

Attachment (Freezing) Order: Overview (the Netherlands)

by *George Driessen* and *Daniël Verduin*, HVG Law

Practice note: overview | Law stated as at 01-Mar-2023 | The Netherlands

A Practice Note providing an overview of Dutch law relating to orders of attachment issued by local courts to preserve the respondent's assets or evidence until judgment can be enforced. This Note covers the grounds on which these orders are made, the type of assets and evidence that can be attached, the procedure for applying for an attachment order, and enforcement of attachment orders. It also covers the scope of attachment orders in relation to overseas assets and in support of foreign proceedings.

In court proceedings where the respondent appears likely to remove or dissipate assets or evidence from the jurisdiction where the proceedings are ongoing, legal practitioners must be aware of the available legal remedies as well as procedural and legal requirements for applying and enforcing those remedies. Attachment orders, also known as freezing orders or freezing injunctions in some jurisdictions, are an interim remedy commonly used to ensure that no irreparable harm occurs to the rights and interests of the parties involved.

This Note gives an overview of the law relating to attachment orders in the Netherlands including:

- The grounds on which the orders are made.
- The type of assets and evidence that can be attached.
- The procedure for applying for an order.
- The enforcement of attachment orders, foreign and domestic, and the penalties for breaching the order.
- The scope of attachment orders in relation to overseas assets and in support of foreign proceedings.

All interim injunctions that restrain a party from disposing of or utilising their assets until judgment can be obtained or enforced (also known as freezing orders or temporary injunctions in some jurisdictions) will be referred to as "attachment" or "attachment orders" in this Note.

For guidance on some of the practical considerations involved while applying for an attachment order in a foreign jurisdiction, see *Practice Note, Attachment Orders: Overview (Cross-Border)*.

Domestic Proceedings

Objective

In court proceedings where the respondent appears likely to remove or dissipate assets or evidence from the jurisdiction where the proceedings are ongoing, an attachment (*conservatoir beslag*) in accordance with Article 700 of the Dutch Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*)(DCCP) may serve as an interim remedy. This is commonly used to ensure that no irreparable harm occurs to the rights and interests of the parties involved (typically creditors). A direct result of the attachment is the (often intended) pressure it exerts on the debtor. The respondent (debtor) is not allowed to dispose of any attached property and may not sell or transfer it. Although freezing the respondent's assets might hinder them in their business or personal life, and they may even consequently suffer damages, this is not itself a compelling reason for denying

Availability

Attachment orders (*beslagverlof*) can be obtained in aid of domestic proceedings. It is relatively easy to obtain an attachment order from the Dutch courts. Attachment orders are commonly issued by Dutch courts and can be obtained against the respondent and third parties (for example, a bank holding funds for the respondent debtor).

Grounds

Attachment orders must be obtained by filing a written request (*beslagrekest*), submitted by an attorney-at-law (*advocaat*) to the relief judge (*voorzieningenrechter*) of the competent district court. This request can be based on either of the following:

- A claim based on an agreement (mostly payment).
- A tort claim.
- In the request, the applicant must elaborate on the necessity of attachment (for example, fear of embezzlement), the reasons for attachment of the chosen good or goods, and why a less valuable good would not suffice.

The relief judge of the competent district court decides on the request for attachment following a marginal assessment (summary review) of the attachment petition only. As a rule, this assessment is performed without any prior hearing of the respondent (*ex parte*).

The request for attachment is typically assessed and decided on within a single business day (even within several hours, if necessary). Court fees are fixed at EUR676 for legal entities, EUR314 for private individuals, and EUR86 for impecunious applicants (the latest fees are available [here](#)).

If the relief judge decides to grant the requested attachment, the applicant must initiate substantive proceedings (*bodemprocedure*) against the respondent debtor within a designated period. This time frame is determined by the relief judge, unless the proceedings on the merits have already been initiated at the time of the request for attachment.

The deadline to initiate substantive proceedings, if applicable, must be set at a minimum of eight days (Article 700(3), DCCP; the time frame is typically set between 14 and 30 days). The applicable circumstances, if duly evidenced by the applicant, may trigger the relief judge to grant (repetitive) extension(s) to initiate follow-up substantive proceedings, for example in the event of cross-border litigation.

If the court intends to reject the request for attachment, either in whole or in part, the applicant must be granted an audience prior to rejection. This audience is usually by phone or secured email and may result in the eventual (partial) granting of the request for attachment.

Stage of the Proceedings

An attachment order can be obtained either:

- Before substantive proceedings have been initiated.
- Pending substantive proceedings.
- Following a final court ruling. This would be relevant if the court has not declared its ruling to be executable with immediate effect (*uitvoerbaar bij voorraad*).

Alternative Remedies

Alternative remedies to an attachment order include:

- (Bank) security issued by the respondent (*bankgarantie*) (Article 7:400, DCC).
- Deposit (Article 7:850, DCC).
- Sale and assignment of claim. In the Netherlands, certain debt-collecting agencies (*incassobureaus*) actively purchase and collect outstanding claims. These claims are typically purchased in wholesale from corporate clients.

Procedure for Applying

Civil Procedure Rules and Judiciary's Attachment Order Syllabus

The statutory requirements for drafting and granting an attachment order are essentially included in the DCCP (specifically Articles 700 to 770c, DCCP). In addition, the Dutch judiciary has issued an Attachment Order Syllabus (*Beslagsyllabus*, available in Dutch only).

Although there is no template for issuing a request for an attachment order, the Attachment Order Syllabus stipulates several minimum requirements that a request for attachment must meet for the relief judge to be adequately informed (see *Beslagsyllabus*, page 2). The Attachment Order Syllabus also includes “*best practices*” as guidance for both legal practitioners and relief judges, ensuring uniformity in the assessment of similar requests in similar cases.

Although these “*best practices*” strictly qualify as non-binding principles (not statutory requirements), they are typically followed by the courts. Deviation from these practices is the exception rather than the rule. The Attachment Order Syllabus is generally updated twice a year (in February and August). Only the most up-to-date version of the Attachment Order Syllabus is published on the [Dutch judiciary's website](#).

Basic Requirements for Request for Attachment

The attachment order is requested by written request (*beslagrekest*).

In the Event of a Payment Claim Under an Agreement

The request must include:

- A summary description of the facts and legal basis of the claim (for example, payment default).
- Known defences against the claim and the legal basis of these defences.
- Copies of documents or other evidence to substantiate the claim (for example invoices, or notices of default).

(Section A, paragraph 3 Ad. B, *Beslagsyllabus*.)

Other Claims in Connection with an Agreement

In the event of claims under an agreement other than payment (for example, performance claims), the request must include the legal basis, a summary description of the facts, and known defences. The creditor must also produce a copy of the agreement and the notice of default (Section A, paragraph 3, Ad b, *Beslagsyllabus*).

Tort or Other (Statutory) Basis

A summary description of fact, legal basis (for example, tort, attribution, causal link, and damages), and known defences is required. The creditor must also produce evidence in support of the alleged tort and the liability notice (Section A, paragraph

3, Ad c, Beslagsyllabus).

The request must comply with the principles of subsidiarity and proportionality. The applicant must elaborate on the necessity of the request, and the reason for proposing the selected assets to be attached (Section A, paragraph 4, Beslagsyllabus).

The applicant has an enhanced duty to disclose any and all circumstances that may be relevant in connection with the assessment of their request. This requires the applicant to explicitly and proactively include the following information in their application:

- Any proceedings pending against the respondent in connection with the claim for which they seek attachment (litigation or otherwise).
- Previous attempts (if any) to seek and obtain the relevant attachment order.

(Section A, paragraph 3, Ad. C, Beslagsyllabus.)

In principle, the applicant is not required to give any undertakings to the court (such as posting a bond or providing security). The court may, however, at its discretion determine that the attachment order is subject to security being provided by the applicant (for instance in the event of foreign applicants).

Jurisdiction and Competency

Requests for attachment orders are exclusively handled by the relief judge of the competent district court (Article 700(1), DCCP). If the application is accidentally submitted to another judge, that judge must refer the case to the relief judge of the competent court (Articles 72 to 73, DCCP).

The competency of the court is determined by the nature of the object (to be) subject to attachment:

- (Im)movable property. The geographic location of relevant property determines the relief judge of the local district court competent to rule on the request (Article 700(1), DCCP).
- Vessels. Special competency rules apply. Each of the relief judges of any of the courts within the jurisdiction of the port where the vessel is located, where the vessel is expected to embark, and the district court of Rotterdam are considered competent to rule on this request (Article 728, DCCP).
- Aircraft registered in the public registers of the Kingdom of the Netherlands, in respect of which the *Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft, 1933* is in force (Article 729, DCCP). When the attachment immunities under Article 729a, DCCP do not apply, competency is attributed to the relief judge of the court within the jurisdiction expecting the aircraft to arrive, exclusively for the purposes of attachment (Article 729d(1), DCCP). See *Attachment of Aircraft*.
- Registered claim. Regarding payment or delivery of goods, for a registered share in a limited or private company or certificate, competency of the court is determined based on the residence of the respondent debtor, or the registered seat of the company that issued the shares (to be) subject to attachment (Article 707, DCCP).
- Third-party attachment. Competency is determined by the residence of the debtor or the third-party (such as a bank or an employer) (Article 700(1), DCCP).
- Attachment of evidence. Competency depends on the nature of the evidence. For example, if the evidence is movable property, competency is determined by the geographic location of the evidence (Article 1019c(1), DCCP in conjunction with Article 700, DCCP).
- Attachment to release and deliver. Competency depends on the nature of the relevant property. If, for example, the request concerns (im)movable property, competency is determined by the geographic location of the property (Article 730, DCCP, in conjunction with Article 700(1), DCCP).

If a petitioner requests an attachment against themselves, competency is determined by the residence of the petitioner and the respondent (see [Attachment Against Themselves](#)).

In the event of a petition for marital attachment, competency is determined in relation to the existence of a request for dissolution of a matrimonial community (of property), for divorce, for legal separation, or for dissolution of the registered partnership. The court handling the dissolution request is automatically competent to handle the petition for marital attachment (Article 768(2), DCCP). If no request for dissolution of matrimonial community (of property), for divorce, for legal separation, or for dissolution has been issued yet, the competence of the relief judge must be determined according to Article 700, DCCP (see [Jurisdiction and Competency](#)).

Warranted Suspicion of Transfer or Embezzlement

In some cases, the applicant must demonstrate a warranted suspicion that the respondent debtor is likely to embezzle or alienate the assets that the applicant seeks to attach. A warranted suspicion must be demonstrated if the applicant seeks attachment of movable or immovable property, intellectual property rights, or shares in a legal entity (Article 711(1), DCCP, in conjunction with Articles 714 and 725, DCCP). The requirement of fear of embezzlement does not apply if leave is requested by the holder of a bill of exchange, promissory note, or cheque of which non-payment has been established (Article 711(2), DCCP).

Type of Assets That Can Be Frozen

In principle, any and all assets of a respondent debtor located in the Netherlands can be subject to attachment, including inventory, available funds (in bank accounts, crypto-currency included), company shares, intellectual property (such as patents or licences), aircrafts, vessels, or real estate.

It is not a requirement that the respondent debtor is a Dutch entity, or has Dutch nationality (in the case of a private individual). Assets located in the Netherlands that are owned by a foreign debtor may be attached as well. This attachment may subsequently create jurisdiction for the Dutch courts in substantive proceedings as well, if the applicant (creditor) would otherwise be unable to obtain an enforceable ruling elsewhere concerning the attached assets.

When requesting an attachment order for recourse purposes, the applicant is entitled to request security for their alleged claim (excluding interest and expenses), to be increased with fixed percentages varying between 10% to 30%, depending on the monetary value of the claim or claims covered by the attachment (section A, paragraph 12, Beslagsyllabus).

Location of Assets

Several assets can be located through available online public registries, such as real estate (including relevant owners).

Process servers (*deurwaarders*) have access to the municipality registry and are permitted to retrieve any registered personal address for the purposes of serving legal notices (including attachment orders).

Process servers may also physically visit the respondent debtor and make an inventory of any and all assets available at the premises of their residence.

In the event of execution of an immediately enforceable ruling (substantive proceedings), creditors may be able to require the respondent debtor to disclose details of their assets (Article 475g, DCCP, in conjunction with Article 720, DCCP).

Trustee or Nominee Interest

In principle, only assets (jointly) owned by the respondent can be subject to an attachment order. Therefore, assets held by the respondent on trust, or as nominee, as a rule, cannot be subject to attachment. However, a debt owed by a third-party to the respondent is considered an asset owned by the respondent (see [Third-Party Attachment](#)).

Jointly owned assets can be subject to attachment, for example, a marital estate. For more information regarding the attachment of jointly owned assets, see [Types of Attachment Order](#).

Exempt Assets

In principle, all assets owned by the debtor can be subject to attachment (Article 3:276, DCC). However, there are certain statutory exemptions. The most important exemptions are set out in Articles 447 and 448, DCCP, which aim to prevent the debtor's basic material and immaterial needs (such as a bed or medicine), or the means to acquire them being affected by unlimited recourse (for example, occupational equipment).

Attachment is not possible on goods meant for public services (Articles 436 and 703, DCCP). Goods intended for public service and goods that the Dutch Central Bank (*De Nederlandsche Bank*) has in its possession for the purpose of a system (referred to in Article 212a (b), *Dutch Bankruptcy Act (Faillissementswet)* (DBA) may not be subject to attachment.

Types of Attachment Order

Attachment on Movable Property

Attachments on movable property that is not registered property, on bearer or registered rights and entitlements, non-regulated rights and entitlements, and non-recoverable rights for garnishment, are governed by Article 700 ff, in conjunction with Articles 711 to 723, DCCP.

Attachment on Registered Shares and Securities That Are Not Shares

An attachment order may concern registered shares, registered securities other than shares, and assimilated rights (Articles 714 to 717, DCCP). The objects of attachment are registered shares in a (public) limited company or private company and other registered securities.

Third-Party Attachment

Third-party attachment is governed by Article 700 ff, DCCP, in conjunction with Articles 718 to 723, DCCP.

Third-party attachment can occur in the following circumstances:

- Claims that the debtor has or will directly obtain from third parties from a pre-existing legal relationship (for example, funds in a bank account), including claims for the delivery of goods.
- Property belonging to the debtor that may be held by third parties, which is not registered property.

However, the following should be noted:

- Permission may never be granted to attach a third-party's bank account itself, not even on the amount available or expected to be available in favour of the debtor. If that were permitted, the third party subject to attachment would no longer be able to use their bank account.
- In the event of a bank guarantee, generally, a pre-judgment attachment against the guaranteeing bank under the same legal relationship in which the guarantee has become due (abstract bank guarantee) is inadmissible. This kind of attachment frustrates the payment of the guarantee and therefore conflicts with the purpose and tenor of the bank guarantee: pay first, speak later.
- In the event of attachment of the purchase price relating to registered property under the buyer or notary, it is assumed

that registration (as referred to in Article 7:3(1), DCC) of that property (*Vormerkung*) has taken place. This is only different if the applicant has verified and stated in the application that this registration has not taken place or has since lost its effect. In the event of *Vormerkung*, an authorisation for garnishment of the purchase price of a registered property may be granted. In the event of *Vormerkung*, payment of the purchase price made by the buyer to the notary may be asserted against the garnishee, notwithstanding an attachment of that purchase price placed under them after the *Vormerkung* (for example, if attachment has taken place after the transfer has been registered in the public registers (Article 475h(3), DCCP)).

- Attachment by the bank of the debtor's share in the notary's or process-server's third-party money account with that bank is not allowed (Article 25(5), *Dutch Notaries Act, 1999 (Wet op het notarisambt)* (DNA), and Article 19(5), *Dutch Bailiffs Act, 2001 (Gerechtsdeurwaarderswet)* (DBA), respectively).
- It follows from case law that recourse attachment should also be possible on a share in a public registry share collection depot, or on the right to extradition under Article 26 of the *Dutch Securities Giro Act, 2011 (Wet Giraal Effectenverkeer)* (DSGA) (see District Court-Hertogenbosch, 11 June 2008, ECLI:NL:RBSHE:2008:BD3570).
- Where attachment is levied on public authorities (such as, municipalities, provinces, or the State), the application for attachment pursuant to the provisions of Article 720, DCCP, in conjunction with Article 479, paragraph 1, DCCP must be outlined unequivocally. The description must enable the public body (subjected to the attachment) concerned to easily identify to which claim the attachment relates. It is often necessary to state the part of the public body (department, district, for example) where the claim in question is to be found, as well as the type of claim (such as on account of a benefit, delivery, subsidy, or salary).
- Marital attachment is granted only if a well-founded fear of misappropriation is demonstrated by the applicant (Article 768(3), DCCP).
- It is recommended to follow the wording of Article 475, DCCP as much as possible if attachment of future funds from an existing legal relationship is also envisaged (Article 475, DCCP in conjunction with section G.4.2., 2, *Beslagsyllabus*).

Attachment Against Themselves

The applicant may request an attachment against themselves. This attachment "*contra se ipsum*" primarily serves to secure assets if the applicant and respondent have (alleged) claims against each other. This type of attachment enables the applicant to secure recourse if the respondent's claim is granted prior to their counterclaim.

For example, the applicant may choose to secure their right of retention by requesting an attachment order on assets they physically hold for the respondent (for example, a car held by the garage, since the owner is in default of payment of their repair bills, see Article 479h, DCCP).

Attachment on Registered Property

The procedure for an attachment order to recover a monetary claim from the debtor on immovable property is set out in Article 700ff, in conjunction with Articles 725 to 727, DCCP.

The object of attachment is immovable property provided that:

- If an attachment is sought against the beneficial owner of economic property, this must take the form of attachment under a third party, as economic property is in principle not subject to attachment.
- Apartment rights must be identified with the immovable property on which the right rests. The rules of jurisdiction applicable to the immovable property therefore apply (see *Jurisdiction and Competency*).
- Attachment of transferable membership rights in a cooperative association regarding flat exploitation that includes the authority to exclusively use certain parts of a building is treated as an attachment of registered securities and shares (Article 712(2), DCCP, compare Article 474aa(2), DCCP).

- The registration (referred to in Article 7:3(1), DCC) of the purchase of a registered property (*Vormerkung*) does not prevent a subsequent attachment at the seller's expense of that property. It only means that the attached property, provided it is delivered to the buyer within six months after the registration of the purchase, cannot be expropriated. Following the delivery of the property, an attachment on immovable property after registration, pursuant to Article 507b (1), DCCP affects the part of the purchase price held by the notary for the benefit of the seller (the executor). This is subject to the condition that delivery must have taken place within a period of six months after the registration (Article 7:3(4), DCC).
- A (copy of the) cadastral excerpt showing the debtor's (partial) ownership of the immovable property must be attached to the request as an indication of (shared) ownership (section G.6.2, NB 5, Beslagsyllabus).
- If the debtor is only entitled to a share in certain (immovable) property, only that share can be attached (section G.6.2, NB 6, Beslagsyllabus).

Attachment on Vessels

The arresting of ships is governed by Article 700ff, in conjunction with Article 728-728b, DCCP.

In the event of an international dispute, sea-going vessels flying the flag of a State party to the *Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships* (Brussels Convention of 10 May 1952) (Brussels Convention) can be arrested exclusively for a maritime claim (see Article 1(1), Brussels Convention). A maritime claim is a claim specifically related to the operation of a vessel. That vessel need not necessarily be the vessel for which the attachment is sought. It may also be another vessel owned by the debtor.

If a Dutch applicant seeks attachment of a ship flying the Dutch flag, the attachment must be assessed under Article 728, DCCP (see Article 8(4), Brussels Convention). In such a case the requirement of an international dispute set out in the Brussels Convention is not satisfied.

Attachment of Aircraft

The procedure for requests for attachment of aircraft is set out in Article 700ff, DCCP, in conjunction with Article 729-729e, DCCP.

Regarding the object of attachment, the following should be noted:

- Article 729-729e, DCCP exclusively applies to aircraft registered in the public registers of the Kingdom of the Netherlands and to aircraft of a foreign state, in respect of which the *Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft, 1933* is in force. In addition, Article 729a, DCCP contains a list of aircraft not subject to attachment, namely:
 - aircraft exclusively intended for the service of a foreign state, including the carriage of mail, but excluding commercial transport;
 - aircraft put into service on a regular public transport route and back-up aircraft required for that purpose; and
 - any other aircraft which is used for the carriage of persons or goods for reward that is ready to leave for such carriage; except when the attachment is made for a debt related to the purpose of the journey the aircraft is about to make.

The second paragraph of Article 729a, DCCP declares the first paragraph inapplicable in respect of stolen aircraft.

Article 729b(1), DCCP provides that: "Without prejudice to the provisions of Article 729a DCCP, no attachment on an aircraft is allowed if adequate security has been provided to prevent attachment."

An attachment on the fuel contained in the aircraft is not an attachment of the aircraft and is therefore subject to the

conditions for a pre-judgment attachment on movable property that is not registered property.

Attachment to Release and Deliver

An attachment order for the release and delivery of goods is governed by Article 700ff, DCCP, in conjunction with Articles 730 to 737, DCCP.

Objects of attachment can be:

- Movable property.
- Property on which a right to release or deliver exists.
- Property for which that right can be acquired by a court order for annulment or termination.

(Article 730, DCCP.)

For delivery, only the movable items enumerated in Article 3:86, DCC may be subject to attachment.

For delivery with a deed, an attachment may concern goods (items, which are not items covered by Article 3:86, DCC, and property rights). A creditor that may be granted the power to take recourse on the property by a court pursuant to Article 3:45, DCC may attach the property (see Article 737, DCC). Aircraft and vessels can also be attached under this section.

Attachment for the purposes of delivery is not limited to revocation. The alleged right to delivery (and then for annulment or termination) may also be based on Article 2.22 of the *Benelux Convention on Intellectual Property, 2019* (BTIP), Article 28 of the *Dutch Copyright Act, 1912* (*Auteurswet*), Article 5c of the *Dutch Databases Act* (*Databankenwet*), Article 70(7) of the *Dutch State Patent Act, 1995* (*Rijksoctrooiwet 1995*), or Article 843a, DCCP (possibly in conjunction with Article 1019a, DCCP). This kind of precautionary attachment should be regarded as a provisional measure, as referred to in Article 50(1) of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS), provided that a reasonable period of time to initiate proceedings on the merits (usually six months) is determined by the court. Therefore, when granting such an attachment order for release, two time-limits for bringing the claim in the proceedings on the merits should be set:

- One under Article 700(3), DCCP (usually 14 days).
- One pursuant to Article 50(1), TRIPS (usually six months).

Pre-judgment attachment for delivery is also possible for damages to which Article 50(1), TRIPS does not apply, under Article 2.21 (3), BTIP.

Partner Attachment

Partner attachment is a specific type of release or delivery attachment enabling the applicant to attach joint property for the purposes of distribution; no capital attachment (see Article 700ff, DCCP, in conjunction with Articles 730 to 737, DCCP, particularly Article 733, DCCP).

The applicant claiming division of joint property may attach the jointly owned property for their undivided share in that mutual property (such as a residence). In addition, each of the holders of a limited right in connection with a share, such as a pledge holder, (see Article 3:178(1), DCC; for example, the usufructuary) and the creditor of the partner, insofar as they have a receivable claim and attachment is required for recovery (see Articles 3:180 and 3:191, DCC) is entitled to request an attachment order.

Marital Attachment

Marital attachment (pre-judgment attachment of the property of matrimonial community of property) is set out in Article

Alien or Foreign Attachment

Article 765, DCCP stipulates that attachment orders may be requested against foreign respondents (debtors without any registered address in the Netherlands) (alien attachment). In the event of foreign respondents, Article 765, DCCP stipulates that a warranted suspicion of embezzlement or alienation of the relevant assets is not required. However, it must be inferred from the ECJ's *Mund and Fester v Hatrex Internationaal Transport*, Judgment of the Court (Sixth Chamber), 10 February 1994, that an alien attachment may be in violation of the anti-discrimination provisions of EU law. Debtors with a registered address in the Netherlands should not be treated differently from debtors located in other EU countries. It is therefore recommended to demonstrate warranted suspicion of alienation or transfer of assets when applying for foreign attachment.

European Bank Attachment (European Regulation)

The entry into force of the European Account Preservation Order-Vo (EAPO-Vo) (through *EU Regulation No 655/2014, 15 May 2014*) introduced a separate European procedure for bank attachments.

For bank attachments outside the EU, if an applicant wishes, if that attachment is acknowledged abroad, that assets administered at a branch of that bank located abroad are also covered by that attachment, the applicant should state in the attachment application in which country, and at which branch assets of the debtor are present.

With the entry into force of the EAPO-Vo, as of 18 January 2017, it is possible to use a standard form to apply to a Dutch court for permission to attach bank accounts in an EU member state (except Denmark). The regulation not only provides the possibility of conservatory bank attachments, but (if the applicant has an enforceable title) also for the possibility to request bank account information. Since the regulation has direct effect and does not require implementation, it enhances the uniformity of the applicable rules in EU member states.

Attachment of Evidence: Intellectual Property and Non-intellectual Property

There are two kinds of attachment of evidence:

- Attachment of evidence relating to intellectual property rights (Articles 1019b(1) to 1019c(1), DCCP) (attachment of evidence in IP cases).
- Attachment of evidence in other cases (Articles 730 and 843a, DCCP).

In its *Molenbeek*-judgment (Dutch Supreme Court 13 September 2013, ECLI:NL:HR:2013:BZ9958), the Dutch Supreme Court ruled that an attachment of evidence in non-IP cases, as well as in IP cases, is permitted. Neither the attachment order nor the attachment itself entitles the applicant to release, inspect, or copy the evidence subject to attachment. Neither does an attachment order entitle the applicant to be physically present or represented when the attachment order is executed by the process-server (typically accompanied by an IT-specialist and a locksmith to force locked server areas or physical data rooms, if required).

In the application, the evidence (documents) to be attached should be described as precisely as may reasonably be expected of the applicant. Both the legal relationship, identity of the respondent and the third-party, as applicable (for example, a data centre), against whom the attachment is requested should be stated in the application. The applicant should also make their interest in the attachment sufficiently plausible, as well as facts and circumstances demonstrating the grounds warranting the attachment. The applicant should also state whether a claim has been lodged in the proceedings on the merits, and make it plausible that the documents to be attached are in the possession of the respondent or the third-party (see also Article 444a(1), DCCP).

Supplementary Orders

In general, it is up to the applicant to include in the petition which property they wish to subject to attachment. However, in

the case of movable property, the application and ensuing attachment order can concern “the debtor’s inventory and furniture” in general.

In principle, when carrying out an attachment, the process-server does not physically attach the relevant assets. However, if the applicant has specifically requested permission to do so and the court has granted permission, the process-server will be able to take goods with them (for example, in matters of repossession). This is called confiscation or custody. In these cases, the court appoints a “custodian” with whom the goods must be stored. Custody can be useful for goods that can be moved easily and are of great value, such as cars, trailers, or agricultural vehicles. It can also be useful for high-value items such as jewellery, cash, or sensitive data for evidentiary purposes.

Undertaking and Security

Attachment may be ordered by the court subject to the condition that the applicant provides a certain amount of security for the damages that might occur due to the attachment (Article 701, DCCP). An attachment must be lifted if the debtor provides alternative security for the creditor’s alleged claim. The most common way for a debtor to provide alternative security to the (prospective) creditor is through a surety bond issued by a bank or other financial institution (*bankgarantie*). A dispute concerning the sufficiency of the collateral offered may be presented to the authorised court.

Form or Amount of Undertaking and Security

The court may grant the attachment order subject to the condition that security be provided for damages that may be caused by the attachment up to an amount to be determined at its discretion (Article 701, DCCP). Therefore, the determination whether (and to what extent) security is required is at the court’s discretion as well. The security must be offered to the respondent debtor before or at the time of service of the attachment order.

Exceptions to the Attachment Order

Given the fact that an attachment order is usually granted *ex parte*, the respondent is unable to request any exceptions to the attachment order. However, if the court considers the requested attachment or attachments unreasonably burdensome (for example, if the value of the object or objects substantially exceeds the claim), it may (partially) dismiss the request. See [Exempt Assets](#) for more information regarding property that can, generally, not be subject to attachment.

Duration of the Attachment Order

An attachment order is typically valid for the duration of the proceedings on the merits, provided that the proceedings are initiated in time (within the timeframe determined by the court in accordance with Article 700(3), DCCP; see [Grounds](#)). Depending on the outcome of the proceedings, the attachment order will then be enforceable or lapse. The main characteristic of preliminary proceedings is that any measure ordered by the judge must be of a provisional nature. In practice, however, an injunction or provisional measure can and may have irreversible consequences.

Proprietary Right and Lien

If the attachment order is granted, the respondent will no longer be able to dispose of the assets subject to attachment. The attachment order itself does not grant the applicant a proprietary right or lien. Only if the pre-judgment attachment order results in an enforceable attachment (typically following a final court ruling), will the applicant be allowed to (publicly) sell the assets and recover the outstanding debt from the proceeds.

Appeal

If the respondent debtor is neither willing nor able to offer alternative security (for instance if they dispute the claim), they may initiate (summary) proceedings aimed at (partially) lifting the attachment. In either case, a hearing can take place at short notice. In some cases, if there is a compelling reason for urgency, (summary) proceedings in accordance with Article 705,

DCCP can be lodged immediately following the attachment of the assets. If the relief judge concludes that the claim underlying the attachment is likely without merit or that the attachment is unnecessary, the relief judge may order the attachment to be lifted (a written decision to be rendered several days or weeks later). The decision of the relief judge in these preliminary proceedings does not prejudice the decision in the substantive proceedings.

Appeal against a preliminary relief ruling must be lodged no later than four weeks from the date of judgment (Article 361, DCCP).

Variation and Discharge

A pre-judgment attachment order is typically granted *ex parte*, meaning the respondent will not be heard prior to the attachment. However, there are instruments and procedures available to the respondent (see [Appeal](#)).

Third Parties

In the case of third-party attachment, Article 476a, DCCP imposes an obligation on the third-party to communicate which claims of the debtor are affected by the attachment. Notice must also be given of the items affected by the attachment. For more information regarding the position of the third-party, see [Third-Party Attachment](#).

Circumstances Where an Attachment Order Is Unavailable

The court will typically not grant an attachment order if it deems the applicant's claim implausible *prima facie*. In specific circumstances an attachment may also be granted on account of a future (not yet due) claim. A crucial factor is how certain or uncertain the future claim is and how plausible it is that the respondent will (not) meet that future obligation.

Overseas Assets

In some cases, overseas assets can be subject to an attachment order obtained in the Netherlands. For example, in cases concerning European parties, the applicable European regulations should be considered. For instance, on 10 January 2015, the [Recast Brussels Regulation](#) entered into force. This regulation facilitates attaching assets in EU member states by means of an attachment order obtained in the Netherlands, at least where the Dutch court has jurisdiction to hear the proceedings on the merits (this is rather difficult to achieve in practice though).

The attachment of overseas assets located outside of the EU is in general (practically) impossible. With respect to the court's jurisdiction regarding overseas assets, see [Jurisdiction and Competency](#) and [Grounds](#).

Foreign Court Proceedings

If a Dutch court has competency, an attachment order can be obtained in support of proceedings in another EU member state. The procedure for applying for an attachment order in support of foreign legal proceedings is the same as for domestic legal proceedings (see [Procedure for Applying](#)).

Enforcement of Attachment Orders

Domestic Attachment Orders

Once the court's permission has been obtained, the creditor instructs a process-server to carry out the attachment order. An attachment on assets located in the Netherlands generally establishes jurisdiction over the cause of action for which the attachment is made, even if neither of the parties involved are domiciled in the Netherlands, provided, however, that there is no other way through which a judgment can be obtained that can be enforced against the attached assets.

Penalties for Breach back

Breaching an executed attachment order is a criminal offence under Dutch law. Article 198 of the *Dutch Penal Code 1881* (*Wetboek van Strafrecht*) (DPC) stipulates that the penalty may either be a fine or imprisonment for up to four years. Article 198 of the DPC applies to any kind of attachment, whether the attachment has a civil or criminal nature (the latter is an attachment order issued by the District Attorney's office), regardless of the nature of the attachment and the nature of the goods seized.

In addition, the effect of the attachment of property is that acts of disposal performed in violation of the attachment cannot be enforced against the distraining party. The distrained party remains authorised to dispose of the attached property or to encumber it with a limited right, but the distraining party may ignore acts of disposition performed after the attachment. In contrast, the party acquiring the attached property, or a limited right in that respect, must respect the attachment if placed prior to acquisition. Rent or lease entitlements following attachment cannot be invoked against the applicant.

Attachments on Overseas Assets

If the Dutch court is competent, the same requirements as domestic procedures apply to attachment orders in relation to overseas assets (see *Procedure for Applying*). See *Overseas Assets*.

Foreign Attachment Orders

With respect to the enforcement of attachment orders granted by a court in a different EU member state, the European bank attachment is applicable. This means that if an attachment is granted in an EU member state, a standard-form can be used to establish a bank attachment in the Netherlands (see *Grounds*).

However, an attachment granted by the court of a foreign state that is enforceable in the Netherlands under a treaty or by law, will not be enforced until judicial approval to do so (*exequatur*) has been obtained (Article 985, DCCP).

Damages

If Dutch law is applicable, the attaching party is strictly liable for all damages resulting from a wrongful attachment (*vexatoir beslag*). A claim for damages resulting from a wrongful attachment will be awarded, even if the attaching party acted with due care and diligence when making the attachment and, for example, the negative outcome (for the arresting party) of the court proceedings following the attachment was by no means predictable or foreseeable.

END OF DOCUMENT