

## **\*\*Luxembourg freezing order (*saisie-arrêt*)\*\***

As of today third-party attachment proceedings (*saisie-arrêt*) remain one the most efficient remedy to preserve assets under Luxembourg law.

Attachment is a two phases process allowing an applicant to (i) temporarily attach sums or assets held by a third-party on behalf of, or owed to, the debtor and (ii) to obtain payment on these assets at the end of the validation procedure.



Attached third-parties usually consist of credit institutions as well as any administration or public officer which may hold assets, monies or properties on behalf of the debtor.

The first conservatory phase may be initiated either directly if the applicant has an authentic or private deed evidencing its claim or through the procedure *ex parte* of authorization from the Presiding judge of the District court of the residence of the debtor or of the third-party. Such authorization will be delivered if the applicant proves that its claim appears to be certain in its principle.

All the assets held by the third-party will be immediately frozen by effect of the service by bailiff of the writ of seizure to the third-party.

The effectiveness of this measure mainly lies in the fact that at this stage the debtor is not informed thereof until the filing and service of a summons to the debtor in accordance with the provisions of the Luxembourg New Code of Civil Procedure.

Besides, the conservatory phase may be completed in a rather short period of time even in

the absence of authentic title as the presidential authorization is usually delivered if the conditions are fulfilled within 48 hours from the filing of the request, as such mitigating the risk of dissipation of assets. It is to note, however, that the debtor is entitled to bring a court action with a view (i) to withdrawing the presidential authorization or (ii) to limiting the effect of the attachment to the total amount claimed through the procedure of "*cantonement*".

At the end of the second enforcement phase the court will render a decision validating the attachment if it is competent to rule on the merits. If the competent court to rule on the merits is a foreign jurisdiction the court may validate the attachment upon production of an enforceable foreign decision.

The attached third-party shall then issue a declaration stating the assets held on behalf of, or owed to, the debtor, if any. Any such assets will be directly transferred to the applicant up to the higher of the sums held and the total amount of the claim validated by the court.

Linari Law Firm is of course available should you require any further information.