



ICLG

The International Comparative Legal Guide to:

Enforcement of Foreign Judgments 2018

3rd Edition

A practical cross-border insight into the enforcement of foreign judgments

Published by Global Legal Group, with contributions from:

Allen & Gledhill (Myanmar) Co., Ltd.

Allen & Gledhill LLP

Archipel

Bär & Karrer Ltd.

Blake, Cassels & Graydon LLP

Boga & Associates

Bonn Steichen & Partners

Brain Trust International Law Firm

Chuo Sogo Law Office, P. C.

Covington & Burling LLP

EsenyellPartners Lawyers & Consultants

Fichte & Co

Gall

GASSER PARTNER Attorneys at Law

Gürlich & Co.

Herbert Smith Freehills Germany LLP

Herbert Smith Freehills South Africa LLP

Jafa & Javali, Advocates

Jones Day

Konrad & Partners

Legance – Avvocati Associati

Lex Navicus Concordia

Linklaters LLP

Matheson

MinterEllison

Montanios & Montanios LLC

N-Advogados & CM Advogados

Pinheiro Neto Advogados

Polenak Law Firm

Rahmat Lim & Partners

Simonsen Vogt Wiig

Stek

TripleOKlaw Advocates LLP

Williams & Connolly LLP



Contributing Editors
Louise Freeman and
Chiz Nwokonkor,
Covington & Burling LLP

Sales Director
Florjan Osmani

Account Director
Oliver Smith

Sales Support Manager
Toni Hayward

Sub Editor
Jane Simmons

Senior Editors
Suzie Levy
Caroline Collingwood

Chief Operating Officer
Dror Levy

Group Consulting Editor
Alan Falach

Publisher
Rory Smith

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Stephens & George
Print Group
March 2018

Copyright © 2018
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-911367-99-4
ISSN 2397-1924

Strategic Partners



General Chapters:

1 Beyond Brexit: Recognition and Enforcement of Judgments between the UK and the EU – Louise Freeman & Chiz Nwokonkor, Covington & Burling LLP	1
2 European Union – Sébastien Champagne & Vanessa Foncke, Jones Day	6

Country Question and Answer Chapters:

3 Albania	Boga & Associates: Gerhard Velaj & Eno Muja	12
4 Angola	N-Advogados & CM Advogados: Nuno Albuquerque & Conceição Manita Ferreira	16
5 Australia	MinterEllison: Beverley Newbold & Tamlyn Mills	21
6 Austria	Konrad & Partners: Dr. Christian W. Konrad & Philipp A. Peters	27
7 Belgium	Linklaters LLP: Joost Verlinden & Nino De Lathauwer	34
8 Brazil	Pinheiro Neto Advogados: Renato Stephan Grion & Guilherme Piccardi de Andrade Silva	40
9 Canada	Blake, Cassels & Graydon LLP: Erin Hoult & Daniel Styler	47
10 China	Linklaters LLP: Justin Tang	53
11 Cyprus	Montanios & Montanios LLC: Yiannis Papapetrou	58
12 Czech Republic	Gürlich & Co.: Richard Gürlich & Kamila Janoušková	64
13 England & Wales	Covington & Burling LLP: Louise Freeman & Chiz Nwokonkor	69
14 France	Archipel: Jacques-Alexandre Genet & Michaël Schlesinger	75
15 Germany	Herbert Smith Freehills Germany LLP: Catrice Gayer & Sören Flecks	81
16 Hong Kong	Gall: Nick Gall & Lydia Mak	88
17 India	Jafa & Javali, Advocates: Kirit S. Javali	93
18 Ireland	Matheson: Julie Murphy-O'Connor & Gearóid Carey	98
19 Italy	Legance – Avvocati Associati: Daniele Geronzi & Stefano Parlatore	105
20 Japan	Chuo Sogo Law Office, P. C.: Masahiro Nakatsukasa	111
21 Kenya	TripleOKlaw Advocates LLP: John M. Ohaga & Gloria Mwika	116
22 Kosovo	Boga & Associates: Sokol Elmazaj & Delvina Nallbani	121
23 Liechtenstein	GASSER PARTNER Attorneys at Law: Thomas Nigg & Domenik Vogt	126
24 Luxembourg	Bonn Steichen & Partners: Fabio Trevisan & Laure-Hélène Gaicio-Fievez	132
25 Macedonia	Polenak Law Firm: Tatjana Popovski Buloski & Aleksandar Dimic	137
26 Malaysia	Rahmat Lim & Partners: Jack Yow & Daphne Koo	141
27 Myanmar	Allen & Gledhill (Myanmar) Co., Ltd.: Minn Naing Oo	147
28 Netherlands	Stek: Gerben Smit & Max Hetterscheidt	151
29 Norway	Simonsen Vogt Wiig: Tage Brigit A. Skoghøy & Ørjan Salvesen Haukaas	156
30 Portugal	N-Advogados & CM Advogados: Nuno Albuquerque & Filipa Braga Ferreira	161
31 Russia	Lex Navicus Concordia: Konstantin Krasnokutskiy & Alexey Drobyshv	167
32 Singapore	Allen & Gledhill LLP: Tan Xeauewei & Melissa Mak	174
33 South Africa	Herbert Smith Freehills South Africa LLP: Jonathan Ripley-Evans & Fiorella Noriega Del Valle	180

Continued Overleaf →

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.



34	Switzerland	Bär & Karrer Ltd.: Saverio Lembo & Aurélie Conrad Hari	187
35	Taiwan	Brain Trust International Law Firm: Hung Ou Yang & Jia-Jun Fang	194
36	Turkey	Esenyel Partners Lawyers & Consultants: Selcuk S. Esenyel	198
37	United Arab Emirates	Fichte & Co: Alessandro Tricoli & Jasamin Fichte	203
38	USA	Williams & Connolly LLP: John J. Buckley, Jr. & Ana C. Reyes	208

EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Enforcement of Foreign Judgments*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations relating to the enforcement of foreign judgments.

It is divided into two main sections:

Two general chapters. These chapters are designed to provide readers with a comprehensive overview of key issues affecting the enforcement of foreign judgments, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in the enforcement of foreign judgments in 36 jurisdictions.

All chapters are written by leading lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Louise Freeman and Chiz Nwokonkor of Covington & Burling LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Netherlands

Gerben Smit



Stek

Max Hetterscheidt



1 Country Finder

- 1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.**

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
In case a treaty applies: specific treaty regime and/or artt. 985–992 of the Dutch Code of Civil Procedure (DCCP).	EU Member States, Mexico and Singapore (Hague Convention on Choice of Court Agreements of 2005). Bilateral treaties with Austria (1963), Belgium (1925), Germany (1962), Italy (1959), Suriname (1976) and the United Kingdom (1967). Albania, Cyprus, Kuwait, Portugal (Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 1971). Various treaties with relatively narrow scope (e.g. transport by air, by road, by rail, nuclear power).	Section 3.
In case no treaty applies: art. 431 DCCP.	All jurisdictions in relation to which no treaties have been entered into.	Section 2.

2 General Regime

- 2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?**

Art. 431 DCCP provides the applicable legal regime for the recognition and enforcement of foreign judgments in the Netherlands, in case no treaty applies.

- 2.2 What constitutes a ‘judgment’ capable of recognition and enforcement in your jurisdiction?**

Foreign court decisions (in civil proceedings) which are enforceable in the country of origin. See for the required form and substance in question 2.3 below.

- 2.3 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?**

The party seeking recognition and enforcement of a foreign judgment is required to submit an authenticated and complete copy of the foreign judgment, which normally needs to be accompanied by a legal opinion confirming the enforceability of the judgment in the country of its origin. The competent Dutch court may furthermore require: (i) a legalisation of these documents; and (ii) a translation thereof into Dutch by a sworn translator (unless a treaty provides otherwise; such as the Hague Convention of 1962 concerning the abolishment of legalisation of Foreign Public Documents).

The procedure of art. 431 DCCP does not formally involve the recognition *and* enforcement of foreign judgments. It does, however, result in giving binding effect to foreign judgments in the Netherlands. In practice, four (substantive) criteria have to be met, which are, in particular: (i) the non-domestic court must have assumed jurisdiction on grounds which are internationally accepted (an example is the forum chosen by the parties); (ii) the judgment should be the result of proceedings conducted in accordance with the principles of “fair trial”; (iii) the recognition of the foreign judgment is not contrary to Dutch public policy; and (iv) the foreign judgment is compatible with an earlier (foreign) judgment rendered between the same parties in relation to the same dispute (provided that the earlier judgment can be recognised in the Netherlands).

The term “public policy” is quite commonly described as the fundamental principle of procedural law or the rule of law, meaning that these principles are so essential to the Dutch legal order that within the territory of the Netherlands any deviation cannot be allowed.

2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

The Dutch courts may assume jurisdiction on different grounds, also depending on the type of procedural route the party seeking recognition and enforcement chooses (see also question 2.6).

In case the judgment creditor intends to initiate “simplified proceedings” (see also question 2.6), the Dutch courts may assume jurisdiction, *e.g.* because a prejudgment attachment was levied on the assets of the judgment debtor which are located in the Netherlands (see also question 5.2), or the domicile of the party against which recognition and enforcement is sought, or the place of enforcement is located in the Netherlands. It could, however, also be argued that the competence of the Dutch courts could directly be derived from the circumstance that proceedings based on art. 431 para. 2 DCCP are initiated before the Dutch courts.

In case the Dutch courts assume jurisdiction and *e.g.* an exclusive jurisdiction clause has been concluded, the party seeking recognition and enforcement of the foreign judgment through “simplified proceedings” could refer to this jurisdiction clause and the judgment of a court whose competence is based on this clause and claim that the other party is condemned to the same in the Dutch proceedings. If these references are correct, the Dutch court will, in principle, bind the parties to the foreign judgment (provided that the other relevant criteria have been met, see question 2.3).

In case parties have not agreed upon a jurisdiction clause, the party seeking recognition and enforcement has to submit (and prove) that the foreign court has based its competency on an internationally recognised ground for jurisdiction (and that the other relevant requirements have been fulfilled, see also question 2.3).

2.5 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

Even though a distinction must be made between recognition and enforcement of a foreign judgment, recognition will generally lead to enforcement (*e.g.* if the foreign judgment concerns the determination of a particular legal position as could be the case in family matters). However, if the judgment provides an order to undertake a certain (legal) action (*e.g.* to give something or to act), then both recognition and enforcement of the foreign judgment should be requested.

2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

In case no treaty applies, foreign judgments cannot be directly recognised and enforced in the Netherlands, but they need to be recognised and enforced by commencing new (simplified) proceedings, which have to be initiated before the competent Dutch courts.

In this regard two procedural routes are available; a party seeking recognition could conduct (a) “simplified proceedings”; or (b)

proceedings in which the merits of the case will be reviewed “*de novo*” by the Dutch court (*e.g.* if that would be favourable for the judgment creditor; in case it wants to claim more than granted in the foreign judgment). Most parties will choose to conduct simplified proceedings, in order to try to achieve the same result as in the foreign proceedings and to prevent a new debate on the merits of the matter.

The party seeking recognition and enforcement through the “simplified proceedings” should submit, and to the extent necessary, prove that the relevant criteria have been fulfilled (see also question 2.3). If it can be established that these requirements have been met, it can be assumed that the claim is in line with the foreign judgment and the Dutch courts will generally grant the same judgment as the foreign court. The procedure of art. 431 DCCP does in effect result in giving binding effect to a foreign judgment.

The decisions on a request for recognition and enforcement by the (sub)district court are subject to appeal and cassation.

2.7 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

The party against which recognition and enforcement of a foreign judgment is sought (the judgment debtor), is required to submit, and to the extent necessary, prove that the foreign judgment does not meet the relevant recognition requirements set out under question 2.3.

The Dutch courts can also refuse enforcement of a foreign judgment if the judgment (which is susceptible of recognition) is not, not yet or no longer enforceable in the country of its origin and does not meet the (formal) enforcement requirements in the country of its origin (which, in principle, has to be adduced by the party against which recognition and enforcement of a foreign judgment is sought). This could *e.g.* be the case when the execution of the foreign judgment in the country of origin is suspended because appeal proceedings have been initiated, or the foreign judgment has been quashed in appeal. However, in case the claim based upon a foreign judgment can no longer be executed in the country of origin because the right to claim execution is time-barred or has lapsed, this shall not necessarily prevent the execution of the foreign judgment in the Netherlands.

Certain refusal grounds can be applied by the Dutch courts “*ex officio*”, such as violation of the Dutch public policy. The competent Dutch court is, in principle, required to hear the judgment debtor before a decision is rendered on the request for recognition and enforcement.

In case it can be established that the minimum criteria have not been met, then the foreign judgment will, in principle, not be recognised. This does not, however, mean that that no legal force at all can be attributed to the foreign judgment. The judgment may be used as a deed (*authentieke akte*) in Dutch proceedings to prove *e.g.* that a decision was rendered by a foreign court and procedural actions have been undertaken by the parties before a foreign court.

2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

Art. 431 DCCP does not provide additional rules in relation to specific subject matters. The Netherlands are, however, member to various treaties concerning the recognition and enforcement of (foreign) judgments. Please note that the relevant treaties differ in scope (*e.g.* broad or limited) and could provide different regimes.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

Point (a) qualifies as a ground for denying the recognition and enforcement of the foreign judgment (see question 2.3). Point (b) could lead to the stay of the recognition and enforcement proceedings, pending the result of the local proceedings.

2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

That would, in principle, not directly constitute a ground for refusal, because the Dutch courts, in principle, do not review the merits of the case in these kind of (simplified) proceedings and it concerns different parties. There is, for example, no system of binding precedents in the Netherlands.

In case the recognition of such a foreign judgment would, however, violate the Dutch public policy (which ground could be applied “*ex officio*” by the Dutch courts, see also question 2.7) the recognition and enforcement thereof would be refused. In principle, the Dutch courts do not easily conclude that the public policy is violated and the Dutch courts would try to fit a foreign judgment into the Dutch legal system as much as possible (also depending on the facts and circumstances of the case).

2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

As specified under question 2.6 the purpose of the (simplified) proceedings is to achieve the same result as in the foreign proceedings, but without reviewing the merits of the case, even if the foreign court has applied substantive Dutch law. However, as set out previously, this is in case the recognition of a foreign judgment would violate the Dutch public policy that would constitute a ground for refusal (see question 2.10).

2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

There are no differences in relation to the recognition and enforcement of judgments rendered in the different parts of the Kingdom of Netherlands (the Kingdom comprises of the following countries: the Netherlands, Aruba, Curaçao and Sint-Maarten). Pursuant to art. 40 of the Statute such judgments have direct effect within the Kingdom of the Netherlands.

The Dutch Supreme Court recently decided that the Kingdom of the Netherlands cannot be regarded as one territory in relation to, *inter alia*, the recognition and enforcement of foreign judgments based upon a recognition and enforcement treaty (see *e.g.* section 3). Such a treaty-based leave for recognition and enforcement of a foreign judgment granted in one of the countries of the Kingdom is, in principle, only valid in that specific country, unless the laws of the other countries provide otherwise.

2.13 What is the relevant limitation period to recognise and enforce a foreign judgment?

Pursuant to Dutch case law it could, under circumstances, be possible to recognise and enforce a foreign judgment, even if the foreign judgment can no longer be executed in the country of its origin because the right to claim execution of a foreign judgment is time barred/has lapsed.

Please note that the limitation period for a leave to enforce a Dutch court judgment – (*e.g.* rendered in “simplified proceedings”) – is in any case 20 years (pursuant to art. 3:324 Dutch Civil Code).

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

Please note that the EU Regulations and Lugano Treaty (EVEX Treaty) could provide different rules than set out in the answers below.

An authenticated and complete copy of the foreign judgment is required, including documents (such as a legal opinion) which evidence that the judgment is enforceable in the country of its origin. The addressed court may require a legalisation of these documents and translation thereof into Dutch by a sworn translator (unless a treaty provides otherwise; see also question 2.3). If the submitted documents are deemed to be inadequate by the court, the party seeking recognition and enforcement will be granted the opportunity to provide additional documents/information.

Furthermore, in the Netherlands, the party seeking recognition and enforcement of a foreign judgment is also required to submit evidence that the defendant/judgment debtor has been duly summoned to appear in court to be heard on the request to recognise and enforce the foreign judgment.

Some treaties to which the Netherlands is a party *e.g.* require (evidence of the fact) that the foreign judgment can no longer be appealed in the country of its origin. Other treaties require, in case a (foreign) judgment was rendered by default, that the judgment debtor has been properly notified of the initiation of the foreign proceedings and evidence thereof should be submitted.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

In principle, artt. 985–992 DCCP only formally provides the rules for *enforcement* of a foreign judgment based upon a treaty. It is, however, generally assumed that this regime also applies for a treaty based request for the recognition of a foreign judgment in the Netherlands.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

Foreign judgments are not recognised and enforced automatically in the Netherlands (neither if such a request is based on a treaty). The

party seeking leave for recognition and enforcement of a foreign judgment is required to submit an application to the district court of the area where the party against whom enforcement is sought or the place of enforcement is located. In principle, leave will be automatically granted, provided that certain formal requirements are met (see the formal requirements set out under question 2.3, *i.e.* the foreign judgment needs to be enforceable in the country of its origin). The competent court will, in principle, not review the merits of the case.

The addressed court will render its decision (*beschikking*) within due course, but only after hearing the parties (which have to be represented by a lawyer). Parties could lodge an appeal and cassation within one month after the date on which the decision is rendered. Unless the court decides otherwise, a leave to enforce is not suspended by initiating appeal proceedings.

In case it would be established that the enforcement of a foreign judgment is not justified, *e.g.* because the judgment is quashed in foreign appeal proceedings, the party who sought recognition and enforcement could be liable for the occurred damages.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

In principle, the grounds for refusal are phrased differently in each treaty, but they are, to a certain extent, comparable to the following (formal and substantive) criteria: (a) the foreign court has not assumed competence on internationally accepted jurisdiction grounds; (b) the foreign judgment is not the result of proceedings conducted in accordance with the principles of “fair trial”; (c) the recognition of the foreign judgment is contrary to Dutch public policy; (d) the foreign judgment is incompatible with an earlier (Dutch) judgment rendered in relation to the same parties and the same dispute; (e) the foreign judgment is incompatible with a foreign judgment that can be recognised in the Netherlands; (f) the foreign judgment is not, no longer, or not yet enforceable in the country of its origin; or (g) if the judgment has already been fulfilled by the judgment debtor.

Some treaties do, however, provide additional grounds for refusal (such as the Hague Convention on Choice of Court Agreements: *e.g.* fraud in foreign court proceedings).

Most treaties require the party seeking recognition and enforcement to submit that the judgment is enforceable in the country of its origin. The grounds for refusal generally have to be invoked and proven by the party against which recognition and enforcement is sought. Some refusal grounds (such as the circumstance that the recognition of the foreign judgment violates public policy) could be applied “*ex officio*” by the Dutch courts.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

If the recognised (foreign) judgment concerns a monetary judgment it is normally effected by a post judgment/executory attachment (*executorial beslag*) on the assets of the losing party/the party against which enforcement was sought. Such an attachment has to be levied by the bailiff (as most physical actions to be undertaken following a leave to enforce) and could be made on all the assets of

the losing party, including property which is in the actual possession of third parties, or on receivables and other claims on third parties. This form of attachment will ultimately lead to the transfer of receivables or the public sale of assets by the bailiff.

If the recognised (foreign) judgment relates to the delivery of movable goods, the bailiff is entitled to seize the goods and deliver them to the judgment creditor. If the goods are legally required to be transferred (*e.g.* by deed of a civil law notary) the court can order that its judgment has the same force as the legal deed required. The court could also appoint a third party to act on behalf of the losing party. If the judgment creditor is required to perform certain actions, the court can order it to do so under penalty of a fine or even (under specific circumstances) commitment to prison.

Certain (state-owned) assets could be immune from enforcement measures or could be subject to a special regime (such as ships and aircraft). A court will furthermore only prohibit the enforcement of a judgment if the party enforcing the judgment seems to abuse its rights to do so (*e.g.* when the judgment creditor wishes to enforce a monetary judgment when it is clear that the losing party has already paid the amounts due).

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

After proceedings which lasted more than a decade, on 9 May 2017 the Amsterdam Court of Appeal rendered a decision on the recognition of the foreign bankruptcy judgment of Yukos Oil in the Netherlands. In short, the Court of Appeal amongst other things established that the Russian authorities contemplated and provoked the bankruptcy of Yuks Oil and decided that the Russian bankruptcy judgment could not be recognised in the Netherlands, because that would (formally and materially) violate the Dutch public policy. As a result thereof the bankruptcy trustee was not authorised to perform certain (legal) actions/decisions and these were considered to be invalid (*e.g.* the transfer of the shares which Yukos Oil held in the Dutch company Yukos Finance B.V.).

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

In the Netherlands it is relatively easy to levy a prejudgment attachment on the goods or bank accounts – of the judgment debtor/party against which recognition and enforcement is sought – located here prior to initiating the main recognition and enforcement proceedings. In most cases the leave for prejudgment attachment is granted *ex parte* within a short period (could be one day or less).

In order to obtain leave to levy prejudgment attachment in the Netherlands, the requesting party has to evidence that it has a *prima facie* claim on the party against which recognition and enforcement is sought and generally the main (recognition and enforcement) proceedings have to be initiated within two weeks after the leave for prejudgment attachment is granted.

This regime, in principle, also applies if the main proceedings are initiated abroad, provided that the Netherlands entered into a treaty with that particular foreign country on the recognition and

enforcement of foreign judgments (in such a situation, only the seized assets have to be located in the Netherlands, it is not required that the parties are domiciled in the Netherlands).

Under certain circumstances, the seizure of assets could be used to create competency for the Dutch courts to hear the proceedings on the merits, *e.g.* in case these proceedings otherwise have to be initiated abroad and the Netherlands have not concluded a treaty

on the recognition and enforcement of foreign judgments with that particular foreign country.

In case the main action (*e.g.* the claim for recognition and enforcement of the foreign judgment) is fully denied the judgment creditor could be held liable for the full amount of damages caused by the prejudgment attachment. However, this does not occur often.



Gerben Smit

Stek
Vijzelstraat 72–Floor 7B
1017 HL Amsterdam
Netherlands

Tel: +31 20 530 5202
Email: gerben.smit@stek.com
URL: www.stek.com

Gerben co-heads Stek's corporate and commercial litigation department. His practice covers the full range of corporate and commercial dispute resolution, with an emphasis on banking and finance litigation, follow-on (cartel) damage claims, trade disputes and M&A-related disputes. Gerben has particular strengths in contract law and tort disputes acting for financial institutions and (listed) companies active in the transportation, leisure and industry sectors. He represents his clients in both local courts and before (international) arbitration tribunals. Gerben is recommended in *Chambers* (Global and Europe) and *The Legal 500*.



Max Hetterscheidt

Stek
Vijzelstraat 72–Floor 7B
1017 HL Amsterdam
Netherlands

Tel: +31 20 530 5216
Email: max.hetterscheidt@stek.com
URL: www.stek.com

Max is a senior associate in the corporate and commercial litigation department of Stek. He litigates in various commercial and corporate disputes, including matters related to contractual liability, directors' and shareholders' liability, M&A related disputes, discovery and proceedings regarding the recognition, enforcement and annulment of (foreign) arbitral awards. Max has acted as counsel in (international) arbitrations under, *inter alia*, the ICC, DIAC and NAI arbitration rules. He also regularly advises various (listed) companies and financial institutions on large and complex matters.

stek

Stek is an independent Dutch business law firm based in Amsterdam providing legal services in four practice areas: Corporate/M&A; Finance; Dispute Resolution; and Competition & Regulated Markets. At Stek we offer approachable excellence and reasonable fees. The firm was launched in 2005, combining expertise from leading international law firms and high-profile in-house positions. We bring this expertise and professionalism in a leaner, smaller, direct and more approachable package and distinguish ourselves through excellent service via a focused, hands-on personal approach. Our firm prides itself in having assembled a top team of 40 lawyers, and clients appreciate our in-depth legal and sector expertise and commercial awareness with a 'can-do' service attitude. At Stek we help clients (multinationals, financial institutions, private equity and other companies) in small teams and we ensure partner involvement in all assignments. Stek has also become a trusted partner for referral work of leading foreign law firms.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com