



Attachments of TANGIBLE MOVABLE PROPERTY

Citizen E-note

Tangible movables are goods that have a material existence and that can be moved (such as a television set or a car). The civil procedures for enforcement, in particular for executing the attachment of tangible movables, are governed by Law 91-650 of 9 July 1991 and Decree 97-755 of 31 July 1992.

A creditor having an enforceable title and who wishes to recover the amount he is owed by the debtor may implement a measure for the attachment of the debtor's tangible movable property. The property attached may then be sold, and the creditor may recover the amount he is owed from the proceeds of the sale, in accordance with the procedures specific to each type of attachment.

In France, tangible movable property may be seized in different ways:

- ▶ the *saisie-vente*, i.e. the attachment and sale of tangible movable property (I),
- ▶ the *saisie-apprehension*, i.e. the attachment of tangible movables by a person entitled to their delivery (II),
- ▶ the attachment of motor vehicles (III),
- ▶ the attachment of assets placed in a safe (IV),
- ▶ the attachment of standing crops (V).

The choice of the procedure to be implemented depends both on its purpose (to secure payment of a sum of money or the delivery of goods), the object being distrained (a television set, a vehicle) and also its location (in the debtor's residence, in a safe).

Apart from the conditions specific to each of the civil procedures for the enforcement of debt against movables, which will be described in this e-note, certain conditions that are common to all the enforcement measures listed in e-note 1 will have to be met. Accordingly, the creditor must have an enforceable title recognising a debt that is certain, of a fixed amount and bearing an execution clause.





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• The *Saisie-vente* – the attachment and sale of tangible movable property for the satisfaction of a debt

The *saisie-vente* is the procedure allowing a creditor to have one or more tangible movable goods belonging to his debtor sold, and to recover the amount owed to him from the proceeds of the sale.

1. DEFINITION

The *saisie-vente* is the procedure offering a creditor the option of having his debtor's goods seized so that they can be sold and he can recoup their price.

Conditions for implementing an attachment and sale of tangible movable property

For recourse to this civil enforcement procedure, a set of conditions must be met:

- the attachment must relate to *tangible movable property*;
- the attachment must relate to *attachable assets*. Article 14 of the Law of 9 July 1991 and article 39 of the Decree of 31 July 1992 set out a list of assets that may not be distrained;
- where the attachment takes place in residential premises, *authorisation by the court* is necessary if the attachment is for the purpose of recovering a *maintenance obligation, the principal of which amounts to less than € 535*. On the other hand, if the *principal amount of the claim to be recovered is greater than € 535*, the attachment may be carried out without authorisation by the court;
- service of an *order to pay* on the debtor. This is the instrument whereby the debtor is ordered to pay his debt. It is drawn up by a judicial officer, who brings it to the attention of the debtor.

Service of the order to pay on the debtor has the effect of suspending the prescription period (the debtor may not rely on the lapse of a certain period of time in order to evade the performance of his obligation) and marks the starting point for the charging of default interest.

An act of enforcement must be adopted within two years of service of the order to pay; if no such act is carried out in this period, the creditor must arrange for the service of a new order to pay.

2. THE ATTACHMENT

Attachment operations begin on the expiry of a period of eight days from service of the order to pay.

These operations take place at the location where the tangible property to be attached are situated. They are conducted by a judicial officer.





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The goods may be attached from the debtor himself or from a third party holding them on the debtor's behalf. In the course of these operations, the judicial officer will draw up an inventory of the debtor's property as well as an attachment report; on its issue, the debtor will no longer be entitled to dispose of the goods attached. On completion of these operations, the assets seized will be sold.

3. THE FOLLOW-UP TO ATTACHMENT

The goods seized may be sold *by private treaty* (on the debtor's own initiative) or may be disposed of by a *forced sale* (sale at public auction).

It should also be pointed out that various procedural objections may arise during the course of the attachment and sale: a person not involved in the procedure may claim ownership of the property attached, or the debtor may claim that the property being attached is non-distrainable.





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• *Saisie-apprehension* - attachment to enforce the performance of an obligation

Saisie-apprehension is an enforcement measure enabling a creditor entitled to the delivery or return of movable property that the debtor is under an obligation to perform, based on an enforceable title or a court order.

1. DEFINITION

This civil procedure can be used by the creditor to enforce the debtor's performance of its obligation to deliver or return movable assets, by means of their seizure based on an enforceable title or a court order.

2. THE ATTACHMENT

The attachment operations may be directed towards the debtor or a third party who may be holding the asset concerned on the debtor's behalf.

In general, service will be made of an order to deliver or return the asset, or a formal notice of the obligation to deliver the asset, depending on whether the procedure is executed against the debtor or the third party holding the asset. This instrument is drawn up by the judicial officer in charge of the attachment.

The judicial officer will also draw up an attachment report.

Once the attachment operations have been carried out, the asset seized is delivered to the creditor.





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• The attachment of road motor vehicles

1. IN SHORT

The attachment of road motor vehicles covers two types of procedure:

DECLARATION TO THE PREFECTURE

The purpose of this execution measure is to deprive the debtor of the right to dispose of his road motor vehicle and, in particular, to prevent him from selling it. It is useful if it is impossible to locate the vehicle.

IMMOBILISATION OF THE VEHICLE

The purpose of this procedure is to have the vehicle immobilised. The measure is generally considered to be a step taken prior to the attachment or to the seizure of the vehicle to enforce performance of an obligation. It is particularly necessary once the vehicle is located.

2. IN PRACTICE

Two types of procedure for the attachment of road motor vehicles co-exist: the declaration to the Prefecture and immobilisation of the vehicle.

These two procedures are not directed towards the same objective, and the choice of which one to deploy will depend in particular on the objective pursued by the creditor.

DECLARATION TO THE PREFECTURE

This aim of this procedure is to prevent the debtor disposing of the vehicle, by making a declaration to the Prefecture. This leads to the Prefecture being prohibited from issuing a registration document for the vehicle concerned. This declaration produces its effects for two years.

It is particularly useful when the vehicle cannot be located.

The purpose of this execution measure is to deprive the debtor of the right to dispose of his road motor vehicle and, in particular, to prevent him from selling it. It is useful if it is impossible to locate the vehicle.

IMMOBILISATION OF THE VEHICLE

This is immobilised through a judicial officer, who draws up an immobilisation report.





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This report is equivalent to an attachment and therefore renders the vehicle inalienable, so that it can neither be sold nor used to secure a debt.

Thereafter, depending on whether the creditor wishes to recover the vehicle or arrange for its sale, the attachment procedure should be applied for its sale or it should be seized to obtain the performance of the debtor's obligation.

The purpose of this procedure is to obtain the immobilisation of the vehicle. The measure is generally considered to be a step taken prior to the attachment or to the seizure of the vehicle to enforce performance of an obligation. It is particularly necessary once the vehicle is located.





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• The attachment and sale of the assets placed in a safe

The attachment and sale of movable assets placed in a safe is the procedure whereby a creditor arranges for the sale of one or more tangible movable goods belonging to his debtor that has been placed in a safe, in order to recover the amount owed to him out of the proceeds from the sale.

1. DEFINITION

The attachment for sale of assets placed in a safe is a special form of attachment that allows a creditor to arrange for the seizure of his debtor's assets from a safe, in order to have them sold and obtain payment from the price of the sale.

2. ATTACHMENT

The procedure for the attachment of assets in a safe is that a judicial officer serves notice on the third party owner of the safe (a bank, hotel, etc.). This attachment is temporary. Its effect is to prevent access to the safe unless the judicial officer is present.

Final attachment takes place at the time of the opening of the safe by the judicial officer after delivery of a formal notice to pay to the debtor. During this procedure, the judicial officer's actions include making an inventory of the assets placed in the safe and determining those that will or will not be covered by the attachment measure.

3. FOLLOW-UP ON THE ATTACHMENT

On completion of the attachment operations, the debtor is informed that he has the option of arranging for the sale of the attached assets by private treaty (on his own initiative). If he fails to do so, they will be disposed of by a forced sale (by public auction).





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• The attachment of standing crops

1. IN SHORT

The attachment of standing crops is a special form of attachment of movable property, whereby a creditor may distrain his debtor's crops (the owner thereof) so that they can be sold and he can recover the amount due to him out of the proceeds.

2. IN PRACTICE

This procedure is covered by articles 134 to 138 of the Decree of 31 July 1992.

Standing, or unharvested, crops are natural or industrial crops that will become movables (apples, for example).

Even though in legal terms standing crops are in the nature of immovable property at the time of their attachment, they are subject to the system of procedures for the execution of an attachment against movables (as they are regarded in law as *meubles par anticipation*, in that they will become movable objects at the time of their separation from the soil).

The creditor must have an enforceable title recognising a claim against the debtor that is of a fixed amount and due. The creditor's debtor must be the owner of the crop.

The attachment must be executed in the six-week period preceding the customary ripening period.

The attachment report is drawn up by the judicial officer and, on penalty of nullity, contains the particulars listed in article 94, but with the exception of the particulars listed in section 2 of this text, which are replaced by the description of the land where the crops are located, together with its size, position and an indication of the nature of the crops (article 135 of the Decree of 31 July 1992).

The crops are placed under the responsibility of the debtor, who is the custodian thereof. However, at the request of the distraining creditor, the execution judge may designate a manager for their exploitation.

In accordance with article 137 of the Decree of 31 July 1992, the sale will be announced by notices displayed at the town hall and in the marketplace closest to the place at which the crops are located.

The sale will be held at the place in which the crops are located, or at the closest marketplace.

- December 2011 -

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The EJE project is cofinanced by the European Union



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