

# Attachment (Freezing) Orders in Spain: Overview

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A Practice Note providing an overview on the Spanish law relating to the order of attachment issued by local courts to preserve the respondent's assets until judgment can be enforced. This Note covers the grounds on which these orders are made, the type of assets that can be attached, the procedure for applying for an attachment order, and enforcement of attachment orders. It also covers the scope of attachment orders in relation to overseas assets and in support of foreign proceedings.

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The purpose of an attachment order is, typically, to preserve the respondent's assets until judgment can be enforced, to prevent the respondent from disposing of their assets to defeat a judgment. This Note gives an overview on the law relating to attachment orders in Spain including:

- The grounds on which the orders are made.
- The type of assets that can be attached.
- The procedure for applying for an order.
- The enforcement of attachment orders, foreign and domestic, and the penalties for breaching the order.
- The scope of attachment orders in relation to overseas assets and in support of foreign proceedings.

All interim injunctions that restrain a party from disposing of or dealing with their assets until judgment can be obtained or enforced (also known as freezing orders or temporary injunctions in some jurisdictions) will be referred to as "attachment orders" in this Note.

## Domestic Proceedings

### Availability

Provisional attachment orders are governed by the Civil Procedure Law of 7 January 2000 (Procedural Law).

The provisional attachment order is a precautionary measure to ensure the enforcement of future judgments, such as an order for payment of money or assets that can be estimated in cash (*Articles 727.1 and 729, Procedural Law*). The provisional attachment order is also appropriate in other types of case if it proves to be the most appropriate and cannot be substituted by another measure of equal or greater effectiveness, or with a lesser burden on the defendant.

In short, the purpose of a provisional attachment order is to temporarily freeze the defendant's assets to avoid frustrating the outcome of the main proceedings, given the inevitable time delay between the start and completion of court proceedings.

Provisional attachment orders are relatively common in Spain and are granted by the Spanish courts if all relevant requirements are met.

The courts can also issue an attachment order against a third party in possession of the defendant's assets (see *Third Parties*).

## Grounds

The following requirements must be met before the court can grant an attachment order as a protective measure in civil proceedings:

- The claim appears to have legal standing following a prima facie assessment of the claim's merits by the court.
- There is a risk that any delay in the court's action may cause the future judgment not to be enforceable, such as actual risk of insolvency or disposal of assets.
- Delivery of security (typically a bank guarantee or deposit in cash) to secure the claimant's potential liability if the attachment order causes damages to the defendant.

*(Article 728, Procedural Law.)*

## Stage of the Proceedings

As a general rule, the applicant requests a precautionary attachment order at the same time as filing the main lawsuit. However, the applicant may also request the precautionary attachment order before filing the main lawsuit (where the circumstances are of such urgency to justify it) or after filing, based on new facts or information.

## Alternative Remedies

Article 727 of the Procedural Law recognises other precautionary measures in addition to a provisional attachment order, for example:

- The deposit of personal property with the court when the claim seeks a judgment to deliver the property that is in the defendant's possession.
- The preventive annotation in the public register as an interim remedy when the claim refers to goods or rights that may be registered in public registers.
- The temporary deposit of copies of works or objects that are deemed to be produced in breach of intellectual property rights.

## Procedure for Applying

Attachment orders as a precautionary measure can be adopted only at the request of the claimant in the main proceedings.

As a general rule, the applicant requests a precautionary attachment order together with the main lawsuit. However, the applicant may request the precautionary attachment order before filing the main lawsuit (where the circumstances require special urgency) or after filing based on new facts or information.

Generally, the defendant must be heard and may present a defence or opposition before the court adopts the precautionary attachment order. However, where the applicant proves that there are reasons of urgency or that a prior hearing may endanger the successful outcome of the precautionary attachment order, the court may grant it without hearing the defendant.

In both cases a hearing will take place, whether before or after the precautionary attachment order is issued so that the defendant may oppose it.

If the attachment order is granted, the court clerk will issue a decree dictated on the same day or the following day to the attachment order detailing the specific assets to be attached.

If the court grants the attachment order without notice to the defendant, the defendant is entitled to oppose the attachment order within a period of 20 days from the day following the notification of the order. The notice of opposition must be served on the applicant and a hearing is set (*Article 734, Procedural Law*). Following the hearing, the court will determine whether to keep or dispose of the attachment order. If the court lifts the attachment order, the applicant is ordered to pay the costs and damages to the affected party.

## **Types of Asset That Can Be Frozen**

Assets and goods subject to an attachment order must meet one of the following conditions:

- Patrimony (the goods must be part of an estate).
- Alienability (the goods must be capable of being disposed of).
- Seizability (the goods must be attachable and the law must not expressly declare them unattachable).

(*Article 605, Procedural Law*.)

### **Trustee or Nominee Interest**

Trust is not legally instituted under Spanish law.

### **Jointly Owned Assets**

Spanish law expressly refers to:

- Attachment of jointly owned bank accounts.
- Enforcement of spouses' joint properties.

When the attachment order affects funds held in a bank account owned by several holders, only the debtor's share is seized. Where an account is jointly owned, only the balance corresponding to the debtor may be seized, understanding that it corresponds to equal parts to the account holders, unless there is a different material ownership of the funds (*Article 588, Procedural Law*).

Conversely, the attachment of spouses' joint properties is possible even if the debt claimed was incurred by only one spouse. In this case, the non-debtor spouse must be notified of the attachment order who can demand that the joint ownership be dissolved to avoid that the liability of the totality of the community property for the debts of the other spouse (if an equal division of the property is insufficient to satisfy the obligation). In this case, the non-debtor spouse may request that only the rights over the common assets are awarded to the debtor after the liquidation of the community property (*Article 541, Procedural Law*).

## Exempt Assets

The Procedural Law distinguishes between property that is absolutely unseizable, property that cannot be seized, and relatively unseizable property that can only be seized in part.

The following assets are absolutely unattachable:

- Goods declared inalienable.
- Accessory rights to a good or asset, which are subordinate to another principal and cannot be transferred or attached independently of the main one.
- Goods that are inherent to an individual and cannot be transferred to another (such as right to life or right to personal and family privacy).
- Goods expressly declared unattachable by any legal provision.

*(Article 605, Procedural Law.)*

The following assets cannot be seized:

- Furniture and household items, clothes, food, fuel and others items that, in the court's opinion, are essential for the defendants and their dependents to provide for their subsistence with reasonable dignity.
- Books and instruments necessary for the exercise of the defendant's profession, art or trade, where the value is not proportional to the amount of the debt claimed. The law seeks to prevent the debtor from being deprived of the means to support itself.
- Sacred goods and goods dedicated to the worship of religions legally registered on the public register.
- Amounts expressly declared unattachable by law.
- Goods and amounts declared unattachable by treaties ratified by Spain.

*(Article 606, Procedural Law.)*

Wages and pensions are partially unattachable and cannot be seized if they do not exceed the minimum inter-professional wage. If wages and pensions exceed this minimum, the attachment may be carried out according to the following scale:

- For the first additional amount, up to twice the minimum inter-professional wage, 30% may be attached.

- For the additional amount, up to the equivalent of three times the inter-professional minimum wage, 50% may be attached.
- For the additional amount, up to the equivalent of four times the inter-professional minimum wage, 60% may be attached.
- For the additional amount, up to the equivalent of five times the inter-professional minimum wage, 75% may be attached.
- For any amount exceeding the minimum inter-professional wage amount, 90% may be attached.

*(Articles 607 and 608, Procedural Law.)*

## **Types of Attachment Order**

The Procedure Law determines how different types of good and asset are attached, for example:

- Cash must be deposited with the court.
- Favourable balances in any pension or periodic benefits accounts opened in financial institutions, as well as interests, incomes or proceeds, must be withheld by the paying entity at the court's disposal and the court may also order amounts to be deposited in the court's account *(Articles 621 and 622, Procedural Law)*.
- Movable property, such as money and other seized assets are considered as public effects or funds as soon as they are deposited or frozen *(Articles 625 and 626, Procedural Law)*. A third party in possession of any movable property must, by decree, keep it at the disposal of the court. The third party will be appointed as a judicial depositary, unless the court clerk reasonably decides otherwise.
- The attachment of real estate must be entered on the Land Registry as ordered by the court clerk at the request of the applicant.
- When any company or group of companies is subject to attachment (or its shares or participations that represent the majority of the capital stock, the common equity or the goods or rights belonging to the companies), the court may appoint a judicial administration. *(Articles 630 to 633, Procedural Law)*. The parties, non-defendant company administrators, partners or participants whose shares are not attached are summoned to appear before the court clerk to determine the following:
  - the appointment of administrator and who should perform this duty;
  - whether a surety is demanded;
  - form of action;
  - whether the pre-existing administration is maintained;
  - rendering of accounts; and
  - compensation.

Where there is no agreement, the matter is brought before the court that issued the attachment order to issue an order as appropriate.

For securities and financial instruments, the notice of attachment is given to whoever is obliged to pay whether on a periodic basis or on a specific date. Notice of attachment of securities or financial instruments listed in secondary official markets is given to the relevant governing body and, as appropriate, the governing body gives notice to the clearing and settlement institution. Where shares in companies not listed in secondary official markets are attached or frozen, notice of attachment is given to company's administrators, who must inform the court of the existence of any agreements limiting the free transfer of shares or any other bye-law or contractual clause affecting the shares attached.

## Location of Assets

The court can order the adoption of measures to investigate and ascertain the defendant's assets. The Neutral Judicial Information Point was established for this purpose. The Neutral Judicial Information Point is a network that, provides the courts with information online that is not accessible to the general public from organisations and registries such as the:

- Cadastre.
- State Tax Agency.
- Association of Property, Mercantile and Movable Property Registrars of Spain.
- General Direction of Traffic.
- National Employment Institute.
- General Treasury of Social Security.
- Financial Entities.

## Supplementary Orders

Unlike in enforcement proceedings, in attachment order proceedings in aid of the main proceedings the defendant is not requested to disclose assets (*Article 738.2, Procedural Law*).

## Undertaking and Security

The applicant must provide a security (typically in the form of a cash deposit or a bank guarantee) when it applies for an attachment order to ensure that the defendant may be compensated for any eventual damage caused by the attachment order. This requirement is to protect the defendant if the court dismisses the claim. The amount of the security will be determined by the court.

### Form or Amount of Undertaking and Security

The security must be sufficient to guarantee the damages that may be caused to the defendant's financial circumstances. (For more information, see [Procedure for Applying](#).) The amount of the security will be determined by the court.

The security may be provided in cash, by a joint and several guarantee of indefinite duration and payable on first demand, issued by a credit institution or mutual guarantee institution, or by any other means which, at the court's discretion, would ensure the immediate availability of the amount in question.

## Exceptions to the Attachment Order

For a list of assets that cannot be attached under the Procedural Law, see [Exempt Assets](#).

## Duration of the Attachment Order

Given its instrumental nature, the attachment order, in principle, will persist until the end of the main proceedings when the court issues a final judgement (not subject to appeals).

However, it is possible to modify or lift the attachment order both during and following court proceedings as follows:

- **Modification during proceedings.** An attachment order may be modified based on new facts and circumstances that have arisen since the attachment order was first granted.
- **Lifting after non-final judgment.** Where the court enters a final judgment on the main lawsuit that is in the defendant's favour, the court normally lifts the attachment order. At the applicant's request, the court may decline to lift the attachment order if it finds the request to be justified given the circumstances of the case.

(Articles 743 and 744, Procedural Law.)

## Proprietary Right and Lien

The seizure of assets or goods under an attachment order grants the applicant the right to use the seized assets to satisfy the amount of the debt (plus interest and costs) if the court grants a judgment in their favour against the defendant.

The attachment order does not deprive the defendant of the ownership or right to dispose of the property or goods that are frozen unless the deposit in court of the attached asset is agreed and the custodian designated is a person other than the executed. The attachment order does not grant the applicant any real right over the defendant's assets subject to the order. However, the attachment order grants the applicant a right to pursue the assets by the delivery of the corresponding security and a right of priority over the claims of other creditors of the same rank (see [Availability](#)).

## Appeal

The defendant can appeal on different grounds both in cases where the defendant is present at the main hearing and in cases where they are not and they become aware of the attachment afterwards (with the notification of the order) (see [Procedure for applying](#)). They may challenge the admissibility of the order, its requirements, scope, or any other circumstances under which the order was issued, without limitation (*Article 740, Procedural Law*).

Among others, the grounds on which appeals are usually based are those related to non-compliance with the requirements of Article 728 of the Procedural Law:

- The applicant has failed to prove that there is a presumption of sufficient legal basis (*fumus boni iuris*) for the grant of the order.
- The applicant has failed to demonstrate that there is a real risk of irreparable injury to them if the attachment order is not granted (*periculum in mora*).
- The applicant has not provided security for the damages which may be caused to the defendant by the adoption of the order.

The appeal procedure varies depending on whether the defendant is allowed to attend the main hearing or not (see [Procedure for Applying](#)).

If the defendant is allowed to attend the hearing, they will be summoned five days after being notified of the hearing, and may produce any evidence they deem necessary. The defendant may request in the hearing to pay a security in lieu of assets subject to the order, provided that the purpose of the order itself is met.

(Articles 732 to 734, Procedural Law.)

If the defendant is not called to attend the hearing, they may appeal within 20 days from the day following the notification of the order requested by the applicant (see [Procedure for Applying](#)).

The statement of appeal must be communicated to the applicant, and then the court will call the parties to the appeal hearing. The court will make a decision on whether to accept the appeal within five days of the hearing.

(Articles 739 to 741, Procedural Law.)

## Variation and Discharge

The party against whom the attachment order is issued may ask the court (at the hearing or in the statement of opposition to the attachment) to accept a guarantee sufficient to fulfil any future judgment in lieu of attaching the defendant's assets (*Article 585, Spanish Procedural Law*).

## Third Parties

The court can issue an attachment order against third parties in possession of the defendant's assets that are subject to an attachment order. The third parties must comply with the attachment order as appropriate, depending on the nature of the assets attached (see [Types of Attachment Order](#)).

A third party who declares ownership of an asset seized under an attachment order against the defendant may file a third-party ownership claim to lift the attachment.

Third-party ownership may also be lodged to lift the attachment order where, by an express legal provision, third-party owners of rights may oppose the attachment or the compulsory execution of one or several assets subject to an attachment order against the defendant.

For example, in the case of financed sale subject to title reservation, the financial institution may file a third-party ownership claim where the title reservation clause is registered in favour of the financial institution in the Registry of Movable Property.



All persons, and public and private entities must co-operate fully to execute the attachment order. All parties must submit any documents and data they have in their power and any items requested by the court clerk (unless the documents or data requested is restricted to protect fundamental rights or the submission is expressly limited by law). If a party does not co-operate with the court clerk's request based on legal reasons or the respect for fundamental rights, the court clerk informs the court so that it might decide whatever is appropriate (*Article 591.1, Procedural Law*). If the parties concerned do not co-operate and have no legal reason for doing so, the court may impose regular coercive fines (*Article 591.2, Procedural Law*).

## Circumstances Where an Attachment Order Is Unavailable

The provisional attachment is a precautionary measure. Therefore, the court can only grant an attachment order when specific conditions and requirements are met (see *Procedure for Applying*).

### Overseas Assets

Attachment may be levied on assets belonging to a debtor in multiple countries, thus creditors are not necessarily restricted to attach assets located in Spain where permitted under the applicable international rules.

A creditor that obtains an attachment order against a debtor in Spain to be enforced in a foreign court must follow the process according to the law of the country where the measure is to be enforced. Regulation 1215/2012 (Brussels I-bis Regulation) governs the enforcement of judgments and attachment orders in other EU member states. Enforcement of the attachment order in non-EU countries depends on the applicable international treaties or the domestic private international law rules of the country where the creditor seeks to enforce the attachment order.

## Foreign Court Proceedings

A party to court or arbitration proceedings conducted in a foreign country may request a Spanish court to issue preventive measures such as attachment orders provided the legal prerequisites are met and provided that Spanish courts are not exclusively competent in relation to the main proceedings (*Article 722.2, Spanish Procedural Law*).

The procedure for applying for an attachment order in support of foreign legal proceedings is the same as that outlined in *Procedure for Applying*.

## Enforcement of Attachment Orders

### Domestic Attachment Orders

Under Article 738.2 of the Spanish Procedural Law, when a provisional attachment is issued, the court enforces the attachment order. The attachment is understood to be carried out as soon as it is ordered by the court clerk (*Article 587, Spanish Procedural Law*).

Once the court orders the enforcement, the assets are attached depending on their type, unless the enforcement debtor deposits the amount ordered, in which case the attachment will be suspended (see *Types of Attachment Order* and *Variation and Discharge*).

Once the provisional attachment is issued and the claimant has provided the security, the court enforces the attachment order as necessary (*Article 738, Procedural Law*).

### **Penalties for Breach**

The court may impose penalties for breaching an attachment order and may impose coercive fines against parties that do not co-operate in enforcement activities (*Article 591, Procedural Law*) (see *Third Parties*). This is a measure of legal coercion against parties that oppose the attachment order or are reluctant to comply with the necessary actions for the execution of the order.

The breach of the duty to co-operate in a serious and continuous manner may lead to criminal liability for contempt of court. The court clerk will report the facts to the Public Prosecutor's Office or the investigating court to initiate criminal proceedings.

### **Overseas Assets**

See *Foreign Attachment Orders*.

### **Foreign Attachment Orders**

The Brussels I bis Regulation allows for the recognition of precautionary measures, such as attachment orders, adopted in another member state. Law 29/2015 of 30 July 2015 on international legal cooperation in civil matters allows precautionary measures such as attachment orders adopted by a foreign court to be enforced in Spain under certain conditions.

The procedure is initiated by presenting a statement of request of recognition and enforcement before the courts of first instance of the domicile of the party against whom execution is sought, or of the party to whom the effects of the foreign judgment apply.

Once the application has been accepted, the defendant is given notice to reply within 30 days and the court will decide on recognition and enforcement within ten days of receiving the defendant's reply.

### **Penalties for Breach**

See *Domestic Attachment Orders, Penalties for Breach*.

### **Damages**

Where an attachment order is issued without notice to the defendant and, at a subsequent hearing the court finds in favour of the defendant's opposition, the applicant must pay damages to the defendant. Payment of damages is enforced by the court if the applicant fails to pay (*Article 742, Procedural Law*).

In addition, if the court enters a final judgment in favour of the defendant, the court clerk will lift the provisional attachment and proceed under Article 742 of the Procedural Law regarding the damages that the defendant may have suffered. The defendant must present a detailed list of the damages suffered due to the attachment order, and submit reports and documents in support of the request for the court's review. The damages claim is delivered to the applicant who then has ten days to respond.

If the applicant agrees with the list of damages and the claimed amount, the court clerk will approve the amount by decree and the agreed sum will be enforceable. If the applicant opposes the terms of the defendant's request for

damages or the monetary amount claimed, the matter will follow the established procedure for verbal proceedings. The court will issue an order within five days of the hearing to include its resolution and the amount payable by the applicant to the defendant as damages. The applicant may appeal the court's order, but the appeal does not suspend any compensation payments set out under the order (*Articles 715 and 716, Procedural Law*).

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