



Attachments of INCORPOREAL MOVABLES

Citizen E-note

The attachment of intangible property (also called garnishment) is a procedure through which a creditor may obtain possession of dematerialised property that makes up his debtor's assets; as opposed to the tangible assets that may be the subject of a standard garnishment (please refer to note no. 3 with regard to the latter point).

The term "dematerialised assets" shall refer to any element of an asset nature that may be physically apprehended.

Besides, the attachment of intangible assets takes place in different forms; the main ones are set out in this e-note.

By way of a general introductory remark, we would like to draw the reader's attention to the fact that only executory attachment of intangible assets shall be dealt with primarily in the case in question.

• General rules for garnishment under ordinary law

1. DEFINITION

Garnishment aims to enable a creditor to intercept sums of money or items owed to his debtor while they are still in the possession of a third-party (art. 1445 of the Judicial Code).

In other words, it is a question of attaching assets that are held by a third-party but which actually already belong to the assets of the pursued debtor if the third-party is in turn the debtor's debtor. In other words, the garnishee must be the attachment creditor's debtor and the third-party/garnishee's creditor.

E.g.: Attachment of an employee (garnishee)'s salary by the latter's employer (third-party/garnishee) paid to the creditor (attachment creditor).

E.g.: Attachment with regard to a banking institution (third-party/garnishee) of sums of money that the debtor has in an account that he (the garnishee) holds paid to his creditor (the attachment creditor).

2. PRINCIPLE

The executory garnishment therefore enables the creditor to obtain payment of sums that he is owed by obliging the third-party/garnishee to hand over amounts to the acting judicial officer, to the amount of his debt towards the garnishee.





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Therefore, the garnishment brings together three persons:

- The attachment creditor, the person who carries out the attachment;
- The garnishee, creditor or owner of the items or money that are being attached;
- The third-party/garnishee, the debtor of the garnishee against whom the attachment is carried out.

Although the attachment of sums of money constitutes the most likely scenario for this type of attachment (see example under point A), it cannot be summarised purely as such.

It may also apply to intangible assets that belong to the debtor and are in the possession of a third-party.

However, the effects of the garnishment will be different depending on whether it concerns debts or tangible or intangible property: in the first example, the garnishment reaches its final stage when the attachment creditor is attributed sums that the garnishee is owed by the third-party/garnishee; in the second example, it leads to the sale of the garnishee's property that is in the possession of the third-party/garnishee and the payment of the attachment creditor using the proceeds from their realisation.

Articles 1409 to 1412 of the Judicial Code even organize the partial or total immunity from attachment and inaccessibility of certain types of sums of money that belong to the debtor so that the latter and his family may retain a minimum subsistence figure (e.g.: salary, benefits, supplementary income, allowance etc.).

3. EFFECT OF THE UNAVAILABILITY OF ANY GARNISHMENT

The immediate effect of the use of garnishment is to make unavailable sums and items that the third-party/garnishee owes to the garnishee and prohibit him from making any payment (art. 1451 and art. 1540 of the Judicial Code).

Thus, the third-party/garnishee cannot legitimately off-load his responsibility onto the garnishee, or even make a payment to one of the garnishee's other creditors. The third-party/garnishee also cannot offset this debt towards the garnishee with an amount receivable from the latter.

4. SPECIAL RULES FOR PRECAUTIONARY GARNISHMENT (ARTICLES 1445 TO 1460 OF THE JUDICIAL CODE)

In the event of precautionary garnishment, this may be carried out without the judge's authorisation, not only by a creditor who has an authentic right, but also merely on the basis of a simple private right and at the creditor's own risk.





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This right must consist of a document that is regular in form, enforceable against the garnishee and which testifies to a claim that is certain, of a fixed amount and due.

In the absence of such a right, the attachment must be requested unilaterally, in accordance with articles 1417 and 1418 of the Judicial Code.

5. SPECIAL RULES FOR GARNISHMENT (ARTICLES 1539 TO 1544 OF THE JUDICIAL CODE)

A creditor who has secured an enforceable right may have an enforceable attachment order served by a bailiff upon a third-party regarding the sums and items that the latter owes to their debtor.

PARTICULARS OF THE WRIT OF ATTACHMENT

The writ containing the enforceable attachment order must contain, in addition to the formalities that are common to all served writs of attachment, the wording of articles 1452 to 1455 of the Judicial Code (the chapter on precautionary attachment orders) and article 1543 of the Judicial Code (the chapter on enforceable attachment orders); in accordance with article 1539, paragraph 4 of the Judicial Code).

By analogy, it is also appropriate to consider that the serving of the enforceable attachment order must also contain a warning to the third-party/garnishee that he must comply with these provisions.

NOTICE OF THE ATTACHMENT GIVEN TO THE ATTACHED DEBTOR

Notice of the enforceable attachment order must be given to the attached debtor within eight days. Under pain of nullity, if this time period is not subject to limitation by lapse of time it shall nevertheless affect the proper functioning of the enforcement measure.

OBJECTION BY THE ATTACHED DEBTOR

Article 1541 of the Judicial Code gives the attached debtor the right to object to the attachment within fifteen days of being given notice of it.

This objection shall be carried out in compliance with ordinary rules, through a summons, served upon the attachment creditor at the garnishee's request, to appear before the judge of attachments who is competent for the territory concerned, i.e. the judge of the attached debtor's place of residence or the judge of the place of enforcement if the debtor is domiciled abroad or has no known residence in Belgium.

At that time, the debtor may put forward any procedural or substantive pleas.





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DETERMINING OF THE THIRD-PARTY/GARNISHEE'S OBLIGATION

The third-party/garnishee's obligation is, in principle, established by their declaration, which shall be carried out in accordance with the rules and forms stipulated by the Judicial Code.

In fact, the third-party/garnishee not only has to retain the attached assets and not make any payment, since article 1540 of the Judicial Code also requires him to declare what he owes to the garnishee.

In the same way, he is required to inform the attachment creditor and attached debtor, at their request and in the same forms, of the sums and items that may increase the assets that exist at the time of the first or previous declaration (art. 1455 of the Judicial Code).

DIVESTITURE BY THE JUDICIAL OFFICER AND EFFECT WITH REGARD TO THE GARNISHEE

In the event of garnishment, the third-party/garnishee must pay the acting judicial officer and not the attachment creditor so that the judicial officer may diligently carry out the distribution procedure, if appropriate.

The attached debtor shall only be released from his obligations towards the attachment creditor to the extent of the payments received by the latter in the context of the garnishment followed by the distribution by contribution procedure.

DISTRIBUTION BY CONTRIBUTION

Distribution by contribution governs the distribution of the income from the enforceable attachment order (art. 1627 *et seq.* of the Judicial Code).

In the case in question this refers to the distribution, between the competing creditors of funds from the sale of attached intangible property or attached sums.

6. THE THIRD-PARTY/GARNISHEE'S LIABILITY TOWARDS THE ATTACHMENT CREDITOR

The third-party/garnishee shall be liable towards the attachment creditor, in such a way that a third-party/garnishee who violates the prohibition to relinquish sums in his possession, risks being declared simply a debtor of the causes of the attachment and sentenced as such.





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• Delegation of sums

Alongside garnishment under ordinary law, the legislator has organised a special procedure called the delegation of sums, in which maintenance creditors may have a right of appeal under certain circumstances (articles 221 of the Civil Code and 1280, paragraph 5 of the Judicial Code).

The delegation of sums may be defined as “the judicial authorisation given to the maintenance creditor to directly obtain, to the exclusion of the debtor, under the conditions and within the limits fixed by the judgment, the debtor’s revenue or any other sum owed to the latter by a third-party”.

• Income tax garnishment

Income tax garnishment is a form of simplified garnishment in the sense that notification of the garnishment can be provided by a letter registered with the postal service by the relevant collector, and consequently it does not require the judicial officer’s involvement.

• Garnishment for the recovery of criminal fines

By virtue of article 299, § 1, of the Law of 27 December 2006 pertaining to various provisions (I), the collector of revenue from State/Crown property and or criminal fines, without having previously given notice of the judgment or decree that has become enforceable, may proceed, with a letter registered with the postal service, with the garnishment by a third-party of sums and items that are owed to or that belong to a convicted person, up to the amount of all or part of the amount due by the latter by way of fines, fees, contributions, confiscated sums and costs of proceedings or enforcement costs. The convicted person must be given notice of the garnishment by a letter registered with the postal service.

The convicted persons may raise an objection to the garnishment by sending a registered letter to the competent collector within fifteen days of the mailing of notification of the attachment.





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The convicted person must inform the third-party/garnishee of this within the same time-period by a letter registered with the postal service.

Aside from certain characteristics particular to this measure, the general provisions of the Judicial Code that are applicable in the case of garnishment, are applicable in this case (just as in the case of tax attachment), it being understood that the attachment amount shall be handed over to the competent collector and no longer the judicial officer.

• Garnishment of maintenance

This enforcement measure can be applied in order to enable recovery of unpaid maintenance claims.

Although the garnishment procedure does not, in this scenario, depart from the general procedural regime, it should be noted that the attachment creditor's status is special.

In fact, as maintenance creditor he occupies a privileged position that grants him the right to seize all of the sums from the third-party/garnishee without any unavailability or inaccessibility limit, as long as these sums constitute a salary, replacement income or certain benefits (art. 1412 of the Judicial Code).

Therefore, this is an exception to the protector principle set out in point 1/, B.

• Garnishment of securities

Securities (shares, bonds, membership shares etc.) may be seized, in principle, by the attachment creditor through garnishment by the company.

This is carried out in the same way as seizure of /enforcement against property, i.e. by applying articles 1516 to 1528 of the Judicial Code.





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In the absence of coherent regulations, a distinction must be made here, according to the type of company that is being dealt with when the garnishment is executed.

• Banking garnishment

This attachment is executed with regard to all assets that the bank owes to the debtor and concerns all bank accounts opened in his name.

1. SCOPE OF PROTECTION

Article 1411c, § 1 of the Judicial Code stipulates that in the event of attachment, income from work or other activities as well as replacement income paid into the attached bank account shall be covered by the protective system of partial unavailability stipulated by article 1409, 1409a and 1410 of the Judicial Code, during a period of thirty days from when these sums are credited to the current account.

In order to identify the protected income, a traceability system has been implemented that therefore establishes a relationship of unavailability or inaccessibility in the event of attachment of protected income credited to a current account opened at a banking (financial) institution.

Therefore, the various types of income must be labelled with a special code when they are paid into the bank account (salary, benefits etc.) so that they can be separated from other amounts credited to the current account. As for other paid amounts, these may be attached in full.

2. PRINCIPLES

Protection of the partial unavailability or inaccessibility shall apply for a period of thirty days from when the sums enter the current account.

However, the calculation of the unavailable proportion shall drop by a thirtieth according to the number of days between the date the sums entered the account and the date of the attachment or assignment. In other words, the calculation of





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the proportion of the balance that can be attached is carried out in proportion to the number of days remaining in the protection period compared to the attachment or transfer date.

3. PROCEDURE

In the case of attachment regarding a current account, the credit institution must set out in its third-party garnishee declaration a list of the coded amounts that were credited during a period of 30 days prior to the attachment date.

Article 1411-c § 2 draws a distinction between whether or not the attachment or assignment takes place with the involvement of a judicial officer.

If this is the case, it is the bailiff who establishes the statement and who, under pain of nullity of the attachment or assignment, sends the statement to the debtor by a letter registered with the postal service with acknowledgement of receipt within 8 days of notice being given of the third-party garnishee's declaration or the one that has to be given by the assigned third-party in that instance.

Under threat of the same nullity, this registered writ given to the debtor shall be accompanied by a reply form as specified by the Crown. This form must facilitate the debtor's task if he intends to contest the statement sent to him.

If, on the other hand, notice of the attachment or assignment is not given by a bailiff, it is the creditor (in the event of tax attachment in simplified form or if the assignment is implemented by the creditor personally) who must draw up the statement personally. The same shall apply with regard to the writ given to the debtor and credit institution. The time periods and penalties of these formalities are the same.

4. DISPUTE

If the debtor intends to dispute the calculation that he has been sent, he must, on pain of forfeiture, use a reply form to provide his comments to the person who sent the statement (bailiff or creditor). He must do this, by a letter registered with the post office with acknowledgement of receipt, within 8 days of the arrival of the letter (registered with the postal service and with acknowledgement of receipt) at his place of residence, containing the contested statement.





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• Territorial competence

By virtue of article 633 of the Judicial Code, applications regarding precautionary attachments and means of enforcement shall solely be referred to the judge of the place in which the attachment is taking place, unless otherwise provided for by law.

In the case of garnishment, this is the attachments judge for the attached debtor's place of residence.

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For further information, please contact eje@europe-eje.eu

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