

NETHERLANDS

Law and Practice

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Lexence N.V. see p.8



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1. Identifying Assets in the Jurisdiction

1.1 Options to Identify Another Party's Asset Position

There is no general asset register or database in the Netherlands. However, for shares in privately owned companies, an excerpt from the Chamber of Commerce provides information about sole shareholders. When the shares are being held by two or more shareholders, information on the identity of the shareholders is not publicly available.

An excerpt from the land registry provides an overview of the rights in rem of parties in respect of immovable properties as well as certain vessels and air planes. Furthermore, where the creditor has reasons to believe that the debtor holds one or more accounts with a bank in a specific EU Member State, the creditor could try to obtain information necessary to allow the bank or banks and the debtor's account or accounts to be identified under the EU Regulation No 655/2014 (establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters).

Dutch civil procedural law does not provide for general freezing orders or asset disclosure orders. However, after having obtained the required leave from the District Court, it is possible to seize specific assets with a conservatory seizure. This is possible for most asset classes, including moveable properties, shares, bank accounts, third-party claims, real estate and intellectual property rights.

2. Domestic Judgments

2.1 Types of Domestic Judgments

There are different types of domestic judgments available in the Netherlands. A default judgment may be rendered when the defendant does not formally appear in court despite valid service of the writ of summons (or equivalent document). In matters that require an immediate remedy, preliminary judgments may be rendered in preliminary relief proceedings.

Provisional remedies that can be issued in such proceedings include preliminary mandatory injunctions (ordering the defendant to do something) and preliminary prohibitory injunction (ordering the defendant to refrain from doing something). Provisional remedies can also be issued in proceedings on the merits, although this is not very common.

Other judgments that may be rendered in the context of proceedings on the merits include judgements in ancillary proceedings, interim judgements and final judgements.

Ancillary Proceedings

Ancillary proceedings could involve a wide range of procedural issues, such as the defendant challenging the jurisdiction of the court or the defendant requesting for joinder of parties or for security for costs. Most ancillary proceedings will be dealt with first, and therefore tend to slow down the main proceedings considerably. In the main proceedings, the court can render interim judgements or final judgements.

Interim Judgments

Interim judgments are given when actions need to take place before the final judgment is delivered (one of the parties could for example be ordered to produce evidence), whereas final judgments conclude the court dispute.

Final Judgments

Final judgments can be condemnatory (ordering a defendant to do or not do something), constitutive (creating, changing or ending legal rights or relationships) or declaratory (pronouncing the existence or non-existence of a legal relationship). When successful, claims for specific performance result in the rendering of a condemnatory judgment, for example ordering the defendant to deliver an object, pay a certain sum of money, perform a certain work or refrain from doing something.

2.2 Enforcement of Domestic Judgments

When a money claim is awarded in a condemnatory judgment, the creditor can enforce the judgment by means of an attachment in execution of one or more of the debtor's assets. Save if otherwise provided by law or contract, the creditor can have recourse for their claim against all the assets of their debtor. In principle, the creditor is free in the choice which assets of the debtor to attach.

Attachable assets include moveable properties, shares, earnings, bank accounts, other types of third-party claims, real estate and intellectual property rights. The attachment implies that the attached asset(s) in the end will be converted into cash on behalf of the creditor. This could for example be effected by means of a public sale of the attached assets, or – in case the attachment is levied on claims against third parties – by collection of these attached claims.

Enforcing judgments by means of an attachment in execution requires the assistance of a bailiff.

Requesting Bankruptcy Proceedings

A creditor could also try to collect his claim against the debtor by requesting the court to open bankruptcy proceedings vis-à-vis the debtor. In their request, the creditor needs to give *prima facie* evidence of facts or circumstances that show that the debtor has ceased to pay their debts and that the debtor has at least

two or more creditors. The creditor also must include prima facie evidence of the existence of their claim against the debtor.

Bankruptcy proceedings can be opened by Dutch courts against debtors if their centre of main interests is located in the Netherlands. Bankruptcy requests can be used by creditors to increase the pressure on the debtor to “voluntarily” comply with their payment obligations

2.3 Costs and Time Taken to Enforce Domestic Judgments

The costs and time it takes to enforce judgments varies greatly, depending on the types of assets available for attachment. If the debtor holds a bank account with a sufficient balance, enforcing the judgment takes about one to two months, with limited costs (usually less than EUR1,000). However, if the enforcement requires for example the public sale of real estate or shares in privately held companies, much more time is required, and the costs will be (much) higher.

If no information is available about attachable assets of the debtor, filing a bankruptcy request is usually the only (cost efficient) way of trying to get the debtor to comply with their payment obligations

2.4 Post-judgment Procedures for Determining Defendants' Assets

Dutch civil procedural law does not provide for post-judgment procedures for determining what assets the defendant holds. However, where the creditor has reasons to believe that the debtor holds one or more accounts with a bank in a specific EU Member State, the creditor could try to obtain information necessary to allow the bank or banks and the debtor's account or accounts to be identified under the EU Regulation No 655/2014 (establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters).

2.5 Challenging Enforcement of Domestic Judgments

As a rule, initiating appeal proceedings (or another legal remedy) against a judgment stays the enforcement of that judgment. However, this is different in case the judgment has been declared provisionally enforceable by the first instance judge. Claimants virtually always ask for such a declaration and, in most cases, judges declare their judgments provisionally enforceable.

In preliminary relief proceedings, the enforcement of a judgment that has been declared provisionally enforceable could be stayed or prevented by way of provisional remedy. A debtor may succeed if they can demonstrate that the judgment relies on an erroneous finding of fact or law, or if new facts or cir-

cumstances arise after the date of the judgment as a result of which enforcement of the judgment would put the debtor in a state of emergency

2.6 Unenforceable Domestic Judgments

By definition, only judgments that are (in part) condemnatory (ordering a defendant to do or not do something) can be enforced. Judgments that are purely constitutive (creating, changing or ending legal rights or relationships) or declaratory (pronouncing the existence or non-existence of a legal relationship) don't qualify for enforcement

2.7 Register of Domestic Judgments

There is no central register of judgments in the Netherlands. Part of the judgments gets published (often in anonymous form) in a publicly available database, but this is done for informational purposes only.

3. Foreign Judgments

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

In the absence of any applicable treaty or statutory provision, foreign judgments in civil and commercial matters are not enforceable in the Netherlands. If a treaty applies, Dutch courts will normally grant an *exequatur* without reviewing the foreign judgement on its merits. The foreign judgment then qualifies for enforcement on the same terms as if it were rendered by a Dutch court.

The Netherlands is party to a number of bilateral and multilateral conventions concerning (inter alia) enforcement, although no treaty exists between the Netherlands and the United States concerning the recognition and enforcement of money judgments in civil and commercial matters. In general, these treaties and conventions contain broadly similar conditions that have to be met before a foreign judgment can be declared enforceable:

- it is required that the jurisdiction of the foreign court is based on a ground of jurisdiction that is generally acceptable by international standards;
- it is required that the foreign judgment is enforceable in the country of origin;
- the recognition of the foreign judgment is not contrary to Dutch public policy;
- for judgments obtained in default of defence, it needs to be established that service of the writ of summons (or equivalent documents) was effected in sufficient time to enable the defendant to defend; and/or
- the judgment may not be irreconcilable with an earlier judgment given between the same parties in the Netherlands.

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Judgments Originating in the EU

EU Regulation 1215/2012 provides rules for enforcement of judgments originating from courts in other EU member states. Pursuant to this regulation, a judgment given in another member state that is enforceable in that member state is enforceable in the Netherlands without any declaration of enforceability being required. The judgment given in the other member qualifies for enforcement on the same terms as if it were rendered by a Dutch judge. However, on application of the debtor, the enforcement of a judgment will be (inter alia) refused:

- if recognition of the foreign judgment is manifestly contrary to public policy in the Netherlands;
- where the judgment was given in default of appearance;
- if the judgment is irreconcilable with a judgment given between the same parties in the Netherlands; or
- if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Netherlands.

Regarding default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable them to arrange for their defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so.

Judgments Outside the EU

With regards to judgments obtained outside of the EU in a country that does not have a treaty for enforcement of civil judgments with the Netherlands, the following applies. These judgments are not enforceable in the Netherlands and re-litigation before the competent Dutch court is therefore required. However, a full retrial can normally be avoided in case the following conditions are met:

- the jurisdiction of the foreign court is based on a ground of jurisdiction that is generally acceptable by international standards;
- the foreign judgment was rendered in legal proceedings complying with elementary principles of fair trial;
- recognition of the foreign judgment is not contrary to public policy in the Netherlands;
- the judgment is not irreconcilable with a judgment given between the same parties in the Netherlands or with a judgment from a foreign court involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for recognition in the Netherlands;
- the judgment is enforceable in the country of origin.

3.2 Variations in Approach to Enforcement of Foreign Judgments

The above applies to judgments in civil and commercial matters. Different rules might apply with regards to enforcement of other types of judgments.

3.3 Categories of Foreign Judgments Not Enforced

Judgments originating from courts in other EU member states, ordering a provisional or protective measure, are only enforceable in the Netherlands in case it is established that the foreign court has jurisdiction as to the substance of the matter. If this condition is not met, judgements of this type, in principle, cannot be enforced in the Netherlands.

For foreign judgments given in default of appearance, it is required to establish that the defendant was served with the document which instituted the proceedings in sufficient time and in such a way as to enable them to arrange for their defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for them to do so. If this condition is not met, in principle, foreign judgements obtained in default of defence cannot be enforced in the Netherlands.

The described rule regarding judgments obtained in default of defence, also applies to foreign judgments obtained outside of the EU. Furthermore, if a treaty applies, the treaty could specify that the foreign judgment should be final and conclusive in the country where it has been rendered at the time the matter of recognition and enforcement is being considered by the Dutch court. A number of Dutch authors consider that this requirement also applies to judgments obtained outside of the EU in countries where no treaty or convention applies.

Foreign Provisional or Protective Measures

Regarding foreign judgments ordering provisional or protective measures (including money judgments rendered after summary proceedings), a number of Dutch authors consider that such judgments should only be recognised and enforced to the extent that it is established that the foreign court has jurisdiction as to the substance of the matter (in addition to the normal requirements that have to be met, see above).

3.4 Process of Enforcing Foreign Judgments Where a Treaty Applies

The creditor submits an application to the court where the debtor is domiciled or where their assets are located. In the application, the creditor requests the court to declare the foreign judgment enforceable in the Netherlands. The court sets a date for a court hearing, where both parties are supposed to appear with their lawyer.

If the court finds that the conditions contained in the specific treaty are met, a declaration of enforceability will be issued. As a result, the foreign judgement qualifies for enforcement on the same terms as if it were rendered by a Dutch judge.

Judgments Originating from Courts in Other EU Member States

Judgements from courts in other EU member states are enforceable in the Netherlands without any declaration of enforceability being required. For the purposes of enforcement, the creditor shall provide a Dutch court bailiff with the required documents. This includes a copy of the foreign judgment (which satisfies the conditions necessary to establish its authenticity), a certificate issued by the court of origin, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest.

Prior to the first enforcement measure, the certificate shall be served on the debtor. The certificate shall be accompanied by the judgment, if not already served on that person.

Judgments Obtained Outside the EU in a Country where no Treaty Applies

The creditor shall start proceedings before the court where the debtor is domiciled or where their assets are located by serving a writ of summons on the debtor. In the writ of summons, the creditor usually claims that the debtor be ordered to pay the same amounts as awarded in the foreign judgment. The normal procedural rules in civil matters apply.

After the debtor has appeared, they will be granted a six-week term to file a written statement of defence. Upon request of either of the parties, the court orders a hearing where the case can be orally argued by parties. Depending on the specifics of the case, the proceedings could include additional procedural steps (such as filing statements of reply and rejoinder).

If the creditor prevails, the court renders a judgment ordering the debtor to pay the amounts as previously awarded in the foreign judgment. This judgment can then be enforced in the Netherlands.

3.5 Costs and Time Taken to Enforce Foreign Judgments

The costs and time it takes to enforce foreign judgments varies greatly. This first depends on where the foreign judgment was obtained.

Judgments Originating from EU Member States

Judgments originating from courts in other EU member states qualify for enforcement on the same terms as judgements rendered by a Dutch judge (see).

In principle, the costs and time it takes to enforce these judgments is therefore comparable to what it takes to enforce domestic judgments (save for some additional translation costs and bailiff costs). This could however be different in case the debtor invokes any of the refusal grounds provided for in Regulation 1215/2012 (see above). The enforcement process then takes longer, and comes with extra costs (mainly lawyer fees and court registry fees).

Judgments where a Treaty or Convention Applies

Judgments originating from courts in one of the countries where a treaty or convention applies, can be enforced in the Netherlands after the creditor has obtained a declaration of enforceability. In general, the application for such a declaration of enforceability takes around six months, depending on the defences (if any) put forward by the debtor. Once the declaration of enforceability is obtained, the foreign judgement qualifies for enforcement on the same terms as if it were rendered by a Dutch judge.

Judgments Originating Outside the EU and where no Treaty Applies

Judgments obtained outside of the EU in a country where no treaty applies are not enforceable in the Netherlands. Re-litigation before the competent Dutch court is therefore required. A full retrial can normally be avoided in case the conditions for recognition of the foreign judgement are met (see above).

It is unlikely that the procedure will take less than a year (except when the debtor fails to appear).

Assets

The costs and time it takes to enforce foreign judgments furthermore depends on the types of assets available for attachment. If the debtor holds a bank account with a sufficient balance, enforcing the judgment takes about one to two months, with limited costs. However, if the enforcement requires for example the public sale of real estate or shares in privately held companies, much more time is required, and the costs will be (much) higher.

If no information is available about attachable assets of the debtor, filing a bankruptcy request is usually the only (cost efficient) way of trying to get the debtor to comply with their payment obligations.

3.6 Challenging Enforcement of Foreign Judgments

Judgments from EU Member States

With regards to judgments originating from courts in other EU member states, enforcement in the Netherlands could be refused on application of the debtor on different grounds, see **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**. The decision on the application for refusal of enforcement may be appealed against by either party. After the appeal, either party can take the matter to the Dutch Supreme Court. If an ordinary appeal has been lodged against the judgment in the member state of origin or if the time for such an appeal has not yet expired, the procedure for refusal of enforcement may be stayed by the Dutch court.

Judgments where a Treaty or Convention Applies

The enforcement of foreign judgments originating from courts in countries where a treaty or convention applies can be challenged in case the conditions for enforceability contained in the applicable treaty or convention have not been met. The treaties and conventions contain broadly similar conditions. Usually, enforcement can be challenged on different grounds, see **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**.

The decision of the Dutch court on the application of the creditor to declare the foreign judgment enforceable in the Netherlands may be appealed against by either party. After the appeal, either party can take the matter to the Dutch Supreme Court. If an ordinary appeal has been lodged against the judgment in the country of origin or if the time for such an appeal has not yet expired, the Dutch judge may stay the procedure concerning the declaration of enforceability.

Judgments from Outside the EU with no Treaty

With regards to judgments obtained outside of the EU in a country that does not have a treaty for enforcement of civil judgments with the Netherlands, the following applies. These judgments are not enforceable in the Netherlands and re-litigation before the competent Dutch court is therefore required. In this litigation, the debtor can challenge the creditor's claims pursuant to the foreign judgment on different grounds, see **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**. The decision of the Dutch court may be appealed against by either party. After the appeal, either party can take the matter to the Dutch Supreme Court. If an ordinary appeal has been lodged against the judgment in the country of origin or if the time for such an appeal has not yet expired, the Dutch judge may stay the re-litigation in the Netherlands.

4. Arbitral Awards

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

Domestic Arbitral Awards

Enforcement of domestic arbitral awards (rendered in proceedings where the place of arbitration is located in the Netherlands) requires a leave from the provisional relief judge of the district court within whose district the place of arbitration is located. Arbitral awards can be enforced to the extent that they are condemnatory in nature. The provisional relief judge can only refuse the leave if it appears plausible to them after a summary investigation that the award will be set aside or revoked or if a penalty for non-compliance has been imposed against the law.

An award may only be set aside on one or more of the following grounds:

- absence of a valid arbitration agreement;
- the arbitral tribunal was constituted in violation of the rules applicable thereto;
- the arbitral tribunal has not complied with its mandate;
- the award is not signed or does not contain reasons;
- the award, or the manner in which it was made, violates public policy or good morals.

Revocation of the award can take place only on one or more of the following grounds:

- the award is entirely or partially based on fraud which is discovered after the award is made and which is committed during the arbitral proceedings by or with the knowledge of the other party;
- the award is entirely or partially based on documents which, after the award is made, are discovered to have been forged;
- after the award is made, a party obtains documents which would have had an influence on the decision of the arbitral tribunal and which were withheld as a result of the acts of the other party.

Once the leave has been granted, the arbitral award qualifies for enforcement on the same terms as if it were rendered by a Dutch court.

Foreign Arbitral Awards

For foreign arbitral awards (rendered in proceedings where the place of arbitration is located outside the Netherlands) the following applies. An award rendered in a foreign country to which a treaty concerning recognition and enforcement is applicable, may be declared enforceable in the Netherlands by the Dutch Court of Appeal at the request of any of the parties. An impor-

tant example of such a treaty is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

If no treaty concerning recognition and enforcement is applicable, a foreign arbitral award may be declared enforceable in the Netherlands by the Dutch Court of Appeal at the request of any of the parties unless the party against whom recognition or enforcement is sought, asserts and proves that:

- a valid arbitration agreement under the law applicable thereto is lacking;
- the arbitral tribunal is constituted in violation of the rules applicable thereto;
- the arbitral tribunal has not complied with its mandate;
- the arbitral award is still open to an appeal to a second arbitral tribunal, or to a court in the country in which the award is made;
- the arbitral award has been reversed by a competent authority of the country in which that award is made; or the court finds that the recognition or enforcement would be contrary to public policy.

4.2 Variations in Approach to Enforcement of Arbitral Awards

The approach to enforcement of arbitral awards varies depending on the place of arbitration.

4.3 Categories of Arbitral Awards Not Enforced

Arbitral awards can only be enforced to the extent that they are condemnatory in nature. Furthermore, arbitral awards rendered in first instance that have not been declared immediately enforceable and that are open to appeal can not be enforced as long as an appeal is pending.

4.4 Process of Enforcing Arbitral Awards

Domestic Arbitral Awards

The process for enforcement of domestic arbitral awards involves the following steps. The creditor submits an application to the provisional relief judge of the district court within whose district the place of arbitration is located. In the application, the creditor requests the court to declare arbitral award enforceable.

As a rule, the court decides on the application *ex parte* (without first hearing the other party). Once the leave has been granted, the arbitral award qualifies for enforcement on the same terms as if it were rendered by a Dutch court.

Foreign Arbitral Awards

The process for enforcement of foreign arbitral awards involves the following steps, unless, in case a treaty applies, that treaty contains provisions in derogation thereof. The creditor submits an application to the Dutch court of appeal where the debtor is domiciled or where their assets are located. In the application, the creditor requests the court of appeal to declare the foreign arbitral award enforceable in the Netherlands. The court of appeal sets a date for a court hearing, where both parties are supposed to appear with their lawyer.

If the court of appeal finds that the conditions have been met, a declaration of enforceability will be issued. As a result, the foreign arbitral award qualifies for enforcement on the same terms as if it were rendered by a Dutch judge.

4.5 Costs and Time Taken to Enforce Arbitral Awards

The costs involved and length of time it takes to enforce an arbitral award varies greatly. No specific guidelines can be provided.

4.6 Challenging Enforcement of Arbitral Awards

The decision to grant a leave in relation to a domestic arbitral award cannot be appealed against by the debtor. However, by operation of law, the setting aside or revocation of the arbitral award entails the setting aside or revocation of the leave for enforcement. Arbitral awards rendered in first instance that have not been declared immediately enforceable and that are open to appeal can not be enforced as long as an appeal is pending.

The power to enforce an arbitral award is prescribed on the expire of twenty years from the beginning of the day following that of the decision. Where, before the completion of the prescription period, a legal remedy or action is instituted by one of the parties to attack the arbitral award, the period shall not start to run until the beginning of the day following the one on which the proceedings relating thereto have been terminated.

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Lexence N.V. is a leading Dutch law firm based in Amsterdam and specialised in corporate and commercial law and real estate law. The firm provides legal services to both national and international companies who operate in the Dutch market. The firm's professionals, including over 95 lawyers and civil law notaries, work in small teams directed by partners. The Lexence corporate and commercial lawyers specialise in legal support regarding mergers and acquisitions, joint ventures, private equity and venture capital transactions, employment and

benefits law, commercial and corporate disputes, structuring and restructuring. The litigation team consists of ten lawyers who represent companies, financial institutions and directors in corporate and commercial disputes, both domestic and international. The practice areas within litigation are: takeover disputes, international trade, franchise and distribution, fraud and asset tracing, insolvency, financing and security and shareholders disputes.

Authors



Bram Thomas Craemer is a partner at Lexence. He specialises in the prevention and resolution of commercial disputes. His regular clients include leading media companies, financial service providers and ICT companies. Businesses from the industrial sector, such as various offshore (and other) installation companies, are also longstanding clients. In addition, Bram Thomas regularly represents individuals and prominent families in complex commercial disputes. He also specialises in cross-border commercial disputes, cross-border bankruptcies and insolvency law matters.



Mattias Kik has been with Lexence since 2009 and specialises in civil procedural law and handles commercial dispute resolution in the broadest sense. He advises and litigates in a wide range of (cross-border) commercial disputes for Dutch and international companies, including complex restructuring and insolvency issues. Mattias also represents clients in disputes regarding fraud and is an experienced specialist in solving issues of IPR and international execution. In this context, he acts for companies, banks, suppliers and other parties who are dealing with (financial) difficulties. Mattias was admitted to the Dutch Bar in 2009.

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