

A close-up photograph of an ATM keypad. A person's finger is pressing the '5' button. The keypad has buttons for numbers 1-9, 0, and special function buttons: 'CLEAR' (yellow), 'CANCEL' (red with an 'X'), and 'ENTER' (green).

FAST ACCESS TO DEBTORS' BANK ACCOUNTS INFORMATION

UNDER BELGIAN LAW

Information as to the bank accounts of the debtor is an essential procedure for any creditor seeking to preserve or execute his rights. For a long time the effectiveness of measures was hampered by the cumbersome nature of the procedure that previously applied.

LEGAL INSIGHT

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Identification of bank accounts: easing of substantive conditions

Creditors may now obtain banking information about their debtor in the context of a conservatory seizure without having to justify the significance of the claim or urgency. It is sufficient to show that a certain degree of speed is required and to produce documents making the debt plausible, even in the absence of a judgment or enforceable title.

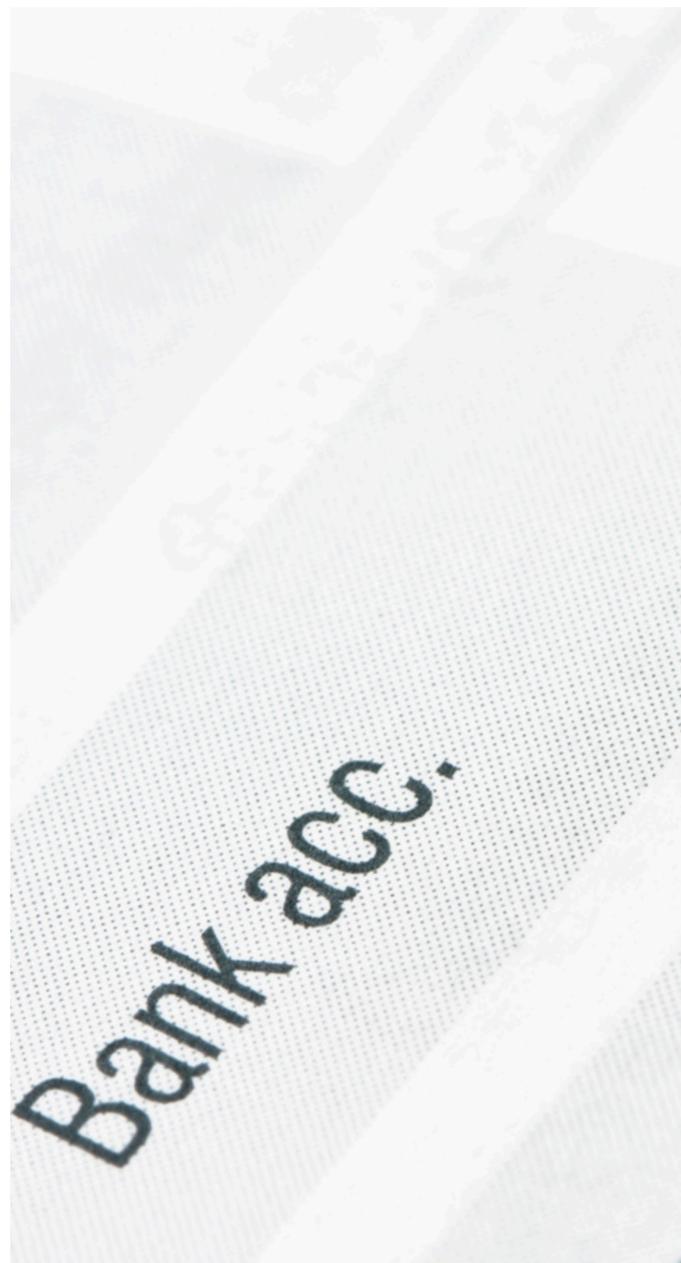
Creditors are allowed to include in their application submitted to the judge a request to identify the debtor's bank accounts "where the creditor has no knowledge of the name or address of the bank, nor of the IBAN code, BIC code, or any other bank account number enabling the bank to be identified." (Article 1447, paragraph 2, 3^o of the Belgian Judicial Code).

Under the old regime it was already possible to find out with which banks the debtor held accounts. In the absence of an enforceable title two additional conditions had to be met: a substantial claim in light of the circumstances and urgency. This procedure was often cumbersome, with an uncertain outcome.

Information on bank account balance

On the basis of an enforceable title, a bailiff may directly access the Central Contact Point (CCP) of the National Bank of Belgium in order to identify the debtor's accounts in the context of an enforceable garnishment, without having to go through a judge.

In addition to identifying the debtor's bank accounts, the creditor may also learn the available balance, provided that it is lower than the amount of the claim.



If the balance is at least equal to the amount of the claim, confirmation that sufficient funds are available is communicated, without disclosing the exact amount.

This transparency, while preserving banking secrecy, gives the creditor a better basis for assessing whether it is financially worthwhile to initiate execution on a bank account (which entails costs as the bank needs to be notified by the bailiff).

However, caution is required with regard to the following points:

The balance communicated is only a snapshot at a given moment: between the request for information and the execution of the garnishment, the available amount may decrease or even disappear entirely.

The proceeds of the bank account seizure might have to be shared with other creditors: this means that the amount recovered may be reduced. However, the new rules allow creditors to reconsider garnishment in cases that were previously abandoned due to insufficient balance, provided that the claim is not time-barred.

MVVP assists Belgian and foreign creditors in enforcing Belgian and foreign judgements and arbitral awards. For more information contact Michel Segers, Muhamet Begaj and Marie-Judith Vanden Kerchove.



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