


Asset Preservation in Aid of Litigation and Arbitration in China

In commercial litigations and arbitration proceedings involving assets in mainland China, asset preservation is a popular tool for the plaintiff/applicant to ensure a future enforcement of judgment or arbitral award. Given the speediness and the effectiveness of asset preservation in practice, some applicants also use it to pressure the defendant/respondent into settlement at the early stage of a lawsuit. As such, it would be helpful for multinational companies faced with dispute in mainland China to know how asset preservation works.

I. Circumstances Where Chinese Courts Are Willing to Grant an Application for Asset Preservation

Article 100 of the Civil Procedure Law of the PRC (Civil Procedure Law) provides that “in a case where, for the conduct of a party or other reasons, it may be difficult to enforce a judgment or any other damage may be caused to the [opposing] party, a people’s court may, upon application of the opposing party, issue a ruling on preservation of the party’s property.”

However, in practice, there is no unified standard for Chinese courts to approve asset preservation applications. For example, Chinese courts are more likely to approve an application where the claim is made for recovery of principal rather than liquidated damages; applications against companies are more likely to be approved than those against individuals; and if an application targets a foreign individual, Chinese courts tend to be extremely prudent. The



situation becomes more complex against the background of the COVID-19 pandemic; for the sake of a quick recovery of local economics and protection of the defendant's cashflow, even if the application targets the defendant's cash deposit in the bank, courts may choose to preserve its real estate instead.

The timing of filing for asset preservation is important. In contrast to pre-litigation asset preservation, it is much easier for the applicant to get the court's approval when the case is on the docket.

II. Fees and Costs for Asset Preservation

Before taking a preservative measure, Chinese courts usually order the applicant to provide a guarantee, which might be in the form of cash, real estate, letter of guarantee, or insurance policy. Among all types of guarantees, an insurance policy is often preferable to the applicant, because: (1) the insurance premium is usually lower than the fee charged by the guarantee company, and it is rarely economical for commercial entities or individuals to provide real estate or cash deposits as guarantee; (2) the liability for a wrongful application is shifted to the insurance company if the applicant stays in compliance with the insurance policy; and (3) if the application is rejected by the court, many insurance companies are willing to refund the premium to the applicant.

Apart from the guarantee, the applicant is required to pay the court's filing fee, which is subject to the claimable amount and capped at RMB 5,000.

III. Asset Information is Required

An applicant shall provide specific information about the defendant's assets to the court, including: (1) bank accounts; (2) real estate; (3) securities; (4) vehicles; and (5) other clues about assets.

To many applicants, the key issue is how to track down such asset information. Here are some places to look:

1. Some online credit monitoring platforms might provide useful information about private companies, like Tianyancha (天眼查) and Qichacha (企查查); for public companies, additional information can be discovered in their annual reports.
2. Some defendants may have disclosed their bank accounts on contracts, invoices, or other transactional documents.
3. At times, upon the request of the applicant, some courts may investigate the defendant's assets via Internet-based property inquiry and control systems, which are linked between the courts and major banks and real estate transaction centers.

Applicants should consult an experienced Chinese lawyer for tailored and creative investigation strategies to uncover such information.

IV. As a Defendant, What Should I Do to Lift an Asset Preservation Order?

For companies that find their bank accounts frozen out of blue, the damage of a wrongful asset preservation order could be serious. Seeking legal advice immediately as the assets get preserved is always advisable.

Although the Civil Procedure Law does provide that the applicant should compensate for the defendant's losses if the asset preservation is wrongfully made, to recover its losses, the defendant may have to initiate a separate proceeding after the applicant's case concludes. This might cause the defendant's assets to be frozen for one year or even longer. In case of emergency, the defendant may provide a guarantee to the court to lift the asset preservation order, which may add extra financial pressure before the application is approved by the court.

V. The Takeaway

Asset preservation is a powerful sword for the applicant in commercial litigation and arbitration proceedings. It is therefore equally important for the applicant to know how to wield this sword, and for the defendant to know how to shield from it. Please reach out to your litigation counsel when asset preservation issues arise.