



# Italy

e-manual appendix





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## **What is enforced**

Enforcement can take place only pursuant an enforceable title with respect to a right that is certain (i.e., one that exists), fixed (in other words, a debt whose amount has been determined) and due (without any terms or conditions) (Article 474 of the Code of Civil Procedure).

The enforceable title, the basis for enforcement in any form, is the document ascertaining the existence of a creditor's claim for enforcement against a debtor and consequently requires the registry to enforce the claim within the limits and in the manner laid down by law.

Article 474 identifies two types of enforceable titles:

- 1) Judicial enforceable titles:
  - a) judgments;
  - b) remedies 'and other documents' to which the law explicitly attributes executable force;
- 2) Extrajudicial enforceable titles:
  - a) certified private agreements, regarding obligations as to the sums of money stated therein;
  - b) promissory notes and other negotiable instruments, and documents to which the law attributes the same force;
  - c) documents of which a notary or other public official has taken knowledge, where he is authorized by law so to do.

The 'precetto', or writ of execution. The 'precetto', an ex parte document, is a formal notice to comply with the obligation arising from the enforceable title within a term of no less than ten days, with the warning that, in the event of failure to do so, enforcement will be levied. This formal warning, therefore, is a document that is a prerequisite for enforcement; the law, however, makes certain exceptions to this requirement, for example in interlocutory proceedings. It also has a twofold function, of a document placing the debtor in default, and suspending the term of prescription of the right. The writ ceases to be effective if, within a term of ninety days from its service, enforcement has not been initiated. If the debtor opposes the writ, that term continues to be suspended and recommences as provided by article 627 of the Code of Civil Procedure.

## **Who enforces**

In Italy, various public and private parties take part in the different stages of the enforcement procedure, although the main role is performed by the judicial officer and by the enforcement judge and his auxiliaries.

In particular, the judicial officer has the duty of executing the enforceable title - the judgment, injunction, promissory note, validation of eviction, court order of transfer, etc. - whereas the enforcement judge, besides acting in any opposition and dispute arising at the time of

enforcement, has the task of overseeing the final stage of the enforcement procedure, either directly or by delegation (from the decision on the sale of the assets attached to the distribution of its proceeds).

The Judicial Officer is placed within the UNEP (office for the execution of notifications and protests) which has a territorial competence coinciding with the territorial competence (district) of the Court. Within the territory of competence of the UNEP each judicial officer is assigned to a specific judicial district. There are about 144 bailiffs' offices.

The parties cannot choose the bailiff, but they can address the request to UNEP, which will assign the file to the judicial officer competent for the territory.

### **Enforcement procedure**

Enforcement in general is regulated by Article 483 et seq. of the Code of Civil Procedure.

A creditor can, in order to seize the debtor's assets, avail themselves cumulatively of the various methods of enforced expropriation, using whichever he/ she feels is most appropriate (Article 483 of the Code of Civil Procedure):

- attachment of movable assets;
- attachment of assets from third party (bank account, wages, rent, etc);
- attachment of immovable assets.

These cumulative options imply that the creditor can carry out a number of enforcement processes of different types against the same debtor, in the sense that he is allowed to act simultaneously by expropriating the personal and real property and the claims of the debtor against whom the claim is being enforced, initiating as many independent procedures, with the obvious aim of more rapidly obtaining satisfaction of his claim.

To avoid causing greater prejudice than necessary, the legislator has made provision for instruments of defense and guarantee for the debtor, giving the enforcement judge authority to intervene in the enforcement process - on the opposition of the debtor themselves - in order to limit the expropriation to the form chosen by the creditor or, failing that, to the choice made by the judge.

### **Duration of enforcement procedure**

It is very difficult to establish exactly the duration of the enforcement procedure. By way of example, it can be assumed that the execution process on movable property and third parties lasts from six to twelve months, and execution on real estate lasts from one to five years.

There is no statutory deadline for the enforcement procedure, but enforcement must commence within 90 days from the service of the “prechetto”.

### **Cost of enforcement procedure**

The enforcement process is composed of different parts and the contribution of different professionals is needed, so the cost can change according to duration, required steps and required professionals' intervention. The total cost of an execution depends on many variables - it is almost impossible to define a standard cost for all the proceedings.

The fees are strictly determined by the law. In the case that fees are not provided, as a general rule they are determined by the judge.

Enforcement on movable assets is in general less expensive than enforcement on immovable assets.

The cost of enforcement on immovable assets is about 20% - 25% of the credit to recover.

Regarding direct costs due to the intervention of the Judicial Officer, a total amount of between 20 and 150 euro for the complete proceedings could be considered.

