



## Under certain conditions, attachment in the Netherlands creates international jurisdiction

You might have a dispute with a counterparty in a country whose legal system you do not trust, even though the court in question has jurisdiction under international law. Based on recent case law in the Netherlands, it is sometimes possible to bring the case before a Dutch court. The Dutch judiciary has been found to be independent and of high quality in various studies.

### Judgement

According to the judgment of the Dutch Supreme Court of 12 April 2019, Dutch law permits the prejudgment attachment of goods located in the Netherlands of a debtor with no known address in the Netherlands. If there is no other way to obtain a legal basis in the Netherlands for the enforcement of a claim, the claim can be lodged in the principal action before the court whose preliminary relief judge granted the attachment. Under Dutch law, the judge of this *forum arresti* (the legal forum that granted the attachment) has international jurisdiction. This is subject to the condition that the attaching party cannot obtain a judgment that is enforceable in the Netherlands by bringing an action before a foreign regular court on the basis of an EU regulation or a treaty.

### What does this mean in concrete terms?

Suppose a party in France has a counterparty in a country outside the EU with which the Netherlands has no treaty to enforce a judgment passed in that country in the Netherlands. The counterparty has assets in the Netherlands. The French party can then have a prejudgment attachment levied against those assets and thus create jurisdiction of the Dutch court. If the claim is allowed by the Dutch court, the assets can be sold off under a post-judgment attachment *and* the French party will also have a judgment that can be enforced throughout the EU.

### A brief comment on attachments in the Netherlands

In the Netherlands, it is usually easy for a creditor to be granted a prejudgment attachment against a debtor's assets. Generally, the preliminary relief judge grants the application for a prejudgment attachment without first hearing the debtor. Only a summary examination of the facts and arguments put forward by the applicant is carried out in order to determine whether the applicant's claim is plausible.

After the attachment has been awarded, the attaching party must in principle bring an action before the court within fourteen days to establish its claim against the party against whom the attachment has been levied.

Prejudgment attachments are only lifted if a bank guarantee is provided equal to the amount for which the attachment has been levied, or if the debtor lodges preliminary relief proceedings seeking to lift the attachment and the court rules that the attachment should not have been levied. In practice, it is difficult to get an attachment lifted once it has been levied.

## Conclusion

If your counterparty has assets in the Netherlands, it is easier here than in most other countries to have those assets attached. This attachment sometimes also leads to the Dutch court acquiring jurisdiction, meaning that you do not have to litigate in countries with a weaker legal system.

If you would like to know more, please contact Flip (P.J.P.) van Huizen of JPR Advocaten.



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