

涉自贸区(港)诉讼指南

The Free Trade Zone (Port) Litigation Guide

财产保全指南

財產保全指南

Guide on Property Preservation

海南省高级人民法院 印制

THE HIGHER PEOPLE'S COURT OF HAINAN PROVINCE

天涯海角廣場



财产保全指南 財產保全指南

Guide on Property Preservation

I. 当事人、利害关系人可以申请财产保全的情形：

當事人、利害關係人可以申請財產保全的情形：

A party or an interested party may apply for property preservation under the following circumstances:

1. 可能因当事人一方的行为或者其他原因，使判决难以执行或者造成当事人其他损害。

可能因當事人一方的行為或者其他原因，使判決難以執行或者造成當事人其他損害。

It may be difficult to execute a judgment or any other damages may be caused to a party for the conduct of the opposite party or for other reasons.

2. 利害关系人因情况紧急，不立即申请保全将会使其合法权益受到难以弥补的损害。

利害關係人因情況緊急，不立即申請保全將會使其合法權益受到難以彌補的損害。

The lawful rights and interests of an interested party will be irreparable damaged if an application for preservation is not filed immediately under urgent circumstances.

II. 申请财产保全应提交的材料

申請財產保全應提交的材料

Materials for Applying Property Preservation

1. 当事人、利害关系人申请财产保全，应当向人民法院提交申请书，并提供相关证据材料。申请书应当载明下列事项：

當事人、利害關係人申請財產保全，應當向人民法院提交申請書，並提供相關證據材料。申請書應當載明下列事項：

To apply for property preservation, a party or an interested party shall file a written application with the people's court, and provide relevant evidentiary materials. The written application shall include:

a) 申请保全人与被保全人的身份、送达地址、联系方式;

申請保全人與被保全人的身份、送達地址、聯系方式;

The identities, addresses for service of process, and contact information of the preservation applicant and respondent;

b) 请求事项和所根据的事实与理由

請求事項和所根據的事實與理由;

The preservation request and the facts and reasons on which it is based;

c) 请求保全数额或者争议标的

請求保全數額或者爭議標的;

The requested amount of property or subject matter of dispute for preservation;

d) 明确的被保全财产信息或者具体的被保全财产线索;

明確的被保全財產信息或者具體的被保全財產線索;

The specific information on the property to be preserved or the specific clues to the property to be preserved;

e) 为财产保全提供担保的财产信息或资信证明, 或者不需要提供担保的理由;

為財產保全提供擔保的財產信息或資信證明, 或者不需要提供擔保的理由;

The information on the property provided as security for property preservation or the credit certificate provided as security for property preservation or the reasons why no security needs to be provided for property preservation;

f) 其他需要载明的事项。

其他需要載明的事項。

Other matters required to be specified.

法律文书生效后, 进入执行程序前, 债权人申请财产保全的, 应当写明生效法律文书的制作机关、文号和主要内容, 并附生效法律文书副本。

法律文書生效後, 進入執行程序前, 債權人申請財

產保全的，應當寫明生效法律文書的制作機關、文號和主要內容，并附生效法律文書副本。

Where a creditor applies for property preservation after a legal instrument takes effect but before the enforcement procedure for the legal instrument commences, the authority producing the effective legal instrument and the document number and main content of the effective legal document shall be stated in the application, to which a photocopy of the effective legal instrument shall be attached.

III. 担保数额的确定 / 擔保數額的確定 The Amount of Security

1. 申请诉前财产保全的，应当提供相当于请求保全数额的担保。

申請訴前財產保全的，應當提供相當于請求保全數額的擔保。

An interested party applying for pre-action property preservation shall provide security equivalent to the amount of preservation requested.

2. 诉讼财产保全，根据案件的具体情况，由人民法院决定当事人是否应当提供担保以及担保的数额。人民法院依照民事诉讼法第一百条规定责令申请保全人提供财产保全担保的，担保数额不超过请求保全数额的百分之三十；申请保全的财产系争议标的的，担保数额不超过争议标的的价值的百分之三十。

訴訟財產保全，根據案件的具體情況，由人民法院決定當事人是否應當提供擔保以及擔保的數額。人民法院依照民事訴訟法第一百條規定責令申請保全人提供財產保全擔保的，擔保數額不超過請求保全數額的百分之三十；申請保全的財產系爭議標的的，擔保數額不超過爭議標的價值的百分之三十。

In a lawsuit, the people's court taking preservation measures shall determine whether the parties shall provide security and the amount of such security, based on the specific circumstances of the case. Where the people's court orders a preservation applicant to provide security for property preservation under Article 100 of the Civil Procedure Law, the amount of security shall not exceed 30% of the requested amount of property to be preserved; or if the

requested property to be preserved is the subject matter of dispute, the amount of security shall not exceed 30% of the value of the subject matter of dispute.

IV. 担保形式 / 擔保形式

The Formality of Security

1. 保全担保形式包括实物、现金、权利凭证担保和保证。

保全擔保形式包括實物、現金、權利憑證擔保和保證。

The formality of security of preservative measures includes physical goods, cashes, documents of title and warranties.

2. 申请保全人或第三人为财产保全提供财产担保的，应当向人民法院出具担保书。

申請保全人或第三人為財產保全提供財產擔保的，应当向人民法法院出具擔保書。

A preservation applicant or a third party that provides property as security for property preservation shall submit a letter of guarantee to the people's court.

3. 第三人为财产保全提供保证担保的，应当向人民法院提交保证书。

第三人為財產保全提供保證擔保的，应当向人民法法院提交保證書。

A third party that provides surety for property preservation shall submit a letter of guarantee to the people's court.

4. 保险人以其与申请保全人签订财产保全责任险合同的方式为财产保全提供担保的，应当向人民法院出具担保书。

保險人以其與申請保全人簽訂財產保全責任險合同的方式為財產保全提供擔保的，应当向人民法法院出具擔保書。

An insurer that provides security for property preservation by entering into a contract on property preservation liability insurance with a preservation applicant shall issue a letter of guarantee to the people's court.

5. 金融监管部门批准设立的金融机构为财产保全提供

担保的，应当向人民法院出具保函。

金融监管部门批准设立的金融机构为财产保全提供担保的，应当向人民法院出具保函。

A financial institution formed with the approval of a financial supervision authority provides security for property preservation shall issue a letter of guarantee to the people's court.

V. 其他问题 / 其他問題

Some Other Related Problems

1. 申请诉前财产保全，应当向人民法院提供明确的被保全财产信息。

申請訴前財產保全，應當向人民法院提供明確的被保全財產信息。

An interested party applying for pre-action property preservation shall provide the people's court with specific information on the property to be preserved.

2. 申请诉讼中财产保全，确因客观原因不能提供明确的被保全财产信息，可以提供具体财产线索。

申請訴訟中財產保全，確因客觀原因不能提供明確的被保全財產信息，可以提供具體財產線索。

Where a party applies for property preservation during an action and is unable to provide specific information on the property to be preserved for objective reasons, it may provide specific clues to the property.

3. 申请人在人民法院采取诉前保全措施后三十日内不依法提起诉讼或者申请仲裁的，应当及时申请解除保全。

申請人在人民法院採取訴前保全措施後三十日內不依法提起訴訟或者申請仲裁的，應當及時申請解除保全。

Where no action is instituted or no application for arbitration is filed by the preservation applicant within 30 days after the pre-action property preservation measures is taken, the preservation applicant shall apply for removal of preservation in a timely manner.