

France

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Attachment of Assets

The attachment of assets in France is chiefly contained in the code of civil procedure of execution (hereafter the “CPCE”), which came into force on June 1st, 2012. The CPCE has codified most of the various statutes in this field including in particular Statute n° 91-650 of July 9, 1991, “reforming the civil procedures of execution” (hereafter the “1991 Statute”) and its implementing Decree n° 92-755 of July 31, 1992, “establishing new rules relating to the civil procedures of execution giving effect to Statute n° 91-650 of July 9, 1991, reforming the civil procedures of execution.”

The following questionnaire will mainly address provisional attachments pending the obtainment of an “enforceable title” (“*titre exécutoire*”), (hereafter “conservatory measures”, i.e., “*mesures conservatoires*”), bearing in mind that the discussion below focuses on the general conditions applicable to such conservatory measures.

1. What is the general nature and effect of judicial measures available for plaintiffs to obtain provisional relief affecting property of debtors to obtain security for judgments to be obtained (“attachments”)? Freezing property in place? Placing it in the custody of a third party, such as a court official, sheriff or marshal?

Under French law, assets may be attached on an interim basis for the purpose of securing the safety of the creditor’s endangered rights. There are two kinds of attachments, i.e., conservatory measures: conservatory seizures (“*saisies conservatoires*”) and judicial securities (“*sûretés judiciaires*”), which differ in nature (1) and effects (2).

(1) General nature of the attachments

- (1.1) Conservatory seizures may be used against movable assets, whether material, *e.g.*, a television set, or immaterial, *e.g.*, patents, monies on a bank account and claims of the debtor against third parties, even where such assets are entrusted to a third party and even where they are subject to prior conservatory seizures (Articles L. 112-1, L. 521-1 and R. 521-1 of the CPCE).

- (1.2) On the contrary, judicial securities may be used against real property, *e.g.*, a house, business, and securities and shares (Articles L. 531-1 and R. 531-1 of the CPCE).
- (2) General effects of the attachments
 - (2.1) The aim of conservatory seizures is to prevent the debtor from disposing of his assets and frustrating the creditor's rights. Therefore, the effect of conservatory seizures is to freeze the seized assets that cannot be removed from the care and/or estate of the debtor and/or third party (Articles L. 141-2 and L. 521-1 of the CPCE). Seizures against claims suspend the calculation of time-limits (Article L. 141-2 of the CPCE).
 - (2.2) The effect of judicial securities is to entitle the creditor to a right over the assets, which is enforceable against third parties after proper registration and/or notification. However, it does not prevent their sale by the debtor, in which case the creditor is entitled to receive part of the sale price (Article L. 531-2 of the CPCE).

2. What is the form of the attachment? Injunction? Other kind of judicial order? Specify.

As a matter of principle, the attachment of assets is made by judicial order rendered by the judge upon the creditor's *ex parte* application ("*ordonnance sur requête*") (*See* Question 5 above for the exceptions). The creditor then has to have the judicial order served by bailiff to the debtor and/or third parties detaining the debtor's assets.

3. What is the jurisdictional basis for an attachment? Is the presence of the debtor's property a sufficient basis for an attachment to be obtained, assuming other requirements are satisfied? To what extent may attachments be used as a basis for obtaining personal jurisdiction over a debtor? To what extent are attachments or similar orders intended to have extraterritorial effect?

The judge's jurisdiction to order an attachment of assets (1) does not confer grounds for jurisdiction to hear the dispute on the merits (2). Also, jurisdiction is limited to assets located in France (3).

- (1) The judge's jurisdiction over the attachment of assets

The judge of the debtor's residence has jurisdiction to order a conservatory measure for domestic cases (Articles R. 121-2 and R. 511-2 of the CPCE).

However, for international cases and as a matter of principle, jurisdiction of French courts is based on the location of assets in France.

Where the debtor has no residence in France or its residence is unknown, the creditor may request the attachment before the judge who has jurisdiction over the place where the assets are located (Article R. 121-2 of the CPCE).

Under French law, only the execution judge ("*Juge de l'exécution*"), a civil judge of the *Tribunal Judiciaire*, has jurisdiction to order an attachment of assets, even when proceedings on the merits are pending before another judge (Article L. 511-1 of the CPCE). However, in commercial matters and before any trial, the President of the Commercial Tribunal ("*Tribunal de Commerce*") has concurring jurisdiction with the execution judge of the *Tribunal Judiciaire* to order the attachment of assets (Article L. 511-3 of the CPCE).

(2) Lack of international jurisdiction on the merits on the grounds of *forum arresti*

Forum arresti is a theory whereby the judge's jurisdiction to order an attachment of assets located within a country is extended to jurisdiction over the merits of a dispute where the debtor does not have any residence within the country. The Court of final appeals in France ("*Cour de Cassation*") once decided that where a French judge had jurisdiction to order the attachment of assets located in France, the French judge also had jurisdiction to hear the dispute concerning the claim on the merits against the debtor whose residence was not in France (the *Nassibian* case, November 6, 1979). Therefore, *forum arresti* was considered as grounds for international jurisdiction on the merits pursuant to this ruling of the *Cour de Cassation*.

However, this ruling was reversed in later decisions by the *Cour de Cassation* dated January 17, 1995 (*SARL Méridien Breckwoldt et Cie v. Cie béninoise de navigation maritime*) and February 11, 1997 (*Société Strojexport v. Banque Centrale de Syrie*). As the law now stands, a French judge may not hear a dispute on the merits when his sole basis for jurisdiction is the location of assets in France.

(3) The territorial limitation of jurisdiction for the attachment of assets

The international jurisdiction of a French judge is based on the location of assets in France. A French judge's jurisdiction is therefore limited to assets in France and attachment orders will not have extraterritorial effects. However, the *Cour de Cassation* declared that when a third party domiciled in France is requested to declare assets detained on behalf of the debtor, the debtor's assets have to be declared whether they are detained in France or abroad (*Cour de cassation*, May 30, 1985, January 30, 2002, February 14, 2008).

4. May an attachment be obtained in support of a proceeding on the merits in another country? If so, may the other proceeding be in court, arbitration or in another type of forum? Are attachments used as a mechanism in enforcing judgments or arbitral awards?

An attachment of assets may be obtained in France in support of foreign proceedings whether these proceedings are pending or to be initiated before a foreign court or an arbitral tribunal.

Also, attachments of assets are used in France as a mechanism in enforcing foreign judgements or arbitral awards. As detailed in the response to Question 19 below, a creditor may request the forced execution of his rights against the assets of the debtor on the face of a foreign judgement or arbitral award that is declared enforceable in France further to an exequatur procedure. On the face of the foreign judgement or arbitration award and prior to any enforcement procedure, the creditor may request conservatory measures against the debtor's assets located in France, which will have to be later converted into execution measures for the purpose of enforcing the final decision on the merits.

5. What are the requirements for obtaining an attachment. Of property in your country? In support of a proceeding in another country, if different?

A judge's authorization is generally necessary for the enforcement of a conservatory measure (Articles L. 511-1 and R. 511-1 of the CPCE).

Where the creditor has an enforceable title (*see* definition under Question 19 below), or a judgment which is not yet final and enforceable,

the attachment may be implemented without the prior authorization of the judge (Article L. 511-2 of the CPCE).

In addition, the prior authorization of the judge is not required when the creditor's claim concerns a default of payment of a promissory note, a bill of exchange, a check, a rent based on a written contract (Article L. 511-2 of the CPCE).

In the absence of an enforceable title, the creditor may request from the judge the authorization to employ conservatory measures if he relies on a monetary claim that seems well-grounded as a matter of principle, and circumstances that are likely to endanger the recovery of the debt (Articles L. 511-1 and R. 511-1 of the CPCE). A well-grounded claim may be evidenced by a foreign judgement, the enforcement of which will be brought before the French Judge, and/or by pieces of evidence supporting the claim on the merits. A well-grounded claim is not necessarily a determined certain claim. The CPCE deliberately removed the condition of emergency. Circumstances that endanger the creditor's chances of debt recovery generate a risk that the debtor may dissipate or conceal his assets so as to frustrate the execution of a judicial decision on the merits. The mere fact that the debtor fails to answer the creditor's claim may amount to a circumstance characterizing an endangered recovery.

6. May an attachment be obtained without notice to the debtor? If so, what are the requirements for notifying the debtor and what procedure is available to the debtor to challenge the *ex parte* attachment obtained? If not, what are the procedural requirements for obtaining an attachment on notice to the defendant?

As mentioned above, a conservatory measure is ordered by the judge at the request of the creditor. It follows that attachment of assets are granted in *ex parte* proceedings, i.e., in the absence of the debtor. The fact that the debtor remains unaware of the process until the assets are effectively attached guarantees the effect of such process, which is to prevent the dissipation of assets by the debtor for the purpose of evading its obligations towards the creditor. When granting the order of attachment, the judge may also decide that the matter will be heard in *inter partes* proceedings, i.e., in the presence of the debtor (Article R. 511-5 of the CPCE).

In any event, the attachment of the debtor's assets must be notified to the debtor within eight days following the implementation of the attachment

of assets in most circumstances. If the notification does not take place in due time, the attachment of assets shall lapse.

The debtor may challenge the attachment obtained by the creditor before the judge who pronounced the attachment order (Articles L. 512-1, R.512-1 and R. 512-2 of the CPCE). The proceedings are contradictory. The judge will pronounce the release (“*mainlevée*”) of the attachment of assets unless the creditor shows that all of the above conditions for the attachment of assets have been met.

In addition, upon request of the debtor, the judge may substitute any measure (e.g. a bank guarantee) with the initial conservatory measure (Article L. 512-1 of the CPCE).

- 7. What are the elements that must be established to the satisfaction of the court for it to grant an attachment, e.g., likelihood of success on the merits, likelihood that the debtor is removing, or will remove, its assets from the jurisdiction, fraudulent activity by the debtor, need for the attachment as security, for an expected judgment or award?**

See Question 5 above.

- 8. What is the procedure for obtaining an attachment? What is the nature and extent of the evidence that must be presented to the court and how must it be presented?**

The creditor’s application for the attachment of assets must be submitted to the judge with all supporting evidence necessary to convince the judge that the attachment must be granted (*see* Question 5 above for the applicable tests). However, bearing in mind that the debtor may ask the judge to release the attachment if the conditions are not met, creditors must be cautious when submitting their *ex-parte* application because the court may award damages in addition to such release, especially if the creditor has deliberately not produced documents showing that the claim was in fact not eligible for attachment.

- 9. To what extent, and under which circumstances, is an undertaking, in the form of a third party bond or guarantee or a deposit, required in order to obtain an attachment? In what amount, in relation to the amount claimed, is the undertaking**

required? How are such undertakings generally obtained, as a matter of practice? How much do they cost?

Under French law, the creditor does not have to provide a third party bond or guarantee or a deposit to obtain the attachment of the assets.

10. What does the undertaking secure? Damages to the debtor if the attachment is ultimately vacated? Do such damages include interest? Other elements? Legal fees? To what extent? Court costs? To what extent?

This issue will not be dealt with as the creditor is not required to provide a guarantee.

11. How specific must the application for an attachment be as to the nature, extent and location of the assets sought to be attached? How many potential garnishees may be served with an order of attachment?

The creditor must submit all information necessary for the validity of the order to be rendered by the Judge. As a matter of law, the order must specify the total amount of the monies to be attached, corresponding to the amount of the debt to be recovered, and the nature, identification and location of the assets to be attached (Articles R. 511-4 of the CPCE). Such specifications will be described in the evidence submitted by the creditor to the judge.

The number of garnishees that may be served is not limited in theory, bearing in mind that each notice of the attachment order that is served to a garnishee has to comply with and fall within the scope of the said attachment order.

12. What are the obligations of a third party who is served with an order of attachment to report on the nature and extent of the assets of the debtor in his possession, and the extent to which other persons, including the party served itself, have prior or competing liens on the property covered by the attachment order?

The third party is under the specific duty to provide information regarding the assets that he holds on behalf of the debtor to the creditor: the third party must declare to the bailiff requesting such information the

nature and value of the assets to be attached and whether they are subject to prior attachments (Articles L. 211-3, R. 221-21, R. 522-5, and R. 523-4 of the CPCE). If he fails to provide the bailiff with adequate information, he may be held liable vis-à-vis the creditor, and in particular having to pay the full amount of the creditor's claim against debtor.

13. To whom are such reports given and what is the form of such reports? To the court? To the attaching plaintiff? What is the form of such reports? In writing? Oral? Informal? Hints?

The third party's declaration regarding the assets of the debtor is given to the bailiff, whether in writing or orally, but in the latter case the bailiff drafts a report on the verbal answers of the third party.

The third party's declaration and/or the bailiff's report are immediately handed over to the third party and conveyed to the creditor, and are also notified to the debtor within eight days.

14. What kind of property of a debtor may be attached? Debts of third parties to the debtor? Claims of the debtor against third parties? Expectancies?

As a matter of law, all the assets of the debtor stand as a guarantee to his creditors (French Civil Code, Article 2284). All the assets of the debtor may be attached in principle, including both conditional assets and assets which will accrue over time (Article L. 112-1 of the CPCE).

Movable (material or immaterial), and immovable assets may be attached.

(1) Movable assets

All the movable assets may be subject to conservatory seizures (Articles L. 521-1, R. 522-1 to R. 522-14 of the CPCE), including sums of money owed to the debtor by third parties (Articles R. 523-1 to R. 523-10 of the CPCE), and securities and shares (Articles R. 524-1 to R. 524-6 of the CPCE). Also, some specific movable assets may be subject to judicial seizures, i.e., business, securities and shares (Articles L. 531-1 and R. 531-1 of the CPCE).

(2) Immovable assets

Real property (“*immeubles*”) may be subject to judicial securities but not to conservatory seizures (Articles L. 521-1, L. 531-1 and R. 531-1 of the CPCE).

15. What is the effect of the service of the order of attachment on assets of the debtor that came into possession of the garnishee after the time of service of the attachment order? Are there any time limits on the effectiveness of an order of attachment? In particular, what is the effect of the service of the order of attachment on a bank that has issued or confirmed a letter of credit of which the debtor is a beneficiary?

Service of order of attachment on assets of the debtor on the garnishee specifies the attached assets. Therefore, assets that come into the possession of the garnishee after the time of service of the attachment order may not be covered by such service. However, the service of the attachment order may have provided for the attachment of conditional assets and assets that will accrue over time. Besides, monies to be attached on a bank account will be subject to transactions that were commenced before service of the attachment order, and which are being processed at the time of such service.

As far as time-limits are concerned, the creditor has a three months’ delay as of the rendering of the judge’s order to have it implemented over the assets, *e.g.*, to have the attachment order served by bailiff on the debtor and/or a third party detaining the debtor’s assets, failing which the order shall lapse (Article R. 511-6 of the CPCE).

With regard to the letter of credit, there is an established line of case law certifying that the creditor of the beneficiary of the letter of credit may have such letter attached. The letter of credit may be attached within the hands of the bank.

16. Are there certain kinds of assets or property of a debtor that are immune, or in some other way protected from attachment, e.g., pension funds, salaries, wages, diplomatic property, other sovereign

property, other property specified under consumer-protection laws?

Immunity of attachment results either from the person of the debtor (1) or the nature of the assets (2).

- (1) Conservatory measures are not applicable against persons who benefit from immunity of execution (Article L. 111-1 of the CPCE). For example, immunity of execution benefits the French State, French City Councils, and French State Offices such as hospitals and universities, foreign States and diplomatic agents.

The principle of immunity of execution against assets belonging to foreign States located in France needs however to be further developed since it has been clarified by law n° 2016-1691 dated December 9, 2016 and codified under articles L. 111-1-1 to L. 111-1-3 of the CPCE.

First of all, conservatory and execution measures against assets belonging to a foreign State need to be authorized beforehand by the French judge in an *ex parte* order (*see* Article L. 111-1-1 of the CPCE). It is therefore no longer possible for a creditor to implement such measures without leave of court (which was the case before when the creditor had an enforceable judgment or arbitral award).

Such court authorization is subject to one of the three following conditions being satisfied (*see* Article L. 111-1-2 of the CPCE):

- (a) Foreign State has expressly agreed to such measures;
- (b) Foreign State has earmarked such asset to the satisfaction of the creditor's request;
- (c) When a judgment or arbitral award has been rendered against such foreign State and the asset under consideration is used for purposes unrelated to non-commercial public service and has a link with the entity against which proceedings have been brought.

For the application of this third condition, the following assets are deemed as being used for non-commercial public service purposes (non-exhaustive list):

- assets used for diplomatic or military activities, special missions, activities linked with international organizations. The Supreme court has already ruled, prior to the enactment of this law, that

a real estate property which was not used as the ambassador's residence or for the embassy could be foreclosed (*Cour de cassation*, January 25, 2005);

- assets belonging to the cultural heritage of the foreign State, which are not designed to be sold;
- assets pertaining to scientific, cultural or historical exhibitions, and which are not designed to be sold;
- tax or social claims of the foreign State.

Besides, if the assets are used or destined to be used in the context of diplomatic activities, special missions, activities linked with international organizations of the foreign State, they can only be attached if such State has expressly and specifically waived its immunity rights (*see* Article L. 111-1-3 of the CPCE).

Finally, article 60 of law n° 2016-1691 dated December 9, 2016 provides, under certain conditions, that the court cannot authorize such measures when the claim held by the creditor is a claim issued by a foreign State benefiting from the OECD's assistance to development.

- (2) Certain assets may not be attached based on their specific purpose or use to the debtor (Article L. 112-2 of the CPCE).

For example, personal property necessary to the life and work of the debtor and his family cannot be attached (Article R. 112-2 of the CPCE). However, such assets may remain attachable if they are located in a place other than where the debtor habitually resides or works, or if they are valuable assets. In case of seizure of a bank account, a minimum amount is left unattachable (Articles R. 112-5, R. 213-10 and R. 162-2 to R. 162-8 of the CPCE). In addition, various codes, including the labor code and the social security code, provide for rules regarding the portion of wages, pensions, alimonies, etc. which can be attached.

Objects indispensable to handicapped persons are also unattachable assets as a matter of principle.

17. For how long may an order of attachment remain in effect? If the attachment order is in support of a proceeding in another forum, are there any requirements concerning when, in relation to the date

of the issuance of the order of attachment, the proceeding in the other forum must be commenced? Completed?

As mentioned above at Question 15, a judge's attachment order may be implemented for three months as of its rendering.

Once the assets are attached, the order of attachment is effective until the discharge (if any), or, for the purpose of enforcement after the conversion of the conservatory measure into an execution measure once an enforceable title has been obtained.

If no proceedings on the merits were initiated abroad prior to the attachment of assets in France, such proceedings must be initiated before the foreign court having jurisdiction within one month of the implementation of the attachment order, failing which such order shall lapse (Articles L. 511-4 and R. 511-7 of the CPCE).

18. What rights in the plaintiff are created by the service of an order of attachment? Priority over creditors attaching later? Do banks and other garnishees have set-off or other priority rights superior to those of creditors attaching assets of debtors who are also debtors of such garnishees?

With the answer to Question 1 above in mind, priority among creditors is different depending on the nature of the conservatory measures.

(1) Conservatory seizures

Where the assets are material assets, such as furniture or equipment, they are attached as a whole by the first creditor. However, other creditors may also attach the assets, as a result of which they will have a concurring right with the first creditor. In any event, certain creditors may have a security interest over the attached asset, which will prevail over the rights of unsecured attaching creditors.

Where the assets are monies owed by a third party to the debtor, including sums deposited by the debtor on a bank account ("*créances de sommes d'argent*"), the creditor who first attaches such assets will obtain a privilege right over the funds up to the amount of his claim. Up to such amount, funds are considered secured for the sole benefit of the attaching creditor. The portion of the funds that remain not attached may be attached by a second creditor. Therefore, creditors may follow each

other until all the funds are depleted, and, accordingly, the issue of priority among them is irrelevant in this case.

(2) Judicial securities

With regard to judicial securities, the creditor's rights over the attached assets depend on the basis of his rights and the order in which they are registered, i.e., each creditor who registers his secured right shall have priority over the subsequent creditors as a matter of principle.

(3) Banks and other garnishees set-off or priority rights

If the bank or other garnishee has a set-off or priority right, he is under the duty to declare such rights to the bailiff, who may nevertheless attach such assets. The position of garnishee does not confer as such any specific creditor's rights, bearing in mind that the garnishee may also be one of the debtor's creditors, in which case he may assert his rights like any other creditor in compliance with the rules described above at Paragraphs (1) and (2) of this Question.

19. How are attachments ultimately enforced as judgments? What is the procedure? What happens if multiple plaintiffs seek judgments against the same property at roughly the same time?

Attachment orders are ultimately executed when they have been converted into forced execution measures on the face of an enforceable title. Enforceable titles are characterized by an enforceable judicial French decision, a foreign act or judgement, or arbitral award that has been declared enforceable by a final decision, an extract from notes of a mediation that have been signed by the judge and parties, an enforceable notary deed, deeds whereby spouses mutually agree to divorce, as countersigned by lawyers and filed with a notary's office, instruments issued by bailiffs in the event of default in payment of a check or in the context of simplified collection proceedings for small claims, and other deeds with the effects of a judgement at law (Article L. 111-3 of the CPCE).

Depending on the nature of the conservatory measure, the procedure of enforcement will be conducted in accordance with the corresponding execution measures, which are the final aim and primary interest of the CPCE. We will not address those procedures, which would be too detailed for the purpose of this questionnaire.

With regard to execution measures on assets attached by multiple creditors and with the answers to Questions 1 and 18 above in mind, there are two procedures that may be summarized as follows.

The distribution of proceeds procedure (“*procédure de distribution des deniers*”) shares the proceeds of sale of attached movable assets among unsecured creditors, and in some cases immovable assets, depending on the respective amount of their debts against the debtor (Articles L. 251-1 and R. 251-1 to R. 251-11 of the CPCE).

The share of proceeds of sale of a real property among the creditors is submitted to specific procedures (Articles L. 311-1 et seq. and R. 311-1 et seq. of the CPCE).

20. What is the procedure for challenging or vacating an order of attachment?

An order of attachment may be challenged by the debtor at any time, in particular when the conditions for attachment were not satisfied from the start (*please see* Questions 5 and 6 above). The debtor may also give a guarantee, which will enable the debtor to obtain the discharge of the attachment of his assets (*see* Question 6 above).

21. If there are any other aspects of attachment of law that have not been addressed in the questions, please discuss them here, or elsewhere, as appropriate.

As mentioned above, this questionnaire discusses mainly the general conditions applicable to conservatory measures. However, certain assets are governed by specific regulations, such as road motor vehicles and assets located in the debtor’s bank safe. Furthermore, the attachment of aircraft and ships is governed by specific legislation whereas certain rules of the CPCE may be applicable when an issue is not covered by the specific legislation.

Also, certain execution measures, in particular when the creditor wants to attach his own assets detained by a third party, are of a conservatory nature during a first phase and later converted into proper execution measures.