

## The transparency of a debtor's assets before obtaining an enforceable title

AUSTRIA	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>Enforcement organ: Court; sometimes also bailiffs</p> <p>Inquiries by private institutions are available (e.g. "Kreditschutzverband 1870")</p>	<p>Generally, no obligation of the debtor to disclose his financial situation.</p> <p>Only in proceedings concerning maintenance claims of minors (Sec 183 AußStrG)</p> <p>This obligation is based on substantive law.</p>	<p>Court; representative of the youth welfare (Sec 184 AußStrG)</p>	<p>Assets of the debtor are relevant for calculating the amount of the maintenance claim;</p> <p>In case of non-performance of the duty to inform, the court can inquire the employer of the debtor about the employment relationship or the revenue office about the taxation of the debtor.</p>	<p>Land register; commercial register; register of effected restraints; insolvency register; motor vehicle, ship and aircraft register; railway register</p>	<p>Public registers are available to everybody; online access available</p>	<p>Inspection of the insolvency register isn't possible if a certain time has run out (e.g. one year after closure of the insolvency procedure); partly a legal interest is necessary</p>	<p>Generally, no duty of third parties to provide information</p> <p>Exception: Maintenance proceedings</p> <p>Employer of the debtor; banks; revenue office; social insurance institutions</p>	<p>In maintenance proceedings it is the duty of the court to get the information of third parties</p>	<p>Third parties have to give information if they are relevant for the maintenance claim of the minor and if the debtor did not fulfil his duty of information (Sec 183 AußStrG); Sec 184 IV AußStrG establishes the duty of information; but there does not exist any sanction in case of mal-performance of this duty (a reform is planned)</p>	<p>public registers are always available</p> <p>In maintenance proceedings, Debtor's declaration has priority in relation to information from third parties;</p>

DANMARK	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>Enforcement organ: Court</p> <p>Private institutions provide information about the Debtor's creditably</p>	<p>In principle, no duty to disclose the assets in process;</p> <p>Exception if maintenance claims are sought</p>	court	<p>Court gets information if they are necessary for the justification of the claim (e.g. in maintenance claims to calculate the amount due);</p> <p>Sanctions: no information available</p>	<p>Land register; commercial register; electronic insolvency register (decentralized, kept by the enforcement courts);</p> <p>motor vehicle, ship and aircraft register;</p> <p>registers of fiscal, social and bank-account matters</p>	<p>Public registers are available to everybody;</p> <p>Insolvency register is available to the creditor;</p> <p>Registers of fiscal, social and bank-account matters are only available to public-creditors</p>	<p>Assertion of legal interest is necessary; sometimes payment of a fee</p>	<p>Before enforcement third parties do not have a duty to disclose their information;</p> <p>During enforcement they are obligated to give information.</p>	<p>Court gets information as part of the examination of witnesses</p>	<p>Information before the beginning of enforcement is voluntary; privacy of data has to be observed;</p> <p>In process, the debtor has to release his bank from its professional discretion (Sec 497 Rpl.);</p>	<p>Public registers are always available;</p> <p>Other information only as an exception (see columns on the left)</p>

FINLAND	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>Enforcement organ: enforcement matters are concentrated to one bailiff ("responsible bailiff")</p> <p>Inquiries by private institutions are available</p>	<p>In cases concerning distribution of matrimonial assets or inheritance the debtor has to provide the necessary information</p>	<p>Estate administrator</p>	<p>Estate administrator can require information about the financial situation of the spouse/s and the estate in general;</p> <p>Information must be necessary for the distribution of the matrimonial assets or the estate inventory;</p> <p>Court order or parties' agreement is necessary;</p> <p>Penal sanctions are possible</p>	<p>Land register;</p> <p>Commercial register;</p> <p>Debtor's register;</p> <p>Insolvency register;</p> <p>Motor vehicle, ship and aircraft register;</p> <p>Matrimonial register;</p> <p>Execution register;</p> <p>Fiscal and social registers</p>	<p>Public registers are available to everybody;</p> <p>Fiscal and social registers are only available to the enforcement organ</p>	<p>Detailed application is necessary;</p> <p>no reason for the request has to be given unless this is necessary for the exercise of the authority's discretion or for determining if the person requesting access has the right to access</p>	<p>No legal obligation of a third party to disclose information about the financial situation of the debtor</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Public registers are always available;</p> <p>Debtor's disclosure only under the conditions described in previous columns</p>

FRANCE	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>Enforcement organ: "Huissier de justice"</p> <p>Enforcement court</p> <p>Private institutions give information about the Debtor's assets.</p>	<p>A debtor's duty to disclose his assets does not exist.</p> <p>Exception: maintenance proceedings</p>	Not applicable.	Not applicable.	<p>Cadastral and mortgage register;</p> <p>commercial register;</p>	<p>Public registers: available to the creditor and the bailiff.</p> <p>Access to the debtor's fiscal files is excluded</p>	No special conditions.	Not applicable	Not applicable	Not applicable ?	Public registers and private institutions may always be contacted.

GERMANY	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>Enforcement organ: Enforcement court; bailiff; land registry</p> <p>Inquiries by private institutions are available (e.g. "Credit-reform")</p>	<p>No general obligation of a debtor to disclose his financial situation.</p> <p>Only in maintenance proceedings, secs. 645 ZPO et seq., in order to calculate the amount due;</p> <p>Only the income must be declared</p>	The court (and by the judgment the creditor)	<p>The courts use standard forms prescribed by law;</p> <p>Part of the taking of evidence during the hearing</p>	<p>Land register;</p> <p>Commercial register;</p> <p>Debtor's register;</p> <p>Insolvency register;</p> <p>Ship and aircraft register</p>	Public registers, open to everybody	<p>application and legal interest is necessary;</p> <p>interest in pursuing a claim is sufficient</p>	<p>No obligation to provide information.</p> <p>With the consent of the debtor, banks may inform other banks (and their clients: creditors) about the financial situation of a debtor (information exchange among banks)</p>	The creditor gets the information from his bank.	Wrong information may entail liability for damages	<p>Public registers are always open for inquiries;</p> <p>Debtor's disclosure in maintenance proceedings</p>

GREECE	Disclosure by the debtor	Who gets the information	Conditions Sanctions	Information from registers	Who gets the information:	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>Enforcement organ: bailiff</p> <p>Private company ("Theiresias") gives information about the Debtor's assets; but: only to certain creditors (banks; leasing and factoring companies; treasury; credit card companies)</p>	No obligation before obtaining an enforceable title.	Not applicable before obtaining an enforceable title.	Not applicable before obtaining an enforceable title.	<p>Land register;</p> <p>mortgage register;</p> <p>list of distressed goods;</p> <p>insolvency register;</p> <p>ship and aircraft register</p>	Public registers: available to everybody	On an application.	Not applicable before obtaining an enforceable title.	Not applicable before obtaining an enforceable title.	Not applicable before obtaining an enforceable title.	Public registers are always available.

IRLAND	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>Enforcement organ: enforcement court (but: practical responsibility for the effective enforcement of court orders and judgments in Ireland lies substantially with the successful party or judgment creditor)</p> <p>Inquiries by private investigation agents are not uncommon</p>	<p>It is not generally possible to compel the debtor in advance to disclose information about his financial situation;</p> <p>In practice, a creditor is well advised to obtain security for credit or supplies in advance</p>	Not applicable	Not applicable	<p>Land Registry and Registry of Deeds (in respect of real property);</p> <p>Companies' Registration Office (CRO);</p> <p>register of ships and of aircraft</p>	Registers are searchable by the public	<p>Searches for a named individual or a company may turn out whether any real property is registered in the name of that person or entity;</p> <p>use of the CRO is possible to establish a title to shares;</p> <p>judgments searches are possible to establish whether any undischarged judgments are registered against a person</p>	No general obligation of any third party to provide any information to a creditor without a judgment; exceptions are possible	Court asks third parties on application of any party	Where the assets themselves are the subject-matter of the proceedings, it can be possible to obtain information or documents about them through the pleadings or by obtaining discovery against the defendant or against a non-party to the proceedings (e.g. order 31, rule 12, RSC);	<p>Public registers are always searchable;</p> <p>Information of third parties only under the named conditions</p>

ITALY	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>Enforcement organ: enforcement court; bailiff</p> <p>Inquiries by private institutions are available and in practice very common</p>	<p>In general the debtor has no duty to disclose his assets;</p> <p>Exception: divorce procedures; maintenance claims</p>	Court	<p>Application of the creditor is necessary ;</p> <p>In procedures concerning maintenance claims of children the judge orders the disclosure ex officio.</p> <p>Sanctions: official inquiry about the debtor's revenues.</p>	<p>Land register (local registers); commercial register;</p> <p>list of effected enforcements;</p> <p>insolvency register;</p> <p>motor vehicle register;</p> <p>register of current accounts, bank depots and cheques (bank register)</p>	<p>Public registers are available to everybody ;</p> <p>bank register is only available to the court</p>	<p>Access to taxation lists only if public outstanding debts are enforced;</p> <p>access to bank registers only if fiscal or penal matters are at issue (not in civil enforcement cases)</p>	<p>In general third parties have no duty to give information on the debtor's assets;</p> <p>but exceptions are possible (e.g. divorce proceedings)</p>	court	<p>In divorce procedures the judge can summon the bank to produce information about the assets of the spouses;</p> <p>In general the judge orders the disclosure on application of the creditor;</p> <p>Sanctions: official inquiry about the Debtor's revenues</p>	<p>Public registers are always available;</p> <p>Taxation lists and bank registers are available under the named conditions;</p> <p>Information is only available in the named special cases;</p> <p>in divorce procedures no priority of one of the sources of information can be stated</p>

LUXEMBURG	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>Enforcement organ: bailiff</p> <p>Inquiries by private institutions are not available</p>	<p>The debtor has no duty to disclose his assets</p> <p>Exception: maintenance proceedings.</p>	Not applicable.	Not applicable.	<p>Land register;</p> <p>mortgage register;</p> <p>commercial register;</p> <p>motor vehicle register</p>	<p>Public registers are available to everybody;</p> <p>motor vehicle register is only available to the creditor</p>	<p>Generally a written application is necessary;</p> <p>the commercial register is available by phone and by internet</p>	<p>Generally a third party must not disclose any information about the Debtor's assets; but:</p> <p>Spouses must disclose revenue if he/she doesn't contribute to the conjugal costs;</p> <p>Debtor or third parties must disclose revenues to prevent over-indebtedness;</p> <p>Social security institutions must indicate the Debtor's employer;</p> <p>Employer must disclose the Debtor's salary</p>	Court, creditor	Any disclosure of information by a third person requires a judicial order	If the creditor can get sufficient information from the registers, a disclosure of assets by third parties is not necessary.



PORTUGAL	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>Enforcement organ: bailiff, enforcement court</p> <p>Inquiries by private institutions are not available; but: the “office of centralisation of credit risks” provides information to banks about persons who want to get a credit</p>	Not applicable.	Not applicable.	Not applicable.	<p>Land register;</p> <p>Commercial register;</p> <p>Insolvency register;</p> <p>Motor vehicle, ship and aircraft register;</p>	Public registers: available to everybody	No special conditions	Not applicable.	Not applicable.	Not applicable.	Public registers are always accessible

SPAIN	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>Enforcement organ: enforcement court</p> <p>Normally, Inquiries are conducted by private institutions (e.g. ASNEF; RAI)</p>	No Debtor's disclosure before the beginning of the enforcement.	Not applicable	Not applicable	Land register (local and central registers); commercial register; motor vehicle register; register of movable goods	Public registers; information can be accessed online	The use of a special form is prescribed; apart from this formal requirement no special conditions	No duty of third parties to give information before the beginning of the enforcement	creditor	Creditor can try to get information from third parties; court does not support him until he has obtained an enforceable title;  problem: information about the debtor's financial situation may be protected by secrecy of banks and revenue offices	Public registers are always available; information of third parties is possible but on a voluntary basis

SWEDEN	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>Enforcement organ: national enforcement authority (KFM) which is independent from the courts</p> <p>Inquiries by private "credit information" companies are available (e.g. Intrum-Justitia and Upplysningscentralen, UC)</p>		Court; creditor	<p>Information is given in a document or at interrogation;</p> <p>Debtor has to confirm the truth of the provided information;</p> <p>application of the creditor is necessary</p> <p>creditor may be summoned to be present at the interrogation with the debtor</p> <p>Sanctions: fines, detention of the debtor.</p>	<p>Land register; commercial register; motor vehicle, shipping and aircraft register; matrimonial register; securities register;</p> <p>trotting- and gallop horse register;</p> <p>accounting system for the enforcement authorities (a reg. of public claims);</p> <p>reg. for the injunction to pay and for the enforcement assistance;</p> <p>tax reg.;</p> <p>reg. of mortgage on a company's assets</p>	<p>Public registers are available to everybody;</p> <p>The accounting system for the enf. auth., the reg. for the injunction to pay and for the enf. ass. and the tax register are only available to the enforcement authorities;</p> <p>to certain registers (acc. sys. for the enf. auth.; reg. for the inj. to pay and for the enf. ass.; tax reg.; comp. reg.; traffic reg.; land reg.; reg. of mortgage on a comp. assets) online access is available</p>	<p>In most cases a written inquiry is necessary;</p> <p>Inquiries about ships and gallop horses can be made by telephone</p>		enforcement authority	<p>the requested information has to be of importance for the assessment (e.g. information about the Debtor's financial dealings or about his distrainable property);</p> <p>sanctions: fines, imprisonment of the third party</p>	<p>Public registers are always available;</p> <p>No priority of one of the other information sources can be stated</p>

UK - England / Wales	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
<p>In support of freezing orders, court can make ancillary orders reg.</p> <p>a) disclosure of documents + answers to request for information (CPR r. 25.1 (1) (g) ) and</p> <p>b) cross examination on affidavit of debtor</p>	<p>Court, creditor</p>	<p>Conditions for freezing order must be met</p> <p>Simple suspicion does not suffice; creditor must have "some evidence" suggesting that additional assets are hidden</p> <p>No real risk of criminal charge (privilege against self-incrimination); [exceptions e.g. regarding intellectual property]</p> <p>flexible sanctions (CPR r. 3.4. (2) (c); 46.10. et seq.): Striking out of a defence; bearing of costs; exclusion of evidence;</p>	<p>diverse registers,</p> <p>1) cf. synopsis "address of the debtor"</p> <p>2) Land register: information available by internet regarding all properties registered titles (fee: £2,- / title); however it does not directly reveal which properties a particular person owns</p> <p>3) Bankruptcy register; Ship register, Airplane register</p>	<p>Public access</p>	<p>Access for most registers on single request – sometimes, a legal interest must be shown</p> <p>Information to be obtained from the Vehicle License Agency must be sufficiently linked to the vehicle</p>	<p>Banks etc are not allowed to disclose information without consent of debtor or court order (duty of confidentiality)</p> <p>Court can order production of documents from any 3<sup>rd</sup> party during trial.</p> <p>Ancillary order: bank can be ordered to disclose the debtors accounts</p>	<p>Court, creditor</p>	<p>Documents to be produced must be likely to support the case of the applicant / affect case the case of another party and disclosure must be necessary in order to dispose fairly of the claim or the costs (discretion of court)</p> <p>Add. test: no harm to public interests</p> <p>Ancillary order: creditor must undertake not to use the information obtained than in the course of the proceedings</p> <p>General rules of proportionality and reasonableness (CPR Part J 48.1 and CPR 48.6) apply</p>		

UK - Scotland	Disclosure by the debtor	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Information from registers	Who gets the information: creditor, court, enforcement organ	Conditions	Third parties	Who gets the information: creditor, court, enforcement organ	Conditions Sanctions	Sequence
No non- public data sources open to creditors	No duty of debtor to disclose assets;  under debate whether to introduce such a duty	N.A.	N.A.	Land Reg., Companies Reg., Bankruptcy Reg., Airplane Reg., Ship Reg	Public access	On application  <i>(Justified interest in access needed ??)</i>	Arrestee (bank) <i>can</i> give information but is not obliged to do so	N.A.	N.A.	Public registers are always accessible