

# **“Official Gazette” of Bosnia and Herzegovina, 18/03**

Pursuant to Article IV 4a) of the Constitution of Bosnia and Herzegovina, Parliament of Bosnia and Herzegovina on a session of the House of Representatives held on April 9 and on the session of the House of Peoples held on April 23, enacted the

## **LAW ON ENFORCEMENT PROCEDURE BEFORE THE COURT OF BOSNIA AND HERZEGOVINA**

### **PART ONE**

#### **I – BASIC PROVISIONS**

##### **Contents of the Law**

###### **Article 1**

This Law shall govern the procedure pursuant to which the Court of Bosnia and Herzegovina (hereinafter: the Court) shall enforce on claims based on enforceable and authentic documents (hereinafter: enforcement procedure) and the procedure of posting security (hereinafter: security procedure), unless otherwise provided by a separate law.

The provisions of this Law shall not be applied to enforcement proceedings stipulated by separate law.

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

###### **Article 2**

The terms used in this Law have the following meanings:

- 1) “claim” denotes a right to a payment, an act, a restraining from acting or the causing of an act to be performed by someone else,
- 2) “judgment creditor” denotes a person who either initiated a proceeding for the purpose of satisfying a certain claim, or a person for whose benefit such proceeding has been initiated automatically,
- 3) “security proponent” denotes a person who either initiated a proceeding for the purpose of securing a certain claim, or a person for whose benefit such proceeding has been initiated automatically,
- 4) “judgment debtor” denotes a person against whom a claim is satisfied,
- 5) “security opponent” denotes a person against whom a security is satisfied,
- 6) “party” denotes a judgment creditor or a judgment debtor and security proponent or security opponent,
- 7) “participant” denotes a person who is not a party in the enforcement procedure or security procedure but participates in the proceedings because his/her rights are affected, or because s/he has a legal interest therein,
- 8) “decision on enforcement” denotes a decision by which a motion for enforcement is entirely or partially accepted or upon which the enforcement is ordered automatically,

- 9) “decision on security” denotes a decision by which a motion for security is entirely or partially accepted, or upon which the security is ordered automatically,
- 10) “Court referee” denotes a Court official who on the Court’s order directly undertakes certain acts set forth in the enforcement procedure or the security procedure,
- 11) “farmer” denotes a person whose major source of income is farming,

### **Initiation of Proceedings**

#### **Article 3**

Enforcement procedure shall be initiated by a motion of a judgment creditor and the security procedure by a motion of a security proponent.

When stipulated by Law that an organ or a person, who is not the carrier of a certain claim, is authorized to initiate an enforcement or security procedure, that organ or person shall have the status of a judgment debtor or a security proponent in the procedure.

Enforcement procedure and security procedure may be also initiated ex officio, when precisely permitted by the Law.

If the proceeding was initiated by a motion of a certain organ or person which is not the carrier of the demand, or ex officio, that person may participate in the proceedings with the jurisdictions of a judgment debtor, i.e. security proponent, but cannot take actions which would prevent the administration of proceedings initiated according to a motion of a certain organ or person or ex officio.

If the organ or person referred to in Paragraph 4 of this Article decides to withdraw the motion by which the procedure was initiated, or if the Court decides to cancel the procedure initiated ex officio, person because of whose claim the procedure was initiated may continue to lead the proceedings. Statement on assuming the proceedings must be given by this person within fifteen days from the day of service of information on the withdrawal of the motion or the intention to cancel the proceedings.

When some bodies or person are obliged by the law to present the Court a certain enforceable document or inform the Court in another way about the existence of reasons for the initiation of an enforcement procedure or a security procedure ex officio, they do not have the status of a party.

### **Methods and Object of Enforcement and Security**

#### **Article 4**

Enforcement and security methods are enforcement actions, or security actions or a system of those actions by which a claim is forcibly collected or secured as stipulated by the Law.

The objects of enforcement and security are any property or any right that can be subject to lawful enforcement in order to satisfy a judgment creditor’s claim or its security.

Enforcement actions or security actions may be carried out directly against a judgment debtor, security opponent and other persons pursuant to this Law.

Objects of enforcement cannot be goods that may not be traded or turned over, as well as other goods prescribed by a separate law, tax and other duty claims, objects, weapons and equipment for defense.

Evaluation if a certain good or right can be subject to an enforcement, or if there is a limitation of enforcement for a certain good or right, will be carried out on the basis of circumstances which existed at the time the motion for enforcement was filed, if not stipulated differently by this Law.

### **Limitations of Methods and Objects of Enforcement**

## **Article 5**

The Court shall issue a decision ordering an enforcement or security in accordance with the requested methods and over the objects listed in a motion for enforcement or a motion for security.

If more than one method or more than one object of enforcement or security were requested, the Court may, on a motion of a judgment debtor or security opponent, limit the enforcement to some of those methods or objects necessary to satisfy or secure the claim.

The Court may, on a motion of a judgment debtor, or security opponent, and in accordance to this Law, determine another method of enforcement or security instead the one she/he recommended.

If an enforceable decision cannot be executed on a certain object or by a particular method, the judgment creditor may, for the purpose of satisfying the claim, propose a new method or object for enforcement, upon which the Court shall continue with the enforcement.

## **Protection of Judgment Creditor's or Security Opponent's Dignity**

### **Article 6**

During the execution of an enforcement and security, judgment debtor's or security opponent's dignity shall be protected, as well as for the enforcement or security to be least unsuitable for him/her.

## **Submissions, Trials and Case Files**

### **Article 7**

In the enforcement procedure and a security procedure the Court shall act in accordance with submissions and other pleadings and Court filings.

The Court shall schedule a hearing as provided by this Law or when it finds holding a hearing is appropriate. Individual judge may compile an official note of a hearing instead of recording a full transcript.

The Court shall hear a party or a participant in the enforcement procedure outside of a hearing if this Law so stipulates, or if it finds that it is necessary to clarify certain issues, or to hear a response to a motion by a party.

The absence of one or both parties and participants from a hearing, or their failure to obey the Court's summons to the hearing, shall not prevent the Court from acting.

In the enforcement procedure and security procedure there is no suspension of procedure.

Submissions, other pleadings and Court filings in the enforcement procedure shall be submitted in a sufficient number of copies for the Court and the adverse party.

## **Delivery**

### **Article 8**

Submissions and other pleadings and Court filings are, principally, delivered by post or directly to the Court.

Delivery to the legal entity, which is recorded in a certain Court or other register, shall be made to the address mentioned in this motion and if this way fails, delivery shall be made to the address recorded in the Court register. If the delivery fails this way also, it shall be made by presenting the Court filing at the Court's notice board. Delivery shall be considered executed eight days after the Court filing was placed in the Court's notice board.

Delivery made by presenting the Court filing at the Court's notice board shall not be applied if the enforcement procedure was initiated according to an authentic document.

## **Dismissal of Proceedings Article 9**

In case of a dismissal of an enforcement procedure or security procedure the Court shall, according to a motion of a party or ex officio, if this is necessary for the protection of rights or interests of a party, appoint a provisional representative of a party in relation to which a reason appeared for the dismissal of a proceeding, and the proceeding shall continue even prior to cessation of this reason.

## **Composition of the Court and Rulings Article 10**

The enforcement procedure and security procedure shall be conducted and rulings issued by an individual judge of the Administrative Division of the Court (hereinafter: Individual Judge), and appeals or objections are decided upon by a Panel of the Administrative Division of the Court, consisted of three judges (hereinafter: Panel).

The Court shall issue rulings in the enforcement procedure and security procedure in the form of a decision or a conclusion.

With a decision the Court shall decide on the enforcement and adjudication of property, settlement and pronouncement of Court penalties and other issues when precisely stipulated by this Law.

With a conclusion a Court order shall be issued for certain actions to be taken, management of proceedings and other issues are decided, when precisely stipulated by this Law.

Conclusion in an appeal procedure or an objection procedure shall be passed by the President of the Panel.

## **Legal Remedies Article 11**

An appeal may be filed against a decision issued by an Individual judge, unless otherwise stipulated by this Law.

An objection may be filed against an enforcement decision pursuant to an authentic document.

An objection shall be filed within eight days from the date of service unless this Law stipulates otherwise.

An appeal may be filed against a decision on objection. Decision made according to the appeal is valid.

An objection or appeal shall not stay the enforcement of a decision, unless otherwise stipulated by this Law.

No legal remedy shall be allowed against a conclusion.

## **Revision, Repeat of Procedure and Return to Status Quo Ante Article 12**

Revision and repeating of a procedure is not permitted in the enforcement procedure and security procedure, unless when the repeating of procedure is requested from Article 51 Paragraph 6 of this Law.

Return to Status Quo Ante is permitted only in cases of missing a deadline for an appeal or objection.

## **Immediacy and Sequence of Actions**

### **Article 13**

In the enforcement procedure and security procedure the Court shall act without delay.

The Court shall review the cases in the order in which they are received unless the nature of a claim or special circumstances calls for a different action.

## **Costs of Proceedings**

### **Article 14**

A judgment creditor or security proponent shall advance the estimated costs required for the proceedings related to determination and execution of an enforcement and security.

A judgment creditor or security proponent shall pay the proceeding costs in advance within a period determined by the Court; on the contrary Court shall dismiss the enforcement, i.e. security. If carrying out an enforcement act depends on the payment of costs in advance before a deadline, and payment is not made before that deadline, such enforcement act shall not be carried out.

The costs of enforcement proceedings initiated automatically shall be paid from the Court funds in advance.

A judgment debtor or a security opponent shall compensate the judgment creditor or security proponent for the incurred costs necessary to carry out the enforcement or the security.

A judgment creditor or security proponent shall compensate the judgment debtor or security opponent for those costs s/he caused unnecessarily.

A request for compensation of costs shall be submitted not later than thirty days after the conclusion on the enforcement proceedings.

The Court shall decide on the costs in the enforcement procedure and upon a motion by a party the Court shall order enforcement for their collection in the same manner.

Judgment creditor or security proponent may, already in the motion for enforcement or the motion for security, request an enforcement against the judgment debtor or security opponent for the compensation of foreseen proceeding costs. Pursuant to this decision on the enforcement, the Court shall undertake measures by which it shall establish rights over judgment debtor's or security opponent's parts of property in order to secure the future compensation of proceeding costs in the benefit of the judgment creditor or security opponent.

## **Security**

### **Article 15**

When this Law prescribes the posting of security, security shall be posted in cash. Exceptionally, the Court may approve the posting of security in the form of a bank guarantee, securities and valuables whose value can easily be determined on the market and which can be easily liquidated.

By law the adverse party acquires a lien on the security posted.

If the Court in an enforcement procedure or a security procedure decides that the adverse party has the right for damage compensation or to be reimbursed for costs of the proceedings for which the security was posted, the Court shall, in the same decision and on the adverse party's motion, decide on the manner of collection of the claim for costs from the security.

## **Enforcement against Property of Foreign States**

## **Article 16**

Enforcement or security may not be ordered against property of a foreign country located in Bosnia and Herzegovina without consent of the Ministry of Foreign Affairs, unless the foreign state agrees to enforcement or security.

### **Application of Provisions of other Laws**

## **Article 17**

The provisions of the Civil Procedure Code shall be also accordingly applied in the enforcement procedure and security procedure, unless this or other law stipulates otherwise.

Provisions of the law regulating property rights and the law of obligations are accordingly applied to the substantive and legal prerequisites, and consequences of the enforcement procedure and security procedure.

## **PART TWO**

### **ENFORCEMENT PROCEDURE**

#### **I- ENFORCEABLE AND AUTHENTIC DOCUMENT**

##### **Basis for Ordering an Enforcement**

## **Article 18**

The Court shall order enforcement only on the basis of an enforceable or authentic document unless this Law stipulates otherwise.

##### **Enforceable Document**

## **Article 19**

Enforceable documents are the following:

1. an enforceable ruling of the Court of Bosnia and Herzegovina and an enforceable Court settlement,
2. an enforceable ruling passed in the administrative procedure and an enforceable settlement in the administrative procedure before the BiH institutions, if it orders the payment of a monetary obligation, unless otherwise stipulated by the Law,
3. other document stipulated by the Law as an enforceable document.

##### **Ruling and Settlement**

## **Article 20**

Under this Law, a Court ruling denotes a judgment, decision, payment order or other ruling issued in proceedings before the Court, and a Court settlement denotes a settlement reached before the Court.

Ruling in an administrative procedure denotes a decision or a conclusion issued in the administrative procedure by BiH institutions, whereas an administrative settlement denotes a settlement reached in the administrative procedure before this body or before those institutions.

##### **Enforceability of Ruling**

## **Article 21**

A Court ruling ordering the liquidation of a claim by the delivery of an asset or the performance of an act shall be enforceable if it has become final and if the period for voluntary liquidation has expired. The period for voluntary liquidation starts on the date of service of the ruling on the judgment debtor, unless otherwise provided by law.

A Court ruling ordering liquidation of a claim by allowing the performance of an act or restraining the performance of an act shall be enforceable if it has become final, unless the enforceable document grants some other period of time for the judgment debtor to comply with his/her obligation.

A ruling passed in the administrative procedure shall be enforceable if it has become enforceable according to the rules that regulate such procedure.

On the basis of a ruling that has become enforceable in one of its parts, enforcement may be ordered only with respect to that part.

An enforcement may be ordered on the basis of a Court decision which has not become final, or a decision issued before the BiH institutions which has not become final, if the law states that an appeal or other legal remedy shall not stay the enforcement of the decision.

### **Enforceability of Settlement**

#### **Article 22**

A Court settlement or an administrative settlement agreement as in Article 20 shall be enforceable if the claim to be satisfied pursuant to such settlement agreement has become due.

Settlement agreement becoming due is proven by a record on the Court settlement or a public document or by a legally certified document, and if not proven in this manner it shall be proven by a final decision passed in the Civil procedure by which due time is determined.

### **Suitability of an Enforceable Document for Enforcement**

#### **Article 23**

An enforceable document shall be suitable for enforcement if it contains the name and address of a judgment creditor and a judgment debtor, and the subject, type, scope of and time for liquidation of the obligation.

If an enforceable document is a decision which orders the delivery of an asset or the performance of an act, it must have a deadline for voluntary liquidation and if not determined that period shall be ordered by the Court in a decision on enforcement.

### **Determination and Collection of Default Interest**

#### **Article 24**

If the law governing the rate of default interest changes after an enforceable document is issued or after a settlement is reached, the Court shall, on a motion of a judgment creditor, issue a decision on enforcement determining the collection of such interest at the new rate for the period to which such change refers.

If the collection of default interest on the costs of proceedings has not been set forth in an enforceable document, the Court shall, on a motion of a judgment creditor, issue a decision on enforcement determining the collection of that interest at the prescribed rate from the day of issuing the ruling or the date the settlement is concluded until the date of collection.

### **Authentic Document**

#### **Article 25**

Pursuant to this Law, an authentic document shall be a invoice, bill of exchange and cheque with protest and reverse account, if necessary, for the establishment of a claim, public document, records of accounts stipulated by the BiH Law, legally certified private document and document considered a public document according to the law. Calculation of interest shall be also considered as an invoice.

An authentic document shall be suitable for enforcement if it contains the name and address of a judgment creditor and a judgment debtor, and the subject, type, scope of and time for performing the obligation.

When it is not visible from an authentic document that a claim is due for enforcement, enforcement shall be ordered if the judgment creditor submits a written statement together with the authentic document explaining that the claim is due for enforcement, stating the date of the claim being due for enforcement.

### **Transfer of a Claim or an Obligation**

#### **Article 26**

An enforcement shall also be ordered on a motion and for the benefit of a person who has not been designated a judgment creditor in an enforceable document, if s/he proves by public document or certified private document that the claim has been assigned to him/her, or that it has been transferred to him/her in some other way. If the assignment cannot be proven in this manner, assignment of claim shall be proven with a final decision passed in civil proceedings.

Regulations of Paragraph 1 of this Article are accordingly applied to the enforcement against the person who has not been designated a judgment debtor.

### **Conditional and Mutual Obligation**

#### **Article 27**

If judgment debtor's obligation determined in the enforcement document depends on the prior or simultaneous performance of a certain obligation by the judgment creditor, or on the meeting of a certain condition, the Court shall, on the motion of judgment creditor, order the enforcement if the judgment creditor states that s/he has performed the obligation or that the condition has been met.

If the judgment debtor states in his/her legal remedy against the decision on enforcement that the judgment creditor did not perform his obligation, or that the condition was not met, the Court shall decide accordingly in the enforcement procedure, unless this decision depends on the determination of disputed facts.

If Court's decision referred to in Paragraph 2 of this Article depends on the determination of disputed facts, the Court shall decide on the legal remedy referred to in Paragraph 1 of this Article in the enforcement procedure if these facts are commonly known, if their existence can be determined by applying the rules on legal assumptions or if the judgment creditor proves the performance or meeting an obligation or meeting a condition with a public document or private document which has the significance of a public document. In other cases, the Court shall dismiss the procedure.

It shall be presumed that a judgment creditor has performed his/her obligation or secured its fulfillment if the object of obligations is posted in the Court's deposit.

Judgment creditor, who does not manage to prove in the enforcement procedure, in accordance to Paragraph 1 to 4 of this Article, that s/he fulfilled his obligation, secured its fulfillment or that the condition was met, may initiate a civil procedure for the determination that s/he's authorized pursuant to the enforcement document to request the unconditional enforcement in order to meet his claim.

### **Alternative Obligation in the Choice of Judgment Debtor**

#### **Article 28**

If, on the basis of an enforceable document, a judgment debtor has the right to choose among several



objects to satisfy his/her obligation and fails to choose among such objects within the deadline for voluntary liquidation, the judgment creditor, in a motion for enforcement, shall designate the object that will satisfy the obligation.

Judgment debtor has the right to choose until the judgment debtor does not even begin to receive partial liquidation s/he requested in the motion for enforcement.

A judgment creditor has the right to reimbursement for any costs incurred as a result of the enforcement procedure being dismissed because the judgment debtor fulfilled his obligation with another object after the procedure was initiated.

### **Optional Authorization of a Judgment Debtor**

#### **Article 29**

A judgment debtor who is ordered through an enforceable document to satisfy his/her obligation in a certain manner may choose to satisfy his/her obligation in another manner that is specified in the enforceable document, until such time as the judgment creditor begins to receive at least a partial liquidation.

A judgment creditor has the right to reimbursement for any costs incurred as a result of the enforcement procedure being dismissed because the judgment debtor performed some other act designated in the enforceable document instead of the obligation that was due after the initiation of the enforcement procedure.

### **Certificate on Enforceability**

#### **Article 30**

An Individual judge or the body that was deciding on the claim at the first instance issues the certificate on enforceability.

A certificate on enforceability that is found to be without legal grounds, shall be revoked by a decision of an Individual judge, or the body, upon a motion or ex officio.

## **II – PROPOSING AND ORDERING AN ENFORCEMENT**

### **Competency**

#### **Article 31**

Individual judge of the Administrative division of the Court is competent for deciding on motions for enforcement.

### **Motion for Enforcement**

#### **Article 32**

A motion for enforcement shall contain a request for enforcement with an enforceable or authentic document, which provides the basis for requesting the enforcement, the names of the judgment creditor and the judgment debtor, the claim whose liquidation is requested, the means of the enforcement and the object of enforcement as well as other information necessary to execute the enforcement.

A motion for enforcement on the basis of an authentic document shall contain:

- 1) a request that the Court impose an obligation on the judgment debtor to satisfy the claim, together with the estimated costs within eight days, and in case of disputes related to bills of exchange and cheques, within three days of service of the decision,
- 2) an enforceable request referred to in Paragraph 1 of this Article,

Judgment debtor may, prior to passing the decision on enforcement, request the Court to obtain information about the assets of the judgment debtor from legal entities, funds, administrative and other bodies which have this information at their disposal and based on this information supplement the motion for enforcement.

Legal entities and bodies referred to in Paragraph 3 of this Article are obliged to act according to the request within eight days from the date of service, under a threat of sanctions against the responsible individuals in the legal entity, fund or other body. Inaction according to the request may be justified by classifying it as an official or business secret, and the judgment debtor may not be informed about the request and presentation of information.

### **Withdrawal of a Motion**

#### **Article 33**

In the course of proceedings, a judgment creditor may, without the consent of the judgment debtor, withdraw the motion for enforcement completely or partially, in which case the Court shall dismiss the enforcement.

After withdrawing the motion, Judgment creditor may file a new motion for enforcement.

### **Decision on Enforcement**

#### **Article 34**

A decision on enforcement must contain references to the enforceable or authentic document that is the basis on which the enforcement is ordered, the names of the judgment creditor and judgment debtor, the claim that is to be satisfied, the means and object of enforcement and other information necessary for the execution of the enforcement.

In a decision on enforcement based on an authentic document, the Court shall:

- 1) impose an obligation on the judgment debtor to pay all of the claim, together with the estimated costs, within eight days, and in case of disputes related to bills of exchange and cheques, within three days of the delivery of the decision on enforcement;
- 2) order the enforcement for the purpose of satisfying such claims,

A decision on enforcement need not contain an explanation and it may be issued by affixing a seal to the motion for enforcement.

A decision on enforcement must contain an instruction on legal remedies.

The Court shall not automatically reject an enforcement request based on a final decision of the Court or a Court settlement, because these documents did not become enforceable at the time motion on enforcement was decided upon, if they became enforceable subsequently.

A decision, which completely or partially rejects or refuses a motion for enforcement, must contain an explanation.

### **Delivery of Decision on Enforcement**

#### **Article 35**

A decision on enforcement shall be served on the judgment creditor and the judgment debtor.

A decision by which a motion for enforcement is rejected or refused shall be served only on the judgment creditor.

A decision on enforcement of a monetary claim shall also be served on the judgment debtor's debtor,

prior to it being final.

A decision on enforcement of funds in a judgment debtor's bank account shall be also served on the bank where the account is located, prior to it being final.

A decision on enforcement based on an authentic document shall be served on a bank only when it becomes final.

A decision on enforcement against personal property shall be served on the judgment debtor at the time the first enforcement is conducted.

### **III- EXECUTION OF ENFORCEMENT**

#### **Competency**

##### **Article 36**

Individual judge of the Administrative division of the Court is competent for the execution of enforcement.

#### **Restrictions and Time of Enforcement**

##### **Article 37**

Enforcement shall be executed within the restrictions stipulated in the decision on enforcement.

The enforcement shall be executed on weekdays and in daytime.

The Court may order, by a conclusion, that the enforcement be executed on a non-working day or during the night, if there is a justified reason to do so.

#### **Work of the Court Referee**

##### **Article 38**

When searching a judgment debtor's house or the clothing s/he's wearing as well as undertaking other enforcement actions, a Court referee shall treat the judgment debtor and members of his/her household with respect.

Two adult witnesses shall be present when enforcement actions are being carried out in the judgment debtor's dwelling if the judgment debtor, his/her legal representative, agent or adult member of his/her household is not present.

Before enforcement is conducted at the premises of a legal person, the Court referee shall ask the legal person's agent or a person s/he appoints to be present when the enforcement is carried out. If a legal person's agent refuses to proceed in accordance with the Court referee's request, or if the Court referee does not find him/her on the legal person's premises when undertaking an enforcement action, such action shall be carried out in the presence of two adult witnesses.

If an enforcement action is to be carried out in a locked room, and the judgment debtor or his/her agent are not present or refuse to unlock the room, the Court referee shall use reasonable means to open such room in the presence of two adult witnesses.

When carrying out enforcement actions in accordance with the provisions under Paragraph 2 through 4 of this Article, the Court referee shall make a separate record of the enforcement action that was carried out, signed by the two present witnesses.

#### **Obstruction of Court Referee's Work**

### **Article 39**

The Court referee is authorized to remove a person obstructing an enforcement action, and depending on the circumstances of the case also may request the help of police.

Police shall be obliged to act according to the order of the Court referee, and if necessary, the Court referee may order the use of force against a person obstructing the enforcement.

The Court may also request the assistance of the Court police during the enforcement action, in a manner and procedure stipulated by a separate Law.

### **Irregularities in the Course of Executing the Enforcement**

#### **Article 40**

A party or participant may file a submission requesting a removal of irregularities conducted by the Court referee in the course of executing the enforcement.

The Court may issue a conclusion revoking illicit and improper activity performed by the Court referee.

## **IV- LEGAL REMEDIES OF THE JUDGMENT DEBTOR AND JUDGMENT CREDITOR AGAINST THE DECISION ON ENFORCEMENT**

### **Legal Remedies against a Decision on Enforcement Pursuant to the Enforcement Document**

#### **Appeal**

#### **Article 41**

A judgment debtor may file an appeal contesting a decision on enforcement, unless otherwise stipulated by this Law.

The judgment debtor may file an appeal and in particular:

- 1) if the document upon which the decision on enforcement was issued is not an enforceable document,
- 2) if the enforceable document has not become enforceable,
- 3) if the enforceable document upon which the decision on enforcement was issued has been repealed, annulled, altered or in some other way rescinded,
- 4) if the parties, based on a public document or legally certified document made after the issuance of the enforceable document, have agreed in writing that they will not request an enforcement on the basis of the enforceable document, permanently or temporarily,
- 5) if the legal deadline within which the enforcement may be requested has expired,
- 6) if the enforcement was ordered on an asset which is exempt from enforcement, or on which the scope of enforcement is limited,
- 7) if the judgment creditor is not authorized to seek enforcement on the basis of the enforceable document, or if s/he is not authorized to seek enforcement against the judgment debtor,
- 8) if any conditions set forth in the enforceable document have not been met, unless otherwise provided by law,

- 9) if the claim ceased because of a fact that occurred at a time when the judgment debtor was not able to present it in the proceedings in which the decision was issued, or if the claim ceased because of an event that occurred subsequent to the conclusion of the Court or administrative settlement;
- 10) if, as a result of a fact that occurred at the time when the debtor was not able to present it in the proceedings in which the decision was issued, or if, as a result of a fact that occurred subsequent to the Court or administrative settlement, the liquidation of the claim was postponed, prohibited, altered or in some other way prevented, either permanently or temporarily,
- 11) if a claim decided on by an enforceable document has expired due to the statute of limitations.

In relation to the appeal referred to in Paragraph 2 of this Article, the Court shall automatically pay attention to:

- reasons referred to in Paragraph 2 Item 1, 3, and 5 of this Article;
- circumstances that in case referred to in Paragraph 2 Item 6 of this Article, enforcement was ordered over objects from Article 3 Paragraph 4 and 5 of this Law, and
- circumstances that in cases referred to in Paragraph 2 Item 10 of this Article when meeting a claim is prohibited.

A judgment creditor may file an appeal contesting a decision in which a motion for enforcement has been denied entirely or partially, decision by which his motion was exceeded and a decision on the cost of proceedings.

### **Decision on Appeal Article 42**

A Panel shall make a decision on appeal contesting a decision on enforcement. Individual judge is competent to grant an appeal contesting a decision on enforcement if he concludes that it's entirely founded, then alter and reject the motion for enforcement which was passed in its entirety or partially, or dismiss the decision on enforcement and reject the motion for enforcement or declare lack of competence. In this case, individual judge shall revoke the enforcement actions that have been previously conducted.

In order to check the grounds of an appeal, individual judge may, if needed, take statements from parties and other participants as well as take other actions.

### **Instruction to Initiate a Lawsuit after an Appeal Article 43**

If an appeal was filed because of reasons from Article 41 Paragraph 2 Item 7 to 11 of this Law, Individual judge shall serve the appeal to the judgment creditor for the purpose of giving a statement within eight days. If the judgment creditor questions the grounds for the appeal or if s/he does not reply in eight days, individual judge shall grant the appeal if the judgment debtor proves their soundness with a public, certified private or other document that has the value of a public document. On the contrary, individual judge shall pass a separate decision by which he will instruct the judgment debtor to initiate a lawsuit in order to pronounce the enforcement as illegal.

If an appeal was filed because of reasons other than from Article 41 Paragraph 2 of this Law, individual judge, if s/he considers the appeal because of those other reasons as unfounded, shall immediately forward a copy of the case file to the Panel for decision on the appeal for those reasons.

If the judgment debtor files an appeal against a decision on instructing to initiate a civil lawsuit, individual judge shall forward this appeal to the Panel for joint decision on this appeal and the appeal against the decision on enforcement.

### **Appeal After the Expiration of a Deadline**

## **Article 44**

Because of reasons from Article 41 Paragraph 2 Item 7 to 11 of this Law, judgment debtor may, until the finalization of the enforcement procedure, file an appeal against a decision on enforcement even when the decision is final, under a condition that it was not possible, because of justified reasons, to present this reason in the appeal against the decision.

Judgment debtor is obliged to present all the reasons in the appeal referred to in Paragraph 2 of this Article, because of which s/he could not have presented this reason at the time the appeal was filed. The Court shall reject the late appeal if it's based on the reasons that the judgment debtor could have presented in the previously filed appeal.

Filing an appeal referred to in Paragraph 1 of this Article does not prevent the enforcement action and liquidation of a claim of the judgment creditor, unless otherwise stipulated by this Law.

### **Response to an Appeal and Decision on Appeal**

## **Article 45**

An appeal from Article 44 of this Law shall be served without delay on the adverse party, who may respond to the appeal within eight days.

Upon the receipt of the response to the appeal or following the expiration of the deadline for a response, the Panel shall, depending on the nature of the case, set a hearing for argument on the appeal or render a decision without scheduling a hearing, except in case from Article 46 of this Law.

Individual judge, by a decision on the appeal, shall determine whether the appeal is rejected, denied or granted, except in cases from Article 46 of this Law. Should the individual judge accept the appeal, enforcement shall be dismissed and previously conducted enforcement actions shall be revoked.

Grounds for the appeal shall be evaluated considering the condition at the time appeal is decided upon.

### **Instruction to Initiate a Lawsuit or Other Procedures after the Appeal**

## **Article 46**

If a decision on appeal from Article 44 Paragraph 1 of this Law depends on the determination of a disputable fact, individual judge shall instruct the judgment debtor to initiate a civil lawsuit or any other procedure within fifteen days in order to render the enforcement as illegal, unless the judgment debtor does not prove the grounds of his/her appeal with a public, certified, private or other document which has the meaning of a public document.

Judgment debtor may initiate a lawsuit or another procedure referred to in Paragraph 1 of this Article even after the deadline determined by the individual judge passes, until the finalization of the procedure, but in this case s/he bears the costs caused by breaking that deadline.

Regulations from Article 43 Paragraph 2 of this Law shall be applied in the procedure on this appeal.

### **Legal Remedies against a Decision on Enforcement on the basis of an Authentic Document Objection against a Decision on Enforcement on the Basis of an Authentic Document**

## **Article 47**

Judgment debtor may file an objection against a decision on enforcement on the basis of an authentic document within eight days, while in disputes related to bills of exchange and cheques within three days, unless only the decision on procedure costs is contested. Because of reasons for which the decision on enforcement may be contested with an appeal pursuant to the provision of Article 42 of this Law, Judgment debtor may contest the decision on enforcement on the basis of an authentic document in the part which decides on the enforcement only with an objection.

Judgment debtor may file an objection, which is filed because of reasons mentioned in Article 44 Paragraph 1 of this Law, contesting a portion of a decision on enforcement, which decides on the enforcement, on the basis of an authentic document, if this objection is based on the fact which occurred after the decision on enforcement was passed.

Provisions of Articles 44 to 46 of this Law shall be accordingly applied to the objection filed after the deadline passes.

**Proceedings upon an Objection against a Decision on Enforcement on the Basis of an Authentic Document**  
**Article 48**

The judgment debtor shall specify what part of the decision s/he contests in the objection opposing the decision on enforcement on the basis of the authentic document and the objection shall contain grounds and arguments in support thereof. Unexplained objection that does not contain grounds and arguments in support thereof shall be rejected.

If the objection does not specify the portion of the decision being contested, the portion being contested shall be determined based on the grounds set forth in the objection.

If the decision on enforcement is contested in its entirety or in the part of the decision on enforcement ordering the judgment debtor to satisfy the claim, the Court shall rescind the decision on enforcement in the part ordering the enforcement and shall revoke all actions taken in the enforcement proceedings, and the procedure shall be deemed as an objection against a monetary order.

If the decision on enforcement is being contested only to the extent that enforcement is ordered, further procedure shall proceed in the same manner as any other objection procedure against a decision on enforcement issued on the basis of an enforceable document.

If the objection referred to in Paragraph 3 of this Article is accepted, the part of the decision on enforcement ordering the judgment debtor to satisfy the claim shall have the effect of an enforceable document on which the enforcement may be requested again.

If the judgment debtor does not file an objection against a part of the decision on enforcement ordering him to satisfy the claim, according to the rules of civil lawsuit procedure s/he may request the repeat of procedure against that part of the decision.

**V- OBJECTION OF THIRD PARTY**

**Preconditions for Filing an Objection**  
**Article 49**

A person who determines to have a right in an object of enforcement that prevents the enforcement may file an objection against the enforcement and request that the enforcement against such object be declared invalid.

Filing of the objection shall not prevent either the execution of the enforcement or the liquidation of the claim of the judgment creditor, unless otherwise stipulated by this Law.

The Court shall serve the objection on the judgment creditor and the judgment debtor, requiring them to respond to the objection within a period of eight days.

**Instruction to Initiate the Lawsuit**  
**Article 50**

If the judgment debtor fails to respond prior to the expiration of the deadline or opposes the

objection, the Court shall direct the party that submitted the objection to initiate a civil lawsuit against parties within fifteen days, in order to declare the enforcement over the enforcement object as inadmissible.

If the party that submitted the objection proves the validity of his/her objection with a final Court decision, public document or private document which has the significance of a public document, the Court shall decide on the objection in the enforcement procedure.

The party submitting an objection may initiate civil proceedings even after the expiration of a deadline determined by the Court, until the finalization of the enforcement procedure, but in this case is obliged to cover the costs caused by breaking that deadline.

In the civil proceedings referred to in Paragraph 1 of this Article, third party may request the determination of the existence of his/her right if one of the parties disputes the same.

### **When it cannot be Requested for an Enforcement to be Declared Inadmissible Article 51**

Exceptionally from the provision of Article 49 Paragraph 1 of this Law, person who is joint owner of an object subject to an enforcement cannot request for the enforcement to be declared inadmissible because of his/her ownership right, but does have the right for reimbursement from the amount received by the sale of the object prior to the reimbursement of all judgment creditors and prior to the reimbursement of enforcement proceeding costs.

Person referred to in Paragraph 1 of this Article has the right to request the return of enforcement object if they pay an amount equal to the value of the judgment debtor's share of the property.

Person referred to in Paragraph 1 of this Article, whose portion of the property under enforcement has been contested, shall be instructed by the Court to initiate a lawsuit against the judgment creditor in order to determine his/her share of property.

If the person referred to in Paragraph 1 of this Article can prove his/her right by a final judgment, the Court shall act as if his/her right has not been contested.

This circumstance does not affect the right of the judgment creditor and judgment debtor to pursue their rights against this person in a separate civil lawsuit.

If the judgment debtor does not file an objection contesting a part of a decision on enforcement, by which s/he's ordered to secure the claim, s/he may request the repeat of the procedure against that part of the decision, pursuant to the regulations of the civil proceedings.

## **VI - COUNTER-ENFORCEMENT**

### **Grounds for Counter-enforcement Article 52**

After the enforcement has been executed, the judgment debtor may, in the same enforcement procedure, request the Court to order the judgment creditor to return to him/her what was obtained through the enforcement:

- if the enforceable document has been finally rescinded, altered, annulled, repealed or otherwise been established as without effect,
- if, during the enforcement procedure s/he satisfied the judgment creditor's claim out of Court and therefore the judgment creditor received double compensation.

Motion referred to in Paragraph 1 of this Article shall not be granted by the Court if sufficient



material or legal changes have occurred to the item obtained by enforcement so that its return is not feasible.

If the judgment creditor collected a certain monetary amount through enforcement, the judgment debtor may request in the motion for counter-enforcement that the creditor pay the lawful default interest from the date that amount was collected.

Rights for reimbursement because of reasons referred to in Paragraph 1 of this Article may be realized in a separate lawsuit.

The motion for counter-enforcement in Paragraph 1 of this Article may be filed within three months of the date when the judgment debtor became aware of the grounds for counter-enforcement, and at the latest within one year of the conclusion of the enforcement procedure.

A judgment debtor may not satisfy his/her claim through a lawsuit before the expiration of the deadline referred to in Paragraph 5 of this Article, except in cases referred to in Paragraph 2 of this Article.

If the enforcement procedure was initiated ex officio, counter-enforcement is not allowed, while the judgment debtor may satisfy his rights in a separate lawsuit.

### **Procedure on Motion for Counter-enforcement**

#### **Article 53**

The Court shall serve the motion filed pursuant to Article 52 of this Law on the judgment creditor and ask him/her to respond within eight days.

If within the deadline referred to in Paragraph 1 of this Article the judgment creditor opposes the motion, the Court shall rule on it following a hearing, and if the judgment creditor fails to respond to the motion before the expiration of the deadline, the Court shall decide whether to rule on the motion without holding a hearing.

If the Court decides to grant the motion, it shall order the judgment creditor to return within fifteen days what s/he has obtained through enforcement to the judgment debtor.

### **The Decision on Counter-Enforcement**

#### **Article 54**

Upon the judgment debtor's motion, the Court shall issue a decision on counter-enforcement based on a final and enforceable decision that ordered the judgment creditor to return what s/he obtained through enforcement to the judgment debtor.

Counter-enforcement shall be executed pursuant to provisions of this Law.

## **VII – POSTPONEMENT, DISMISSAL AND TERMINATION OF ENFORCEMENT**

### **Postponement of an Enforcement**

#### **Postponement of Enforcement on Motion of the Judgment Debtor**

#### **Article 55**

On the motion of the judgment debtor, the Court shall, if the judgment debtor establishes the likelihood that s/he would suffer irreparable or hard to repair damage, entirely or partially postpone the enforcement, if a request for the protection of legality was filed against the final decision passed in the enforcement procedure.

On the motion of the judgment debtor, the Court shall, if the judgment debtor establishes the

likelihood that s/he would suffer irreparable or hard to repair damage, entirely or partially postpone the enforcement:

- if a legal remedy was filed against the decision on the basis of which the enforcement was ordered;
- if a motion for the return to previous state was filed in the procedure in which a decision ordering the enforcement was passed;
- if a lawsuit was filed for the annulment of the arbitration verdict on the basis of which the decision was ordered;
- if a lawsuit was filed to rescind a settlement on the basis of which an enforcement was ordered;
- if the judgment debtor filed an appeal conceding the decision on enforcement or filed an objection or a lawsuit;
- if the judgment debtor filed an appeal against a decision which certifies the enforceability of the enforceable document or if s/he filed a motion for the repeat of procedure in which this decision was passed;
- if the judgment debtor or a participant in the procedure requested the removal of irregularities that occurred during the enforcement actions;
- if the enforcement, according to the contents of the enforceable document, depends on the simultaneous performance of a certain obligation by the judgment creditor, and the judgment debtor withheld the performance of his obligation because the judgment creditor did not fulfill his obligation and was not prepared to fulfill this simultaneously.

The Court shall pass the decision on the motion for the postponement after allowing the judgment creditor to make a statement, unless the circumstances of the case do not request a different action.

In case of Paragraph 2 of this Article, the Court shall, upon the request of the judgment creditor, contingent the postponement upon posting of appropriate security.

If the judgment debtor does not post security within the time ordered by the Court, which cannot be longer than fifteen days, it shall be considered that s/he withdrawn his/her motion for postponement.

Actions by which the enforcement is executed shall not be undertaken during the postponement of enforcement.

In the enforcement for the security of a monetary claim, even after the decision on postponement of a procedure is passed, actions on the basis of which the judgment creditor acquires a lien or the right to satisfy their claim over the object of enforcement shall be executed.

If the motion for the postponement of the enforcement is not granted, the Court shall continue with the enforcement even prior to the decision by which the motion is refused is final.

### **Postponement of Enforcement on the Motion of a Judgment Creditor**

#### **Article 56**

On a motion of the judgment creditor, the Court shall entirely or partially postpone the enforcement if the enforcement process has not yet begun.

If the enforcement process has commenced and the judgment debtor opposes the postponement within a deadline set by the Court, the Court shall deny the motion for postponement.

If the law provides that enforcement must be requested within a given deadline, the judgment creditor may file his/her motion for postponement before the expiration of that deadline.

### **Postponement of Enforcement on the Motion of a Third Party**

#### **Article 57**

On the motion of a person requesting the enforcement over a certain object to be declared

inadmissible, the Court shall, if this person establishes the likelihood that his right exists and that by the enforcement s/he would suffer irreparable or hard to repair damage, postpone the enforcement over that object.

The Court may, on the motion of a judgment creditor, condition the postponement of the enforcement with posting a security.

### **Duration of Postponement of Enforcement**

#### **Article 58**

If the enforcement was postponed because the judgment debtor or a third party filed a legal remedy or special legal expedient, the postponement shall last until the finalization of the procedure according to that remedy or expedient.

In other cases in which the judgment debtor requested a postponement, the Court shall, depending on the circumstances of the case, order the time for which the enforcement is postponed.

On the motion of the judgment creditor for the postponement of the procedure, the Court shall postpone the enforcement for the time s/he motioned.

### **Resumption of Postponed Procedure**

#### **Article 59**

Postponed enforcement shall resume automatically following the expiration of the period of postponement.

Upon the motion of the judgment creditor, the Court may resume the enforcement even before the period of postponement expires, if the judgment creditor establishes the likelihood that the reasons for the postponement have ceased or if s/he posts security.

### **Dismissal of Enforcement**

#### **Article 60**

Enforcement shall be dismissed automatically if the enforceable document has been finally repealed, altered, annulled, or otherwise declared without effect, or if the certificate of enforceability is revoked.

Enforcement shall be dismissed if it has become impossible or cannot be enforced for other reasons.

Enforcement against individual objects shall be dismissed on the motion of the judgment debtor if the Court determines that, upon the expiration of the deadline for appeal, the enforcement has extended to objects not specified in the decision on enforcement, objects which are exempt from enforcement, or objects on which the scope of the enforcement is limited.

The deadline for an objection to reasons set forth in the previous Paragraph shall be eight days and shall start running from the date the judgment debtor has learned that the enforcement has extended to an object exempt from enforcement, or on which the scope of enforcement is limited. Upon expiration of thirty days after the date of extending the action to objects listed in Paragraph 3 of this Article, the motion under Paragraph 3 may no longer be filed.

The decision dismissing the enforcement shall revoke all enforcement actions previously performed unless it infringes upon rights acquired by third persons.

### **Completion of Enforcement**

#### **Article 61**

The enforcement procedure shall be deemed completed when the decision on rejecting or denying

the motion for enforcement has become final, when the last enforcement action is completed, or when the enforcement is dismissed.

If the enforcement was finalized by completing the last enforcement action, the Court shall determine this with a separate decision.

## **VIII- ENFORCEMENT FOR THE PURPOSE OF SATISFYING**

### **A MONETARY CLAIM**

#### **General Provisions**

#### **Scope of Enforcement on Monetary Claims**

##### **Article 62**

Enforcement to satisfy a monetary claim shall be decided and enforced for the amount necessary to discharge the claim.

#### **Protection of Natural Persons as Judgment Debtors**

##### **Article 63**

Items and rights necessary to satisfy the daily needs of the judgment debtor and the members of his/her household s/he's legally obliged to support or for the performance of an independent business which is the main source of judgment debtor's income shall not be subject of an enforcement to satisfy a monetary claim.

Provision of Paragraph 1 of this Article shall not be applied in cases where this Law on enforcement ordered special rules on exemption from enforcement or on limitation of enforcement over certain objects and rights.

#### **Protection of Legal Persons Work**

##### **Article 64**

Items and rights of legal persons necessary for the performance of their work shall not be subject of an enforcement to satisfy a monetary claim.

Provision of Paragraph 1 of this Article shall not be applied in cases where this Law on enforcement ordered special rules on the order of enforcement, on exemption from enforcement or on limitation of enforcement over certain objects and rights.

#### **Protection of a Judgment Creditor**

##### **Article 65**

If the judgment creditor, on the basis of legal business with the judgment debtor acquired a lien or a similar right over real property or a right, as security for his/her claim which is subject of a request for faceable action, judgment debtor cannot oppose this enforcement pursuant to the provisions of this Law on exemption from enforcement or on limited enforcement, except by provisions of Article 5 of this Law.

Exceptionally, judgment debtor may oppose the enforcement form Paragraph 1 of this Article, except if the object of the right was acquired from the judgment creditor, requesting the fulfillment of his/her claim in connection to that acquirement by initiating a procedure.

#### **Order of Settlement of Several Judgment Creditors**

##### **Article 66**

Several judgment creditors who are satisfying their claims against the same judgment debtor and on the same object of enforcement shall be paid in the order they acquired the right to settlement from that object, unless otherwise provided by law.

## **IX – ENFORCEMENT AGAINST REAL PROPERTY**

### **(1) General Provisions**

#### **Enforcement Actions**

##### **Article 67**

Enforcement against real property shall be executed through a notice on enforcement entered in the Land Book, an appraisal of the value of the real property, the sale of the real property and the payment to the judgment creditor out of the proceeds of the sale.

#### **Real property as an Object of Enforcement**

##### **Article 68**

Unless otherwise provided, real property can only be enforced upon in its entirety as defined by regulations governing property and other property rights.

If a joint ownership on real property is established (percentage share of ownership of the real property) this part of the real property may be an independent object of enforcement based on provisions of this Law regarding enforcement against real property.

If the right of usufruct has been established on real property or on its percentage share of ownership, it may be a source of enforcement, provided that the judgment debtor satisfies his/her claims out of the fruits realized from such rights based on some legal relationship such as rent or lease. The rules of this Law governing enforcement over rights shall be applicable in this instance.

#### **Proof of Ownership**

##### **Article 69**

The judgment creditor shall submit the ownership excerpt from the Land Book with the motion for enforcement on real property as proof that the real property is registered as the judgment debtor's property.

If the right to real property referred to in Paragraph 1 of this Article is registered in the Land Book in the name of a person other than the judgment debtor, the motion may be granted only if the judgment creditor files a document which is suitable for the registry of judgment debtor's right.

#### **Change of Object of Enforcement**

##### **Article 70**

The judgment debtor may file a motion requesting that enforcement be ordered against another parcel of real property, within eight days after service of the decision on enforcement, but the judgment debtor shall file proof of his/her ownership of the proposed object, together with the motion.

The Court shall serve the motion on the judgment creditor who may file a response within eight days after the date of service. Within this period, the judgment creditor may request reimbursement of expenses incurred in carrying out the enforcement on the first parcel of real property listed, and request that the judgment debtor post security to compensate for damages which s/he might incur due to the change.

The Court shall decide on the motion by a decision after a statement of the judgment creditor or after the expiration of the deadline for its submission.

The Court may grant the motion if the judgment debtor establishes the likelihood:

- 1) that enforcement against the real property on which it was first proposed would be a special hardship for him/her,
- 2) that s/he had good reasons for being unable to sell the new object s/he proposes as the new object of enforcement in order to pay the judgment creditor, and
- 3) that the judgment creditor's claim could be paid entirely from the newly proposed object of enforcement.

The Court shall deny a motion changing the object of enforcement by a decision if it determines that the enforcement would be considerably prolonged and impeded, or if the judgment creditor might be severely prejudiced as a result.

If the judgment creditor has acquired a lien over real property as security for his/her claim prior to initiating enforcement procedure, then the enforcement may not be ordered on another object of enforcement without his/her consent.

If the judgment debtor has proposed garnishment on salary, pension, disability allowance or other constant source of income as the other means of enforcement, the Court may accept the motion on the condition that the judgment debtor establishes the likelihood that the claim shall be paid within one year from the date of issuing the decision on his/her motion. In addition to the requirements of this paragraph, the conditions in Paragraph 4, item 1, and Paragraph 6 of this Article must also be met.

If requested by the judgment creditor, the Court shall condition the acceptance of judgment debtor's motion with posting a security for the full compensation of judgment creditor's expenses, incurred in the initiated enforcement procedure on the real property prior to the decision on the change of the enforcement object is passed, and immediately after this decision, as well as with posting a security to compensate for damages which s/he might incur due to the change.

The Court shall, in the decision on the change of the enforcement object, decide on the amount of the security and the deadline within which it must be given. If the judgment debtor does not provide the security within the deadline ordered by the Court, it shall be considered that s/he has withdrawn the motion for the change of the enforcement object.

The Court shall order the enforcement against the newly proposed object of enforcement in its decision on the change.

No legal remedy shall be allowed against a decision denying the judgment debtor's motion to change of the object of enforcement.

If some other means or object of enforcement has been decided, the notice in the Land Book of the enforcement on the first object of real property remains registered until the judgment creditor's claim is satisfied.

### **Notice on Enforcement in the Land Book**

#### **Article 71**

Immediately after issuing a decision on enforcement, the Court shall automatically order that a notice on enforcement be entered into the Land Book.

With this notice a judgment creditor acquires the right to satisfy his/her claim from the real property (right to settlement) even in the case when the third party becomes the owner of that real property.

After the notice on enforcement, registry on the change of ownership based on the disposal of the judgment debtor, nevertheless when this disposal was undertaken, is not permitted.

A change of ownership of real property during the enforcement procedure shall not prevent the continuation of the enforcement procedure against a new owner as a judgment debtor. All enforcement actions undertaken before that time shall remain in effect and the new owner may not undertake any acts that could not have been undertaken by the former owner if the change in ownership had not occurred. New owner does not have the right for an appeal against this decision.

On the motion of the judgment creditor, the Court shall pass a decision about the continuation of the enforcement procedure against the new owner as the judgment debtor in that procedure.

Judgment creditor who initiated the motion on enforcement, and did not acquire a lien, by the notice on enforcement in the Land Book acquires the right to be secured from the real property prior to the party which later acquired a lien or the right on compensation over this real property.

## **Commencement of Enforcement**

### **Article 72**

After a notice on enforcement is entered into the Land Book, a separate enforcement procedure may not be carried out for the purpose of satisfying another claim of the same or other judgment creditor on the same real property.

A judgment creditor, for whose claim enforcement was subsequently ordered on the same real property, shall join the enforcement procedure already initiated.

Other parties may join an enforcement procedure already initiated up until the final decision on awarding the real property to the purchaser.

The Court shall notify the judgment creditor for whose benefit a notice was entered earlier in the Land Book, that it shall begin the enforcement procedure.

The reasons for which enforcement is not allowed with respect to some of several judgment creditors on whose behalf the enforcement is being executed on the same real property, or the reasons for dismissing the enforcement as to some of the judgment creditors, shall not affect enforcement procedure with respect to other judgment creditors.

If the reasons for postponing enforcement relates to only one of several judgment creditors, the enforcement shall not be postponed, but the Court shall, when issuing a decision on payment, order the postponement of the payment to said judgment creditor until the enforcement pertaining to his/her claim resumes. The Court shall safe-keep the assets designated for payment to said judgment creditor until the enforcement procedure resumes, and if the procedure does not resume, those assets shall be used to pay other judgment creditors or shall be delivered to the judgment debtor.

## **Liens**

### **Article 73**

The lien holders who did not propose the enforcement shall also be paid in the enforcement procedure on real property.

A lien on real property shall cease with the enforcement of the decision on award even if the lien holders were not satisfied in full.

A purchaser of real property and a lien holder may agree, up to the date of the foreclosure sale, that the lien remains on the property even after the enforcement of the decision on award of the real property, and that the purchaser assumes the judgment debtor's debt towards the lien holder in the amount that would have been awarded to him in the enforcement procedure. In such case, the purchase price shall be reduced by the amount of the debt assumed.

The purchaser and the lien holder shall enter into an agreement referred to in Paragraph 3 of this

Article in the form of a Court settlement in the enforcement procedure.

### **Easement and Encumbrances Article 74**

Easement, encumbrances and personal easements, which have been entered in the Land Book prior to the rights of persons who initiated the enforcement procedure, shall not cease when the real property is sold.

### **Contracts about Rent or Lease Article 75**

Contracts for rent or lease of real property that are concluded prior to acquiring the lien or right of settlement for which the enforcement is being sought, do not cease with the sale of the real property. The purchaser becomes the renter or the lessor upon attaining ownership of the real property.

### **Inspection of the Real property Article 76**

In its conclusion, the Court shall designate the time when the person interested to purchase the real property may inspect the real property and shall ensure uninterrupted inspection of the real property through the Court referee.

The Court shall, for justified reasons, give the person, upon his/her request, interested for the purchase of real property a permission to inspect the real property outside the time frame referred to in Paragraph 1 of this Article, while the costs of special inspection of real property are covered by this person.

If the judgment debtor or other person prevents or interferes with the inspection of real property, the Court shall order that the judgment debtor or such person be removed from the property at the time of the inspection. The Court referee, with the help of the police if necessary, shall enforce the order on removal.

### **Protection of Real property Article 77**

At the request of the judgment creditor for the purpose of preventing damage to the real property, or enabling its appraisal, inspection, protection, etc., the Court may issue an order:

- that the judgment debtor or other persons be temporarily or permanently removed from the property,
- entrusting the property for safekeeping to the judgment creditor or to a third person, or
- such other measures as are necessary for the protection of the real property or for the unfettered execution of the enforcement.

The judgment creditor shall be responsible for providing, in advance, the means necessary for the enforcement of the measures referred to in Paragraph 1 of this Article.

## **(2) Exemption from Enforcement**

### **Real property that cannot be Subject to Enforcement Article 78**

Farmland and farmer's economic facilities in the amount needed for his support and the support of his household as well as other persons, which s/he's obliged to support by the law, cannot be subject of enforcement.

## **(3) Appraisal of Real property**



## **Manner of Appraisal**

### **Article 79**

The Court shall determine the manner of appraising real property by issuing a conclusion immediately after it issues the decision on enforcement, and if necessary, the Court shall hold a hearing with the parties before issuing the conclusion.

The appraisal of real property shall commence after the decision on enforcement becomes enforceable, and may commence before that time on the motion of the judgment creditor if s/he provides security for the appraisal in advance and agrees to bear the costs of the appraisal even if the enforcement is dismissed.

Real property shall be appraised based on an expert's evaluation and other factors to determine its market value on the date of the appraisal, while any encumbrances that will remain on the property after the sale shall be taken into account and may result in a lesser value being assigned to the property.

In lieu of the appraisal stipulated in Paragraph 3 of this Article, the Court may request a competent body of the tax administration to provide their appraisal of the property.

On the motion of a party, which shall be filed no later than eight days prior to the hearing for sale, the Court shall determine the value of the real property again at the hearing for sale by a conclusion, if the party establishes the likelihood that the value has changed for more than a third from the previous determination of value until the day the motion was filed.

If in the Court or other settlement, on the basis of which lien on real property was secured for the purpose of securing a claim, for which a settlement is requested, the parties have determined the value of the real property, it shall not be determined again but the value determined in the agreement shall be accepted.

In case referred to in Paragraph 6 of this Article, on the motion of a party, the Court may order for the value of the real property to be estimated again if the judgment debtor establishes the likelihood that the value has grown more than a third after the agreement was made. Funds for the coverage of the repeated value estimation of the real property shall be paid in advance by the judgment debtor within eight days from the service of the Court decision by which his/her motion is granted, on contrary it shall be considered that the motion was withdrawn.

Provisions referred to in Paragraph 6 of this Article shall not be applied if lien holders exist, persons that have a right for a claim or personal easement noted in the Land Book which shall cease with the sale of real property and which are in the enforcement on real property secured before the judgment creditor requesting the enforcement, unless they do not make that agreement.

## **Objection to Insufficient Settlement**

### **Article 80**

Any person who has a right to be paid from the sale price of real property, and whose right takes precedence over a judgment creditor in the order of priority, may, within eight days from the date of service of the conclusion on sale, propose that the enforcement be dismissed if the appraised value of the property does not cover a portion of the amount of judgment creditor's claim.

The Court shall, according to the circumstances of the case, evaluate if the sale is efficient considering the possible value of the partial payment of the judgment creditor, by whom the enforcement was motioned.

In the case of a dismissal of enforcement referred to in Paragraph 1 of this Article, the judgment creditor who initiated the enforcement shall pay the costs of the proceedings.

## **(4) Sale of Real property**

## **Conclusion on Sale**

### **Article 81**

After conducting a proceeding for determining the value of real property, the Court shall issue a conclusion on sale of the real property, setting forth the value of the property and stipulating the manner and conditions as well as the time and place of the sale if the sale is being carried out at a public auction.

Conclusion on sale shall specially note the possibility that the value of the real property shall be finally determined at the hearing for sale.

The conclusion on sale shall be posted on the Court notice board and in other usual ways, and, on the motion of a party, it may be published in the media if the party covers the cost in advance.

At least thirty days must elapse from the date the conclusion on sale is posted on the Court notice board to the date of the sale.

The conclusion on sale shall be delivered to the parties, lien holders, procedure participants, to the persons who have a registered right or a preemption right by law to purchase it and to the applicable tax administration body.

## **Right of Preemption**

### **Article 82**

A person who has a legal or contractual right of preemption entered in the Land Book has precedence over the highest bidder if s/he acknowledges, immediately following the termination of the auction, that s/he will buy the real property at the same price and on the same conditions.

If the real property is sold by direct settlement, the Court shall instruct the holder of a registered right of preemption or the holder of a legal right of preemption to acknowledge within a specified time, whether s/he will exercise that right; otherwise, such right will expire.

## **Manner of Sale**

### **Article 83**

The sale of real property shall be carried out at verbal public auction.

The sale of real property shall be held in the courthouse, before an individual judge, unless the Court stipulates otherwise.

Parties, lien holders and holders of personal easements and encumbrances, which shall cease after the sale of real property, may agree that the sale be consummated by private agreement within a specified deadline, through an authorized real property agent, Court referee or in some other way.

The contract of sale by private agreement shall be in writing.

A person entrusted with a sale based on the Court's conclusion shall enter into the agreement on behalf and for the benefit of a judgment debtor. The Court must certify signatures of persons entering into such agreement.

The agreement referred to in Paragraph 5 of this Article shall be effective as of the date of issuing the decision on award.

## **Conditions of Sale**

### **Article 84**

The conditions of the sale shall include, in addition to other data,:

- 1) a detailed description of the real property and the structures thereon;
- 2) a notice of the rights of third parties which do not cease with the sale;
- 3) a notice whether the real property is free of people and property, or is the judgment debtor living in the real property with his household members or is it rented or leased;
- 4) the value of the real property determined by the conclusion on sale;
- 5) the price at which the real property may be sold and who shall have the duty to pay the taxes and the fees related to the sale,
- 6) the period of time within which the purchaser must pay the purchase price,
- 7) the manner of the sale,
- 8) the amount of security, the deadline within which it has to be given, to whom and in what manner it must be given, and
- 9) any special conditions that a purchaser must fulfill in order to acquire the real property.

The period of time within which a purchaser must pay the purchase price may not exceed six months from the date of sale, regardless of whether the price is paid in a lump sum or in installments.

#### **Posting of Security** **Article 85**

Only persons who have posted security in advance may participate in a public auction as purchasers.

In the private arrangement, buyer gives security in Court deposit.

Persons who do not have to post security in the enforcement procedure are the judgment creditor on whose motion the enforcement was ordered, and the holders of rights entered into the Land Book which cease with the sale of real property, are exempt from posting security if the amount of their claims equal the amount of the security, and if that amount could be paid from the purchase price given their order of priority.

The security of the bidders whose offers were rejected shall be returned to them immediately after the completion of the auction.

#### **One Bidder** **Article 86**

The foreclosure sale may be held with only one bidder present.

At the request of a party or other persons, the Court may issue a conclusion ordering the postponement of the foreclosure sale if only one bidder is present after considering status of the case.

#### **Persons not Qualifying as Bidders** **Article 87**

Buyer cannot be the judgment debtor, individual judge or other persons officially participating in the proceedings, judgment as well as the persons who, by law, may not acquire the real property that is the object of the enforcement.

#### **Sale Price** **Article 88**

At the first foreclosure sale, real property may not be sold for less than four fifths of the appraised

value.

If the real property is not sold at the first foreclosure sale, the Court shall schedule a second foreclosure sale where the property may be sold for less than the appraised value, but not less than one half of that value

Between first and second foreclosure sale shall be at least thirty days.

Parties and persons whose claims are being satisfied in the proceeding may agree on the record before the Court, that the property may be sold at the auction and at a price below the price set forth in Paragraphs 1 and 2 of this Article.

If the parties had agreed prior to initiating the enforcement procedure, in an agreement certified before the Court, that the real property could be sold for the purpose of paying the judgment creditor's claim, for a price lower than the one referred to in Paragraphs 1 and 2 of this Article, the real property may be sold at such price at the first foreclosure sale if there are no other persons participating in the enforcement procedure whose claims are being satisfied, and who have entered their right in the Land Book before the judgment creditor's right was entered by which his claim has been secured. The lowest price at which the real property may be sold in such case may not be less than 1/3 of the appraised value.

The provisions of Paragraphs 1 to 5 of this Article shall also be applied to sales of real property by private agreement.

### **Foreclosure Auction and Award** **Article 89**

The Court shall announce the commencement of the auction process after it has determined that the conditions for holding the foreclosure sale have been met.

The auction shall be concluded ten minutes after the offer of the highest bid.

After the conclusion of the auction process individual judge shall determine the bidder who offered the highest price and fulfilled conditions to be awarded with real property.

The Court shall issue a written decision (decision on award), which shall be posted on the Court notice board.

The decision referred to in Paragraph 4 of this Article shall be deemed served on all persons on whom the conclusion of sale must be served and on all the participants in the foreclosure, upon the expiration of three days following the date of its posting on the notice board. Those persons have a right to ask for direct delivery of the copy of decision in the Court registry.

The Court shall keep a record of the foreclosure sale.

### **Award through Private Agreement** **Article 90**

In case of sale by private agreement, the Court shall issue a decision on award of the real property after it has determined that all the conditions for the validity of the sale have been met.

Decision on award shall be posted on the Court notice board and served on all persons that are to be served with conclusion on sale of the real property to the purchaser.

### **Depositing the Price** **Article 91**

The purchaser shall pay to the Court the total sales price within the period set by conclusion on sale

or the Court shall declare by a conclusion, that the sale is void and new sale shall be set.

The costs of the new sale shall be paid out of the security deposit as well as the difference between price reached on the previous and new sale.

**Real property Transfer to Purchaser**  
**Article 92**

The Court shall, in its decision on award, grant the real property to the purchaser after s/he delivers the purchase price and after the decision becomes valid.

After acts referred to in Paragraph 1 of this Article, the Court shall order that the right of ownership is entered in Land Book and to Court to delete the rights for which decision on award determined to be deleted from the Land Book.

**Protection of the Purchaser's Rights**  
**Article 93**

Revocation or modification of a decision on enforcement after the decision on award of real property becomes into power shall have no effect on the purchaser's right to ownership acquired according to the provisions of Article 92 of this Law.

**Dismissal of Enforcement**  
**Article 94**

If the real property could not be sold on second foreclosure sale, the Court shall determine new sale only upon a motion of the judgment creditor which s/he cannot put before expiration of three months from the day of second foreclosure nor after expiration of one year from that day.

The Court shall dismiss enforcement if the judgment creditor does not put the proposal within the period set in the Paragraph 1 of this Article or if the real property couldn't be sold in the first foreclosure in the continued procedure for at least one half of its appraised value.

In the case of sale by private agreement, the Court shall dismiss the enforcement if the real property cannot be sold within the deadline set forth in the agreement between the parties and the persons whose claims are to be satisfied in the enforcement procedure.

The dismissal of the enforcement does not preclude the initiation of a new enforcement procedure for the purpose of collecting the same claim against the same real property.

**(5) Settlement of Judgment Creditors**

**Commencement of Settlement and Persons to Be Paid**  
**Article 95**

The Court shall commence paying the creditors by the validity of the decisions on award and after the purchaser pays the price.

The following shall be paid out of the sale price of the property: creditors whose motion caused the enforcement to be ordered, lien holders even when they have not notified the Court of their claims and persons who have the right to reimbursement for personal easements and other rights that seize with sale, administrative bodies based on taxes and other fees, and the persons that have claims listed in Article 96 Paragraph 1 Item 3 of this Law.

**Priority Settlement**  
**Article 96**

The following shall have priority to be paid out of the proceeds of the sale and in the following order:

1. the costs of the enforcement procedure;
2. taxes and other fees for the last year that put burden on sold real property;
3. claims based on lawful support, claims based on compensation of damage due to disability or physical impairment resulting in the inability or limited ability to work, claims for compensation of damages for loss of support due to the supporter's death, claims of employees and claims for health and pension insurance accrued for last year;

Claims referred to in Paragraph 1 Item 1 and 2 of this Article are to be settled if they are reported no later than on hearing for division and if they are provable with enforcement paper.

The time as set forth in Paragraph 1 Item 2 and 3 of this Article shall be calculated from the day of issuance of decision on award of the real property.

### **Settlement of Other Claims**

#### **Article 97**

Upon settlement from Article 96 of this Law, claims secured by lien shall be paid, lien of the creditor on whose motion the enforcement has been initiated and the reimbursement for personal easements and other rights ceasing with the sale.

Creditors referred to in Paragraph 1 of this Article are to be paid by order of acquiring the liens and rights of creditors whose motion initiated enforcement specifically by the order of registering in the Land Book of personal easements.

The expenses and interest for the three years preceding the issuance of the decision on award of the real property to a purchaser, which are set forth in an enforceable document, shall be paid as if they had the same order of priority as the main claim.

### **The Amount of Reimbursement for Personal Easements and other Rights Ceasing with the Sale**

#### **Article 98**

If the holders of personal easements and other rights ceasing with the sale and the judgment creditors who follow them in the order of settlement cannot agree as to the amount of reimbursement for such easements or other rights, the amount of reimbursement shall be decided by the Court, taking into special consideration the time for which those rights would still be active, their value and the age of the holder of such rights.

The purchaser and the holders of the rights of personal easements may agree that the purchaser of the property assumes the easement and that the amount of reimbursement stipulated in Paragraph 1 of this Article shall be deducted from the purchase price.

### **Settlement Pro Rata**

#### **Article 99**

Several claims with the same order of priority shall be paid on a pro rata basis if the amount obtained through sale is insufficient to pay them all in full.

### **Contesting of Claims**

#### **Article 100**

A person being paid out of the sale price may, if it affects the amount of his payment, contest the existence of a claim, its amount and the order of settlement to such other persons, no later than at the distribution hearing.

## **Instruction to Initiate a Lawsuit**

### **Article 101**

The Court shall instruct a person who contests a claim to initiate a civil lawsuit within a specified deadline, if a ruling depends on disputed facts, unless s/he proves his/her challenge with a final ruling, public document or a private document with the power of public document. In that case Court shall decide on challenge in the enforcement procedure even if the facts on which the issuance of a ruling depends are undisputed.

If contesting is granted, Court shall instruct a person whose claim has been contested to initiate a civil lawsuit

If the person who contests a claim establishes a credible reason for challenging the claim, the Court shall postpone the issuance of a decision on settlement of the persons whose claim is being challenged until the lawsuit is completed. Exceptionally, the Court may issue the decision on settlement contingent upon posting of security.

The amount that is contested shall be deposited with the Court.

If the person who was directed to initiate a civil lawsuit fails to demonstrate that s/he has initiated a lawsuit within the deadline stipulated, it shall be deemed that the claim is no longer being contested, or that such person has withdrawn his/her motion for the claim to be paid in the enforcement procedure.

A ruling rendered in a lawsuit on the contested claim shall be effective against the judgment debtor and all other judgment creditors.

The provision of Paragraph 3 of this Article shall not infringe on the rights of the person directed to initiate a civil lawsuit to, even after the termination of the enforcement procedure, initiate the civil lawsuit against person whose claim s/he contested.

The Court may, on the motion of a person whose claim was contested, postpone the issuance of the decision on settlement and make the payment of that person contingent upon posting sufficient security against any damages that such person might suffer due to the postponement of the payment. If the person who contests a claim does not post the security within the specified deadline, the claim shall be deemed uncontested.

The person whose claim was contested has the right to be compensated for damages s/he suffered due to another person contesting his/her claim without grounds, if it has been done for the sole purpose of inflicting damage upon such person, or if it impedes the enforcement procedure or the exercise of such person's rights.

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

### **Unripe Claims**

#### **Article 102**

A claim of a lien holder that does not become due until after the date of issuing a decision on settlement for which the interest earned has not been agreed upon, shall be paid after deducting an amount equal to the legal default interest, for the period from the date of issuing the decision on settlement up to the date when the claim becomes due.

Unripe claims for which the interest rate was agreed upon, shall be paid, together with the amount of the agreed interest, calculated up to the date of issuing the decision on settlement.

### **Unripe Claims on Periodic Income**

#### **Article 103**

Claims on periodic income for legal support, compensation of damage due to disability or physical impairment resulting in the inability or limited ability to work, claims for compensation of damages for loss of support due to the supporter's death that have been secured by a lien and are due after the date of issuing a decision on settlement, shall be paid at the express request of the judgment creditor, and calculated in the same manner as the reimbursement for a personal easements.

### **Conditional Claims**

#### **Article 104**

The amount of conditional claim that is secured by a lien shall be segregated and deposited with the Court and shall be paid when the condition precedent is met, or it is clear that the condition subsequent will not be met.

If the condition precedent is not met or the condition subsequent is met, the segregated amount of the price shall be used to pay the judgment creditors whose claims have not been paid in full or at all, and if there are no such judgment creditors or the entire amount has not been exhausted with such payments, that amount, or the remainder thereof, shall be delivered to the judgment debtor.

### **Preliminary Entry of Lien and the Notice of Dispute**

#### **Article 105**

If a lien has been preliminarily entered in the Land Book and the person for whose benefit the preliminary entry was made, proves that the proceeding for justification of the preliminary entry is ongoing, or that the deadline for initiation of such proceeding has not yet expired, the claim to which the preliminary entry relates shall be paid in the same manner as the claim with a condition precedent.

A claim in which a notice of dispute has been entered in the Land Book for the purpose of deleting a lien or a notice of another dispute, shall be paid in the same manner as a claim with a condition subsequent.

### **Joint Encumbrances**

#### **Article 106**

Claim secured by joint encumbrance, and whose judgment creditor requested settlement from some of those burdened real properties, shall be satisfied by stipulations of this Law if the land rights does not stipulate something else regarding joint encumbrances.

## **(7) Distribution Hearing, Decision on Settlement and Deleting Rights and Liens**

### **Distribution Hearing**

#### **Article 107**

After decision of enforcement coming into power on awarding the real property to the purchaser, the Court shall schedule a hearing for the distribution of the sale proceeds on which, apart the parties, also persons that according to the facts in the case file and according to the data from the Land book have a right be paid from that proceeds shall be summoned.

Those persons summoned shall be notified in the summons that if they fail to appear at the hearing, their distribution shall be made according to the facts in the Land Book and the case file, and that they may contest any other person's claim, its amount and the order of settlement no later than at the hearing on distribution.

The payment of judgment creditors and other persons who file a motion for payment shall be argued at the hearing.

### **Decision on Settlement**

#### **Article 108**



The Court, after holding a hearing, shall rule without delay on the payment of the claims of the judgment creditor and other persons who have a right to have their claims satisfied by issuing a decision, taking into account the data from the case file and the Land Book, as well as the facts presented at the hearing.

In issuing a decision under Paragraph 1 of this Article only those claims for which the decision on enforcement is enforceable as of the date of the distribution hearing shall be considered.

If there are claims with respect to which the decision on enforcement has not become enforceable as of the date of the distribution hearing, after the decision on enforcement has become enforceable, those claims shall be satisfied out of the remaining proceeds of the sale, if any, and any remaining amounts shall be paid to the judgment debtor.

Appeal against decision on settlement postpones enforcement of the decision if the decision on acceptance of the appeal can effect the settlement.

### **Deleting the Rights and Liens Article 109**

Upon enforceability of the decision on award, the Court shall determine by its decision that entered rights and liens be deleted from Land Book, apart those that stay on real property after transfer of the real property to the purchaser or those assumed by purchaser.

Purchaser can demand by a civil lawsuit to delete liens that Court missed to determine in the sense of the Paragraph 1 of this Article.

## **(8) Legal Status of the Judgment Debtor and Third Persons upon the Transfer of the Real property**

### **Loss of Right to the Possession of the Real property Article 110**

Upon the sale of the real property, the judgment debtor loses his/her right to occupancy and must deliver the property to the purchaser immediately after service of the decision on award, unless otherwise provided by the law or by an agreement with the purchaser.

### **Eviction of the Judgment Debtor Article 111**

Judgment creditor may even in request for enforcement by sale of real property, and later until the real property is transferred to the purchaser, request for its vacating and transfer to the purchaser based on the conclusion on transfer of real property to the purchaser.

In that case, the Court shall in its decision on enforcement order vacating the property and its transfer to the purchaser upon decision on transfer of the real property to the purchaser come into power.

After issuing conclusion on transfer of real property to the purchaser, the Court shall, on the motion of the purchaser, commence enforcement in order to vacate and transfer the real property to the purchaser where purchaser assumes position of the judgment creditor.

Enforcement under Paragraph 3 of this Article shall be carried out in accordance with the provisions of this Law on enforcement by vacating and transferring the real property.

Judgment debtor and the members of his/her family household that are to be evicted, are entitled to alternative accommodation only if it is stipulated by special regulation.

Providing the alternative accommodation referred to in Paragraph 1 of this Article does not preclude enforcement.

## **Eviction of other persons**

### **Article 112**

Upon issuing a decision on award of real property, the Court shall, upon motion of the purchaser, order persons who do not possess any written valid legal basis for the use of the real property to vacate it and deliver it immediately to the purchaser and in the same decision determine enforcement against those persons by vacating and transfer to the purchaser.

Appeal to this decision on enforcement as set forth in Paragraph 1 of this Law does not preclude the enforcement.

In the enforcement procedure under Paragraph 1 of this Article, the purchaser shall be treated as a judgment creditor.

## **Application of Provisions of This Chapter in the Territory where there is no Land Books**

### **Article 113**

If it not possible for any reason to acquire proof of ownership, judgment creditor shall, instead of proof of ownership from Article 69 of this Law, in the motion for enforcement specify the location of the real property, its name, boundaries and size.

In that case, the Court shall make an inventory of the real property subject to seizure against which a motion for enforcement has been filed, and shall summon the judgment creditor, the judgment debtor and abutters to the real property to a hearing on the inventory.

The record on the inventory of the real property subject to seizure has a weight of a decision on enforcement and shall be posted on the Court notice board.

The Court shall place an advertisement on seizure inventory in which will be included: the Court placing the notice, the case number, information on parties and real property on which the enforcement is being carried out, the place and time that the hearing on the inventory was held, and when the record of the inventory was posted on the Court notice board. In that same advertisement, the Court shall summon all interested parties to notify the Court, orally or in writing, of any reasons why the enforcement cannot be carried out against that real property.

Provisions of this Article shall apply if the real property in the cadastral book is entered under the name of judgment debtor if the land owner or his/her heirs confirm by the statement certified by respective body that the judgment debtor is owner of the real property which is subject of enforcement.

## **X - ENFORCEMENT AGAINST MOVABLE ASSETS**

### **(1) General Provisions**

#### **Jurisdiction**

##### **Article 114**

Jurisdiction over issuance of decisions on motions for enforcement on the movable assets, and for enforcement of those decisions, is on the individual judge of the Administrative Department of the Court.

#### **Exemptions from Enforcement**

##### **Article 115**

Objects of the enforcement cannot be:

1. clothes, shoes, underwear and other possessions of personal use, bed linens, dishes, furniture, stow, refrigerator, washing machine and other possessions used for satisfying needs of the household if they are necessary for the judgment debtor and members of his/her household considering usual life

- conditions of its social surrounding;
2. food and kindle for use of judgment debtor and members of his/her family for six months;
  3. work and stud cattle, farming machines and other tools necessary for judgment creditor for maintaining farm household in the extent necessary for his/her support and support for his/her family, and the seeds for use in that household and feed for cattle for four months;
  4. tools, machines and other items necessary for the craftsman or tradesman being judgment debtor for performing his/her registered profession, as well as the raw material and fuel for four months;
  5. items necessary to judgment debtor who independently as a profession works as lawyer, physician, scientist, artist or other professional;
  6. cash of the judgment debtor based on claims that are exempted from enforcement, and cash of the judgment debtor that has regular monthly income up to the monthly amount that is exempted by the law from the enforcement, prorated for the time remaining until the next monthly payment;
  7. decorations, medals, certificates of war service and other decorations and awards, wedding rings, personal correspondence, manuscripts and other personal documents of the judgment debtor, family photographs, personal and family documents and family portraits
  8. aids that were given to a handicapped person or person with physical impediments based on the regulations or acquired by that person, and which are necessary for exercising life functions;
  9. other movable items if stipulated by the law.

Mail and mail many orders sent to a judgment debtor can not be subject of an enforcement before it has been delivered.

### **Enforcement Actions**

#### **Article 116**

Enforcement against movable assets shall be executed by seizure, appraisal, sale and payment to a judgment creditor from the proceeds of the sale.

A motion for enforcement may request only seizure and appraisal, but in such case the judgment creditor must file a motion for the sale of objects within three months from the date of the seizure and appraisal, otherwise the enforcement shall be dismissed

### **(2) Seizure and Evaluation of Movable assets**

#### **Notice on Seizure**

##### **Article 117**

Before a seizure is commenced, a Court referee shall serve the decision on enforcement on the judgment debtor and instruct him/her to pay the amount for which the enforcement has been ordered along with interests and costs.

The judgment creditor shall be informed on time and the place of the seizure if he/she asked for that, and the absent party shall be informed that the seizure was performed.

The absence of the judgment creditor shall not prevent the seizure.

#### **Object of Seizure**

##### **Article 118**

The seizure shall be carried out by making an inventory for seizure.

Objects in the judgment debtor's possession and objects belonging to him/her that are in the judgment creditor's possession may be inventoried.

Property of the judgment debtor that is in the possession of a third person may be inventoried only upon such third person's consent, and if it is not granted, Court shall on the motion of judgment creditor

transfer the judgment debtor right for transfer of properties to judgment creditor

It shall be presumed that judgment debtor owns the movable assets that are on him/her or which are in or on his real property, in the apartment where s/he lives or the rented business premises.

Spouses shall be considered as equal co-owners of all movable assets that is found in their house, apartment, business premises or other real property.

### **Scope of the Seizure Inventory List**

#### **Article 119**

As many objects shall be put on an inventory list as necessary to satisfy the judgment creditor's claims and the costs of enforcement.

Objects, for which no objections are made concerning encumbrances that could interfere with the enforcement process and which easily can be liquidated, shall be put on the inventory list first, and the statements of parties and third persons present at the inventory regarding the status of such objects shall be considered.

The Court may, on the motion of the judgment debtor, to determine afterwards that enforcement is being made on other item, and not on the item that was listed on the request of judgment creditor if there is a significant discrepancy between value of that item and the amount of claim, in which case the provisions of the Article 70 of this Law shall be applied.

### **Safekeeping of the Inventoried Objects**

#### **Article 120**

The Court referee shall leave the inventoried items with the judgment debtor for safekeeping, unless, on the judgment creditor's motion, the Court has ordered that the objects be submitted for safekeeping to the judgment creditor or a third person.

Items left to the judgment debtor for a safekeeping shall be visibly marked that they are seized.

A judgment creditor shall bear the risk of destruction or damage to the objects given to him/her or a third person for safekeeping, unless such destruction or damage was a consequence of force majeure.

Cash, securities and valuables shall be delivered to the Court for deposit as well as other items of significant value shall also be delivered to the Court for deposit if they are suitable for such kind of safekeeping.

### **Prohibition on Disposal of the Inventoried Objects**

#### **Article 121**

Judgment debtor is forbidden to dispose seized objects.

That restriction shall be put in the decision on enforcement, as well as the warning to the judgment debtor on consequences by criminal law for contradicting that restriction.

### **Acquiring of a Lien**

#### **Article 122**

A judgment creditor shall acquire a lien against the inventoried movable assets.

If the inventory was made for the benefit of several judgment creditors, their rights of priority on liens, which were acquired through the inventory or through a notice entered into the record on the inventory of seized objects shall be determined as of the date their motion was submitted to the Court that is of the date

the notice was entered.

If the inventory of seized objects is made for the benefit of several judgment creditors, their rights of priority shall be determined as of the date the motion for enforcement was submitted to the Court, and if more than one motion for enforcement was filed on the same day, their liens have the same order of priority.

If the motion for enforcement was sent by registered mail, the date of its delivery to the post office shall be deemed the date of its receipt by the Court.

### **Unsuccessful Attempt of Seizure**

#### **Article 123**

If, during seizure, no movable assets is found that may be subject to enforcement, the Court shall so inform the judgment creditor who was not present at the seizure.

The judgment creditor may file a motion that the seizure be conducted again within three (3) months of the date of service of the notice or of the date of the seizure attempted when s/he was not present, or the Court shall dismiss the enforcement.

### **Appraisal**

#### **Article 124**

An appraisal of movable assets shall be performed at the same time the inventory of the seizure is carried out, by the Court referee unless the Court determined that shall be done by Court expert.

A party may file a motion for an expert appraisal even when the Court has not ordered it and if the Court accepts the motion, the person filing the motion must advance the costs of the expert appraisal within a deadline set by the Court, and if the costs are not paid within such deadline, it shall be deemed that the person filing the motion has withdrawn it.

The Court shall rule on the motion set forth in Paragraph 3 of this Article by a conclusion.

A party may, within eight days after the appraisal is performed, move the Court to set a higher or lower value of the seized movable assets than the one appraised, or to order a new appraisal, and the Court shall rule upon the motion by a conclusion.

### **Court Record on Inventory of Seized Objects and Appraisal**

#### **Article 125**

A Court record shall be made regarding the inventory of seized objects and their appraisal in which shall include, among other things, an itemization of the inventory of the seized objects, the appraised value of the objects and the statements of the parties, participants in the proceeding and third parties regarding existence of their rights that prevent enforcement procedure.

### **Notice Instead of Seizure Inventory**

#### **Article 126**

If, after the seizure inventory, enforcement against the seized objects for the purpose of satisfying an other claim of the same judgment creditor is ordered, an inventory and appraisal of the movable assets shall not be performed again but the information from the later decision on enforcement shall be added to the record.

### **(3) Sale of Movable Objects**

#### **Time of Sale**

#### **Article 127**

The sale may be carried out only after the decision on enforcement came into power unless judgment debtor agrees for the sale to be performed sooner or if the items in question are perishable, or if there is danger of a substantial drop in their prices, or if the judgment creditor posts security for the damages s/he would be obligated to pay to the judgment debtor if the decision on enforcement becomes unenforceable.

The Court shall issue a conclusion on sale if the sale is due prior the date when decision on enforcement becomes enforceable.

At least fifteen days must elapse from the date of making the seizure inventory to the date of sale, considering that sale can be preformed even before that deadline for the reasons set forth in Paragraph 1 of this Article.

### **Manner of Sale** **Article 128**

The sale of movable assets shall be carried out by an oral public auction or private agreement on which the Court shall decide in a conclusion based on the method that will obtain the most favorable sales price.

A Court referee shall conduct the public auction.

A sale by private agreement shall be entered into between the purchaser at the one side and the Court referee or a commission agent on the other side. The Court referee shall sell the movable assets in the name and for the account of the judgment debtor and a broker performing the commission sale in his/her own name on behalf of the judgment debtor.

A sale through public auction shall be ordered if the objects in question are of considerable value and it is expected that they will be sold at a price exceeding their appraised value.

The sale of the objects shall be announced on the Court notice board in a timely fashion or in an other manner stipulated for advertisements, and the judgment creditor and judgment debtor shall be informed on location, date and hour of the sale.

### **Sales Price** **Article 129**

On the first auction or within the deadline set by the Court for the private arrangement, movable assets cannot be sold for less then two thirds of the appraised value.

If the price referred to in Paragraph 1 of this Article is not achieved on the first auction, the Court shall, on the motion of the party, set a new auction on which the movable assets can be sold for the price lower that that, but not lower then one third of the appraised value.

Condition set in Paragraph 2 of this Article shall apply even if the seized movable objects could not be sold by private arrangement in the amount of appraised value and in the deadline ordered by the Court.

Motion for the second auction or for the sale through private arrangement party can file with the Court within fifteen days from the first auction or from the date of the expiration of deadline that Court set for sale through private arrangement.

The Court shall dismiss the proceedings if none of the parties file a motion that a second public auction or second sale through private arrangement be held within the specified period, or if the objects could not be sold at the second auction or by private agreement in the new deadline set by the Court.

### **Right and Obligations of the Purchaser** **Article 130**

The purchaser shall pay the price for the property and take movable assets immediately after the auction is concluded, that is sale by private arrangement has been concluded.

If the purchaser does not pay the sales price, it shall be deemed that auction failed and s/he is obligated to reimburse the parties for the damage they suffered by his desisting, on which the Court shall, on the motion of the parties, decide in the enforcement procedure.

The Court referee shall deliver the objects to the purchaser even if s/he has not paid the purchase price, provided that the judgment creditor agrees within limits of the amount s/he would have been entitled to recover in order to satisfy his/her claim.

If the purchaser does not pay the purchase price within the specified period, the judgment creditor may move the Court to order the purchaser in the same proceeding to pay them the price and to execute the enforcement against such purchaser after the decision has become enforceable.

In any case purchaser becomes owner of the purchased movable objects by its handover, with regard to that they do not belong to him/her on the bases of responsibility for the missing objects.

#### **(4) Payment of the Judgment Creditors**

##### **Payment of One Judgment Creditor**

###### **Article 131**

If only one purchaser is being paid out of the sales price, the Court shall, without holding a hearing, order by its decision that, from the amount obtained through sale of the object and seized money, the following costs are paid by order: the costs of the proceedings, the costs determined in the enforceable document, interest up to the date the objects were cashed in, and the main claim

Any sums remaining after the foregoing payments have been made shall be paid to the judgment debtor so long as there are no other impediments.

##### **Payment of Several Judgment Creditors**

###### **Article 132**

If several judgment creditors are paid in the enforcement procedure, or if, persons whose rights cease with the sale of the movable assets are also being paid, they shall be paid out of the sale price by the order on acquiring the lien unless the law prescribes an order of priority in the payment of claims.

Judgment creditors with the same order of priority who cannot be paid in full from the sale price shall be paid in proportion to the amount of their claims.

Costs of the enforcement procedure, costs determined in an enforceable document and the interests have the same priority as the main claim.

In issuing a decision on settlement, the Court shall consider only those claims for which the decision on enforcement became enforceable before the date of the sale of inventoried objects.

## **XI - ENFORCEMENT ON A MONETARY CLAIM OF THE JUDGMENT DEBTOR**

### **(1) General Provisions**

#### **Jurisdiction**

##### **Article 134**

Individual judge of the Administrative Department of the Court is authorized to decide on the motion for enforcement against the monetary claim of the judgment debtor as well as for its execution.

### **Exemption from Enforcement Article 134**

The following is exempted from the enforcement against the monetary claim of the judgment debtor:

1. income, which is derived from lawful support, compensation of damage due to disability or physical impairment resulting in the inability or limited ability to work, and compensation of damages for loss of support due to the supporter's death;
2. income derived from compensation of damage due to the physical impairment by the regulations on insurance of disadvantaged;
3. income derived from social welfare;
4. income derived from allowance during the temporary unemployment;
5. income derived from support for children;
6. income derived from scholarships and aids to pupils and students;
7. income of the soldiers and students of military schools;
8. compensation for the work of convicted persons except for the claims for lawful support and for claims concerning the reimbursement of the damage caused by criminal offence of the convicted persons;
9. income derived from decorations and awards.

### **Restrictions of the Enforcement Article 135**

Garnishment on salary, reimbursements instead of salary, reimbursement for shorter working hours and reimbursement for the reduction in salary or pension, for payment of the claim related to lawful support, compensation for damages resulting in health deterioration or reduction or loss of working ability and compensations for lost support due to the death of the provider of support, shall be enforced in the amount up to one half of the salary, and for the collection based on other foundation up to one third of the salary or reimbursement instead of salary or pension.

The limitations on enforcement against a monetary claim of the judgment debtor under Paragraph 1 of this Article shall be applied only if the claim does not exceed 1,000 KM per month. For the claims exceeding 1,000 KM per month, limitations shall be applied to the amount of claim up to 1,000 KM, and for the rest of the claim enforcement may be applied without limitations.

If the judgment creditor receives guaranteed salary in accordance with the collective contract or the law, enforcement of the claims referred to in Paragraph 1 of this Article shall be executed up to one third that is up to the amount of one quarter of that salary.

Provisions of Paragraphs 1 and 2 of this Article shall be applied on the salaries of the military personnel and to the income of the persons in the reserve while on duty.

Enforcement against the income of the disabled persons based on the compensation for bodily injury and allowance for aid and care of somebody else may be executed only for payment of the claim based on lawful support, compensation for the deteriorated health or reduction or lost of working ability and compensation for the lost support due to the death of the provider of that support up to the amount of one half of such income.

Enforcement on the income based on the life-long support contract and life-long annuity, and on the income base on contract on life insurance may be executed only on the part exceeding the amount of the highest social welfare that is being paid out.

### **Enforcement Actions Article 136**



Enforcement on a monetary claim shall be enforced through seizure and transfer, unless this Law stipulates otherwise for certain cases.

Enforcement proposal can demand to determine only the seizure of the monetary claim, but in that case judgment creditor is obligated to, within three months period from the date of serving him/her with the decision on seizure, or the date when served with notice on hear response of the judgment debtor's debtor or on the fact that s/he failed to do so within specified deadline, file a motion for transfer of claim, and in within that period that proposal has not been filed, the enforcements will be dismissed.

### **Scope of Enforcement**

#### **Article 137**

Seizure and transfer of a monetary claim may be ordered and enforced only up to the amount necessary to compensate the judgment creditor, unless the amount cannot be divided.

If several judgment creditors request enforcement over the same divisible amount, the seizure and transfer shall be decided in their respective amounts separately for each judgment creditor.

### **(2) Seizure of Claim**

#### **The Effect of Seizure**

#### **Article 138**

Seizure shall be carried out by serving the decision on enforcement on the judgment debtor's debtor prohibiting him/her from paying the claim to the judgment debtor, and the judgment debtor shall be prohibited from receiving it, or disposing of it in any other way, as well as with the lien that existed to secure said obligation.

The judgment creditor acquires a lien on the judgment debtor's claim through seizure.

The judgment debtor's debtor shall have no right to appeal the decision on enforcement.

### **Seizure of Claims Based on Securities**

#### **Article 139**

A Court referee shall conduct the seizure of a monetary claim based on securities, which is to be transferred by endorsement or for witch that otherwise that securities is necessary, by seizing the securities from the judgment debtor and delivering them to the Court.

A Court referee shall perform the legal actions necessary for maintaining or cashing in of rights derived from the securities referred to in Paragraph 1 of this Article on behalf of the judgment debtor, in accordance with a Court conclusion.

Seizing the monetary claim based on share for which the document on shares has not bee issued, and on the share on the name of the person for whom that document has been issued, shall be done by delivery of the decision on seizure to the joint stock company, in which case the provisions of the Article 138 of this Law shall apply.

### **Ban Claims against Savings Account**

#### **Article 140**

Exceptionally from the provisions set forth in the Article 139 of this Law, seizure of the monetary claims against savings account with the bank may be enforced even without prior taking the savings book of the judgment debtor.

If the judgment creditor does not have necessary information on judgment debtor's savings account, s/he can move with the Court the decision by which all savings accounts of the judgment debtor's savings accounts with the bank shall be seized (motion for temporary seizure).

By the decision on temporary seizure the Court shall ask the bank also the information on savings accounts of the judgment debtor, which the bank is obligated to give to the Court without delay and shall not inform judgment debtors that the information was asked for.

After getting requested information, the Court shall inform judgment creditor on that, who is obligated to move for the enforcement against particular savings account or savings accounts within eight days, on which the Court shall issue decision on seizure of the particular savings account or particular savings accounts and rescind the decision on temporary seizure of the savings accounts.

Motion for the temporary seizure as set forth in Paragraphs 2 and 4 of this Article, are considered as one motion in the sense of the provisions on Court fees.

If the savings book has not been seized for the judgment debtor previously, it shall be considered that seizure has taken place on the date when the decision on temporary seizure being delivered to the bank that takes care on the savings account.

Bank that takes care on the savings accounts is entitled on reimbursement of the costs accrued for the acts in accordance with this Article, and the request for reimbursement may be filed within fifteen days from the undertaken act, and those costs become part of the enforcement procedure.

### **Lien on Interests**

#### **Article 141**

A creditor's lien acquired on claims that accrue interest shall also apply to the interest that becomes due after the seizure.

### **Order of Priority**

#### **Article 142**

The order of priority of liens of several judgment creditors shall be determined according to the date of receiving the motion for enforcement.

If the motion for enforcement was sent by registered mail, the date of delivering it to the post office shall be deemed the date of its delivery to the Court.

If motions for enforcement of several judgment creditors were received in the Court on the same date, their liens have the same order of priority.

The claims having the same order of priority shall be settled on a pro rata basis if they cannot be settled in full.

If liens and other rights on a monetary claim acquired before the initiation of the enforcement procedure cease due to the execution of the enforcement, the order of priority to settle those rights shall be determined according to the regulations governing the acquisition of the order of priority of those rights outside the enforcement procedure.

### **Hear Response of Judgment Debtor's Debtor**

#### **Article 143**

The Court shall, on the motion of the judgment creditor, ask judgment debtor's debtor to respond within deadline set by the Court on the fact if s/he recognize and in which amount the seized claim and if s/he is willing to settle it and under which conditions.

Motion for hearing response of the judgment debtor's debtor judgment creditor may join with enforcement motion or give it in separate motion after that motion no later then the transfer of the claims.

Response of the judgment debtor's debtor shall be delivered to judgment creditor without delay.

### **Responsibility of the Judgment Debtor's Debtor**

#### **Article 144**

Judgment debtor's debtor shall be deemed responsible for the damage inflicted on judgment creditor by not responding or responding wrongly or not entirely, on which the Court shall advise him/her.

### **Seizure of Claims Secured by Lien Entered in Public Registry**

#### **Article 145**

Seizure of claims secured by a lien entered in the Land Book or other Public Registry in which the liens on real property are entered, shall be carried out by entering the seizure in said Registry.

The registration shall be done automatically with a notice that the seizure by which the lien was acquired on the claims was ordered to satisfy the judgment creditor's claim.

If there are several judgment creditors, the order of priority of their claims shall be determined as of the dates of registration.

### **(3) Transfer of Claim**

#### **General provisions**

#### **Types of Transfer**

#### **Article 146**

Seized claims shall be transferred to a judgment creditor pursuant to his/her motion to have his/her claim satisfied either by payment or transfer in lieu of payment.

The judgment creditor shall request the transfer to him/her of the right to payment or transfer in lieu of payment in the motion for enforcement unless otherwise provided in this Law.

The Court shall in the decision on enforcement determine the type of transfer which or in a separate decision on transfer, the judgment debtor's debtor shall be instructed to deposit the amount due with the Court by payment to a designated account and so inform the Court.

### **Special Conditions for Transfer of Indivisible Claimed Property**

#### **Article 147**

A claim, which is based on securities transferable by endorsement, or whose redemption requires presentment, or which otherwise cannot be divided for transfer or redeemed, shall be transferred in its full amount.

If several judgment creditors have submitted a motion for transfer on different dates, the Court shall transfer the claim to the judgment creditor who filed his/her motion first, and if several judgment creditors filed motions on the same day, the claim shall be transferred to the judgment creditor with the largest claim.

### **Enforcement of Transfer**

#### **Article 148**

The transfer of claim shall be effectuated by serving the judgment debtor's debtor with the decision ordering the transfer.

The transfer of a claim based on securities transferable by endorsement or that must be presented to be redeemed, shall be deemed effective when the Court attaches a statement of the transfer on the securities and delivers them to the judgment creditor.

### **Duties of the Judgment Debtor and Judgment Creditor**

#### **Article 149**

The judgment debtor shall, upon the request of the judgment creditor to whom the claim has been transferred and within the deadline set by the Court, explain to the judgment creditor what is required in order to liquidate the claim and to deliver to him/her any necessary documents relevant to the claim.

The judgment creditor to whom a part of a claim has been transferred shall, if requested by the judgment debtor and within a deadline set by the Court, post security for the return of relevant documents after s/he has liquidated the claim.

Upon the motion of the judgment creditor, the Court shall execute the enforcement against the judgment debtor to deliver such documents if s/he fails to do so.

The judgment creditor may demand delivery of documents in possession of a third party by filing a civil lawsuit.

The Court shall make a note on the document delivered over to the judgment creditor that the transfer of claim for which the enforcement was requested has been completed.

### **Depositing of Money with the Court**

#### **Article 150**

The judgment debtor's debtor upon whom a decision on enforcement or a separate decision on transfer has been served discharges his/her obligation by depositing the money or securities with the Court.

Based on the motion of the judgment creditor to whom the claim has been transferred, enforcement against the judgment debtor's debtor shall be enforced and the sum collected through that enforcement shall, after paying the costs of the proceeding, be paid to the Court by the official duty, and the Court shall inform him/her on executed payment.

### **Transfer for the Purpose of Payment**

#### **Competence of Judgment Creditor**

#### **Article 151**

The transfer of a claim for the purpose of collection authorizes the judgment creditor to demand from the judgment debtor's debtor payment of the amount designated in the decision on enforcement or in a separate decision on transfer, and if such amount is due, to undertake all steps necessary to preserve and liquidate the transferred claim and to exercise the rights related to the security posted for said claim.

A transfer of claim for the purpose of payment does not authorize the judgment creditor to settle the claim at the expense of the judgment debtor, to release the judgment debtor's debtor from the debt, to otherwise dispose of the transferred claim, or to enter into an agreement with the judgment debtor's debtor to arbitrate a decision on the claim if disputed.

The judgment debtor's debtor may submit only those objections to the judgment creditor to whom the claim has been transferred for the purpose of payment, that s/he is entitled to submit to the judgment debtor.

Ceding of the transferred claim by the judgment debtor after transfer shall not affect the rights the judgment creditor acquired through the transfer.

## **Transfer for Payment of Claim Entered in the Public Registry**

### **Article 152**

Transfer for the purpose of payment of a claim entered in the Land Book or other Public Registry where the rights on real properties are registered shall be entered automatically.

## **The Judgment Debtor's Debtor Obligation Contingent on Delivery of Items**

### **Article 153**

If the judgment debtor's debtor liability to pay off the claim shall be contingent on the judgment debtor's obligation derived from valid decisions to deliver a certain item in his/her possession the Court shall, upon a motion of the judgment creditor to whom the claim has been transferred for payment, order the judgment debtor to deliver the item to the Court to be forwarded to the judgment debtor's debtor.

Upon the motion of the judgment creditor, the Court shall execute the enforcement for delivery of the item against the judgment debtor who failed to deliver the said item within the given deadline.

## **Notification of the Judgment Debtor of the Complaint for Cashing a Transferred Claim**

### **Article 154**

The judgment creditor who has filed a civil complaint for payment of a transferred claim shall notify the judgment debtor about the lawsuit promptly, and if s/he fails to do so, s/he shall be held liable to the judgment debtor for any damages caused by such failure.

## **Delay in Collection of Transferred Claim**

### **Article 155**

The judgment creditor who is negligent in cashing in a transferred claim shall be held liable for damages caused thereby to any other judgment creditor having a lien or some other right which is to be paid out of the claim.

In the case set forth in Paragraph 1 of this Article, the Court may, upon the motion of another judgment creditor, revoke the decision on transfer of the claim to the negligent judgment creditor and transfer the claim to another judgment creditor.

## **Settlement with Judgment Creditor**

### **Article 156**

The judgment creditor to whom the claim has been transferred for the purpose of payment shall be paid out of funds deposited with the Court.

Payment to a judgment creditor and other persons whose rights cease with the execution of the enforcement shall be carried out through appropriate application of provisions of Articles 131 and 132 of this Law.

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

### **Article 157**

The seized claim shall be transferred in lieu of payment to the judgment creditor who requested the enforcement up to the transferred amount, which shall be deemed an assignment of the claim with compensation.

If the transferred claim is secured by a lien entered in the Land Book or other Public Registry where the rights on real property are entered, the Court shall automatically transfer the judgment debtor's rights to the judgment creditor and delete the lien registered in favor of the judgment debtor.

The judgment creditor to whom the claim has been transferred in lieu of payment shall liquidate the claim in accordance with the rules governing a claim transferred for purposes of liquidation, provided that the money obtained in that way is payable directly to the judgment creditor, except in cases under Paragraph 4 of this Article.

The claim of the judgment creditor to whom the claim has been transferred in lieu of payment, shall be deemed satisfied by the transfer itself in the amount of the claim, unless several judgment creditors or other creditors who are to be paid out of the transferred claim participated in the enforcement procedure. If such persons did participate in the enforcement procedure, the judgment creditor to whom the claim has been transferred in lieu of payment shall be deemed the judgment creditor to whom the claim has been transferred for liquidation.

The circumstance in which the claim has been transferred to the judgment creditor in lieu of payment does not affect the judgment debtor's liability for validity of the claim and its liquidation.

#### **(4) Special Provisions on Enforcement of Garnishment and other Permanent Source of Income**

##### **Decision on Enforcement**

###### **Article 158**

A decision on garnishment of a salary orders the seizure of a certain portion of a salary and orders the employer who pays the judgment debtor's salary to pay out or to continue paying the sum for which the garnishment was ordered to the judgment creditor after the decision on enforcement has become enforceable..

The decision on enforcement covers also any salary increase occurring after delivery of the decision on enforcement.

##### **Enforcement when Several Persons Have Right of Support**

###### **Article 159**

If several persons have the right of support by virtue of law, or, the right to an annuity due to loss of support because of the supporter's death, against the same judgment debtor, and the total of their claims exceeds the part of salary that may be garnished, the enforcement shall be ordered and executed in favor of each such judgment creditors in a proportionate amount to their claims.

If, after the commencement of the garnishment of the salary or of any other constant financial income, another motion for enforcement is filed by another claimant under Paragraph 1 of this Article, the Court shall automatically modify the previous decision on enforcement to be consistent with Paragraph 1 of this Article and set out the amounts to be paid to the individual judgment creditors.

In cases referred to in Paragraph 2 of this Article the decision on enforcement shall also be served on the prior judgment creditor who may file an appeal against such decision.

##### **Place of Payment**

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

Claims for which the non-cash payments is not stipulated, judgment creditor shall collect directly at the cashier where the judgment debtor's salary is paid out, and s/he is entitled to demand payment of the garnished amount by postal order at an address s/he designates or to a particular account held with a bank, after deduction of administrative costs.

##### **Termination of Employment**

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

When the judgment debtor's employment is terminated, the decision on enforcement applies to a

subsequent employer, beginning on the date of service of the decision on enforcement upon the new employer.

The former employer of the judgment debtor shall, without delay, send the decision on enforcement to the new employer via registered mail with return receipt, and so inform the Court.

The former employer shall, without delay, notify the Court of the termination of employment and if s/he does not know the identity of the new employer, on which the Court shall instruct the judgment creditor to obtain the information on the new employer within a given deadline.

In the event the judgment creditor does not inform the Court within the specified deadline of the identity of the new employer, the Court shall dismiss the enforcement.

### **Liability of Employer in Omission of Garnishment and Payment of Installments Due**

#### **Article 162**

The judgment creditor may file, up to the date of the completion of the enforcement procedure, a motion that the Court in the enforcement procedure issue a decision ordering the employer to pay all the installments s/he suspended or omitted to pay in accordance with the decision on enforcement.

Based on the final decision set forth in Paragraph 1 of this Article, the judgment creditor may move the Court to issue the decisions on enforcement against the employer in the same enforcement procedure.

An employer who fails to proceed in accordance with the decision on enforcement or fails to proceed in accordance with Article 161, Paragraphs 2 and 3, of this Law shall be held liable for damages caused to the judgment creditor.

### **Seizure with Debtor's Consent**

#### **Article 163**

The judgment debtor may, by certified document, consent to the seizure of a part of his/her salary for the purpose of paying a judgment creditor's claim, and to payment directly to the judgment creditor and such document has the legal effect of a decision on enforcement.

The document referred to in Paragraph 1 of this Article shall be sent to the employer by the judgment creditor via registered mail with return.

As an exception to provision of Paragraph 1 of this Article, seizure with the judgment debtor's consent shall have no effect on enforcement of garnishment instituted for payment of a claim based on legal support, of compensation of damages due to disability or physical impairment resulting in the inability or limited ability to work, or of claims for compensation of damages as a result of the loss of support due to the supporter's death.

## **(5) Enforcement of Claim on Bank Accounts**

### **Coercive Enforcement**

#### **Article 164**

Enforcement of a monetary claim against a savings deposit account, giro account, foreign currency account and other bank accounts belonging to the judgment debtor, shall be effectuated by ordering in the decision on enforcement that the bank pay the amount under enforcement to the judgment creditor after the decision on enforcement has become enforceable. This decision has the same effect as a decision on enforcement ordering seizure of a monetary claim and transferring it for the purpose of payment.

The decision on enforcement referred to in Paragraphs 1 of this Article shall state the number of the account of the judgment debtor from which payment will be made, and the account number of the judgment

creditor to be credited with the payment.

Decision on enforcement shall be delivered to the bank before it become enforceable. On the validity of the decision on enforcement the Court shall inform the bank by official duty.

On the enforcement as set forth in Paragraph 1 of this Article, the provision of the Article 140 of this Law shall be applied appropriately.

Provisions as set forth in paragraphs 1 to 4 of this Article shall not be applied on the claims against savings deposits.

#### **Obligation on Delivery of the Information on Account and the Liability Article 165**

Bank is obligated to deliver information on gyro account, foreign currency account or any other account belonging to the judgment debtor if requested by the Court.

Provisions from Article 162 of this Law shall be applied appropriately on the bank if it fails to act in accordance with the decision on enforcement.

#### **Seizure of the Account with Judgment Debtor's Consent Article 166**

Judgment creditor may, by certified document, give consent for seizure on his/her certain account in order to pay the claim of the judgment creditor, and for the monetary funds of that account, in accordance with his statement in such document, be paid directly to the judgment creditor. Such document has an effect of the valid decision on enforcement by which the claim against account is seized and being transferred on to judgment creditor for payment.

Document referred to in Paragraph 1 of this Article the judgment creditor shall deliver to the bank directly in the reception office of the bank or via certified mail with mail return receipt.

Provision from Article 163 Paragraph 3 of this Law shall be appropriately applied on this enforcement.

## **XII- ENFORCEMENT OF CLAIM TO DELIVER OR HANDOUT MOVABLE ASSETS OR REAL PROPERTY**

### **(1) General Provisions**

#### **Enforcement Actions Article 167**

The enforcement of the judgment debtor's claim to deliver or handout movable or real property shall be executed by seizure of the claim for property, its transfer to the judgment creditor and the sale of the property.

#### **Effect of Transfer Article 168**

The transfer of a judgment debtor's claim that has been seized has the effect of transferring a monetary claim for purposes of payment.



## **Judgment Debtor's Undue Claim and Civil Lawsuit against Judgment Debtor's Debtor**

### **Article 169**

If the judgment debtor's claim has not become due, the Court shall order the judgment debtor's debtor to deliver the items after the date they are due.

Against judgment debtor's debtor that is not willing to deliver the items the judgment creditor may, even before decision on transfer of the claims becomes enforceable, request delivery by the civil lawsuit, if s/he does not have enforceable document.

If the decision on enforcement does not become enforceable or it is revoked or altered afterwards, the Court shall reject the civil lawsuit form Paragraph 2 of this Article.

### **Application of the Provisions on Enforcement on a Financial Claim**

#### **Article 170**

The provisions on enforcement pertaining to the enforcement against a monetary claim shall apply in appropriate way to the enforcement of claims for the delivery or handing out of movable or real property, unless the provisions of this Chapter specify otherwise.

#### **(2) Movable assets**

##### **Delivery of Items for Safekeeping**

#### **Article 171**

In the decision ordering the transfer of a judgment debtor's claim, the Court shall order the judgment debtor's debtor to deliver the movable assets, on which the claim applies, to the Court referee or other person for safekeeping.

The provisions of Article 120 of this Law apply to such safekeeping.

The sale of movable assets delivered for safekeeping to Court referee or to other person for safekeeping and the payment to a judgment creditor shall be performed in accordance with provisions dealing with enforcement on movable assets.

#### **(3) Real property**

##### **Delivery to the Judgment Creditor**

#### **Article 172**

In the decision prescribing the transfer of judgment debtor's claim, the Court shall order the judgment debtor's debtor to deliver the real property, on which the claim is put, to the judgment creditor.

The judgment creditor shall be required to manage the real property for the benefit and on behalf of the judgment debtor with the due care of an owner, and to report on its management to the Court upon the its request.

##### **Sale and Payment to Judgment Creditor**

#### **Article 173**

In order to satisfy his/her claim, the judgment creditor may, within thirty days of the date the real property is delivered to him/her, file a motion with the Court for the sale of the property or the Court shall dismiss the enforcement.

The real property shall be sold and the judgment creditor paid in accordance with the provisions of this Law governing the enforcement on real property.

### **XIII – ENFORCEMENT AGAINST SHARES FOR WHICH DOCUMENT ON SHARE HAS NOT BEEN ISSUED, THEN ON FOUNDERS’ SHARES OR OTHER SHARES IN A LEGAL PERSON**

#### **Enforcement Actions**

##### **Article 174**

Enforcement on shares, for which the document on shares has not been issued, shall be executed by seizing the shares, appraising their value, selling them and paying the judgment creditor.

Enforcement on shares in a legal person shall be executed by seizing the shares, appraising their value, selling them and paying the judgment creditor.

#### **Seizure of Shares**

##### **Article 175**

Seizure of shares, for which the document on shares has not been issued, shall be completed by serving the decision on enforcement on the legal person where the shares have been entered. This seizure grants the judgment creditor a lien over the shares.

Legal person referred to in Paragraph 1 of this Article is obligated to enter the seizure of shares issued on the name on the date of serving the decision on enforcement in the Register of the Securities, and then it shall inform the Court promptly on that entry or the reasons why the entry was impossible to perform. Legal person has no right to appeal to the decision on enforcement

Legal person from Paragraph 1 of this Article shall, without delay, inform the Court on any change regarding the seized shares, especially on forcible enforcement for the purpose of the payment or on the posting of security for some other claim.

Legal person referred to in Paragraph 1 and 2 of this Article shall be held responsible for damage that judgment creditor may suffer for its failing to act in accordance with Paragraphs 2 and 3 of this Article. Persons that hold managerial positions in such legal person shall be jointly responsible for the damage as well. Warning on responsibility of the legal person, members of the management and other executives of the joint stock company shall be entered in the decision on enforcement. Judgment creditor may, by the end of the enforcement procedure, move the Court to decide on his/her claim for reimbursement in the same procedure, and, based on the final decision on damage compensation s/he may require forcible enforcement against legal person and the persons performing managerial duties in it. Upon finalizing of the enforcement procedure judgment creditor may satisfy his/her right to be compensated for the damage by filing civil lawsuit.

The judgment debtor shall be forbidden to transfer the seized shares and a notice of this prohibition shall be included in the decision on enforcement.

The Court may by a conclusion order joint stock company to enable Court referee to check the Registry of Shares and other documents. Against the joint stock company and the responsible persons that prevent or district Court referee criminal measures may be sentenced as provided by this Law. The Court is obligated to undertake all necessary measures to keep the secrecy of the acquired documents as by the regulations regarding business secrets.

#### **Appraisal and Sale of Shares and Payment to Judgment Creditors**

##### **Article 176**

Seized shares shall be sold at public auction or by private agreement. By private agreement the shares shall be sold by the Court referee or other person authorized to sell shares, entrusted by the Court for the sale. The Court referee or the person authorized to sell shares shall enter into a contract for sale of the shares on behalf of the judgment debtor based on a Court conclusion authorizing him/her to do so.

If the shares are to be sold at public auction or by private agreement, it shall be appraised first. Court

referee shall establish market value of the shares by experts or authorized appraiser. Person authorized for sale of the shares, to which the sale of the shares has been entrusted, determines price for the sale of the shares by himself having in mind the market conditions.

Of shares shall be served on the Registrar of securities.

Appraisal, determination of the sale price and the sale of the shares, and the payment of the judgment creditor shall be performed by applying provisions of this Law related to enforcement on movable assets.

## **XIV ENFORCEMENT ON OTHER PROPERTY OR MATERIAL RIGHTS**

### **Basic Provisions**

#### **Jurisdiction Article 177**

Individual judge of the Administrative Department of the Court shall be responsible for deciding on motions for enforcement on patents, technical improvements, usufructs or similar rights of the judgment debtor and for the execution of that enforcement.

#### **Enforcement Actions Article 178**

Enforcement on rights as set forth in Article 177 of this Law shall be executed by seizure of that right and its chasing in accordance with provisions on sale of movable assets.

## **XV SPECIAL PROVISIONS**

### **Enforcement against Ownership Rights in a Legal Person**

#### **1) Exemption from Enforcement and Restrictions of the Enforcement**

##### **Real property Article 179**

Real property used as the office premises and the real property that has not been built yet or adjusted to perform registered activity are not being considered the items necessary for performing the activity of the legal person. If the same property is being used as the office space and for the performance of the registered activity, the enforcement may be carried out on the part of the real property that is used as the office space.

Real property built for the purpose of performing registered activity may be an object of the enforcement if the activity of the judgment debtor will not be stopped due to their seizure, especially if what judgment debtor is getting on that real property can be compensated by acquisitions on the market, meaning if the business space may be rented on the market where such activity can be carried out.

Real properties used for performing one out of several activities of the judgment debtor, and for which seizure the other activities of the judgment debtor will not cease are not considered as the items necessary for performing his/her activity.

##### **Movable assets and Rights of the Legal Person Who Performs Activity for Profit Article 180**

Enforcement against legal person who performs its activity for profit may be ordered against those movable properties and rights:

1. cash money and securities without restrictions;
2. final products and semi products intended for sale without restrictions;
3. raw materials, semi products intended for productions and energy (fuel, lubricants etc.) above the quantity that is necessary to judgment debtor for one month average production, if those items cannot be purchased regularly on the market and if that is necessary for efficient production;
4. other movable items not necessary for the performance of the judgment debtor's activity;
5. patents, technical improvements and other rights without restrictions.

The Court shall determine if the conditions for the restrictions as set forth in Paragraph 1 Item 3 of this Article are met regarding legal remedy of the judgment debtor, that is regarding the motion of the judgment debtor after certain items have been seized by enforcement actions. Such motion judgment debtor should put within eight days from the day of execution of the enforcement action.

It shall not be considered that movable item is necessary for performance of the activity of the judgment debtor if it serves for performing the activity which is provided by other persons by appropriate movable items on the market or if it can be rented on the market.

It shall not be considered that vehicle is necessary to the legal person that performs transport activity, that is renting the vehicles, if, due to the enforcement on such vehicle activity of the person is not decreased for more than two thirds.

### **Movable assets and the Rights of Other Legal Person Article 181**

Enforcement against legal person that does not perform activity for the profit may be ordered against movable assets and rights not necessary for performing its activity.

In the event referred to in Paragraph 1 of this Article, provisions as set forth in Paragraph 1 Items 1, 4 and 5, a and Paragraph 3 and 4 of the Article 180 of this Law shall be applied appropriately.

### **Volume of the Enforcement against Monetary Funds on the Account of Legal Person Article 182**

Enforcement for satisfying the monetary claim against legal person may be executed on all funds on its bank accounts.

Enforcement against monetary funds on the account of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republika Srpska, Brcko District of Bosnia and Herzegovina, cantons, municipalities and administrative organizations, that they have with the banks, cannot be ordered if those funds are necessary for performing the basic activity of those legal persons.

Provision of the Paragraph 2 of this Article applies also to the organs of the legal persons from that provision.

The Court shall, on the objection of legal person or organ referred to in Paragraph 2 and 3 of this Article, hear the parties, and if necessary exercise other evidences, upon which it shall determine by the conclusion the amounts up to which, within determined sequences, the enforcement for the purpose of the payment of the claim to the judgment creditor may be enforced.

Appeal against the decision from the Paragraph 4 of this Article does not preclude its execution.

### **1) Enforcement against Funds on the Account of the Legal Person**

#### **Order of Payment Article 183**

Bank shall perform payment by the sequence in accordance with time of serving decision on

enforcement, unless otherwise prescribed by the law.

Bank keeps record on the sequences of the decision on enforcement by the date and hour of delivery and issue to the judgment creditor, on his/her request, the affirmation of the place of his/her claim in that sequence. Bank shall not execute order of the judgment debtor before paying out the claim established by the decision on enforcement, unless separate law prescribes otherwise.

Document for which special law says so shall be deemed equal with decision on enforcement.

If the enforcement is postponed on the proposal of the judgment debtor, appropriate amount of funds is being estranged for the purpose of keeping the order of the payments of claims.

Bank shall be held liable to the judgment creditor for the damage inflicted by its breach of the provisions of this Law related to scope, sequence and manners of settlement of the judgment creditors claims.

The Court in the enforcement procedure shall decide on request for damage compensation referred to in Paragraph 5 of this Article. Based on final decision ordering bank to reimburse the judgment creditor for the damage, judgment creditor may request the enforcement against the bank in the separate enforcement procedure.

#### **Specifying the Accounts Article 184**

Judgment creditor is obligated to, besides other things, to specify the bank where judgment debtor's funds are being taken care of, as well as the number of his/her account in his/her motion for enforcement.

If the payment for the claim that is being satisfied is being done through the account, judgment creditor is obligated to name also the bank where his/her funds are being taken care of as well as the number of his/her account in the proposal for enforcement.

On the enforcement from this Article provisions of the Article 140 of this Law are being applied appropriately.

#### **Article 185**

By a decision on enforcement against monetary funds that are on the judgment debtor's bank account, the bank shall be ordered, upon enforceability of the decision on enforcement, to transfer the amount of money for which the enforcement has been determined from judgment debtor's account to judgment creditor's account.

If, in the motion for enforcement, judgment creditor proposes that the transfer as set forth in Paragraph 1 of this Article be performed before the enforceability of the decision on enforcement and offers a security for the compensation of the damage that judgment debtor could suffer for such transfer, the Court shall, by a conclusion, set a deadline for posting a security, and such amount shall be assessed by the facts of the case, and after the security has been made, decision on enforcement shall determine that transfer is being done before enforceability.

If the judgment creditor does not post a security in given deadline, s/he shall be deemed to give up from the motion to have transfer done before the enforceability of the decision on enforcement.

#### **Periodic Payments Article 186**

If the decision on enforcement ordered the bank to do payments of certain amounts in certain periods, it shall perform payments in accordance with order from decision on enforcement, bearing that the sequence of all future installments shall be calculated by the time of delivery of the decision on enforcement.

Bank shall keep separate record of decisions on enforcement by which the future periodic payments have been ordered.

**Cease with Enforcement**  
**Article 187**

Bank that has been delivered with decision on enforcement shall cease with enforcement on the request of the judgment creditor, in which case the monetary funds shall not be paid.

**Procedure when there are no funds on account**  
**Article 188**

If, at the time when the bank was delivered with decision on enforcement, there are no funds on the judgment debtor's account, the bank shall keep that decision in the registry and perform the transfer as ordered when the funds arrive on the account.

**Enforcement against Joint and Several Judgment Debtors**  
**Article 189**

If, on the basis of an enforceable document, two or more judgment debtors are jointly and severally liable, the Court shall, upon the motion of the judgment creditor, render a single decision on enforcement freezing the judgment debtor's accounts up to the amounts set forth in the decision on enforcement.

The judgment creditor may, in the motion for enforcement, list the order of payment for individual judgment debtors, and if the order has not been set forth then collection shall be effectuated in the order they are listed in the motion.

If the accounts of joint and several judgment debtor are with different banks, the Court shall serve the decision on enforcement to the bank that has account on the judgment debtor, which is put by judgment creditor on the first place in the motion.

In the event referred to in Paragraph 3 of this Article there are no funds in the bank accounts of one judgment debtor's, bank that got the decision on enforcement shall forward such decision, on the proposal of the judgment creditor, to some other bank where joint and several judgment debtors have the accounts.

**Enforcement against Funds on Foreign Currency Accounts**  
**Article 190**

If the enforcement is executed for the purpose of payment of a claim in other currencies, the funds on the foreign currency account of the judgment debtor shall, be calculated in that currency at the rate of exchange, which would be applied for such calculation by the bank where the account is kept, if the judgment debtor requested so and payment will be effectuated according to rules governing payment from such accounts.

**Enforcement for Cashing in an Asset in Foreign Currency**  
**Article 191**

If an claim set forth in the enforceable document is expressed in foreign currency and if the judgment debtor holds a foreign currency account in that currency, the decision on enforcement shall order the bank where the foreign currency account of the judgment debtor is kept to transfer a corresponding amount in foreign currency from the judgment debtor's account to the judgment creditor's account, or to effectuate payment in the foreign currency in some other acceptable manner.

The judgment creditor may request that enforcement for satisfaction of his/her claim in a foreign currency be directed and executed on other accounts or assets of the judgment debtor as actual payment of his/her claim in the amount necessary for purchasing the foreign currency owed from an authorized person.

Provisions of paragraphs 1 and 2 of this Article shall also apply when the enforcement is ordered against a judgment debtor who is not a legal person.

## **XVI ENFORCEMENT TO SATISFY A NON-MONETARY CLAIM**

### **1) Court Penalties**

#### **Imposing Court Penalties**

##### **Article 192**

If the judgment debtor does not perform a particular non-monetary obligation ordered by an enforceable document or by Court settlement, the Court shall in the enforcement procedure, on a motion of the judgment creditor, order a subsequent time period for the judgment debtor to fulfill his/her obligation and instruct him/her that if s/he fails to fulfill his obligation within such period, s/he shall pay the judgment creditor a specified sum of money for every day of delay [Court penalties] according to the Law and Rules on Obligations, starting from the date of expiration of said period.

The subsequent time period set under Paragraph 1 of this Article commences to run on the date of serving the decision on the judgment debtor. The appeal shall not affect the deadline.

If the judgment debtor fulfills his/her obligation no later than fifteen days after the decision under Paragraph 1 of this Article becomes final, the Court may, in the same enforcement procedure and at a request of the judgment debtor filed within eight days after fulfilling the obligation, reduce the amount of the penalties imposed, taking into account the reasons they were imposed.

Payment of Court penalties may be requested up to the time when, on the basis of the enforceable document, a motion is filed for enforcement for the purpose of satisfying non-monetary claims.

The right to Court penalties shall cease on the date of filing the motion for enforcement referred to in Paragraph 4 of this Article.

If the enforcement referred to in Paragraph 5 of this Article is dismissed, the right of the judgment creditor to seek Court penalties is reinstated.

#### **Enforcement for Collection of Penalties Imposed by the Court**

##### **Article 193**

On the basis of the final decision on payment of penalties imposed by the Court under Article 192 of this Law, the Court shall, in the same enforcement procedure in which the decision was issued, upon the motion of the judgment creditor, issue a decision on enforcement for forcible collection of the imposed penalties.

If the judgment debtor states in his/her objection opposing the decision on enforcement that s/he has discharged his/her obligation, the Court shall accept his/her objection during the enforcement procedure only if s/he proves it with a public document or private document that has the effect of a public document, or otherwise it shall instruct the judgment debtor to file civil lawsuit.

## **XVII – ENFORCEMENT FOR HANDOVER AND DELIVERY OF MOVABLE ASSETS**

### **Enforcement for Delivery of Certain Items in Possession of the Judgment Debtor or Third Party**

#### **Article 194**

Enforcement for the delivery of one or more specified items in the judgment debtor's possession shall be enforced so that the Court referee seizes these items from the judgment debtor, delivers them to the judgment creditor with a receipt.

Enforcement shall be executed in the manner referred to in Paragraph 1 of this Article also when the items are in possession of a third party who is willing to deliver them to the Court referee.

If the third party is unwilling to deliver the items to the Court, the judgment creditor may move the Court to transfer the judgment debtor's claim against a third party to the judgment creditor so that the items can be delivered him/her.

Provisions of this Law governing enforcement on the claims for the movable assets to be delivered or handed over shall apply on the procedure based on the motion referred to in Paragraph 3 of this Article.

### **Enforcement for Delivery of Specified Items Not Found with the Judgment Debtor or Third Party**

#### **Article 195**

If items are not found with the judgment debtor or a third party, the Court shall, in the same procedure, upon a motion of the judgment creditor, appraise the value of such items and by decision order the judgment debtor to pay the amount equal to this value to the judgment creditor within a given period of time.

The judgment creditor may file the motion under Paragraph 1 of this Article within eight days after the date s/he was notified that the items could not be found, otherwise the Court shall dismiss the enforcement.

Based on the decision under Paragraph 1 of this Article, the judgment creditor may file a motion even before it becomes enforceable, but no later than fifteen days after the date when the decision became enforceable, to obtain the amount awarded by the Court in the same enforcement proceeding.

If the motion under Paragraph 3 of this Article is not filed within the specified period of time, the Court shall dismiss the enforcement and revoke the decision under Paragraph 1 of this Article as well as other actions carried out.

The judgment creditor may, with a motion for enforcement pursuant to Article 194, Paragraphs 1 and 2 of this Law, joint a motion for issuing the decision under Paragraph 1 of this Article, and in such case enforcement under in Article 194 of this Law and the procedure from this Article shall be carried out simultaneously

### **Enforcement for the delivery of fungible items that are with judgment debtor or third party exchange**

#### **Article 196**

If the obligation of delivery of certain quantity of the fungible items that are in possession of judgment debtor or third party, is established by enforcement document, enforcement shall be executed in the manner pursuant for the delivery of specified items.

### **Enforcement when fungible items that were found neither with judgment debtor nor with third party**

#### **Article 197**

If the fungible items were found neither with judgment debtor nor with third party, enforcement shall be executed by appropriate application of the provisions of Article 195 of this Law.

If, during the enforcement procedure the change of the value occurs with fungible items, judgment creditor may move with the Court the new appraisal and order judgment debtor to pay the difference, in which case provisions of Article 195 of this Law and Paragraph 1 of this Article shall be applied.

### **The Right to Compensation for Damages**

#### **Article 198**

The provisions of this Chapter do not impair the right of judgment creditor to seek, in a civil lawsuit compensation for damages inflicted on him/her due to failure to deliver the items to him/her.



## **XVIII – ENFORCEMENT TO VACATE AND DELIVER REAL PROPERTY**

### **Manner of Execution of Enforcement**

#### **Article 199**

Enforcement to vacate and deliver real property shall be enforced in the manner that the Court referee, upon removing the persons and items from the property, delivers the real property to the judgment creditor.

Vacating and delivery of real property may commence after the expiration of eight days of the date of serving the decision on enforcement on judgment debtor and before its enforceability. If it was impossible to serve the decision on enforcement to judgment creditor on his/her last know address not in accordance with provisions of Article 8 Paragraphs 1 and 2 of this La, the Court shall, without delay, appoint temporary agent to whom the decision shall be served.

If necessary, the Court may impose fines on persons impeding the execution of enforcement.

At the request of Court, the police and welfare agency shall provide all necessary assistance in carrying out the acts set forth in Paragraph 1 of this Article.

During the execution of the enforcement the provisions of Article 38 of this Law shall be applied.

The manpower and vehicles required for execution of the enforcement shall be provided by the judgment creditor at the request of the Court referee, and the judgment creditor must be notified of this request no later than eight days prior to executing the enforcement.

### **Removal of Movable assets**

#### **Article 200**

Movable assets that has been removed from real property shall be delivered to the judgment debtor, and if s/he is not present, then to an adult member of his household agent.

When carrying out enforcement actions, if none of the persons to whom the items can be delivered are available, or if such persons refuse to accept them, the items shall be delivered to another party for safekeeping at the expense of the judgment debtor. The judgment creditor shall designate a person to whom the removed items may be delivered or the judgment creditor may keep the items of the judgment debtor for safekeeping himself.

The removed items shall be delivered to another party or the judgment creditor for safekeeping by the Court referee on the basis of a conclusion of the Court. The Court may, by a conclusion, subsequently order that a third party be entrusted with the items instead of the party to whom they were delivered.

The Court shall inform the judgment debtor of the delivery to another party and on the costs of safekeeping, leaving him/her a reasonable time to request the return of the items upon paying the costs of safekeeping and warning him that, after the expiration of a given period of time, the items shall be sold and the costs of safekeeping and the sale shall be paid out of the sales price.

### **Sale of Movable Assets**

#### **Article 201**

The Court shall automatically decide to sell the items on behalf of the judgment debtor if s/he fails to request their return and fails to pay the costs of safekeeping within a given period of time.

The sum remaining after paying the costs of the sale and safekeeping shall be deposited with the Court for the judgment debtor's benefit.

The sale of said items shall be carried out pursuant to provisions of this Law governing enforcement

against movable assets.

### **Enforcement for Payment of Costs of Procedure**

#### **Article 202**

The judgment creditor may, in the motion for enforcement to vacate and deliver real property, request that with the enforcement an instruction be issued for simultaneous enforcement against the judgment debtor's movable assets that is to be removed from the real property for the purpose of paying the costs of enforcement procedure.

Enforcement under Paragraph 1 of this Article is decided and executed pursuant to the rules governing enforcement against the judgment debtor's movable assets for the payment of a monetary claim.

### **XIX – ENFORCEMENT TO REALIZE A CLAIM TO PERFORM, TO ALLOW OR TO RESTRAIN FROM AN ACT**

#### **Enforcement to Fulfill an Obligation to Perform an Act which Can Also Be Performed by Another Party**

##### **Article 203**

An enforcement to fulfill an obligation to perform an act, which can also be performed by another person, shall be enforced by the Court authorizing the judgment creditor to delegate to another person, at the expense of the judgment debtor, to perform the act or to perform it himself/herself.

In the motion for enforcement the judgment creditor may propose that the Court, by a decision, order the judgment debtor to deposit a certain sum with the Court, in advance, that is necessary for the payment of expenses that will be incurred by another person or the judgment creditor in performing the act. The amount of expenses shall be estimated by the Court in its discretion, taking into consideration, if possible, the list of expenses of the person authorized to perform the act, which the judgment creditor appends to his/her motion for enforcement.

If it is subsequently determined that, based on the decision under Paragraph 2 of this Article, funds obtained from the judgment debtor exceed the costs of performing said act and the costs of enforcement procedure, the Court shall, upon the motion of the judgment debtor, return the difference to the judgment debtor or shall order the judgment creditor to return the difference within a given time if the funds were placed at his/her disposal.

On the basis of the decision referred to in Paragraph 2 of this Article, one may propose enforcement before it becomes enforceable, and on the basis of the decision referred to in Paragraph 3 of this Article only upon its enforceability.

#### **Enforcement to Fulfill an Obligation to Perform an Act which can only Be Performed by the Judgment debtor**

##### **Article 204**

If only the judgment debtor may perform an act, the Court shall, in a decision on enforcement, set a reasonable period of time for the judgment debtor to fulfill the obligation.

In the decision on enforcement the Court shall warn the judgment debtor and also the responsible persons within a legal person, that it shall impose fines in certain amount if they fail to fulfill the obligation within the prescribed period of time.

First fine for judgment debtor and responsible person in legal person may be in the amount from 500 KM to 3000 KM, and for a legal person in the amount from 1000 KM to 10000 KM tentative to economic power of judgment debtor.

If the judgment debtor fails to fulfill the obligation within the prescribed period of time, the Court shall, on the motion of the judgment creditor, set a new deadline for fulfillment of the obligation and warn them about higher fines than the previous one.

The Court shall continue to set fines and to warn the judgment debtor and responsible persons in a legal person about new ones setting the new deadlines for fulfillment of the obligation till the total amount of the fines reaches an amount ten times bigger than the first fine.

If the judgment debtor or responsible person in a legal person fails to pay a fine within the deadline set by the decision of the Court, the fine shall be replaced by imprisonment and executed by the regulations of the criminal legislation.

For determining the amount of the fine, in the bestowable limits, the Court shall take into account the meaning of the act the judgment debtor was obligated to perform, as well as other conditions of the case.

Judgment debtor who fulfilled his/her obligation within the deadline set by the Court, is obligated to inform the Court about it without delay and present credible evidence on that (written statement of the judgment creditor that the act was performed, record of the Court referee on the performance of the act, finding and opinion of the Court expert that the act was performed, delivery of the piece that was made by such act into Court deposit), otherwise it shall be deemed that the act has not been performed.

If an act that may only be performed by the judgment debtor is of the type that does not depend exclusively on his/her willingness (for example, the creation of a certain work of art, etc.), the judgment creditor shall not have the right to request enforcement under Paragraph 1 of this Article, but only compensation for his/her damages.

Judgment debtor and other person referred to in Paragraph 2 of this Article may file an appeal against the decision on fining and decision on replacing the fine with term in prison within three days from the receiving of the decision.

Provisions of this Article regarding fines and replacement of such sentence by time in prison shall not be applied if the judgment debtor is Bosnia and Herzegovina, Federation of BiH, Republika Srpska, Brčko District of Bosnia and Herzegovina, cantons, city, municipalities and administrative organs of those legal persons. If those judgment debtors fail to act in accordance with provisions of Article 1 of this Article, only compensation may be requested.

## **Enforcement to Fulfill an Obligation to Allow Another to Perform an Act or to Restrain from Action**

### **Article 205**

If, on the basis of the enforcement document, a judgment debtor is obligated to allow a certain act to be performed or to refrain from undertaking an act, the Court shall, on the motion of the judgment creditor, by a decision, order the judgment debtor to act in accordance with his/her obligation and warn him/her of the fines or time of imprisonment that can be imposed if s/he does not comply. In the legal remedy against the enforcement decision the judgment debtor may oppose the claim of the judgment creditor that s/he acted contrary to his/her obligation from the enforcement paper, and the Court may, as necessary, set a hearing for carrying out the evidence and hearing the witnesses.

Judgment creditor is obligated to file a motion for judgment debtor to pay a fine or spend time in prison because, even after being ordered by the Court, s/he acted opposite to his/her obligation, within fifteen days for the knowledge of such behavior, and no later than one year since the violation of obligation occurred.

The Court shall, on the motion of the judgment creditor, continue to impose the fines or imprisonment and to warn him/her about new punishments if s/he does not stop to act contrary to his/her obligation. Total time of imprisonment, used as a replacement for the fines, and related to the same enforcement document, cannot exceed six months.

Motion to impose a certain fine or imprisonment can be withdrawn by the judgment creditor until the decision on imposing a fine is final and it shall be considered as if it was not filed, and the cost of the procedure caused by the withdrawn motion shall be covered by the judgment creditor, unless agreed otherwise by the parties.

When a fine is imposed on a legal person, the Court shall impose a fine also on the responsible individuals in the legal person if it concludes that, by their actions or mistake, he/she caused the behavior of the judgment debtor contrary to the enforcement document.

The Court shall, on the motion of the judgment creditor, order the judgment debtor to provide security for the damage, if the judgment creditor establishes the likelihood that s/he would endure damage by the judgment debtor continuing to act contrary to his/her obligation. Amount and the duration of the security, according to the circumstances of the case, shall be ordered by the Court.

### **Enforcement for the Purpose of Return to the Status Quo Ante**

#### **Article 206**

If a change has occurred due to judgment debtor's violating an obligation set out in the enforceable document and such change interferes with the judgment creditor's rights, the Court shall authorize the judgment creditor, on his/her motion, to return to the status quo ante at the expense and risk of the judgment debtor, and the judgment creditor may do so himself/herself or with the assistance of a Court referee, if necessary.

When depositing the amount necessary to pay the costs of returning to the status quo ante and in determining the total amount of such costs, the provisions that regulate the costs of performing an act, which, apart from the judgment debtor, may be performed by another person, shall apply.

If the changes referred to in Paragraph 1 of this Article occurred after the issuance of an enforceable document, the Court shall proceed in accordance with the provision under Paragraph 1 of this Article only after establishing that the change occurred as a result of an act performed by the judgment debtor.

### **Repeated Trespassing**

#### **Article 207**

If an enforcement was conducted on the basis of an enforceable document issued in civil proceedings based on a trespass, or if the judgment debtor voluntarily fulfilled his obligation, then later committed a subsequent trespass that was essentially the same as a previous trespass, the Court shall, on a motion of the judgment creditor, and on the basis of the same enforceable document, provided such document prohibits such behavior in the future, issue a new decision on enforcement in order to return to the status quo ante, if needed, and it shall warn the judgment debtor of the imposition of a fine if s/he continues to trespass, in which case, the provisions of Articles 205 of this Law shall apply.

A judgment creditor may file a motion for enforcement referred to in Paragraph 1 of this Article within thirty days of the date s/he finds out about the repeated trespassing, but not later than one year after the repeated trespassing occurred.

### **Right on Compensation of Damages**

#### **Article 213**

The provisions of this Chapter do not interfere with the right of the judgment creditor to seek, through a civil lawsuit, compensation for damages sustained by the judgment debtor's violation of his/her obligations as set forth in the enforceable document.

## **XX – ENFORCEMENT FOR THE PURPOSE OF REINSTATING AN EMPLOYEE TO WORK OR SERVICE**

## **Manner of Execution of Enforcement**

### **Article 209**

Enforcement on the basis of an enforceable document ordering the judgment debtor to permit the judgment creditor to return to work or to his/her service shall be enforced by applying the appropriate provisions of this Law.

## **Deadline for Filing a Motion for Enforcement**

### **Article 210**

A motion for enforcement pursuant to Article 209 of this Law may be filed within thirty days from the day when the judgment creditor acquired the right to file this motion.

## **Salary Compensation in Case of an Employee Returning to Work**

### **Article 211**

A judgment creditor who has filed a motion to return to work or to his/her service may propose that the Court issues a decision ordering the judgment debtor to pay the monthly salary from the date the decision became final until the date s/he returns to work, as well as to order enforcement for the purpose of collecting the amount awarded.

A motion for compensation and a motion for enforcement to be permitted to return to work may be filed together, or the former may be filed at any time up until the time the enforcement procedure is completed.

Decision granting the motion for compensation has the same legal effect as a ruling on the existence of the judgment debtor's obligation and a decision on enforcement and may be executed prior to being final.

A judgment debtor may request that the decision referred to in Paragraph 3 of this Article be revoked, if the circumstances for which it was issued changed after the decision was issued.

Monthly salary shall be equal to the amount that the judgment creditor would have received had s/he worked, and also includes taxes and other liabilities withheld from a salary.

## **XXI - ENFORCEMENT BY THE ENTRY OF RIGHTS IN THE PUBIC RECORDS**

### **Manner of execution of enforcement**

#### **Article 212**

Pursuant to an enforceable document, which determines the obligation of entry to a public record, the Court shall order for an adequate entry to be entered into a public register, which is executed ex officio.

### **Entry of an ownership right when the judgment debtor is not registered as the owner**

#### **Article 213**

When the judgment debtor is not registered as the owner of the real property, entry of ownership right of the judgment creditor on that real property may be executed if the judgment creditor, with the motion for enforcement, files evidence in accordance with the Land registry rules, that the legal predecessor of the judgment debtor is the person registered as the owner.

### **Entry of other rights when the judgment debtor is not registered as the owner**

#### **Article 214**

When the judgment creditor is authorized with the enforceable document to request, in relation to the judgment debtor, registry of a lien or any other right over the real property, except the ownership right, judgment creditor may in the motion for enforcement request for the ownership right to be registered onto

the judgment debtor, and then for the registry of his right to be carried out, if evidence is presented, in accordance with the Land registry rules, that the judgment debtor acquired a right of ownership over that real property.

## **XXII - ENFORCEMENT BY PARTITION OF OBJECTS**

### **Physical Partition**

#### **Article 215**

The Court shall order the physical partition of a common object if such partition has been foreseen by an enforceable document.

An individual judge or a Court referee, depending on circumstances, shall carry out specific physical partitions.

The Court shall summon the parties to be present in carrying out the partition, and if needed, shall also order the assistance of an expert.

### **Partition by Selling**

#### **Article 216**

If, based on an enforceable document, the common object must be sold in order to carry out the partition, the sale shall be performed in a manner prescribed by this Law pertaining to the enforcement against personal or real property, unless otherwise specifically agreed to by the parties.

### **Determination of a Manner of Partition by a Court Decision**

#### **Article 217**

In accordance with the regulations governing ownership and legal relationships, the Court shall decide whether the partition is to be conducted physically or by selling the object, unless the manner of partition has been set forth in an enforceable document or the parties agreed to a different manner.

The partition shall be carried out by selling the asset if it has been decided in the course of enforcement proceedings that physical partition, as ordered by the enforceable document, is not feasible, or that physical partition would significantly decrease the value of the object.

If the partition is not possible even by sale, joint owners may, after the dismissal of the enforcement procedure, file a suit requesting a partition by the payment of their joint ownership share, pursuant to regulations on ownership and legal relationships.

### **Costs of proceedings**

#### **Article 218**

The costs of carrying out an enforcement, incurred under the provisions of this Chapter, shall be borne by all parties in proportion to their shares in the common object.

The party that has caused additional costs to be incurred shall reimburse the parties adversely affected.

## **XXIII – LIQUIDATION OF CLAIMS UPON VOLITION STATEMENT**

### **Unconditional Claim**

#### **Article 219**

If, based on a decision with the effect of an enforceable document, the judgment debtor is obliged to make a volition statement, it shall be presumed that s/he has made the statement at the moment when the

decision became final.

If, based on a Court or administrative settlement, the judgment debtor is obliged to make a volition statement, it shall be presumed that s/he has made the statement at the moment when his/her obligation became due.

**Conditional Claim**  
**Article 220**

If collecting a claim that requires giving a volition statement depends on fulfilling specific obligations of the judgment creditor or some other condition, it shall be presumed that the judgment debtor has given the statement at the moment when the judgment creditor fulfilled his/her obligation, or when such other condition was met.

**PART THREE**

**SECURING OF CLAIMS**

**I GENERAL PROVISIONS**

**Enforcement provisions application**  
**Article 221**

Provisions set forth in the Law on Enforcement shall accordingly apply also on the securing of claims in terms of these provisions.

**Means of Securing Claims**  
**Article 222**

Only the means envisioned by these or other laws may be identified as means of securing claims for the purpose of satisfying the claims.

**Competence to Order Securing of Claims ex officio**  
**Article 223**

The Court that has jurisdiction as to the person making the securing of claims motion shall have jurisdiction in ordering and carrying out the securing of claims ex officio, unless otherwise provided for in the law.

**II – SECURING OF CLAIMS THROUGH ENFORCED LIEN ON REAL PROPERTY**

**Lien Establishment Prerequisites**  
**Article 224**

Pursuant to the enforcement document establishing a monetary claim, the person making the securing of claims motion is entitled to request that the claims be secured by establishing lien on the claims securing the real property of the person opposing the motion.

**Lien Establishment Modalities**  
**Article 225**

Lien on real property registered in land books shall be established by registration.

In registering lien in land books, one must make note of the enforceability of the claims whose

securing was the reason for ordering the registration.

If the person making the securing of claims motion has already, before the claims became enforceable, acquired pursuant to a contract a lien on the claims on the given real property, or if the lien has been previously noted, the Court shall, at the proposal of the person making the securing of claims motion, order that the enforceability of the claim be noted in the land records.

If the person opposing the motion is not registered in land records as the real property owner, the person making the securing of claims motion is obliged to attach to his motion a document appropriate for the ownership right registration of the person opposing the motion.

### **Effect of Lien Registration and Note Article 226**

The registration of lien and claims enforceability note have such an effect as to allow for the enforcement on the real property to be carried out also against a third entity that has subsequently acquired the property in question.

In the event referred to in Paragraph 1 of this Article, the enforcement on real property shall be ordered against the entity registered as the owner, based on the enforcement document based on which lien and enforceability note have been registered in the land records, and on a land record excerpt which shows that the entity in question has been registered as the owner after the lien and enforcement note registration.

## **III – JUDICIAL SECURING OF CLAIMS PURSUANT TO AGREEMENT BETWEEN PARTIES**

### **1) Judicial Securing of Monetary Claims through Lien Establishment pursuant to Agreement between Parties**

#### **Securing of Claims Motion Article 227**

For the purpose of securing monetary claims by the person making the securing of claims motion through acquiring lien on particular items subject to securing of claims, the person making the securing of claims motion and the person opposing the securing of claims may agree to request from the Court to order and carry out the following actions to the benefit of the person making the proposal to secure the claims:

1. registration of lien on the real property of the person opposing the motion;
2. real property seizure that have not been registered in land records pursuant to the rules applicable while carrying out any enforcement for the purpose of collecting monetary claims on the real property in question;
3. seizure of movable assets of the person opposing the motion to secure the claims in question;
4. seizure of monetary claims of the person opposing the motion to secure the claims in question;
5. seizure of a part of income of the person opposing the motion to secure the claims in question based on the labor or service contract;
6. seizure of a portion of the pension, disability allowance or lost income compensation;
7. seizure of claims which the person opposing the motion to secure the claims in question has on his bank account;
8. seizure of claims to surrender or deliver movable assets or to surrender real property;
9. seizure of other property or material rights;
10. seizure of official documents on the shares and other securities, and their handing over for safekeeping;
11. seizure of shares with no share documents, and shares, or business shares, in trade companies.

#### **Hearing upon Motions and Agreement of Parties Article 228**



At the proposal of one or both parties, the Court shall set a hearing date, the minutes of which shall contain the agreement of the parties on the existence of claims of the person making the motion to secure the claim and the time of its maturity, as well as their consent that through the security activities set forth in Article 227 of this law, depending on the subject of securing, one shall secure the monetary claim in question through the lien establishment. In this agreement, the parties may set the value of security objects which will in the enforcement procedure serve as the basis for determining the value of secured objects for the purpose of their cashing in.

The signed transcript on the agreement of parties as laid down in Paragraph 1 of this Article shall have the force of a Court settlement.

The parties may also secure non-monetary claims of the person making the motion to secure the claims, so that in the agreement under Paragraph 1 of this Article they determine their monetary counter-value. The procedure of securing the claims shall then be defined and carried out for the purpose of securing the monetary counter-value of the non-monetary claims. Unless in the framework of the agreement under Paragraph 1 of this Article the parties decide otherwise, non-monetary claims shall not cease by the conclusion of the agreement.

Upon the maturity of the non-monetary claims under Paragraph 3 of this Article, the person making the motion to secure the claims may, at his choice, request the enforcement for the purpose of acquiring the non-monetary claims, or enforcement for the purpose of collecting the monetary counter-value. If the person making the motion is even partly compensated in the procedure of enforcement for the purpose of collecting the monetary counter-value of non-monetary claims, his non-monetary claims shall cease entirely, and it shall be considered that the person making the motion has only non-monetary claims against the person opposing the motion, which matches the non-settled part of the monetary counter-value of the non-monetary claims.

### **Ordering and Carrying out the Securing of Claims**

#### **Article 229**

Pursuant to the agreement under Article 228 of this law, the Court shall issue a decision ordering measures of security under Article 227 of this law, and shall undertake all necessary measures for their implementation, pursuant to the provisions laid down in this law on enforcement activities through which, in the procedure of enforcement for the purpose of collecting non-monetary claims, one acquires lien on particular objects of enforcement.

The decision under Paragraph 1 of this Article shall have the validity of a decision to secure claims. By carrying out the activities to secure claims, under Paragraph 1 of this Article, the person making the motion shall acquire lien on the particular object of securing.

### **Ordering and Carrying out the Enforcement**

#### **Article 230**

At the proposal of the person making the motion, the Court shall issue a decision, when it has established that the agreement of parties under Article 228 of this law has become effective, and for the purpose of settling the secured monetary claims of the person making the motion, ordering and carrying out the enforcement on the objects of the person opposing the motion, on which pursuant to the agreement of the parties lien has been established, in accordance with the provisions set forth in this law on the enforcement on the objects or rights of the debtor.

The decision under Paragraph 1 of this Article shall have the validity of an enforcement decision.

The enforcement note on real property shall have legal validity as of the day of registration of lien on the real property in the claims securing procedure.

In the enforcement procedure and for the purpose of collecting monetary claims secured by lien, pursuant to the provisions set forth in this Chapter, the activities through which lien has been acquired shall not be repeated, but shall have legal effect as of the day of acquiring lien in the claims securing procedure.

In the enforcement procedure under Paragraph 1 of this Article, provisions set forth in this law with regard to the protection of debtors, exemption from enforcement and limited enforcement on particular objects of enforcement, shall not apply.

### **Securing of Claims by Acquiring Lien on Properties and Rights of Other Persons**

#### **Article 231**

If the other person has consented that lien be established on his object or right for the purpose of securing monetary claims of the person making the claims securing motion, that person shall be summoned for a hearing under Article 228 of this law, while the Court shall enter his statement on the consent into the transcripts of that hearing and in the agreement of parties on the securing of claims.

The signed transcript referred to in Paragraph 1 of this Article shall have the validity of a Court settlement also in relation to the person who has given consent that lien be established on his object or right.

Lien on a third person's object shall be acquired in the same manner as on an object of the person opposing the claims security motion.

Pursuant to the transcript under Paragraph 1 of this Article, the person making the claims security motion may, for the purpose of the secured claims collection, immediately propose an enforcement against a person referred to in that provision, on the object on which lien has been established for the purpose of securing his claims.

## **IV – SECURING OF CLAIMS BY PREVIOUS ENFORCEMENT**

### **Prerequisites for Ordering the Enforcement**

#### **Article 232**

For the purpose of securing a non-monetary enforcement that cannot be secured through pre-registration in the public books, the Court may, pursuant to a verdict handed down in a civil procedure case, order a previous enforcement if the creditor proves a probable danger that due to a delay of enforcement, pending the effectiveness of the verdict, the enforcement would be prevented or rendered considerably more difficult, and if he provides security for the damage that the debtor might suffer due to such an enforcement.

### **Procedure upon Motion for Previous Enforcement**

#### **Article 233**

Before it decides on the creditor's motion, the Court shall conduct a hearing for the purpose of discussing the motion and the security.

Should the parties fail to reach an agreement, the Court shall, providing it has accepted the enforcement motion, by its free assessment, define the amount of the security and the time-frame in which it must be delivered, and until the security is delivered it cannot commence the enforcement.

If the security is not provided within the given time-frame, the Court shall stay the enforcement.

If so required by special circumstances of the case, the Court may order the enforcement and the amount of security, and commence the enforcement as soon as the security is deposited, even before it has allowed the debtor to respond to the motion.

At the request of the debtor who renders it probable that due to the enforcement he would suffer irreparable or hardly reparable damage, the Court may deny the enforcement motion, or condition its denial

by ordering appropriate security deposit within a certain time-frame. If the person subject to enforcement fails to provide the ordered security within the given time-frame, the Court shall issue an enforcement decision.

Regarding the objection of the debtor who has not been allowed to previously respond to the creditor's motion, the Court may stay the enforcement if its completion might cause irreparable or hardly reparable damage to the debtor, or may condition the stay by ordering security deposit within a certain time-frame. If the debtor fails to deposit the ordered security within the given time-frame, it shall be considered that he has dropped his objection.

## **V – CLAIMS SECURING THROUGH PREVIOUS MEASURES**

### **Prerequisites for Ordering a Previous Measure**

#### **Article 234**

A previous measure shall be ordered for the purpose of securing monetary claims based on the following:

1. decision of the Court or an administrative authority, which has not become enforceable;
2. settlement agreed upon before the Court or an administrative authority, if the claims set forth therein are still not due.

Pursuant to the documents referred to in Paragraph 1 of this Article, the Court shall order a previous measure if the person making the claims security motion proves probable the danger that without that security the liquidation of claims would be prevented or made considerably more difficult.

### **Presumed Danger**

#### **Article 235**

It shall be considered that danger referred to in Article 234 of this law shall exist if the ordering of a previous measure has been proposed based on the following:

1. a payment order or an enforcement decision based on a credible document, against which an objection has been duly made;
2. a verdict delivered in the criminal proceedings on a property law claim, against which a retrial is allowed;
3. a decision that must be carried out abroad;
4. a verdict based on a guilty plea, against which an appeal has been filed;
5. a settlement under Article 234, Paragraph 1, Item 2, of this law, which is denied in a manner provided by the law.

In the event under Paragraph 1, Items 4 and 5 of this Article, the Court may, at the proposal of the person opposing the claims security motion, condition the previous measure by depositing security by the person making the claims security motion for the damage which the person opposing the motion might suffer by its ordering.

### **Securing of Claims with Undue Installments**

#### **Article 236**

The securing of claims through a previous measure for undue claims installments based on legal support, claims based on damage compensation for lost support due to the death of support provider, and claims based on damage compensation for deteriorated health or reduction or loss of working ability, shall be ordered only for the installments that will become mature in a single year.

In the cases referred to in Paragraph 1 of this Article, it shall be presumed that danger exists if

enforcement has already had to be carried out against the person opposing the claims security motion for the purpose of collecting a due installment, or if such an enforcement has been proposed.

### **Types of Previous Measures**

#### **Article 237**

The Court may order the following as previous measures:

1. previous note on lien on the real property belonging to the person opposing the claims security motion, or on a right registered on real property;
2. a claims security measure referred to in Article 227, Items 2 through 10, of this law;
3. a prohibition for the bank to pay a certain amount of money to the person opposing the motion or a third person, at the request of the person opposing the motion, from his own account against which a previous measure has been imposed.

At the request of the person making the claims security motion, the Court may order, given the circumstances of the case, two or more previous measures if necessary, and it may also, provided conditions have been met as provided for in the law, order a provisional measure together with the previous measure.

By carrying out a previous measure, the person making the claims security motion has acquired lien on the security object.

The amount of money of the person opposing the motion with the bank, that has been subject to a payment ban, cannot be transferred from that account until the ban is in effect, except for the settlement of the secured claims.

### **Sale of Seized Movable Assets and Transfer of Claims of the Person opposing the Motion to Secure the Claims in Question**

#### **Article 238**

The Court shall order the sale of seized movable properties that are prone to swift decay, or if there is a danger of a considerable fall in the price of those properties.

The sale of the listed items shall be carried out in accordance with the provisions on movable properties, set forth in this enforcement law.

If the previous measure has been ordered through the claims seizure, the Court may, at the proposal of the person making the claims security motion or the person opposing the claims security motion, order that the seized claims be transferred to the person making the motion for the purpose of collection or some other form of liquidation, in the event of a danger that the claims, due to delays in their liquidation, cannot be collected or otherwise liquidated, or that the right to recourse towards third persons will be lost.

The amount obtained through the sale of movable property or collection of claims shall be kept within the Court depository until the cancellation of the previous measure or until the person making the claims security motion proposes an enforcement, but not longer than thirty days after the claims have become enforceable. Other benefits obtained through claims liquidation shall be deposited in the Court depository if possible, or their safekeeping shall in some other fashion be ordered until the cancellation of the previous measure, or until the person making the claims security motion proposes an enforcement, but not longer than thirty days after the claims have become enforceable.

### **Decision to Order a Previous Measure**

#### **Article 239**

The decision ordering a previous measure shall, inter alia, contain the amount of claims secured, including interests and costs, the security measure and its time-frame.

The time-frame for the previous measure may not exceed a period of fifteen days after the enforcement conditions have been met.

If the time-frame referred to in Paragraph 1 of this Article has elapsed before the decision based on which the previous measure has been ordered has become enforceable, the Court shall, at the proposal of the person making the claims security motion filed with the Court prior to the lapse of time for which the measure has been ordered, extend that period on condition that the circumstances under which the measure had been ordered have not changed.

The decision to order a previous measure shall be elaborated.

### **Termination of a Previous Measure**

#### **Article 240**

The Court shall, at the proposal of the person opposing the claims security motion, terminate the proceedings and cancel the relevant actions:

1. If the person opposing the claims security motion deposits with the Court the due amount of claims secured, including interests and costs;
2. if the person opposing the claims security motion proves it probable that the claims at the time of issuing the decision ordering a previous measures had already been collected or sufficiently secured;
3. if it has been established in a legally final manner that the claims had never been made or had ceased to exist;
4. if the decision based on which the previous measure has been ordered has been cancelled upon legal remedy, or if the Court settlement based on which the previous measure was ordered has been rendered ineffective.

The Court shall terminate the proceedings and cancel the actions taken if within fifteen days after the time period for which the previous measure has been ordered the conditions for forced enforcement have not been met.

In cases under Paragraph 1, Items 2, 3 and 4, and Paragraph 2 of this Article, the person making the claims security motion shall compensate the person opposing the motion for the costs incurred by the ordering and carrying out the previous measure.

In cases under Paragraph 3 of this Article, the person opposing the claims security motion may seek damage compensation from the person making the motion within thirty days after the completion of the proceedings, and after that in the course of civil procedure.

In the procedure of securing the claims, at the proposal of the person opposing the claims security motion, the Court shall establish through a decision the existence and the amount of damage referred to in Paragraph 4 of this Article.

An appeal against the decision referred to in Paragraph 5 of this Article shall not stay its execution.

### **Canceling in Case the Person Making the Motion to Secure the Claims in Question Fails to Request Enforcement**

#### **Article 241**

If the prerequisites for enforcement for the purpose of collecting the secured claims have been met before the lapse of time for which a previous measure has been ordered, the Court shall, at the proposal of the person opposing the claims security motion, terminate the procedure and cancel the actions taken if the person making the claims security motion fails to file an enforcement proposal within fifteen days after those conditions have been met.

## **VI – PROVISIONAL MEASURES**

### **1) General provisions**

#### **Motion to Order a Provisional Measure Article 242**

A provisional measure may be proposed prior to the commencement and during judicial or administrative proceedings, and also after the completion thereof, until the enforcement has been carried out.

In the proposal to order a provisional measure, the person making the claims security motion shall point out a request in which he shall specifically note the claims whose security he seeks, determine the measure requested and the time of its duration, and, when necessary, the means of security with which to forcibly carry out the provisional measure, as well as the object of security with an adequate application of rules set forth in this law regarding the means and object of enforcement. The proposal shall contain the facts on which to base the request for ordering a provisional measure, and evidence submitted to substantiate those facts. The person making the claims security motion is obliged, if possible, to attach the evidence to the proposal.

#### **Decision to Order a Provisional Measure Article 243**

In the decision to order a provisional measure, the Court shall, if necessary given the type of measure and its purpose, regarding the proposal of the person making the claims security motion, determine the means with which to carry it out in a forced manner, as well as the object of security, with an adequate application of rules set forth in this law regarding the means and object of enforcement in the enforcement decision.

If for the purpose of carrying out an order or a ban imposed in a decision ordering a provisional measure it is necessary to subsequently determine the means of forced execution referred to in Paragraph 1 of this Article, or add new means to the ones already set, or replace them with others, the person making the motion may propose within the same procedure that these means be determined based on the already issued orders or bans.

A decision ordering a provisional measure shall have the effect of an enforcement decision.

Provisions set forth in this law on the enforcement decision shall accordingly apply on the decisions referred to in Paragraph 2 of this Article.

The decision referred to in Paragraph 1 and 2 of this Article shall be elaborated.

In case of ordering a provisional measure ex officio, the Court shall accordingly apply provisions laid down in Paragraphs 1 through 4 of this Article.

#### **Admissibility of a Provisional Measure Article 244**

A provisional measure may be ordered also for the purpose of securing undue and conditional claims.

A provisional measure shall not be permitted in case conditions exist for ordering a previous measure with which to achieve the same purpose of securing the claims.

### **2) Provisional measures for the purpose of securing monetary claims**

#### **Prerequisites for ordering provisional measures**

## **Article 245**

A provisional measure for the purpose of securing monetary claims may be ordered if the person making the claims security motion has proven probable the existence of claims and a danger that without such a measure the person opposing the motion would prevent or render considerably more difficult the collection of claims by appropriating his property, hiding it or disposing of it in any other way.

The person making the security claims motion does not have to prove the danger referred to in Paragraph 1 of this Article if he has proven it probable that the proposed measure would cause only minor damage to the person opposing the motion.

It shall be considered that the danger referred to in Paragraph 1 of this Article exists if the claims would have to be liquidated abroad.

## **Types of Provisional Measures for the Purpose of Securing Monetary Claims**

### **Article 246**

For the purpose of securing monetary claims, one may order any measure achieving the purpose of such security, which particularly includes the following:

1. a ban against the person opposing the claims security motion to appropriate or burden movable assets, forfeiture of those assets and their placing under the management of the person making the claims security motion or a third person;
2. forfeiture and depositing of cash, securities etc. with the Court;
3. a ban against the person opposing the claims security motion to appropriate or burden real property or proprietary rights on real property that have been registered on his name, with a note on that ban being put in the land records;
4. a ban against the debtor of the person opposing the claims security motion to voluntarily fulfill his obligation towards the person opposing the claims security motion, and a ban against the person opposing the claims security motion to accept the fulfillment of that obligation or disposal of his own claims;
5. an order to the bank to deny the person opposing the claims security motion or a third person, based on an order of the person opposing the claims security motion, the payment of cash from the debtor's bank account which is subject to a provisional measure.

Lien shall not be acquired by a provisional measure.

The bans referred to in Paragraph 1 of this Article shall be considered carried out by the delivery to the person they have been imposed against, or the Court's land records department.

Appropriation and burdening of movable assets referred to in Paragraph 1, Item 1 of this Article, which the person opposing the claims security motion performs in contravention of the ban shall have no legal effect, unless the rule on the honest acquirer protection is applicable.

The effect of the ban referred to in Paragraph 1, Item 3 of this Article is in the fact that the person making the claims security motion may propose an enforcement for the purpose of collecting his claims when it becomes enforceable on a real property registered in the land records or the right registered on the real property, which are subject to the ban regardless of the fact that after the ban a third person, based on the voluntary disposal of the person opposing the claims security motion, has acquired and registered in the land records a right of his. The person making the claims security motion may propose the execution on a real property or a right registered on the real property directly against the person registered as the real property owner or the proprietary right holder registered on the real property based on an enforcement document with which his claims have been established against the person opposing the claims security motion, for the purpose of securing the claims which the ban has been registered for, and evidence that the person against whom the enforcement has been proposed has acquired the ownership of the real property, or the right to the real property following the ban registration.

The effect of the ban referred to in Paragraph 1, Item 1 and 5 of this Article is in the fact that the security proponent may request the judgment debtor of the security opponent, in the civil proceedings, reimbursement for damages caused by the actions contrary to the ban. Security proponent is also the holder of other rights against these persons according to the general rules of the obligatory law on banned or illegal actions.

### **3) Provisional Measures to Secure a Non-monetary Claim**

#### **Preconditions for Ordering Provisional Measures Article 247**

Provisional measure may be ordered in order to secure a non-monetary claim if the security proponent establishes the likelihood of his claim, and:

1. if s/he establishes the likelihood and a danger that without such a measure security opponent would prevent or considerably make more difficult the fulfillment of the claim especially by changing the present state of things, or
2. if s/he establishes the likelihood that the measure is needed to prevent violence or the occurrence of the threatening irreparable damage.

Provisions of Article 245 Paragraph 2 and 3 of this Law shall be applied also during the determination of provisional measures in order to secure non-monetary claims.

#### **Types of Provisional Measures for Securing Non-monetary Claims Article 248**

In order to secure non-monetary claims any measure by which the aim of such security is achieved may be ordered, and especially:

1. prohibition of alienation and strain of moveable assets to which a claim is directed, their seizure and commitment to care to the security proponent or a third person;
2. prohibition of alienation and strain of shares, founder or other shares to which a claim is directed, with a note on prohibition in the Book of shares, and if necessary in the Court register as well; prohibition to use or have disposal over rights on the basis of such shares or partial ownership; commitment to care to a third person,
3. prohibition of alienation and strain of other rights to which a claim is directed, with the commitment to care over those rights to a third person;
4. prohibition of alienation and strain of real property to which a claim is directed or property rights registered over the real property to which a claim is directed, with a note on prohibition in the Land Register, seizure of real property and its commitment to care and management to the security proponent or a third person;
5. prohibition for the debtor of the security opponent to surrender items, transfer a right to the security opponent, or carry out some other non-monetary action over which a claim is directed;
6. prohibition for the security opponent to take actions which may cause damage to the security proponent and a prohibition to make changes to the items towards which a claim is directed;
7. order for the security opponent to carry out certain actions necessary to preserve moveable assets or real property or in order to maintain the present state of items;
8. authorization for the security proponent to keep the items of the security opponent which are with him/her and to which the claim is referred to, until the lawsuit is finally completed;
9. authorization for the security proponent, alone or with the help of a third party, carry out certain actions or obtain certain items, especially to return to status quo ante;
10. Temporary return of employees to work, payment of compensation for the period of the labor dispute, if this is necessary for his support or the support of persons which s/he's obliged to support by the Law.

If necessary to prevent irreparable damage or hard to repair damage, or if this is necessary because



of other important reasons in order to secure a legal order, the Court may order a measure by which the disputed relation between parties shall be temporarily settled.

Prohibitions referred to in Paragraph 1 of this Article shall be considered enforced after service on the appropriate person or the Land registry Section of the Court or other registry.

The effect of the note on prohibition referred to in Paragraph 1 Item 34 of this Article is in the fact that by the entries in the Lad registry on the basis of a voluntary disposal of the security opponent, after the entry of the note on prohibition, certain rights may be acquired in relation to the security proponent over the real property or a registered right only if the security proponent is finally rejected with his motion in the procedure which s/he initiated in order to satisfy the claim for which the note is registered.

On the basis of the enforceable document acquired in a procedure which was initiated against the security opponent in order to satisfy a claim, for whose security a note on prohibition was entered, and proof that this person, which acquired a certain right over real property or a right registered over the real property on the basis of voluntary disposal of the security opponent, acquired this right after the registry of prohibition, security proponent may directly against this person motion for enforcement in order to fulfill his rights determined in the enforceable document.

The effect of the prohibition referred to in Paragraph 1 of this Article, except the one from Item 4 of this Article is in the fact that the persons given a prohibition are responsible to the security proponent for the damage they cause acting against the prohibitions after being served with it. Persons that have been issued a ban can absolve from the responsibility by storing the objects, to which the prohibition is referred and, if they're suitable for this, at the Court or by surrendering them to a keeper or an administrator which shall be appointed by the Court on their proposal.

Provisions of Article 246 Paragraph 3, 4 and 5 of this Law shall be appropriately applied also on the provisional measures for the security of a non-monetary claim.

#### **(4) Joint Provisions**

##### **Security Instead of Provisional Measures**

##### **Article 249**

Security proponent may, in the motion for the order of a provisional measure or subsequently state that s/he would be satisfied by the security opponent giving certain security, instead of the provisional measure.

Giving security instead of a provisional measure may be ordered also on the motion of the security opponent, which shall not delay the enforcement of the security until a decision on this motion is passed.

If the security opponent gives security, the Court shall dismiss the proceedings and revoke the previously taken actions.

##### **Security as a Condition for the Order of Provisional Measures**

##### **Article 250**

The Court may, on the motion of the security proponent, also order a provisional measure when s/he did not establish the likelihood for the existence of a claim and danger, if prior to that s/he provides security, within the deadline ordered by the Court, for the damage which may be caused to the security opponent by the order and enforcement of a provisional measure. If the security proponent does not give security in the determined deadline, the Court shall refuse the motion of security.

The Court may, on the motion of the security opponent, depending on the case circumstances, act according to provisions of Paragraph 1 of this Article also when the security proponent established the likelihood of the claim and danger. If the security proponent does not give a security within the determined deadline, the Court shall dismiss the proceedings and revoke the previously taken actions. These

circumstances, that the security opponent requested the placing of security, shall not delay security proceedings until his/her motion is decided upon.

Security is ordered until the expiration of the deadline until which the security opponent may request the reimbursement of damage in the security proceedings.

### **Ordering Several Provisional Measures Article 251**

The Court may, considering the circumstances, order several provisional measures, if necessary.

If it's possible to order several provisional measures in an individual case, the Court shall order the one which is the most appropriate for the accomplishment of the security, and if they are all equally appropriate, the Court shall order the one which is the least serious for the security opponent.

### **Duration for which the Provisional Measure is Ordered Article 252**

In the decision ordering the provisional measure, duration of this measure shall be also ordered, but if the measure is ordered prior to the charges being filed or the initiation of any other proceedings and a deadline within which the security proponent must file charges or motion for the initiation of another procedure, in order to justify the measures.

The Court shall, on the motion of the security proponent, extend the duration of the provisional measure, with a condition that circumstances under which that measure was ordered have not changed.

Proposition form Paragraph 2 of this Article may be filed only prior to the expiration of time for which the provisional measure was ordered.

### **Legal Remedies Article 253**

Provisions of this Law on appeals and objections against a decision on enforcement shall be appropriately applied also in the procedure of security by a provisional measure.

### **Revocation of the Provisional Measure Article 254**

If the security proponent does not file charges within the determined deadline, or does not initiate other proceeding in order to justify the provisional measure or the time for which the provisional measure was ordered expires, the Court shall, on the motion of the security opponent, dismiss the proceedings and revoke the previously taken actions.

On the motion of the security opponent, proceeding shall be dismissed and previously taken actions revoked if the circumstances because of which the measure was ordered have later changed and there is no need for the same.

### **Reimbursement for Damage to the Security Opponent Article 255**

Security opponent has the right over the security proponent for the reimbursement of damage that was caused by the provisional measure, for which it was determined to be unfounded or which was not justified by the security proponent.

Security opponent has the right over the security proponent for the reimbursement of damage that was caused by the provisional measure, for which it was determined to be unfounded or which was not justified by the security proponent, in which case provisions of Article 233 of this Law shall be accordingly

applied.

**Application of Provisions on the Security by Provisional Measures  
Article 256**

In the procedure of security by provisional measures, provisions of Article 239 and Article 240 Paragraph 2 to 4 of this Law shall be accordingly applied.

**PART FOUR**

**TRANSITIONAL AND FINAL PROVISIONS**

**Effective Date  
Article 257**

This law shall enter into force eight days after the date of its publication in the Official Gazette of Bosnia and Herzegovina.

Session of the Parliament of BiH no. 58/03  
Sarajevo, 23<sup>rd</sup> April 2003

Chair of House of Representatives of BiH  
Parliamentary Assembly  
Sefik Dzaferovic,

Chair of House of Peoples of BiH Parliamentary  
Assembly  
Velimir Jukic