

## Enforcement of judgments and arbitral awards in The Netherlands: overview

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### JUDGMENTS: LEGAL FRAMEWORK

#### Domestic framework

#### 1. What is the applicable domestic legislative framework for enforcement of judgments?

The applicable domestic legislative framework for the enforcement of judgments in the Netherlands is as follows:

- As the Netherlands is an EU member state, EU regulations concerning the enforcement of foreign judgments directly apply in the Netherlands without the need for implementing legislation. Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation) is the most important regulation in the context of recognition and enforcement of European judgments in civil and commercial matters.
- Article 40 of the Statute for the Kingdom of the Netherlands states that judgments, orders and authentic deeds from the Kingdom's constituent countries of the Netherlands, Aruba, Curacao and Sint Maarten can be enforced throughout the Kingdom with due observance of the legal provisions of the country where the enforcement is sought.
- Article 430 et seq of the Code of Civil Procedure contains the requirements for the enforcement of foreign and domestic judgments in the Netherlands.
- Articles 985-994 of the Code of Civil Procedure set out the formalities surrounding exequatur proceedings in the Netherlands. These Articles apply to foreign judgments that are rendered in a state that has concluded a treaty with the Netherlands for the mutual recognition and enforcement of judgments. The text of international agreements or EU Regulations supersedes any conflicting provisions in the Code of Civil Procedure.
- Article 431 of the Code of Civil Procedure applies if there is no applicable treaty between the state of origin and the Netherlands. In that case, in principle, the claim must be re-litigated on the merits to obtain an enforceable judgment in the Netherlands. However, if the conditions as set out by the Dutch Supreme Court in the *Gazprombank* case are met, the foreign judgment is eligible for simplified recognition and enforcement proceedings (see *Question 6*).

#### International conventions/agreements

#### 2. What international conventions and agreements on enforcement of judgments is your jurisdiction a party to?

##### EU legislative framework

The EU legislative framework on the reciprocal recognition and enforcement of foreign judgments in the Netherlands includes:

- The Recast Brussels Regulation, which applies only to legal proceedings instituted, authentic instruments formally drawn up or registered, and court settlements approved or concluded on or after 10 January 2015.
- Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation), which continues to apply to judgments given in legal proceedings instituted, authentic instruments formally drawn up or registered, and court settlements approved or concluded before 10 January 2015.
- The Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968. While this is largely superseded by the EU Regulations above, it continues to apply in relation to judgments from Gibraltar and certain of the member states' dependent territories that fall under its territorial scope and that are excluded from the Recast Brussels Regulation pursuant to Article 355 of the Treaty on the Functioning of the European Union (TFEU).
- Regulation (EC) 805/2004 creating a European Enforcement Order for uncontested claims (European Enforcement Order Regulation), which enables a court of the country of origin to certify an uncontested claim judgment as an EU enforcement order.
- Regulation (EC) No 861/2007 establishing a European Small Claims Procedure applies to civil and commercial matters where the value of a claim does not exceed EUR2,000. Judgments given in a member state through the European Small Claims Procedure are, in principle, recognised and enforced in the Netherlands without the need for a declaration of enforceability and without any possibility of opposing their recognition.
- Regulation (EC) 1896/2006 creating a European order for payment procedure allows creditors to recover uncontested civil and commercial claims before the courts of an EU member state. These orders are recognised and enforced in the Netherlands without the need for a declaration of enforceability and without any possibility of opposing their recognition.

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## International conventions

The international conventions applicable to the reciprocal recognition and enforcement of foreign judgments in the Netherlands include the:

- EFTA Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1988 (Lugano Convention).
- Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 (New Lugano Convention).
- HCCH Convention on Choice of Court Agreements 2005 (Hague Choice of Court Convention).
- The Hague Convention on International Access to Justice 1980.
- The Convention on Jurisdiction and Enforcement between Belgium and the Netherlands 1925.
- The Convention on the Enforcement of Judgment between Italy and the Netherlands 1959.
- The Convention on the Enforcement of Judgment between Germany and the Netherlands 1962.
- The Convention on the Enforcement of Judgments between Austria and the Netherlands 1963.
- The Convention on the Enforcement of Judgments between the UK and the Netherlands 1967.
- The Convention on the Enforcement of Judgment between Surinam and the Netherlands 1979.

As the Netherlands is a member of the EU, the EU legislative framework supersedes earlier bilateral treaties on mutual recognition and enforcement concluded between the Netherlands and other EU member states.

See also *Question 41*.

## Definitions

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### 3. What is the definition of judgment in your jurisdiction for the purpose of enforcement proceedings?

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The Code of Civil Procedure does not define a "judgment". However, it is commonly assumed that a judgment is a written reflection of the decision of a judge that meets the requirements outlined in Article 230 of the Code of Civil Procedure, under which a domestic judgment must contain, among other things, the:

- Names and residence of the parties.
- Names of the parties' lawyers.
- Course of proceedings.
- Claim and the parties' pleadings.
- Grounds for the decision, including the facts that led to the decision and the decision itself.
- Names of the judge(s).

The judgment must also be signed by the judge and stamped with the words "in the name of the King".

These requirements only apply to purely domestic judgments. A foreign judgment does not have to meet these requirements to be recognised and enforced in the Netherlands. When a judgment is rendered in a country with which the Netherlands does not have a treaty on recognition and enforcement, the Dutch court will render a Dutch decision that corresponds to the foreign judgment in recognition and enforcement proceedings if certain conditions are met (see *Question 6*). In these circumstances, the corresponding

Dutch judgment must fulfil the requirements outlined in Article 230 Code of Civil Procedure before it can be executed.

See *Question 4*.

## Enforceable/excluded types of judgment

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### 4. What types of judgments in commercial matters are enforceable, and what types are excluded?

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#### Domestic

Article 430 of the Code of Civil Procedure identifies three types of domestic documents that can be enforced in the Netherlands:

- Condemnatory (provisional) judgments.
- Authentic deeds executed in the Netherlands with a condemnatory character.
- Other documents designated by law as being enforceable, including:
  - settlements reached in the parties' personal presence and drawn up before the court in enforceable form (*Article 87(3), Code of Civil Procedure*); and
  - orders concerning the costs of proceedings (*Article 237(4) and 250(4), Code of Civil Procedure*).

Purely declaratory judgments such as those where the court defines the legal relationship between parties, as well as constitutive judgments or judgments dismissing a claim, are outside the scope of Article 430 of the Code of Civil Procedure, and are in principle therefore not directly enforceable. Please note, however, that these types of judgments can contain enforceable cost orders that are enforceable.

#### Foreign

**Judgments rendered in an EU member state.** All types of EU judgments with a condemnatory character (including decrees, orders, decisions or writs of execution, as well as a decision on the determination of costs or expenses) rendered by a court in an EU member state are enforceable in the Netherlands under the relevant EU regulations (see *Question 2, EU legislative framework*).

Provisional or protective judgments rendered in another EU member state can also be enforced in the Netherlands, provided the court of origin also has jurisdiction as to the substance of the matter. However, these types of judgments cannot be enforced in the Netherlands if the party against whom the measures are aimed was not summoned to appear, unless the judgment is served on that party before its enforcement.

Is it also possible to enforce an EU member state judgment that includes a penalty order, as long as the amount payable has been finally determined by the court of origin.

**Judgments rendered in a state that is party to a treaty.** Generally, the applicable treaty describe which types of foreign judgments can be enforced in the Netherlands.

**Judgments rendered in a state without a treaty.** Article 431 of the Code of Civil Procedure deals with the enforcement of foreign judgments in the Netherlands where there is no applicable treaty on mutual enforcement between the origin state and the Netherlands. Only foreign condemnatory judgments fall within the scope of Article 431. This means that declaratory judgments, judgments dismissing a claim and constitutive judgments all fall outside the scope of Article 431 and can therefore not be enforced in the Netherlands. However, under certain conditions, these types of judgments can be recognised in the Netherlands (according to the Dutch Supreme Court *Gazprombank* decision, see *Question 6*).

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## JUDGMENTS: PROCEDURE FOR ENFORCEMENT

### Overview

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#### 5. What is the general outline of enforcement proceedings?

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##### Domestic

A domestic judgment does not require separate recognition and enforcement proceedings. Enforcement of a domestic judgment in the Netherlands takes place through a bailiff serving the judgment on the debtor, giving the debtor one final opportunity to pay the debt (*Articles 430(3) and 432, Code of Civil Procedure*). In the absence of payment, the bailiff can then levy post-judgment attachments and/or take other enforcement measures (see *Question 18*).

##### Foreign

Under the Recast Brussels Regulation, a judgment rendered in an EU member state does not require separate recognition and enforcement proceedings (*Article 39*). Enforcement of such a judgment in the Netherlands takes place through a bailiff serving the judgment (including the required documentation from the court in the state of origin) on the debtor, giving the debtor one final opportunity to pay the debt. In the absence of payment, the bailiff can then levy post-judgment attachments and/or take other enforcement measures (see *Question 18*).

For judgments rendered in a state that is party to a treaty with the Netherlands, enforcement proceedings are commenced through filing an application to enforce the foreign judgment in the Netherlands. The defendant is notified of the request and is allowed to submit a defence. Following a hearing, the court renders a judgment either granting or denying the request for enforcement. This judgment is generally obtained within six to 12 months. The 2020 court fees in respect to enforcement proceedings generally vary between EUR639 and EUR4,030. The enforcement decision is subject to appeal. If the judgment is declared to be provisionally enforceable, the appeal does not suspend enforcement. However, the appellate court may suspend the enforcement pending the appeal, on request.

A domestic judgment obtained following a "quasi-exequatur" of a foreign judgment does not require further recognition and enforcement proceedings, and can be enforced in the same way as a Dutch judgment (see *Question 6*).

##### Foreign judgments: formal/simplified proceedings

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#### 6. Is the enforcement of a foreign judgment subject to formal proceedings or simplified procedures?

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##### Judgments rendered in an EU member state

Under the Recast Brussels Regulation, a judgment rendered by a court in an EU member state is treated as if it has been rendered in the member state in which the enforcement is sought. Judgments that are enforceable in the member state of origin are therefore also enforceable in the Netherlands without any declaration of enforceability being required.

##### Judgments rendered in a state that is party to a treaty

If a foreign judgment is enforceable in the Netherlands by virtue of a treaty, the party seeking enforcement must obtain a declaration of enforceability before the foreign judgment can be enforced in the Netherlands. This declaration of enforceability can be obtained through application proceedings, in which the case is not re-examined on the merits. The Dutch court generally renders a decision with due speed.

##### Judgments rendered in any other state without a treaty

If there is no applicable treaty between the state of origin and the Netherlands, the claim must in principle be re-litigated on the merits

in order to obtain an enforceable judgment in the Netherlands (*Article 431, Code of Civil Procedure*). The Dutch court will assess whether and to what extent it will grant authority to a foreign judgment (see the *Bontmantel* case (ECLI:NL:HR:1924:19)). However, a foreign judgment will be recognised and is eligible for simplified enforcement proceedings if the following conditions are met, as set out by the Dutch Supreme Court in the *Gazprombank* case (ECLI:NL:HR:2014:2838):

- The court of origin based its jurisdiction on generally accepted jurisdictional grounds.
- The foreign judgment was rendered in proceedings that met the requirements of and include safeguards for the proper administration of justice.
- The foreign judgment does not contravene Dutch public policy.
- The foreign judgment is not irreconcilable with an earlier judgment rendered between the same parties in the Netherlands, and is not irreconcilable with an earlier judgment rendered in another state involving the same cause of action and the same parties, provided that that earlier judgment can be recognised in the Netherlands.
- The foreign judgment is still enforceable under its own terms.

If these conditions are met, the Dutch court will render a Dutch decision that corresponds to the foreign judgment (known as a "quasi-exequatur"). That Dutch decision is enforceable in the Netherlands. If these requirements are not met, the claim must be completely re-litigated.

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#### 7. Must applicants institute a new action on the foreign judgment in the form of main proceedings instead of making an application for enforcement based on the judgment?

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If a judgment is not rendered in an EU member state or if there is no applicable treaty between the state of origin and the Netherlands, the claim must in principle be re-litigated on the merits to obtain an enforceable judgment in the Netherlands (*Article 431, Code of Civil Procedure*). Simplified enforcement proceedings can apply if the conditions as set out in the *Gazprombank* case are fulfilled. See *Question 6*.

##### Form of application

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#### 8. What documents and information must be provided with an application for enforcement?

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##### Judgments rendered in an EU member state

Under the Recast Brussels Regulation, foreign judgments that have been rendered in another EU member state are generally enforceable in the Netherlands without any declaration of enforceability being required (*Article 39*). A party who wishes to enforce a foreign EU judgment in the Netherlands must produce both (*Article 42*):

- A copy of the judgment that satisfies the conditions necessary to establish its authenticity.
- A certificate issued by the state of origin certifying enforceability and containing formal details of the judgment (such as information regarding the recoverable costs of the proceedings and the calculation of interest).

If the foreign judgment concerns provisional or protective measures, the party seeking enforcement in the Netherlands must provide:

- A copy of the judgment that satisfies the conditions necessary to establish its authenticity.

- A certificate issued by the state of origin containing a description of the measure sought and certifying:
  - that the court of origin had jurisdiction;
  - that the judgment is enforceable in the member state of origin;
  - service of the judgment, if the measure was ordered without the defendant being summoned to appear.

### Judgments rendered in a state that is party to a treaty

The applicable treaty usually sets out the documentary requirements for the enforcement of judgments. For example, the Convention on the Enforcement of Judgment between Surinam and the Netherlands 1979 stipulates that it is necessary to provide a complete and authentic copy of the judgment.

However, under most treaties, the procedure for obtaining leave for enforcement is governed by the law of the country where enforcement is sought. In the Netherlands, a complete and authenticated copy of the foreign judgment and evidence of formal enforceability in the country of origin must accompany the request. The Dutch court may also require those documents to be authenticated and translated into Dutch by a sworn translator (*Article 986, Code of Civil Procedure*).

### Judgments rendered in any other state without a treaty

A complete and authenticated copy of the foreign judgment and a legal opinion confirming enforceability of the judgment in the country of origin are usually sufficient in terms of evidence. The court may require legalisation of those documents and a translation into Dutch by a sworn translator.

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## 9. What information must be included in the application regarding the judgment, the claim as awarded in the judgment, the facts and legal grounds of the case, and that the judgment is no longer appealable?

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See *Question 8*.

## CHALLENGING ENFORCEMENT

### Service

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## 10. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?

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Article 45(1)(b) and 46 of the Recast Brussels Regulation state that the recognition and enforcement of a judgment will be refused "where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence (...)".

Under Article 431 of the Code of Civil Procedure, the Dutch courts will examine whether foreign proceedings were in accord with general standards of due process (the second condition in *Gazprombank*, see *Question 6*). A default judgment will not be recognised and enforced if the defendants have not been properly summoned and were unable to defend themselves in the foreign proceedings. The issue would then have to be (re)litigated before the Dutch courts.

## Final/provisional judgments

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## 11. Must a judgment be final and have conclusive effect, and what is the effect of pending appeal proceedings?

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There is no general rule that only final and conclusive judgments can be recognised or enforced.

The Recast Brussels Regulation does not specify that only final judgments against which no remedies have been brought can be recognised and enforced. It is possible to enforce judgments that are under the review of an appellate body in the country of origin. However, the Dutch Court may stay the enforcement proceedings if an appeal has been lodged against the judgment in the member state of origin or if the time for such an appeal has not yet expired (*Article 38*).

Some treaties specify that a foreign judgment should in principle be final before it can be enforced. For example, the Convention on the Enforcement of Judgment between Surinam and the Netherlands 1979 stipulates that only judgments that are not susceptible to appeal can be enforced (unless they are provisionally enforceable), in accordance with the approach towards purely domestic judgments under Articles 350 and 404 of the Code of Civil Procedure. The Convention also stipulates that judgments containing interim measures can be enforced if the measures also can be taken and enforced in the country where enforcement is sought.

It is currently unclear whether a foreign judgment containing interim measures can be enforced in the Netherlands in the absence of an applicable treaty. However, there are examples of cases in which recognition and enforcement was obtained for a foreign judgment that was still subject to appeal in the country of origin.

### Foreign judgments: jurisdiction

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## 12. Is the enforcing court entitled to consider the grounds on which the court assumed jurisdiction, and if so, on what jurisdictional grounds can enforcement be refused?

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### Judgments rendered in an EU member state

Under the Recast Brussels Regulation, the Dutch courts can only consider the grounds on which the foreign court assumed jurisdiction in the following specific situations (*Article 45 (1)(e)*):

- Jurisdictional matters relating to insurance, consumer contracts or individual employment contracts, where the defendant was the policyholder, insured or beneficiary of the insurance contract, or the injured party, consumer or employee.
- Exclusive jurisdiction provisions under the Recast Brussels Regulation or Lugano Convention.

In any other situation, the Dutch court will not review the grounds on which the foreign court assumed jurisdiction.

### Judgments rendered in a state that is party to a treaty

The treaty concerned usually sets out whether and to what extent the local courts can review the grounds on which the foreign court assumed jurisdiction. For example, the Lugano Convention has a similar approach as the Recast Brussels Regulation in this regard. However, the Convention on the Enforcement of Judgments between Surinam and the Netherlands 1979 follows a different approach in which the enforcing court can review the grounds on which the foreign court assumed jurisdiction.

### Judgments rendered in any other state without a treaty

If there is no applicable treaty or other instrument, the foreign judgment will not be enforced in the Netherlands if the foreign court

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did not assume jurisdiction on an internationally recognised ground. The court will therefore review the grounds on which the foreign court assumed jurisdiction (the first condition of the *Gazprombank* case, see *Question 6*).

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**13. If the court assumed jurisdiction on the basis of an exorbitant ground of jurisdiction, can the enforcing court review the judgment on that ground?**

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Exorbitant grounds of jurisdiction are not widely recognised internationally. In cases where no treaty is applicable, a judgment rendered by a judge who assumed jurisdiction on an exorbitant ground cannot be enforced in the Netherlands (the first condition of the *Gazprombank* case, see *Question 6*).

Under the Recast Brussels Regulation, a foreign court can assume jurisdiction on exorbitant grounds if the defendant enters into the proceedings and does not contest the jurisdiction of the court, unless another court has exclusive jurisdiction. As Dutch courts will in principle not review the grounds on which the foreign court assumed jurisdiction, it is arguable that EU judgments rendered by a court that assumed jurisdiction on an exorbitant ground are enforceable in those specific circumstances.

Similarly, the Convention on the Enforcement of Judgment between Surinam and the Netherlands 1979, for example, has a similar approach as the Recast Brussels Regulation.

**Foreign judgments: review of judgment**

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**14. Can the enforcing court review the judgment as to its substance if all formalities have been complied with and if the judgment meets all requirements?**

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**Judgments rendered in an EU member state**

In principle, the Dutch courts do not review a foreign judgment given in another EU member state as to its substance.

**Judgments rendered in a state that is party to a treaty**

The Dutch courts do not review the merits of the foreign judgment.

**Judgments rendered in any other state without a treaty**

Unless the conditions set out by the Dutch Supreme Court in the *Gazprombank* case (see *Question 6*) are satisfied, the claim must be re-litigated as to its substance, and the Dutch court is only then permitted to review the foreign judgment on its merits.

**Foreign judgments: public policy**

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**15. Can enforcement of a judgment be refused on grounds of public policy? Does public policy include matters of substantive law?**

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According to the Dutch courts, public policy concerns encompass both substantive and procedural aspects. For example, enforcement of a judgment can be refused on grounds of public policy for violations of mandatory EU law, fundamental principles of due process or the European Convention on Human Rights. However, Dutch courts will only refuse recognition and enforcement on the grounds of Dutch public policy in exceptional circumstances. See for example, *C-145/86, Hoffmann v Krieg, ECJ, 4 February 1988*.

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**16. In what circumstances and against which types of judgments has the principle of public policy generally been applied?**

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If there is a violation of Dutch public policy, the violation is usually concerned with the procedural aspect of Dutch public policy rather than with the substantive aspect. For example, Dutch courts have previously refused recognition and enforcement of a foreign judgment on the ground that it was rendered in violation of fundamental principles of due process, such as the principle of hearing both parties.

**Domestic and foreign: other conditions for recognition and enforcement**

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**17. What other conditions must be satisfied for recognition and enforcement of judgments?**

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**Domestic**

A domestic judgment does not require separate recognition and enforcement proceedings. Enforcement of such a judgment in the Netherlands is through a bailiff serving the judgment on the debtor and giving them one final opportunity to pay the debt. In the absence of payment, the bailiff can levy post-judgment attachments (see *Question 18*).

The authority to enforce a domestic judgment generally lapses after 20 years following the day on which the judgment was rendered. However, in respect of certain decisions, the limitation period is five years.

**Foreign**

If the requirements for recognition and enforcement of foreign judgments in the Netherlands are complied with, the bailiff serves the judgment (and any exequatur as applicable) on the debtor, giving it one final opportunity to pay the debt. In the absence of payment, the bailiff can levy post-judgment attachments (see *Question 18*).

In case of a judgment rendered by a court in a country within the EU with whom a treaty is in force, the limitation period under the laws of the country of origin applies. However, according to the Dutch Supreme Court *Gazprombank* decision (see *Question 6*), the mere expiry of the limitation period in that country does not prevent the judgment from being enforced in the Netherlands.

Reciprocity is not a requirement for a Dutch court to recognise and enforce a foreign judgment in the Netherlands.

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**JUDGMENTS: METHODS OF ENFORCEMENT**

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**18. What is the enforcement procedure after a declaration of enforceability is granted?**

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After a declaration of enforceability is granted, the creditor can levy post-judgment attachments on the debtor's known assets.

Attachment is often made on assets that can be sold, such as movable and immovable goods, stock, claims against third parties, and so on. In principle, all the debtor's assets are susceptible to attachment. The specific requirements for making attachments depend on the:

- Nature of the assets (movable, immovable and/or registered goods, claims on a third party, stock and so on).
- Party holding the assets (the creditor, the debtor or a third party).

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A post-judgment attachment is generally created either at the moment the bailiff draws up an official report that attaches assets, or on service of a notice of the attachment on the debtor. The bailiff draws up an official report that clearly states the assets that are subject to attachment. After the attachment, the assets are generally sold by public auction, or the court may order a different form of sale at the request of either the creditor or the debtor. The creditor then settles the debtor's claim with the proceeds of the sale.

If the assets are not sold, other creditors can also seize the assets. The enforcing bailiff divides the proceeds of the sale of the assets between the parties that have made an attachment if these parties come to an agreement on the apportionment. In the absence of such an agreement, a judge is appointed to decide how the proceeds will be divided. An attachment does not create any privilege for the creditor in case of bankruptcy of the debtor.

Dutch law offers various other coercive measures to enforce judgments. For instance, a claimant can request the court to impose incremental fines on the defendant that will be due and payable if the defendant fails to fulfil certain obligations other than the payment of money (*dwangsommen*). Other coercive measures, such as the committal to prison (*gijzeling*) for a failure to comply with a judgment, are less common.

## JUDGMENTS: INTERIM REMEDIES AND INTEREST

### *Interim remedies*

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#### 19. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?

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Dutch courts have broad powers to order provisional or interim measures during proceedings (*Article 223, Code of Civil Procedure*). Such interim measures can be sought where there is a danger of the decision no longer being able to be enforced at a later point in time.

In addition, the claimant can make a separate request for a pre-judgment attachment against the defendant against whom enforcement is sought. This ensures that the judgment will be enforceable against the defendant once the Dutch enforcing court has ruled on the enforceability of the foreign judgment. Proceedings to obtain a pre-judgment attachment are generally held *ex parte* and are usually granted within a few days. The criterion is that the claim appears on the face of it to justify the preliminary relief. The pre-judgment attachment is always granted under the condition that a principal action relating to the underlying claim is instituted within a certain time. If there is already a foreign judgment (and no treaty is applicable), the principal action may consist in Dutch quasi-exequatur proceedings (see *Question 6*). A special feature of Dutch procedural law is that leave for a pre-judgment attachment can also be requested before or while the foreign main proceedings are pending.

### *Interest*

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#### 20. Is the judgment creditor entitled to interest? If so, on what basis is it calculated?

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Entitlement to interest depends on and is generally specified in the foreign judgment. For example, under the Recast Brussels Regulation, the applicable interest rate and method of calculation is provided in the form set out in Annex I by the court of origin on request of any interested party.

## *Currency*

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#### 21. Must the value of a foreign judgment be converted into the local currency?

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The value of a foreign judgment need not be converted into the local currency.

## ARBITRAL AWARDS: LEGAL FRAMEWORK

### *Domestic framework*

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#### 22. What is the applicable domestic legislative framework for enforcement of arbitral awards?

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### *Domestic*

The legislative framework for enforcement of arbitral awards set out in the Dutch Code of Civil Procedure. Article 1073(1) stipulates the applicability of Articles 1020 to 1073 if the seat of the arbitration is located in the Netherlands. Article 1062 and Article 1063 are specifically concerned with the enforcement of domestic arbitral awards.

### *Foreign*

Articles 1074 to 1076 of the Code of Civil Procedure concern the enforcement of arbitral awards rendered abroad. For the purposes of enforcement of foreign arbitral awards. Article 1075 applies if the foreign award is rendered in a state with which the Netherlands has an applicable treaty. Article 1076 applies if there is no applicable treaty, or if the applicable treaty allows a party to invoke domestic enforcement provisions. Both these Articles refer to Articles 985 to 991, where specific provisions are set out that must be taken into account in the context of enforcing foreign arbitral awards.

### *International conventions/agreements*

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#### 23. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?

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The Netherlands is party to the following international conventions and agreements on the enforcement of arbitral awards:

- UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).
- ICSID Convention on the Settlement of Investment Disputes Between States and Nationals of Other States 1965.
- Bilateral treaties, such as the Agreement between the Netherlands and Belgium Concerning the Enforcement of Judgments, Arbitral Awards and Authentic Deeds 1925.
- Procedural Rules on Conciliation and Arbitration of Contracts Financed by the European Development Fund 1990.

### *Definitions*

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#### 24. What is the definition of an arbitral award in your jurisdiction for the purpose of enforcement proceedings?

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According to Article 1062(1) of the Code of Civil Procedure, a domestic "arbitral award" can be enforced in the Netherlands once the provisional relief judge of the district court within whose district the place of arbitration was located has granted a leave to do so. Both a final award and a partial final award as referred to in Article 1049(1) fall within the meaning of "arbitral award" in Article 106(1). Article 1049(1) defines final awards and partial final awards as

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awards where the claim is respectively wholly or partially settled in the operative part of the award.

According to the parliamentary history of the Dutch Arbitration Act, interim awards also fall within the meaning of "arbitral award" in Article 1062(1). The same applies for awards rendered in summary arbitral proceedings.

Article I(2) of the New York Convention is also relevant in the context of the enforcement in the Netherlands of a foreign arbitral award.

## **ENFORCEABLE/EXCLUDED TYPES OF ARBITRAL AWARD**

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### **25. What types of arbitral awards are enforceable, and what types are excluded?**

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See *Question 24*.

Purely declaratory awards (such as decisions on jurisdiction), constitutive awards or awards dismissing a claim are not enforceable. The same is true for procedural orders issued by a tribunal. However, declaratory awards often contain costs orders that can be enforced.

## **ENFORCEMENT PROCEEDINGS Procedure**

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### **26. What is the procedure for making an application to enforce an arbitral award?**

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#### **Domestic awards**

Domestic awards are enforced through application proceedings before the preliminary relief judge of the district court in whose district the seat of arbitration is located. The preliminary relief judge must grant leave for enforcement if there is no apparent ground for refusal. The application is generally decided *ex parte*. The decision is not subject to appeal, but a decision denying leave for enforcement is appealable. The limitation period for lodging a petition for leave for enforcement is 20 years.

#### **Foreign awards**

If enforcement is sought on the basis of a treaty, the leave for enforcement must be sought by making an application to one of the courts of appeal, irrespective of whether the award debtor is domiciled in the Netherlands or whether it has any assets in the Netherlands (*Article 1075, Code of Civil Procedure*). According to Supreme Court case law, a request for enforcement of a foreign arbitral award in the Netherlands is by definition sufficiently closely connected to the Netherlands, meaning that a Dutch court has jurisdiction to adjudicate the request.

Enforcement proceedings are in principle not *ex parte*, and both the applicant and award debtor can appeal to the Supreme Court within three months of the day of the decision, unless the applicable treaty provides otherwise. However, the Dutch Supreme Court has held that, in light of Article III of the New York Convention, an award debtor cannot appeal to the Supreme Court if the Court of Appeal has granted leave for enforcement (subject to certain exceptions). Under the Article 1075 of the Code of Civil Procedure regime (where there is an applicable enforcement treaty), an appeal to the Supreme Court is only possible if the Court of Appeal has denied leave for enforcement. However, under the Article 1076 regime (where there is no applicable enforcement treaty) the award debtor can appeal to the Supreme Court if the Court of Appeal has granted leave for enforcement.

An appeal against leave for enforcement granted by a court of appeal does not suspend the enforceability of the foreign arbitral award, unless the court of appeal has decided otherwise.

However, this procedure is not applicable for ICSID awards. These awards are enforced in the Netherlands on request by the District Court of the Hague without any further procedure or grounds for refusal.

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### **27. Can parties seek to enforce only part of the award?**

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Parties can seek to enforce only part of an award. For example, if the award is in excess of or different from the relief sought, the arbitral award can be partially recognised and enforced if the part of the award that is in excess of or different from the relief sought can be separated from the remainder of the award (*Article 1076(6), Code of Civil Procedure*).

#### **Form of application**

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### **28. What documents and information must be provided with an application to enforce an award?**

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#### **Domestic**

A Dutch court can require parties to supply legalised copies and/or certified translations of relevant documents.

#### **Foreign**

Article 1075 and Article 986 of the Code of Civil Procedure specify that the original or an authentic copy of the award must be submitted, as well as documents showing that the award can be enforced in the country of origin. A Dutch court may request parties to furnish legalised copies and/or certified translations of relevant documents (see for example, Article 986 of the Code of Civil Procedure).

Some treaties require the applicant to furnish further documents. Article IV of the New York Convention requires a party to submit a duly authenticated original or duly certified copy of the arbitral award, and the original or a duly certified copy of the arbitration agreement. If the ICSID Convention applies, an authentic copy of the award signed by the Secretary General of ICSID must be submitted.

The application for leave for enforcement other than on the basis of an applicable treaty must be accompanied by a copy of the award, together with other documents that are relevant for establishing that the award is enforceable in the country where it was rendered. However, the Dutch Court may also require legalisation of these documents (*Article 1076 (6) and Article 986, Code of Civil Procedure*).

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### **29. What information must be included in the application?**

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#### **Domestic**

See *Question 28*. A request generally also contains a brief background statement on the matter, the applicable arbitration agreement and the arbitration.

#### **Foreign**

See *Question 28*. A request generally also contains a brief background statement on the matter, the applicable arbitration agreement and the arbitration.

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## CHALLENGING ENFORCEMENT

### Service

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#### 30. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?

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##### Domestic

The enforcing court can refuse to enforce an arbitral award if there is prima facie ground for setting it aside. As one of the grounds for setting aside is a violation of public policy (which includes, for example, the right to be heard), the court can consider service of the arbitral proceedings and the award. However, the court will only conduct a prima facie investigation and does not always summon the defendant.

##### Foreign

The defendant can, for example, invoke Article V(1)(b) of the New York Convention, according to which the court will consider whether proper notice of the arbitral proceedings was given. The court will also consider whether the defendant was properly summoned to appear at the enforcement proceedings (*Article 987, Code of Civil Procedure*).

##### Pending challenge proceedings

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#### 31. What is the effect of pending challenge proceedings to the award?

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##### Domestic

Article 1066 of the Code of Civil Procedure stipulates that a petition to set aside a domestic arbitral award does not suspend enforcement of that award. However, the petitioner can request the court adjudicating a set-aside petition to suspend the enforcement of the award pending the outcome of the set-aside proceedings.

##### Foreign

The extent to which a challenge against a foreign arbitral award automatically postpones the enforcement of that award is yet to be determined under the applicable law. However, under Article VI of the New York Convention, a defendant can request the Dutch enforcement court to postpone a decision on enforcement pending challenge proceedings before the courts at the seat of the arbitration.

##### Review/opposition

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#### 32. Can the enforcing court review an award if all formalities were complied with and if the award meets all requirements?

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##### Domestic

An enforcing court does not generally review the merits of the award. However, it can refuse enforcement if there is a prima facie ground for setting aside the arbitral award (*see Question 33*). As domestic enforcement proceedings are in principle ex parte, the court acts ex officio in this respect.

##### Foreign

An enforcing court is only entitled to review ex officio whether leave for enforcement must be rejected on the basis of Article V(2) of the New York Convention. The Code of Civil Procedure contains a similar provision relating to enforcement of a foreign arbitral award on the basis of domestic law.

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#### 33. What are the grounds for refusing enforcement?

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##### Domestic

Leave for enforcement of an arbitral award can only be refused if it appears plausible to the enforcement court after a summary investigation that the award should be set aside on one of the following grounds:

- The non-existence of a valid arbitration agreement.
- The arbitral tribunal was composed in violation of the applicable rules.
- The arbitral tribunal did not comply with its mandate.
- The award was not signed or did not contain reasons in accordance with the provisions of Article 1057 of the Code of Civil Procedure.
- The award, or the manner in which it was made, violates public policy.

However, if the term for setting aside the arbitral award has lapsed, leave for enforcement of the arbitral award can only be refused if it appears plausible to the enforcement court that the award, or the manner in which it was made, violates public policy.

##### Foreign

The grounds for refusal of enforcement closely resemble those in the New York Convention and in Article 1076 of the Code of Civil Procedure, apart from there being no similar restriction where the term for setting aside the arbitral award has lapsed.

##### Public policy

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#### 34. Which country's public policy applies? Does the court approach the issue differently depending on whether the award is a domestic or foreign award?

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##### Domestic

Dutch public policy applies in the context of a domestic award. According to the Dutch courts, public policy concerns encompass both substantive and procedural aspects. For example, enforcement of a judgment can be refused on grounds of public policy for violations of mandatory EU law, fundamental principles of due process, or the European Convention on Human Rights. However, Dutch courts will only refuse recognition and enforcement on the grounds of Dutch public policy in exceptional circumstances.

##### Foreign

In principle, Dutch public policy also applies in the context of a foreign award. However, a Dutch judge may interpret public policy as incorporating international aspects when assessing whether or not the award violates public policy. The notion of "public policy" is not clearly defined under Dutch law. Some authors argue that the notion of international public policy is or could be a slightly narrower concept than Dutch public policy.

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#### 35. In what circumstances and against which awards has the principle of public policy generally been applied?

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Both the arbitral award itself as the manner in which it was rendered can be contrary to public policy. Even though the public policy exception is in principle interpreted restrictively, Dutch courts have, for example, previously refused recognition of an award on the ground that it was rendered in violation of fundamental principles of due process, such as the principle of hearing both parties.



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## ACTUAL ENFORCEMENT

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### 36. What is the execution procedure when a declaration of enforceability is granted?

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Once leave for enforcement is granted, an arbitral award can be enforced in the same way as a court judgment. See *Question 18*.

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### 37. Can defendants oppose the execution procedure, and if so, on what grounds/defences?

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Defendants can oppose execution by initiating an "execution dispute" under Article 438 of the Code of Civil Procedure. Such disputes can be brought before the preliminary relief judge at the court in whose jurisdiction an attachment is levied. The preliminary relief judge can, if so requested:

- Suspend enforcement for a certain period of time.
- Determine that enforcement can only take place against the creditor posting sufficient security.
- Stop enforcement, with or without security posted by the debtor.

However, the preliminary relief judge can only do so if there has been a misuse of powers, for example, if:

- The enforcement is apparently based on a legal or factual error.
- Events that have occurred after the award was rendered give rise to a state of emergency for the party against whom enforcement is sought.

## ARBITRAL AWARDS: INTERIM REMEDIES AND INTEREST

### *Interim remedies*

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### 38. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?

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It is possible to apply for interim measures, see *Question 19*. A temporary suspension of enforcement can also be seen as an interim measure, see *Question 31*.

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### 39. Is the creditor entitled to interest? If so, on what basis is it calculated?

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Any entitlement to interest would need to be specified in the award concerned.

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### 40. Is it required to convert the value of foreign awards into the local currency?

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The value of a foreign award need not be converted into the local currency.

## JUDGMENTS AND ARBITRAL AWARDS: PROPOSALS FOR REFORM

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### 41. Are any changes to the law currently under consideration or being proposed?

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#### Judgments

The recently introduced Netherlands Commercial Court is dedicated to commercial and international disputes. The judges are:

- Specialised in international trade law.
- Experts in handling international commercial disputes.
- Selected for their English proficiency.

The Netherlands Commercial Court has jurisdiction if parties decide to settle their dispute through it. The parties to the dispute do not have to be Dutch, nor does the conflict have to be governed by Dutch law. Every aspect of the proceedings is conducted in English and the judgment is also drafted in English. The decisions of the Netherlands Commercial Court can be executed under the Recast Brussels Regulation throughout the EU without any declaration of enforceability being required.

The Netherlands has not yet signed the Hague Convention of 2 July on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters 2019. It is expected that the Netherlands will consider its accession to the Convention in the near future.

The Dutch legislator is considering codifying the legal practices surrounding Article 431 of the Code of Civil Procedure, including the criteria following from the *Gazprombank* case (see *Question 6*).

#### Arbitral awards

The Netherlands Commercial Court also has jurisdiction to entertain setting aside proceedings if Amsterdam is the place of arbitration.

Following the European Court of Justice's decision in *Achmea*, on 5 May 2020 EU member states, including the Netherlands, signed the Agreement for the Termination of Intra-EU Bilateral Investment Treaties. This entered into force on 29 August 2020.

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## Practical Law Contributor profiles

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#### Recent team transactions

- Representing the Russian Federation in the setting aside, and thereby resisting the enforcement of UNCITRAL arbitral awards awarding over USD50 billion.
- Representing the Russian Federation in UNCITRAL arbitrations and setting aside proceedings relating to claims from investors in Crimea worth over USD6 billion.
- Representing OIEG in the enforcement of an US\$400 million ICSID arbitral award against Venezuela.
- Represented Petrobras before the Dutch Court of Appeal resisting the enforcement of a USD620 million arbitral award.
- Represented an investor in the enforcement of an USD80 million UNCITRAL arbitral award against Ghana.