



Provisional Attachment Order and Evidence Preservation Order In Taiwan – An Introduction

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Agenda



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 - Scope of Review
 - Level of Prove
 - Petition Granted, What's Next?
- Evidence Preservation Order (a quick overview)



Provisional Attachment Order

Highlights



- Ex-parte process
- Minimal application fee
- (Generally) short examination period
- Without prejudice – multiple petitions likely

Sources of Law



- Taiwan – A civil law country
- Major sources of law re: provisional attachment:
 - Taiwan Code of Civil Procedures (TCCP), *Ch. VII Provisional Remedies Proceeding*
 - Taiwan Compulsory Enforcement Act (TCEA), *Ch. V Enforcement of Provisional Attachment and Provisional Injunction*

How to Apply



- Power of Attorney
 - Required for engaging local counsel(s)
 - Preparation process could be lengthy
 - Executed by a representative (Chair, CEO, CLO, etc.)
 - Notarization **REQUIRED**
 - Legalization/Authentication by a competent Taiwan Representative Office **REQUIRED**
 - Scanned copy only **TEMPORARILY** acceptable

How to Apply (Cont.)



- Application brief (like a motion), setting out:
 - Parties, and their representatives, if applicable
 - Subject claim and underlying facts
 - Ground(s) for provisional attachment
 - Competent court
 - Domicile/place of business, or location of property to be attached

How to Apply (Cont.)



- Application fee
 - Payable upon application
 - Application fee: NT\$1,000 (approx. US\$32), per application
 - Compulsory enforcement: 0.8% of claim amount

Scope of Review



- Art. 526 of TCCP: “... a preliminary showing of the claim and the ground(s) for the provisional attachment.”
- In principle, two elements:
 - Establish preliminary showing of “**subject claim**”
 - Establish preliminary showing of “**ground(s) for provisional attachment,**” or the “*necessity of preservation*”

Scope of Review (Cont.)



- The “Subject Claim”:
 - The same claim as the principal action
 - Limited court review
 - Court should not decide on the merit of dispute

Scope of Review (Cont.)



- The “Necessity of Preservation”:
 - Opinion split at Supreme Court level
 - Basically, two approaches:
 - Relaxed approach [e.g. Supreme Court 2016 Tai-Appeal Ruling No.106]
 - Stringent approach [e.g. Supreme Court 2017 Tai-Appeal Ruling No.917]
 - Granted mostly based on relaxed approach and overruled on stringent approach

Level of Prove



- How to establish “preliminary showing”?
 - evidence produced capable of creating a **weak, roughly-so mental impression** on the judge [Supreme Court 2015 Tai-Appeal Ruling No.712]
 - Substantially lower than as required by “proving” (i.e. preponderance of evidence in civil actions)

Level of Prove (Cont.)



- How to establish “preliminary showing”?
 - Element “subject claim”:
 - Some relevant evidence is enough
 - E.g. agreements, communications, correspondence...
 - State a reasonable claim based on evidence
 - Cursory review by the court

Level of Prove (Cont.)



- How to establish “necessity of preservation”?
 - Can require lots of evidence, some are unlikely to obtain, under stringent approach
 - Under relaxed approach, only a showing of drastic gap between the claim amount and the debtor’s assets and properties is enough
 - Can submit public information, such as company registration record, published judgements, or even news articles, etc.

Level of Prove (Cont.)



- “Preliminary showing” supported by security bond
 - Petitioner can post a bond, at court’s discretion
 - Normally set at 1/3 of the claim amount
 - Court has authority to request security bond even where preliminary showing has been established

Level of Prove (Cont.)



- “Necessity of preservation” based on potential likelihood of foreign enforcement
 - A deemed “necessity of preservation” under Art. 523 of TCCP
 - E.g. A foreign entity seeking attachment of its foreign opponent’s local assets
 - Handy tool for a foreign company seeking injunctive protection in Taiwan

Petition Granted, What's Next?



- Creditor
 - Must enforce the order within 30 days
 - Examine financial-info at tax authorities
 - If insufficient assets, can let lapse without prejudice and petition again later
- Debtor:
 - Petition the court to order creditor to file principal action within a prescribed period
 - For a foreign entity, proofs such as written confirmation from ICC Arbitration is sufficient
 - Post 100% security bond for revocation of attachment



Evidence Preservation Order

Evidence Preservation Order



- Ex-parte proceeding by motion of plaintiff
- Particularly useful in IP infringement cases
- If motion granted, IP court would conduct an investigation on-site to look for and preserve the evidence
- Recent trend shows IP court would rather demand opposing party to voluntarily produce evidence



Thank you for your attention!

Q & A