



Your bank account frozen by a creditor: what to do?

In the Netherlands it is possible for unpaid creditors to freeze the debtor's assets to safeguard the debtor's ability to pay. Bank accounts are a popular example. Freezing them by obtaining a 'conservative attachment' court order is a pressure tool which is often used by creditors. This attachment of the bank account has adverse consequences for the debtor because the debtor no longer has access to the frozen account.

If assets are attached, the debtor can request the court to lift the attachment of assets. After all, such an attachment of assets will hinder or even make it impossible for the company in question to operate. According to Dutch law, an attachment of assets can be lifted if 'sufficient security' is provided for the claim of the creditor during the court proceedings, or if it is evident that the attaching party has no justified claim at all.

The security is often provided by a bank guarantee. In practice, different models of bank guarantees have been used. This led to a lot of discussion and loss of time. That is why the Dutch Banking Association (*Nederlandse Vereniging van Banken; NVB*) has developed a model attachment guarantee as a standard document used by the banks. This standard document is still used today. For more information see: www.nvb.nl/english/

Does an NVB-model attachment guarantee provide 'sufficient certainty'?

This attachment guarantee provides that the bank will not pay out until a judgment has been rendered whereby payment to the creditor is confirmed and that this judgment has become final, i.e. not subject to further appeals. This is certainly logical, because if an appeal is still open and the court of appeal rules otherwise while the bank has already paid out - or if the bank guarantee has been cancelled - this can lead to undesirable situations.

In practice, the attaching party usually prefers not to have to wait until the judgment has become final. This may lead to many discussions between the parties. The question may arise whether an attachment guarantee according to the document developed by the Dutch Banking Association is seen by the Dutch courts as sufficient security. The answer to that is yes. Recent jurisprudence has confirmed that this type of bank guarantee offers sufficient security, even if a bank only pays out after the judgment is final. After all, the court will then definitively determine who is right.

What does this mean for you?

If you are a debtor whose account has been frozen by a creditor (or someone just claiming payment), you may get a court to lift the attachment if you obtain an attachment guarantee from a bank that guarantees the value of the claim in favour of the creditor. But what happens if you are a foreign company with no access to a Dutch bank that will issue the guarantee? Practice shows that foreign banks may not want to issue an attachment guarantee according to the model of the Dutch Banking Association in accordance with Dutch law. In that case, the debtor can deposit an amount of money for which the attachment of assets has been levied, into a third-party account of his lawyer in the Netherlands or at a civil-law notary for during the court proceedings. For this, a deposit agreement must be drawn up between the parties, using the text of the document provided by the Dutch Banking Association as a starting point.

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