

Attachment (Freezing) Orders: Overview (France)

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A Practice Note providing an overview on the French law relating to the order of attachment issued by local courts to preserve the respondent's assets until judgment can be enforced. This Note covers the grounds on which these orders are made, the type of assets 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 from the jurisdiction where the proceedings are underway, legal practitioners must be aware of the available legal remedies, and procedural and legal requirements for applying and enforcing those remedies. Attachment orders, also known as freezing orders or freezing injunctions in some jurisdictions, are one such interim remedy commonly used to ensure that no irreparable harm may occur to the rights and interests of the parties involved.

This Note gives an overview on the law relating to attachment orders in France including:

- The grounds on which the orders are made.
- The type of assets 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 dealing with 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 orders" in this Note.

For guidance on some of the practical considerations that come into play while applying for an attachment

order in a foreign jurisdiction, see [Practice Note, Attachment orders: a cross-border overview](#).

Domestic Proceedings

Availability

A party with a lawful claim to assets can seek an attachment order in France. Primarily, the claimant or applicant must prove that the recovery of a debt is threatened.

Usually, the claimant or applicant requests an attachment order before initiating court proceedings and when the defendant's solvency is in doubt.

The claimant must prove a real risk to debt collection before the judge will authorise the measures requested in the attachment order. Attachment orders can be obtained against third parties (for example, banks, which means that a bank may freeze the accounts of its client who is subject to the order).

Grounds

The main ground for granting an attachment order is:

- A claim exists that appears to be well founded in principle.
- The recovery of the debt is likely to be threatened.

(Article L.511-1, [Civil Enforcement Procedures Code](#) (*Code des procédures civiles d'exécution*)).

This assessment is made at the discretion of the judge ([Court of Cassation \(Cour de cassation\), 2nd Civil Chamber, 3 September 2015, no 14-22.182](#); [Court of Cassation, 2nd Civil Chamber, 19 December 2002, no 01-03.719](#)).

Stage of the Proceedings

Attachment orders can be issued at any stage of the proceedings. However, under Article R. 511-7 of the Civil Enforcement Procedures Code, the applicant has one month after the order is issued to seek a judgment on the merits.

After judgment is entered, the claimant does not need to request a court order but can directly freeze the defendant's assets through a bailiff (*huissier de justice*) (Article L. 511-2, Civil Enforcement Procedures Code).

Alternative Remedies

The claimant can freeze the defendant's assets without a court order when:

- The claimant has an executory title (for example, a contract signed before a public official).
- The debtor failed to pay a promissory note, an exchange bill, or a cheque.
- The claimant has a court decision without a writ of enforcement (*titre exécutoire*), which orders a bailiff, prosecutor, or public official to help to enforce the writ.
- The debtor failed to pay a provision referred to in Article 19-2 of [Law no 65-557 of 10 July 1965, establishing the status of co-ownership of build-ups properties](#).

(Article L511-2, Civil Enforcement Procedures Code.)

These situations are bound by the same rules under the Civil Enforcement Procedures Code regarding proof of the defendant's solvency and risk of collection.

Procedure for Applying

Articles L. 521-1 to L. 523-2 of the Civil Enforcement Procedures Code govern attachment orders for personal property. Articles L. 531-1 to L. 533-1 of the Civil Enforcement Procedures Code govern measures on real property.

There is no standard form or draft available for an application for an attachment order. The claimant's lawyer drafts the request.

In practice, it makes sense for the claimant to disclose the value and location of the assets it seeks to attach. In addition, the claimant must provide a specific description and location of any real property in the request for attachment. If the claimant does not have this information, it can still request an attachment order, but it may weaken the request as it does not fulfil Article R. 511-4 of the Civil Enforcement Procedures Code.

In France, the *juge de l'exécution* (established under [Law no 91-650 of 9 July 1991 on reforming civil enforcement procedures](#)) is in charge of enforcement, including attachment orders. These judges preside over each civil court in each area (*Tribunaux Judiciaires*) and may delegate this duty of enforcement to other judges of their court. Acting as *juge de l'exécution* is just one aspect of the role of *Président du Tribunal Judiciaire*. Where the debt is a commercial debt, the President of the Commercial Court (*Tribunal de commerce*, renamed Economic Activities Court, *Tribunal des Activités Economiques*, in twelve French cities) has specific jurisdiction and may issue an attachment order before proceedings are started (Article L.511-3, Civil Enforcement Procedures Code).

There is no mention in any French legal code of the standard of proof to be presented to the court. In practice, the claimant must bring proof of the debt and any elements confirming that its collection is in jeopardy, as stated in Article 9 of the [Civil Code \(Code civil\)](#).

Parties are under no specific disclosure duties. However, if a claimant intentionally conceals information from the judge, it can be held liable if the defendant challenges the attachment order through the application for release of seizure.

The claimant is not compelled by law or practice to give undertakings to the court. However, the claimant bears the costs and fees to implement the attachment order (see *Undertaking and Security*).

The claimant is not required to notify the defendant of an application for an attachment order. The order can be issued on an *ex parte* basis.

The judge can authorise the attachment order and schedule a full hearing for the defendant to appear.

Between the issuance of the attachment order and the full hearing, the defendant's assets are frozen.

The following fees apply for an attachment order:

- Before the Commercial Court: the amount is fixed by each Commercial Court. For example, the fee established by the Paris Commercial Court is EUR11.28 if the request is dropped off at the clerk's office during an appointment and EUR14.62 if sent by mail.
- Before the *Tribunal Judiciaire*: no fixed court fee.

Type of Assets That Can Be Frozen

French law specifically allows an attachment order on both tangible and intangible assets (Articles L. 522-1 and L. 523-1, Civil Enforcement Procedures Code). Attachment of specific types of assets (such as real property, shares, bonds, stocks, and boats), is governed by specific proceedings (Articles L. 531-1 and following, R. 531-1 and following, R. 524-1, and R. 525-1 and following, Civil Enforcement Procedures Code).

In all cases, the creditor must ensure that the requested measure is proportionate and does not exceed what is necessary to recover the amount of the debt (Article L.111-7, Civil Enforcement Procedures Code).

Trustee or Nominee Interest

The claimant cannot attach assets that do not belong to the defendant. Therefore, an asset held on trust or as a nominee cannot be subject to an attachment order. The defendant must have legal ownership of the asset, unless the assets are being fraudulently concealed.

Debts of third parties can be attached, and a specific set of rules applies (Articles L. 123-1 and R. 123-1, Civil Enforcement Procedures Code).

Jointly Owned Assets

Jointly owned goods cannot be subject to an attachment order. The claimant may sue for partition and then attach the defendant's share.

Any asset held by a third party but legally owned by the defendant can be attached. Any asset held by a third party, even for the defendant's benefit, but not legally owned by the defendant, cannot be attached.

Exempt Assets

There are several assets that are exempt from attachment. For example, some tangible assets are considered necessary to the life and work of the

defendant (such as clothes, articles of bedding, food, and pets).

Some third-party debts are also outside the scope of attachment, such as maintenance claims, pensions paid by the state for unemployment, and social security compensation.

For sole proprietors (*entrepreneurs individuels*), only assets used for commercial purposes can be attached to secure a commercial debt. The sole proprietor's personal property, which includes its primary residence, cannot be subject to an attachment order.

Types of Attachment Order

The attachment order issued by the court must specify the amount over which it is taken, potentially including interest and costs. It must also specify the goods over which the measure must be taken but, in practice, it can include all goods. The court does not issue orders to attach goods abroad, as it is not possible for the bailiff to enforce the order over those goods.

The claimant prepares the order for the court's signature which may, for example, cover specific goods or all goods up to a certain value.

Location of Assets

Under French law, no specific action exists to ascertain the location of the defendant's assets without a proper writ of execution. The claimant may privately investigate assets and the location of the goods in question, but this is not common and is usually a last resort.

Supplementary Orders

Supplemental orders are not possible nor available under French law.

Undertaking and Security

The court issues an attachment order, therefore, the judge must determine whether the proposed order is balanced and proportionate and must avoid irreparable harm.

The claimant need not give an undertaking or any security to the court, but bears the costs of the application, mostly bailiff fees.

Form or Amount of Undertaking and Security

The claimant is not required to provide an undertaking or security.

Exceptions to the Attachment Order

Once aware of the attachment order, the defendant may apply to the court to withdraw or amend the scope of the order (for example, to reassess the freezing of a specific type of asset or to exclude various assets from attachment).

The judge has discretion to grant or deny the defendant's request after a full and adversarial hearing.

Under Article L.162-2 of the Civil Enforcement Procedures Code, a specific amount (currently EUR607.75 for a single person without children) is exempt from attachment, to allow the defendant funds for daily life expenses.

Where the debtor is an individual entrepreneur with limited liability, this exemption applies only to the seizure of accounts relating to its unrestricted assets, that is, its personal property.

Duration of the Attachment Order

Attachment orders on personal property have no time limit. However, they are protective orders and are not intended to last longer than the judicial claim on the merits, which must be brought within one month of the attachment order (Article R.511-7, Civil Enforcement Procedures Code). Beyond this time limit, the attachment order becomes null and void.

Attachment orders relating to real property, a business (*fond de commerce*), stocks, and bonds expire within one month of the attachment order if the claimant does not begin the action.

After an attachment order is issued, if the claimant wins the case, it may request the attachment order to be converted into a seizure order. However, notice of the attachment must be published, which is renewable every three years indefinitely (Article R. 532-7, Civil Enforcement Procedures Code).

Proprietary Right and Lien

There is a general procedure to attach personal property and specific proceedings for real property, a business, stocks, and bonds.

For personal property, a lien can only be created for the attachment of third-party debts.

Under specific proceedings, an attachment order creates a judicial mortgage that must be recorded and filed with a department of the Ministry of the Economy. The claimant must file two copies of the relevant form detailing the creditor, debt, and the attached property, and a copy of the attachment order. These mortgages are bound by the general rules, creating a proprietary right.

Special rules apply in specific circumstances in insolvency proceedings, which allow the claimant to circumvent the rules by which attachment orders are considered void during the suspect period (*période suspecte*) (that is, a certain period before the start of the insolvency proceedings).

Appeal

Under French law, the defendant cannot usually appeal an attachment order. As the defendant is not notified of the order before it is issued, the defendant can only request to vary or discharge the attachment order (*demande de mainlevée*).

If the claimant's initial request is denied, the claimant can appeal the order of denial. The grounds for appeal are the same as in the first instance, where the claimant would argue that the debt is well founded and that the recovery is threatened.

Variation and Discharge

The defendant has several ways to challenge an attachment order:

- Apply to the court to void the order because:
 - the defendant does not have legal ownership of the asset; or
 - the claimant or the bailiff did not comply with formalities.
- Apply to the court to vary or discharge the order on various grounds, for example, the defendant can challenge the existence of the debt or the threat of recovery.
- Apply to vacate the attachment order if the claimant does not bring the claim within one month of the attachment order.

Third Parties

Third parties (especially banks) served with an attachment order must declare the defendant's assets that are in their custody or possession. A false or imprecise statement of assets may render the third party liable to the claimant.

The third party must declare to the bailiff enforcing the order the existence of any previous attachment orders on the defendant's assets.

A third party may vacate an attachment order by claiming title to the frozen assets. The claim of title must be proven by clear and convincing evidence.

Circumstances Where an Attachment Order Is Unavailable

A claimant can apply for an attachment order where there is a real risk to the recovery of a debt. State or public bodies are presumed to be solvent and, therefore, recovery is never really jeopardised. (For more information on assets that may not be attached, see *Type of Assets That Can Be Frozen*.)

However, the initiation of insolvency proceedings prevents the taking of conservatory measures against the debtor (Article L.622-21, [French Commercial Code](#) (*Code de commerce*)).

Overseas Assets

In France, attachment orders are enforced by a bailiff, who does not have jurisdiction overseas. Therefore, French judges are not inclined to issue injunctions for assets abroad unless ordered under an international convention or an EU regulation.

Under [Regulation \(EU\) 655/2014](#), a judge of a member state can issue an attachment order freezing bank accounts located in any member state. The debt must arise out of a civil or commercial duty or obligation and must relate to cross-border litigation.

Foreign Court Proceedings

The French equivalent of the attachment order is issued before the claim is begun and is linked to the proceedings on the merits. The claimant must prove a meritorious claim and that the recovery of the debt or claim is threatened (see *Procedure for Applying*). If a foreign applicant can fulfil the two requirements, the French court will issue the attachment order.

In some cases, the claimant can freeze the defendant's assets by going directly to a bailiff when the claimant has a court order without a writ of execution. French courts have determined that a foreign judgment or court order falls within this category. Therefore, a claimant with a judgment or a court order in another country can freeze the defendant's assets without a French attachment order issued by a judge.

[Regulation \(EU\) 1215/2012](#) allows judgments of any other member state to be directly enforced in France without an order issued by a French judge.

Enforcement of Attachment Orders

Domestic Attachment Orders

An attachment order is enforced by a bailiff.

When the attachment order relates to personal property held by the defendant, the bailiff usually serves the defendant with papers stating that the asset is frozen and cannot be sold or rented.

The bailiff requests that any third party involved must declare the assets and their value held but legally owned by the defendant. Once this is confirmed, the bailiff then orders the third party to freeze assets up to the value listed in the order. This two-step procedure only applies to assets held by third parties (usually banks).

An attachment order can also be issued to seize the defendant's goods, which may then be kept by a third party appointed by a judge. In this case, the bailiff can directly seize the goods and hand them to the third party.

Penalties for Breach

If a party breaches an attachment order, whether the defendant or a third party, that party may be held liable for the pecuniary consequences of the breach.

Criminal sanctions for breach of an attachment order include:

- Imprisonment for up to three years.
- Fine of up to EUR375,000.

(Article 314-6, [Criminal Code](#) (*Code penal*)).

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However, the defendant is not usually able to breach the order, because an independent third party (for example, a bank) has possession of the frozen assets and acts accordingly to protect the assets.

Overseas Assets

Outside the scope of a bilateral convention or an international regulation, a French court rarely issues an order to attach assets abroad.

Foreign Attachment Orders

French courts have determined that a foreign court decision is sufficient to directly require a bailiff to enforce an attachment order (see *Foreign Court Proceedings*). However, attachment orders are temporary in nature, and a bailiff may be reluctant

to enforce a foreign attachment order. It is advisable that a claimant obtain a writ of execution from a French court, which allows the bailiff to enforce the attachment order as though it were a domestic order.

Penalties for Breach

The same penalties apply to breach of a foreign attachment order as for a French order.

Damages

If a judge revokes an attachment order, the defendant may claim compensation and damages. The defendant must prove personal damages incurred as a result of the order. The defendant is usually reimbursed costs and damages, including the costs to initiate the proceedings to revoke the attachment order.

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