

Your debtor has assets in France? - You can secure the payment of your claim and facilitate the enforcement of a court decision

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When it comes to securing enforcement, it is worth thinking outside the box, and looking at what can be done overseas: the French procedure code offers to litigants the ability to obtain the Court's authorization to perform conservatory measures which freeze your debtor's assets, by way of security, for the ultimate enforcement and performance of judgments made in substantive proceedings.

This device can be implemented in support of litigation pending outside of France (e.g., in the UK or U.S., in the absence of restriction), and none of the parties need to be French, as long as the debtor has assets in France.

It is quite easy to obtain and is powerful.

The creditor who is a party to a commercial or civil action outside France can in principle apply before the French Judge for a freezing order.

Straight forward application conditions and a relatively low standard of proof

All the applicant needs to show is:

- That **his claim appears to be well-founded in principle**. This can be a claim for payment, or even a claim in damages, and can be of contractual or tortious origin; and
- That there are **circumstances likely to jeopardize the recovery** of such claim.

The French Courts tend to consider that the following constitute circumstances likely to jeopardize the recovery of the claim:

- Debtor's averred attempt to dissipate its assets;
- Failure to pay debts when they fall due;
- Anticipated difficulty in enforcing the substantive decision when this is made.

The application itself is made **ex parte**.

The procedure is quick and the standard of proof is relatively low: the claimant will not need to give a cross-undertaking in damages, nor have to show precisely that the alleged debtor is busy dissipating his assets to the detriment of his creditor.

Such evidence can also consist in commercial investigators reports, provided that they do not infringe privacy and have been legally obtained.

The creditor needs to **identify the debtor's assets in France**: contrary to other legal systems where the freezing order, once granted under a very high level of preconditions, covers the entirety of the debtor's assets, the applicant in France must have identified specific assets of his debtor upon which the attachment measure can be taken.

That said, in our experience, if the parties have been in a business relationship before the dispute arose, they tend to be pretty familiar with each other's assets, and that facilitates their identification for that purpose.

The variety of assets on which freezing orders may be effected

Conservatory measures can be performed in France on all sorts of assets, whether tangible or intangible, and this includes trademarks, shares, bank accounts, but also receivables owed, for example, by customers of the debtor.

As a consequence, if the applicant's debtor is a U.S. entity which has a French subsidiary, the applicant can, if the conditions are met, obtain a freezing order on the shares in the French entity owned by the debtor to secure a claim litigated in the U.S. or in the UK.

Powerful effects

The main effect of conservatory measures is of course to prevent the debtor from disposing of the attached assets. For example, the receivables are blocked in the hands of the customers, who as a result of the freezing order notified upon them are prohibited from releasing such sums in favor of the debtor.

Therefore, if the creditor freezes significant receivables in the hands of his debtor's customers in France, the effect on the debtor's market can be very important, harm his reputation and adversely affect his relationship with his customers.

Conservatory measures however show one weakness: they tend to lapse if the debtor becomes insolvent: a conservatory measure becomes void upon the opening of insolvency proceedings against the debtor.

Lifting of the freezing order

The application for a conservatory measure being made ex parte, the debate, if any, starts when the debtor applies for its release.

Given the fact that the Judge already granted the conservatory measure, the real challenge for the debtor is to persuade the Judge that he has been misguided.

Conclusion

Conservatory measures constitute in France a powerful procedural weapon, obtained through a quick, ex parte and cost-efficient procedure that can be performed in a short timeframe, and implemented swiftly.

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Our litigation team in Paris is at your disposal to assist you and coordinate such enforcement measures in France.

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