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GARNISHMENT ON BANK ACCOUNTS - ITALY

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Garnishment on bank accounts - Italy

COVERAGE

Garnishment on bank accounts - Italy

- Does the seizure solely freeze (as in the European Regulation), or can it also recover (as in various domestic regimes)?
- The seizure not only freezes* bank accounts (or assets or goods), but it can also recover them**
- ** "sequestro conservativo", art. 671 f. c.p.c. (civil procedure code)*
- *** "pignoramento presso terzi", c.p.c., art. 543 -554*

Garnishment on bank accounts - Italy

- Does the seizure extend to the account, or moneys in the account, up to the value of the claim?
- Yes, it does extend up to the value of the claim (obviously, if money suffices).

- Does the seizure apply to the moneys sitting in the account at the time of seizure, or extend to any new moneys flowing in post seizure?
- The seizure applies to all the moneys sitting and flowing between the service of a garnishment document and the judge's order, generally at the hearing indicated by the creditor in that document itself.

Garnishment on bank accounts - Italy

- Does the seizure extend forever (until the claim is met?), or whether a statutory/ mandatory sunset applies?
- They may comprise instalment payments over a period of time as well as single payments; but it depends on the judge's order and on the kind of debt of the third party (to be paid in a single solution or periodically, e.g. salaries, wages, rentals, and so on)

- Will there be a mandatory pre-recovery freeze (UK, Portugal?), or direct recovery?
- No, it's not mandatory
- BUT
- It's possible to begin with a direct recovery. But it's also possible a freezing order (precautionary seizure), if the claim is not yet ascertained by an enforceable title; that is automatically converted into assignment or garnishment at that time.

Garnishment on bank accounts - Italy

ADMINISTRATION

Garnishment on bank accounts - Italy

- What are the costs of associated with garnishment? Can the creditor file, or does an Enforcement Agent or lawyer file on its behalf?
- It depends on the credit amount.
- For a € 3.000 claim, Court fees € 245,26 and lawyers' fees from € 428 up to € 1.539 (the judges decides).
- The creditor cannot file on his own, but he needs BOTH an Enforcement Agent AND a lawyer.

Garnishment on bank accounts - Italy

THE BANK SIDE

Garnishment on bank accounts – Italy
Information infrastructure

- Is there a national register of bank accounts?
- NOT YET ACCESSIBLE,
- but recent law 162/2014 introduced a new system of accessing to the public databases and even of bank accounts, but a Ministerial Decree, expected within some months, is needed to specify the rules for these accesses, delegated to the Judicial Officers on behalf of creditors

- If your country has no register, how will creditors know where bank accounts are held?

They have to do researches on their own and at their own risk.

Garnishment on bank accounts – Italy procedural requirements

- Service of the freezing order to the Bank main office or local offices are both legally permitted?
- It's possible to serve (also seizure garnishment orders, anyway) both the bank main office and the local office where the account sits or is kept.
- Service to the Bank is regulated in a way that the precise time of service can be determined?
- No, as well as any other service, any Public Officer can serve the garnishment act between 7 a.m. and 9 p.m. in workable days
- A secure electronic service system exists?
- Yes, it's "posta certificata" (art. 149-*bis* civil procedure code); but it's necessary that the defendant has got an e-mail "certified" address entered in public registers
- Service at the bank front office suffices?
- Yes, provided it's one of the two relevant Bank offices (the main Bank office, or the one where the account is held or kept)

Garnishment on bank accounts – Italy
Bank responsibilities, obligations and liabilities

- The Bank is required to provide a proper stamp which marks the date and time of service?
- No, it all depends on what Judicial Officer states in his report, that is public fiduciary
- The law provides that the garnishment is effective on the date and time of the stamp?
- Yes, at the date the garnishment act is serviced by the Public Officer
- The law provides for vicarious liability of the bank to the full amount of the claim, in case of withdrawals from the account by the debtor?
- Yes, it does. The bank's liability is however limited up to one and a half times the principal of the claim, including interests, costs and fees.

Garnishment on bank accounts – Italy Conservatory attachment (pre-court)

- Are there any safeguards against abuse and what are they?
- No, it's only possible to claim for costs, compensation or damages
- Any kind of conservatory (or precautionary) attachment is not permitted without a Court order or writ

- Do safeguards include liability for damages or is there a creditor guarantee deposit?
- Safeguards descend into liability for damages; it's never required a creditor guarantee deposit

Garnishment on bank accounts – Italy

Can all accounts be garnished or are there restrictions (deposit accounts; jointly held accounts, distribution/escrow accounts etc)?

There are some restrictions: not for jointly held accounts (unless with a special procedure concerning the joint account holder)

Sometimes it depends on the nature of the debtor's credit (maintenance claim, doles, out-of-works benefits, salaries and wages, public purse), that can be garnished under special circumstances or in certain fractions

- Are certain social benefits, such as child benefits and old age pensioner benefits excluded?
- Yes, they are: e.g., wages, only 1/5; old-age and retirement pensions: 1/5 of what exceeding a variable minimum); maintenance claims