

# CIVIL LITIGATION

## Preservative Relief



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## I. Introduction

In a lawsuit for money damages, the attachments of assets are a fundamental resource for plaintiffs whether they are individual private investors or big institutional conglomerates and banks who are unclear of the defendant's financial situation. This is even more so in a country such as Cambodia where it is often difficult to ascertain a person's assets.

The purpose of this report is to give practical information of and regarding how an Attachment of Assets works in Cambodia and its relation to the Code of Civil Procedure of 2006. This report should act as guidance to lawyers who are interested in securing judgments for their clients and as an informative aid for businessmen in making strategic decisions concerning the deployment of moveable assets.

This report will also be useful for students researching Cambodian Attachment of Assets Law, legal practitioners whose job requires them to use and have reference to the Law on Attachment of Assets, as well as ordinary citizens who need or want to understand their rights in order to protect their property and monetary interests.

The report is set out in eighteen sections. The eighteen sections in total document the steps necessary to obtain and/or challenge an action for Attachment of Assets from commencement of the action in Court to the execution of the Judgment.

## II. Brief History of Attachment of Assets

The Code of Civil Procedure 2006 was adopted by the General Assembly and the Senate respectively on May 26, 2006 and June 23, 2006. It was promulgated by the King on July 06, 2006 and was implemented in July 2007.

With the implementation of the Code, the remaining Laws and regulations from the previous regimes, namely the 1963 Civil Procedure Code of the First Kingdom of Cambodia (1953-1970), Laws and Regulations of the People's Republic of Kampuchea (1979-1989), the Laws of the State of Cambodia (1989-1993) are abrogated in parts that are contrary to the Code. The Law on Enforcement of a Civil Judgment (1992) and the Law on Legal Costs (1993) are completely abrogated per the instructions of the Code of Civil Procedures 2006. However, the implementation of this Code shall not in any way affect other laws and regulations that are currently in force, except for some provisions that are contrary to the Code. Therefore, in practice, the Cambodian courts follow these laws, regulations, and guidelines of the Ministry of Justice.

The following are certain laws governing the attachment of assets that are in effect in the Kingdom of Cambodia:

- The Code of Civil Procedure 2006 (CCP);
- Law on the Organization and Functioning of the Court dated February 1993: This law stipulates the organization of the courts and their jurisdiction within Cambodia. The Cambodian court is classified into the High Courts and Lower Courts. The High Court consists of the Appeal Court and the Supreme Court whereas the Lower Courts consist of Provincial Courts, Municipal Courts, and a Military Court. The Military Court is one of the Lower Courts but it has only jurisdiction on military disciplines and military property. However, please note that this law cannot be implemented in criminal cases (see Article 611 of Code of Criminal Procedure);
- Law regarding the Ratification of New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) dated May 16 2001. This law determines the procedure and jurisdiction of Cambodian courts related to the recognition and enforcement of foreign arbitral awards.

- Circular of the Ministry of Justice No. 05 on Instruction to Implement the Criminal Procedure, dated November 18, 1993;
- Circular of the Ministry of Justice No. 117 dated January 31, 1997 on the execution of the definitive judgments and other court decisions;

### III. Judicial Measures Available for Plaintiffs to Obtain Preservative Relief

The claim for preservative relief can be made by motion on the basis of judicial proceeding when the plaintiff ("**Creditor**") wishing to preserve his/her rights has an apprehension that execution will become impossible or extremely difficult by reason of alteration of the state of the property of the debtor in execution, or that significant damage or imminent risk will arise affecting the status of one of the parties in respect of the right in issue.

The court may issue a ruling of provisional disposition of the subject matter in dispute if there is an apprehension that execution will become impossible or extremely difficult by reason of alteration of said subject matter. Where deemed necessary in order to avoid significant damage or imminent risk to the Creditor in relation to the right in dispute, the court may issue a ruling of provisional disposition establishing a provisional status.

A ruling of provisional disposition establishing the provisional status may not be issued without holding either oral arguments or examination which the debtor is able to attend, provided that this shall not apply if there are extraordinary circumstances such as would prevent the attainment of the objective of the motion for ruling of provisional disposition if such arguments or examination were held.

In this process, the court may order any disposition that it deems necessary to attain the purpose of a motion of provisional disposition, such as requiring a debtor to perform a specified act, enjoining a debtor from performing a specified act, ordering a debtor to effect performance of the debt, ordering a custodian to take custody of the subject matter or other disposition.

In practice, there are two possible scenarios: (1) upon the motion of the Creditor, the court may instruct the debtor to voluntarily pay compensation, damage or debt settlement by indicating a specific time period and amount of money to be paid without mention of attachment; (2) if the court recognizes the claim and mentions in its judgment, the possibility to attach the debtor's property upon the Creditor's motion. In the first situation, the Creditor with a notice from the Judgment Executor about the debtor's unwillingness to effect the payment of debt may ask the court to issue an "Order of Attachment" (deika sãmrach roeub aus); only with this order may the Judgment Executor proceed with attachment. In the second situation, the Creditor may bring the judgment to the Judgment Executor to proceed with attachment.

In principle, the Creditor may request the bailiff or execution court to attach the debtor's property if there is a judgment bearing the executing clause.

Preservative execution is implemented on the basis of an authenticated copy of a preservative ruling; provided that preservative execution against or for persons other than the party indicated in the ruling of preservative execution shall be implemented on the basis of an authenticated copy of the ruling barring an execution clause. Preservative execution shall not be carried out after 2 weeks have passed since the day the preservative ruling has been served on the Creditor. However it should be noted that preservative execution may be carried out before the preservation ruling is served on the debtor (Article 562 of CPP).

Generally, after the Creditor has got a ruling of preservative relief, he/she shall submit a motion to court [in case of attachment against immovable property] or bailiff [for the case of attachment against movable property] to execute such ruling. If Creditor doesn't submit the request the court will not start the proceeding of execution.

When the execution court finds that the necessary conditions are fulfilled, the court shall proceed to the execution. The method how to execute the ruling depends on the types of the ruling and object of the ruling (Art 565, 566, 567, 568, 570 of CPP).

In the case of provisional attachment against immovable, the execution shall be carried out by means of registering the provisional attachment (Art. 567(1) of CPP). In order to register the provisional attachment, the court clerk shall make the instruction for registration of provisional attachment and sent the instruction to the register office (Art. 567(3) of CPP). Upon registration of provisional attachment pursuant to said instruction, the register office shall send a certified copy of the register to the court clerk (Art. 567(4), Art. 420(2) of CPP) and the court clerk shall place said certified copy in the case record.

In addition, it should be noted that during the waiting period before the case is settled, if the plaintiff has reasonable grounds to suspect that the debtor, will evade payment of the debt by absconding, removing property, or other action, he/she can submit motion to court of first instance in order to issue the preservative relief ruling to put a lien on the property. The Creditor can apply to prevent the loss of such property while waiting for a final judgment on attachment if the debt is specific and deadline for debt payment has expired. A motion of seizure of property must be deposited at the court clerk's office of either the Provincial Court or Municipal Court.

#### IV. Process and Requirements for Attachment of Assets

In principle, the Creditor may request the judgment executor to attach the debtor's property if there is a definitive judgment bearing the executing clause. Otherwise, the Creditor does not have the right to request the judgment executor to attach the debtor property.

There are two possible ways to obtain a decision to attach the debtor's property:

The Creditor asks the court in a Complaint to attach the debtor's property and the court confirms in its judgment that the possibility to attach the property exists. (The plaintiff may only make a claim to seize the property after the deadline of paying debt expires and when having the definitive judgment on the debt repayment).

If the definitive judgment only orders the payment of debt, but does not mention the attachment, the Creditor may ask the court to issue an Order of Attachment (Deika Samrach Roeb Aus) when the Creditor has identified any debtor property.

Under Article 9 of CPP, the attachment of assets shall be enforced wherever there is the debtor's property even at his/her residence, temporary residence or at the public places. According to this article, the court may consider the presence or absence of property in Cambodia, when determining if it is reasonable to suspect that the debtor by removing property, or other action, will evade payment of the debt. The presence of property in Cambodia may also be the only basis for Cambodian jurisdiction in the attachment matter, if the debtor does not reside in Cambodia.

## V. Types of Preservative Relief

The court may issue a ruling of provisional disposition of the subject matter in dispute if there is an apprehension that execution will become impossible or extremely difficult by reason of alteration of said subject matter.

Where deemed necessary in order to avoid significant damage or imminent risk to the Creditor in relation to the right in dispute, the court may issue a ruling of provisional disposition establishing a provisional status.

A motion of provisional disposition with regards to attachment of assets may not be issued without holding either oral arguments or examination which the debtor is able to attend, provided that this shall not apply if there are extraordinary circumstances such as would prevent the attainment of the objective of the motion for ruling of provisional disposition if such arguments or examination were held. (Art. 548 of CPP)

There are three types of preservative relief (Article 521 of CPP). The preservative reliefs are: (i) Provisional Attachment, (ii) Provisional Disposition of Subject Matter of Dispute, (iii) Provisional disposition establishing a provisional status.

**Provisional Attachment:** Disposition restricting the disposition of property of the debtor in order to safeguard [future] execution of a claim having as its subject matter the payment of money.

An Attachment is an act by which a Creditor claims for seizing the tangible property of a debtor to place it in the court's possession in order to sell it to satisfy the debt. The attachment is a formal decision made by the court, which has to be enforced by the enforcement authorities. The Creditor claims for an attachment of assets unless he or she has a definitive judgment from the court which orders to do so. The attachment cannot be obtained unless the plaintiff applies to the provincial court or municipal court (Tolakar Khet/ Tolarka Krong) for attachment. The court may decide to grant attachment in any property belonging to the debtor, to an extent the property correspond to a certain value, but the court, generally, does not identify the property to be attached.

In principle, the party must have reasonable grounds/merit before filing petition for an attachment order to be issued from the provincial court or municipal court. First, the plaintiff has to prove that it has a claim from the debtor, and second the plaintiff has to provide reasonable grounds about the debtor probability of absconding, removing property, or other action, to evade payment of the debt. In practice it is also necessary that the benefit to the plaintiff will exceed any threatened damage to the debtor. But in the period when waiting for the deadline to be expired, if the Creditor doubts the part or the whole of property can be lost; and the Creditor can request to the Court to take temporary protective measures to hold the property.

There are certain procedures regarding obtaining an attachment of property:

First, the party has to file a motion to the court by explaining that he or she want the judgment bearing the attachment of debtor's property in case of the debtor's failure to repay the debt.

The motion must include the following:

- The names or appellations and addresses of the parties together with the names and addresses of their respective legal representatives;

- The details of the ruling for preservative relief that is sought;
- The rights or legal relationship that are to be preserved; and
- The necessity of the preservative relief.

Second, in case of the judgment does not mention the attachment, the petitioning party can request the court to issue an Order of Attachment.

Third, in case of emergency or necessity, the petitioning party can request the court to issue the Temporary Measures, such as Emergency Interim Order in Absentia or Contradictory Emergency Interim Order.

In every case, the petitioning party or Creditor has to show that he or she has reasonable grounds, and the judge will use his/her discretionary power to decide whether to issue the attachment of property.

The attachment must be based on a decision of the court and needs to be enforced by the appropriate authorities. If there is a likelihood that the debtor will dispose of the property, the Creditor may apply for an Order to restrain such a disposal. It is a measure to temporarily protect the right of the Creditor. It applies to various property of the debtor, and it prevents the debtor with bad intention from losing or selling the property to the third party, etc. It applies to the movable, immovable and claim and other property right.

Example: B (debtor) owes A (Creditor) 20 million riels. B has deposited the amount of 25 million riels at a Bank in Cambodia. In the case of claim for the repayment of the loan, the proceeding takes time. This may lead to the loss of A's benefit if B's deposit at the bank is withdrawn and disposed of. Therefore, in order to protect this benefit, A may file a motion to the court to seek a ruling for a provisional attachment of B's account so as to ensure the future enforcement of the A's right when he wins the case. So, after the ruling for a provisional attachment of B's account, B cannot withdraw his money.

It secures the right over the payment of money, and it may apply to the movable, immovable and Claim or other property right.

Provisional Disposition of Subject Matter of Dispute: Disposition for the maintenance of the status quo of the subject matter of the dispute, in cases where there is an apprehension that alteration of the status thereof would render it impossible, or extremely difficult, for the Creditor to enforce his/her rights.

This measure is aimed at maintaining the status quo of the subject matter of the dispute. It is a measure to protect the subject matter of the dispute. In this case, if the Creditor does not think of filing a motion for provisional disposition of the subject matter of the dispute, it may be difficult to enforce the judgment after he has won the case. However, if the Creditor files the motion for the provisional disposition of the subject matter of dispute, the damage may not occur, even if the debtor transfers or sales subject matter of dispute to other because the subject matter is under provisional disposition, and when the Creditor wins the case, he will be able to enforce his rights in relation to the subject matter of the dispute.

Example: A bought a car from B for 10 million riels. A has already paid the amount to B, and is waiting for the transfer of ownership and handover of the car from B. However, upon the date of the transfer, B did not agree to hand the car over. A filed a case against B to demand the handover of the car as stated in the sale contract. The court may take a long time in the proceeding to establish whether A has the right over the car. Within this time, B may sell the car to a third party, and if so, it would be a disadvantage to A. Therefore, A can file a motion for the court to issue a rule for provisional disposition of the car so that B cannot sell or

transfer the car to a third party. Through this, A's car won't be lost or transferred. If the court can establish A's right over the car, then A can exercise his right over the car.

It preserves the right to claim the subject matter of the dispute, which is other than the right over the payment. It applies only to the subject matter of the dispute.

Provisional disposition establishing a provisional status: Disposition establishing a provisional condition until a judgment becomes final and binding, where this is necessary in order to avoid significant damage or imminent risk to the Creditor in relation to the right in dispute.

It is a measure to establish the provisional status of a party who files a motion while waiting for the litigation proceeding to be concluded. It is aimed at avoiding significant damage due to delay in establishing the existence of the Creditor's right. It is a necessary procedure to establish a right of the Creditor in order for him to continue the proceeding. If the court does not establish this provisional status, the Creditor may find it difficult to assert his rights against the adversary until he gets the final judgment. This provides the party filing the motion with more chances to avoid significant damage to the right in dispute.

After the court has issued the ruling on time to determine the provisional status, the risk of damage can be reduced to a minimum.

Example 1: A owns a plot of land. B starts building a structure on that land. A filed the case to the court to seek the removal of the structure. If A waits till he wins the case, it may be difficult for him to remove the structure because it could be close to the completion or completed. However, if A files the motion from the beginning to stop the construction, it would be easy for him to remove it. If A doesn't submit a motion to the court, A will be in a difficult situation as mention above.

Example 2: There is a small passage leading to the main road. A normally takes that passage. One day B built a structure to close that passage. In this case, A can file a motion for the provisional removal of the construction to the court while the court is considering the case.

It avoids significant damage to the right due to the delay in the determination of the right. It establishes the provisional status so that a party may not take a severe loss. The effect of provisional attachment and provisional disposition of subject matter of dispute is keeping the present condition but the effect of provisional disposition establishing provisional status is changing the present condition and getting temporary satisfaction.

#### VI. Specificity of Application for Attachment

The plaintiff is not required to specify the property to be attached, but he/she has to have a definitive judgment bearing attachment or an order bearing attachment. The plaintiff can identify the property to be attached later after discovering the property of the debtor or garnishee. The enforcement authorities may also locate the debtor property and to designate the property to be attached. However, the enforcement measures are more effective when the plaintiff is able to identify and suggest to the enforcement authorities certain property or garnishees.

In relation to movable property, Article 9 of CPP disposes that the attachment can be performed at any place where the debtor's movable property is discovered, either at the debtor's home or at the debtor's temporary residence or in public place or streets. As for immovable property, the Creditor has to identify the property by attaching a copy of deed or title certificate to the application for an attachment (Art. 8 of CPP). That means the enforcement authorities have to locate the debtor's property and to designate the property to



be attached. The effectiveness of the enforcement measures may, however, be dependent on the plaintiff's ability to identify and suggest to the enforcement authorities certain property or garnishees.

## VII. Characteristics of Preservative Relief

### 1. Provisional

The ruling of preservative relief is made on a temporary basis. It does not have any impact on the judgment of the litigation or it does not cause any change to the judgment. Although the ruling is made by the court, the right over the debt or other rights claimed in the litigation do not yet establish that they exist or do not exist.

### 2. Urgent

The proceeding in issuing the ruling is done on an urgent basis to protect the legal interests or prevent the possible damage in the future from happening. So, judge has the discretion to choose whatever proceeding they think necessary. It is seldom used at the oral argument proceeding because it may cause damage to the subject matter of preservative relief by the debtor. The judge often uses the proceeding of interviewing the Creditor. The judge just examines the documentary evidence or requires some preliminary showing. Preliminary showing shall be made based on evidence that permits of immediate examination. The ruling takes effect for two weeks from the date of serving the ruling on the Creditor. If the Creditor does not implement the ruling within this period, it will no longer be effective. This ruling does not have to include an execution clause. To speed up the proceeding, exclusive jurisdiction is required by law. It means that the party cannot change the jurisdiction by agreement.

### 3. Subordinated

The proceeding of preservative relief is a subordinate procedure to suit in principal case in some points. As mentioned above, the ruling of preservative relief is done on a provisional basis, so it does not have an effect on the suit and it is determined by the exclusive jurisdiction. The court to which the suit is filed has the exclusive jurisdiction over this ruling of preservative relief. Therefore, a party shall apply for such a ruling to the court where the case is adjudicated. In conclusion, the ruling of preservative relief is under the jurisdiction of the court where the case is adjudicated or of the court of first instance where the subject matter of provisional attachment or the thing in dispute is located (Article 540-1 of CPP).

Upon motion of the debtor, the court shall order the Creditor to file suit in principal case within the period deemed reasonable by the court. If the Creditor does not file the suit within that period, the court has the right to cancel the ruling upon the motion by the debtor (Article 557-1, 3 of CPP).

The application for preservative relief can take place only when there is a legal relationship or the creation of right to be preserved or the necessity for preservative relief. Where there is an extinction of the rights or legal relationship to be preserved or the necessity of preservation or the circumstances have changed, not only the court that issued the ruling of preservative relief but also the court hearing the principal case may cancel such ruling. (Article 558-1 of CPP)

Example: Supposed there is a provisional attachment against the debtor's car to secure the repayment of the loan, and if the debtor later pay loan to the Creditor, the right or legal relationship between the debtor and Creditor would be extinguished, so the court, not only the court that issued a ruling of preservative relief but also the court hearing the principle case may cancel the ruling of the preservative relief upon motion (Art. 558(1) of CPP).



#### 4. Confidential

The Creditor applying for the preservative relief may fear that after the determination of right and legal relationship he/she cannot exercise his/her right, so the Creditor need to apply to the court for the preservative relief. Sometimes the court requires the Creditor to secure that he will not overuse his right, while the debtor may try to secretly dispose his property in order to avoid responsibility. This confidentiality is aimed at protecting the benefits of the Creditor. However, this proceeding is contrary to the Principle of La Contradiction. Based on this confidentiality, the court allows the Creditor to carry out the ruling before it is served on the debtor (Article 562-3 of CPP). The court may choose the proceeding for oral argument such as examination of evidence or parties, but such proceedings shall be done in public (Art. 115(2) of CPP) so there is risk that debtor or another third party may cause damage to the Creditor.

In order to avoid such risk, the court has to carry out the proceeding of preservative relief in a secret manner, so the court may choose the proceeding of examination of documents or Creditor to issue the ruling. (Art. 114(2) of CPP)

In cases where the debtor thinks that such disposition may unreasonably affect his benefit, the debtor is allowed to file an objection to the court. Through this objection, the court may accept, change or repeal this preservative relief.

There is a provision about security under Article 542 of CPP which states "a ruling of preservative relief may be made with or without requiring the provision of security".

#### VIII. Security for Preservative Relief

A ruling of preservative relief may be made with or without requiring the provision of security. (Art. 542 of CPP) If a requirement of security is required, security shall be made by deposit of money or valuable securities deemed reasonable by the court or preservative relief execution court with such court. (Art. 536 of CPP)

The special characteristic of the proceeding of preservative relief is that the court can issue a ruling without asking the debtor but just going through the preliminary showing. However, the ruling of preservative relief may sometimes be cancelled. In this respect, it may cause damage to the debtor's property, which is a great loss to the debtor. In order to prevent this loss from happening, the court requires the Creditor to provide security. The placement of security is aimed at preventing the overuse of the right.

In fact, it is aimed at guaranteeing the compensation of damages. In addition, the debtor has the priority right over this security among other Creditors (Article 539, 72 of CPP).

Where a motion is filed for a ruling of preservative relief, the applicant shall pay a fee in the amount of 5,000 riels to the court. The applicant shall pay in advance the amount set by the preservative relief execution court upon filing of a motion for execution as the costs required for execution of preservative relief. If the applicant does not pay such costs in advance, the preservative relief execution court can dismiss the motion for execution or cancel the execution procedures.

A Chomtoah appeal may be filed against a ruling to dismiss a motion if the Court dismisses for lack of payment. When a motion seeking preservative relief is submitted to a bailiff, the applicant shall pay a fee as provided separately.

## 1. Amount of Security

When the court requires the Creditor to provide security, the court shall carefully consider the consequences of the ruling. Therefore, the court shall try to assess the possible losses that may occur to the debtor. At the same time, the court shall think about the rights of the Creditor to be preserved. Not only does the court consider the possible loss, the court also has to consider the preliminary showing.

So, before issuing a ruling of preservative relief, the court just examines material for preliminary showing or/and ask the Creditor questions and after that service the ruling to the debtor. It means that if the preliminary showing is convincing, the amount of security is low or minimal. However, if it is not strong, the amount would be high or enormous. The last point to consider is the subject matter of the ruling: movable or immovable property or right over the debt. Based on the important points mentioned above, the court may find it easy to determine the amount of security that the Creditor is required to place.

## 2. Method of providing security (Article 536 of CPP)

Where the court orders to deposit security before the issuance of ruling, the deposit of security is to be a condition to issue the ruling. So the Creditor shall deposit security before ruling, in other words, the court does not issue the ruling until the security is deposited.

Where the court issue the ruling with the order to deposit security, the deposit of security is to be a condition to execute the ruling. So the Creditor shall deposit security before execution, in other words, the Creditor is not able to execute the ruling until the security is deposited.

The case of mock record is the first one, the case where the court orders to deposit security before the issuance of ruling. Therefore the Creditor deposits security prior to the ruling and submits "statement or deposit" to the court in order to show the deposit of security.

Security shall be made by deposit of money or valuable securities deemed reasonable by the court or preservative relief execution court with such court (Art. 536 of CPP) in other words the security can be deposited with the court of preservative relief execution or the court ordering the deposit of security.

In providing security, the deposit of cash or valuable securities could be placed so that the person who has the right over the security can claim them (Art. 539, 72 of CPP).

Article 73-1 of the CPP states that the person entitled to security as used in this Article means a person who receives a provision of security for the benefit of such person. The method of providing security will be detailed in the "Ministerial Ordinance on Court Deposit Procedures" by the Ministry of Justice, which is now in draft but is expected to be conclusive soon.

## IX. Damages to Debtor for Revocation of Provisional Remedies

Where a motion of objection to preservative relief has been filed, the court may, upon motion, order a stay of execution of preservative relief or reversal of disposition already executed until the court renders a decision concerning the ruling on the motion of objection, subject to the provision of security, but only in a case where preliminary showing has been given that clear circumstances constituting grounds for canceling the ruling of preliminary relief exist, and that there is an apprehension that execution of the ruling of preservative relief would cause irreparable damage [to the debtor] (Article 551-1 of CPP)

In practice, the damages to the debtor if attachment is vacated may be calculated by taking into consideration the security interest and possibly the legal fees, and other costs incurred by the victim party.

#### X. Enforcement of Attachments

If there is no appeal or objection from the debtor or third parties within 2 months from the date a judgment on a debt repayment case has been issued, the judgment becomes definitive and enforceable. Order of attachment is normally issued during the execution period of the definitive judgment. The attachment is to be enforced by the judgment executor, as described in earlier Questions.

If multiple plaintiffs/Creditors seek enforcement of judgments against the same property at the same time, the enforcement authority will enforce the judgments by simultaneous executions (however, in practice such executions may be done in different time). In this instance, all plaintiffs will have, in principle, equal priority rights of their claims to the property, except in the case as mentioned in section thirteen of Plaintiff's Priority Rights on Attached Assets. In the event of disputes between different parties (Creditors), the final decisions of the higher courts (Appellate Court and Supreme Court) may be sought.

#### XI. Procedure for challenging an Order of Attachment

There are three possible ways for the debtor to challenge the court order on the attachment.

First, during the enforcement of the attachment, the debtor may challenge the order of attachment by asking the civil court to issue a court order to stop the seizure of the property.

Second, if the attachment was already enforced, the debtor may challenge the order of attachment by making a direct petition to the chief of the municipal court.

Third, if the debtor challenges the order of attachment before it is enforced, and the chief of the court fails to make decision before the auction of the property, he/she shall submit the opposing complaint to the judgment executor.

Where a motion of objection to preservative relief has been filed, the court may, upon motion, order a stay of execution of preservative relief or reversal of disposition already executed until the court renders a decision under Paragraph 3 concerning the ruling on the motion of objection, subject to the provision of security, but only in a case where preliminary showing has been given that clear circumstances constituting grounds for canceling the ruling of preliminary relief exist, and that there is an apprehension that execution of the ruling of preservative relief would cause irreparable damage to the debtor.

In cases where a Chomtoah appeal court issued the ruling of preservative relief and the record of the case is still with the original court, that court may render a decision under Paragraph 1.

In its ruling on a motion of objection to preservative relief, the court shall cancel, modify or affirm the ruling already made in accordance with Paragraph 1. (Article 551 of CPP)

Upon motion of the debtor, in a ruling of cancellation of a ruling of preservative relief the court may order the Creditor to return any object delivered or money paid by the debtor, or any object used or held in custody by the Creditor, as the case may be, pursuant to the canceled ruling. (Article 555 of CPP)

## XII. Jurisdictional Basis by Attachment of Assets

In order to make the procedure clear, the motion for the ruling of preservative relief must be in writing (Art. 534 (a) of CPP 2006).

### 1. Lack of jurisdiction

The court having jurisdiction over the principal suit, or the court of first instance having jurisdiction over the objects to be attached or the subject matter of the dispute, shall have jurisdiction over the preservative relief case (Article 540-1 of CPP).

Where the object to be attached or the subject matter of the dispute is a claim, the claim shall be deemed to be located in the locus of the third party debtor, provided that in the case of claims having as their subject matter the delivery of vessels or movables, the claim shall be deemed to be located in the locus of such object (Art 9 of CPP).

When a motion is filed with a court, the court must investigate the existence of non-existence of jurisdiction as well as appropriateness of the motion.

If the court finds that it lacks jurisdiction over the preservative relief case, it shall transfer the case to a court having jurisdiction, upon motion or on its own authority (Art. 539, Art. 19(1) of CPP)

Execution of provisional attachment against movables shall be carried out by means of the bailiff, of the court of the first instance having jurisdiction over the location of the movables, taking possession of the subject matter (Article 565-1 of CPP).

Execution of provisional attachment against vessels shall be carried out by means of registration of attachment or by the bailiff being ordered to confiscate the certificate of registry, etc. of the vessel and submit same to the court of execution of preservative relief. These two methods may be used at the same time (Article 568-1 of CPP).

When provisional attachment is carried out by means of registration of attachment, the court that issued the attachment ruling shall have jurisdiction as the court of execution of preservative relief. When provisional attachment is carried out by means of ordering confiscation of the vessel's certificate of registry, etc, the court of first instance having jurisdiction over the territory where the vessel is located shall have jurisdiction as the court of execution of preservative relief (Article 568-2 of CPP).

### 2. Jurisdiction Conferred by Address

Article 8 states that actions against the following types of persons shall be brought in the court of first instance that has jurisdiction over the location indicated below:

A natural person:

[1] his/her domicile; [2] the location of residence, where such natural person does not have a domicile within Cambodia, or where his/her domicile is unknown; or [3] his/her last known domicile, where such natural person does not have a location of residence within Cambodia, or where the location of his/her residence is unknown.

A Cambodian juridical person:

[1] the location of its administrative headquarters or business office; or [2] the location of the domicile of the entity's representative or other principal person in charge of the operations of the entity, where there is no administrative headquarters or business office.

A foreign juridical person

[1] the location of the entity's administrative headquarters or business office in Cambodia; or [2] the location of the domicile of the entity's representative or other principal person in charge of the operations of the entity in Cambodia, where there is no administrative headquarters or business office within Cambodia.

### 3. Jurisdiction based on property

Jurisdiction based on property is conferred by Article 9 of CPP. The following types of actions may also be brought in the court having jurisdiction over the location set forth below:

Actions demanding performance of obligations:

- The location where the obligations are to be performed;

Actions demanding payment of money on bills or checks:

- The location where payment on the bill or check is to be made;

Actions demanding performance of obligations against persons who have no domicile in Cambodia or those whose domicile is unknown:

- The location of the defendant's property which is the subject of the claim or security interest, or which may be seized;

Actions demanding performance of obligations against juridical persons that have no administrative headquarters or business office in Cambodia, or those whose administrative headquarters or business office is unknown:

- The location of the defendant's property which is the subject of the claim or security interest, or which may be seized;

Actions against persons having an administrative headquarters or business office and pertaining to business transacted therein:

- The location of the administrative headquarters or business office;

Actions based in tort:

- The location where the alleged tort occurred;

Actions pertaining to immovable property:

- The location of the immovable;

Action pertaining to registration:

- The location at which the registration is required;

Actions pertaining to deceased's estate:

- the location of the domicile of the deceased at the time the inheritance commences, or if such person does not have a domicile in Cambodia or his/her domicile is unknown, the location of his/her residence, or if such person does not have a location of residence in Cambodia or his/her location of residence is unknown, the location of his/her last known domicile.

The presence of the debtor's property is sufficient for an attachment and the petitioning party for the attachment must have reasonable grounds in order to request the judge to issue the decision regarding attachment. Under Article 9 of CPP, the attachment of assets shall be enforceable wherever the debtor's property is located at his/her residence, temporary residence or at the public places. If the debtor does not reside in Cambodia, the presence of property in Cambodia may also be the only basis for Cambodian jurisdiction in the attachment matter.

The Creditor must have reasonable grounds in order to request the judge to issue the decision regarding attachment. In practice, an attachment order has no extraterritorial effect; however with the exception that the country of the debtor living has bilateral treaty or agreement with Cambodia.

### XIII. Recognition and Enforcement of Foreign Arbitral Awards

There is no attachment obtained in support of a proceeding on the merit in another country unless that country has bilateral agreement with Cambodia. However, since Cambodia has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, foreign arbitral award can be enforceable in Cambodia if the party seeking to enforce the award successfully petitioning the Appeals Court for the award recognition.

### XIV. Plaintiff's Priority Right on Attached Assets

In absence of bankruptcy and insolvency laws in force, the priority of Creditor depends on type of Creditors. In relation to real property, the mortgagor of a registered mortgage is in first priority.

According to Article 490 of CPP, the priority and amount of distribution shall be recorded in accordance with the agreement of all the Creditors on the date of distribution, if such agreement is achieved, and in other cases in accordance with the provisions of the Civil Code, Commercial Code or other relevant law.

Also, for the purposes of distribution, claims subject to a certain time stipulation which have not matured shall be deemed to have matured. (Art. 490 of CPP) It should be noted that a person holding a lien or pledge can make a demand for distribution by submitting documentary evidence of such right.

In general case of liquidation, the priority rights is classified in accordance with the general principle of liquidation and precedent cases, as follows:

- Government Tax
- Employees
- Banks
- Other Creditors/suppliers

### XV. Effect of Service of an Order of Attachment on Future Assets

Under Article 407 of CPP and in practice, the effect of attachment of salaries and other claims for continuing payments shall extend to payments to be received after the attachment, up to a limit being the total of the claim and execution costs.

There is no time limit with regards to the effects of an order of attachment and it will continue to be in effect until the total of the claim and execution costs are paid in total. Therefore, the effect of service of an order of attachment can apply to the letter of credit that a bank has

confirmed or issued in benefit of the debtor as well as the bank account under the name of the debtor even if the assets came into possession of the debtor after the time of the service of the attachment order.

If the attachment order is in support of a proceeding in another forum, the requirements are that:

Starting from the receipt of an attachment order of arbitration from another forum, the Plaintiff shall apply for its recognition and execution at the Appellate Court in Cambodia with the enclosure of its original copies or certified copies and other related documents. The Debtor hereby is informed within 10 days after the Appellate Court receive the application for recognition and execution of the award. The Debtor may appeal against the award within 60 days after the Appellate Court receive the application for recognition and execution of the award. The Appellate Court shall render a decision to recognize or not to recognize the award within 60 days after receiving the appeal of the Debtor. If either party to the dispute is not satisfied with the decision of the Appellate Court, the party may make a grievance complaint at the Supreme Court within 60 days after the issuance of the judgment of the Appellate Court. Within 60 days after filing the complaint, the Supreme Court shall conduct a hearing without returning the case to the Appellate Court for retrial, and render a definitive judgment as its first and last resort.

#### XVI. Obligations of Third Party to give Notice of Assets

Under Article 405 of CPP, upon motion by the Creditor in execution, at the time of service of the ruling for execution, the execution court shall notify the third party debtor to state within two weeks of the date of service the following matters:

- Whether the attached claim exists or not, and if so, the type, amount and details thereof;
- Whether the third party debtor intends to make payment, the scope of payment or the reasons for not paying, as the case may be;
- if there is any person having rights with priority over those of the Creditor in execution in respect of the claim in question, a description of such person and of the type and scope of such priority rights; and/or
- Whether there has been any attachment or provisional attachment execution by other Creditors.

If the third party debtor intentionally or negligently fails to make a statement or makes a false statement, he will liable to compensate any loss incurred thereby.

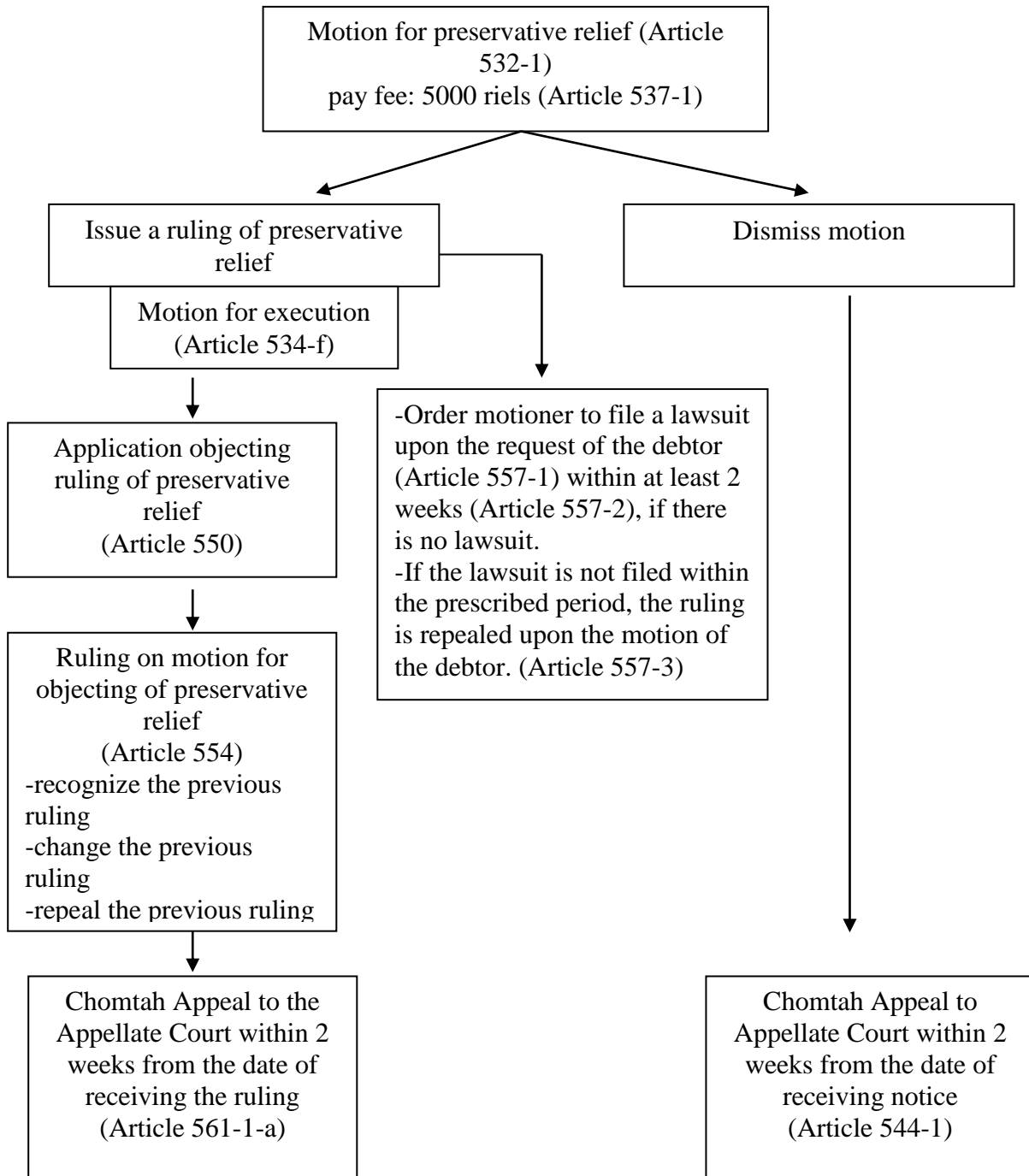
In practice, the enforcement authorities may conduct an investigation of the property of debtor to be attached and check if there are any liens on the property of the debtor. A third party, generally, has an obligation to give the enforcement authorities all information concerning all dealings that the third party has with the debtor.

In case that a third party has interest/benefit in connection with the property of debtor, the third party has to report to the judgment executor in writing. The court may impose a penalty, such as a fine or a warrant of arrest if a third party refuses to comply with it.



XVII. Flow Chart for Proceeding of Preservative Relief

Flow Chart  
Proceeding of Preservative Relief at the court of first instance



\*After the Appellate Court has decided on the Chomtah appeal, another Chomtah appeal cannot be filed (Article 259-3 of CPP).

\*The application for preservative relief shall be filed to the court where the case is adjudicated. However, if the trial takes place at the Supreme Court, the application shall be filed to the court of first instance (Article 540 of CPP).

#### XVIII. Attachable Properties over Salary

Property: Any property movable or immovable, concrete or abstract property can be confiscated to be sold and repay the Creditor with the exceptions noted in Question 16 below.

Salary: Salary of officials and employees, fees and remuneration's of servants and workmen can be confiscated only in the proportion shown below. The remuneration shall be calculated on monthly basis:

Salaries, wages and other rights in the nature of compensation for work shall only be attachable to the extent set forth below, in respect of the balance remaining after deduction of taxation and social insurance premiums from the amount receivable by the debtor in execution on the date of payment of such compensation:

- None of the amount up to the amount of 200,000 riels per month;
- One quarter of the amount exceeding 200,000 riels up to the amount of 600,000 riels per month;
- One third of the amount exceeding 600,000 riels up to the amount of 2,000,000 riels per month;
- One half of the amount exceeding 2,000,000 riels up to the amount of 4,000,000 riels per month;
- Two thirds of the amount exceeding 4,000,000 riels up to the amount of 6,000,000 riels per month; and
- The whole of the amount exceeding 6,000,000 riels per month.

Rights to receive livelihood support, educational support, medical support or other support having the objective of protecting the livelihood of the debtor in execution cannot be attached.

#### XIX. Non-attachable Assets

The following is a list of Properties that are exempt from attachment (Art. 380 of CPP)

The following property cannot be attached:

- Clothing, bedding, furniture, kitchen appliances and house fittings that are indispensable for the daily living of the debtor in execution and his/her family living under the same roof;
- Foodstuffs and fuel sufficient for two months for the debtor in execution and his/her family living under the same roof;
- Money or articles received by the debtor in execution from the central or local government pursuant to any livelihood, educational, medical or other welfare program;
- Apart from the money prescribed in Item (c), money up to 1,000,000 riels;

- Tools, fertilizer, domestic livestock and their feed that are necessary for the work of persons engaged predominantly in agriculture by their own labor, together with seeds and other agricultural products required in order to continue such work until the next harvest;
- Nets and other fishing equipment, feed, young fish and other fishery products that are necessary for the work of catching or raising fish by persons engaged in fisheries predominantly by their own labor;
- Tools and other objects that are necessary for the work of technicians, artisans laborers and other persons engaged in an occupation or business predominantly using their own intellectual or physical work; provided that objects that are held with the object of sale or lease can be attached;
- Buddha images, sacred books and other objects directly used in worship or religious ceremonies;
- Genealogical records, diaries, trade books and similar objects required by the debtor in execution;
- Objects commemorating awards or other honors received by the debtor in execution or a family member;
- Books and other equipment necessary for study at a school or other educational institution by the debtor in execution or a family member residing under the same roof;
- An invention or work that has not yet been laid open;
- An artificial hand, leg, ear, eye or other prosthetic body part, or other thing necessary for nursing any sickness of the debtor in execution or a family member residing under the same roof; and
- Firefighting equipment, apparatus, escape apparatus and other equipment required to be installed by law for prevention of disaster and security of buildings and other structures.

Diplomatic property and other sovereign property are generally protected from attachment under international law (Vienna Convention on Diplomatic Relation).

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