

NCC and Pre-judgment Attachments

Who are we?

The Netherlands Commercial Court (which consists of 3 chambers: the NCC District Court, the NCC Court in Summary Proceedings and the NCC Court of Appeal) is a part of the Dutch Judiciary, which is ranked among the most efficient, reliable and transparent worldwide. The NCC is based in Amsterdam - a prime location for business and a gateway to Europe, with a long history of justice and global business.

The NCC uses Dutch procedure, which is highly regarded for its pragmatic approach and efficient operation. Proceedings are in English. Judgments are in English. eNCC, an electronic communication system, is a web portal with secure access through the NCC site (www.ncc.gov.nl), allowing Dutch counsel to initiate an action, check the status and scheduled next steps, and submit and download documents. This gives the NCC the tools to communicate effectively and provide swift and firm guidance throughout the process.

Pre-judgment attachments in the Netherlands Before initiating proceedings, lawyers may wish to ascertain whether the alleged debtor has assets against which a favourable money judgment can be enforced. This fact sheet provides more information.

There are two relevant actions under Dutch procedure:

- a) The creditor submits an application to the court in summary proceedings requesting leave for a pre-judgment attachment:
 - the goods to be attached are situated in the Netherlands or (if the application does not pertain to goods) the debtor is domiciled in the Netherlands
 - for money and non-money claims in civil and commercial matters
 - the application is submitted by a lawyer who is a member of the Dutch Bar Association
 - the claim is not without merit; other requirements may apply (see the Guidelines of the Dutch Courts ("Beslagsyllabus"; in Dutch only)
 - the debtor is typically not notified of the application
 - the court generally issues its decision on the application within a period of 24 hours; leave is conditional upon the creditor's compliance with the time limit to initiate the main action (usually 14 days)
 - the creditor is usually not required to provide security
 - enforceable in the other Member States without the need for a declaration of enforceability, provided a Dutch court has jurisdiction on the merits.

- b) The creditor submits a European form to the court in summary proceedings requesting an European Account Preservation Order (EAPO; EU Regulation No. 655/2014)

- the creditor is domiciled in an EU Member State
- a Dutch court has jurisdiction on the merits
- only for money claims in civil and commercial matters in cross-border cases where the creditor is domiciled outside of the Netherlands, or the bank account to be preserved is maintained in another EU Member State (with the exception of the United Kingdom and Denmark)
- if the specific account number is unknown: the creditor submits details to identify the bank where the debtor holds an account
- there is a risk that subsequent enforcement of the creditor's claim against the debtor will be impeded or made substantially more difficult
- the creditor is likely to succeed on the substance of his claim against the debtor
- the creditor provides security
- the debtor is not notified of the application or heard prior to the issuing of the EAPO
- the court issues its decision by the end of the tenth working day after the creditor lodged or, where applicable, completed his application - the EAPO is granted conditional upon the observance by the creditor of the time limit set to initiate the main action (usually 14 days) - enforceable in the other Member States without the need for a declaration of enforceability.

Lifting the attachment or EAPO

- the court that granted leave has jurisdiction to lift the attachment
- any interested party may submit an application to that effect
- a pre-judgment attachment is lifted, inter alia, if the right invoked by the attachment creditor after a summary examination is shown to be without merit
- an EAPO: the remedies listed in the Regulation apply.

How can NCC get involved?

- a) An application for a pre-judgment attachment: the assets are situated in Amsterdam (if the assets are tangible property) or the debtor is domiciled in Amsterdam (if other assets are involved, such as a claim/bank account)
- b) Where an EAPO is sought, the debtor must be domiciled in Amsterdam, or one of the bank accounts involved must be with a bank that has offices in Amsterdam,
- c) A claim to lift the attachment or revoke the EAPO: the judgment must have been given by the court in summary proceedings of the Amsterdam District Court (including NCC's Court in Summary Proceedings)
- d) in all cases special NCC requirements apply
 - civil or commercial matter within the autonomy of the parties and not subject to special jurisdiction
 - international dispute
 - express agreement for the proceedings to be in English before the NCC: the applicant and all interested parties (the party or parties whose interest are

involved, such as the debtor or third party holding the goods involved) must have agreed on this prior to the submission of the application

- where a third party submits a claim in the NCC Court in Summary Proceedings for an order lifting a prejudgment attachment, the third party is bound by the language that applied to the application for leave for the attachment.

Costs

NCC charges a fixed court fee of € 7,500 to the applicant and any party initiating an action to lift the attachment.

Need to know more?

If you have any questions, please contact us at NCC@rechtspraak.nl. Or visit our website www.ncc.gov.nl. You can also follow us on Twitter (@NethComCourt) and/or LinkedIn.

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