

Attachment (Freezing) Orders in Brazil: Overview

by *Flavia Alterio, Tiago Cortez, Taísa Oliveira, Aline Adestro, Gabriella Feres, and Nathalia Abe*, KLA Advogados

Practice note: overview | **Maintained** | Brazil

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

In court proceedings where the respondent appears likely to remove or dissipate assets from the jurisdiction where the proceedings are underway, legal practitioners must be aware of the available legal remedies, and procedural and legal requirements for applying and enforcing those remedies. Attachment orders, also known as a freezing orders or freezing injunctions in some jurisdictions, are one such interim remedy commonly used to ensure that no irreparable harm may occur to the rights and interests of the parties involved.

This Note gives an overview on the law relating to attachment orders in Brazil including:

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

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

For guidance on some of the practical considerations that come into play while applying for an attachment order in a foreign jurisdiction, see [Practice Note, Attachment orders: a cross-border overview](#).

Domestic Proceedings

Availability

Attachment orders can be requested through interim injunctions (anticipatory or precautionary) or in an enforcement procedure.

The most common interim injunctions available are as follows:

- **An injunction attaching assets.** This attaches the defendant's assets to ensure the effectiveness of a future attachment in an enforcement action.
- **A sequestration injunction.** This ensures the enforcement of a judgment for the delivery of a specific thing. It consists of the seizure of a specific asset, pending some further proceedings affecting it, to preserve its integrity, and protect it from damage, depreciation, or deterioration, to allow its delivery in good condition to the prevailing party.

These measures consist of the judicial seizure and deposit of the assets. The court will appoint a trustee of the attached assets. Typically, the defendant is appointed as trustee. If the applicant does not agree with the appointment of the defendant as trustee:

- Cash, precious stones, and metals or bonds can be deposited in an official bank or in any credit entity designated by the court.
- Furniture and urban properties can be deposited with a judicial trustee.
- Other assets can be deposited with a private trustee.

Assets which have been subject to sequestration can be deposited either with a person appointed on agreement between the applicant and the defendant or with one of the parties if it offers a security or pledge.

Attachment orders are commonly issued by Brazilian courts. If the attachment request is filed in an enforcement proceeding or phase, it is not difficult to obtain an attachment order over a debtor's free asset.

Attachment orders can be granted against third parties in very specific cases, when the fraud occurs or the legal requirements of the disregard doctrine (that is, piercing of the corporate veil) can be demonstrated.

Grounds

An order to attach assets in an enforcement procedure is automatic and will always be granted if the defendant fails to pay the amount due within the term established by the court. Attachment order injunctions are usually required to preserve the status quo and ensure the effectiveness of a final decision (by preventing the defendant from becoming insolvent during the lawsuit).

The Civil Procedure Code (*Código de Processo Civil*) (Law No. 13.105/2015) has unified the requirements for the issuance of all interim measures (including attachment orders), which can be anticipatory or precautionary. To obtain an interim injunction to attach assets, the applicant must demonstrate both:

- Real risk of asset dissipation that would jeopardize any subsequent judgment.
- Likelihood of success on the merits.

(Articles 300 and 497, Civil Procedure Code.)

Stage of the Proceedings

Attachment orders are commonly issued by the Brazilian courts once the applicant can fulfil the legal requirements for them.

Attachment orders can only be issued in enforcement proceedings or enforcement phases. It is not possible to request an attachment order before the proceedings have started. It is possible to request an injunction for a precautionary attachment, to stop the debtor from selling or placing an encumbrance on its assets.

Alternative Remedies

No other remedies are available to preserve assets.

Procedure for Applying

The applicant must petition the competent court presenting the following:

- A summary description of the right under the threat and the risk of damage.
- Evidence that the legal requirements for the granting of relief have been complied with.
- What evidence it will submit.

On the applicant's request the attachment or sequestration of assets can be ordered immediately after the request is filed by means of an interlocutory injunction. This is provided that the court is convinced that the applicant's right has been sufficiently demonstrated in the initial pleading and there is a risk that irreparable damage may be caused by the delay of the lawsuit.

In the event the injunction is denied, the applicant can appeal to the State Court of Appeals. If the applicant does not appeal, or if the appeal is denied, the attachment of assets or the sequestration will be ordered, or not, in the judgment of the request for injunction, after a defense is submitted by the defendant and summary production of the necessary evidence.

Articles 300 and 497 of the Civil Procedure Code govern injunctions and Articles 771 to 788 of the Civil Procedure Code govern attachment orders in enforcement procedures.

Attachment requests in enforcement procedures should be made in the initial statement (*petição inicial*). An injunction request must be presented to the court through a new lawsuit (incidental procedure) and must fulfil all the legal requirements of an initial statement.

The applicant is required to disclose the value and location of the assets it seeks to attach and demonstrate that the assets are owned by the defendant.

Brazilian judicial authorities have jurisdiction in the following circumstances:

- If the defendant is domiciled in Brazil, regardless of its nationality.
- If the obligation must be performed in Brazil.
- If the suit originates from a fact which occurred or from an act committed in Brazil.
- In respect of suits concerning properties in Brazil.

The existence of the defendant's property is a sufficient basis for an attachment to be obtained, assuming the other requirements are satisfied.

As a rule, an action must be filed at a lower civil court in the jurisdiction where the defendant is domiciled or is known to be domiciled, or at the place where the obligation is to be performed. The court to which the main action will be assigned has jurisdiction over requests for attachment of assets and sequestration injunctions.

Where the assets that would be subject to attachment or sequestration are at a different place from the place where the request for injunction was filed, the injunction is enforced by means of letters rogatory before the court of the jurisdiction where the assets are located.

Although under Brazilian law an applicant is not required to disclose evidence that may be harmful to its case, the applicant has the duty to litigate in good faith, which means it cannot alter the truth of the facts or institute clearly unfounded proceedings (*Article 80, Civil Procedure Code*).

The judge can order the applicant to give any undertaking, but it is possible to obtain an attachment order without the obligation to provide collateral.

An injunction ordering attachment of assets or sequestration can be granted without notice to the defendant. It can be granted by the court based on the factual circumstances, documents submitted by the applicant, and other evidence. The court must be convinced that notice may lead the defendant to either:

- Make the measure ineffective by disposing of, subtracting from, or destroying the relevant assets
- Directly or indirectly cause harm to the applicant or to the case.

If an injunction is granted without notice to the defendant, the applicant must provide for service of process on the defendant within five days. Failure to do so may make the applicant liable for losses caused.

The defendant can object to the request for an injunction by presenting an answer within five days from the service of process. The defendant can also appeal to the State Court of Appeals against the decision ordering the injunction.

Court fees of up to 1% of the value of the assets to be attached (depending on the state) must be paid before commencing legal proceedings. If the lawsuit is decided in favor of the applicant, this amount is reimbursed by the defendant.

Type of Assets That Can Be Frozen

The following assets can be attached:

- Money, in cash, in a deposit, or invested in a financial institution.
- Federal, state, and federal district government bonds listed on the market.
- Bonds and securities listed on the market.
- Land vehicles.
- Real estate property.
- Personal property in general.
- Livestock.
- Vessels and aircraft.
- Membership interests and shares in partnerships and companies.
- A percentage of the turnover of the defendant company.

- Precious stones and metals.
- Rights of acquisition derived from a promise of sale and from a secured fiduciary sale.

Cash is first in the order of preference when it comes to naming assets for attachment (*Article 835, Civil Procedure Code*). Certain amounts found in bank accounts are not susceptible to seizure, including incomes, retirement proceeds, and allowances (*Article 833, Civil Procedure Code*).

Rights and immaterial assets can be attached, for example, rights over real estate and trademarks.

Trustee or Nominee Interest

Only assets that belong to the defendant can be attached. Assets over which the defendant has beneficial title cannot be subject to an attachment order.

Debts owed by third parties to the defendant can be attached. The third party must be summoned not to make payments, and the defendant not to transfer its credit right. Credits of the defendant resulting from lawsuits, or expectancies under probate or distribution, can also be subject to attachment.

Jointly Owned Assets

The court can order attachment of an asset over which the defendant has joint ownership with a third party. In this case the attachment order will be related to the part of the asset owned by the defendant.

Exempt Assets

Under Brazilian law, the following assets cannot be attached:

- Inalienable assets and those voluntarily declared by the applicant as not subject to execution.
- Furniture and household appliances in the defendant's residence, except those with a high value or beyond the common needs of an average standard of living.
- The defendant's garments and personal belongings, except those with a high value.
- Salaries, allowances, soldiers' payments, wages, retirement pensions, pensions, money reserves, and widows' funds.
- Amounts received through the generosity of a third party, when essential to maintain the defendant or their family.
- The remuneration of a self-employed person.
- Books, machines, apparatus, and tools necessary or useful in the performance of any profession.
- Life insurance.
- Materials necessary to works in progress, except if these works are pledged.
- Small rural property, as defined by law, on the condition that it is worked by the family.
- Public funds received by private entities for compulsory investments in education, health, and social welfare work.
- Money deposited in saving accounts, up to a limit of 40 times the minimum wage.

- Public funds received by a political party fund.

The yield and income from inalienable assets can be attached only in the absence of other assets, except if used for the payment of alimony.

Types of Attachment Order

Courts will grant an attachment order which is limited to the value of the claim (which may include interest and costs).

The attachment of overseas assets is uncommon, but possible. There are recent precedents of Brazilian courts requesting international collaboration to freeze assets in other jurisdictions.

Location of Assets

The applicant can ask the court to issue official letters to the:

- Internal Revenue Service (IRS), to obtain the last five IRS declarations presented by the defendant.
- State Transit Department.
- Real Estate Registry.
- Commercial Registry, to receive information regarding the ownership and location of the defendant's assets.

The attachment of bank accounts will be automatic on the granting of the attachment order and will be performed directly by the judge without the need to indicate further information.

Supplementary Orders

See *Location of Assets*.

Undertaking and Security

An injunction can be granted if the applicant gives an undertaking consisting of a security interest or bond as a guarantee for possible losses that the defendant may suffer if the main action is unsuccessful. This is regardless of any supplementary documentary evidence or prior justification.

The court may, at its discretion when granting an injunction ordering attachment or sequestration, order the applicant to give an undertaking consisting of a security interest or bond with the purpose of reimbursing eventual losses that the defendant may suffer.

The undertaking can consist of cash, a court deposit in an official bank, real or personal property, or a surety. The costs of a surety given by a bank will depend on the amount to be secured.

The applicant cannot be asked to provide an undertaking to compensate third parties.

An applicant is not required to give undertakings in enforcement proceedings and the enforcement phase.

Form or Amount of Undertaking and Security

Typically, according to Brazilian case law based on Article 300, section 1 of the Civil Procedure Code, the court will order the applicant to give an undertaking in an amount equivalent to the debt involved (*RESP 709.479/SP, Superior Court of Justice, 1 February 2006 and RESP 489.514/RJ, Superior Court of Justice, 23 June 2003*).

Exceptions to the Attachment Order

It is possible for the court to grant exceptions to the attachment order if the defendant proves that the order may compromise the payment of their daily living expenses.

Duration of the Attachment Order

Attachment or sequestration injunctions remain effective while the main action is pending, up to the final decision, without any time limit. However, they may be revoked or modified by the court at any time, at its discretion.

The applicant must provide for enforcement of the injunction within 30 days from the date it is granted, under the penalty of the injunction being vacated. Once the injunction is enforced, the applicant must commence the main action within 30 days, without the possibility of extending this period, otherwise the consequence can be that the injunction loses its effect.

Proprietary Right and Lien

Once executed, the attachment order creates a lien over the attached asset(s).

If various attachment orders are concurrent over the same assets, priority among creditors is defined not only according to the date the attachment orders were made, but also taking into consideration the time when each applicant obtained conversion of the order into a lien of execution.

When the same assets are included in more than one lien of execution, each creditor will have priority over the proceeds from the execution of the asset according to the order in which the lien of execution took place.

However, this priority ceases in the event of the insolvency of the debtor. In this case, liens lose their effect, and all assets are made subject to the collective or concurrent execution of all the debtor's property, aimed at the satisfaction of all creditors.

Appeal

The defendant can appeal to the State Court of Appeals against a decision granting an interlocutory injunction within 15 days from the service of process. The Court of Appeals can, on the defendant's request, grant a supersedeas bond to stay the enforcement of the injunction until the final decision of the appeal if there is a serious risk of damage or of difficult reparation.

Variation and Discharge

The defendant can present a defense to a request for an injunction of attachment of assets or an injunction of sequestration (with and without notice) within five days of the date on which notice of process is served. The defendant can also appeal to the State Court of Appeals against decisions granting these injunctions.

Third Parties

The court may order a third party, in any proceeding, to report all the facts and circumstances they become aware of, and to present any assets or documents they hold (*Civil Procedure Code*). An attachment order can be issued against a third party in possession of assets that are subject to an attachment order, if the third party holds the possession of the asset as a trustee or fiduciary.

A third party that has been served with an attachment order (and/or any other supplementary or ancillary order) can respond to the court order and file a defense, if applicable.

A third party that suffers damage as a result of an attachment order can present its defense by means of a specific procedure (*Embargos de Terceiro*).

Circumstances Where an Attachment Order Is Unavailable

An attachment order is unavailable if the legal requirements (see *Domestic Proceedings*) are not met or if the defendant does not have attachable assets (see *Type of Assets That Can Be Frozen*).

Overseas Assets

If the assets subject to an attachment or sequestration order are in a different place to where the request was filed, the court can determine that the injunction will be enforced by means of letters rogatory before the court of the jurisdiction where the assets are located (including if they are located overseas).

Courts can issue rogatory letters to request the attachments of overseas assets. There is no discretion in this act, since the measure is based on section 36 of the Civil Code (*Código Civil*) (Law No. 10406/2002).

Foreign Court Proceedings

Until 2005, it was not possible to request attachment of assets in support of a proceeding taking place in another country. Only final and non-appealable foreign judgments could be ratified by the Brazilian Federal Supreme Court and enforced in Brazil.

Under Constitutional Amendment No. 45, enacted on 31 December 2004, the Superior Court of Justice has jurisdiction to ratify foreign judgments. Following the Constitutional Amendment, the Superior Court of Justice enacted Resolution 9/2005 on 4 May 2005, governing the procedures and requirements for homologation of foreign judgments.

One major change provided for in Resolution 9/2005 concerns the enforcement of foreign provisional measures to obtain attachment of debtors' assets in Brazil. It provides that foreign court decisions that order attachment of debtors' assets in Brazil can be accepted by the Superior Court of Justice, with the purpose of expanding international judicial co-operation. (Information can also be found in section a216-B of the Superior Court of Justice Rules.)

All foreign provisional measures of attachment of assets must be submitted to the Superior Court of Justice by means of letters rogatory. The President of the Superior Court of Justice is competent to grant exequatur to the letter rogatory and, therefore, to order the enforcement of the foreign injunction.

Enforcement of Attachment Orders

Domestic Attachment Orders

Attachment orders are enforced by the court by the issue of official letters (to banks or the Real Estate Registry) and by summons to the debtor.

Penalties for Breach

If a party refuses to comply with a judicial order it can be subject to a fine or even prison.

Overseas Assets

Requests for all provisional measures of attachment of foreign assets must be made to the judge who has jurisdiction over the case. The judge will issue a letter rogatory to the competent overseas authority. Once the letter rogatory is issued, the procedural requirements will follow the foreign legislation.

Foreign Attachment Orders

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Penalties for Breach

A penalty will be imposed if the foreign order established a penalty for its breach. Brazilian courts will not impose penalties for breaches of foreign attachment orders in Brazil if the foreign order does not impose a penalty.

Damages

The claimant may be held liable for losses that the injunction caused to the defendant in the following cases:

- If the judgment in the main action is unfavorable to the claimant.
- If, once the injunction is granted, the claimant fails to provide notice to the defendant within five days.
- If the effect of the injunction ceases because it is not enforced within 30 days, or because the claimant fails to file the main action, or if the court determines the main action should be abated.
- If the court acknowledges the defendant's allegations with regard to the statute of limitations.

This is strict liability and does not depend on malice or fault on the part of the claimant. It does not exempt the claimant from being held liable for malicious abuse of process.

Any damage resulting from the enforcement of an injunction must be indemnified if the attachment is ultimately vacated. Compensation must also be paid for lost profits, court costs, and attorneys' fees (established as a percentage of the amount involved in the lawsuit).

The claimant can be held liable for:

- Any consequent damage because of deterioration in the condition of the assets during deposit.
- The yield on the assets not obtained due to the defendant being deprived of the assets.

- Any damage that the creation of a lien may have caused to the defendant's business operation.

A request for damages must be filed by the defendant in the records of the request for the injunction itself. The parties are responsible for calculating the debt amount. If there is any doubt about the calculation, the court can request an expert analysis.

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