



PROVISIONAL EMERGENCY MEASURES IN COMMERCIAL DISPUTES

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The below Legal Summary prepared by BLG contains a brief discussion with tailored practical information for investment and business activities in Vietnam.

The article concentrates on the application of provisional emergency measures in commercial disputes.

During the course of civil disputes resolution at court, in order to ensure the ability to settle the case and enforce the judgment, one or more provisional emergency measures (also known as “interim relief orders”) may be invoked. This article provides a concise overview of key points about provisional emergency measures, especially in commercial litigation.

1. Definition of Provisional Emergency Measures

Provisional emergency measures are court orders during the settlement of civil lawsuits to provisionally (i) address urgent needs of the involved parties; (ii) protect their lives, health, properties; gather and protect evidence against irrecoverable damage; (iii) ensure judgment enforcement (*hereinafter referred to as “PEM”*).

Article 114 of the Civil Procedure Code 2015 (“*CPC 2015*”) lists 16 named types of PEM, with the following being particularly relevant to commercial dispute:

- a) Attaching the assets in dispute.
- b) Prohibiting the transfer of property rights of the assets in dispute.
- c) Prohibiting any change in the status quo of the assets in dispute.
- d) Freezing accounts at banks or other credit institutions – the State treasury; freezing assets at places of deposit.
- e) Freezing assets of the obligor.
- f) Prohibiting involved parties from performing or forcing them to perform certain acts.
- g) Prohibiting obligors from leaving Vietnam.

2. When to Apply Provisional Emergency Measures

2.1 Request by Involved Parties

Generally, the court shall apply PEM upon request of involved parties except some special cases of marriage and family or labor disputes, where the court, at their discretion, decides to apply PEM^[1].

Inter alia^[2], the application has to include the reasons for application and the specific PEM requested.

2.2 General Conditions to Apply Provisional Emergency Measures

^[1] Article 135 of Civil Procedure Code 2015; Article 5 of Resolution No. 02/2020/NQ-HDTP dated 24 September 2020 (“*Resolution 02*”).

^[2] Article 133 of CPC 2015.

Pursuant to Article 111 of CPC 2015 and Article 2 and Article 3 of Resolution 02, one or more PEM provided in Article 114.1 of the CPC 2015 shall be applied in the following circumstances:

a) For Cases Being Settled at the Court

- To temporarily and immediately address urgent requests of the involved party, or else, their life, health, honor, dignity and assets would be adversely affected.
- To collect and protect evidence when the involved party obstructs the taking of evidence or when the evidence is being destroyed or likely to be destroyed or difficult to collect thereafter.
- To preserve the status quo and prevent irreparable damage.
- To secure the judgment settlement or enforcement.

b) For Cases Being Submitted for Acceptance

- Due to an emergency situation.
- To immediately protect evidence when it is being destroyed or likely to be destroyed or difficult to collect thereafter.
- To prevent probable severe material or mental consequences.

2.3 Special Conditions to Apply Specific Provisional Emergency Measure

In addition to the general conditions, the court may consider special conditions before applying any PEM. Those special conditions are specified from Article 115 to Article 132 of CPC 2015 and Resolution 02.

To protect the legitimate interests of the persons subject to provisional emergency measures and to prevent the rights abuse, the requestor seeking PEM from point (a) to (e) mentioned in Section 1^[3] has to provide the court with security interests in form of guarantee; money, precious metals, precious stones, or valuable papers in an escrow account equivalent to not less than 20% of the provisional value of the property subject to PEM application, unless there is clear evidence that the loss or damage is less than that threshold.

^[3] Article 136 of CPC 2015.

The requestors shall bear legal responsibility for their request and have to compensate in case of improper application of PEM^[4].

2.4 Circumstances not to apply provisional emergency measures

Despite all general and special conditions, provisional emergency measures shall not be applied under the following circumstances^[5]:

- a) The application of PEM leads to the shutdown of enterprises or cooperatives.
- b) The prohibition of the transfer of property rights over the property in dispute; the freezing of obligor's asset shall not be applied to (i) assets associated with the security that takes effect against a third party; (ii) asset auctioned with full payment settled by the buyer, unless the auction result is cancelled in accordance with applicable laws or otherwise agreed upon by the involved parties.
- c) The freezing of the bank account shall not be applied to the account used to discharge liability to the credit institution as agreed in a credit agreement.
- d) Provisional emergency measures shall not be applied to some specific assets such as (i) assets banned from circulation as prescribed by law; property serving national defense, security, and public interests; (ii) personal property (like food) for essential needs; drugs used for prevention and treatment; necessary items of disabled people, items used to care for the sick; common worship items according to local customs; necessary and not-so-great-value labor tools used as essential means of living of the person subject to provisional emergency measure; essential living items; (iii) property of enterprises (like drugs) serving the prevention and treatment of employees; food, tools, and other assets serving meals to workers; daycare centers, schools, health facilities and other equipment, means and assets belonging to these establishments, if the property is not intended for business; equipment, means and tools to ensure occupational safety, fire prevention and safety, prevention and control of environmental pollution.

3. How to Apply Provisional Emergency Measures

The consideration and application of provisional emergency measures shall follow these steps:

^[4] Article 113 of CPC 2015.

^[5] Article 4 of Resolution 02.

- a) The requestor submits an application to a competent court.
- b) The court considers the application and enclosed evidence within a time limit.
- c) After consideration, the court will decide whether to apply provisional emergency measures or not.

4. Practice Notes

The application of PEM offers numerous advantages to the stage of adjudication or enforcement of courts' judgments. However, the application, in fact, faces several difficulties.

The process could be lengthy. As mentioned, the requestors have to submit applications and provide evidence to the court. When considering, the court may ask for amendment and supplement of evidence. However, there are no guiding regulations on (i) the time limit for the court to re-consider the amended request; (ii) legal consequences.

Moreover, the process may encounter obstruction from the obligor. According to Article 13.1 of Resolution 02, when requesting for security interests before applying some specific PEM, the court needs to anticipate the potential damage. As a result, the court may ask the person subject to the PEM application to estimate and temporarily calculate the potential damage. This may result in discrepancies between estimation by requestor and by obligor, making it difficult for the court to come to a decision.

One of the most required PEM in commercial disputes is the freezing of bank accounts or assets of the obligors. However, this measure often encounters difficulties as follows:

Firstly, requestor has to provide the account balance of the obligor when requesting the court to freeze their bank account^[6]. This is unrealistic as the bank shall not reveal such information unless required by laws^[7]. In such case, the requestors have to prove

^[6] **Article 12.2 of Resolution 02.**

2. The court may only freeze accounts and property with a value equal to or lower than the property obligations that the person subject to the provisional emergency measure is obliged to conduct. The applicant of provisional emergency measures is obliged to prove the value of the frozen account or property. The applicant of provisional emergency measures is responsible for the truthfulness and accuracy of the documents relating to the determination of the value of the property and the account to be frozen. The court shall determine the value of the property subject to the application of provisional emergency measures based on documents, evidence and relevant provisions.

^[7] Article 14 of the Law on Credit Institutions 2010, Article 4 of Decree No. 117/2018/ND-CP.

that they fail to gather information despite making efforts and then ask the court to collect those information from the bank^[8].

Secondly, the bank in question may notify the obligor to withdraw all the money in the account before the PEM is applied.

Thirdly, determining the value of the property to be frozen may be time-consuming. According to Article 12.2 of Resolution 02, the court may only freeze assets and bank accounts equivalent to the obligations of the person subject to the PEM application. However, there are no detailed guidelines on the competent authority to make appraisal, procedures, and time limit.

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^[8] Article 106.2 of CPC 2015.



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