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PRELIMINARY INJUNCTION AND PROVISIONAL ATTACHMENT IN TEN QUESTIONS



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1. What is Preliminary Injunction and Provisional Attachment?

Preliminary injunction is a kind of legal protection which may be implemented before or during the legal dispute and is brought to assure protecting the claimant's rights whose he may obtain at the end of an ongoing litigation process or a future litigation process to be initiated.

Provisional attachment is seizing the debtor's property temporarily with a court order in order to guarantee that the creditor can receive his pecuniary claims at due date. retrospective rights and receivables due to the fact that they have been recruited as permanent workers.

2. What is the Key Difference Between Preliminary Injunction and Provisional Attachment?

To rule a provisional attachment decision, the court seeks more concrete evidence and conditions comparing to preliminary injunction. In principle, the preliminary injunction relates to any material fact that the claimant may assert; whereas provisional attachment is related to securing the receivable with any asset subject to the provisional attachment. In other words, preliminary injunction aims to protect the subject matter of the litigation, whereas the provisional attachment is for protecting the receivables requested from the debtor in the litigation process.

3. When and How Can It Be Demanded?

Before initiating the lawsuit, preliminary injunction shall be requested from the court authorized and competent to hear the main lawsuit, whereas after initiating lawsuit, it shall only be requested from the court already hearing the lawsuit.

As a rule, provisional attachment is requested from the court located in the settlement place of the debtor. In case the lawsuit has been already initiated, it may be requested from the court already hearing the lawsuit.

4. Which Court is Authorized and Competent?

Before initiating the lawsuit, preliminary injunction shall be requested from the court authorized and competent to hear the main lawsuit, whereas after initiating lawsuit, it shall only be requested from the court already hearing



5. What are the Main Points to Consider While Ruling a Preliminary Injunction and a Provisional Attachment?

The receivable subject to provisional attachment should be a due pecuniary claim. Claiming the receivable shall not be depended on a condition and the receivable shall not be provided with the guarantee.

The subject of the preliminary injunction should be adversarial between the parties. Therefore, the court will seek the possibility to suffer any loss due to loss of any rights or difficulty to obtain any right in case the current situation changes.

6. What are the exceptional cases in Provisional Attachment?

Even if a receivable is provided with the guarantee, provisional attachment may be requested for the guarantor if the guarantee is not provided by that guarantor.

In case the amount of the guarantee is not able to pay the receivable, or the receivable is documented under bill of exchange or there is any dispute over the guarantee; the claimant may request the provisional attachment from the authorized and competent court.

Exceptionally, the creditors may request the provisional attachment of the commercial enterprise fully or partly, in case of any claim arising out a pledge over such commercial enterprise.

7. May Provisional Attachment Be Requested for Undue Debt?

A provisional attachment decision might be made even if the debt doesn't become due. However, it is necessary to make such decision that the debtor does not have a specific settlement place or attempts to hide his assets from the court and his creditors.



8. Is It Necessary to Make a Deposit Payment for a Provisional Attachment or Preliminary Injunction?

In principle, provisional attachment or preliminary injunction decisions shall only be implemented in return of a deposit payment which is determined by the court and should be paid by the creditor.

In some exceptional cases envisaged in related legislation, it is also possible to take provisional attachment or preliminary injunction decisions without any deposit payment.

On the other hand, the debtor has right to remove or change such injunction in return of a deposit payment determined by the court and paid by him.



9. Does the Debtor Has Right to Object the Provisional Attachment or Preliminary Injunction Decisions?

Preliminary injunction and provisional attachment decisions are considered as interim decisions. In principle, the debtor has right to object the conditions of the preliminary injunction; the competency of court and the deposit payment.

Mainly, the debtor may object the competency of court who make preliminary injunction decision without listening him; the conditions based on the decision; and the deposit payment.

10. Is There any Liability of Indemnity in case of any Unjustified Provisional Attachment or Preliminary Injunction Decision?

The creditor is liable to recover the loss for the damages caused due to the unjustified preliminary injunction decision, in case it is determined that the decision is not requested with just cause when the preliminary injunction is requested; or the preliminary injunction decision is removed automatically or upon an objection.

Likewise, the creditor is liable for compensation for pecuniary and non-pecuniary damages of the debtor, in case of unjustified provisional attachment.

Answers. Not theories.

Gokce Attorney Partnership

Editors:



Doç. Dr. Ali Paslı
ali.pasli@gokce.av.tr



Aslihan Kayhan
aslihan.kayhan@gokce.av.tr



Ece Özkan
ece.ozkan@gokce.av.tr



Mehmet Topluıldız
mehmet.topluyildiz@gokce.av.tr

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Please contact us at
contact@gokce.av.tr
0 212 352 88 33

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