



Netherlands

Narrative National Report

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TABLE OF ABBREVIATIONS

Bureau	The Financial Supervision Bureau
CC	Civil Code
Chamber	Royal Dutch Chamber of Private Enforcement Agents
CPC	Civil Procedure Code
LPEA	Law on (Private) Enforcement Agents



PART I: LEGAL FRAMEWORK

Prior note

Enforcement in the Netherlands is carried out by two different professions: the civil servant enforcement agent, whose focus is on the enforcement of tax cases only, and the self-employed (private) enforcement agent. The latter has a monopoly on the enforcement of all civil cases and certain criminal and administrative cases. In general, the legislation in Netherlands applies to the profession of the enforcement agent and the professions related to it (article 1, 4, 23, 25 and 27 LPEA):

- *Enforcement agent*: the person appointed by Royal Decree to exercise a practice.
- *Deputy enforcement agent*: the person who, in the event of discharge from office of the enforcement agent, or if the locally appointed enforcement agent cannot perform office due to illness, absence or suspension, is appointed by the Minister of Justice as a deputy enforcement agent to replace such enforcement agent.
- *Candidate enforcement agent*: the person who successfully completed a training recognized by the Minister of Justice for the preparation of the profession of enforcement agent, who has been assigned for the benefit of the traineeship and who is employed at an office under the responsibility and supervision of an enforcement agent.
- *Assigned enforcement agent*: an enforcement agent who, with the approval of the Minister of Justice, is assigned to an enforcement agent. The assigned enforcement agent is employed at the office of the enforcement agent to whom he/she has been assigned and can perform the official acts which the latter is authorized to perform, under the responsibility and supervision of the said enforcement agent.

I.1 Legislation affecting civil enforcement

I.1.1 Enforcement

Dutch legal provisions on enforcement are not only found in one law. The basic laws that have provisions on civil enforcement are the *Dutch Civil Procedure Code*¹ (book 2) and the *Civil Code*. The main provisions with regard to enforcement can be found in the CPC. However, book 3 of the CC applies with regard to the *rights of pledge and mortgage*. Book 3 of the CC also includes the main provisions with regard to preferred creditors in distribution of funds from a public sale.

The Dutch Parliament recently adopted a revision of the enforcement provisions. This revision aims to prevent people with debts from falling below the subsistence level. The amendments will come into effect in phases. The first phase came into force on October 1st, 2020. In principle, movable property, such as household effects, may no longer be seized if it is reasonably foreseeable that the costs of the public sale will

¹ Civil Procedure Code, 29 March 1828; recently amended on 21 December 2016.

exceed the revenues of such public sale. Furthermore, clothing, food and other items that a person needs for personal care and primary daily needs may in principle may not be attached. Seizure of art and jewelry, for example, remains possible.

The second phase came into force on January 1st, 2021. A so-called attachment-free amount is introduced from this date. In the event of an attachment on the debtor's bank account, part of the balance cannot be seized (the seizure-free amount). Something similar is already applied to attachment against wages or benefits (the attachment-free foot).

The third phase will enter into force on April 1st, 2021. This phase will enable administrative seizure of motor vehicles. This means that attaching a car or other vehicle becomes more efficient. Until recently, an enforcement agent actually had to see the vehicle in order to be able to attach it, while it is easy to determine whether someone owns a vehicle based on the registration in the vehicle registration register. From 1 April 2021, attachment of a vehicle is possible after a check of the vehicle registration register. This will also prevent transfer of such a vehicle after the attachment.

I.1.2 Bankruptcy proceedings

Bankruptcy is regulated in the Law on Bankruptcy². The request for bankruptcy can be made either by the debtor or by the creditor. Both need to make plausible to the court that debts can no longer be paid. In case the creditor requests the bankruptcy, they have to make plausible that, in addition to their claim, the debtor is also in default of payment of at least one other claim of another creditor.

In accordance with article 33 of the Law on Bankruptcy, any enforcement against any part of the assets (property) of the debtor, started before the declaration of bankruptcy, shall end immediately. Attachments made prior to the declaration of bankruptcy cease to exist; the registration of a statement to that effect from the magistrate (*rechter-commissaris*) authorizes the keeper of the public registers to delete the registered attachments. Once the bankruptcy ends, as a result of the nullification or termination of the bankruptcy order, the attachments take effect again, provided that the seized property still forms part of the liquidation estate.

I.1.3 Individual bankruptcy proceedings

The Netherlands has both statutory and voluntary debt solutions. With regard to natural persons, in 1998 the '*Law on Debt Rehabilitation of Natural Persons*' (*WSNP*) was introduced.

Voluntary debt settlement is a local debt counselling supervised by municipal authorities in order to carry out voluntary debt settlements. Over-indebted debtors may apply for help and an inventory on the debts and a debt adjustment plan, which consists of a voluntary debt settlement, are made. The local authorities have a Memorandum of Understanding with the enforcement authorities with regard to the enforcement of cases: during the period needed for the drafting of the debt

² Law on Bankruptcy, 30 September 1893; recently adjusted on 21 February 2018, Stb 2018, 75.

adjustment plan, in general, no enforcement will be initiated by the enforcement agents. In case a debtor breaks the voluntary arrangement, the process stops at the end of the plan all remaining debts are discharged.

Voluntary debt rescheduling (schuldsanering) uses a consolidating loan to replace existing loans. The repayments are calculated according to the debtor's income. The creditors receive their payment up front, although if the debtor can only pay off a consolidating loan which is less than the total value of their debts, this is only a part payment. Should the consumer's income increase during the period of the plan, the consumer benefits from this as their repayments on the new loan are fixed. If the income decreases, however, then the loan is extended for a longer period with lower instalments each month.

Voluntary debt conciliation (schuldbemiddeling) uses a calculation based on the consumer's income to inform creditors how much is expected to be repaid each month, and therefore an estimate of the fraction of the debt which they can expect to recoup over the life of the plan. If the creditors agree, the plan goes ahead. If the consumer's income increases, the creditors will be repaid a higher amount, but if it decreases, they will receive less. The forced agreement (*dwangakkoord*) allows the debtor to request that the court forces a creditor to accept the debtor's proposed out-of-court plan 'if the creditor could not have reasonably refused' to accept the compromise plan 'in light of the imbalance between the [creditor's] interest... and the interest of the debtor and the other creditors' (article 287A Bankruptcy Law).

The Statutory debt settlement (Law on Debt Rehabilitation of Natural Persons) was introduced only for natural persons. Along with the request, the debtor must enclose a model statement with the restructuring application, completed by the municipality and signed by him/her in person, and must also submit a complete petition to the court, demonstrating that voluntary debt settlement had been attempted and failed as a requirement for accessing the court-based system.

If accepted, the court will appoint a trustee for the debt re-structuring. The debt restructuring proceedings in court have a double objective: liquidation of the available equity and restructuring of the debt burden. However, in principle the debt restructuring arrangement does not work in respect of claims covered by pledge or mortgage. Entering a statutory plan puts a stop to creditors exercising the law.

As soon as debt restructuring is provisionally or finally declared applicable, an overall moratorium applies against creditors as far as legal exercise is concerned. Attachments already made will lapse and executions already started will be suspended. Legal or contractual interest likewise stops from that time onwards. In debt restructuring the supervisory judge may also specify a cooling off period by order at the request of each interested party.

If a debtor completes a debt re-structuring plan, they could be awarded a "remission of debts" which would apply to all creditors, even those who have not submitted their claim to the receiver.

1.1.4 Collection of costs of criminal proceedings and court fees



In accordance with article 94a of the Dutch Code of Criminal Procedure, it is possible to attach assets to secure:

- the payment of a fine in case of a criminal conviction;
- the fulfilment of a measure to confiscate the proceeds of crime (article 36e Dutch Criminal Code), in case a suspect is convicted for such a measure in a separate proceeding;
- the payment for damage incurred by the victim of a crime (article 36f Dutch Criminal Code).

In such case the provisions of the CPC apply (articles 94c and 574 Criminal Procedure Code).

I.2 Enforceable titles

In the Netherlands, the following can be considered enforceable titles:

1. A formal copy (“grosse”) of a Dutch court decision;
2. A foreign judgment providing it has an exequatur;
3. A judgment in a civil or commercial claim rendered in an EU Member State, which can be enforced in the Netherlands on the basis of the Brussels I Bis Regulation without an exequatur;
4. A European Enforceable Title (EET);
5. A European Payment Order;
6. A decision based on the European small claims procedure;
7. A Dutch or foreign arbitral decision provided with an exequatur;
8. A settlement reached between parties in court proceedings and issued in an enforceable form;
9. A formal copy (“grosse”) of an authentic deed (this also includes a notarial mortgage agreement).

Dutch decisions do not need a separate order for enforcement. The formal copy of the judgment (“grosse”) with the heading “In the name of the King” (“In naam der Koning”) legitimates the enforcement agent to start enforcement. Once the enforceable title is served on the debtor, and the time limit for voluntary fulfillment (2 days) has passed, such title can be enforced. The enforceable title does not have to be final and have a conclusive effect in order to initiate the enforcement (article 431 CPC).

I.3 Service of documents to parties and third parties

I.3.1 Legal basis

The service of (extra-) judicial documents in both civil proceedings and enforcement proceedings is an exclusive power of the enforcement agent. The service of documents can only be done by the enforcement agent or the deputy enforcement

agent.

The provisions regarding service of documents are included in the CPC (articles 45-66). Also, there are some additional provisions regarding the service of documents in the Law on Private Enforcement Agents (LPEA) (e.g., article 3, 3A, 11 and 15). Article 3 LPEA authorizes the enforcement agent to perform official acts within the territory of the Netherlands. Such nation-wide power also refers to the service of documents.

The service of documents is considered a key activity for a Dutch enforcement agent, both with regard to the initiation of civil proceedings and with regard to enforcement. Formal documents in the enforcement proceedings will need to be served to the debtor.

The service of documents is done in person; service by mail is only possible in highly exceptional cases. Electronic service of documents is allowed for certain cases, specifically described by law, only. For example, from 1 January 2021, the enforcement agent is obliged to serve the arrest under a third party (e.g., a bank or employer) electronically in case such third party informed the Chamber of Private Enforcement Agents that they only want to receive such documents electronically.

The service of documents can only be carried out from Monday to Saturday between 07:00 AM and 20:00 PM; this also includes electronic service of documents. In exceptional cases, the court may grant permission to the enforcement agent to serve outside these hours.

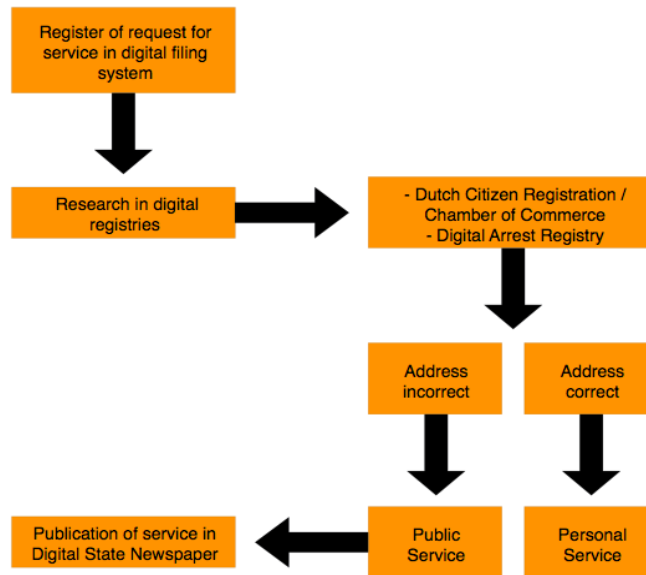
I.3.2 The contents of the documents to be served

There is no special format in which the record of service needs to be formulated. Since enforcement agents work under private status, the service of documents is mainly performed according to their own office standards. The contents may differ per office. However each document also needs to comply with the mandatory legal requirements (article 45-66 CPC; article 15 LPEA), according to which it should contain: the date (and when necessary, for example, in case of attachment on a bank account the time of service) to the addressee (the date needs to be recorded in letters); the data of the (deputy) enforcement agent who effected the service; details of the applicant as a natural person (full first name and last name and place of domicile) or legal entity (form of legal entity, statutory name, location of office); details of the addressee as a natural person (full first name and last name, address and date of birth, if available) or legal entity (form of legal entity, statutory name, location of office); name and capacity of the person on whom the documents were served or, in case of electronic service, the email address; the costs of the service; and the signature of the (deputy) enforcement agent.

There is no need to have the addressee sign the record of service (see paragraph I.3.4).

I.3.3 The practice of service of documents





In case a document needs to be served, the enforcement agent is obliged to first check the population register and/or the Chamber of Commerce register. After control of the address of the addressee, service has to be performed in the following order (articles 45-66 CPC):

1. In person to the address as given in the record of service (for natural persons), or to the legal representative or authorized agent (in case of a legal entity).
2. In case the natural person is not present at the registered address, the enforcement agent may leave the document with a person living on the same address.
3. In case nobody is at home or present in the office, the enforcement agent is allowed to leave the document at the address in a closed envelope (the envelope containing specific information: the name and address of the debtor, the name, title, office, address and phone number of the enforcement agent and a statement that the content needs immediate attention; article 47 CPC). The enforcement agent will note in the record of service that no person was present.
4. In case it is not possible to leave the document at the address, the enforcement agent has the option to send it by regular post (in an envelope with the aforementioned under 3 details on it).
5. In case the debtor refuses to accept the document, the enforcement agent is allowed to leave it in the aforementioned under 3 closed envelope at the premises of the debtor or send it by post (article 46 CPC). The enforcement agent will note the reasons of refusal by the addressee in the record of service.
6. In case the person cannot be located or does not have a domicile or residence, the documents are served to the public prosecutor, followed by a public

announcement in the (electronic) Official Gazette.³

7. The service to the public prosecutor and the public announcement procedure will also be followed in case the enforcement agent, though the debtor has a registered address, concludes, based on factual circumstances, that the debtor is not actually domiciled at the registered address.

I.3.4 Probative value of the service of documents

Under Dutch law, the record of service is considered an authentic act: an act prepared by a *public officer* (authorized official, i.e., the enforcement agent) in a form as prescribed by law (art. 156 CPC) and within the legal competence (authorization) of the enforcement agent to give record of service authenticity.

The key characteristic of an authentic act is that it has a greater probative value than a private agreement: the record of service constitutes proof of its contents against all persons until set aside by a special procedure. The enforcement agent guarantees the contents of the record of service and can be held liable for wrongdoing.

I.4 Legal remedies, appeal and objection

Any dispute (“*executiegeschil*”) in enforcement is governed by article 438 CPC. Regarding jurisdiction, the competent court is determined by the general rules on jurisdiction. Regarding competence, in general, the district court is competent, irrespective of the court that issued the court decision. In case the decision was issued by the local judge (“*Kantonrechter*”) there is an exception. In this case, the “*Kantonrechter*” who issued the enforceable title is competent.

An enforcement dispute may also be initiated through summary proceedings before the court which is competent under the general rules of jurisdiction as mentioned before.

The court may decide to suspend enforcement for a certain period of time or until a decision in the dispute is issued or may decide that enforcement takes place or is continued only against security. The court may also terminate the attachments, whether or not against security; order recovery from omissions; order a third party to tolerate enforcement or to cooperate in enforcement proceedings (whether or not against security by the creditor).

When the case does not lend itself for summary proceedings, instead of dismissing the claim, the court may refer the case to normal court proceedings.

Article 438 CPC also enables the enforcement agent to initiate summary proceedings if an immediate decision is necessary.

I.5 Postponement, suspension and termination of enforcement

According to article 434 CPC, the handover of the enforceable title legitimates the enforcement agent to carry out the entire enforcement. In principle, this also includes any decisions on postponement, suspension or termination of enforcement at the

³ www.officielebekendmakingen.nl

request of the creditor or the debtor.

In addition, the parties (debtor and/or creditor or third party; article 438 CPC) may apply to the court and request a delay or termination of enforcement in case they consider that it is not justified. The court may order the requesting party to deposit a guarantee in case postponement is requested.

Termination is possible in case the creditor misuses the power to enforce. This could be the case when the enforceable title was based on legal or factual errors, or when the enforcement, based on facts that came to light after the enforceable title was issued, causes such an emergency situation (irreparable damages) that (continued) enforcement cannot be expected.

Based on article 350 CPC, the enforcement of a judgment is suspended in case an appeal is lodged against such judgment. However, the creditor may request before the court to have the judgment enforced even if it is not final (“uitvoerbaar bij voorraad”). In such case, enforcement may continue, despite the fact that an appeal was lodged.

I.6 Counter enforcement

The Netherlands does not have a so-called counter-enforcement procedure, in which the debtor has an enforceable title (counter-claim) on the creditor.

I.7 Objects and exemptions on enforcement

In accordance with articles 447 and 448 CPC, the following are exempted from enforcement:

- Items belonging to the household of the premises in which the debtor is living;
- The clothes and footwear of the debtor and their family members;
- The stock of food available in the premises.
- The things the debtor and their family members reasonably need for personal care and daily necessities;
- The items present in the premises which the debtor and family may reasonably require to obtain the necessary means of subsistence or for their education or study;
- Matters of a highly personal nature.
- Pets of the debtor and their family, as well as items necessary for the care of these animals.

In case these items can be considered excessive under the specific circumstances, the enforcement agent shall enable the debtor and his/her family to replace the items that cannot be regarded as excessive.

Dutch law also provides for certain limitations when it comes to enforcement against wages, pensions, social security benefits and other periodic incomes. In general, there is a seizure-free foot of 90% of the social security benefit the debtor would be entitled

to receive.

A seizure-free amount has also been recently added with regard to attachment on the bank account of a debtor (article 475A CPC): in case the debtor is a natural person, attachment on a bank account is only valid, if it exceeds (per calendar month):

- a. € 1.486,37 for a single person.
- b. € 1.623,45 for a single parent.
- c. € 1.956,90 for married persons without children.
- d. € 2.093,48 for married persons with one or more children.

Goods to be used for public service cannot be seized either (article 436 CPC).

The Dutch Supreme Court decided that assets of foreign States cannot be attached either (presumption of immunity).⁴

In case an enforcement agent is requested to perform an official act and he/she has reasonable grounds to believe that the performance thereof may breach the State's obligations under international law, he/she is obliged to immediately inform the Minister of Justice (article 3A LPEA). The Minister can also, *ex officio*, notify an enforcement agent that an official act with which he/she has been or shall be charged, or which he/she has already performed, breaches the State's obligations under international law.

If, upon receipt of the notification, the official act has not yet been performed, the enforcement agent is unauthorized to perform it. An official act which is performed in breach of this shall be null and void. If the official act has already been performed the enforcement agent must immediately serve this notification on the person on whom the writ in question had been served, lift the attachment and undo the consequences thereof.

I.8 (Court) penalties and fines

No information available.

I.9 Access to information on the domicile and assets of the debtor

For an efficient functioning enforcement system, it is important that the enforcement agent has easy access to information, keeping in mind the data protection provisions. Information about the debtor's assets can be obtained from various sources, in particular through (electronic) databases and through the debtor directly.

Article 475G CPC obliges the debtor to state their sources of income to an enforcement agent who is entitled to impose an attachment. As long as the debtor, though requested, does not state such sources of income, the seizure-free foot (in case of attachment on the income of the debtor) shall be halved.

The enforcement agent is also authorized to request the debtor's employer, the social security institute or other source of periodic income for the debtor, to deliver detailed

⁴ HR 30 September 2016; ECLI:NL:HR: 2016:2236.

information on such source of income. If so requested, one is obliged to inform the enforcement agent.

With regard to access to registers (databases), a distinction needs to be made between public and non-public registers: it is unlikely that one will consider the collection of information from public registers a breach of the debtor's privacy by objective standards, but it is necessary to be careful when obtaining information from non-public registers.

Professional secrecy is reviewed in accordance with the regulative framework of the Dutch Chamber and the Chamber's professional standards via annual audits. This audit also includes the use of the digital access system to collect information and whether the enforcement agent was entitled to collect such information. For example, in case the enforcement agent needs to serve a document upon a person, the domicile needs to be checked in the Population Register. One is not allowed to request such information in case no document needs to be served. In case the enforcement agent needs information on the assets of the debtor, he/she should have an enforceable document. Any violation will result in disciplinary liability.

Access to information can be obtained via electronic means or in written. In case of electronic access, such access is coordinated through a centralized server hosted by the Chamber (SNG).

The main sources of information are the following:

Registries of persons/companies:

- Dutch population register.
- Citizen registration on the Caribbean parts of the Kingdom of the Netherlands.⁵
- Citizen registration in Europe.
- Chamber of Commerce.

Registry of income / financial capital:

- Register on Social Security benefits and employment.
- Tax-office (returns of taxes).
- VISH (registration of persons with excessive debts, registered by the municipalities).
- RDW (motor vehicles register).
- National insolvency and bankruptcy registers.
- Central register of custody.
- National register of last wills.

Other registries:

⁵ The islands of Bonaire, Sint Eustatius, Saba.

- DBR (national register of seizures). This register is hosted through the Chamber. Each enforcement agent is obliged to have attachments registered in this database. Access is limited to enforcement agents only.
- The Cadastre, which holds registrations of property, vessels and airplanes, including mortgages, and attachments on immovables.
- Marital Property Register.

Regarding banks, in accordance with article 475AA CPC, the enforcement agent may summon the debtor to state which bank has any moneys of the debtor in their possession. The enforcement agent is entitled to request the bank if it has any assets of the debtor in their possession. The bank is obliged to respond immediately upon such request. Article 475AA CPC forbids the bank to inform the debtor about the request of the enforcement agent, until after the arrest.

PART II: ORGANIZATION OF ENFORCEMENT

II.1 The status of the judicial officer

II.1.1 The jurisdiction and competences of the enforcement agent

The status, rights and obligations of private enforcement agents are regulated in the Law on Private Enforcement Agents (LPEA).

In accordance with article 1 and 20 LPEA, the private enforcement agent is a public officer entrusted with tasks assigned or reserved by or pursuant to the law. In particular, the enforcement agent is entrusted with:

- a) Service of documents (*summoning* and other forms of service), which form part of the access to courts or the instruction of court proceedings, as well as notifications, protests and other writs.
- b) Enforcement: evictions, attachments, public foreclosures, commitments for failure to comply with a judicial order and other acts.
- c) Filing of protests for non-acceptance, or non-payment of drafts, promissory notes, etc., and drawing up of deeds of intervention at the foot of the protest.
- d) Official supervision of voluntary public sales of personal corporeal property by auction, or by Dutch auction.
- e) Other activities, provided that such activities do not affect or obstruct the proper and independent discharge of his/her office or its reputation. By general order such activities can be prohibited, with the exception of:
 - The acting as a representative and the rendering of legal assistance in court and otherwise, in accordance with the relevant statutory provisions.
 - The acting as a trustee or administrator.
 - The collecting of moneys for third parties (amicable debt recovery).
 - The making of inventories and valuations.

- The drawing up of a written statement regarding material facts personally observed by the enforcement agent (statement of facts).
- The exercise of the auctioneering business.

The Dutch enforcement agent is authorized to perform official acts within the territory of the Netherlands (article 3 LPEA). The enforcement agent is obliged to perform the official acts for which he/she is authorized within the court district in which his/her office is located at all times (article 11 LPEA).

II.1.2. The obligations of the enforcement agent

The basic obligations of Dutch enforcement agents are regulated by LPEA. The enforcement agent performs his/her profession independently and cannot perform it in any context as a result of which his/her independence is or may be affected. (article 12A LPEA). The rules on independence are developed in more detail in regulations by the Chamber.

If so requested, the enforcement agent is obliged to perform the official acts to which he is authorized within the court district in which his/her office is located at all times.

The enforcement agent is obliged, upon request, to identify him/herself by means of an identity card issued by the Minister of Justice.

Based on article 16 LPEA, the enforcement agent is obliged to keep an office in his/her place of practice.

The enforcement agent is obliged to keep a register and repertory of enforcement cases and other cases. The register contains the copies of the records of service drawn up or signed by the enforcement agent, affidavits, deeds and statements, ordered by date. The repertory is updated every day and contains the following information about the records of service issued by the enforcement agent: the date of the record of service; the nature of the record of service; the name of at least one of the parties involved, and the costs of the record of service.

The enforcement agent is further (article 17 LPEA) obliged to keep records both with regard to his/her work and business assets. These records show his/her rights and obligations at all times. Further, it is obligatory for the enforcement agent to keep records with regard to his/her personal assets, including the wealth of a community of property in which he/she is married or the registered partnership. Every year the enforcement agent draws up a balance sheet both with regard to his/her business assets and his/her personal assets as well as a statement of income and expenditure with regard to this/her business.

The manner in which business and personal records are to be arranged and kept are detailed in different regulations.

The enforcement agent is obliged to keep one or more special bank accounts which are earmarked solely for moneys which he/she receives for third parties in connection with his work. Any moneys entrusted to the enforcement agent for third parties in connection with his/her work are paid into that account. If money is paid into another bank account of the enforcement agent by mistake, or erroneously paid into the

special account, the enforcement agent shall transfer such moneys to the correct account without delay. The enforcement agent states the number of the special account on the letter paper (article 19 LPEA).

II.1.3 Inconsistencies and conflict of interest

If so requested, (article 11 LPEA), the enforcement agent is obliged to perform the official acts to which he is authorized within the court district in which his/her office is located at all times, unless:

- It cannot be reasonably expected from the enforcement agent to do so, taking into account his/her personal circumstances. In such cases, the enforcement agent, insofar as this is within his/her power, takes the necessary measures to ensure that the official acts can be performed locally if required. The enforcement agent may request the Minister to appoint an observer to this end.
- The applicant is not prepared to pay the advance for the performance of official acts as required by the enforcement agent.

An enforcement agent is not authorized to perform official acts for or directed at (article 3 LPEA):

- a. Him/herself, his/her spouse, his/her registered partner or a person with whom he/she maintains a long-term relationship and with whom he/she co-habits.
- b. His/her relatives by blood or marriage to any degree in direct line, or in collateral line up to the third degree.
- c. A natural person, not being an enforcement agent, or legal person whose shares are not entirely held by an enforcement agent who directly or indirectly holds shares of or holds the position of director at the legal person that keeps the office from which the enforcement agent performs his/her official acts.
- d. A legal entity of which the enforcement agent knows or should know one of the individuals referred to under a) or one of their relatives by blood or affinity in direct line to hold a majority of the shares or holds the position of director.
- e. In case the enforcement agent has reasonable grounds to believe that the performance of the activity may breach the State's obligations under international law. In such case, the enforcement agent will notify the Minister of Justice to receive further instructions (article 3A LPEA).

Official acts, performed in breach of these points are null and void.

II.1.4 Ethics and deontology

In accordance with article 57 LPEA, the Dutch Chamber of Private Enforcement Agents, is charged with the promotion of proper professional conduct by the members and their professional skills. The Chamber has developed codes of professional conduct

(among which the Code of Ethics and the Regulation of professional standards - norms for quality) through byelaws.

Professional standards aim to provide a set of standards securing the professional (and commercial) quality of service, conduct of good business, independence and integrity of the enforcement agent. Professional standards, are classified in different categories, based on the procedures within the office: infrastructure and identification; staff and social obligations; organization; communication; automation (IT); marketing and acquisition; contracting; case management (including fees); finances; closing cases and archiving; results and evaluation of cases and ethics and ongoing training.

A formal review on compliance with the standards and best practices is carried out on a regular basis (every two years). The assessment is preventive. The Chamber issues a certificate of compliance with the professional standards, based on the recommendation of the auditor. Not meeting those standards leads to initiation of disciplinary proceedings.

II.1.5 Disciplinary proceedings against enforcement agents

The private enforcement agent and the deputy private enforcement agent are disciplinary responsible for infringements of their duties and for conduct which is not in accordance with the dignity and respect of their profession (article 34 LPEA).

The Disciplinary Commission examines the disciplinary cases on first instance. The Commission is comprised of five members and ten deputy members, three members (and six deputy members) who are appointed by the Minister of Justice out of members of the judiciary and two members (and four deputy members) who are enforcement agents (article 35 LPEA). A panel of the Disciplinary Commission consists of at least two members from the judiciary (including the President) and one member who is an enforcement agent.

The members are appointed for a period of four years. After this period, they can be reappointed once for another period of four years. The members cannot, at the same time, be members of the board of the Chamber. The clerk of the district court in Amsterdam acts as the secretary of the Chamber.

The Minister of Justice appoints the President of the Chamber, who is a judge. The president has the possibility to try to settle the matters or to dismiss manifestly inadmissible and manifestly unfounded complaints as well as complaints that in his/her opinion are of insufficient consequence.

The parties have the right to appeal against the decisions of the Disciplinary Commission before the Higher Disciplinary Court. The Regional Court in Amsterdam acts as this higher disciplinary court. An appeal may be lodged within 30 days of the award being served upon the parties. The appeal shall suspend the execution of the measure imposed.

The sessions of the Chamber and the Higher Disciplinary Court are public.

Regarding a complaint against an enforcement agent, the Disciplinary Commission,



shall decide that such complaint is inadmissible, unfounded or founded. The decision shall state the reasons and be rendered in public, on pain of nullity. If the Disciplinary Commission fully or partly declares the complaint well-founded, it can impose the following measures:

- a warning,
- a reprimand,
- a fine,
- disqualification from exercising the authority to appoint an assigned enforcement agent for a fixed or an open term,
- suspension from the performance of the profession for a duration of one year at most,
- removal from the profession.

II.2 Supervision over enforcement

The profession of the enforcement agent becomes more and more complex. The enforcement agent, within the limitations provided by law, is vested with the power to perform certain activities of public interest, as an exponent of the State. At the same time, the enforcement agent is responsible to run his/her office. While carrying out his/her profession, the enforcement agent needs to consider both his/her formal duties and good management of the office.

In the Netherlands, supervision on compliance by the enforcement agent, the deputy enforcement agent, the assigned enforcement agent and the candidate enforcement agent is carried out by the Financial Supervision Bureau, hereinafter the Bureau (article 30 LPEA).

The Bureau has access to personal data and documents, to the extent that they are related to the personal financial administration of the enforcement agent.

The Bureau has the following powers (article 30B, 32 LPEA):

- It can investigate the business and personal records of the enforcement agent.
- It can submit a complaint to the Disciplinary Commission.
- It can impose an administrative fine and an order subject to a fine on the violator in case of a violation of certain legal provisions (shortcomings in business or personal record keeping; failure of the enforcement agent to inform the Bureau on events that may have considerable adverse effects on his/her financial position; failure to submit (in time) the annual balance sheet with regard to the business and private assets and profit and loss account as audited by a certified accountant).
- If the continuity of the practice of an enforcement agent is endangered due to his/her manner of operational management, the President of the Disciplinary Commission can, ex officio, following a complaint or at the request of the Chamber or the Bureau, and after having heard the enforcement agent,

appoint an undisclosed administrator for a period of at most one year.

In order to facilitate the work of the Bureau, within six months after expiry of every financial year, the enforcement agent is obliged to submit to the Bureau a balance sheet with regard to both his/her business assets and his/her personal assets as well as a statement of income and expenditure with regard to his/her business, accompanied by a report on the audit by a certified accountant (article 31 LPEA). In addition, the enforcement agent is obliged to report to the Bureau on the status of his/her special bank account on a periodic basis.

Such special bank account (article 19 LPEA) is an account earmarked solely for moneys which the enforcement agent receives for third parties in connection with his/her work. Any moneys entrusted to the enforcement agent for third parties in connection with his/her work shall be paid into that account. If these moneys have been paid into another account of the enforcement agent by mistake, or erroneously paid into his/her special account, the enforcement agent shall transfer such moneys to the correct account without delay. The same applies if the moneys have been given to the enforcement agent directly.

The right of action arising from the special account is vested jointly in the rightful claimants. The share of each rightful claimant shall be calculated *pro rata* on the basis of the amount that has been paid into the special account for his/her benefit. The enforcement agent shall immediately supplement a deficit in the balance of his/her special account, and shall be liable with regard to such deficit, unless he/she can demonstrate that he/she is not to blame for the deficit.

Professional standards (see paragraph II.1.4) also imply the design of an assessment (audit) system. The professional standards and thus the general meaning of the assessment is clear and transparent and comprehensible to the enforcement agent. A formal review on compliance with the standards and best practices needs to be conducted on a regular basis (every two years). This means that such an assessment is preventive. The Board of the Dutch Chamber, based on the report of the auditor, will supply the enforcement agent with an audit certificate, indicating that he/she meets all standards. Not meeting those standards means that disciplinary proceedings will be initiated. As mentioned, the certificate needs to be renewed every two years.

II.3 Access to the premises

In case premises are locked, or the debtor refuses cooperation, Dutch enforcement agents have the power to decide to enter the defendants' premises. They are not allowed to misuse such power. Guidance in such matters is governed by the principle of proportionality.

In addition, Dutch enforcement agents are only allowed to enter the premises of the enforcement debtor when accompanied by the mayor or a substitute public prosecutor who replaces the mayor (article 444 CPC).

II.4 Obstructing the judicial officer from carrying out enforcement

The enforcement agent is authorized to remove a person from the place where an

enforcement action is taking place, with assistance of the police, if such person obstructs its commission. In that respect, police have a duty to provide the enforcement agent with the appropriate assistance for the commission of enforcement actions.

II.5 Time of enforcement

In accordance with articles 438B and 64 CPC, no enforcement action can be carried out between 20:00 PM and 07:00 AM. Neither is enforcement possible on Sundays and on recognized public holidays. The enforcement agent is only allowed to conduct enforcement outside these times and days with the permission of the court.

II.6 Mediation

In line with international standards, Dutch enforcement agents are allowed to be active in mediation, both pre-judicial mediation (before court proceedings) and post-judicial mediation. It is not necessary that the enforcement agent is involved in an amicable settlement of debts. Within the office it might also be delegated to employees (e.g., lawyers).

During the initial training attention is paid to several mediation related skills (e.g., conflict handling). There is no separate accreditation or authorization to exert mediation though.

PART III: ENFORCEMENT PROCEDURES

III.1 Initiation and end of the enforcement procedure

III.1.1 Initiation of enforcement

It is important to mention that the judgment does not necessarily need to be final in order for enforcement to be initiated. The creditor may request direct enforceability by the court (“uitvoerbaarheid bij voorraad”). In this case, legal remedies (such as objection or appeal) will not halt or suspend enforcement (article 350 CPC).

Enforcement is initiated by the creditor, who requests the enforcement agent the enforcement of the enforceable document. It is not necessary for the creditor to indicate the assets of the debtor in the request for enforcement. Contrary to a lot of other countries, in the Netherlands it is not necessary to make a separate request to the court to start enforcement. According to article 434 CPC, handing over the enforceable title (“grosse”) of the enforceable document by the creditor, legitimates the enforcement agent to start enforcement.

The “grosse” of the enforceable document is the executory form of the judgment with the heading “In the name of the King” (“In naam der Koning”) (article 430 CPC). Such executory form of the judgment is sent to the creditor, who hands over this “grosse” to the enforcement agent.

The enforcement starts with the service of the enforceable document to the debtor, summoning the debtor to meet their obligations (article 430 CPC). The debtor is given a 2 days period for voluntary fulfillment.

After the service of the enforceable document to the debtor, the enforcement agent



is entitled to search for the debtor's assets.

III.1.2 Withdrawal of enforcement

Enforcement can be ended in different ways:

1. The enforcement is finalized, for example, in case of attachment on movables, once the public sale took place.
2. The enforcement can be finalized at the request of the creditor. A simple letter from the creditor to the debtor is sufficient in such case. The enforcement agent needs to be aware that certain formalities will need to be carried out, for example, informing the bank on the termination of the attachment or informing the registers (such as the land register in case of attachment on immovables).
3. The enforcement can be withdrawn by the court (see also paragraph I.4).
4. The enforcement (in case of seizure before judgment) is withdrawn since the court dismissed the creditor's claim (article 704 CPC).

III.2 Enforcement against movable assets to settle pecuniary claims

The procedure followed in case of attachment on movables (articles 439-474 CPC) can be summarized as follows:

1. *Service of the enforceable document to the debtor and order to the debtor to fulfill the obligations from the enforceable document (article 430 and 439 CPC)*

Prior to the attachment of the movables, the enforceable document needs to be served to the debtor. Besides, the debtor needs to be ordered to fulfill the obligations from the enforceable document. Normally, such order is included in the same act as the act on the service of the enforceable title. The debtor is given a two-day period for voluntary fulfillment of the obligations from the enforceable title (or 8 days in case the title is not directly enforceable) (article 439 CPC). After this two-day period, the enforcement agent may attach the movables.

2. *Attachment of the movables (articles 440 and 443 CPC)*

The enforcement agent is only allowed to attach those goods that he/she was able to visually identify. An exception is the attachment on motor car vehicles. A recent amendment to article 442 CPC now enables the enforcement agent to attach such vehicles by registration of the attachment in the Motor Car Vehicles Register.

The enforcement agent will make an inventory, a detailed description of the movables that are attached. The enforcement agent has legal access to any place or room necessary to identify the assets. In case such assets are with a third party, such party is obliged to cooperate (article 444A CPC).

The consequence of the attachment is that any sale or pledge of the attached goods cannot be invoked against the creditor (article 453A CPC).

In case the enforcement agent finds any money in cash during the attachment, such money will be entrusted to a bank (article 445 CPC). Other attached assets can be

given in custody in case the enforcement agent considers this necessary (article 446 CPC). The enforcement agent will make a separate act regarding this custody.

It is assumed that the matrimonial and extra-marital spouses are equal co-owners of all movable items that are in the house, flat or business premises of the debtor.

Until the moment of public sale, it is possible to (re)attach the goods, e.g., by another enforcement agent or for another claim against the debtor. In such case, the public sale will be carried out by the first enforcement agent who attached the assets. In case there is already a pledge on the attached goods, the pledge holder may take over the enforcement (articles 461A-461C CPC).

3. Service of the act of attachment to the debtor (article 442 and 443 CPC)

Within 3 days, the act of attachment (inventory) (and, if applicable, the act of custody) need to be served to the debtor. Normally, the debtor is informed on the date and time of the public sale together with the service of the act of attachment. If he/she is not informed thereof with the service of the act of attachment, the debtor will be served another document stating the date and time of public sale within 3 days after the service of the act of attachment (article 463 CPC).

In case public sale is effected through e-auction, the debtor is informed via which website and during which period a bid can be made (article 449 CPC).

At least 4 weeks need to pass between the date of service of the act of attachment and the date of public sale (article 462 CPC).

4. Public sale of the attached movables (articles 462-463 CPC)

The public sale is announced on a generally accessible website, mentioning the location, day and time of the public sale or the name of the website and the period during which a bid can be made (article 464 CPC).⁶ The announcement should be made public at least 4 days before the public sale.

The attached goods are not valued. The goods are allocated to the highest bidder. During the public sale, the debtor has the right to decide on the order of sale of the attached assets (article 470 CPC).

The public sale can be done via e-auction and/or via normal auction (article 463 CPC).

5. Distribution of the revenues from the public sale (articles 474 and 480 and further CPC)

In case there are no other creditors who are entitled on the revenues, the enforcement agent will transfer the net amount to the creditor. Any surplus will be paid to the debtor (article 480 CPC).

In case there are other creditors who are entitled to the revenues, such revenues will be deposited with a custodian, until all creditors agree on the distribution of funds. In case an agreement cannot be achieved, the court will decide on the distribution (article 481 CPC).

⁶ <https://www.kbvg.nl/gerechtsdeurwaarders/aankondigingen-executieverkopen>

Articles 3:276 and further CC regulate the ranking of preferred creditors. First, the costs of the enforcement will be paid from the revenues. In general, pledge and mortgage have priority over other preferred creditors (article 3:279 CC).

6. Handover of the movables to the buyer

The enforcement agent shall draw up an act on the public sale. The names and domiciles of the buyers are mentioned in this act.

III.3 Attachment on the bank account of the debtor

The attachment on the bank account of the debtor is one of the major activities of Dutch enforcement agents. Besides the parties, a third party, the bank, is involved. The attachment on the bank account can be done electronically, provided the bank has informed the Chamber about the email address that can be used (article 475 CPC)⁷.

The procedure of attachment on the bank account is as follows:

1. Service of the enforceable document to the debtor and order to the debtor to fulfill the obligations from the enforceable document (article 430 CPC)

Prior to the attachment of the bank account, the enforceable document needs to be served to the debtor.

In accordance with article 475AA CPC, the enforcement agent may summon the debtor to state which bank has any moneys of him/her in their possession. The enforcement agent is entitled to request the bank if such bank has any assets from the debtor in their possession. The bank is obliged to respond immediately upon such request. Article 475AA CPC forbids the bank to inform the debtor about the request of the enforcement agent, until after the arrest.

2. Attachment of the bank account

As mentioned, the attachment order can be sent electronically to the bank, provided that the bank has agreed on electronic attachment.

In case of a “regular” attachment, the enforcement agent will notify the bank of the attachment in person. From that moment, the bank accounts are considered blocked.

A special form is served upon the bank together with the notification of the attachment order. This form is the basis of the statement the bank has to give to the enforcement agent regarding the funds of the debtor that are on the bank account(s). The enforcement agent and the bank may agree that this legal form is replaced by another written statement.

The attachment automatically refers to any deposited savings, current account(s), foreign currency account(s), or any other account or items of the debtor in the bank. A seizure-free amount has also been added recently for an attachment on the bank account(s) of a debtor (article 475A CPC): in case the debtor is a natural person, an

⁷ Also: AMVB 2 June 2009, 235 and Decision of Deputy Minister of Justice, 3 June 2009 (Stcrt 2009,112, p2).

attachment on his/her bank account is only valid, if such attachment exceeds (per calendar month):

- a. € 1.486,37 for a single person.
- b. € 1.623,45 for a single parent.
- c. € 1.956,90 for married persons without children.
- d. € 2.093,48 for married persons with one or more children.

3. Notification of the attachment order to the debtor (article 475I CPC)

The attachment order needs to be served to the debtor within 8 days.

4. Statement of the bank

Within 2 weeks after the attachment, the bank is obliged to send the statement regarding the bank accounts (or other items in possession of the bank) that are under the arrest (article 476A CPC) to the enforcement agent (article 476B CPC). The debtor may request the bank to make such statement 4 weeks after the attachment (provided that such request to the bank is made within 2 weeks after the attachment).

In case the bank refuses to proceed to such statement, court proceedings can be initiated against the bank: in such case the bank will be sentenced to meet the obligations of the debtor as if the bank is the debtor (article 477A CPC).

In case the enforcement agent has reasons to doubt the contents of the statement, the bank can be summoned in court to adjust the statement (article 477A CPC).

5. Notification of the statement of the bank to the debtor

Within 3 days after receipt of the statement of the bank, the enforcement agent has to notify the debtor of such statement.

6. Payment of the moneys in possession of the bank or transfer of other items from the debtor to the enforcement agent (article 477 CPC)

7. Distribution of the moneys and items according to general rules (article 477 CPC)

III.4 Enforcement against savings deposits and current accounts

See III.3.

III.5 Enforcement on immovable property

One of the major enforcement procedures is the attachment on immovables. The enforcement procedure can be summarized as follows:

1. Service of the enforceable document to the debtor and order to the debtor to fulfill the obligations from the enforceable document (article 502 CPC)

Prior to the attachment of the immovables, the enforceable document needs to be served to the debtor. In addition, the debtor needs to be ordered to fulfill the obligations arising from the enforceable document. Normally such order is included in the same act as the act on the service of the enforceable title. The debtor is also given

a two-day period for voluntary fulfillment of the obligations from the enforceable title (or 8 days in case the title is not directly enforceable) (article 439 CPC). After this two-day period, the enforcement agent may attach the immovables.

In case the order is older than one year, before the attachment on immovables, such order needs to be renewed (article 503 CPC).

2. Attachment of the immovables

The attachment on immovables is a so-called desk-attachment (“bureaubeslag”). For such attachment the enforcement agent does not have to leave the office. When it comes to an attachment on immovables, in addition to the general requirements, the attachment report needs to meet certain requirements (e.g., mentioning the nature of the immovables, the cadastral registration, article 504 CPC).

Upon drafting the attachment report, the enforcement agent forwards it electronically to the Cadaster. From the moment of registration, the immovables can no longer be disposed of by the debtor (article 505 CPC).

3. Notification of the attachment report to the debtor (article 505 CPC)

Within 3 days, after registration in the Cadaster, the attachment report needs to be served to the debtor.

4. Notification of the attachment report to the mortgage holder (article 508 CPC)

Within 4 days, the attachment report needs to be served to the mortgage holder(s).

In case the mortgage holder intends to take over the enforcement of the immovables, the enforcement agent needs to be informed within 14 days (articles 509, 544-549 CPC).

In case the *mortgage holder takes over the enforcement*, they shall notify the debtor (article 544 CPC) about the default. The mortgage is directly enforceable (article 3:268 CC), meaning that the mortgage holder may directly contact a notary to sell the secured property in public. The mortgage holder and/or the debtor, may address the court to allow a private sale.

In case the *mortgage holder does not take over enforcement, or does not respond* within 14 days, the creditor may continue the enforcement. In case several creditors have attached the immovables, the creditor who attached the immovables first will continue the enforcement (article 513 CPC).

5. Determination of the date and time of sale by the notary (article 515 CPC)

Public sale of immovables is done by the notary (article 514 CPC). In case there are no mortgage holders, the notary will decide on the date and time of sale within 14 days.

In case of mortgage holders, the notary needs to decide on the date and time of the public sale within 2 weeks after the period the mortgage holder has to notify whether they will take over the enforcement has elapsed (if the mortgage holder did not intend to take over the enforcement).

The conditions of the public sale are set by the notary. The notary shall inform the

debtor, mortgage holders and other creditors who (later) attached the immovables at the latest 30 days before the public sale (article 517 CPC).

6. Announcement of the public sale (articles 515-517 CPC)

The public sale is announced on a generally accessible website (article 516 CPC). The announcement should be made public at least 30 days before the public sale.

7. Public sale (Articles 515-529 CPC)

The auction is in public and has two sessions. The first session is an ascending auction, the second session is a descending auction. The public sale can be done exclusively in an electronic form or together with a face-to-face auction (article 519 CPC).

The buyer has to pay the buying price immediately (article 524 CPC).

8. Registration of the report of public sale in the Cadaster (Article 525 CPC)

The report of public sale shall be registered in the Cadastre.

9. Informing the debtor on the outcome of the public sale (Article 515 CPC)

The day after the public sale, at the latest, the notary has to inform the debtor on the result of the public sale (Article 523 CPC).

The buyer shall receive a copy of the report of the public sale. This report can be used as an enforceable title to evict the debtor from the immovables, when necessary (Article 525 CPC).

10. Distribution of the revenues of the sale (Articles 524 and 551-553 CPC)

There are different options:

- In case the creditor initiated the public sale and there are no other creditors, the revenues are paid to the creditor. Any amount exceeding the amount of the claim shall be paid to the debtor (article 551 CPC).
- In case the enforcement was performed at the initiative of the mortgage holder, the revenues are paid to the mortgage holder. Any amount exceeding the amount of the claim shall be paid to the debtor (article 551 CPC). In case there is more than one mortgage holder, the revenues are deposited with a custodian, unless all creditors, mortgage holders, and parties in the enforcement procedure agree on the distribution of the revenues (article 551 CPC and 3:270 CC).

III.6 Enforcement against wages and other permanent pecuniary income

Besides attachment on the bank account of the debtor, one of the main activities of Dutch enforcement agents is enforcement on the salary or other periodic incomes of the debtor. Besides the parties, a third party, the employer or social security institute, is involved. The attachment on the periodic incomes can be done electronically, provided that the employer or social security institute has informed the Chamber on

the email address that can be used (article 475 CPC)⁸.

The procedure of attachment on the debtor's periodic income is as follows:

1. Service of the enforceable document to the debtor and order to the debtor to fulfill the obligations from the enforceable document (article 430 CPC)

Prior to the attachment of the periodic income, the enforceable document needs to be served to the debtor. In the notification to the debtor, the latter is ordered to pay the amount due, within two days. Based on article 475G CPC, the debtor is obliged to inform the enforcement agent on the sources of income. Normally, the debtor is ordered to deliver such information in the notification.

The same provision also obliges the public authorities to inform the enforcement agent on the employer or social security institute or other organization who does periodic payments to the debtor.

Finally, this provision also obliges the employer or social security institute or other organization to inform the enforcement agent directly.

The enforcement agent is able to attach the periodic incomes of the debtor based on this information.

2. Attachment order on the periodic income

Though possible, electronic attachment is rarely used. "Regular" attachment is more common; the enforcement agent will notify the employer or social security institute of the attachment.

Together with the attachment order, a special form is served upon the employer or social security institute. This form is the basis of the statement the employer or social security institute has to provide to the enforcement agent regarding the periodic income the debtor is entitled to. The enforcement agent and the employer/social security institute may agree that this legal form is replaced by another written statement.

3. Notification of the attachment order to the debtor (article 475I CPC)

Within 8 days, the attachment order needs to be served to the debtor.

4. Statement of the employer or social security institute

Within 2 weeks after the arrest, the employer/social security institute is obliged to send the statement regarding the periodic income to the enforcement agent (article 476B CPC). The debtor may request the employer/social security institute to make such statement 4 weeks after the arrest (providing such request to the bank is done within 2 weeks after the arrest).

In case the employer/social security institute refuses to make such statement, court proceedings can be initiated against them: in such case the employer/social security institute will be sentenced to meet the obligations of the debtor as if the

⁸ Also: AMVB 2 June 2009, 235 and Decision of Deputy Minister of Justice, 3 June 2009 (Stcrt 2009,112, p2).

employer/social security institute is the debtor (article 477A CPC).

In case the enforcement agent has reasons to doubt the contents of the statement, the employer/social security institute can be summoned in court to adjust the statement (article 477A CPC).

Not the full salary is under attachment. The debtor is entitled to the so-called seizure-free foot, the amount that is exempted from attachment. The (complicated) determination of the seizure-free foot depends on the living circumstances of the debtor.⁹ The attachment is only valid, if such attachment exceeds (per calendar month):

- a. € 1.486,37 for a single person.
- b. € 1.623,45 for a single parent.
- c. € 1.956,90 for married persons without children.
- d. € 2.093,48 for married persons with one or more children.

These are basic amounts. Correct calculation depends on the additional living circumstances of the debtor. A special website has been introduced for the calculation of the seizure-free foot.¹⁰

The seizure-free foot shall be halved as long as the debtor refuses to give a statement on the sources of income (see under I.9).

5. Notification of the statement of the employer or social security institute to the debtor

Within 3 days after receipt of the statement of the employer or social security institute, the enforcement agent has to notify the debtor of such statement.

6. Start of deduction by the employer or social security institutes on the salary or social security benefits of the debtor (article 477 CPC)

The employer/social security institute are obliged to withhold the amounts exceeding the seizure-free foot and transfer such deductions to the enforcement agent.

7. Distribution of the moneys and items according to general rules (article 477 CPC)

In case different creditors have attached the periodic income of the debtor, the amount exceeding the seizure-free foot shall be distributed proportionally among them. The enforcement agent who first attached the periodic income, is responsible for distribution of the amount under attachment to the other creditors (article 478 CPC).

III.7 Attachment under the debtor's debtor

Attachment under the debtor's debtor is very similar to the attachment on the bank

⁹ See Law Simplification Seizure Free Foot (Wet Vereenvoudiging Beslagvrije Voet), 8 March 2017 Stb 2017,110.

¹⁰ <https://www.uwbeslagvrijevoet.nl/>

account or attachment against the salary or other periodic incomes. Besides the parties, a third party (the debtor's debtor) is involved.

The procedure of attachment under the debtor's debtor is as follows:

1. *Service of the enforceable document to the debtor and order to the debtor to fulfill the obligations from the enforceable document (article 430 CPC)*

Prior to the attachment, the enforceable document needs to be served to the debtor.

2. *Attachment order under the debtor's debtor*

Though possible, electronic attachment is rarely used. "Regular" arrest is more common; the enforcement agent shall notify the debtor's debtor of the attachment.

Together with the attachment order, a special form is served. This form is the basis of the statement the debtor's debtor has to give to the enforcement agent regarding the existing debt to the debtor. The enforcement agent and the debtor's debtor may agree that this legal form is replaced by another written statement.

3. *Notification of the attachment order to the debtor (article 475I CPC)*

Within 8 days, the attachment order needs to be served to the debtor.

4. *Statement of the debtor's debtor*

Within 2 weeks after the attachment, the debtor's debtor gives a statement on whether and what amount is owned to the debtor, whether s/he is ready to settle the debt, and if the obligation for paying the debt is conditioned with fulfillment of any other obligation (article 476B CPC).

The debtor's debtor shall be held liable to the creditor for the damage caused by non-statement or for providing an inaccurate or incomplete statement.

In case the debtor's debtor refuses to make such statement, court proceedings can be initiated; in such case the debtor's debtor shall be sentenced to meet the obligations of the debtor as if he/she is the debtor (article 477A CPC).

In case the enforcement agent has reasons to doubt the contents of the statement, the debtor's debtor can be summoned in court to adjust the statement (article 477A CPC).

5. *Notification of the statement of the debtor's debtor to the debtor*

Within 3 days after receipt of the statement of the bank, the enforcement agent has to notify the debtor of such statement.

6. *Payment of the moneys in possession of the debtor's debtor or transfer of other items from the debtor to the enforcement agent (article 477 CPC)*

7. *Distribution of the moneys and items according to general rules (article 477 CPC)*

In case different creditors have attached the claim of the debtor, it shall be distributed proportionally among them. (article 478 CPC).

III.8 Enforcement against shares

The procedure of attachment on shares is as follows:

1. *Service of the enforceable document to the debtor (and order to the debtor to fulfill the obligations from the enforceable document) (article 430 CPC)*

Prior to the attachment of the bank account, the enforceable document needs to be served to the debtor.

2. *Attachment of the shares*

The attachment on shares is done through the attachment order of the enforcement agent. In the attachment order, the enforcement agent informs the company that the debtor's shares within the company are attached (article 474C CPC). The company receives a copy of the enforceable title and the attachment order.

At the same time, the enforcement agent notes the attachment of the shares in the Register of Shareholders of the company, including the name of the creditor, the date and time of the attachment, the total number of shares and (if possible) the numbering of the shares (article 474C CPC). The note in the Register of Shares is signed by both the enforcement agent and the representative of the company. In case the Register is not available, the enforcement agent makes a note in the attachment report.

The company must inform the enforcement agent if any previous rights exist on the attached shares within 8 days (article 474F CPC).

3. *Notification of the attachment order to the debtor (article 474D CPC)*

The enforcement agent shall immediately inform the debtor on the attachment. In addition, the attachment order must be served to the debtor within 8 days.

4. *Request of the creditor to the court to decide on the sale of the shares (article 474G CPC)*

The request to the court must be submitted within one month after the attachment (on pain of invalidity of the attachment).

The court where the company is located is competent to decide on the term, method of sale and conditions of the sale.

Prior to the decision, the court shall hear the enforcement agent, the creditor, the debtor, the company and other stakeholders.

5. *Decision of the court on the term, method and conditions of the sale (article 474G CPC)*

In the decision, the court shall take into consideration the legal and statutory provisions of the company regarding the transfer of shares (even if this means that the selling price will be less).

6. *Sale of the shares and delivery of the shares to the buyer (article 474H CPC)*

The delivery of shares is carried out in accordance with the normal provisions

regarding delivery of shares. The enforcement agent's report of the sale replaces the notarial act that is normally required for the delivery of shares (article 474H CPC). However, in practice, a notarial act is also made.

7. *Distribution of the moneys and items according to general rules (article 480 CPC)*

III.9 Other attachment procedures

Within the scope of this overview, we have only focused on the major enforcement procedures. In addition, Dutch law has a number of other enforcement procedures. The standard rules of the attachment on movables, attachment on immovables or attachment under a third party are applied to a large extent in such procedures.

Other examples of attachment procedures include attachment on ships, attachment on planes, attachment for maintenance obligation.

III.10 Handing over movable assets

The procedure for handing over movable assets (articles 491-500 CPC) is as follows:

1. *Service of the enforceable document to the debtor and order to the debtor to fulfill the obligations from the enforceable document (article 430 and 439 CPC)*

As any other attachment, this procedure also starts with the service of the enforceable document to the debtor. In addition, the debtor must be ordered to fulfill the obligations arising from the enforceable document within 2 days. Normally such order is included in the act on the service of the enforceable title.

2. *Attachment of the movables (articles 440 and 443 CPC)*

Contrary to the procedure followed in the case of attachment on movables (see paragraph III.2), in the procedure for handing over movable assets the two-day period for voluntary fulfillment does not have to be respected if the enforceable document is directly enforceable ("uitvoerbaar bij voorraad") (article 492 CPC). In such case, the enforcement agent may start the enforcement directly, shall retain the goods and hand them over to the creditor.

However, it is not always possible to directly retain the goods: for practical (logistical) reasons either the two-day period for voluntary fulfillment has not expired yet or other creditors had already attached the same assets. In such case, the enforcement agent shall attach the assets without immediately retaining them. The attachment report must be served on the debtor within 3 days (article 492 CPC).

In case there was already a previous attachment on the goods, the attachment report needs to be served on the enforcement agent who had attached the assets before (article 492 CPC). In such case it might be up to the court to decide who has the strongest right (article 497 CPC; 3:21 and 3:298 CC) (for the procedure: see paragraph I.4).

Regarding the rights of third parties, if the third person is willing to hand over the assets to the enforcement agent, he/she shall retain the items from the third person and hand them over to the creditor. In case the third party refuses cooperation, the

enforcement agent might use the procedure for attachment under the debtor's debtor (see paragraph III.7).

3. *The enforcement agent retains the assets and hands them over to the creditor (article 491 CPC)*
4. *Service of the attachment report to the debtor (article 491 and 443 CPC)*

III.11 Enforcement in reinstatement of employee to work

No information available.

III.12 Eviction

Eviction is based either on a breach of a landlord-tenant contract or on a breach of the terms of a mortgage.

In the case of a mortgage, article 3:268 CC enables the mortgagee to directly enforce (without court order) the mortgage deed (which is a notarial act as an enforceable title) and initiate public sale of the immovable. The same provision also allows parties to address the court in order to sell the immovable through a private agreement. In such case, the court can also order the mortgagor to vacate the immovable once ownership of the real estate is transferred.

Following the implementation of the EU Mortgage Credit Directive¹¹ (article 7:128A CC), the mortgagee is obliged, prior to the direct enforcement, to consult the mortgagor on the backlog in payments. The direct enforcement can only be initiated after two months following such consultation (unless unreasonable).

For the actual eviction, see below under points 2-5.

In the case of renting, the unlawful behavior of the tenant needs to be sufficiently serious to justify the termination of the contract. This means that either the rent is left unpaid or the tenant's behavior is disruptive, they are involved in drug-related crime or illegally subleasing the premises (article 7:274 CC). For an eviction based on rent, a court decision is necessary (articles 7:231 and 7:274 CC). In general, 90% of eviction cases are related to non-payment of rent.

The procedure of eviction based on non-payment of rent is as follows:

1. *Initiation of court proceedings in order to obtain an enforceable title*

In case the tenant does not pay the due rent, the landlord shall initiate proceedings. Though not explicitly mentioned in Dutch law, the national coordination of district courts has agreed that (in principle) a three-month backlog of payment in rent is sufficient to grant the landlord's claim for eviction.

Under Dutch law the husband/spouse or contracting partner are considered co-tenants. This means that in case the contract is terminated, it is also terminated for

¹¹ [Directive 2014/17/EU](#) of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010.

the co-tenants. Co-tenants also need to be summoned in court.

This means that prior to the proceedings the enforcement agent shall enquire at the Population Register to find out the family relationships of the tenant.

2. Once the judgment is issued: notification of the judgment to the tenant, ordering the tenant to leave the premises

The time limit for voluntarily fulfillment is three days (article 555 CPC). The tenant is also informed on the date of the eviction. In case another date is chosen, the tenant, once again, needs to be informed.

In practice, a period of 14 days after service of the judgment upon the defendant is provided for voluntarily fulfillment.

3. Informing the tenant and municipality on the date and time of the eviction

Prior to the eviction, the enforcement agent is obliged to inform the local authorities (article 14 LPEA).

4. The actual eviction

The actual eviction is carried out in the presence of the substitute public prosecutor (see paragraph II.3).

In accordance with article 556 CPC, the municipality is responsible, at the expense of the claimant, for the carrying and storing of the movables.

5. The act of eviction

The enforcement agent will make an act of eviction. The costs of the eviction are borne by the tenant. Normally the enforcement agent shall continue the enforcement in order to collect the unpaid rent and the enforcement costs.

Unauthorized Occupancy

In 2010, the Squatting and Vacancy Act was established. This law considers squatting a criminal offence under Dutch law (articles 138-139 and 429 sexies Criminal Code). The Criminal Code provides a legal basis for the Public Prosecutor to evict squatters. The Dutch Supreme Court found that the provisions of this law do not violate article 8 ECHR¹².

However, the Supreme Court also considered that squatters should be able to have the proportionality of the eviction determined by an independent court prior to an eviction. Such right is in line with the right of other occupiers who risk losing their home. Though most cases are lost by squatters, real estate owners now protect their property by having property guardians living in the premises.

III.13 Enforcement of obligations to act, refrain from acting or suffer action

Article 3:296 CC states that where a person is legally obliged towards another person to give, to do or not to do something, the court may order them, upon a request or claim of the entitled person, to carry out such specific performance (unless something

¹² HR 28 October 2011; 2013.153 BQ9880.



else results from law, the nature of the obligation or a juridical act).

If such performance is obtained through the enforcement of a judicial decision or another enforceable title, this has the same legal effect as that of a voluntary performance of the obligation that exists according to that judicial decision or executory title (article 3:297 CC).

Regarding a specific performance to do or not to do something, article 3:299 CC enables the court to authorize the creditor to effectuate the obligation him- or herself.

In the same way, a person towards whom another person is legally obliged to refrain from doing something, may be authorized to undo what is performed in violation of that obligation (article 3:299 CC).

In case the performance demands the completion of a legal act, the court may order that its judicial decision shall have the same force as a deed that should have been drawn up or that a representative of this person, appointed by the court, shall perform such legal act in their name, unless this is incompatible with the nature of the juridical act to be performed (article 3:300 CC).

The court decision may be registered in the public registers, provided that it has been served upon the debtor and it has become final and binding or is immediately enforceable (“uitvoerbaar bij voorraad”) notwithstanding any appeal or other legal remedy and a period of fourteen days, or the period stipulated in the court decision, has passed since it was served upon the person who is ordered to deliver the property (article 3:301 CC).

III.14 Sequestration of goods

Sequestration of goods is possible in different situations. In case the creditor has not (yet) obtained an enforceable title, the court may grant a pre-judgment attachment or conservatory attachment at the request of the creditor. In such case, the creditor may also request the court the sequestration of the attached assets (article 709 CPC).

In case the enforcement agent is already entitled to enforcement, special permission of the court is not necessary. Article 446 CPC authorizes the enforcement agent, if there is reasonable fear that, despite the attachment, goods will disappear, or if he/she considers it necessary for the preservation of the assets, to sequester the goods and hand them over to a sequester. In case of sequestration, the enforcement agent draws up a report of sequestration which has to be served to the debtor and the sequester within three days after the sequestration.

Though Dutch law does not mention any requirements with regard to the sequester, it is commonly understood that the sequester is acting as a professional. Based on article 7:601 CC such sequester is entitled to financial compensation. In accordance with article 857 CPC, such costs may be recovered from the debtor.

Sequestration is obligatory in case money in cash is found during the attachment procedure (article 445 CPC). Sequestration of immovables is possible, provided that it is necessary for the preservation of the immovables (article 446 and 506 CPC). Sequestration is also common in case of attachment on a ship (article 564 CPC). In case

of attachment on a plane, sequestration is obligatory (article 584C CPC).

III.15 Enforcement of foreign enforceable documents from non-EU States

With regard to the possibility to enforce a foreign decision (from a non-EU State), the general rule (article 431 CPC) is that such foreign judgments cannot be enforced in the Netherlands, unless the court has granted an *exequatur*, a declaration of enforceability. The Dutch Supreme Court set out in the *Gazprombank case*¹³ that a foreign decision cannot be enforced unless the enforceability is based on a treaty or legal provision.

As such, a distinction has to be made between judgments rendered in a State with whom the Netherlands has signed a treaty, and countries with whom the Netherlands has not signed a treaty (article 431 CPC). With regard to judgments rendered in a State with whom the Netherlands has signed a treaty, articles 985-994 CPC apply. In general, the treaty will include provisions regarding which judgments can be enforced in the Netherlands. In such case the judgment will need an *exequatur*, a declaration of enforceability in the Netherlands. The request for such declaration of enforceability needs to be addressed to the court, by a lawyer. The court where the defendant has their domicile is normally competent (article 985 CPC). The defendant is notified of the request and may submit, in a hearing, an objection against the request (article 987 CPC). Parties may appeal the decision of the court within one month (article 989 CPC). Such appeal does not suspend the enforcement.

In case a judgment is rendered in a state with which no treaty has been signed, the general rule is that the case will need to be re-litigated (article 431 CPC) in order to obtain a judgment from a Dutch court. It is common practice from the Dutch Supreme Court (*Gazprombank case*) that the Dutch court, in such proceedings, may ascribe authority to the decision of the foreign court and that the foreign decision will be “recognized” if the following conditions are met:

- The jurisdiction of the court of origin is based on internationally generally accepted jurisdictional grounds.
- The foreign judgment was rendered in proceedings whereby the principle of procedural due process was respected.
- The foreign judgment is not in conflict with Dutch public policy.
- The foreign judgment is not irreconcilable with a decision of a Dutch court or an earlier judgment rendered by a foreign court which is enforceable in the Netherlands.

In case these conditions are met, the claim is subject to award in accordance with the foreign judgment.

PART IV: ENFORCEMENT COSTS

IV.1 The costs of enforcement

¹³ *Gazprombank case* (ECLI:NL:HR:2014:2838).



With regard to the activities of enforcement agents in the Netherlands it is important to realize that Dutch enforcement agents are, in line with CEPEJ Guideline 34, involved in amicable debt recovery, are allowed to do civil proceedings (up to the amount of Euro 25,000) and carry out enforcement. Consequently, the costs Dutch enforcement agents can charge consist of different components:

1. costs of extra judicial debt recovery;
2. costs of proceedings;
3. costs of enforcement.

The costs for extra judicial debt recovery, the costs of proceedings and the enforcement costs are to be paid by the debtor.

Ad 1: Costs of extra judicial (amicable) debt recovery

The fee for amicable debt recovery can be recovered from the debtor. Most creditors use Conditions or Terms of Delivery and Payment. According to these conditions, the costs for extra judicial recovery shall be borne by the debtor.

From 1 July 2012 the costs for extra judicial debt recovery are to a large extent regulated by law¹⁴:

Claim up to (in Euros)	Percentage	Maximum (in Euros)
2.500	15%	Minimum Euro 40, -- Maximum Euro 375, --
5.000	Euro 375, -- + 10% on the claim -/- 2500	Maximum Euro 625, --
10.000	Euro 625, -- + 5% on the claim -/- 5.000, --	Maximum Euro 875, --
200.000	Euro 875, -- + 1% over the claim -/- 10.000	Maximum Euro 2.775, --
>200.000	Euro 2.775, -- + 0,5% over claim -/- 200.000	Maximum Euro 6.775, --

Ad 2 Costs of court proceedings

The costs of civil proceedings in general, consist of the following components (all regulated by law):

- A. Court fees
- B. Service of writ of summons
- C. Lawyer's (or enforcement agent's) fees

Ad A Court fees

Court fees are the administrative fees the creditor has to pay to the court for the initiation of proceedings. The amount of court fees depends on the type and amount of the claim. Court fees in Netherlands are rather high, especially in comparison with

¹⁴ Law Standards for Costs for Extra Judicial Debt Recovery (Wet Normering Buitengerechtelijke Incassokosten).

other countries. For example, the following fees apply as of 1 January 2020:

Claim up to (in Euros)	Court fee for non-natural persons	Court fee for natural persons	Court fee for financially vulnerable persons
Euro 500, --	Euro 124, --	Euro 83, --	Euro 83, --
Between Euro 500, -- and Euro 12.500, --	Euro 499, --	Euro 236, --	Euro 83, --
Higher than Euro 12.500, --	Euro 996, --	Euro 499, --	Euro 83, --
Until Euro 100.000, --	Euro 2.042, --	Euro 937, --	Euro 83, --
Above 100.000, --	Euro 4.131, --	Euro 1.639, --	Euro 83, --

Ad B Service of the writ of summons

Service of the writ of summons is carried out by the enforcement agent, based on a fixed fee. As of 1 January 2017, such fee is Euro 83,38 (excluding VAT).

Ad C The fee for the lawyer or enforcement agent

The fee depends on the amount of the claim and the number of phases within the civil process. In case the debtor does not appear in court proceedings (default judgment), the fee is restricted to one point only. In case the debtor appears in court to object the claim, the creditor's representative is entitled to more points.

Claim (including interest and extra judicial costs) up to (in Euros)	Fee per point (in Euros)	Maximum number of points
250	30	3
500	60	4
1.250	100	5
2.500	150	5
3.750	175	5
5.000	200	6
10.000	250	6
20.000	300	7
40.000	400	10
100.000	600	10
200.000	700	No maximum
400.000	800	No maximum
1.000.000	1.000	No maximum

more	1.200	No maximum
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Ad 3 enforcement costs

Netherlands has a system of fixed fees. This system applies to the costs payable by the debtor for the official duties of the enforcement agent. In case of unsuccessful enforcement, the enforcement costs need to be paid by the creditor. In the relationship between the enforcement agent and the creditor, the fees are negotiable. When the fee system was introduced (2001) the Dutch legislator intended to stimulate market working (competition) among enforcement agents. Negotiable fees with the creditors fit in such policy.

The fixed fees are based on a cost price calculation. For service and seizures outside normal office hours the enforcement agent may request an extra (negotiable) fee from the claimant. The “out of pocket expenses” (e.g., costs of access to registers, removal and storage, costs of locksmith) need to be added to the fixed fees.

In addition, the performance fee is a matter of negotiation between the enforcement agent and the creditor. The Dutch law does not have any provisions regarding such fee. In such case the “success fee” can be charged (to the creditor) based on a contractual agreement between the enforcement agent and the creditor. In general, a fee between 4% (for claims up to Euro 5.000), to 1.5% (for claims up to Euro 200.000) are considered reasonable. However, it needs to be mentioned that in case the activities of the enforcement agent are limited to official duties only, such fee cannot be charged. In this case, the enforcement agent is only entitled to a fixed fee:

Article	Enforcement action	2020
2A	service of writ of summons or inventory	83,38
2B	service of judgment	80,24
2C	service of request to appear in court	65,96
2D	service of other documents	70,59
2E	attachment on movables	109,66
2F	attachment on movables in use by a third party	147,27
2G	attachment on shares or other	217,04
2H	attachment on shares in limited company or public company	238,23
2I	attachment on bearer shares or attachment under third party, not being an attachment on periodic payments	174,76
2J	attachment under third party relating to periodic payments, e.g., income, salary, unless under 2K	124,39
2K	attachment in alimony or maintenance case	106,23
2L	attachment under the creditor	145,51
2M	attachment on non-monetary claim (handing over certain goods)	253,15

2N	attachment on non-monetary claim (debtor has to deliver certain goods)	108,86
2O	attachment on immovables and planes registered in the Netherlands	150,70
2P	termination of attachment on immovables	53,76
2Q	attachment on ships or planes not registered in the Netherlands	332,14
2R	legal custody	226,01
2S	announcement of public sale	82,50
2T	public sale of movables	288,72
2U	service of document concerning priority creditor taking over enforcement	77,54
2V	eviction	215,70
2W	arrest	250,72
2X	information request European Arrest Preservation Order	82,94
3A	administrative fee in case of only one attachment on income (per payment)	10,63
3B	in case of two attachments on income (per payment)	16,90
3C	from the third attachment, per attachment (per payment)	6,28
5	reduction concurrence enforcement measures	20,35
6A	witness in actions under 2 e/f/g/n	20,73
6B	witness in actions under 2 m/o/q/v/w	72,61
7	in case the action: a. as meant in 2, under e, f, g, h and n, lasts longer than 1,5 hours or b. as meant in 2, under m, q, r, t, v and w, lasts longer than 3 hours the fee is raised with for every 15 minutes the action took longer than 1,5, respectively 3 hours and for every 15 minutes the witness has been present for longer than 1,5 respectively 3 hours	20,35 12,07
8	service of documents to a next address	25,67
	attempt to attach movable, nobody at home	51,67
	unsuccessful arrest	101,05

Fixed enforcement fees in the Netherlands as of 1 January 2020 (all amounts excluding 21% VAT).

PART V: LINKS, LITERATURE AND SOURCES

Legislation:

Civil Procedure Code (in Dutch): <https://wetten.overheid.nl/BWBR0039872/2020-10-01>

Civil Code (in Dutch):

- Book 1: <https://wetten.overheid.nl/BWBR0002656/2020-01-01>
- Book 2: <https://wetten.overheid.nl/BWBR0003045/2020-09-03>
- Book 3: <https://wetten.overheid.nl/BWBR0005291/2020-01-01>
- Book 4: <https://wetten.overheid.nl/BWBR0002761/2018-09-19>
- Book 5: <https://wetten.overheid.nl/BWBR0005288/2018-09-19>
- Book 6: <https://wetten.overheid.nl/BWBR0005289/2020-07-01>
- Book 7: <https://wetten.overheid.nl/BWBR0005290/2020-10-15>
- Book 7A: <https://wetten.overheid.nl/BWBR0006000/2019-01-01>
- Book 8: <https://wetten.overheid.nl/BWBR0005034/2019-07-01>
- Book 9: ---
- Book 10: <https://wetten.overheid.nl/BWBR0030068/2019-01-29>

Law on Enforcement Agents (in Dutch):
<https://wetten.overheid.nl/BWBR0012197/2020-03-01>

General Act on entry into dwellings (in Dutch):
<https://wetten.overheid.nl/BWBR0006763/2010-07-01>

General Extension of Limits Act (in Dutch):
<https://wetten.overheid.nl/BWBR0002448/2010-10-10>

Institutional links:

International Union of Enforcement Agents: www.uihj.com

Royal Professional Organization of Enforcement Agents: www.kbvg.nl

Ministry of Justice and Security: <https://www.government.nl/ministries/ministry-of-justice-and-security>

Literature:

Compendium beslag- en executierecht: <https://www.sdu.nl/shop/compendium-beslag-en-executierecht.html>

Asser Procesrecht 5 Beslag en executie:
<https://www.wolterskluwer.nl/shop/boek/asser-procesrecht-5-beslag-en->





[executie/NPASP5BEX-BI17001/](#)

