



# The prerequisites for THE IMPLEMENTATION OF A COMPULSORY EXECUTION MEASURE

## • The basic general requirements for enforcement

The formal requirements are:

- Enforcement Order
- Execution clause
- Service
- Petition

All types of compulsory execution are subject to these conditions. The requirement of a petition purposes to ensure that no enforcement proceedings may begin ex officio (with the exception of executing a declaration of intent pursuant to Art. 894 Code of Civil Procedure [Zivilprozessordnung - ZPO]).

### 1. ENFORCEMENT ORDER

An enforcement order is the document containing a judicial order (for payment or action). A debtor must comply with the instructions outlined in this document in order to fulfil his obligations.

The enforcement order, as mentioned previously, is one of the formal requirements for enforcement and must also satisfy requirements regarding content.

The question arises as to which documents may be deemed enforcement orders.

### TYPES OF ENFORCEMENT ORDERS

The final judgement, referred to in art. 704 Code of Civil Procedure [ZPO] constitutes one of the most important enforcement orders: “*Compulsory execution is effected from final judgements that are legally binding or have been declared provisionally enforceable*”. The rules applying to enforcement thereof are defined in arts. 704-793.

In turn, art. 794 lists additional enforcement orders and subjects them to several special rules (art. 795 Application of the General Provisions to the Additional Enforcement Orders [Anwendung der allgemeinen Vorschriften auf die weiteren Vollstreckungstitel]):





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**art. 794 Additional Enforcement Orders** “(1) Furthermore, compulsory execution will result:

1. from settlements that have been concluded between the parties or the party and a third party before a German court or an arbitration committee established or approved by the State Department of Justice [Landesjustizverwaltung] to resolve the dispute fully or with regards to part of the matter in dispute, as well as from settlements that have been recorded pursuant to art. 118 (1)(3) or art. 492 (3).

2. from decisions regarding the fixing of costs;

2a. (omitted)

2b. (omitted)

3. from verdicts which are being appealed against;

3a. (omitted)

4. from enforcement notices;

4a. from verdicts that declare arbitral verdicts to be enforceable, insofar as the verdicts are effective or have been declared to be provisionally enforceable;

4b. from decisions pursuant to art. 796b or art. 796c;

5. from documents that have been recorded by a German court or a German notary public within the restrictions of its, his or her authority and in the specified form, insofar as the document is based on a claim which is open to settlement, which is not aimed at stating a declaration of intent and does not concern a tenancy of living space, and the debtor has submitted in the document to immediate compulsory execution on grounds of the claim that must be defined;

6. from European orders for payment that have been declared enforceable.

(2) Insofar as it is necessary to sentence an involved party to accept the compulsory execution pursuant to the provisions of arts. 737, 743, art. 745 (2) and art. 748 (2), the sentence will be replaced to the effect that the involved party concedes to the immediate compulsory execution of the items under his jurisdiction in a document recorded pursuant to paragraph 1, no. 5.”

Enforceability may also be ordered for other enforcement orders than the documents specified in arts. 704 and 794.

By way of example, art. 801 provides the federal states with the option to permit judicial compulsory execution for other reasons than the enforcement orders specified in arts. 704 and 794.

## § 704

As stated previously, compulsory execution results most frequently from a court verdict. The law assumes that execution results from an effective or provisionally enforceable final judgment (art. 300 or art. 704 Civil Procedure Code [ZPO]).





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Furthermore, the law permits several verdicts on compulsory execution to be considered as final judgments. Notable examples are provisional judgements, which pursuant to art. 599 (3) are to be considered as final judgements for the purposes of compulsory execution.

Art. 704 makes a distinction between **final and provisional enforceability**. A final judgment (art. 705) is the case when there is no further possibility for appeal, meaning when the time allowed for appeal has passed without being utilised (art. 19 Law Concerning the Introduction of the Civil Procedure Code [Gesetz betreffend die Einführung der Zivilprozessordnung - EGZPO]), or if the debtor has waived any right of appeal. Upon application, the clerk of the trial court will confirm its validity pursuant to art. 706 Civil Procedure Code [ZPO], e.g. with the sentence “*This judgment is effective*”.

In the time until it becomes effective, it may be provisionally enforceable (arts. 708-720 Civil Procedure Code [ZPO]). With regards to final enforceability, it may become effective either upon issuance of the judgment or after the right to appeal has expired.

By contrast, execution may also commence once the judgment has been passed and before it becomes non-appealable, as part of a provisional enforcement. This accelerates proceedings. However, the debtor is entitled to exhaust all legal avenues in an attempt to obtain a more favourable judgment.

Therefore the debtor should make use of the period for appeal, as pursuant to art. 717 a judgment that has been declared provisionally enforceable may be repealed or amended. As a result the creditor may execute the provisional enforcement at their own risk, as they will be “*liable for damages*” in the event that the enforcement is repealed.

Arts. 708 and 709 stipulate that all final judgments specified therein are to be declared provisionally enforceable. Art. 708 lists those judgments that are to be declared provisionally enforceable without requiring a deposit, whereas the judgments covered by art. 709 require a deposit from the creditor in order to be enforced provisionally.

### § 794

Art. 794 (1) defines additional enforceable orders. The most important ones are:

- Court settlement (no. 1)
- The enforceable document (no. 5)
- Settlement between lawyers (no. 4b)

#### ► Settlement between parties / court settlement (no. 1)

This court settlement differs from the withdrawal of action outlined in art. 269. A withdrawal of action terminates proceedings even though the parties have not reached an agreement. A court settlement serves to continue proceedings even though the parties have reached an agreement (e.g. if one of the parties requires the judgment resulting from the proceedings).





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## ► The enforceable document (no. 5)

In this case the court or notary public is required to intervene so that the agreement between the parties can obtain the status of an order.

This order can be enforced in accordance with the rules defined in art. 797 (“How to proceed with enforceable documents” [“Verfahren bei vollstreckbaren Urteilen”]).

## ► Settlement between lawyers (no. 4b)

A settlement between lawyers provides the option to obtain enforceability for a settlement that has been reached without involving any court proceedings. Thus it is an out-of-court settlement.

**Art. 796a Requirements for declaring a settlement between lawyers to be enforceable:** “(1) A settlement concluded by lawyers on behalf of and with the authority of the parties they represent is declared enforceable upon application of one party, if in the settlement the debtor has submitted to immediate compulsory execution and, specifying the date on which the agreement was made, the settlement has been presented to a local court (Amtsgericht) that is also the general court of jurisdiction of one of the parties at the time the settlement was concluded.”

**Art. 796c Declaration of enforceability by a notary public:** “(1) In addition, with the parties consent a notary public who resides in the district of a competent court as defined in art. 796a (1) may accept a settlement for custody and declare it to be enforceable. Arts. 796a and 796b apply accordingly. (...)”

Arts. 796a and 796c state clearly that a settlement between lawyers must be presented to or given into custody to a court (art. 769a) or a notary public (art. 796c) before it can be declared enforceable.

An application for enforceability of the settlement must be made to the trial court (art. 796b), however, this is more easily achieved than a final judgment by the court.

Other orders contained in art. 794 are:

- the decisions regarding the fixing of costs (no. 2)
- appealable decisions (no. 3)
- enforcement notices (no. 4)
- Declaration of arbitrations as being enforceable (no. 4a)
- European payment orders (no. 6)





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## Other orders

Other enforcement orders can also be found outside of the Code of Civil Procedure [ZPO], for instance:

- The decision to award the bid in compulsory auction proceedings concerning immovable property (art. 93 Law on Foreclosure and Forced Administration - [Gesetz über die Zwangsversteigerung und die Zwangsverwaltung - ZVG])
- Entry into the insolvency list (art. 201 (2) Insolvency Statute [Insolvenzordnung - InsO])

## CONTENT OF AN ENFORCEMENT ORDER

### ► Enforceability – Rule of Certainty of Law [Bestimmtheitsgebot]

The order must include an enforcing performance on the part of the debtor. The order must define this performance clearly and may not be vague or ambiguous.

The rule of certainty of law generally assumes that each encroachment upon civil rights may only be based upon an exact wording (foundation of Basic Law). Thus any ambiguities contained in an order must be interpreted by the enforcement authorities. However, this interpretation pertains only to the content of an order.

Creditors and debtors must be identified by name. Pursuant to art. 727, an enforceable copy can be issued for or against a legal successor if the legal succession or ownership is clear to the court.

### ► Additional requirements

The aforementioned requirements of certainty apply to all orders. Additionally, arts. 735-749 govern rules for content regarding individual cases.

## 2. EXECUTION CLAUSE

The clause proceedings serve to actually effect the compulsory execution. According to art. 724 compulsory execution is “*executed based on a copy of the judgment (enforceable copy) that includes an execution clause.*” The clause is not issued ex officio, but rather upon application. Thus the creditor must apply to the trial court for the clause.

The executing authority checks the formal requirements only, and not the validity of the order. For that matter, executing authorities should not be encumbered with substantive issues, as the enforcement proceedings have been concluded. They should also not be required to check if and how an order came about. However, it must be certain that the order exists and can be used for execution. The clause solves this problem in this respect, as it permits the court to determine if a formally valid order is present, if it is ready for execution, if the order contains enforceable content and if the plaintiff (creditor) and defendant (debtor) are identical in each case.





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Pursuant to art. 725 the execution clause states “*The aforementioned copy is issued to etc. (name of party) for the purpose of compulsory execution.*”

It is necessary to distinguish between a basic clause and a qualified clause (clauses that amend or transfer an order respectively):

## THE BASIC CLAUSE

In this case the clause attests that the order is ready for actual enforcement. Thus the clause is the official attestation of enforceability.

It concludes contentious proceedings and initiates enforcement proceedings.

The basic clause proceedings derive from art. 724. Pursuant to this, the following points are checked to permit issuance of the clause:

- Application of creditor
- Presence of an existing enforceable order
- Readiness of order for execution (valid or provisionally enforceable judgment)
- The order may not be qualified (art. 726) and may only be enforced against the persons specified in the order (art. 727)

The clerk of the office is responsible for issuing the clause.

## SPECIAL CLAUSE FORMS

Arts. 726-729 stipulate special clause forms: the execution clause that amends or transfers the order.

The registrar (Rechtspfleger) is responsible for issuing clauses that amend or transfer the order (art. 20 (12) Law governing Registrars [Rechtspflegergesetz - RPfIG).

### ► The execution clause that amends the order

Art. 726 governs this form of execution clause. According to this article, a clause amending an order is required if the obligation to perform is worded clearly based on the content of the order but can only be enforced if the creditor substantiates a fact depending on him or her and this also is also done.





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Thus the requirements for issuing an execution clause that amends the order are as follows:

- The enforcement depends on the occurrence of a fact.
- It falls to the creditor to provide evidence of this fact.
- This evidence is recorded in public or publicly certified documents.

## ► The execution clause that transfers the order

According to arts. 727 to 729 an execution clause that transfers the order is required when compulsory execution is effected on behalf of the creditor's legal successor or against the debtor's legal successor.

In these cases one person is replaced by another person so as to avoid new proceedings. As a matter of fact, pursuant to art. 750 (1) this would require a new trial, as the order must contain the identity of the parties involved in the enforcement and this would not be the case if these parties were replaced by other persons: **art. 750 Requirements for Compulsory Execution [Voraussetzungen der Zwangsvollstreckung]** "(1) Compulsory execution may only commence if the persons on behalf of and against whom it is to be effected are named in the judgment or the appended execution clause (...)."

Clause	Responsible for Issuing
Basic clause	Clerk of the office of the trial court (art. 724)
Clause that amends or transfers the order	Registrar of the trial court (art. 20 (12) Law governing Registrars [RPflG])
Enforceable document	Custodian notary public (art. 794 (1)(5))

### 3. SERVICE, PECULIARITIES

**Art. 166:** "(1) Service is the notification of a person on a document in the form specified in this order. (2)(...)."

Thus service constitutes the formal notification of written statements and decisions made to the recipient of the service. The recipient is to be granted the option to take note of the content of the document being delivered. Furthermore, the fact, type and time of notification (or possibility of taking note) is to be documented.

Arts. 166 et seq. govern the details of service, art. 750 (Requirements for Compulsory Execution [Voraussetzungen der Zwangsvollstreckung]) contains additional provisions, thus service is a basic requirement for compulsory execution, as is naming the debtor and creditor.





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The law permits simultaneous service and compulsory execution. Art. 720a and the provisional attachment [Sicherungsvollstreckung] form an exception (pursuant to art. 750 (3)). According to this, compulsory execution may only commence “if the judgment and the execution clause have been delivered at least two weeks beforehand.”

Service can be made “ex officio” (arts. 166-190 Code of Civil Procedure [ZPO]) or “at the instigation of the parties” (arts. 191-195 Code of Civil Procedure [ZPO]).

### 4. PETITION

**Art. 753 enforcement by judicial officers:** “(1) Insofar as compulsory execution is not assigned by the courts, it is performed by judicial officers who effect it on behalf of the creditor.

(2) The creditor can call upon the assistance of the court due to the issuance of the order for compulsory execution. The judicial officer mandated by the court is considered mandated by the creditor.

(3) With the consent of the Bundesrat, the Federal Ministry of Justice [Bundesministerium der Justiz] is authorised to introduce by statutory instrument obligatory forms for the mandate as defined in paragraph 2. Special forms may be stipulated for mandates submitted electronically.”

The creditor may decide at their own discretion if and when they want to enforce their claim arising from the enforcement order. They determine the start, type and extent of the access to enforcement. The creditor may also withdraw the mandate at any time and thus is “master of the proceedings”. Thus enforcement is not executed “ex officio”. Therefore the debtor’s application (declaration of intent) is a step that institutes proceedings.

The order to levy execution can be issued in writing or verbally. If the courts (a court competent for execution or a land registry office, among others) are competent, then submissions must be made to the court in writing or transcribed (art. 496 Code of Civil Procedure [ZPO]).

#### • Interim Legal Protection

It is possible, by means of detention or interim injunction, to secure the property claim asserted in a trial until a judgment is achieved (arts. 916-945 Code of Civil Procedure [ZPO]).







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In all cases the creditor must exhibit two important foundations of interim legal protection: a claim and a reason (art. 920 Code of Civil Procedure [ZPO]).

Enforcement takes place to secure the claim. A civil arrest (arts. 933-934 Code of Civil Procedure [ZPO]) permits one to detain the debtor so that they cannot dispose of their assets to the disadvantage of the creditor. In fact the proceedings covering detention serve to secure a claim to payment, whereas an interim injunction is reserved for other claims.

Liability for damages (art. 945 Code of Civil Procedure [ZPO]) applies both in the case of detention and an interim injunction: *“Should the order for detention or interim injunction prove unwarranted from the outset or should the measure be repealed based on art. 926 (2) or art. 942 (3), the party that obtained the order will be liable to indemnify the opponent for the damage incurred by execution of the measure, or by the provision of a security to avert enforcement or to effect a repeal of the order.”*

Pursuant to art. 717 (2) enforcement takes place at the risk of the applicant in all cases: *“(…)(2) If a judgment that has been declared provisionally enforceable is repealed or amended, the plaintiff is liable to indemnify the defendant for damages incurred by the enforcement of the judgement or for payments made to avert an enforcement. The defendant can assert a claim for damages in the pending proceedings; if a claim is asserted, it is to be considered pending at court at the time of payment or performance.”*

## 1. ARREST

### THE PROCEEDINGS

Detention is instituted by an applicant filing an application with the court defined in art. 919 Code of Civil Procedure [ZPO]: *“Both the court of the principal proceedings and the district court in whose jurisdiction the item to be secured or the person to be detained is located are competent for ordering detention.”*

According to art. 920 Code of Civil Procedure [ZPO] the applicant must demonstrate a reason for detention and a claim, both of which must be substantiated before the court for the application to be considered founded.

#### ► Claim to detention

Pursuant to art. 916 (1) Code of Civil Procedure [ZPO] the claim to detention must be made on grounds of a monetary claim or on grounds of a claim that can be transferred to a monetary claim.





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### ► Grounds for detention

As interim legal protection is generally urgent, the applicant must likewise demonstrate this urgency for detention. With regards to the grounds for detention, the law distinguishes between attachment (art. 917 Code of Civil Procedure [ZPO]) and civil arrest (art. 918 Code of Civil Procedure [ZPO]):

#### Attachment (art. 917 Code of Civil Procedure [ZPO])

In this case it is to be feared that enforcement of the judgment would be frustrated or complicated severely.

#### Civil arrest (art. 918 Code of Civil Procedure [ZPO])

Preventive custody is only possible if there is no other way to remedy a risk to enforcement. This is understandable, as a civil arrest represents a limitation of freedom. Such an arrest may therefore only be permitted if e.g. there is a risk of the debtor eluding their obligations by means of escape.

In the latter case it should be noted that art. 933 speaks of “custody” or “other limitation of personal freedom”. This also shows that civil arrest should be employed only in the most extreme cases.

### ► Proceedings covering detention

As stated previously and according to art. 920 (1) and (2) the applicant must demonstrate a claim and a reason for detention, which must be substantiated before the court for the application to be considered founded. The application before the competent court constitutes the proceedings covering detention.

Pursuant to art. 294 the applicant may “make use of all evidence” to satisfy the furnishing of prima facie evidence. However, even if it is not possible to substantiate the claim or grounds for detention, the court may order detention by making it subject to a deposit (art. 294).

With regards to a decision on the petition, the court can base its decision on a hearing.

In this case the court passes a final judgment. However, if it decides without a hearing then it issues an order that must then be served to the opponent in the party litigation (art. 922 (2)).

The decision and the judgment that order the civil arrest are detention orders [Arrestbefehle] (which must not be confused with arrest warrants [Haftbefehl]).

There are judicial remedies for an detention order. According to art. 924 objection is made to the decision, and must be made in writing before the local court or to transcribed before the office. As a rule it is possible to appeal against the judgment (art. 511).





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## ENFORCEMENT

**Art. 928** “The provisions concerning compulsory execution are to be applied to the enforcement of detention, insofar as the following articles do not contain deviating provisions.”

Pursuant to art. 928 the enforcement of detention is based on the general rules for compulsory execution.

The other articles refer to several special rules (arts. 929-934). According to these, detention orders “only require an execution clause if the enforcement is effected on behalf of another creditor than the one named in the order, or against another debtor than the one named in the order.” (art. 929 (1)). Furthermore, service may occur up to one week after enforcement (art. 929 (3)).

With regards to attachment, for the purposes of security assets are either seized (art. 930) or an equitable mortgage is registered (art. 932).

## 2. INTERIM INJUNCTION

An interim injunction serves to secure a claim not based on money (arts. 935-942).

Pursuant to arts. 935 and 940 interim injunctions are applied in reference to a particular claim (art. 935 - court order to secure assets [Sicherungsverfügung]) or to a contested legal relationship.

- **Enforcement resulting from a European enforcement order certificate if the debtor resides in another Member State**

Pursuant to art. 722 foreign judgments may only be enforced “if their admissibility is declared by a judgment for enforcement”. This procedure is frequently replaced or simplified by EU directives and regulations, or by bilateral and multilateral agreements.

Furthermore, the enforcement order certificate regulation (European enforcement order certificate regulation - Regulation (EC) No 805/2004) serves to assert uncontested claims more easily.





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A European enforcement order certificate (judgments, decisions, payment order or enforcement order, decisions by a court clerk regarding the fixing of costs, court settlements and public documents) is issued for uncontested claims only, and must be applied for before the competent authority (the trial court in the principal proceedings) in the Member State of origin (art. 24 (1) Regulation (EC) No 805/2004). Legal validity is not required.

As of 21 October 2005 the underlying Regulation (EC) No 805/2004 of 21 April 2004 is applicable in all Member States with the exception of Denmark.

However, as it already came into effect on 21 January 2005, the regulation applies to decisions passed after 21 January 2005. 1 January 2007 is the reference date for Bulgaria and Romania.

Even if the requirements for issuing a European payment order are met, an applicant may effect a judgment and have it confirmed as a European enforcement order certificate. It is also conceivable to instead apply for an international clause in the country in which the enforcement is to be effected.

In the event that a European enforcement order certificate is on hand that must be enforced provisionally, no declaration of enforceability is required in the Member State of enforcement (art. 5 Regulation (EC) No 805/2004).

The court will issue the European enforcement order certificate using the standard form in Annex I (art. 9 Regulation (EC) No 805/2004).

A foreign or German execution clause is not required in Germany, it is replaced by the confirmation (art. 1082 Code of Civil Procedure [ZPO]).

### SERVICE

Articles 13 to 17 of the regulation pertain to serving the document that institutes proceedings, which the judicial officer is not required to check.

The national law of the respective Member State may require service with proof of receipt of the enforcement order certificate. If art. 750 Code of Civil Procedure [ZPO] requires proof of service of the debt certificate, then this proof must be furnished, even if the enforcement is based on Regulation (EC) No 805/2004.

### COMPULSORY EXECUTION

The creditor can instigate enforcement themselves, but to do so must apply to the court or authority responsible for the enforcement of European enforcement orders in the Member State of enforcement. These authorities are listed on the website of the European Judicial Network in civil and commercial matters.

[http://ec.europa.eu/civiljustice/enforce\\_judgement/enforce\\_judgement\\_gen\\_en.htm](http://ec.europa.eu/civiljustice/enforce_judgement/enforce_judgement_gen_en.htm)





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Pursuant to art. 20 (2) Regulation (EC) No 805/2004 the creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement (see above) with the following documents:

- a copy of the judgment, the public document or the court settlement which satisfies the conditions necessary to establish its authenticity;
- a copy of the European enforcement order certificate;
- where necessary a translation of the certificate in the official language of the Member State of enforcement. As a rule a translation is not be required unless the standard form contains individual specifics.

It may also be a good idea to present the competent enforcement authority with evidence of service of the certificate to the debtor. However, this is not an essential requirement (Strasser, Rpfleger 2007, 249 [Judicial Officers 2007, 249]).

The enforcement authorities must check if the creditor has produced the documents required for enforcement.

### ► Enforcement of a judgement in Germany, if no reciprocity or agreed reciprocity is warranted with the country in which the judgment was passed.

Art. 328 (1)(5) Code of Civil Procedure [ZPO] excludes the acceptance of a judgment if it was passed in a country with which there are no contractual relations in the form of bilateral or multilateral agreements regarding reciprocal acceptance and enforcement of court judgments. This provision also affects cases in which bilateral or multilateral agreements exist, for instance judgements concerning inheritance law.

If multilateral agreements are present, the judgment must be furnished with an execution clause (Art. 31 European Jurisdiction and Enforcement Regulation - Regulation (EC) No 44/2001 / Lugano Convention I - 88/592/EEC).

If bilateral agreements are present the decision by which the foreign judgment was declared enforceable is deemed an enforcement order (cf. art. 794 (1)(4a) Code of Civil Procedure [ZPO]), together with the judgment that has been declared enforceable.

The judgement of the court of a Member State of Council Regulation (EC) No 44/2001 of 22 December 2000 is accepted in another Member State pursuant to art. 33 Brussels I (European Jurisdiction and Enforcement Regulation), insofar as there are no reasons to object to acceptance as defined in arts. 34 or 35 Brussels I. The presiding judge of a civil court has sole competence (art. 39 in conjunction with Annex II of Brussels I/Lugano Convention II). Local jurisdiction is determined by the place of residence of the debtor. The judgement must exhibit an execution clause (arts. 4 (1), 9 (1) Recognition and Enforcement Execution Law [AVAG]).





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The judgement of the court of a contracting state of Brussels I/Lugano Convention I will be accepted in another contracting state without requiring a new trial, insofar as there are no reasons to object to acceptance as defined in arts. 27 or 28 Brussels I/Lugano Convention I.

Again, the presiding judge of a civil court has sole competence (art. 32 (1) Brussels I/Lugano Convention I). Local jurisdiction is likewise determined by the place of residence of the debtor.

A judgement for enforcement must be issued pursuant to arts. 722, 723 Code of Civil Procedure [ZPO], or in special cases by decree, to effect compulsory execution arising from a foreign judgment, a court settlement or a document in Germany which is not governed by a bilateral or multilateral agreement or a European regulation. The judgement for enforcement is declared provisionally enforceable, requires an execution clause (arts. 724 et seq. Code of Civil Procedure [ZPO]) and is thus applicable for compulsory execution in Germany.

Arrests, interim injunctions and interim orders by a foreign court are not governed by art. 722 Code of Civil Procedure [ZPO].

However, pursuant to art. 38 et seq. Brussels I/Lugano Convention II such judgments may be declared enforceable if they are judgements as defined in art. 32 Brussels I/Lugano Convention II. The European Court of Justice has decreed that these are judgements as defined in art. 25 Brussels I if the defendant has been summoned to a hearing and has been granted the right to a hearing in court.

### ► Notes on the clause in the scope of application of bilateral and multilateral agreements (recognition and enforcement agreements)

Pursuant to art. 9 Recognition and Enforcement Execution Law [AVAG] the execution clause must state the obligations of the debtor in German and must state that the enforcement may not exceed measures to secure the claim so long as the period for appeal after service of the judgment concerning the admission of compulsory execution has not yet expired, or appeal has not yet been decided on. The clause also does not contain a statement concerning provisional enforcement.

The creditor must then present an order or certificate of the clerk of the court to the authority stating that enforcement may be effected without limitations (art. 23 Recognition and Enforcement Execution Law [AVAG]). It is thus unnecessary to furnish an additional execution clause as defined in arts. 724 et seq. Code of Civil Procedure [ZPO].





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### ► Notes on the service of the clause in the scope of application of bilateral and multilateral agreements (recognition and enforcement agreements)

In the event that compulsory execution is permitted and is furnished with the execution clause then pursuant to art. 10 (1) Recognition and Enforcement Execution Law [AVAG] the debtor must be served ex officio with a certified copy of the enforcement order exhibiting the execution clause, and a certified copy of the decision in which enforcement was permitted, including a translation if applicable, and any documents that may have been referred to in art. 8 (1)(3) Recognition and Enforcement Execution Law [AVAG]. Additional service as defined in art. 750 Code of Civil Procedure [ZPO] is not required. It is not necessary to inform the debtor of the issued declaration of enforceability prior to commencing compulsory execution. Thus the creditor may take steps to secure the claim as defined in art. 39 Brussels I/Lugano Convention I as soon as enforcement resulting from the foreign debt certificate is permitted.

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