

1. Record Nr.	UNINA9910743379903321
Titolo	Effective enforcement of creditors' rights // edited by Masahisa Deguchi
Pubbl/distr/stampa	Gateway East, Singapore : , : Springer, , [2022] ©2022
ISBN	981-16-5608-8 981-16-5609-6
Descrizione fisica	1 online resource (282 pages)
Collana	Ius Gentium: Comparative Perspectives on Law and Justice ; ; v.91
Disciplina	346.077
Soggetti	Civil procedure (Adat law) Executions (Law)
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Nota di bibliografia	Includes bibliographical references and index.
Nota di contenuto	Intro -- Preface -- Contents -- Editor and Contributors -- Enforcement Against Movable Property in Germany -- 1 The Search for Assets Before the Reform 2013 -- 2 Principles of the Reform 2013 -- 3 The Reform in detail -- 4 Assessment of the Reform -- Clarification of Facts in Austrian Enforcement Law -- Comments on the Paper of Professor Dr. Walter H. Rechberger -- Clarification of Facts in Austrian Enforcement Law -- 1 Fact Finding System in Austria -- 2 New Japanese System -- 3 Comparative Perspective -- 3.1 France -- 3.2 Germany -- 3.3 The United States -- The Effective Disclosure of the Debtor's Assets in Enforcement Proceedings -- 1 Introduction -- 1.1 Information Inequalities in Enforcement Procedures -- 1.2 Information Deficits and Enforcement Structures -- 1.3 Legislative Responses to the Information Deficit -- 2 The 2013 Reform of the German Enforcement Law -- 2.1 A Structural Change of the System -- 2.2 Different Ways of Obtaining Information -- 3 European Developments -- 3.1 The Maintenance Regulation, Articles 51(2), 61-63 Reg. (EC) 4/2009 -- 3.2 The European Bank Account Preservation Order, Article 14 Reg. (EU) 655/2014 -- 4 The Protection of the Debtor: Data Protection, Privacy and Asset Tracing -- References -- Effective Rights Protection in Civil Enforcement -- 1 Meaning of Evolution -- 2 Role of the Judge -- 3 The Notion of Trial --

Comments on Information Concerning the Debtor's Assets
for the Enforcement Proceeding -- 1 Introduction -- 2 Conflicts
Between Debtor and Creditor -- 3 The Role of IT: Register
and Database -- 4 General Conclusions: Open Questions -- References
-- America's BYO Approach to Enforcing Money Judgments -- 1
Introduction -- 2 The Basic Outline of Contemporary Practice
in Germany and Austria -- 2.1 Fundamental Right to Judicial
Enforcement -- 2.2 Broad Judicial Access to Information About Debtor's
Assets.
2.3 Judicial Assistance in Collecting the Assets -- 3 Outline of the US
Approach to Judgment Enforcement of Money Judgments -- 3.1 The
'Hunting License' Approach -- 3.2 A Different Attitude Toward Debt? --
4 A Contrasting Case-Judicial Enforcement of Injunctions -- 5
American Discovery to the Judgment Creditor's Rescue -- 6 American
Self-help Methods -- 6.1 Asset Location -- 6.2 Asset Hiding -- 6.3
Self-help Collection of Debts -- 7 Conclusion -- References -- Fact
Clarification and Effective Legal Protection in Civil Enforcement Law
in Japan -- 1 Introduction -- 2 Reform Efforts in Japanese Civil
Enforcement Law -- 2.1 Reform of the Civil Enforcement Act in Japan
-- 2.2 Difficulty in Identifying Monetary Claims -- 2.3 Improve
the Effectiveness of the debtor's Property Disclosure Procedure -- 3
Clarification of Fact in the Civil Enforcement in European Countries --
3.1 Clarification of Facts in German Enforcement Law -- 3.2
Clarification of Facts in French Enforcement Law -- 3.3 Clarification
of Facts in English Civil Enforcement Law -- 3.4 Clarification of Facts
in Austrian Enforcement Law -- 3.5 Harmonization in the European
Union -- 3.6 Measures of Europeanizing Fact Clarification -- 4
Conclusion -- Investigation of Debtor's Property in Japan-To Make
Claims Truly Enforceable -- 1 The 2003 Reform of the Japanese Civil
Execution Act -- 2 Creditor's Efforts to Overcome the Difficulty
of Finding Debtor's Property -- 3 The 2019 Reform of the Japanese
Civil Execution Act -- Comment on Civil Enforcement Reforms
from a Comparative and Historical Perspective -- References --
Proposal for a Procedure to Strengthen Creditor's Claims While
Protecting Debtor's Quality of Life and Privacy in Japan -- 1 The
Purpose of Our Study Group -- 2 The Newest Amendment from the Old
System of the Civil Enforcement Act of Japan.
3 The Legislative Process of Investigating Debtor's Property -- 3.1
Property Disclosure Procedure -- 4 Remaining Issues
of the Amendment in 2019 -- 4.1 Property Disclosure Procedures --
4.2 Procedures for Obtaining Information from Third Parties -- 5 The
Purpose of Our New Proposal -- 6 Proposal of New Procedure
of Enforcement Executive -- 6.1 Appointment of an Enforcement
Executive -- 6.2 Compulsory Execution to Assets of a Debtor -- 6.3
Recommendation of a Settlement Between a Creditor and a Debtor -- 7
The Good Points of the Procedure of Enforcement Executive -- 7.1 To
Make a Balance of Satisfying Title-of-Obligation and Protecting
the Private Information of a Debtor -- 7.2 Simple Proceeding
for a Creditor -- 7.3 Protection of a Debtor's Quality of Life -- 7.4
Smooth Transition to a Bankruptcy Proceeding -- 8 The Procedures
in Other Countries Giving Inspirations to the EE Procedure -- 8.1 EE's
Power to Investigate a Debtor's Properties and Performing Compulsory
Execution -- 8.2 EE's Power to Establish a Payment Plan by a Debtor --
8.3 Title-of-Obligation-Mortgage to Real Property -- 8.4 The System
to Protect the Debtor's Privacy -- 8.5 Relationship with Bankruptcy -- 9
Cost, Multiple Creditors, and Multiple Debts Against the Same Creditor
-- 9.1 Fee for the EE -- 9.2 Multiple Creditors -- 9.3 Multiple Title-of-
Obligations Owned by a Creditor -- 10 Conclusive Remarks -- Some

Comments on the Proposals of the Study Group from a German Perspective -- 1 Efficient Proceeding and the Recent Reform of the German Enforcement Law -- 2 The Problem of Disclosure -- 3 The Enforcement Executive as Enforcement Manager -- 4 Attorney's Exercising Sovereign Power -- Comment on "A Proposal of a Procedure to Strengthen Creditor's Claims While Protecting Debtor's Quality of Life and Privacy in Japan" by the Study Group for Improvement of Civil Enforcement Law.

The European Account Preservation Order in Dutch Practice -- 1 Introduction -- 2 The EAPO in General -- 3 The Request for the Obtaining of Account Information -- 4 Enforcement and Prejudgment Attachment in the Netherlands -- 5 The Dutch Implementation Act -- 6 The Dutch Implementation Act and the Request for the Obtaining of Account Information -- 7 Dutch Case Law on the EAPO: General Remarks -- 8 Case Law on Security to Be Provided by the Creditor -- 9 Case Law on the Request for the Obtaining of Account Information -- 10 Case Law on Jurisdiction and the Revocation of an EAPO -- 10.1 Jurisdiction -- 10.2 Revocation of an EAPO -- 11 Final Remarks -- References -- The Investigation into the Debtor's Assets in Civil Enforcements Proceedings -- 1 Introduction -- 2 Investigations into Debtor's Assets and the Right to a Fair Trial -- 3 Interim Measures as the Most Effective Way to Carry Out Investigations -- 4 No Automatic Issuance of the EAPO. The creditor's Burden of Proof -- 5 Judicial Control of the Investigation Activities and the Increasing Dejudicialization of the Enforcement Proceedings -- 6 The Need of Binding Case-Law in Enforcement Proceedings -- 7 Resorting to Private Actors: The Flourishing of the Credits Bureaus or Data Collection Agencies Gathering Account Information and Providing Other Kinds of Data About the Financial Solvency of the Debtors -- 8 Using Criminal and Other Punitive Devices to Compel the Uncooperative Debtor -- 9 Extending the Duty of Cooperation with the Judiciary Including Both Public and Private Persons -- References -- Towards More Effective Enforcement Proceedings Through More Effective Asset Discovery -- 1 General Approach to the Topic: Commonalities and Divergences in Enforcement Proceedings with Potential Consequences on Their Effectiveness -- 1.1 Convergence and Similarities -- 1.2 Divergences. 2 Discovering Debtor's Assets: Main Problems and Some Examples of Solution -- 2.1 Who is Entitled to Gather the Information? -- 2.2 From Whom May the Information be Validly Retrieved? -- 3 Two Cross-Cutting Issues -- 3.1 The Use of ICT Devices -- 3.2 The Cross-Border Dimension -- References -- Finding Defendant's Assets in Proceedings to Enforce Money Judgments in Switzerland -- 1 Introduction -- 2 Procedure to Enforce Money Judgments in Switzerland -- 2.1 Preliminary Proceedings -- 2.2 Enforcement -- 3 Discovering Defendant's Assets -- 3.1 Obligations of the Debtor -- 3.2 Obligations of Third Persons -- 3.3 Obligations of Authorities -- 4 Finding Debtor's Assets in Bankruptcy Proceedings -- 5 Enforcing Support Payments -- 6 Statistics -- 7 Conclusion -- References -- Searching Assets and Pressuring the Debtor for an Effective Enforcement: An Overview of the Brazilian Execution Proceedings -- 1 Introduction -- 2 Parameters in Comparative Perspective: Who Should Be in Charge of Searching for Debtor's Assets -- 3 Constitutional Limitation on the Enforcement of Judgments by Preventing Some Assets of Ever Being Seized or Attached -- 4 Specific Performance and Court Injunctions. The Revolution of the General Clauses for Coercion and Induction -- 5 The Indication of Debtor's Assets in the Initial Filing: Primarily a Problem of the Creditor and the Means to Obtain This

Information -- 6 The Subsidiary Help of the Judge in Finding and Seizing Debtor's Assets. Electronic Seizure and Attachment of Bank Accounts. Requirements in Statutory Law and the Legal Duties of the Debtor to Disclose Assets and Their Location -- 7 Sales by Private Initiative -- 8 Other Trends of the New Code of Civil Procedure of 2015. Notarized Notice of Dishonor ("Protesto") and the Use of "Bad Debtors Lists".
9 Litigation Agreements and Their Usage Regarding Debtor's Assets and Their Sales.
