



# The prerequisites for THE IMPLEMENTATION OF A COMPULSORY EXECUTION MEASURE

## • What conditions must be met to implement an enforcement order against a debtor?

Before implementing the means to compel a debtor or the party against whom a judgment has been issued to fulfil his obligations pursuant to a contract or judgment, certain conditions must be fulfilled.

To implement an enforcement order it is necessary to possess an enforceable right establishing a claim for a debt that is fixed and due and certified enforceable (1). When it is a judgment, one must also ensure that the judgment is not subject to appeal, unless there is a provisional enforcement, and the debtor has been notified (2). Finally, the enforcement order must be implemented within a certain time frame (3).

### 1. POSSESSING AN ENFORCEABLE RIGHT ESTABLISHING A CLAIM FOR A DEBT THAT IS FIXED AND DUE AND CERTIFIED ENFORCEABLE

To be able to implement an enforcement order, the creditor must have an enforceable right establishing a claim for a debt that is fixed and due and certified enforceable.

Article 2 of Law 91-650 of 9 July 1991: *The creditor who possesses an enforceable right establishing a claim for a debt that is fixed and due can carry out the attachment of the debtor's assets according to the conditions for each enforcement order.*

This enforceable right must clearly identify the creditor and the debtor and establish the obligation to be carried out.

### WHAT IS AN ENFORCEABLE RIGHT ?

The following are enforceable rights :

- Judgments handed down by an authority;
- Transactions submitted to the president of the "Tribunal de Grande instance" (regional court) when they are enforceable;
- Extracts of conciliation minutes signed by the judge and the parties;
- Notarised deeds that are enforceable;
- Evidence issued by the judicial officer in case of non payment of a cheque;
- Evidence issued by legal entities governed by public law and qualified as an enforceable right by the law, or decisions that the law views as judgments.





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Article 3 of the law of 9 July 1991 *Only the following are enforceable rights:*

1. *The judiciary or administrative decisions by authorities as well as transactions submitted to the president of the “Tribunal de Grande instance” (regional court) when they are enforceable;*
- 2° *Foreign documents and foreign judgments as well as arbitrary sentences which have been declared enforceable by a decision that is not subject to an appeal to suspend enforcement;*
- 3° *Extracts of conciliation minutes signed by the judge and the parties;*
- 4° *Notarised deeds that are enforceable;*
- 5° *Evidence provided by the judicial officer in case of non payment of a check;*
- 6° *Evidence provided by legal entities governed by public law and qualified as an enforceable right by the law, or decisions that the law views as judgments.*

## WHAT IS A FIXED AND DUE DEBT ?

The debt is fixed when it is evaluated in cash or when the enforcement right contains all the elements that allow it to be evaluated. A debt is due when it is not subject to a term or condition suspending execution.

## WHAT IS AN ORDER FOR ENFORCEMENT ?

In France the order for enforcement contains the following: « *En conséquence, la République Française mande et ordonne à tous Huissiers de Justice sur ce requis de mettre la dite décision à exécution, aux Procureurs Généraux et aux Procureurs de la République près les Tribunaux de Grande Instance d’y tenir la main à tous Commandants et Officiers de la Force Publique de prêter main-forte lorsqu’ils en seront légalement requis. En foi de quoi, la présente décision (ou le présent arrêt ou le présent acte...) a été signée par ....* ». This must appear on the enforceable right to be executed.

## 2. ADDITIONNAL CONDITIONS TO BE FULFILLED WHEN THE ENFORCEABLE RIGHT IS A JUDGMENT

When the enforcement right is a judgment, two other conditions must be fulfilled before proceeding with its execution:

- the judgment must not be subject to appeal, unless there is a provisional enforcement;
- the debtor must have been notified regarding the judgment.





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## A JUDGMENT MUST NOT BE SUBJECT TO APPEAL, OR THERE MUST BE A PROVISIONAL ENFORCEMENT

A judgment may be subject to an appeal to reform or cancel it before an appellate court or to an opposing appeal to have it retracted before the same jurisdiction when it has been handed down by default, i.e. when one of the litigants did not appear. The appeal or opposition must be lodged by the defendant within a certain time. The timeframe for the appeal or opposition is indicated by the office of the court where the decision was handed down, or by the judicial officer when he serves the judgment (see below). The execution of the judgment will be suspended until this period of time expires.

Article 500 CPC: *The judgement, which is not subject to any review action staying its execution, will become res judicata. The judgement, which is subject to such a review action, will have the same authority on the expiration of the time-limit for such a review action if the review action has not been made within the time-limit.*

However, in certain situations, the law or the judge can allow the party that has received the judgment to initiate the enforcement, even before the time period for the appeal expires or before the outcome of the filed appeal. In this case, this is a provisional execution. It will be possible to enforce the right even before the period of time for the appeal has expired.

Article 501 CPC: *The judgement will be enforced, under the following conditions, as from the moment it becomes res judicata, save where the debtor enjoys the benefit of a period of grace or the creditor enjoys the benefit of a provisional enforcement.*

In principle, “extraordinary” appeal procedures (such as cassation appeal) do not entail suspension, that is to say that they do not suspend the execution of a judgment, except in specific cases regarding nationality (Art. 1045 Code of Civil Procedure), divorce (Art. 1086 and 1087 Code of Civil Procedure), adoption (Art. 1178-1 Code of Civil Procedure) or filiation (Art. 1150 Code of Civil Procedure).

## A JUDGMENT MUST BE NOTIFIED

So that it may be able to be enforced, the debtor must first be notified of the judgment; he must be made aware of it so that he can learn the exact extent of his obligations.

Article 503 - subparagraph 1 : *Judgements may not be executed against the parties standing liable thereto unless they have been notified, save where the enforcement is voluntary.*





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## ► If the debtor resides in France:

The notification regarding the decision handed down by a French jurisdiction will be carried out by the judicial officer. Notification carried out by the judicial officer is called the service.

Article 675 - subparagraph 1: *judgments will be notified by way of service (through a bailiff), save where the law provides otherwise.* It is therefore appropriate to contact a judicial officer so that he can notify the debtor about the judgment to be carried out.

## ► If the debtor resides in another member State:

The cross border notification system is regulated by (EC) Regulation no. 1393/2007 of the European Parliament and Council of 13 November 2007 regarding the service and notification for judicial and extra judicial documents related to civil or commercial subjects, within the member states (see the special file regarding this question).

In France, the judicial officers are the original competent entities to receive the creditor's requests for service of a document within another member State. The judgment to be served to a debtor residing abroad must therefore be sent to the French judicial officer who will transfer it to the competent entity in the member state where the debtor resides, accompanied by the required forms.

## ► The special case of execution on the mere production of the original:

Certain decisions may be enforced immediately, i.e. they can be executed, given the urgency, upon presentation of the judge's original decision; it is not necessary to serve the debtor a copy of the decision with the enforcement order in advance. This is the case regarding immediate decisions (orders handed down by the judge upon the request of one of the parties within an ex parte proceeding).

Article 503 - subparagraph 2 : *"In the event of an execution on the mere production of the original, the said production shall amount to a notification."*

### 3. IMPLEMENTING THE ENFORCEMENT ORDER WITHIN A CERTAIN TIME

If the enforceable right is from the courts (example: a judgment), an enforcement order must be implemented within ten years of its issuance. In certain cases, this time frame may be extended... ».





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Article 3-1 of Law 91-650: “*The execution of enforceable rights mentioned in paragraphs 1 to 3 of article 3 of can only be carried out within ten years, unless actions to recover the referenced debts are stipulated for a longer period*”.

If the enforceable right is a notary’s deed, the duration of the limitation period, after which the enforcement order can no longer be implemented, is the same as the limitation period of the debt stated in the enforceable right. The limitation period of the debt is the time period after which the debt is no longer enforceable.

- ▶ If the various conditions listed above are fulfilled, the creditor may contact the competent judicial officer (see sheet 2) in order to implement an appropriate enforcement order (see sheets 3 and 4).
- ▶ Please note that in most cases, the execution procedure begins with sending a payment order. The payment order, which is a document drawn up by the judicial officer inviting the debtor to voluntarily pay off his obligation, is the first document in the execution procedure. However, this payment order is not required for a garnishment (see sheet...).

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### • What can I do while waiting to obtain an enforceable right? Are there protective measures?

A protective measure is a document by which the creditor, even if he does not yet have a definitive order from the court or another enforceable right, can have the debtor’s assets made unavailable. It allows the debtor’s assets to be protected and also ensures the effectiveness of the execution measures that the creditor will then be able to undertake when he has fulfilled the conditions necessary to implement them. In order to have such a measure carried out, the creditor must contact a judicial officer. Only the latter can proceed with protective attachments.

Certain conditions must however be met (1) to have the most appropriate protective measure (2) carried out.

#### 1. CONDITIONS REQUIRED TO HAVE A PROTECTIVE MEASURE CARRIED OUT

The possibility of having a protective measure carried out is subject, in principle, to judicial authorisation handed down by a judge ruling on the request (1). As an exception, the creditor who has certain rights is exempt from requesting judicial authorisation to have protective measures carried out (2).





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When it is the result of judicial authorisation, the authorised measure must be executed within a certain time frame (3). In addition, the creditor must strive to implement the means that he has to obtain an enforceable right.

### THE PRINCIPLE: POSSESSING A JUDICIAL AUTHORIZATION

According to the terms of Article 67 of the Law of 9 July 1991, *any person with a debt that appears founded in principle can request authorisation from the judge to have a protective measure carried out on the debtor's assets, without an advance order, if this person can show that there are existing circumstances that threaten recovery of the debt.*

The judicial authorisation to proceed with a protective measure can be obtained by request, i.e. a request by one of the parties within an ex parte proceeding: the creditor can therefore benefit from the “element of surprise” that is necessary for the protective measure to be effective. This request must be presented to the judge responsible for execution in the location where the debtor resides (see sheet 2 regarding the question of competence of the judge responsible for execution).

The granting of authorisation is subject to dual conditions: The creditor must report a debt that appears founded in principle (it is not necessary to prove the certainty of the debt, or that it is payable) and he must prove that there are circumstances that threaten the recovery of the debt (show that there are legitimate doubts regarding the debtor's ability to honour his debt).

In the order, the judge must determine the amount of the sums for the guarantee for which the protective measure is authorized and detail the nature of the assets which are affected.

### THE EXCEPTION: EXEMPTION FROM JUDICIAL AUTHORISATION

According to the terms of Article 68 of the Law of 9 July 1991, an advance authorisation by a judge is not necessary when the creditor already has one of the following documents:

- An enforceable right (the creditor can theoretically proceed with execution, but in most cases, a payment order must be sent first. To preserve the “effect of surprise” the creditor can proceed with a protective measure without notifying the debtor in advance);
- A court decision that is still not enforceable;
- An accepted bill of exchange;
- A promissory note;
- A check;
- A written lease.





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## CARRYING OUT THE PROTECTIVE MEASURE WITHIN A CERTAIN TIME FRAME

The creditor must provide the judicial officer with the document allowing him to implement a protective measure: either a judicial order authorising the protective measure or one of the rights mentioned in Article 68 of the Law of 9 July 1991. In the latter case, carrying out the protective measure is not subject to any time frame. On the other hand, when the protective measure is carried out by applying a judicial authorisation, the measure must be carried out within three months beginning on the date when the order was handed down.

## OBTAINING AN ENFORCEABLE RIGHT WITHIN A CERTAIN TIME FRAME

Articles 70 of the Law of 9 July 1991 and 215 of the Decree of 31 July 1992 state that the creditor who does not have an enforceable right to implement a protective measure, must undertake, pursue or introduce a procedure or fulfil the formalities necessary for obtaining an enforceable right within a month following the execution of a protective measure.

## 2. THE DIFFERENT TYPES OF PROTECTIVE MEASURES:

There are two types of protective measures, depending on the assets to be protected: a protective attachment (1) and judgments (2). The effects of the two types of measure differ considerably.

### PROTECTIVE ATTACHMENTS

#### ► The effects of a protective attachment:

Assets seized for protection are unavailable, i.e. the debtor cannot sell or transfer his asset.

#### ► Assets that can be subject to protective attachment:

##### Tangible assets

Tangible assets can be subject to protective attachment, whether they are held by the debtor or a third party. The creditor who obtains or already has an enforceable right establishing the debt can then proceed to converting (transforming) the protective attachment into a sale after attachment (see sheets number...) and be paid through the sale price of the assets.





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## Debts

The creditor can also have third party debts held by the debtor attached. The judicial officer will proceed with the service of the attachment to the third parties and inform the debtor of it within eight days. There again, the creditor who obtains or already has an enforceable right establishing the debt can then proceed to converting the protective attachment into an attachment.

## SECURITY

### ► The effects of a security:

Assets encumbered by a judgment remain alienable and transferable. They can therefore be sold. The specific purpose of a security is to ensure the preservation of certain rights for the creditor. They confer an advantageous rank on the creditor due to the dual registration: a provisional registration, first of all, the date upon which the definitive inscription will be ranked, retroactively, when the creditor's rights have been established.

The creditor benefits from two types of rights:

### right of priority

The creditor will be able to proceed with the forced sale of the asset. If he does not initiate the forced sale, the creditor who holds a security has the right to participate, according to his ranking, in the distribution of the sale price.

### resale right

The creditor can exercise his right on the asset no matter who holds it (even if the debtor has for example, sold it to a third party).

### ► Assets that can be subject to a security:

**Immovable property** belonging to the debtor can be subject to registration of a provisional mortgage by filing forms with the mortgage registry.

**A business** can be provisional security by filing forms with the commercial court registry.

**Company shares** can be provisional security by serving a document on the company that issued the shares.







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**Securities** can also be provisional security by serving a document on the moral person that issued them or the portfolio manager as the case may be.

In any case, the judgment must be notified to the debtor within the eight day after it is realised, i.e., that the debtor must be informed by a document from the judicial officer.

In addition, provisional advertising must be confirmed with definitive advertising. The judicial officer will proceed with this in accordance with the forms established by law. This advertising gives rank to the judgment on the date of the initial formality, for the amount of the sums protected by the latter.

- July 2011 -

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The EJE project is cofinanced by the European Union



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