

# Provisional Attachment Under the Cambodian Code of Civil Procedure 2006

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Provisional attachment is one of the three preventive measures of the preservative disposition systems<sup>1</sup> provided for by the Cambodian Code of Civil Procedure (2006, the “CCP”) and allows creditors who have monetary claims against debtors to secure against the risk that a court order against a debtor will become impossible or extremely difficult to execute due to an alteration in the state of the debtor’s assets in-execution,

## 1. Overview

An order for provisional attachment is an interim relief mechanism available to secure the enforcement of a judgment on a monetary claim in Cambodia.<sup>2</sup> Such an order prevents the debtor from disposing of their assets.<sup>3</sup> The provisional attachment order may be made over movables, immovable properties, claims of the debtor and other property rights of the debtor.

An order for provisional attachment may be compared to a grant of a freezing order known as a “Mareva Injunction”<sup>4</sup> made by courts in common law jurisdictions. However, order for provisional attachment differs from a Mareva Injunction in that the applicant *must* specify a specific asset (e.g. a parcel of land) to be attached whereas a Mareva Injunction may specify a specific asset or attach to all of the debtor’s assets.

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<sup>1</sup> Article 530 of the Code of Civil Procedure 2006 provides for three types of preservative relief; (i) provisional attachment (ii) provisional disposition of subject matter of dispute and (3) provisional disposition establishing a provisional status.

<sup>2</sup> See *id*, Art. 531(a) and Art. 545(1).

<sup>3</sup> See *id*, Art. 541(1).

<sup>4</sup> Named after the case *Mareva Compania Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd’s Rep 509.

## 2. Requirements for the Ruling

Under the Article 545(1) of the CCP:

*“an order for provisional attachment may be issued where there is a risk that compulsory execution will become impossible or extremely difficult concerning a claim the subject of which is a monetary payment.”*

In the motion for the order, the applicant must demonstrate, for example, the connection of the right of the claims or the legal relationship with the debtor, the risk that the debtor could conceal the assets or cause deterioration in the value of the assets and/or that the debtor could abscond with money in his/her possession.<sup>5</sup> In making the motion, it is important to submit sufficient written prima facie evidence of the basis for the motion. After an order for provisional attachment is granted, the creditor may request the execution of the preservative relief and the registration of the order for provisional attachment.<sup>6</sup>

## 3. Procedure for the Ruling

Proceedings for provisional attachment are separate from proceedings on the merits, and the application for a provisional attachment order can be filed in written form before the appropriate provincial/municipal court of first instance, which has jurisdiction over the place where the object to be provisionally attached is located.<sup>7</sup>

Because it is an emergency and compulsory measure, the court generally issues the order of provisional attachment without prior notice to the debtor. The court often makes the order **ex parte** (without the

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<sup>5</sup> Article 541 **Matters to be stated in written motions and prima facie showing:**

2. A written motion to a ruling of preservative disposition shall contain the following information:

- (a) the names and addresses of the parties, and the name and address of their agent;
- (b) the contents of the ruling of preservative disposition that is sought;
- (c) the rights or legal relationship that are to be preserved; and
- (d) the necessity of the preservative disposition.

2. The moving party shall make efforts to state specific details for Items (c) and (d) under Paragraph 1, and state evidence for each fact and the grounds required to be proven.

3. A *prima facie* showing shall be established concerning items (c) and (d) of paragraph 1.

<sup>6</sup> See *Supra note 1*, art. 562(1).

<sup>7</sup> See *id*, Art. 534-a and Art. 540(1).

debtor being present) but the debtor may object or request revocation or revision of the interim order through separate procedures.<sup>8</sup> The court may also specify an amount of “money for release from provisional attachment” in the order, with payment of such amount by the debtor resulting in revocation of the order. A debtor who objects to an order for attachment is required to provide a security deposit. The court determines the amount of security by taking into consideration all the relevant factors. The amount of the security deposit may be equal to the claims filed for to which the motion for provisional attachment relates.

#### **4. Effects of the Ruling**

An order for attachment creates a preferential right in favor of the applicant (debtor) over the attached assets of the debtor. If a creditor obtains a successful judgment in the principal lawsuit, the applicant is entitled to payment of the relevant claim from the proceeds of liquidation of the attached assets through compulsory execution by the court. The assets will be subject to compulsory execution during the compulsory execution proceedings.

### AUTHOR’S PROFILE

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Yoeurng Sotheara  
Attorney-at-Law

GIA Tower, 37th Floor, Sopheap Mongkul Rd, Diamond Island, Sangkat Tonle Basak, Khan Chamkar Mon, Phnom Penh, Cambodia (P.O.120101)

T: +855 (0) 85 555 777 / 16 555 777 | E: [info@hbslaw.asia](mailto:info@hbslaw.asia) | [www.hbslaw.asia](http://www.hbslaw.asia)

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<sup>8</sup> See *id*, Art. 554(1).