to return the employee to work or employment within the time limit of eight days (Article 239, paragraph 1).

(2) A fine amounting from HRK 10,000.00 to 50,000.00 shall be also imposed for the offence referred to in paragraph 1 above on the responsible person of the employer who is a legal person.

#### **Offences of Persons and Bodies Obligated to Provide Information on the Debtor**

##### **Article 307v**

(1) Fines amounting from HRK 10,000.00 to 50,000.00 shall be imposed on a legal person who fails to provide, within eight days, the information referred to in Article 16b, paragraphs 1 and 3, hereof.

(2) Fines amounting from HRK 2,000.00 to 10,000.00 shall be also imposed for the offence referred to in paragraph 1 above on the responsible person of the legal person.

(3) Fines amounting from HRK 2,000.00 to 10,000.00 shall be also imposed for the offence on the responsible person of a body if it fails to provide, within eight days, the information referred to in Article 16b, paragraphs 2, hereof.

**Offences of the Execution Debtor's Debtor,  
i.e. the Person Keeping the Execution Debtor's Property**

Article 307z

(1) Fines amounting from HRK 10,000.00 to 50,000.00 shall be imposed on a legal person who fails to provide, at the court's request, within eight days, its statement on the facts referred to in Article 16b, paragraph 4, hereof.

(2) Fines amounting from HRK 2,000.00 to 10,000.00 shall be also imposed for the offence referred to in paragraph 1 above on the responsible person of the legal person referred to in paragraph 1 above.

(3) Fines amounting from HRK 2,000.00 to 10,000.00 shall be imposed for the offence on a natural person who fails to provide, at the court's request, within eight days, its statement on the facts referred to in Article 16b, paragraph 4, hereof.

**TRANSITIONAL AND FINAL PROVISIONS**

**Tenancy Rights**

Article 308

(1) Tenancy rights or rights equivalent to tenancy rights shall not cease with the sale of an apartment or the building in which the apartment lies, save if otherwise provided for by the law.

(2) The buyer shall assume the rights and obligations of the provider of the apartment for use.

**Current Proceedings**

Article 309

Currently running proceedings shall be concluded according to the provisions of the law applicable before the entry into force of this Act.

**Cessation of Validity of Other Acts' Provisions**

Article 310

On the day this Act enters into force the Execution Proceedings Act (OG 53/91 and 91/92) shall cease to be valid, save for the cases referred to in Article 309 hereof.

**Entry Into Force**

Article 311

This Act shall enter into force on the thirtieth day following its publication in the Official Gazette.

*PROVISIONS OF THE ACT ON AMENDMENTS TO THE EXECUTION ACT THAT DO NOT  
MAKE PART OF THE PRINCIPAL TEXT OF THE EXECUTION ACT*

*Act on Amendments to the Execution Act, OG 88/05*

*Article 123*

*(1) The provisions of this Act shall apply to execution proceedings and security proceedings instituted after its entry into force.*

*(2) The provisions of this Act shall apply to other execution and security proceedings that are commenced before its entry into force, if the first instance decision is revoked in these cases after such date and the file remanded for retrial to the court of first instance.*

*Article 124*

*(1) The provisions of Article 77 hereof shall start to apply six months following the entry of this Act into force.*

*(2) The provisions of Article 102 hereof shall start to apply six months following the entry of this Act into force. The provisions of this Article shall apply only to cases in which the motion for execution on the basis of a trustworthy document has been filed after such date.*

*(3) The rules on subject-matter jurisdiction of courts as in force before this Act coming into force shall apply to proceedings instituted pursuant to motions for execution on the basis of trustworthy documents filed before the beginning of application of Article 102 hereof.*

*Article 125*

*(1) The provisions of the Execution Act, as in force at the time of their conclusion, shall apply to agreements on security by transfer of ownership and transfer of rights and to the procedure of their entry into land registers.*

*(2) Each party may seek the restoration of the status in the land registry as it was prior to the entry into force of the Act on Amendments to the Execution Act (OG 173/03), if the entries foreseen in Article 103 of this Act have been carried out after its entry into force.*

*(3) If a decision on the motion for entry filed in accordance with Article 103 of the Act on Amendments to the Execution Act (OG 173/03) has not been reached before the entry into force of this Act, the court shall suspend proceedings.*

*Article 126*

*(1) The Minister in charge of the economy shall lay down the requirements referred to in Article 143a, paragraph 2, hereof, within two months following the entry into force of this Act.*

*(2) The Minister in charge of judicial affairs shall lay down the tariff referred to in Article 143d, paragraph 3 and the amount referred to in Article 143e, paragraph 1, hereof, within two months following the entry into force of this Act.*

*(3) The Minister in charge of internal affairs shall adopt the ordinance referred to in Article 143n hereof within two months following the entry into force of this Act.*

*(4) The Croatian Chamber of Economy shall establish the register of real estates and chattels being sold in execution proceedings within three months following the entry into force of this Act.*

*(5) The minister in charge of judicial affairs shall harmonise the Rules of the Court and the Rules of Notary Publics with the provisions of Article 102 and adopt the Tariff on Remuneration and Recovery of Notary Publics' Expenses in Enforcement Proceedings referred to in Article 252 I, paragraph 1, hereof within three months following the entry into force of this Act.*

*Article 127*

*(Amendments entered)*

*Article 128*

*Articles 96, 97, 98, 102, paragraph 3, Article 103 and 104 of the Act on Amendments to the Execution Act (OG 173/03) are deleted.*

*Article 129*

*After Article 433 of the Civil Procedure Act (OG 53/91, 91/92, 112/99, 88/01 and 117/03) Article 433a is added and reads:*

*“Article 433a*

*(1) When a worker is suing for monetary claims on the basis of employment relationships that are determined in a gross amount, he shall sue for such amount.*

*(2) The court shall deliver the copy of a legally effective judgement by which the court has decided on the worker's request referred to in paragraph 1 above to the tax authorities.*

*(3) A worker is authorised to seek execution for the collection of the full adjudicated, i.e. determined, amount on the basis of an enforceable judgement by which the worker's request referred to in paragraph 1 above is accepted or on the basis of a payroll of a due but not yet disbursed salary, as an enforcement title document.*

*(4) In an execution on an execution creditor's account with a bank, the bank shall, after it has completely or partially collected the claim determined in the writ of execution, deposit the collected amount in a special account and inform the court thereof. In execution on other objects of execution the court shall deposit the collected amount in a special account of the court.*

*(5) After receiving the bank's notice, i.e. after collecting partially or in full a claim determined in a writ of execution in accordance with the provisions of paragraph 4 above, the court shall inform of this the competent tax authorities and ask it to calculate tax, surtax and contributions, including contributions for individualized capitalized savings on the collected amount.*

*(6) The tax authority shall make the calculations referred to in paragraph 5 above in compliance with applicable regulations on calculation and payment of contributions on salaries and income tax, with an indication of the designated accounts on which payment of contributions, including contributions for individualized capitalized savings, tax and surtax shall be effected.*

*(7) The calculation referred to in paragraph 6 above does not have the authority of an administrative act and legal remedies may not be lodged against it.*

*(8) The court shall, on the basis of the calculation referred to in paragraph 6 above, after it has given the parties the opportunity to provide their statements on it, reach a decision on payment in which it shall determine the part of the collected amount to be disbursed to the worker, the part to be disbursed to the tax authorities and the part to be paid in the account designated for payment of contributions for individualized capitalized savings.*

*(9) The provisions of paragraph 1 to 8 above shall apply to proceedings instituted after this Act's entry into force."*

*Article 130*

*The Legislation Committee of the Croatian Parliament is authorised to determine and publish a consolidated text of the Execution Act.*

*Article 131*

*This Act shall enter into force on the eight days following its publication in the Official Gazette.*