

 **EU
ENFORCEMENT
ATLAS**

Italy

Narrative National Report

Author: Andrea Mascioli, Judicial Officer, Bailiff

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Table of Contents

INTRODUCTION	5
I.1 Legislation affecting civil enforcement	8
I.2 Enforceable titles	9
I.3 Service of documents to parties and third parties	11
I.3.1. Legal basis	11
I.3.2. The legal capacity to serve documents	15
I.3.3. The contents of the documents to be served	16
I.3.4. Service upon the addressee of other persons	18
I.3.5. The use of new technologies	19
I.3.6. Probative value of the service of documents	19
I.4 Legal remedies, appeal and objection	20
I.5 Postponement, suspension and termination of enforcement.....	20
I.5.1. Suspension of enforcement	20
I.5.2 Termination of enforcement proceedings	21
I.6 Counter enforcement.....	22
I.7. Objects and exemptions on enforcement.....	22
I.7.1 Exemptions.....	22
I.7.2 Enforcement on property of a foreign country.....	23
I.8 (Court) Penalties and fines.....	23
I.9 Access to information on the domicile and assets of the debtor	24
I.9.1 Access to information	24
I.9.2 Statement of assets.....	24
II.1 The status of the judicial officer.....	24
II.1.1 The jurisdiction and competences of the judicial officer.....	27
II.1.2. The obligations of the judicial officer.....	28
II.1.3 Inconsistencies and conflict of interest.....	28
II.1.4 Ethics and deontology.....	28
II.1.5 Disciplinary proceedings against judicial officers	29
II.2. Supervision over enforcement.....	29
II.3 Access to the premises.....	30
II.4 Obstructing the judicial officer from carrying out enforcement	30
II.5 Time of enforcement.....	30
II.6 Mediation in the enforcement procedures.....	31
II.6.1 Mediation.....	31
II.6.2 Enforceability of the mediation agreement.....	31
III.1 Initiation and end of the enforcement procedure.....	31
III.1.1 Initiation of enforcement	31
III.1.2 Determination of the means and object of enforcement.....	32
III.1.3 Withdrawal of enforcement.....	34
III.1.4 Enforceability of the enforcement document.....	34
III.2 Enforcement against movable assets to settle pecuniary claims	35
III.2.1 General.....	35

III.2.2 The inventory	35
III.2.2.1 Opposition of third party	36
III.2.2.2 Custody of the attached assets	36
III.2.3 Valuation of the movable items	37
III.2.4 Methods of sale.....	38
III.2.5 Sale through direct settlement	38
III.2.6 Public sale of movables.....	39
III.2.7 Payment of the sale price.....	39
III.2.8 Handover of movables to the buyer	39
III.2.9 Payment to the creditor	39
III.3 Attachment on the bank account of the debtor	40
III.4 Enforcement against savings deposit and current accounts.....	41
III.5 Enforcement on immovable property.....	41
III.5.1 General.....	41
III.5.2 Enforcement against unregistered real estate	42
III.5.3 Enforcement against registered real estate	42
III.5.4 Preparation of the sale of the real estate	43
III.5.5 Valuation of the real estate.....	44
III.5.6 Conditions for sale	45
III.5.7 Method of sale	46
III.5.8 Sale by direct agreements.....	47
III.5.9 Public sale of real estate	47
III.5.10 Payment of the sale price.....	48
III.5.11 Handover of the real estate to the buyer	48
III.5.12 Payment to the creditor	48
III.6 Enforcement against Wages and Other Permanent Pecuniary Income.....	48
III.7 Attachment under the debtor's debtor	49
III.8 Enforcement against shares	49
III.8.1 In general.....	49
III.8.2 Enforcement.....	49
III.8.2.1 Attachment of shares in limited liability companies (SRL).....	49
III.8.2.2 Attachment of not dematerialized shares	50
III.8.2.3 Attachment of dematerialized shares	50
III.8.2.4 Attachment of partnerships	50
III.8.3 Evaluation and sale	51
III.9 Other attachment procedures	51
III.9.1 Real estate rights.....	51
III.9.2 Industrial property	52
III.9.3 Attachment of aircraft and naval vessels	53
III.9.4 Foreclosure of vehicles.....	54
III.10 Handing over movable assets	54
III.11 Enforcement in reinstatement of employee to work	55
III.12 Eviction	55
III.13 Enforcement of obligations to act, refrain from acting or suffer action	56
III.13.1 Enforcement of the decision for division of items.....	56

III.13.1.1 Separation in kind of the debtor's share.....	57
III.13.1.2 Division of the common asset.....	57
III.13.1.3 Sale of the indivisible share	58
III.13.2 Enforcement of the decision in which the debtor has a duty to perform certain action, tolerate certain actions, or to omit certain actions	59
III.14 Sequestration of goods	59
III.15 Enforcement of foreign enforceable documents from Non EU States	59
IV.1 General questions	60
IV.1.1 Judicial Officers costs	60
IV.1.2 Real estate enforcement proceedings costs	61
IV.1.3 Exemptions from the payment of enforcement costs	62

INTRODUCTION

Country: **ITALY**

Judicial Officer - Bailiff: **Ufficiale Giudiziario**

Judicial Officers - Bailiffs: **Ufficiali Giudiziari**

Status: in Italy the **Judicial Officers are civil servants**, employed by the Ministry of Justice, operating in the 142 offices located in the Courts.

National Association: **Association of Judicial Officer in Europe (A.U.G.E.)** is the national association that has an active role in the dissemination of best practices and procedures for the efficiency of justice, actively contributes to the continuous training of bailiffs and the dissemination of legal culture.

Web site: www.auge.it

Email: segreteria@auge.it

Enforcement Activities

Activity	Judicial officer	Judge	Lawyer	Notary	Other namely:
Attachment of movable goods in the hands of the debtor	yes				
Attachment of movable goods in the hands of a third party	yes				
Attachment of immovable	yes				
Attachment of earnings	yes				
Attachment in the hands of a third party of funds owed to the debtor	yes				
Attachment of intangible goods other than the funds owed to the debtor	yes				

Freezing and/or collection of tangible movable goods that should be handed over by the debtor according to a court decision	yes				
Attachment of motor vehicles	yes				
Attachment of ships and vessels	yes				
Attachment of aeroplanes	yes				
Attachment of crops	yes				
Attachment of goods placed in a safe	yes				
Evictions	yes				
Arrest of persons according to a court decision					police
Handing of children according to a court decision	yes				
Bringing physically a party to a court hearing					police
Provisional measures on tangible movable goods of the debtor	yes				
Provisional measures on intangible movable goods of the debtor	yes				
Setting up of a provisional judicial guarantee on a immovable of the debtor	yes				

Setting up of a provisional judicial guarantee on a business of the debtor	yes				
Setting up of a provisional judicial guarantee on shares, stocks and securities of the debtor	yes				
Physical (as opposed to Internet) forced auction sale of tangible movable goods attached by the judicial officer	residual				I.V.G. (judicial sale institute)
Internet forced auction sale of tangible movable goods attached by the judicial officer					I.V.G. (judicial sale institute)
Physical (as opposed to Internet) forced auction sale of intangible movable goods attached by the judicial officer					Accountant
Internet forced auction sale of intangible movable goods attached by the judicial officer	n/a				
Physical (as opposed to Internet) forced auction sale of businesses attached by the judicial officer			yes		Accountant
Internet forced auction sale of businesses attached by the judicial officer			yes		Accountant

Physical (as opposed to Internet) forced auction sale of immovable goods attached by the judicial officer		yes	yes	yes	Accountant
Internet forced auction sale of immovable goods attached by the judicial officer		yes	yes	yes	Accountant
Distribution to creditors of monies collected during the forced auction sale of a movable good		yes			
Distribution to creditors of monies collected during the forced auction sale of an immovable good		yes			

The Judicial Officer has almost the monopoly of all the enforcement of court decisions and other enforceable titles in civil matters. They have little role in the enforcement of court decisions and other enforceable titles in criminal matters, these decisions are almost totally enforced by police forces.

PART I: LEGAL FRAMEWORK

I.1 Legislation affecting civil enforcement

The majority of the rules regarding enforcement are to be found in:

1. the third volume of the Code of Civil Procedure from Article 474 to Article 632;
2. collection of the costs of the criminal proceedings and court fee are regulated by the Legislative Decree 30 may 2002, n. 113 single text of justice costs as subsequently modified and amended.

The law provides for any creditor to seek enforcement against the debtor.

A creditor with an enforcement order who has a certain, liquid and payable receivable may obtain enforcement against the debtor's assets.

1.2 Enforceable titles

According to the law, in order to proceed with the enforcement, the creditor must have an executive title. Before starting, in addition to the enforcement order, the creditor must serve to the debtor the 'Precetto' (writ of execution).

The purpose of this formality is to give the debtor a deadline for voluntary compliance in order to avoid enforcement, and at the same time to assign the creditor a term (of ninety days) within which enforcement must commence.

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

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 Judicial Officer 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:

- c. certified private agreements, regarding obligations as to the sums of money stated therein;
- d. promissory notes and other negotiable instruments, and documents to which the law attributes the same force;
- e. documents of which a notary, or other public official has taken knowledge, where he is authorized by law so 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 not 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 an opposition is proposed against the **precetto – writ of enforcement**, the term remains suspended and starts to run again in accordance with article 627 of the Code of Civil Procedure.

	Yes	Yes under certain conditions	No
Court decision		x	
Court settlement (reconciliation)		x	
Enforceable decision in administrative proceedings		x	
Enforceable decision in misdemeanor proceedings		x	
Payment order		x	
Notarized agreement	x		
Agreement in mediation procedure		x	
Foreign court decisions		x	
Foreign court settlements		x	
Arbitration decision		x	
Foreign arbitration decision		x	
Mortgage agreement		x	
Municipal administrative acts		x	
Administrative acts pertaining to satisfying pecuniary claims issued by other administrative bodies	x		
Invoice in utility cases			x
Cheque	x		
Bill of exchange (cambiale - promissory note)	x		
Other:			

Enforceability of documents

Table: Enforceability of different types of documents

	directly	In case unappealable	After the period for voluntary fulfillment
Court decision	x		
Court settlement (reconciliation)	x		
Enforceable decision in administrative proceedings	x		
Enforceable decision in misdemeanour proceedings	x		
Payment order	x	x	
Notarized agreement	x		
Agreement in mediation procedure	x		x
Foreign court decisions		x	x
Foreign court settlements		x	x
Arbitration decision			x
Foreign arbitration decision			x
Mortgage agreement	x		
Municipal administrative acts	x		
administrative acts pertaining to satisfying pecuniary claims issued by other administrative bodies		x	
Invoice in utility cases	N/A	N/A	N/A
Cheque	x		
Bill of exchange (cambiale - promissory note)	x		
Other:			

1.3 Service of documents to parties and third parties

1.3.1. Legal basis

The word 'notificazione', or notification, is derived from the Latin, 'notum facere', which means 'to make known'. The purpose of 'notification' in this context is to bring a document to the addressee's knowledge, so that the adversarial process can be initiated and he can effectively exercise his right of defence.

The word 'signification', or service, refers to an institution that exists in many EU countries but not in Italy: it consists of the delivery of a document together with the production of a record certifying that the addressee has effectively taken cognizance of the content of the document.

Under Italian law, notification in general may be vitiated for reasons associated with the notifying procedure, and no exceptions are envisaged as to the addressee's effective knowledge of the document. With the entry into force of Law 80/2005 and further implementing measures, the use of telecommunications - fax and electronic mail - and the digital signature, applied to the notification and communication procedures, has also been introduced in Italy.

The law provides specific procedures for the notification of documents so that formal knowledge of certain facts can be guaranteed (art. 137 to 151 of the civil procedure code and art. 148 to 171 of the criminal procedure code). Once the notification procedure is respected, the recipient is deemed to have had legal knowledge of the notified document which will produce its legal effects.

The judicial officer normally serves notice by the personal delivery of a copy to the addressee at his residence or, if this is not possible, wherever he is located within the limits of the judicial officer's territorial jurisdiction (article 138 cpc).

If service is not made in the manner stated in Article 138, it must take place in the municipality in which the addressee resides, seeking him at his home or the place at which he has his office or is engaged in his industrial or commercial work (article 139 cpc).

If personal service on the addressee is not possible at the said locations, Article 139 of the Code of Civil Procedure allows the document to be delivered to a person other than the addressee (the consignee), but whose relationship is such as to ensure that it will be handed to him.

The consignee is a person who must be identified by the judicial officer from among the addressee's family members or those working at his home, office or business.

The legislator has restricted the capacity of consignee to these persons, as it is presumed that those linked with him by family ties or working relationships - who are to be found in the specified places and who accept the copy - are suitable persons to ensure that the document is handed to him promptly by virtue of the solidarity associated with such ties and the legal duty arising from its acceptance.

Not all persons at the place of service can receive the document to be consigned to an addressee who is temporarily absent. The judicial officer's choice is confined to particular persons, namely

1. family member;
2. person employed in his home;
3. person employed in his office or business;
4. employee responsible for the receipt of notices;

in the absence of such persons:

5. the janitor;
6. neighbour;

and in special cases:

7. the master of a merchant vessel, or the person acting in his stead.

Safeguarding the right to privacy, has imposed the requirement on the notifying officer to ensure that judicial documents for personal service that are consigned to a person other than the addressee are in a closed and sealed envelope (article 174(3) of Legislative Decree 196/2003)..

As regards the place of service, article 145 of the Code of Civil Procedure - an article amended after Law 263/2005 came into force - states that if the addressee is a legal person service will be made at its registered office or, alternatively, pursuant to articles 138 (personal service), 139 (service at the place of habitual residence, temporary residence or the main seat of business) and 141 (service care of the process agent), on the natural person representing the legal person, where the document to be served indicates the capacity of the natural person together with his place of business and habitual or temporary residence.

If attempts to deliver the copy of the document are unsuccessful, whether to the addressee - due to the temporary impossibility of locating him - or to suitable persons for its receipt, the judicial officer serves notice in the manner laid down by article 140 of the Code of Civil Procedure:

1. lodging the copy of the document with the town hall;
2. affixing a notice to the door of the addressee's residence, office or business;
- 3 forwarding a registered letter with advice of receipt.

Unlike the form of notification specified by article 140 of the Code of Civil Procedure, the provision of article 143 pertains to cases in which the addressee's habitual or temporary residence and place of business are not known.

If the addressee's habitual or temporary residence and place of business are not known and there is no attorney as referred to in article 77, the judicial officer serves notice (article 143 cpc):

'by lodging a copy of the document - in a closed and sealed envelope - with the town hall of the addressee's most recent residence or, if this is unknown, the town hall of his birthplace.

If neither the place of his most recent residence nor his birthplace is known, the judicial officer delivers a copy of the document to the office of the public prosecutor.'

For the service of notice to be valid, it is essential that the negative investigation conducted in order to identify the place of service is indicated in the judicial officer's record of his service.

The situation differs from certain EU countries that require notice to be served personally by the judicial officer: in Italy, notice served 'by hand', irrespective of nature of the document, is regarded as being on a par with notice served by post.

In certain cases, the latter procedure is in fact compulsory.

Pursuant to articles 106 and 107 of Presidential Decree 1229 of 15 December 1959, the judicial officer is competent to use the postal service to serve documents from his public prosecution office on persons permanently or temporarily resident or with their place of business in the area of its jurisdiction, whereas he may arrange for service on parties resident elsewhere only if the document refers to a proceeding that comes or might come within the jurisdiction of the court to which the notifying officer is attached.

In consequence, in order to identify the service, execution and protest office/U.N.E.P. competent to serve a document by post, account should be taken of:

- the competent court registry for the procedure;
- the place of service.

For the postal service of extrajudicial documents, there are no territorial limits on the territorial jurisdiction of the judicial officer.

The addressee's cognizance of a document for legal purposes is evidenced by a report on of the service of process.

The service of process report - 'relazione di notificazione', informally known as the 'relata di notifica' - is in effect a 'written' reproduction of the whole procedure of serving a document.

The law does not permit the substitution of this certification that notice has been served by documents other than the service of process report, in that the 'relata di notifica' is the sole document that can furnish proof of service.

It should also be pointed out that every activity performed by the judicial officer at the time of service of process must be indicated and found in the service of process report; the statements in the report in question may not be supplemented by subsequent declarations by the notifying officer.

The service of process report is an authentic instrument and is deemed to be valid unless an action for fraud is brought regarding the attestation on:

- the activities performed by the judicial officer in the proceedings,
- the recording of facts occurring in his presence,
- and the receiving of statements made to him - limited to their extraneous content,

whereas, until proved to the contrary, other attestations are deemed to be valid where the facts attested have not been directly perceived by the public official but are derived from information he has acquired or particulars furnished by others - for example, the habitual or temporary residence or place of business of the addressee of the notice, a company's registered office, the consignee's declaration of being a co-habitant of the addressee, and similar information.

In the event of a discrepancy between the original of the document and the copy served, the information evidenced by the copy prevails.

This principle does not apply if the discrepancy is merely superficial and can be eliminated by examining the whole context of the copy served.

I.3.1.2 Time of service

- **criminal matters** - Nothing is provided about time of service in criminal matters, so it can be deduced that is possible to serve documents any day of the year at any time of the day.

- **civil matters** - the service time, from 7 a.m. to 9 p.m, nothing is provided for public holidays, it can be deduced that it is possible to serve any day of the year by respecting the times indicated. (**art. 147 CPC**).

I.3.2. The legal capacity to serve documents

The Judicial Officer is the main body for the serving of any document in civil, administrative and in criminal matters, but the serving of documents not represent a monopoly activity, with some distinctions can also be carried out by other subjects depending on the matter and type of document.

Judicial Officer (*ufficiale giudiziario*) in civil matters can serve documents if is required by a party, by al lawyer, by the prosecution service (*pubblico ministero*) or the registrar (Article 137 CPC).

The jurisdiction of the Judicial Officer correspond with the territory administrated by the Court where his office is located (articles 106 and 107 of Presidential Decree No 1229 of 15 December 1959).

According to the request of the party, the service of document can be exerted by the Judicial Officer, by going personally or by sending a specific registered letter with return receipt to the addressee.

Judicial Officers are the designated authority under Article 2 of Regulation (EC) No 1393/2007 for the transmission and receipt of documents for service in or from another Member State.

Lawyer: is permitted to serve documents by post, provided that he or she holds an appropriate power of attorney in the case and is so authorized by the council of the bar (Consiglio dell'Ordine) at which he or she practices, or by direct delivery to the address of another lawyer who is authorized to accept service on behalf of one of the parties and who is registered with the same bar council as the lawyer effecting service (*Law No 890/1982 and Law No 53/1994*).

Lawyer does not need authorisation from the bar council to effect formal notification via certified email (posta elettronica certificata, 'PEC') to an email address obtained from the public registers (Article 3 bis of Law No 53/1994).

Court registrar: Simple service is effected by the court registrar (art. 136 CPC).

The messenger notifier: serve documents of assessment of local taxes and for the collection of the State Asset Revenue, pursuant to the Royal Decree of 14 April 1910, n. 639, and subsequent amendments, as well as the documents of invitation to pay the extra-tax revenues of Municipalities and Metropolitan Cities.

Police officers: can serve documents in criminal matters at the request of the judicial authority.

Tax agent: serving documents for the collection of tax.

I.3.3. The contents of the documents to be served

In civil matters, the preparation of judicial documents is entrusted to lawyers, who must follow the provisions of the code of civil procedure regarding their content. To initiate a proceeding according art. 163 CPC the document must contain:

- 1) the indication of the court before which the application is proposed;
- 2) indication of the day of the appearance hearing;
- 3) the name and surname of the attorney and the indication of the attorney, if this has already been issued;
- 4) the invitation to the defendant to appear within twenty days before the hearing indicated pursuant to and in the forms established by article 166, or ten days before in case of shortening of the terms, and to appear, at the indicated hearing, before the judge appointed pursuant to article 168bis, with the warning that the establishment beyond the aforementioned terms implies the forfeiture referred to in articles 38 and 167;

- 5) the determination of the object of the application;
- 6) the presentation of the facts and elements of law constituting the reasons for the request, with the relative conclusions;
- 7) the specific indication of the means of proof of which the plaintiff intends to make use of and in particular of the documents he offers in communication;
- 8) the name, surname, residence and tax code of the plaintiff, the name, surname, tax code, residence or domicile or residence of the defendant and of the persons who respectively represent or assist them. If the plaintiff or defendant is a legal person or a committee, the summons must contain the name or company, with an indication of the body or office that represents them in court;
- 9) the subscription pursuant to article 125 CPC.

In practice, there are collections of forms used by lawyers to drafting of documents.

Concerning the **judicial officer**, he has to write in a clear and easily legible font, continuously, without blank spaces and without alterations or abrasions.

Any additions, deletions or modifications must be made at the bottom of the document, with a reminder note without deleting the deleted or modified part (Art. 46 of the CPC implementation provisions).

According to the art. 148 CPC, the judicial officer certifies the successful serving of the document by a report dated and signed by him, affixed at the bottom of the original and a copy of the document.

The **serving report** indicates the person to whom the copy is delivered and its qualification, as well as the place of delivery, or the searches, including personal data, made by the bailiff, the reasons for the non-delivery and the information collected on the recipient's availability.

The signing of the deed by the recipient will not be necessary, unless it is the porter of the building or a neighbor (art.139 cpc), nor an indication of the time unless the party requests it (art. 47 disp. Att. Cpc).

Serving report requirements are:

- the date of the notification;

- the place of notification;
- the indication of the person who received the deed;
- the indication of quality (husband, wife, neighbor, brother, sister, employee ...);
- the signature of the bailiff;
- the signature for the receipt of the neighbor or the building's doorman (art. 139 of the Code of Civil Procedure).

There is no a special format to relating to the documents of the bailiffs, but in practice there are collections of forms for each type of notification.

1.3.4. Service upon the addressee of other persons

According art. 139 CPC If the addressee cannot be found at the addressee's habitual residence (*abituale dimora*), and if that is not known, in a municipality where he or she has a temporary abode (*dimora temporanea*), or in the municipality where he or she has established his or her main centre of business and interests (*domicilio*), after enquiries have been made at his or her home or office or place of business, the copy, in a sealed envelope, may be delivered to a member of his or her family, or to a person employed in his or her home or business, but not to a minor aged less than 14 or to a person who is manifestly unfit to be entrusted with it.

The copy, still in its sealed envelope, may also be delivered to the doorkeeper of the building or to a neighbour, who must sign the receipt form; in that case the addressee must be advised by registered letter, without acknowledgment of receipt, that service has been effected. If the addressee habitually lives on board a merchant vessel, the document may be handed to the ship's master (Article 139 CPC).

Article 146 CPC provides that service upon active military personnel, when personal service is not possible, is made to the prosecution service, which sends it to the commander of the corps to which the addressee belongs.

If service is not possible in any of the ways described, because the addressee is absent for the time being and the other persons who might receive the document are absent, or unfit, or refuse to accept the service, the bailiff will deposit the copy of the document, in a sealed envelope, at the town hall of the municipality where the notification is to be served, affix a notice of deposit in a sealed envelope to the door of the addressee's home or office, and send the addressee a registered letter with acknowledgement of receipt to inform him or her that the document has been deposited at the town hall (Article 140 CPC).

If the recipient refuses to receive the copy, the bailiff acknowledges it in the report, and the notification is deemed to be made in his own hands.

1.3.5. The use of new technologies

Documents can be served via certified electronic mail (posta elettronica certificata, 'PEC') to a certified email address obtained from the public registers:

- by the judicial officer according art. 149 bis CPC;
- by the lawyer according D.L. n. 90/2014;
- by the registrar according art. 16 (4) D.L 179/2012.

Serving by PEC has full legal value and is the principal method of effecting simple service from the court and the parties, and it is the main method used by the lawyers to serve documents in all kinds of proceeding.

In order for the procedure to operate properly, various parties are required to make their certified email address available on the appropriate registers: legal professionals, legal persons, commercial undertakings, and public bodies.

The serving via PEC has probative value and certifies the date of dispatch, receipt and content of the notified document. Can be used for services of all judicial and extrajudicial documents in the civil matters.

1.3.6. Probative value of the service of documents

Service of documents is a codified procedure whereby a natural or legal person can be informed of a legal step, with various effects set out in law.

The law provides specific procedures for service of documents so that it can be guaranteed that the addressees are legally apprised of such documents, which they must be if the document is to produce its intended effects. This means that, once the required procedure for service has been complied with, the addressee is deemed to have cognisance of the document, and there is no need to prove that the addressee is indeed acquainted with it; the document can then produce its desired effects in law.

The service report constitutes a public act, therefore, the certificates contained therein, inherent to the activities directly carried out by the judicial officer, make full proof up to a complaint of forgery.

All other attestations that are not the result of the direct perception of the bailiff, such as the information assumed or the indications provided by other subjects, are not assisted by public faith.

I.4 Legal remedies, appeal and objection

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 himself - in order to limit the expropriation to the form chosen by the creditor or, failing that, to the choice made by the judge himself.

The legal system allows appeals by the debtor (and/or third parties subject to enforcement):

- against enforcement (*opposizione all'esecuzione*) (Articles 615 and 616 of the Code of Civil Procedure) where the right to proceed with enforcement (or the existence of the creditor's right to proceed with enforcement) is challenged;
- against enforceable acts (*opposizione agli atti esecutivi*) (Articles 617 and 618 of the Code of Civil Procedure) where procedural errors (i.e. the legality of the documents involved in the enforcement procedure) are challenged.

The legal provisions governing the matter are Articles 615, 616, 617, 618 and 619 of the Code of Civil Procedure.

According art. 610 CPC If difficulties arise during the execution which do not allow for deferment, each party can ask the enforcement judge, even verbally, for the necessary temporary interventions.

I.5 Postponement, suspension and termination of enforcement

Suspension and termination of the executive process close the last title of the third book of the code of civil procedure.

Regarding postponement there are no explicit law provisions. In the practice postponement is an instrument that Judicial Officers utilize to avoid problem during the enforcement, and in some case to give the party the opportunity to spontaneously fulfill, especially during evictions, attachment of assets and other kind of enforcement that require special attention and care.

I.5.1. Suspension of enforcement

Articles 623 to 628 regulate the suspension of the executive process.

Article. 623 of the Italian Code of Civil Procedure provides that unless the suspension is ordered by law or by the judge before whom the enforceable title is contested, enforcement can only be suspended by order of the enforcement judge.

The suspension can be requested upon application by a party pursuant to art. 624-bis of the Italian Civil Code. The suspension entails an arrest of the enforcement proceeding: as provided by article 626 cpc, when the trial is suspended, no enforcement actions can be carried out, unless otherwise provided by the enforcement judge.

The enforcement judge, upon application by all creditors with executive title, may have heard the debtor, suspend the trial for up to twenty-four months. The request can be submitted up to twenty days before the deadline for the deposit of the purchase offers expires or, in the event that the sale without auction does not take place, up to fifteen days before the auction.

1.5.2 Termination of enforcement proceedings

The termination of the enforcement is regulated by articles 629 to 632 of the code of civil procedure.

The enforcement process ends when it has achieved its specific purpose, by renunciation or by inactivity of the parties.

The enforcement process ends if, before the award or assignment, the distraining creditor and those intervening with executive title waive the deeds. It also expires if, after the sale, all competing creditors renounce the deeds (article 629 cpc).

The executive process ends due to inactivity of the parties, as well as in cases expressly provided for by the law, when the parties do not continue or summarize the executive process within the peremptory term established by law or by the enforcement judge (art. 630 cpc).

The extinction may also occur due to the failure of the parties to appear twice at the hearing, except for the hearing in which the sale takes place (article 631 cpc).

The extinction is declared by the judge with an order that can be the subject of a complaint by all those involved in the enforcement process.

For a further extinction hypothesis, occurs in the event of failure to advertise on the public sales portal. (article 631-bis cpc)

However, this omission does not lead to extinction if the advertising has not been carried out due to malfunctions of the IT system.

I.6 Counter enforcement

In Italy it is not provided that a debtor is entitled during the same enforcement procedure (or after the end of the enforcement procedure) to request the court to enforce a decision against the creditor in the original enforcement procedure.

A counter enforcement is possible starting a new enforcement procedure.

I.7. Objects and exemptions on enforcement

I.7.1 Exemptions

In addition to items declared untouchable by special legal provisions (art. 545 CPC), the following items cannot be attached:

- 1) sacred objects and items used in the practice of a religion;
- 2) wedding rings, clothes, household linen, beds, dining tables and chairs, wardrobes, chests of drawers, refrigerators, stoves and ovens, whether gas or electric, washing machines, household and kitchen utensils and a piece of furniture to hold them, sufficient to meet the needs of the debtor and his or her household; however, this does not include furniture of significant value (except beds), including valuable antiques and items of confirmed artistic worth;
- 3) the food and fuel necessary to sustain the debtor and the other persons mentioned in the previous paragraph for one month;
- 4) furniture (except beds) of significant financial value (including valuable antiques and items of confirmed artistic worth) are also excluded.
- 5) weapons and other items that the debtor must keep in order to provide a public service;
- 6) decorations, letters, records and family papers in general, as well as manuscripts, except where they form part of a collection, cannot be attached;
- 7) the law also declares untouchable: state-owned property, non-disposable assets owned by the state or another public body, property covered by the matrimonial property regimes, the property of ecclesiastical institutions, and religious buildings.
- 8) pets that live in the house of the debtor that are not employed in commercial activities;
- 9) animals employed for therapy or assistance of the debtor, of his family.

The rules on the non-recognition of credits, like the non-recognition of movable property, are strictly interpreted rules - not capable of analogue interpretation - and constitute an exception to the principle of the general guarantee (liability) of the debtor indicated in the article 2740 of the Civil Code.

Credit not attachable

The non-attachable credits listed in article 545 of the Code of Civil Procedure are:

- maintenance claims, except for maintenance reasons and always with the authorization of the judge and for the part determined by him by decree (Relative non-attachable);
- credits for grants or subsistence benefits to people included in the list of the poor, or subsidies due for maternity, illness and funeral from insurance funds, assistance agencies or charities.

The sums owed by private individuals by way of salary, wages or other indemnities relating to the employment or employment relationship, including those due as a result of dismissal, may be foreclosed for maintenance claims to the extent authorized by the Judge. These sums can be repaid to the extent of one fifth for taxes due to the State, Provinces and Municipalities, and in equal measure for any other credit.

1.7.2 Enforcement on property of a foreign country

The assets of foreign states that have a public destination (e.g. diplomatic residences) as established by law no.5 of 14/1/2013 which ratified the accession of the Italian Republic to the United Nations Convention on jurisdictional immunity of states and their property, made in New York on December 2, 2004.

1.8 (Court) Penalties and fines

The judicial officer invites the debtor to indicate other assets that can be usefully seized if they are subject to an attachment that are insufficient to satisfy the reasons advantageous by the proceeding creditor, or if the recent duration of the settlement, with the warning of the sanction in case of omission or false declaration pursuant to art. 388 of the criminal code that provide imprisonment of up to three years or with a fine from € 103 to € 1,032 (art. 492 CPC paragraph 6).

With the order of condemnation to the fulfillment of obligations other than the payment of sums of money, the judge, unless this is manifestly unfair, fixes, upon request by the party, the sum of money due by the obliged for any subsequent violation or non-compliance, or for any delay in the execution of the measure (astreinte) (art. 614 bis CPC).

1.9 Access to information on the domicile and assets of the debtor

1.9.1 Access to information

There is not a direct access to a centralized online database regarding the domicile and residence of the citizens. Some Judicial Officers Offices (UNEP) has entered into agreements with the municipalities for the direct online consultation of their registers. In practice, to get information on the debtor's residence and domicile, the bailiff goes personally to the municipal registry offices.

1.9.2 Statement of assets

The judicial officer is required to ask the debtor to make a statement of assets prescribed **by article 492 CPC**, fourth paragraph, of the Code of Civil Procedure, if:

1. the assets attached appear to be insufficient to satisfy the claim for which action is being taken;
2. the assets attached for the purpose of liquidation of the debt appear to be long-term;
3. the combined assets attached have become insufficient due to other creditors joining the claim.

The Italian legislator, with the intention of harmonizing the Italian judicial officer and putting him on a competitive footing with the judicial officers of other European countries, has given him the authority - besides that of requiring a statement of assets - to access data from the tax register and other public databases, in order to discover the existence of other assets and claims owned by the debtor that can be attached. In addition, where the debtor is a commercial entrepreneur, the statutory provision states that the investigation of assets may be extended by an examination of the business accounts.

PART II: ORGANIZATION OF ENFORCEMENT

II.1 The status of the judicial officer

With regard to enforcement in Italy, four groups of professionals are involved:

- **First, judges:** They conduct the enforcement procedure from the beginning up to the issuance of the sales order. With this order, the judge appoints a professional sales delegate who would be responsible for the sale. Judges maintain only a control function over the activity of the delegated professional. They sign the decree of transfer of the property prepared by the delegated professional after the auction. They also approve the draft allocation of the proceeds from the sale between the creditors. This draft is always prepared by the delegated professionals.
- **Second, delegated professionals:** As noted above, delegated professionals are appointed by judges and are selected from a court list. They may be notaries, attorneys or accountants. From the moment of their appointment to a case, they administer the sale of the foreclosed real estate. This includes drafting and publication of

sales notices, organizing auctions, drafting transfer decrees, and the distribution of sales proceeds.

- **Third, judicial guardians:** They are private professionals appointed by the judge. Oftentimes, the delegated professional will also be appointed as judicial guardian for the same real estate. The judicial guardians are responsible for the administration and conservation of the property after the attachment until the sale and they deliver the property to the highest bidder at the auction. They carry out the eviction of old owners and the occupants from the property.
- **Fourth, judicial officers:** They are officials of the Italian public administration. They perform the act of attachment. This is the act with which the compulsory enforcement begins: an injunction with which the judicial officer orders the debtor to abstain from any act aimed at subtracting from the assets and the proceeds from them, with the warning that any such act will be invalid.

According to article 1 of their statutes, judicial officers¹ are attached to 'service, execution and protest offices' - Uffici Notificazioni Esecuzioni e Protesti - within court registries and are auxiliaries of the judicial order.

They carry out the acts entrusted to them when such acts are ordered by the judicial authority or requested by the court registry or the party to a case.

The employment of private staff in such offices is prohibited.

The judicial officer is an agent with jurisdictional authority who carries out the court's auxiliary functions, but also performs his own autonomous functions in the civil, administrative and extrajudicial fields.

Furthermore, he may not accept public or private employment, engage in commerce, industry or any profession or accept office in partnerships formed for profit-making purposes.

The judicial officer is a public servant and is not the proprietor of his own practice, as is the case in other European countries.

For his activities, he uses the assets and facilities of the public administration and works under the supervision of the chief magistrate in the court registry to which he belongs.

¹ The term judicial officer is used interchangeably with the term bailiff.

Judicial officers operate in the Ufficio Notificazioni Esecuzioni e Protesti - the 'service, execution and protest office', known by its abbreviation, U.N.E.P., which is established at every court of appeal, lower court and the decentralised divisions of lower courts.

The U.N.E.P. is staffed by three professionals with different economic functions: U.N.E.P. officials, judicial officers and court assistants.

The first two implement enforcement instruments and service of process, while the assistants carry out preparatory work associated with the service and enforcement documents.

The work of judicial officers today is regulated in part by Presidential Decree 1229, 15/12/1959 (Ordinamento, or Statute), and in part by national collective labour agreements.

Opinions on the equivalence of the judicial officer and Government employees have been expressed on many occasions in the legal literature and in case law.

However that may be, one of the most recent interpretations is that 'judicial officers, in that they are included in the organisation of the State based on a formal deed of appointment, are civil servants of the State and therefore, although this is not envisaged in their special statute, the general status of civil servants should also be applied to them unless the specific characteristics of the work they perform justifies differential treatment compared with that of other State employees'.

It should be pointed out that even though the Italian judicial officer is treated as being on a par with a civil servant, he is in fact a hybrid in that:

- a. he is not under an obligation to comply with specified working hours, even though there are European directives and laws that impose maximum limits;
- b. is authorized to deduct and handle tax payable by others on their behalf;
- c. uses his own vehicle in the performance of his duties;
- d. lodges surety before taking up his own role;
- e. administers his own funds for official expenses, consisting of a percentage of the emoluments collected from private parties;

- f. finances his own stipend - the guaranteed minimum - out of the fees he collects from private parties;
- g. has personal civil, criminal, administrative, disciplinary, fiscal and monetary liability associated with the performance of his own role;
- h. may carry out activities on a fee basis, such as offers of satisfaction of indebtedness, arbitration and technical consultancy, albeit with the authorization of his office manager.

II.1.1 The jurisdiction and competences of the judicial officer

Pursuant to articles 106 and 107 of Presidential Decree 1229 of 15 December 1959, the judicial officer is competent to use the postal service to serve documents from his public prosecution office on persons permanently or temporarily resident or with their place of business in the area of its jurisdiction, whereas he may arrange for service on parties resident elsewhere only if the document refers to a proceeding that comes or might come within the jurisdiction of the court to which the notifying officer is attached.

Judicial officer duties and competence are: **the direction of the office** and all the services from it inherent, **the execution of the execution acts** (foreclosure of movable property, foreclosure of immovable assets, evictions.), **protest** of promissory notes, cheques and equivalent titles, **servicing documents**, as well as all the other deeds entrusted to them by law or by regulation.

The judicial officer's activities are of the following nature:

civil, criminal, extrajudicial.

In criminal matters, the judicial officer mainly arranges for the service of documents, whereas in civil matters his main work is the service of process and the enforcement of judgments and other enforceable titles, with the assistance of the police where required.

In the course of his extrajudicial activities, he arranges for:

- the service of protests of promissory notes and cheques;
- the service of extrajudicial documents (notices to perform, summonses);

formally placing a creditor in default due to his refusal to accept the debtor's offer of consignment of moneys or goods to his domicile or, if consignment is to be elsewhere, to accept notice to take possession thereof.

II.1.2. The obligations of the judicial officer

According art. 108 of the Judicial Officers Law, the Judicial Officer cannot deny his ministry: in case of refusal, he must indicate the reasons in writing, for this lack the bailiffs are punished with suspension.

He must carry out the cases committed to him without delay and, in any case, no later than the deadline which may have been prefixed by the authority for the actions requested by it. In case of impediment, the judicial officer must immediately report and justify the reasons to the head of the office.

For this lack the bailiffs are punished with the disciplinary fine.

II.1.3 Inconsistencies and conflict of interest

The Judicial officer cannot take on public or private jobs, exercise the trade, industry, nor any profession or accept offices in companies set up to end profit (art.27 D.P.R.1229/1959).

He can hold the position of free administrator of public charitable institutions, of legally recognized public utility entities or entities that are subject to supervision of the state administration; can also be chosen as a technical consultant, expert or arbitrator with the authorization of the head of the office. Can access the charge of municipal councilor, but must be placed on leave if he agrees to hold other elected offices.

The Minister is empowered to authorize, on a case by case basis, other activities that are compatible with the functions of judicial officer (bailiff).

The bailiff, who contravenes the prohibitions set by the first paragraph of this article, is warned by the Minister or by the President of the Court of Appeal to cease the activity incompatible with its functions.

The fact that the bailiff has obeyed the warning does not preclude the eventual disciplinary action. Fifteen days after the formal notice, without the incompatible activity having ceased, the judicial officer is expelled from office.

The president of the court or the magistrate is required to report to the president of the Court of Appeal to the cases of incompatibility of which I have come to know anyway.

II.1.4 Ethics and deontology

Judicial Officers are under the law that regulates civil servants. Ethics and deontology are regulated by the Code of conduct of the civil servants according art. 54 D. Lgs. 165/2001

II.1.5 Disciplinary proceedings against judicial officers

According art. 59 of the Bailiffs Order (Presidential Decree December 15, 1959, no. 1229).

The President of the Court of Appeal has disciplinary supervision over all the bailiffs of the district.

The Court president supervises all bailiffs of the local Court.

The head of judicial officers supervises the judicial officers of the office.

Magistrates with supervisory powers under the preceding paragraphs can contact the bailiff, even in writing, for slight negligence or irregularity of service, a reminder of the observance of his duties.

The bailiffs like civil servants are under the law that regulate the disciplinary proceedings for the civil servants.

The legal discipline is regulated by art. 2106 of the civil code, in part of art. 7 of the Workers' Statute, and articles from 54 to 55 septies of Legislative Decree 165 of 2001.

II.2. Supervision over enforcement

The enforcement judge - designated by the President of the Court - in the enforcement proceeding:

a) has the duty of verifying that compulsory expropriation is conducted in accordance with the principle of strict legality and, as the judicial authority, ensures that the fundamental constitutional freedoms are respected;

b) may not be substituted by another judge, save in cases in which there is an absolute impediment or serious service requirements.

For enforcement levied on movable or immovable assets, the case comes before the judge with jurisdiction for the place in which the assets are located.

If not all the immovable assets liable to enforcement are located within the district of a single court, article 21 of the Code of Civil Procedure applies.

For the compulsory expropriation of the debtor's claims, the case comes before the judge having jurisdiction for the place where the third party debtor resides.

For the enforcement of the obligations of performance and non-performance, the case becomes before the judge of the place where the obligation must be performed.

II.3 Access to the premises

According to art. 513 CPC once the judicial officer has an executive title and the procedure relating to legal notifications and notices is respected, he has the power to enter the premises even when the debtor is absent and without his permission.

When it is necessary to open doors, closets or receptacles, overcome the resistance opposed by the debtor or third parties, or remove people who disturb the execution of the attachment, the bailiff provides according to the circumstances, **requesting assistance of the public force when necessary.**

Except that for the proceedings of eviction no notice are requested to inform the debtor about the planned date of enforcement.

For eviction proceedings according Art. 608 CPC is necessary to serve the eviction notice that inform the party about the date and the hour of the eviction. The notice has to be served 10 days before the fixed date.

II.4 Obstructing the judicial officer from carrying out enforcement

The judicial officer can overcome the resistance of anyone who impedes execution with the public force support.

According art. 651 CPC anyone who, requested by a public official in the exercise of his functions, refuses to give indications on his personal identity, on his state, or on other personal qualities, is punished with an arrest of up to one month or a fine of up to two hundred six euros.

According art. 492 CPC and 388 CPP **the refusal to give information necessary to identify the debtor's assets** is provided a sanction by the criminal court in case of omission or false declaration pursuant to art. 388 CPP that provide imprisonment of up to three years and with a fine from € 103 to 1,032 euros.

II.5 Time of enforcement

Article 519 CPC states that the attachment may not be done on non-working days or outside the hours stated in article 147 of the Code of Civil Procedure (before 7 a.m. and after 9 p.m.), unless authorization has been given by the President of the Court or by a judge delegated by the President.

II.6 Mediation in the enforcement procedures

II.6.1 Mediation

The judicial officer has not the power to arrange an agreement with the debtor in order to delay payment or suspend the enforcement. In the practice with the consensus of the claimant is possible to suspend the enforcement in order to foster potential agreements.

There is not a mandatory post judicial mediation and the judicial officers are not involved in this matter. De facto judicial officer promote anyway agreement between the parties. There is not any form of soft-enforcement used by the judicial officers.

In Italy mediation is mandatory in such matters before commencement of court proceedings. Judicial officers can be appointed as mediators and registered in the mediator register. To exercise as mediators they must be authorized for each procedure by the ministry of justice.

II.6.2 Enforceability of the mediation agreement

According to the art. 12 of Legislative Decree 4 March 2010, n. 28, the mediation agreement, is enforceable, when all the parties are assisted by a lawyer and is signed by all the parties and their respective lawyers. The agreement, in this case, constitutes an executive title for the enforcement. The mediation agreement is directly enforceable respecting the provision of art. 482 CPC about the serving of the precetto (*writ of execution*).

PART III: ENFORCEMENT PROCEDURES

III.1 Initiation and end of the enforcement procedure

III.1.1 Initiation of enforcement

The enforcement could take place on creditor impulse. According art. 482 CPC the **enforcement can initiate after 10 days the serving of the precetto (*writ of execution*)**, the president of the court competent for the enforcement or a judge delegated by him, if there is danger in the delay, **can authorize the immediate execution**, with bail or without [art.119 CPC; disp. att. 86 CPC]. Authorization is given with a decree written at the bottom of the precetto (*writ of execution*) and transcribed by the bailiff in the copy to be served.

The purpose of this formality is to give the debtor a deadline for voluntary compliance in order to avoid enforcement, and at the same time to assign the creditor a term (of ninety days) within which enforcement must commence.

According art. 474 CPC, enforcement can take place only in force of an enforceable title according the following are list:

- 1) the sentences, measures and other deeds to which the law expressly attributes executive effectiveness;
- 2) authenticated private deeds, in relation to the obligations of sums of money contained therein, bills of exchange, as well as other credit instruments to which the law expressly attributes its own effectiveness;
- 3) deeds received by a notary or other public official authorized by law to receive them.

III.1.2 Determination of the means and object of enforcement

The creditor has to indicate the object of the enforcement indicating if the enforcement is on immovable assets, registered movable assets, expropriation through third parties (bank accounts, wages, etc) or on movable assets to the domicile of the debtor.

In general, it is the lawyer of the creditor who submits the application to start the enforcement and who must prepare and provide the judicial officer with different types of acts according to the different enforcement procedures.

The request of enforcement is directly delivered to the Judicial Officer office called UNEP (service enforcement and protest office)

As regards the seizure of property from the debtor, article 513 of the Code of Civil Procedure traces the route that the judicial officer must take in searching for the debtor's assets to be attached:

- in the debtor's house;
- in other places belonging to him;
- on the debtor's person;
- in places not belonging to the debtor.

The search of the debtor's person is one method in such an investigation, and is inherent in the function of the enforcement procedure and on a par with the searching of the debtor's house.

Just as it is not admissible that the debtor should prevent the judicial officer from entering his residence, it could not be accepted either that he should remove the attachable assets from the enforcement process by carrying them or hiding them on his person. This would be tantamount to accepting that the debtor is free to evade his civil liability.

If the search for the assets has to be conducted in locations not belonging to the debtor, the procedure for the attachment of those assets may be one of three types:

1. expropriation from third parties - as provided by article 543 of the Code of Civil Procedure - for objects owned by the debtor that are in possession of third parties and of which he cannot dispose directly;
2. direct action by the judicial officer on the premises of the third party in possession of the debtor's assets, when the third party consents to display them;
3. the attachment of personal property from the debtor and, by authorisation from the President of the Court, when certain assets are located in places not belonging to the debtor but of which he can dispose directly.

Choice of objects to be attached

Pursuant to article 517 of the Code of Civil Procedure, the attachment must be made on the objects that the judicial officer considers can be liquidated more easily and promptly, within the limit of a presumed realisation value equivalent to the amount of the claim stated in the writ plus one half.

However, the bailiff must give preference to cash, valuables, negotiable instruments and other assets considered safe to quickly recover the credit.

Description of attached assets:

the first paragraph of article 518 of the Code of Civil Procedure introduces an important provision as regards the description of the assets attached:

'The judicial officer draws up a report of his operations in which he records the injunction referred to in article 492 and describes the objects attached, together with their condition, by means of photographic images or other audiovisual media.'

The presumed realisation value of the assets attached:

on the entry into force of the reform of enforcement against personal property, the legislator has introduced a new criterion for estimating assets subject to attachment.

Whereas, in the past, the evaluation of an asset was linked with its commercial value, under the reform law the reference is now **the presumable value on realisation** (*the value that is expected to obtain from the selling by the auction*).

This means that at the time of estimating the asset the judicial officer is required to make a careful assessment of how much can be recouped from the enforced sale (*auction*) of that particular asset.

The reference criteria for arriving at an approximate estimate of the presumed value on realisation are linked with supply and demand on the market for the asset that is being attached.

III.1.3 Withdrawal of enforcement

According art. 629 CPC the process can be withdrawn, before the award or assignment, the attaching creditors renounce the deeds.

When is possible is applied the provisions of art. 306 cpc.

III.1.4 Enforceability of the enforcement document

According art. 475 cpc the judgments and other measures of the judicial authority and the acts received by a notary or other public official, to be valid as a title for the enforcement, must have the executive formula, unless the law otherwise provides (disp. att. 153 CPC).

The executive formula can only be issued to the party in whose favor the provision was made or the obligation was entered into, or to his successors, with an indication at the bottom of the person to whom it is issued (art. 476 CPC).

The expedition in executive form consists in the heading "Italian Republic - In the name of the law" and in the affixing by the chancellor or notary or other public official, on the original or on the copy, of the following formula:

"We command all the bailiffs requested and whoever is responsible, to enforce this title, the public prosecutor to assist, and all the officers of the public force to compete, when they are legally required".

Enforceable title

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

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 office to enforce the claim within the limits and in the manner laid down law.

Article 474 identifies two types of enforceable titles:

1. Judicial enforceable titles:

- judgments;
- remedies 'and other documents' to which the law explicitly attributes executable force;

2. Extrajudicial enforceable titles:

- certified private agreements, regarding obligations as to the sums of money stated therein;
- promissory notes and other negotiable instruments, and documents to which the law attributes the same force;
- documents of which a notary or other public official has taken knowledge, where he is authorized by law so do.

III.2 Enforcement against movable assets to settle pecuniary claims

III.2.1 General

The Judicial Officer is competent to decide on the enforcement proposal, in view of this, the judgment creditor (either personally or through his lawyer), equipped with the enforceable title and the writ, delivers the documents to the Ufficio Notificazioni Esecuzioni e Protesti - the 'service, execution and protest office', known by its abbreviation, U.N.E.P. with jurisdiction over the territory.

The document is checked by the judicial officer responsible for receiving documents and if it does not contain any irregularities it is delivered to the competent local judicial officer.

At the time of the attachment request the creditor may declare that he intends to participate in the attachment operations at his own expense, with the assistance of or using a defence lawyer and expert, or one of the latter. In that case the enforcing judicial officer must give notice of the date and time of access within fifteen days, giving three days' notice, which may be reduced in urgent cases (article 165 of the provisions for the implementation of the Code of Civil Procedure).

The judicial officer, with the titles (enforceable title and writ of execution) and within the term of validity of the writ, may visit the place indicated in the documents in order to execute the enforceable title.

Article 519 of the Code of Civil Procedure states that the attachment may not be levied on non-working days or outside the hours stated in article 147 of the Code of Civil Procedure (between 7 a.m. and 9 p.m.), unless authorisation has been given by the President of the Court or by a judge delegated by the President.

Attachment initiated within the prescribed hours may be pursued until completion.

III.2.2 The inventory

In order to proceed with an attachment, the Judicial Officer has to control that the title and the precetto (writ of execution) are been served to the debtor according the law provisions. No further communications are required to notify the debtor of the date and the time of the Judicial Officer enforcement access. In the absence of prior notification of the title and precept, enforcement is not possible.

The first paragraph of article 518 of the Code of Civil Procedure specifies that: 'The judicial officer draws up a report of his operations in which he records the injunction referred to in article 492 and describes the objects attached, together with their condition, using photographic images or other audiovisual media.'

The main reason for the attachment report including a photographic image or audiovisual medium is so that at the moment of removal of the attached assets intended for enforced sale, the debtor cannot replace them with other similar assets of little value. In fact the general description "written in pen" when the attached asset is not a registered asset (for example a vehicle), lends itself to fraudulent acts by the debtor which are difficult to uncover.

The photographic or audiovisual images can also be taken by the valuer appointed to value the assets, in addition to the judicial officer.

The omission of a photographic or audiovisual copy from an attachment report is not a ground for invalidity provided for by law, but it is so when it prevents it from achieving its aim.

III.2.2.1 Opposition of third party

Article 619 cpc provide about the form of opposition. A third party who claims to have ownership of or another actual right regarding attached assets may oppose the attachment by petitioning the enforcement judge, before the sale or allocation of assets is arranged.

By a court order the judge fixes the hearing for the parties to appear before him and the deadline by which the petition and court order must be served.

If the parties reach an agreement at the hearing, the judge acknowledges this with an order, adopting any other decision which might, if appropriate, ensure continuation of the enforcement process or the termination of the process, also issuing a ruling on costs in the latter case; otherwise the judge makes a provision pursuant to article 616 taking into account responsibility for the amount.

III.2.2.2 Custody of the attached assets

The judicial officer decides about the custody, in general he appoints the debtor. The assets attached, and are subject to the continuous and immediate availability to the judicial authority by the party responsible for their custody; in acting as the custodian of the attached assets, that party has the function of cooperation with the administration of justice and assumes the capacity of a public official.

The institution of the custody of attached movable assets is covered in articles 65, 66, 67, 520, 521 and 522 of the Code of Civil Procedure.

It should first be stated that when the judicial officer attaches money, negotiable instruments and valuables, within the meaning of the first paragraph of article 521, he is required to deposit those assets with the registry of the enforcement court.

For assets other than those specified in the preceding paragraph, the judicial officer may authorise the following as the place of storage of the assets attached:

- a. the place at which the assets have been attached (on the premises of the debtor or the third party in possession);
- b. a public depositary;
- c. with a third party;
- d. at the seat of the Istituto Vendite Giudiziarie (judicial sales institute).

III.2.3 Valuation of the movable items

On the entry into force of the reform of enforcement levied on movable assets, the legislator has also introduced a new criterion for estimating assets subject to attachment. Whereas, in the past, the evaluation of an asset was linked with its commercial value, under the reform law the reference is now the presumable value on realisation. This means that at the time of estimating the asset the judicial officer is required to make a careful assessment of how much can be recouped from the enforced sale of that particular asset.

The reference criteria for arriving at an approximate estimate of the presumed value on realisation are linked with supply and demand on the market for the asset that is being attached.

Bearing in mind that the Judicial Officer carries out the valuation of the assets on the basis of his general experience and expertise, during an enforcement procedure, it may be that assets which require specific and industry expertise in order to be valued are subject to attachment. The legislator has made provisions for these specific cases, and has granted the Judicial Officer the operational power to call upon a trusted expert.

As regards the appointment of an expert valuer by the Judicial Officer, the legislator has provided for two operational possibilities:

1. the Judicial Officer appoints the valuer before initiating the enforcement, if he considers this necessary or at the creditor's request;
2. the Judicial Officer appoints the valuer in the course of the enforcement.

The first case may occur if, the judicial officer makes a prior assessment that it is highly probable that there will be assets which are difficult to value in the place of enforcement, such as for example in the case of a request for attachment at a jewelers. In this event the Judicial Officer will appoint a valuer and they will enter the place of enforcement together.

The second case, on the other hand, may occur when the judicial officer goes by him/ herself to the place of enforcement and discovers assets which are difficult to value (as in the example given above, except that the documents do not make reference to the debtor's activity as a jeweller). In this second case - pursuant to article 518 of the Code of Civil Procedure, paragraph 2 - the judicial officer may defer the estimation operations by drawing up a first attachment report, and within a brief time limit and in any case by the thirty day deadline, definitively identifying the assets which are to be attached on the basis of the values indicated by the expert, who in any case is allowed to enter the place where the assets are located.

III.2.4 Methods of sale

After ten days from the attachment, the judgment creditor or one of the creditors who has joined in the claim may ask for the attached assets to be sold.

The enforcement judge may order the sale of the assets attached other than by public auction or through a commission agent.

The attached objects may be entrusted to the judicial sales institute or, by a substantiated measure, to another party specializing in the sector in question, so that it may proceed with the sale in the capacity of a commission agent.

Furthermore the judge may issue a measure delegating the conduct of the sale, whether or not by auction, of the movable assets entered into the public registers to the Judicial Sales Institute or, failing this, to a notary preferably having his seat in the district, or to a lawyer or qualified accountant, entered into their respective lists.

Lastly, the enforcement judge rules as to the distribution of the proceeds from the sale.

III.2.5 Sale through direct settlement

The execution judge orders the sale without enchantment or through a commission agent of the seized assets. Foreclosed items must be entrusted to the judicial sales institute, or, with a motivated provision, to another subject specialized in the sector of competence registered in the list referred to in art. 169-sexies of the provisions for the implementation of this code, so that it proceeds with the sale as a commission agent.

III.2.6 Public sale of movables

Anyone except the debtor can participate in the auction (art. 579 cpc). Art. 1471 civil code provide the nullity of the purchase of goods sold by administrators of state goods or other public bodies with respect to assets entrusted to their care or public officials, which include the judicial officer who executed the attachment, the execution judge, the professional delegate for the sale, the registrar and the custodian.

According art. 534 cpc, when the sale is to be made to public bids, the execution judge, with the provision referred to in article 530, establishes the day, time and place where it must be carried out, and entrusts its execution to the clerk or to the bailiff or an institution authorized for that purpose.

In the same provision, the execution judge can order that, in addition to the advertising provided for in the first paragraph of article 490, an extraordinary advertisement will also be given pursuant to the third paragraph of the same article.

Article. 535 of the Italian Code of Civil Procedure, states that if the value of the items appears on the stock exchange or market price list, the base price is determined by the minimum of the day preceding the sale.

In any other case, the enforcement judge, in the provision referred to in article 530, heard when an estimator is needed, fixes the opening price of the auction or authorizes, if circumstances recommend, the sale to the highest bidder without determining the lowest price.

When something auctioned remains unsold, the person entrusted with the execution of the sale fixes a new auction at a base price one fifth lower than the previous art. (538 cpc)

III.2.7 Payment of the sale price

Article. 540 of the Code of Civil Procedure provides for immediate payment in cash, art. 169 quater provisions implementing the cpc provide that the purchase price can be paid with electronic payment systems or with debit, credit or prepaid cards or with other means of payment with electronic money available in the banking and postal circuits.

If the price is not paid, a new auction is immediately carried out at the expense and under the responsibility of the defaulting successful tenderer.

III.2.8 Handover of movables to the buyer

The delivery of the goods purchased at the auction takes place after payment of the sale price.

III.2.9 Payment to the creditor

Art 510 cpc when there is only one proceeding creditor, the execution judge orders the payment of the sum due to them as capital, expenses and interest, after hearing the debtor.

In the case, however, in which in addition to the proceeding creditor there are other creditors intervened, the judge distributes the sum obtained by distributing it proportionally among all creditors, according to the specific rules provided for the expropriation of property or real estate. The remainder is handed over to the debtor or third party who has been expropriated.

III.3 Attachment on the bank account of the debtor

According art 492-bis Judicial Officer has the access electronically² to all the databases, including bank account database. Prior access before the attachment is provided just in particulars case. In general the access to bank account database is provided just in case of a non profitable attachment.

The bank account attachment could be carried out electronically³ and belongs to the type of attachment from third parties which automatically includes every savings deposit, current account, foreign currency accounts and any other position managed by the bank.

Expropriation through third parties is regulated by articles 543-554 of the Code of Civil Procedure.

The creditor through the judicial officer proceed to attach a movable object that he assumes is the property of his debtor but that is held by a third party, he must act - unless the third party agrees to disclose the object voluntarily to the judicial officer - according to the procedures and forms laid down by article 543 et seq. of the Code of Civil Procedure.

In addition to movable objects, the same code also regulates the garnishment of the debtor's claims against third parties.

The garnishment, therefore, is directed against:

- a. the debtor's money held by, or claims against, a third party;
- b. movable objects owned by the debtor, but held by a third party.

The function of the garnishment document is to place a lien as to destination on the debtor's claim in order to satisfy the garnisher.

The debtor's claims against third parties or the debtor's property in the possession of third parties are attached by means of a document served in person on the third party (article 546 of the Code of Civil Procedure) and on the debtor pursuant to article 137 et seq.

²This kind of provision is not still applicable for technical delay, In the mean time the party can obtain information by the fiscal authority, previous authorisation by the President of the Court where the proceeding is based.

³This kind of provision is not still applicable for technical delay.

The central and decisive moment of the garnishment is the service of that document, even though it consists of a number of elements.

In format, the document consists of two separate parts: the first part is produced by the judgment creditor and contains the elements listed in article 543 of the Code of Civil Procedure, whereas all the information required by article 492 of the Code of Civil Procedure is contained in the second part, signed by the judicial officer.

Garnishment is finalised not only by service of the document, but also by the third party's positive statement or the judicial assessment of the claim.

These are the two methods that alone lead to an accurate and practical specification of what property or amounts the third party owes or that are in the third party's possession at the time at which payment or consignment is due.

The garnishment document must contain the summons of the third party and debtor to appear before the court of the third party's place of residence, so that the third party can make the declaration referred to in article 547 and so that the debtor is present at the time of the declaration and subsequent documents; the third party is summoned to appear when the garnishment relates to the claims referred to in article 545, third and fourth paragraphs, and in other cases it is asked communicate the declaration referred to in article 547 to the garnishee creditor within a term of ten days by registered letter.'

III.4 Enforcement against savings deposit and current accounts

Concerning this subject it's applicable what was said above in the paragraph about the bank account enforcement (Part III.3)

III.5 Enforcement on immovable property

III.5.1 General

A reform in the area of enforcement empowered judges to involve delegated professionals in real estate procedures. This legislation was adopted in 1998. As of 1998, the appointment of professional delegates was only optional for the judges and not all Courts acted in accordance. In 2015, the appointment became mandatory for all Courts. This 2015 law made it obligatory for the judge to assign the sale to a professional notary, attorney or accountant officially registered in a special court list available to all judges overseeing property transactions.

By virtue of their appointment, these professionals act as representatives of the judge, as agents of enforcement. Recently, the Italian Government proposed in the Recovery Plan 2021 an increase

in the competence of the delegated professionals to improve the efficiency of real estate enforcement proceedings.

Of course, also the Judicial Officer is competent to decide on the enforcement proposal, in view of this, the judgment creditor (either personally or through his lawyer), equipped with the enforceable title and the writ, delivers the documents to the Ufficio Notificazioni Esecuzioni e Protesti - the 'service, execution and protest office', known by its abbreviation, U.N.E.P. with jurisdiction over the territory.

The document is checked by the judicial officer responsible for receiving documents and if it does not contain any irregularities it is delivered to the competent local judicial officer.

The expropriation of real property is governed by the provisions of Book II, Title II, Chapter IV of the Code of Civil Procedure (articles 555 to 598), and the provisions contained in Chapter I on enforced expropriation in general are also applicable.

The Civil Code (article 812) defines immovable property as soil, springs and waterways, trees, buildings and other constructions, even if joined to the ground for transitory purposes, and in general all that which naturally or artificially is embedded on the ground. Mills, bathrooms and other floating buildings are considered immovable when they are firmly secured to the shore or riverbed and are intended to be permanently secured for their use.

III.5.2 Enforcement against unregistered real estate

In Italy, the exact identification of the property is required to proceed with the property foreclosure, which can only be carried out if it is registered in the land register.

The creditor don't has to submit evidence for the right of ownership on real estate which is object of enforcement with the attachment proposal. This matter is dealt after the attachment of the real estate, in the enforcement proceeding directed by the judge.

The judicial officer has no duty of investigation with regard to this kind of real estate. All the activities regarding the real estate procedure after the attachment are conducted by the Judge and the parties.

III.5.3 Enforcement against registered real estate

Two separate stages of the procedure can be identified in the attachment of real property:

1. service of the attachment document on the debtor;
2. the entry of the certified copy of the attachment order - notice of which has been duly served on the addressee - in the public property registers.

The service of the document is the point at which the effects of attachment start to run, whereas the function of transcription of the order into the public register is to make its enforcement effective against third parties.

The attachment of real estate property may be served personally by the judicial officer or by the postal service.

Transcription becomes of decisive importance for the purpose of the attachment of real property, in that it gives rise to the lien of inalienability in favour of the creditor making the attachment and other creditors that are parties to the enforcement. Since it is in fact the essence of attachment that such inalienability is created, the function of transcription is constitutive and not merely declarative, with the effect that the attachment is finalised, including between the creditor and debtor, only at the moment of transcription and not at the earlier point of service of notice (see article 2693 of the Civil Code, in relation to article 2913 et seq. of the Civil Code).

III.5.4 Preparation of the sale of the real estate

All the activities regarding the visit, the custody, the measures necessary for protection or requesting the court to fine the persons who are unable or obstruct the enforcement process are in power of the custodian of the immovable property appointed by the Judge.

After the ten-days from the attachment - and within ninety - the creditor can request the sale of the attached property.

The parties deposit all the documents required by article 567 of the Code of Civil Procedure - within one hundred and twenty days from the request for sale, extendable only once and for a duration not exceeding a further one hundred and twenty days - the Execution Judge, then, within thirty days from the filing of the documentation, he appoints the expert and fixes the appearance of the parties for the sale authorization.

At the hearing, having heard the expert for clarifications, the judge determines the methods of the sale and after hearing the parties, he can delegate the sale operations to a notary, a lawyer, a chartered accountant (sale without auction). For this delegation, the Enforcement Judge will consult the lists received by the President of the Court on the basis of those that the District Notarial Council, the Council of the Bar Association and the Council of the Association of Chartered Accountants communicate every three years, accompanied by specific forms information on specific experience in the matter (179- ter and quater of the Act of the Civil Procedure Code).

From the rules governing the institution of the real estate sale, it is clear that the sale without auction must be attempted; if this fails, the sale goes by enchantment;

Once the delegate has been chosen, in compliance with the shift criteria pursuant to art. 179- quater disp. att. and assigned the task according to the provisions of articles 569 and 591- bis of the Code of Civil Procedure, the Execution Judge:

- establishes the term within which the sales operations must be carried out;
- indicates how advertising is performed;
- indicates the place of presentation of the offers and the place where the examination of the offers and the tender between the bidders are carried out;
- finally, it indicates the place where the auction takes place.

It is good to specify that the professional in charge is not an auxiliary of the judge, but performs substitute functions entrusted to the judicial authority, even if within the limits of the delegation.

For the sale with enchantment, please refer to the provisions of articles 576 and following of the Code of Civil Procedure:

The judge of the execution (484), heard when an expert is needed when ordering the auction (569, 572, 573, 575, 587), establishes (68; 161 att.):

- 1) if the sale is to be made in one or more lots (577, 578);
- 2) the base price of the auction determined in accordance with article 568 of the Code of Civil Procedure;
- 3) the day and time of the enchantment;
- 4) the term that must elapse between the completion of the forms of advertising and the auction, as well as any forms of extraordinary advertising pursuant to art. 490 last paragraph;
- 5) the amount of the security (119, 580, 587; 86 att.) In an amount not exceeding one tenth of the basic auction price and the term within which this amount must be paid by the bidders;
- 6) the minimum amount of the increase to be made to the offers (581);
- 7) the term, not exceeding sixty days from the award, within which the price must be deposited and the modalities of the deposit (585).

The order is published (490) by the registrar.

III.5.5 Valuation of the real estate

As required by art. 568 of the Italian Code of Civil Procedure for the purposes of expropriation, the value of the property is determined by the judge having regard to the market value on the basis of the elements provided by the parties and by the expert appointed pursuant to article 569, first paragraph.

In determining the market value, the expert calculates the surface of the property, specifying the commercial one, the value per square meter and the total value, analytically exposing the adjustments and corrections of the estimate, including the reduction of the market value practiced

for the absence of the guarantee for defects of the goods sold, and specifying these adjustments separately for the urbanization regularization charges, the state of use and maintenance, the state of possession, the constraints and the legal obligations which cannot be eliminated during the enforcement procedure, as well as for any outstanding condominium expenses.

III.5.6 Conditions for sale

On expiry of a term of ten days from the attachment - and within ninety days - the creditor may apply for the attached immovable property to be sold.

The parties lodge all the documents specified by article 567 of the Code of Civil Procedure - within a term of one hundred and twenty days from the application for the sale, which may only be extended once and by no more than an additional one hundred and twenty days - the enforcement judge then nominates an expert, within thirty days of the documentation having been lodged, and fixes a date for the appearance of the parties for authorisation of the sale.

At that hearing the judge determines the procedures for the sale, if necessary after obtaining clarification from the expert; having heard the parties, he may delegate the sale transactions to a notary, lawyer or qualified accountant (non-auction sale). When delegating, the enforcement judge will consult the lists received from the president of the court based on the lists provided by the District Notarial Board, the Bar Council and Board of Chartered Accountants every three years, accompanied by appropriate information relating to relevant specific experience (179-b and 179-c of the enacting provisions of the Code of Civil Procedure).

The rules regulating the instituting of the immovable property sale make it clear that the first attempt must be a non-auction sale and if this is not successful then there shall be an auction sale;

Once the delegate has been chosen, in accordance with the turnover system referred to in article 179-c of the enacting provisions and with the task assigned according to the provisions referred to in article 569 and 591-a of the Code of Civil Procedure, the Enforcement Judge:

- establishes the deadline by which the sales operations must take place;
- indicates the ways in which the sale must be advertised;
- indicates where bids must be made and where the bids will be examined as well as where the bidding between bidders will take place;
- and indicates where the auction shall take place.

It should be pointed out that the assigned professional is not an assistant of the judge, but rather he carries out substitute tasks entrusted to the judicial authority, within the limitations of the delegation.

With regard to auction sales see that established by articles 576 et seq of the Code of Civil Procedure:

The enforcement judge (484CPC), having, where necessary, consulted an expert, when he orders the auction (569, 572, 573, 575, 587)), establishes (68; 161 of the enacting provisions);

- 1) whether the sale shall take the form of one or more lots (577, 578);
- 2) the base price of the auction determined according to article 568 of the Code of Civil Procedure;
- 3) the date and time of the auction;
- 4) the time period that must elapse between the completion of the forms of advertising and the auction, as well as any forms of exceptional advertising pursuant to art. 490, final paragraph;
- 5) the deposit amount (119, 580, 587; 86 of enacting provisions), which must not exceed a tenth of the auction base price and the deadline by which this amount must be provided by the bidders;
- 6) the minimum amount that must be given as bids (581);
- 7) the time limit, not exceeding sixty days from the awarding of the bid, within which the amount must be deposited and the methods of depositing (585).

The order is published (490) by the court registry official.

III.5.7 Method of sale

The forced sale has the function of transforming the seized assets into liquid money, therefore if the seizure affects a sum of money. The tool by which the forced sale of an asset is implemented is the public auction.

Forced sale can take place:

- sale without auction
- sale with auction

In the sale without auction, (articles 570 ss. CPC), the participants present the purchase offers in a sealed envelope at the court registry with an indication of the price, time, method of payment and any other element useful for evaluating the offer. These envelopes are then opened in the hearing set for the examination of the offers at the presence of the bidders.

In the sale with auction (articles 576 ss. CPC), a tender takes place immediately between the various bidders. The judge of the execution establishes, with ordinance, the modalities with which to carry out the sale, the base price of the auction, the day and time of the auction, the minimum measure of the increase to be made to the offers, the amount of the deposit, the methods and the term within which the price must be deposited.

With the laws of 28 December 2005, n. 263 and 24 February 2006 n. 52, a clear preference was expressed for the sale without auction, establishing, in the real estate expropriation, that the judge

must always order the sale without auction first and will order the sale by auction only if the sale without auction is unsuccessful or cannot have place for lack of adhesions or if there is a single offer that does not exceed 1/5 the estimate value of the property.

III.5.8 Sale by direct agreements

Sale by direct agreement is not normally expected in the executive process. In the most usual practices of the instrument for daring the effectiveness of a private sale is to stipulate the sale between the executive debtor and the third buyer in the presence of the Judge of the enforcement and contextual renunciation of all creditors with executive title who, paid with the proceeds from the sale, they will renounce the enforcement action and will request the extinction of the enforcement procedure by the Judge with order of notification of the attachment.

III.5.9 Public sale of real estate

Anyone except the debtor can participate in the auction (art. 579 cpc). Art. 1471 civil code provide the nullity of the purchase of goods sold by administrators of state goods or other public bodies with respect to assets entrusted to their care or public officials, which include the judicial officer who executed the attachment, the execution judge, the professional delegate for the sale, the registrar and the custodian.

When the law states that an executive act must be made public auction, it must be posted for three consecutive days in the register of the judicial office before which the executive proceeding takes place, a notice containing all the data that may be of interest to the public.

The same notice, together with a copy of the judge's order and the estimate report drawn up pursuant to article 173-bis of the cpc implementation provisions, must also be included in specific websites at least forty-five days before the deadline for submitting offers or the date of the auction.

The judge of execution, when ordering the auction, establishes, after hearing an expert:

- 1) if the sale is to be made in one or more lots;
- 2) the base price of the auction determined in accordance with article 568;
- 3) the day and time of the enchantment;
- 4) the term that must elapse between the completion of the forms of advertising and the auction, as well as any forms of extraordinary advertising pursuant to article 490 last paragraph;
- 5) the amount of the security in an amount not exceeding one tenth of the basic auction price and the term within which it must be paid by the bidders;
- 6) the minimum extent of the increase to be made to the offers;
- 7) the term, not exceeding sixty days from the award, within which the price must be deposited and the modalities of the deposit

The order is published by the registrar.

III.5.10 Payment of the sale price

Art. 585 cpc provide that times and methods for paying for the goods purchased at the auction are decided by the judge. The winner will pay the balance of the price of the property purchased including charges, rights and expenses, usually within 60 days of the award. If payment does not take place in the manner and within the time established by the judge, the winner will lose the deposit and the property will be auctioned again. Once the price of the purchased property has been paid in full, the judge orders the decree to transfer the property to the new owner, a decree that has the power to cancel everything that weighed on the property, such as mortgages and foreclosures.

III.5.11 Handover of the real estate to the buyer

Art. 586 cpc provide that after the sale and the full payment of the price, the enforcement judge pronounces the decree by which he transfers the expropriated property to the successful tenderer.

The transfer decree must contain the following fundamental elements:

- the description of the asset
- the order for the cancellation of the transcriptions of the foreclosures and the mortgage registrations.

The transfer decree constitutes the title for the transcription of the sale on landed books and the executive title for the release.

In accordance with article 560 CPC, also the judicial guardian is empowered to carry out the eviction.

III.5.12 Payment to the creditor

Pursuant art 510 cpc when there is only one proceeding creditor, the execution judge orders the payment of the sum due to him/ her as capital, expenses and interest, after hearing the debtor.

In the case, however, in which in addition to the proceeding creditor there are other creditors intervened, the judge distributes the sum obtained by distributing it proportionally among all creditors, according to the specific rules provided for the expropriation of property or real estate.

The remainder is handed over to the debtor or third party who has been expropriated.

III.6 Enforcement against Wages and Other Permanent Pecuniary Income

Concerning this subject it's applicable what was said above in the paragraph about the bank account enforcement (Part III.3)

III.7 Attachment under the debtor's debtor

Concerning this subject it's applicable what was said above in the paragraph about the bank account enforcement (Part III.3)

III.8 Enforcement against shares

III.8.1 In general

The company shares can be subject to forced expropriation and precautionary measures aimed at safeguarding the debtor's property guarantee, however, before examining in detail the methods of execution, when they concern company shares - participation - it must be specified that the object and the form of the attachment differ according to the type of company and the level of responsibility of the debtor shareholder.

The companies are divided into:

- a) partnerships: partnerships (S.n.c.) and limited partnerships (S.a.s.)
- b) joint stock company: limited liability company (S.r.l.); joint-stock company (S.p.A) and limited partnerships (S.a.p.A.).

Companies - both capital and partnerships - are primarily responsible for their social obligations for their social obligations.

The execution methods are different depending on whether the attachment involves shares of limited liability companies (S.r.l.), dematerialized shares (S.p.a.), non-dematerialized shares (S.p.a.) or shares of partnerships (S.n.c. and S.a.s.).

III.8.2 Enforcement

III.8.2.1 Attachment of shares in limited liability companies (SRL)

The discipline is based on the following procedural moments:

1. the notification of the deed of attachment to the debtor, containing the injunction and the other elements required by article 492 of the Code of Civil Procedure;
2. notification of the deed to the company;
3. the registration of the attachment in the commercial register at the competent chamber of commerce;

The attachment is considered completed only after the attachment has been entered in the register of companies (defined as the company registry) which fulfills the function of rendering ineffective all acts of transfer of the share (quota) carried out after the date of attachment registration. Therefore, the Business Register is a subjective advertising tool: it makes known the exercise of entrepreneurial activity through the dissemination of facts and deeds concerning the economic operators who carry out these activities.

Following the attachment, the order of the judge who orders the sale of the participation must be notified to the company by the creditor. If the participation is not freely transferable and creditor, debtor and company do not agree on the sale of the share itself, the sale takes place at the auction; this sale has no effect if, within ten days of the award, the company presents another buyer who offers the same price.

III.8.2.2 Attachment of not dematerialized shares

The attachment when it concerns "non-dematerialized" actions is carried out by means of direct apprehension of the document incorporating the right by the Bailiff - article 1997 of the Civil Code - according to the form of the attachment attachment to the debtor as the movable asset is the cartula - credit certificate - or in the form of attachment to third parties when the security is held by third parties (credit institution or other authorized managers or intermediaries).

Pursuant to article 2024 of the Italian Civil Code, the credit restriction has effects on the issuer and third parties following an annotation on the security subject to foreclosure.

III.8.2.3 Attachment of dematerialized shares

The term "Dematerialisation" is intended to express a concept according to which listed financial instruments are no longer represented by paper securities, but by simple accounting records.

In the case of dematerialized equity securities, the attachment can be carried out in the form of the attachment to third parties (see paragraph III.3), at the intermediary appointed by the debtor to keep the account in which those instruments are registered. Therefore, it is part of the duties of the intermediary constituted custodian for the effect of the attachment, to perform the registration of the bond in the account held by him.

III.8.2.4 Attachment of partnerships

In partnerships (S.n.c. and S.a.s.), all members are liable for social obligations (excluding limited partners who are obliged within the limits of the share capital subscribed) also with their personal assets. This unlimited personal liability is subsidiary in nature, since the corporate creditors, pursuant to art. 2304 c.c. they cannot claim, even if the company is in liquidation, the payment of their credits by individual shareholders, except after the enforcement of the company's assets.

The issue is inverse and more complex when a creditor intends to subject the share of the shareholder for a personal credit of the debtor partner.

Before examining the extent to which the shareholdings of a partnership are likely to form the subject of rights and any executive actions, it should be specified that:

1. the transfer of the quality and the share cannot take place without the consent of the other shareholders, or without specific provision of the social contract;
2. the deed of transfer of a shareholding - if provided for in the social contract - does not transfer the ownership - or the share of undivided ownership - of the assets making up the corporate assets, but only the intangible movable property made up of the shareholding is sold, and with it the rights and obligations of an administrative and corporate nature inherent to the quality of member;
3. the share of "transferable" partnerships must be considered as an intangible asset comparable to the movable property not entered in the public register pursuant to article 812. u.c. of the Civil Code as it is likely to form the subject of rights, according to the definition of legal assets established by article 810 of the Civil Code.

Starting from these concepts and in particular from point two (the shareholders of the personal companies are not co-owners of the company assets, of which the latter is the exclusive owner) it can be excluded that the expropriation of the share by the particular creditors of the shareholder, Articles 599 and 601 of the Code of Civil Procedure (expropriation of undivided assets) may apply instead of the rules governing **expropriation from third parties** (see par. III.3).

III.8.3 Evaluation and sale

Art. 2471 states that "if the participation is not freely transferable and the creditor, the debtor and the company do not agree on the sale of the share itself, the sale takes place at auction; the sale has no effect if, within ten days of the award, the company presents another buyer who offers the same price".

III.9 Other attachment procedures

III.9.1 Real estate rights

Article 555 of the Code of Civil Procedure identifies property rights (real property rights) as assets subject to attachment, in addition to real estate.

Real estate rights are real rights of enjoyment in favor of one who is not the owner of the property and has the obligation not to be able to change the economic destination; they are: the right of surface, of emphyteusis, of usufruct, of use, of dwelling and the easements of the land.

The provisions and related actions concerning real estate also apply to real rights (article 813 of the Civil Code).

For the assignment or the constitution of the real rights on a real estate a written document is required (article 1350 of the Civil Code).

1. The usufruct right It consists in the right to enjoy the thing of others. The characteristic of usufruct is constituted by its duration which is temporary: if nothing is said it is meant constituted for the entire duration of the usufructuary's life.

The usufructuary can assign his right to others, he can grant a mortgage and he can also rent out the things that are the subject of usufruct.

2. Right to use consists in the right to use a good and, if it is fruitful, to reap the fruits limited to one's own needs and those of the family. The right of use cannot be transferred or leased. It ends with the death of the owner.

III.9.2 Industrial property

Industrial property rights, pursuant to Legislative Decree 10 February 2005, n. 30 may be subject to forced execution.

Execution is subject to the rules established by the code of civil procedure for execution on movable property.

The attachment of the industrial property title is carried out by a deed notified to the debtor, by means of a bailiff.

The act must contain:

- a) the declaration of attachment of the industrial property title, after mentioning the elements capable of identifying it;
- b) the date of the title and its shipment in executive form;
- c) the sum for which execution is carried out;
- d) the surname, forename and domicile, or residence, of the creditor and the debtor;
- e) the surname and first name of the enforcement officer.

The debtor, from the date of notification, assumes the obligations of the judicial sequestrator of the industrial property title, also with regard to any fruits. The fruits, accrued after the date of the notification, deriving from the concession of use of the industrial property right, are cumulated with the proceeds of the sale, for the purpose of the subsequent attribution.

The deed of attachment of the industrial property right must be transcribed, under penalty of ineffectiveness, within eight days of the notification. Once the deed of attachment of the industrial property right has been transcribed, and as long as the attachment itself explains the effect, the subsequently transcribed foreclosures count as an opposition on the sale price, when they are notified to the proceeding creditor.

The sale and the awarding of the attached industrial property rights are made with the corresponding rules established by the code of civil procedure as applicable, subject to the particular provisions of this code.

The sale of the industrial property right cannot be made unless at least thirty days have passed since the attachment. A period of twenty days must start, for the sale, from the decree fixing the day of the sale itself.

The judge, for the sale and award of industrial property rights, arranges the special forms he deems appropriate in individual cases, also providing for the announcement of the sale to the public, also in derogation of the rules of the code of civil procedure.

The judge can establish that the announcement is posted on the premises of the Chamber of Commerce and in those of the Italian Patent and Trademark Office and published in the Bulletin of industrial property rights.

The immediate creditor, in the forced enforcement of industrial property rights, must notify the creditors holding the guarantee rights, transcribed, at least ten days before the sale, the deed of attachment and the decree fixing the day of the sale. The latter creditors must deposit their applications for placement with the supporting documents within fifteen days of the sale in the registry of the competent judicial authority. Anyone interested can examine these questions and documents.

III.9.3 Attachment of aircraft and naval vessels

Enforcement is regulated solely by the special measures set out in Book Four, Title V, of the Code of Navigation, as well as in Title IV of the regulations implementing that Code, approved by Presidential Decree 328 of 15 February 1952, with the result that reference cannot be made to the rules on enforcement in the Code of Civil Procedure, except in those cases in which specific reference is made to that Code in the Code of the navigation or its implementing regulations.

Article 650 of the Code of Navigation provides that the attachment of ships, floats or shares in their ownership - and article 2061i as regards aircraft - is carried out on the creditor's application, by service of the document on the owner and the master or captain.

When, therefore, the attachment refers to ships or aircraft:

- the form of the attachment is not as prescribed by the Code of Civil Procedure: the judicial officer does not arrange for the search for and identification of the ship or aircraft pursuant to article 513 of the Code of Civil Procedure;
- enforcement is regulated solely by the special measures set out in Book Four, Title V, of the Code of Navigation, as well as in Title IV of the regulations implementing that Code, approved by Presidential Decree 328 of 15 February 1952;
- the judicial officer merely serves the relevant attachment document on the owner and the master or captain.

III.9.4 Foreclosure of vehicles

The attachment of cars, motorcycles and trailers pursuant to the provisions of article 521 bis of the Italian Civil Code, is carried out:

1. The attachment is carried out by notification of the deed to the debtor.
2. Once the attachment has been notified, the bailiff delivers the attachment order to the creditor without delay to proceed with the transcription in the public registers.
3. The debtor has ten days from the date of completion of the notification to deliver the vehicle to the Judicial Sales Institute (IVG). If he does not, the proceeding creditor will be able to report the non-delivery of the vehicle to the police which, after having ascertained the movement of the vehicle or in any case find it, will proceed to collect the documents, and will have the vehicle deposited and kept at the institution for judicial sales closest to the place where the foreclosed property was found.
4. Within 30 days from the communication of the IVG, the creditor must deposit the registration note in the registry of the court competent for the execution - via electronic means - with certified copies of the enforceable title, the precept, the deed of attachment and transcription note.
5. From this moment on, the procedure follows the ordinary procedure of attachment with the debtor.

III.10 Handing over movable assets

According art. 2930 civil code, If the obligation to deliver a specific, movable or immovable thing is not fulfilled, the beneficiary can obtain forced delivery or release in accordance with the provisions of the code of civil procedure (art. 605 c.p.c. seq.).

The provision of the art. 605 cpc specify that Handing over movable assets is possible according a title containing the handing over order. After the serving of the enforceable title, it's necessary to

serve the writ of execution (*precetto*) where is briefly indicated the description of the property to be handing over or released.

After 10 days from the serving of the writ of execution (*precetto*) the enforcement can take place directly and without a previous notice from the Judicial Officer.

III.11 Enforcement in reinstatement of employee to work

The reintegration order of the illegitimately dismissed worker is not susceptible of enforcement. The reintegration in the workplace involves not only the readmission to the company, but also an indispensable and irreplaceable active behavior of the employer, consisting, among other things, in giving the employee the appropriate directives, in the context of a relationship of mutual and unreachable collaboration.

III.12 Eviction

The creditor, bearing the enforceable title in executable form, must therefore serve that title and the writ before proceeding with enforcement.

The first paragraph of Article 608 of the Code of Civil Procedure - Method of release - states that enforcement commences on service of the notice whereby the judicial officer informs the party at least ten days in advance that it is required to release the property, stating the date and time on which action will be taken.

Enforcement is assigned to the judicial officer, although provision is made for the intervention of the judge if, in the course of execution, difficulties arise whose solution cannot be deferred. In this case, article 610 of the Code of Civil Procedure provides that each party may apply to the enforcement judge to exercise his authority to take the temporary measures required.

On the day and at the time appointed, the judicial officer, bearing the enforceable title, the writ and the prior notice, goes to the place at which the property being released is located, to implement the execution.

It should be pointed out that, pursuant to articles 608 and 513 of the Code of Civil Procedure, the judicial officer's powers and duties include those of opening doors, store rooms or containers, overcoming resistance offered by the debtor or third parties, or removing persons who disrupt execution.

If the judicial officer finds the evictee or another person living with the evictee, the first formal request is to hand over the keys and, depending on the circumstances, to transport elsewhere all the movable objects not related to the enforcement;

not to leave valuables, money or other objects of value in the property being released - in a case in which the evictee declares that he does not have other premises available where the movable property can be transferred.

If the evictee does not offer resistance and voluntarily hands over the keys, the judicial officer proceeds by taking possession; if, however, resistance is offered, he calls on the Police for support. If nobody is present on behalf of the evictee in the place of enforcement, and the judicial officer finds the entrance door closed, he is authorised by law to make a forced entry, in that it is not a prerequisite for the applicant party to enter into possession that the enforcer, on whom the notice of release has been duly served, should be present.

Once all the difficulties that arise in the first phase of enforcement are overcome, the judicial officer places the applicant party or the person designated by him in possession of the property.

Article 609 of the Code of Civil Procedure provides that if movable objects are found in the property that belong to the party required to release that property and that do not have to be consigned to the applicant party - for example, an unfurnished apartment - the judicial officer may, unless the evictee removes them immediately, arrange for their custody on site, even by the applicant party if he agrees to such custody, or for their transfer to another location.

It may arise that there are assets liable to attachment or seizure among the objects to be removed or listed in an inventory.

In this case, the judicial officer is required to give immediate notice of their release to the creditor on whose application the attachment or seizure has been carried out, and to the enforcement judge for the replacement of the custodian if necessary.

III.13 Enforcement of obligations to act, refrain from acting or suffer action

III.13.1 Enforcement of the decision for division of items

A debtor's property is not always made up of assets exclusively owned by him/ her, but may be made up of assets in joint ownership with other non-enforcee individuals, such as for example assets inherited together with other heirs (co-ownership by heirs) or under the regime of joint estates of spouses.

In these cases, when the assets are jointly held by more than one individual, they are called "indivisible assets".

The co-ownership may concern both the right to ownership and any other actual right.

Enforcement levied on indivisible assets is regulated by the Code of Civil Procedure in articles 599, 600 and 601, integrated by articles 180 and 181 of the enacting provisions.

The first paragraph of article 599 of the Code of Civil Procedure establishes that: "Joint assets may be attached even when not all the co-owners are indebted to the creditor".

This means that when joint assets are the subject of attachment inevitably this indirectly involves individuals who are not concerned by the debt position. Therefore, after the attachment has been carried out, the judgment creditor - pursuant to paragraph 2 of article 599 of the Code of Civil Procedure and 180 of the enacting provisions of the Code of Civil Procedure - is required to serve a notice of attachment upon the other co-owners.

Service of the notice of attachment of a joint asset upon co-owners who are not debtors, has two aims:

1. prohibit the joint things from being separated without an order from the judge;
2. to allow all of the interested parties to be heard, as stipulated by article 600 of the Code of Civil Procedure.

Joint assets may be both movable and immovable, but claims may also have this requirement: for example current accounts with positive balances held by more than one person where these persons also have the right to carry out transactions separately. In this event the account holders are considered (pursuant to article 1854 of the Civil Code) to be co-creditors of the positive balance.

There are three methods by which enforcement levied on joint assets may take place:

1. separation of the share;
2. division of the asset;
3. sale of the indivisible share.

III.13.1.1 Separation in kind of the debtor's share

The enforcement judge, on application by the attaching creditor or co-owners and having heard all the interested parties, if possible, arranges the separation of the share in kind that is owed to the debtor.

III.13.1.2 Division of the common asset

If the separation in kind is not requested or is not possible, the judge provides for the division to be carried out pursuant to the Civil Code, unless he thinks it probable that the indivisible share will be sold for a price equal to or higher than its value, determined pursuant to article 568 of the Code of Civil Procedure.

In that case the execution is suspended, pursuant to article 600 of the Code of Civil Procedure, until an agreement is reached between the parties or a judgment is issued which definitively identifies the debtor's share of ownership of the asset that was originally common.

Division of a jointly held asset is feasible when it is possible to determine definite shares which can be used autonomously and freely, while inconvenient divisibility takes place when it is not possible to create a number of homogeneous shares which is the same as that of the co-owners (Court of Cassation, Section II, 3 May 1996, no. 4111).

From an economic and functional point of view, the division must allow the maintenance of the functionality of the whole, even if to a proportionally lesser extent, taking into account the normal purpose and use of the asset (Court of Cassation, Division II, 7 February 2002, no. 1738); that is to say the asset can be split into many separate portions, each of which can be used autonomously by each sharer according to the ordinary and normal function of the whole (Court of Cassation, Division II, 23 October 2001, no. 12998; Court of Cassation, Division II, 24 November 1998, no. 11891).

III.13.1.3 Sale of the indivisible share

If the common asset cannot be divided, the enforcement judge may order the sale of the indivisible share owned by the execution debtor.

The sale of the indivisible share involves a partial amendment of the subjective structure of the co-ownership as - unlike in separation in kind - it does not cause any decrease in the combined common assets, nor does it involve any restriction of the rights of the other co-owners, because the co-ownership relationship is not destroyed.

Article 600. Summons of co-owners

The enforcement judge, on application by the attaching creditor or co-owners and having heard all the interested parties, if possible, arranges the separation of the share in kind which is owed to the debtor.

If the separation in kind is not requested or is not possible, the judge provides for the division to be carried out pursuant to the Civil Code, unless he thinks it probable that the indivisible share will be sold for a price equal to or higher than its value, determined pursuant to article 568.

Article 180. Notice of attachment given to co-owners of the attached asset.

The notice given to co-owners of the indivisible assets in the case provided for by article 599, paragraph 2 of the Code must state the attaching creditor, attached asset, the date of the writ of attachment and the transcription of it. The notice is signed by the attaching creditor.

In this notice or in another separate one the interested parties must be invited to appear before the enforcement judge in order for the measures set out in article 600 of the Code to be issued.

III.13.2 Enforcement of the decision in which the debtor has a duty to perform certain action, tolerate certain actions, or to omit certain actions

Where the enforcement in specific form related not to an asset but to the debtor's performance, this type of execution is called the enforcement of '*obblighi di fare o di non fare*'.

The condition of such execution is that the activity in question is fungible, in other words that it can be performed by a party other than the obligee, as per articles 2931-2933 of the Civil Code and 612-614 of the Code of Civil Procedure.

Article 612 provides that the enforcement judge, in his order, should designate the judicial officer who is to levy execution.

A 'personal' assignment of this nature is justified by the complexity - procedural and in timing - that may arise in enforcement of an obligation of performance or non-performance.

The same requirement that the person in charge of a procedure should not be substituted also applies to the judge in certain stages of the process - see, for example, article 174 of the Code of Civil Procedure.

III.14 Sequestration of goods

The '*sequestro giudiziario*' is an interim measure regulated by article 670 of the Code of Civil Procedure, which does not protect the claim or its security in the form of assets in general - as does the precautionary seizure - but is directed towards the preservation and custody of assets whose ownership or possession is disputed, when their de facto state pending judgment entails a practical risk that they might deteriorate, be removed or be altered in such a way as to prejudice the implementation of the right at issue.

III.15 Enforcement of foreign enforceable documents from Non EU States

The recognition and execution of judgments issued by judges from third countries are regulated in Italy by law no. 218/95, which provides, as a general rule, the automatic recognition of decisions that respect some basic requirements of compatibility with the Italian legal system, without the need for recourse to any procedure.

However, in order for it to be approved by the competent Court of Appeal by territory, and therefore to become enforceable in Italy, the sentence issued by a judicial authority of a third country must, in addition to being finalized, duly legalized, if necessary by an Italian consular representation, or by a public official through apostille (for the countries signatories to the Hague Convention of 5 October 1961).

The law provides that in the event of contestation of the recognition of a decision issued by the judge of a third country, or when it is necessary to proceed with enforcement, anyone interested can ask the ordinary judicial authority to ascertain the recognition requirements.

PART IV: ENFORCEMENT COSTS

IV.1 General questions

IV.1.1 Judicial Officers costs

According artt. 23, 27, 29 e 34 D.P.R. n. 115 del 2002, parties requesting the service of documents or enforcement must pay in advance to the judicial officers the fees and travel charges or the cost of dispatch of the documents to be served by post.

The fees payable are those laid down by law, the rates varying depending on the number of addressees (from € 2.58 for two addressees to € 12.39 for over six addressees).

The travel charge is payable at the rates laid down by law, varying according to the distance in kilometers travelled:

the amount is (for distances of over 18 km the charge is € 4,36, plus € 0,93 for distances of 6 km thereafter or for a fraction thereafter of not less than 3 km).

The fees and travel charges are increased by a half for urgent documents, in other words those to be served on the same or following day.

In the case of enforcements on movable and immovable assets and for any document requiring the production of a report, excluding the protest document, a single fee is payable to the judicial officers at the following rates:

for cases from EUR 516.46 to EUR 2,582.28:	EUR 2.58;
for cases from EUR 516.46 to EUR 2,582.28:	EUR 3.62;
for cases from EUR 2,582.28 to indeterminable value:	EUR 6.71.

For enforcement documents, the travel charge is payable for the outward and return journey at twice the rate specified for the service of notice.

According to the art. 122 of the bailiffs system they are also paid:

1) by means of proceeds constituted by the rights that they are authorized to demand, according to the provisions of this system or other laws, on the deeds and commissions inherent to their office;

2) with a percentage on the credits recovered from the Treasury, on the civil, criminal and administrative samples and on the sums collected by the Treasury as a result of the sale of the bodies of crime, at the rate of fifteen percent.

When foreclosures are carried out in accordance with article 492-bis of the civil procedure code or foreclosure, bailiffs are remunerated by means of an additional remuneration, which is part of the execution costs.

IV.1.2 Real estate enforcement proceedings costs

To have an idea of the costs for real estate enforcement proceedings is useful to describe the various steps provided:

- request from the creditor made to the debtor to fulfill his debt (notification of the precept),
- affixing a bond of unavailability to the real estate placed to guarantee the uncollected credit (foreclosure carried out by the bailiff);
- transcription in the real estate registers;
- request addressed to the judge to proceed with the forced sale (request for sale),
- various sales operations indicated by the judge when he makes the sales order;
- appointment of the expert estimator;
- appointment of sales delegate;
- appointment of judicial custodian;
- advertising on the website "public sales portal";

The creditor anticipates costs (stamps, unified contributions, certificates and certifications, the expert's compensation and that for the activity of the attorney in charge), which will be returned to him only if there are proceeds from the sale of the property.

The diagram below shows that the cost of a forced property execution procedure accounts for a percentage equal to approximately 45%.

- mortgage credit € 100,000,
- sum to be returned by the debtor € 85,000
- property value € 125,000,
- proceeds from the auction sale € 45,000.00
- expenses € 20.000,00 euro,

- residual debt € 40,000.00

IV.1.3 Exemptions from the payment of enforcement costs

- 1) The executive process relating to exempt subjects (work, family) is not subject to the unified contribution
2. The process, including executive, of opposition and precautionary measures, regarding checks for the maintenance of the offspring, and the one concerning the same, is not subject to the unified contribution.

PART V: LINKS, LITERATURE AND SOURCES

- 1) Order of Judicial Officials R.D. 1229/1959;
- 2) Consolidated text of the costs of justice (G.U.n.139 of 15 June 2002, s.o.n.126/L);
- 3) Notifications of documents by postal services Law 20/11/1982, n. 890;
- 4) Notifications by Lawyers Law 21 January 1994 n. 53;
- 5) Civil Procedure Code.