

EXECUTION WITH RESPECT TO FUNDS ADMINISTERED BY A FINANCIAL INSTITUTIONS

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The enforcement of claims is an essential requirement for the efficient operation of any market economy. Considering that the number of judicial executions (enforcement actions) increased from year to year due to the greater number of business transactions in Hungary, investors demanded more efficient legal protections. The revision of the enforcement act took place by Act No. LIII. of 1994 on Judicial Executions (“Executions Act”). Due to the fact that the business and legal practice required additional changes for the purpose of making the execution procedure more efficient, simple, and expeditious as well as to avoid the non-recoverability of the outstanding debts, during the experiences of the past 6 years, the complex revision of the Execution Act become indispensable.

Among the several important amendments made by Act No. CXXXXVI of 2000 to the Executions Act effective as of September 1, 2001, one of the most significant change is the revision of the provisions regarding the execution against funds administered by financial institutions. In principle, Section 6 of the Executions Act set forth in the event if on the basis of an enforceable judgement funds payable by the debtor may be collected via bank transfer from the account of the debtor such judgements be enforced through the banking system via a so-called immediate collection order. And judicial execution procedure may only be claimed by the creditor, if the immediate collection order would fail to produce a result. The principle source of satisfying immediate collection order are the funds administered by a financial institution in the name and on behalf of the debtor.

Section 7 (c) of the Executions Act as amended, specifies those funds kept by the financial institutions which shall be defined as subject to an immediate collection order. These are a) the funds deposited into a bank account opened pursuant to a current account contract, b) the sums deposited pursuant to a deposit contract or pursuant to a savings deposit contract, and any other sums that are due and available to the debtor as payable by the financial institution pursuant to other contracts.

In the course of a judicial execution procedure, the provisions pertaining to funds deposited with financial institutions shall also apply to the cash assets of the debtor held in a client account in accordance with the provisions applicable to investment firms.

Section 79/A of the Executions Act, in principle sets forth that the deposits made by a debtor with a financial institution may be subject to execution without any limitations, except for the cash assets of natural persons. Such limitation is specifically detailed in Section 79/A of the Executions Act.

If the funds in the bank account indicated in the writ of transfer or in the immediate collection order are insufficient, whether in part or in full, to cover the amount of the judgment, the financial institution shall include the debtor's other accounts it administers. The financial institution shall carry out the inclusion of other accounts in the following hierarchical order: a) funds held in a current account, b) funds held in a current account pursuant to a deposit contract, c) funds held in a bank account, d) funds deposited pursuant to a deposit contract, e) funds deposited pursuant to a savings deposit contract.

The hierarchy defined above shall be first applied to all HUF accounts, and then to all foreign currency accounts of the debtor. From the accounts specified above, those where a lower interest rate is applicable shall first be taken into account, and then those with higher interest rates, or, if the interest rate is the same, then the accounts in which deposits were made earlier than those deposited in a timely order shall be subject to execution.

In respect of the account that is held by more than one person with a financial institution, such may be subject to execution in whole regardless of which account holder is named as the debtor. The account holder who is not named as a debtor may file a claim to recover any sums withdrawn from the joint account and to which he is entitled.

The funds administered by a financial institution in the name of the debtor, but which are pledged as security (collateral) for other transaction and therefore are not considered as liquid may be subject to an attachment only for claims that are derived from or are in connection with the transaction to which the security pertains.

Section 79/E of the Executions Act establishes the obligations and liabilities for financial institutions as well. If a financial institution effectuates any payment from the funds that are subject to execution pursuant to a court decision to the debtor or to any other person, the financial institution shall be held liable for the amount claimed by the creditor. Further, in case a financial institution denies administering the account of the debtor or refuses to comply with the writ of execution, the creditor may file a claim against such financial institution for the collection of such claim.

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