

Civil Provisional Remedies Act

(Act No. 91 of December 22, 1989)

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Chapter I General Provisions

(Purpose)

Article 1 The provisional seizure and provisional disposition of a disputed subject matter in order to preserve the fulfillment of a right comprising the merits of a civil suit, and provisional disposition that determines the provisional status of a relationship of the claims made in the civil suit (collectively referred to below as "civil provisional remedies") are governed by the provisions of this Act in addition to the provisions of other laws and regulations.

(Organization for Civil Provisional Remedies and the Court Enforcing a Provisional Remedy)

Article 2 (1) An order for a civil provisional remedy (referred to below as an "order for a provisional remedy") is issued by a court upon petition.

(2) The enforcement of a civil provisional remedy (referred to below as the "enforcement of a provisional remedy") is carried out by a court or a court

enforcement officer upon petition.

- (3) For the enforcement of a provisional remedy carried out by a court, the court issuing the disposition of enforcement pursuant to the provisions of this Act is to be the court enforcing the provisional remedy, and for the enforcement of a provisional remedy carried out by a court enforcement officer, the district court to which the court enforcement officer belongs is to be the court enforcing the provisional remedy.

(Optional Oral Arguments)

Article 3 The court may render a judicial decision on civil provisional remedy proceedings without holding oral arguments.

(Provision of Security)

Article 4 (1) Security to be provided pursuant to the provisions of this Act must be made by means of a statutory deposit of money or of securities (including book-entry transfer bonds, etc. prescribed in Article 278, paragraph (1) of the Act on Book-Entry Transfer of Corporate Bonds and Shares (Act No. 75 of 2001)) that the court that has ordered the provision of security finds reasonable, with an official depository within the jurisdictional district of the district court that has jurisdiction over the location of the court that has ordered the provision of security or the court enforcing the provisional remedy, or by other means specified by the Rules of the Supreme Court; provided, however, that if the parties concerned have made a special contract, that contract prevails.

- (2) The provisions of Articles 77, 79, and 80 of the Code of Civil Procedure (Act No. 109 of 1996) apply mutatis mutandis to the security referred to in the preceding paragraph.

(Access to Non-Electronic or Magnetic Case Records)

Article 5 (1) With regard to proceedings concerning an order for a provisional remedy or proceedings carried out by a court for the enforcement of a provisional remedy, an interested party may file a request with a court clerk to inspect or copy the hard-copy case records (meaning the portion of the case records excluding the electronic or magnetic case records as prescribed in paragraph (1) of the next Article), to be issued an authenticated copy, transcript, or extract of the case records.

- (2) The provisions of Article 91, paragraphs (4) and (5) of the Code of Civil Procedure apply mutatis mutandis to the request under the provisions of the previous paragraph.

(Access to Electronic or Magnetic Case Records)

Article 5-2 (1) With regard to proceedings concerning an order for a provisional remedy or proceedings carried out by a court for the enforcement of a provisional remedy, an interested party may file a request with a court clerk, as provided for by the Rules of the Supreme Court, to inspect something that, in the manner specified by the Rules of the Supreme Court, has been made show the content of the electronic or magnetic case records (meaning the part of the case record that constitutes information which has been recorded into a file stored on a computer (inclusive of its input and output devices; the same applies in this Article and the following Article) used by the court (these files are simply referred to as the "computer files" in Article 43, paragraph (1)) , pursuant to the provisions of this Act and any other laws and regulations; the same applies below in this Article) .

(2) With regard to proceedings concerning an order for a provisional remedy or proceedings carried out by a court for the enforcement of a provisional remedy, an interested party may file a request with a court clerk , as provided for by the Rules of the Supreme Court, to copy the information recorded in the electronic or magnetic case records , using an electronic data processing system specified by the Rules of the Supreme Court (meaning an electronic data processing system connecting a computer used by the court and a computer used by the other person involved in the procedure via a telecommunications line; the same applies to the next paragraph and the next Article) to record the information in a file stored on a computer that the person is using, or by any other means specified by the Rules of the Supreme Court.

(3) With regard to proceedings concerning an order for a provisional remedy or proceedings carried out by a court for the enforcement of a provisional remedy, an interested party may file a request with a court clerk, as provided for by the Rules of the Supreme Court, to issue a paper document containing the whole or part of the information recorded in an electronic or magnetic case records whose content the court clerk certifies, by the means specified by the Rules of the Supreme Court, to give information identical to what is recorded in the electronic or magnetic case records ; or to provide an electronic or magnetic record (meaning record used in computer data processing which is created in electronic form, magnetic form, or any other form that is otherwise impossible to perceive through the human senses alone; the same applies below)containing the whole or part of the information recorded in an electronic or magnetic case records, whose content the court clerk certifies, by the means specified by the Rules of the Supreme Court, to give information identical to what is recorded in the electronic or magnetic case records, using an electronic data processing system specified by the Rules of the Supreme Court to record it in a file stored on the computer that party is using, or any other means specified by the Rules of the Supreme Court.

(4) The provisions of Article 91, paragraph (5) of the Code of Civil Procedure apply *mutatis mutandis* to a request prescribed in paragraphs (1) and (2).

(Certifying Information Concerning the Case)

Article 5-3 With regard to proceedings concerning an order for a provisional remedy or proceedings carried out by a court for the enforcement of a provisional remedy, an interested party may file a request with a court clerk, as provided for by the Rules of the Supreme Court, to issue a document containing information concerning the case that the court clerk certifies by the means specified by the Rules of the Supreme Court; or to provide an electronic or magnetic record containing information concerning the case that the court clerk certifies by the means specified by the Rules of the Supreme Court, using an electronic data processing system specified by the Rules of the Supreme Court to record it in a file stored on a computer that the party is using, or by any other means specified by the Rules of the Supreme Court.

(Special Provisions on Access to the Case Records)

Article 5-4 Notwithstanding the provisions of the preceding three Articles, persons other than an obligee may not file a request under any of these paragraphs until the date for an oral argument or the date on which the obligor is summoned for interrogation is designated with respect to a petition for an order for a provisional remedy or until the obligor is served with an order for a provisional remedy.

(Exclusive Jurisdiction)

Article 6 The court jurisdictions prescribed in this Act are exclusive jurisdictions.

(*Mutatis Mutandis* Application of the Code of Civil Procedure)

Article 7 Except as otherwise provided for, the provisions of Parts I through IV of the Code of Civil Procedure apply *mutatis mutandis* to proceedings for civil provisional remedies, unless contrary to their nature. In this case, the term "a person stated in the items of Article 132-11, paragraph (1)" in Article 109-4, paragraph (1) of the Act is deemed to be replaced with "a person stated in the items of Article 132-11, paragraph (1) (in procedures for enforcing provisional remedy, a person stated in each item of Article 19-3, paragraph (1) of the Civil Enforcement Act (Act No. 4 of 1979) (including as applied *mutatis mutandis* pursuant to Article 19-6 of the Act) as applied *mutatis mutandis* pursuant to the provisions of Article 46 of the Civil Provisional Remedies Act), and the term "provisions" in Article 132-11, paragraph (1), item (ii) of the Act is deemed to be replaced with "provisions (including the cases where it is applied *mutatis mutandis* pursuant to Article 9 of the Act)."

(Rules of the Supreme Court)

Article 8 Beyond what is provided for in this Act, necessary matters concerning proceedings for civil provisional remedies are to be specified in the Rules of the Supreme Court.

Chapter II Proceedings Concerning Order for Provisional Remedy

Section 1 General Provisions

(Special Provisions on Order for Clarification)

Article 9 If necessary, in order to clarify the allegations of a party with regard to the facts concerning a dispute, the court may have a person who handles administrative affairs for the party or who assists the party and whom the court considers appropriate, to give a statement on the date for oral arguments or the date of interrogation.

Article 10 Deleted

Section 2 Order for Provisional Remedy

(Jurisdiction of a Case Involving Order for Provisional Remedy)

Article 11 A petition for an order for a provisional remedy may be filed only if an action on the merits may be filed with a court in Japan, or if the property to be provisionally seized or the disputed subject matter is located in Japan.

Article 12 (1) A case involving an order for a provisional remedy is under the jurisdiction of the court with jurisdiction over the merits of the case or the district court with jurisdiction over the location of the property to be provisionally seized or the disputed subject matter.

(2) Notwithstanding the provisions of the preceding paragraph, if the action on the merits is an action related to patent rights, etc. prescribed in Article 6, paragraph (1) of the Code of Civil Procedure, the case involving the order for a provisional remedy is under the jurisdiction of the court with jurisdiction over the merits of the case; provided, however, that if the district court with jurisdiction over the location of the property to be provisionally seized or the disputed subject matter is a court specified in the items of paragraph (1) of that Article, the court is also to have jurisdiction over the case involving the order for a provisional remedy.

(3) The court of the first instance is the court with jurisdiction over the merits of the case; provided, however, that the court of the second instance has jurisdiction if the merits of the case is pending in the second instance.

- (4) If the property to be provisionally seized or the disputed subject matter is a claim (meaning a claim prescribed in Article 143 of the Civil Enforcement Act (Act No. 4 of 1979); the same applies below in this Article), the claim is deemed to exist at the location of the general venue of the obligor of the claim (referred to below as the "third party obligor"); provided, however, that a claim for delivery of a vessel (meaning a vessel prescribed in Article 112 of the same Act; the same applies below) or movables (meaning movables prescribed in Article 122 of the same Act; the same applies below) or a claim secured by security right over a property is deemed to exist at the location of the property.
- (5) The provisions of the main clause of the preceding paragraph apply mutatis mutandis when the property to be provisionally seized or the disputed subject matter is a property right prescribed in Article 167, paragraph (1) of the Civil Enforcement Act (referred to below as "other property right") for which there is a third party obligor or an equivalent person (excluding cases prescribed in the following paragraph).
- (6) If the property to be provisionally seized or the disputed subject matter is other property right whose transfer requires registration, such property right is deemed to exist at the place of the registration.

(Petition and Prima Facie Showing)

- Article 13 (1) A petition for an order for a provisional remedy must clarify its purpose and the rights or relationship of rights that must be preserved and the necessity of preservation.
- (2) Prima facie showing of the rights or relationship of rights that should be preserved and the necessity of their preservation must be made.

(Security for Order for Provisional Remedy)

- Article 14 (1) An order for a provisional remedy may be issued while requiring provision of security or requiring provision of security within a certain period of time that is found to be reasonable as a condition for implementing the enforcement of the provisional remedy, or not requiring the provision of security.
- (2) In the case referred to in the preceding paragraph in which security is to be provided, if there are grounds that make it difficult for the party to make a statutory deposit with an official depository provided for in Article 4, paragraph (1) without delay, the party may, with the court's permission, make a statutory deposit with an official depository within the jurisdictional district of the district court having jurisdiction over the obligee's domicile or the location of the obligee's office or other places that the court finds to be appropriate.

(Authority of the Presiding Judge)

Article 15 An order for a provisional remedy may be issued by the presiding judge, but only if there are pressing circumstances.

(Reasons for the Ruling)

Article 16 A ruling on a petition for an order for a provisional remedy must be accompanied by its reasons; provided, however, that if the ruling is made without holding oral arguments, it is sufficient if an outline of the reasons is given.

(Service)

Article 17 An order for a provisional remedy must be served on the party.

(Withdrawal of Petition for Order for Provisional Remedy)

Article 18 It is not required for the obligor's consent to be obtained in order to withdraw a petition for an order for a provisional remedy, even after an objection to the provisional remedy or a petition for revocation of provisional remedy is filed.

(Immediate Appeal Against a Judicial Decision of Denial)

Article 19 (1) An obligee may file an immediate appeal against a judicial decision to deny a petition for an order for a provisional remedy, within an inalterable period of two weeks from the day on which the obligee has been notified of the decision.

(2) No further appeal may be filed against a judicial decision to deny an immediate appeal referred to in the preceding paragraph.

(3) The provisions of the main clause of Article 16 apply mutatis mutandis to a ruling on an immediate appeal referred to in paragraph (1).

Subsection 2 Order for Provisional Seizure

(Necessity of Order for Provisional Seizure)

Article 20 (1) An order for provisional seizure may be issued when it is likely that a judicial enforcement regarding a claim for payment of money will not be possible, or it is likely that significant difficulties will arise in implementing enforcement.

(2) An order for provisional seizure may be issued even when a claim provided for in the preceding paragraph is subject to a condition or a time limit.

(Object of Order for Provisional Seizure)

Article 21 An order for provisional seizure must be issued with regard to a

specific property; provided, however, that an order for provisional seizure of movables may be issued without the subject matter being specified.

(Money to be Released from Provisional Seizure)

Article 22 (1) An order for provisional seizure must specify the amount of money that the obligor must deposit in order to obtain a stay of enforcement of a provisional seizure or in order to have a provisional seizure that has already been enforced annulled.

(2) A deposit of money referred to in the preceding paragraph must be made with an official depository within the jurisdictional district of the district court that has jurisdiction over the location of the court that has issued the order for provisional seizure or the court that enforces the provisional remedy.

Subsection 3 Order of Provisional Disposition

(Necessity of Order of Provisional Disposition)

Article 23 (1) An order of provisional disposition with regard to a disputed subject matter may be issued when it is likely that the obligee's exercise of its right will not be possible or will be extremely difficult due to any changes to the existing state of the subject matter.

(2) An order of provisional disposition that determines a provisional status may be issued when the status is necessary in order to avoid any substantial loss or imminent danger that would occur to the obligee with regard to the relationship of the rights in dispute.

(3) The provisions of Article 20, paragraph (2) apply mutatis mutandis to an order of provisional disposition.

(4) An order of provisional disposition referred to in paragraph (2) may not be issued without holding oral arguments or interrogation at which the obligor may be present; provided, however, that this does not apply when circumstances are such that the objective of the petition for an order of provisional disposition cannot be achieved if the proceedings are held.

(Means of Provisional Disposition)

Article 24 In order to achieve the objective of a petition for an order of provisional disposition, the court may issue a disposition ordering the obligor to take or prohibit from taking certain actions, ordering the obligor to tender performance, or having the object to be placed in the custody of a custodian, or issue other necessary dispositions.

(Money for Release from a Provisional Disposition)

Article 25 (1) After hearing the opinion of the obligee, the court may specify in

an order of provisional disposition the amount of money that the obligor should deposit in order to obtain a stay of enforcement of a provisional disposition or have a provisional disposition that has already been enforced annulled, but only if the objective of the exercise of a right to be preserved can be achieved through the receipt of a monetary payment.

- (2) The provisions of Article 22, paragraph (2) apply *mutatis mutandis* to the deposit of money referred to in the preceding paragraph.

(Order of Provisional Disposition Prohibiting the Transfer of Possession Issued without Specifying the Obligor)

Article 25-2 (1) The court may issue an order of provisional disposition prohibiting the transfer of possession (meaning an order of provisional disposition issued to preserve the right to claim the delivery or surrender of the disputed subject matter, which contains the particulars stated in the following items; the same applies in this Article, Article 54-2, and Article 62) for a disputed subject matter constituting real property without specifying the obligor if there are special circumstances that make it difficult to specify the obligor prior to the enforcement of the order:

- (i) prohibiting the obligor from transferring the possession of the disputed subject matter, and ordering the obligor to release the disputed subject matter from its possession and deliver it to a court enforcement officer; and
- (ii) having the disputed subject matter placed in the custody of a court enforcement officer and having the court enforcement officer issue a public notice to the effect that the obligor is prohibited from transferring the possession of the disputed subject matter and that the court enforcement officer has custody of the disputed subject matter.

- (2) When an order of provisional disposition prohibiting the transfer of possession under the provisions of the preceding paragraph is enforced, the person who, through the enforcement, is released from the possession of the real property that constitutes the disputed subject matter becomes the obligor.

- (3) An order of provisional disposition prohibiting the transfer of possession under the provisions of paragraph (1) is not required to be served upon the obligor if the order is not enforced within the period referred to in Article 43, paragraph (2). In this case, a ruling under the provisions of Article 79, paragraph (1) of the Code of Civil Procedure as applied *mutatis mutandis* pursuant to Article 4, paragraph (2) to release the security that was provided pursuant to the provisions of Article 14, paragraph (1), becomes effective through the court notifying the petitioner of the ruling by a method it finds appropriate.

Section 3 Objection to Provisional Remedy

(Filing of an Objection to Provisional Remedy)

Article 26 A obligor may file an objection to an order for a provisional remedy with the court that issued the order.

(Judicial Decision to Stay the Enforcement of a Provisional Remedy)

Article 27 (1) If an objection to a provisional remedy is filed, the court may, upon petition, order a stay of enforcement of the provisional remedy or order the annulment of a disposition that has already been enforced by requiring the provision of security or on condition that security will be provided, during the period until the court reaches a judicial decision under the provisions of paragraph (3) in its ruling on the objection to the provisional remedy, but only if a prima facie showing is made with regard to circumstances that are clearly grounds for setting aside the order for the provisional remedy and the likelihood that enforcing the provisional remedy will cause damage which cannot be compensated.

- (2) When the court in charge of an appeal has issued an order for a provisional remedy, if the case record exists at the court of prior instance, the court of prior instance may also render a judicial decision under the provisions of the preceding paragraph.
- (3) The court must, in its ruling on the filing of an objection to a provisional remedy, set aside, change, or approve a judicial decision it has already made pursuant to the provisions of paragraph (1).
- (4) No appeal may be taken against a judicial decision under the provisions of paragraph (1) and the preceding paragraph.
- (5) The provisions of Article 15 apply mutatis mutandis to a judicial decision under the provisions of paragraph (1).

(Transfer of a Case)

Article 28 When it is necessary in order to avoid a substantial delay in a case involving an objection to a provisional remedy or to ensure equity between the parties, in consideration of the domicile of a party, a witness to be examined, or a person of reference to be questioned, or of any other circumstances, the court may, by petition or on its own authority, transfer the case to another court that has jurisdiction over the case involving the order for provisional remedy.

(Proceedings for Objection to Provisional Remedy)

Article 29 The court may not render a ruling on a filing of an objection to a provisional remedy without holding oral arguments or holding interrogation at which both parties may be present.

Article 30 Deleted

(Conclusion of Proceedings)

Article 31 In order to conclude proceedings, the court must decide the date on which proceedings are to be concluded, allowing a reasonable period of time; provided, however, that on the date of oral argument or interrogation at which both parties may be present, the court may declare that proceedings are to be immediately concluded.

(Ruling on Filing of Objection to Provisional Remedy)

Article 32 (1) The court must, in a ruling on a filing of an objection to a provisional remedy, approve, change, or set aside the order for the provisional remedy.

(2) In the ruling referred to in the preceding paragraph, the court may, as a condition for implementing or continuing enforcement of a provisional remedy, require the obligee's provision of security within a certain period of time that the court finds to be reasonable, or may increase the amount of security required under the provisions of Article 14, paragraph (1) and require the obligee's provision of security in the amount of the increase within a certain period of time that the court finds to be reasonable.

(3) The court may make its ruling to set aside an order for a provisional remedy under the provisions of paragraph (1) conditional upon the obligor's provision of security.

(4) The provisions of the main clause of Articles 16 and 17 apply *mutatis mutandis* to the ruling referred to in paragraph (1).

(Judicial Decision of Restitution)

Article 33 If, based on an order of provisional disposition, an obligee has been delivered or surrendered an object, has received a monetary payment, or has used or had in its custody an object, the court may, at the petition of the obligor, order the obligee to return the object delivered or surrendered to them by the obligor, the money paid to them by the obligor, or the object used or held in custody by them, in a ruling to set aside the order of provisional disposition pursuant to the provisions of paragraph (1) of the preceding Article.

(Effect of Ruling to Set Aside Order for Provisional Remedy)

Article 34 In a ruling to set aside an order for a provisional remedy under the provisions of Article 32, paragraph (1), the court may declare that the ruling to set aside the order will not take effect until the expiration of a certain period of time that it finds to be reasonable, not exceeding two weeks from the day on which the ruling is served; provided, however, that this does not apply when

appeal pertaining to provisional remedy may not be filed against the ruling to set aside the order.

(Withdrawal of Filing of Objection to Provisional Remedy)

Article 35 It is not required to obtain the obligee's consent in order to withdraw a filing of an objection to a provisional remedy.

(Special Provisions on the Authority of Assistant Judges)

Article 36 An assistant judge may not independently render a judicial decision on a filing of an objection to a provisional remedy.

Section 4 Revocation of Provisional Remedy

(Revocation of Provisional Remedy by Reason of Failure to File an Action on the Merits)

Article 37 (1) At the petition of the obligor, the court that issued the order for a provisional remedy must order the obligee to, within a certain period of time that the court finds to be reasonable, file an action on the merits and submit a document or an electronic or magnetic record certifying the filing, or, if the obligee has already filed an action on the merits, to submit a document or an electronic or magnetic record certifying that the action is pending before a court.

(2) The period referred to in the preceding paragraph must be two weeks or more.

(3) The court must set aside the order for a provisional remedy at the petition of the obligor if the obligee fails to submit the document or the electronic or magnetic record referred to in paragraph (1) within the period under that paragraph.

(4) If the action on the merits referred to in paragraph (1) is withdrawn or denied after the document or the electronic or magnetic record referred to in that paragraph has been submitted, the document or the electronic or magnetic record is deemed not to have been submitted.

(5) With regard to the application of the provisions of paragraphs (1) and (3), the filing of an action on the merits is deemed to be the filing of a petition for conciliation with a family court if the case on the merits is a case prescribed in Article 18, paragraph (1) of the Act on Adjudication of Domestic Relations (Act No. 152 of 1947); the filing of a petition for labor tribunal proceedings with a district court if the case on the merits is a case prescribed in Article 1 of the Labor Tribunal Act (Act No. 45 of 2004); the procedures for commencing arbitration proceedings if an arbitration agreement exists with respect to the case on the merits; and an application for an adjudication of liability to compensate for damages (referred to as a "adjudication of liability" in the

following paragraph) prescribed in Article 42-12, paragraph (1) of the Act on the Settlement of Environmental Pollution Disputes (Act No. 108 of 1970) if the case on the merits is a case demanding compensation for damage related to environmental pollution prescribed in Article 2 of that Act.

- (6) If a conciliation case referred to in the preceding paragraph, labor tribunal proceedings referred to in the same paragraph, arbitration proceedings referred to in the same paragraph or proceedings for adjudication of liability referred to the same paragraph ends without a conciliation, a labor tribunal judgment (including when a conciliation is reached under the provisions of Article 16, paragraph (1) of the Civil Conciliation Act (Act No. 222 of 1951) as applied mutatis mutandis pursuant to the provisions of Article 29 of the Labor Tribunal Act, and when a labor tribunal case ends pursuant to the provisions of Article 24, paragraph (1) of the Labor Tribunal Act) an arbitration judgment or an adjudication of liability (including when an agreement between the parties is reached pursuant to Article 42-24, paragraph (2) of the Act on the Settlement of Environmental Pollution Disputes) being reached, the obligee must file an action on the merits within the same period as the period specified under the provisions of paragraph (1) starting from the date of the end of the case or the proceedings.
- (7) The provisions of paragraph (3) apply mutatis mutandis when the obligee has failed to file an action on the merits under the provisions of the preceding paragraph, and the provisions of paragraph (4) apply mutatis mutandis when an action on the merits referred to in the preceding paragraph is filed or the action is deemed to have been filed under the provisions of Article 22, paragraph (1) of the Labor Tribunal Act (including as applied mutatis mutandis pursuant to Article 23, paragraph (2) and Article 24, paragraph (2) of that Act) and subsequently has been withdrawn or denied.
- (8) The provisions of the main clause of Article 16 and Article 17 apply mutatis mutandis to the ruling under the provisions of paragraph (3) (including as applied mutatis mutandis pursuant to the preceding paragraph).

(Revocation of Provisional Remedy by Reason of Change in Circumstances)

- Article 38 (1) If the right or relationship of rights that should be preserved or the necessity to preserve the right no longer exists, or if there has been any other change in circumstances, the court that issued the order for the provisional remedy or the court hearing the case on the merits may set aside the provisional remedy upon the petition of the obligor.
- (2) The obligor must make prima facie showing of the change in circumstances referred to in the preceding paragraph.
- (3) The provisions of the main clause of Article 16, Article 17, and Article 32, paragraphs (2) and (3) apply mutatis mutandis to a ruling on the petition

referred to in paragraph (1).

(Revocation of Provisional Remedy by Reason of Special Circumstances)

Article 39 (1) If it is likely that an order of provisional disposition will cause damage which cannot be compensated or if there are other special circumstances, upon the petition of the obligor, the court that issued the order of provisional disposition or the court hearing the case on the merits may set aside the order of provision disposition, conditional upon the provision of security.

- (2) The obligor must make prima facie showing of the special circumstances referred to in the preceding paragraph.
- (3) The provisions of the main clause of Articles 16 and 17 apply mutatis mutandis to a ruling on the petition referred to in paragraph (1).

(Mutatis Mutandis Application of Provisions on Objection to a Provisional Remedy)

Article 40 (1) The provisions of Articles 27 through 29, Article 31, and Articles 33 through 36 apply mutatis mutandis to a judicial decision involving the revocation of a provisional remedy; provided, however, that the provisions of Articles 27 through 29, Article 31, Article 33, Article 34, and Article 36 do not apply to the judicial decision under the provisions of Article 37, paragraph (1).

- (2) When a petition to revoke a provisional remedy is filed with the court hearing the case on the merits other than the court that issued the order for the provisional remedy, and the case record exists at the court that issued the order for the provisional remedy, the court that issued the order for the provisional remedy may also make the judicial decision under the provisions of Article 27, paragraph (1) as applied mutatis mutandis pursuant to the preceding paragraph.

Section 5 Appeal Pertaining to Provisional Remedy

(Appeal Pertaining to Provisional Remedy)

Article 41 (1) An appeal pertaining to provisional remedy may be filed against a judicial decision on a filing of an objection to a provisional remedy or on a petition to revoke a provisional remedy (including a judicial decision pursuant to the provisions of Article 33 (including as applied mutatis mutandis pursuant to paragraph (1) of the preceding Article)), within an inalterable period of two weeks from the day on which the judicial decision is served; provided, however, that this does not apply to a judicial decision on a filing of an objection to a provisional remedy issued by a court in charge of an appeal.

- (2) If the court of prior instance receives an appeal pertaining to provisional

remedy, the court of prior instance must refer the case to a court in charge of an appeal without assessing the existence of grounds for the appeal.

- (3) No further appeal may be filed against a judicial decision on an appeal pertaining to provisional remedy.
- (4) The provisions of the main clause of Article 16, Article 17, and Article 32, paragraphs (2) and (3) apply *mutatis mutandis* to a ruling on an appeal pertaining to provisional remedy; the provisions of Article 27, paragraphs (1), (4), and (5), Article 29, Article 31, and Article 33 apply *mutatis mutandis* to a judicial decision on an appeal pertaining to provisional remedy; and the provisions of Article 349 of the Code of Civil Procedure apply *mutatis mutandis* when a judicial decision against which an appeal pertaining to provisional remedy may be filed becomes final and binding.
- (5) If the case record exists at the court of prior instance, the court of prior instance may also make a judicial decision under the provisions of Article 27, paragraph (1) as applied *mutatis mutandis* pursuant to the preceding paragraph.

(Judicial Decision to Stay the Effect of Ruling Setting Aside Order for Provisional Remedy)

- Article 42 (1) If an appeal pertaining to provisional remedy is filed against a ruling to set aside an order for a provisional remedy, the court in charge of an appeal may, upon petition, order a stay of the effect of the ruling to set aside the order for the provisional remedy by requiring the provision of security or on condition that security will be provided, during the period until the court reaches a judicial decision on the appeal, but only if a *prima facie* showing is made with regard to circumstances that are clearly grounds for setting aside the ruling of prior instance, and of the likelihood that setting aside the order will cause damage which cannot be compensated.
- (2) The provisions of Article 15, Article 27, paragraph (4), and paragraph (5) of the preceding Article apply *mutatis mutandis* to the judicial decision under the provisions of the preceding paragraph.

Chapter III Procedures for Enforcing Provisional Remedy

Section 1 General Provisions

(Requirements for Enforcing Provisional Remedy)

- Article 43 (1) The enforcement of a provisional remedy is to be implemented based on an authenticated copy of the order (in case of an electronic or magnetic record concerning an order for a provisional remedy recorded in a computer file, a certificate of information recorded (meaning a document describing the matters recorded in the computer file and certified by the court

clerk that the content of the document is identical to the matters recorded in the computer files; the same applies to the next Article, paragraph (2)); the same applies in this paragraph.) for the provisional remedy; provided, however, that the enforcement of a provisional remedy on or in the interest of a party other than the party indicated in the order for the provisional remedy is to be implemented based on an authenticated copy of the order for the provisional remedy with an attestation of enforceability attached to the order.

- (2) A provisional remedy may not be enforced when two weeks have elapsed from the day on which the order for the provisional remedy is served upon the obligee.
- (3) A provisional remedy may be enforced even before the order for the provisional remedy is served upon the obligor.

(Annulment of Enforcement of Provisional Remedy by Reason of Failure to Provide Additional Security)

- Article 44 (1) If a judicial decision is rendered to make the continuance of an enforcement of a provisional remedy conditional upon the provision of security pursuant to the provisions of Article 32, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 38, paragraph (3) and Article 41, paragraph (4); the same applies in this paragraph), the obligee must submit a document or an electronic or magnetic record certifying that they have provided security within the period specified under the provisions of Article 32, paragraph (2), to the court enforcing the provisional remedy or to the court enforcement officer within one week from the last day of that period.
- (2) If the obligee fails to submit the document or the electronic or magnetic record under the provisions of the preceding paragraph, the court enforcing the provisional remedy or the court enforcement officer must annul the disposition that has already been made to enforce the provisional remedy if the obligor submits an authenticated copy of the judicial decision or a certificate of information recorded referred to in that paragraph.
 - (3) The provisions of Article 40, paragraph (2) of the Civil Enforcement Act apply *mutatis mutandis* to the annulment of a disposition of enforcement pursuant to the provisions of the preceding paragraph.

(Special Provisions on the Court with Jurisdiction over Third Party Action Against Enforcement)

- Article 45 A third party action against the enforcement of a provisional remedy carried out by a high court as the court enforcing the provisional remedy falls under the jurisdiction of the district court that has jurisdiction over the location of the property to be provisionally seized or the disputed subject matter.

(Mutatis Mutandis Application of the Civil Enforcement Act)

Article 46 Except as otherwise provided for in this Chapter, the provisions of Articles 5 through 14, Article 16, Article 18, Article 18-2, Articles 19-2 through 19-6, Article 23, paragraph (1), Article 26, Article 27, paragraph (2), Article 28, Article 30, paragraph (2), Articles 32 through 34, Articles 36 through 38, Article 39, paragraph (1), items (i) through (iv)-2, item (vi) and item (vii) and paragraph (4), Article 40, and Article 41 of the Civil Enforcement Act apply mutatis mutandis to the enforcement of provisional remedy.

Section 2 Enforcement of Provisional Seizure

(Enforcement of Provisional Seizure of Real Property)

- Article 47 (1) A provisional Seizure of real property prescribed in Article 43, paragraph (1) of the Civil Enforcement Act (including property that is deemed to be real property pursuant to the provisions of paragraph (2) of the same Article) is enforced by means of registration of the provisional seizure or by means of compulsory administration. These means may be used jointly.
- (2) The court that issued the order for provisional seizure has jurisdiction over a provisional seizure that is enforced by means of registration of the provisional seizure, as the court enforcing the provisional remedy.
- (3) A court clerk is to commission the registration of a provisional seizure.
- (4) In the enforcement of a provisional seizure by means of compulsory administration, the administrator must make a statutory deposit of the money to be allotted to the liquidating distribution, etc. as calculated under the provisions of Article 107, paragraph (1) of the Civil Enforcement Act as applied mutatis mutandis pursuant to the following paragraph, and notify the court enforcing the provisional remedy of the circumstances.
- (5) The provisions of Article 46, paragraph (2), Article 47, paragraph (1), Article 48, paragraph (2), Article 53, and Article 54 of the Civil Enforcement Act apply mutatis mutandis to the enforcement of a provisional seizure by means of registration of the provisional seizure, and the provisions of Article 44, Article 46, paragraph (1), Article 47, paragraph (2), the main clause of paragraph (6), and paragraph (7), Article 48, Article 53, Article 54, Articles 93 through 93-3, Articles 94 through 104, Article 106, and Article 107, paragraph (1) of the same Act apply mutatis mutandis to the enforcement of a provisional seizure by means of compulsory administration.

(Enforcement of Provisional Seizure of a Vessel)

Article 48 (1) The provisional seizure of a vessel is enforced by means of registration of the provisional seizure or by means of ordering the court

enforcement officer to confiscate the document proving the nationality of the vessel and other necessary documents for the navigation of the vessel (referred to as the "certificate of the vessel's nationality, etc." in this Article) and to submit them to the court enforcing the provisional remedy. These means may be used jointly.

- (2) The court that issued the order for provisional seizure has jurisdiction over the enforcement of a provisional seizure that is carried out by means of registration of the provisional seizure as the court enforcing the provisional remedy, and the district court that has jurisdiction over the location of the vessel has jurisdiction over the enforcement of a provisional seizure that is carried out by means of ordering the confiscation of the certificate of the vessel's nationality, etc.
- (3) The provisions of paragraph (3) of the preceding Article and the provisions of Article 46, paragraph (2), Article 47, paragraph (1), Article 48, paragraph (2), Article 53, and Article 54 of the Civil Enforcement Act apply *mutatis mutandis* to the enforcement of a provisional seizure by means of registration of the provisional seizure, and the provisions of Article 45, paragraph (3), Article 47, paragraph (1), Article 53, Article 116 and Article 118 of the same Act apply *mutatis mutandis* to the enforcement of a provisional seizure by means of ordering the confiscation of the certificate of the vessel's nationality, etc.

(Enforcement of the Provisional Seizure of Movables)

- Article 49 (1) The provisional seizure of movables is enforced by means of a court enforcement officer taking possession of the subject matter.
- (2) A court enforcement officer must make a statutory deposit of money that is subject to the enforcement of a provisional seizure. The same applies to money paid to a court enforcement officer with regard to a negotiable instrument, check or any other securities for payment of money, which is subject to the enforcement of a provisional seizure and requires presentation for underwriting or payment, or requires a demand for payment within the period specified for exercising their rights.
 - (3) If the movables subject to the enforcement of a provisional seizure are likely to considerably decline in value or if retaining the movables requires an inappropriate amount of costs, the court enforcement officer must sell the movables by following the procedures for the sale of movables subject to enforcement under the provisions of the Civil Enforcement Act, and make a statutory deposit of the proceeds of the sale.
 - (4) The provisions of Articles 123 through 129, Article 131, Article 132, and Article 136 of the Civil Enforcement Act apply *mutatis mutandis* to the enforcement of a provisional seizure of movables.

(Enforcement of Provisional Seizure of Claims and Other Property Rights)

Article 50 (1) The provisional seizure of a claim prescribed in Article 143 of the Civil Enforcement Act is enforced by the court that enforces a provisional remedy issuing an order prohibiting a third party obligor from providing performance to the obligor.

(2) The court that issued the order for provisional seizure has jurisdiction over the enforcement of a provisional seizure referred to in the preceding paragraph, as the court that enforces the provisional remedy.

(3) If a third party obligor has made a statutory deposit of money equivalent to the amount of the claim for the payment of money upon which the provisional seizure was enforced, the obligor is deemed to have made a statutory deposit of money equivalent to the amount of money specified under the provisions of Article 22, paragraph (1); provided, however, that this does not apply to the part of the deposit which exceeds the amount of money equivalent to the specified amount.

(4) The provisions of paragraph (1) and paragraph (2) apply mutatis mutandis to the enforcement of a provisional seizure of other property rights.

(5) The provisions of Article 145, paragraphs (2) through (6), Articles 146 through 153, Article 156 (excluding paragraph (3)), Article 164, paragraph (5) and paragraph (6), and Article 167 of the Civil Enforcement Act apply mutatis mutandis to the enforcement of a provisional seizure of a claim and other property rights as s referred to in paragraph (1).

(Revocation of Enforcement of Provisional Seizure by Reason of Deposit of Money for Release from Provisional Seizure)

Article 51 (1) If an obligor proves that they have made a statutory deposit of money equivalent to the amount of money specified under the provisions of Article 22, paragraph (1), the court enforcing the provisional remedy must annul the enforcement of the provisional seizure.

(2) Notwithstanding the provisions of Article 12, paragraph (2) of the Civil Enforcement Act as applied mutatis mutandis pursuant to Article 46, the ruling made under the provisions of the preceding paragraph becomes effective immediately.

Section 3 Enforcement of Provisional Disposition

(Enforcement of Provisional Disposition)

Article 52 (1) The enforcement of a provisional disposition is governed by the rules for the enforcement of a provisional seizure or judicial enforcement, in addition to the provisions of this Section.

(2) In the enforcement of a provisional disposition that orders the delivery of

property or, other actions or inaction, the order of provisional disposition is deemed to be the title of obligation.

(Enforcement of Provisional Disposition Prohibiting the Disposal of Property in Order to Preserve the Right to Claim the Registration of Real Property)

- Article 53 (1) A provisional disposition prohibiting the disposal of property in order to preserve the right to claim the registration (excluding provisional registration) of a right to real property (referred to below as the "right to claim registration") is enforced by means of registration of the prohibition of disposal.
- (2) A provisional disposition prohibiting the disposal of property in order to preserve the right to claim a registration with regard to the preservation, establishment, or change of a right to real property other than an ownership right is enforced by means of provisional registration through a provisional disposition (referred to below as a "provisional registration for the purpose of preservation"), together with the registration of the prohibition of disposal referred to in the preceding paragraph.
- (3) The provisions of Article 47, paragraph (2) and paragraph (3), and the provisions of Article 48, paragraph (2), Article 53, and Article 54 of the Civil Enforcement Act apply mutatis mutandis to the enforcement of a provisional disposition prohibiting the disposal of property referred to in the preceding two paragraphs.

(Enforcement of a Provisional Disposition Prohibiting the Disposal of Property in Order to Preserve the Right to Claim Registration of Right Other Than the Right to Real Property)

- Article 54 The provisions of the preceding Article apply mutatis mutandis to the enforcement of a provisional disposition prohibiting the disposal of property in order to preserve the right to claim registration (excluding provisional registration) of a right other than a right to real property, for which the restriction on disposal may not be duly asserted against a third party or which is not effective until registered.

(Enforcement of Order of Provisional Disposition Prohibiting the Transfer of Possession Issued Without Specifying the Obligor)

- Article 54-2 An order of provisional disposition prohibiting the transfer of possession issued under the provisions of Article 25-2, paragraph (1) may not be enforced if it is not possible to specify the possessor of real property that constitutes the disputed subject matter, at the time of releasing the real property from possession.

(Enforcement of a Provisional Disposition Prohibiting the Disposal of a

Building in Order to Preserve the Right to Claim the Removal of the Building and the Surrender of Land)

Article 55 (1) When an order of provisional disposition is issued to prohibit the disposal of a building in order to preserve the right to claim the removal of the building and the surrender of its grounds, the provisional disposition is enforced by registration of the prohibition on the disposal of the property.

(2) The provisions of Article 47, paragraph (2) and paragraph (3), and the provisions of Article 48, paragraph (2), Article 53, and Article 54 of the Civil Enforcement Act apply mutatis mutandis to the enforcement of provisional disposition prohibiting the disposal of property referred to in the preceding paragraph.

(Commissioning the Registration of Provisional Disposition Suspending Performance of Duties by the Representative of a Corporation)

Article 56 When an order of provisional disposition is issued that suspends the performance of duties by the person registered as the representative or other officers of a corporation or that appoints a person to execute the duties on behalf of the registered person, or when a ruling is made that changes or annuls the order of provisional disposition, a court clerk must commission the registration to the registry office that has jurisdiction over the location of the head office or principal office of the corporation (for a foreign corporation, the location of each office); provided, however, that this does not apply if these particulars should not be registered.

(Annulment of Enforcement of Provisional Disposition by Reason of Deposit of Money for Release from Provisional Disposition)

Article 57 (1) If the obligor proves that they have made a statutory deposit of money equivalent to the amount of money specified under the provisions of Article 25, paragraph (1), the court enforcing the provisional remedy must annul the enforcement of the provisional disposition.

(2) The provisions of Article 51, paragraph (2) apply mutatis mutandis to the ruling made pursuant to the provisions of the preceding paragraph.

Chapter IV Effect of Provisional Disposition

(Effect of Provisional Disposition Prohibiting the Disposal of Property in Order to Preserve the Right to Claim the Registration of Real Property)

Article 58 (1) If the obligee under the provisional disposition referred to in Article 53, paragraph (1) registers a right to claim a registration that should be preserved, the restriction on acquisition or disposal of a right which is registered after the registration of a prohibition on disposal as referred to in

that paragraph may not be duly asserted against the obligee to the extent that it is in conflict with the acquisition or extinction of the registered right.

- (2) In the case referred to in the preceding paragraph, the obligee under a provisional disposition referred to in Article 53, paragraph (1) (excluding the obligee under a provisional disposition referred to in paragraph (2) of the same Article) may cancel a registration that is made after a registration prohibiting the disposal of property referred to in paragraph (1) of that Article.
- (3) The registration of the right to claim a registration that should be preserved by an obligee under a provisional disposition referred to in Article 53, paragraph (2) is to be made by means of a definitive registration based on a provisional registration for the purpose of preservation.
- (4) When the obligee under a provisional disposition referred to in Article 53, paragraph (2) makes a registration pursuant to the provisions of the preceding paragraph, if a right connected with the right to claim a registration that should be preserved through that provisional disposition is a right to use or profit from real property, the obligee may cancel a registration of the acquisition of the right to use or profit from the real property (excluding an ownership right) or a right established on the right, which is made after the prohibition on the disposal of property referred to in paragraph (1) of the same Article is registered.

(Notice of Cancellation of Registration)

- Article 59 (1) In order for the obligee under a provisional disposition to cancel a registration pursuant to the provisions of paragraph (2) or paragraph (4) of the preceding Article, the obligee must notify the registered holder of rights to that effect in advance.
- (2) The notice under the provisions of the preceding paragraph may be sent to the domicile or the office of the registered holder referred to in that paragraph as indicated in the registry as of the time the notice is sent. In this case, the notice is deemed to have arrived at the destination when one week has elapsed from the day on which it was sent, at the latest.

(Correction of Order of Provisional Disposition)

- Article 60 (1) If the description of a right under a provisional registration for the purpose of preservation is inconsistent with the description of the right in the title of obligation on the merit that a definitive registration should be made based on the provisional registration for the purpose of preservation, the court that issued the order of provisional disposition prohibiting the disposal of property referred to in Article 53, paragraph (2) must correct the order upon the petition of the obligee.
- (2) An immediate appeal may be filed against a ruling of correction under the

provisions of the preceding paragraph.

- (3) When a ruling of correction under the provisions of paragraph (1) has become final and binding, a court clerk must commission the correction of the provisional registration for the purpose of preservation.

(Effect of Provisional Disposition Prohibiting the Disposal of Property in Order to Preserve the Right to Claim the Registration of the Right Other Than the Right Related to Real Property)

Article 61 The provisions of the preceding three Articles apply mutatis mutandis to the effect of provisional disposition prohibiting the disposal of property prescribed in Article 54.

(Effect of Order of Provisional Disposition Prohibiting the Transfer of Possession)

Article 62 (1) When an order of provisional disposition prohibiting the transfer of possession has been enforced, the obligee may enforce delivery or surrender of the disputed subject matter upon either of the following persons based on the title of obligation on the merits:

- (i) a person who takes possession of the disputed subject matter knowing that the order of provisional disposition prohibiting the transfer of possession has been enforced; or
 - (ii) a person who succeeds the obligor's possession of the disputed subject matter after the enforcement of the order of provisional disposition prohibiting the transfer of possession, without knowing that the order has been enforced.
- (2) A person who takes possession of disputed subject matter after the enforcement of an order of provisional disposition prohibiting the transfer of possession is presumed to have taken possession of the disputed subject matter knowing that the order has been enforced.

(Reasons for Filing an Objection on the Grant of Attestation of Enforceability)

Article 63 When an attestation of enforceability upon a person other than the obligor referred to in paragraph (1) of the preceding Article has been granted with regard to a title of obligation on the merits referred to in that paragraph, the person may file an objection on the grant of the attestation of enforceability on grounds that the person possesses the subject matter under a title that may be duly asserted against the obligee, or on grounds that the person did not know that the provisional disposition has been enforced and is not the successor to the obligor's possession.

(Effect of Provisional Disposition Prohibiting the Disposal of a Building in

Order to Preserve the Right to Claim the Removal of the Building and the Surrender of Land)

Article 64 If the prohibition on the disposal of property referred to in Article 55, paragraph (1) has been registered, the obligee may enforce the removal of a building and the surrender of its grounds, upon a person who acquires the building after the registration is made, based on the title of obligation on the merits.

(Exercise of the Right to Money for Release in Provisional Disposition to Preserve the Right to Demand Rescission of Fraudulent Act)

Article 65 If a statutory deposit of money equivalent to the amount of money stated in Article 25, paragraph (1) has been made as specified by an order of provisional disposition in order to preserve the right to demand rescission of fraudulent act under the provisions of Article 424, paragraph (1) of the Civil Code (Act No. 89 of 1896), the obligor referred to in Article 424, paragraph (1) of the Civil Code acquires the right to claim refund of the deposit money (referred to below as "right to claim refund"). In this case, the right to claim refund may be exercised only if the obligee under the provisional disposition effects a judicial enforcement of the claim for the refund based on a title of obligation upon the obligor referred to in Article 424, paragraph (1) of the Civil Code after the enforcement of the provisional disposition has been annulled pursuant to the provisions of Article 57, paragraph (1) and a judgment on the merits concerning the right that should be preserved has become final and binding.

Chapter V Penal Provisions

(Crime of Damaging Written Public Notice)

Article 66 A person who damages a written public notice or any other sign posted by a court enforcement officer pursuant to the provisions of Article 168-2, paragraph (3) or paragraph (4) of the Civil Enforcement Act that are applicable pursuant to the provisions of Article 52, paragraph (1) is punishable by imprisonment for not more than one year or a fine of not more than one million yen.

(Crime of Refusing to Make a Statement)

Article 67 An obligor or a third party in possession of the real property, etc. prescribed in Article 168, paragraph (2) of the Civil Enforcement Act as applicable pursuant to the provisions of Article 52, paragraph (1), who fails to give a statement, refuses to present a document, gives a false statement, or presents a document containing a false statement, without legitimate grounds,

in response to a question or a request for the submission of a document by a court enforcement officer under the provisions of that paragraph is punishable by imprisonment for not more than six months or a fine of not more than 500,000 yen.

Supplementary Provisions [Extract]

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding two years from the date of its promulgation.

(Transitional Measures upon the Partial Amendment of the Code of Civil Procedure and the Civil Enforcement Act)

Article 4 With regard to a case involving a provisional seizure or provisional disposition based on an application for an order for provisional seizure or provisional disposition filed prior to the enforcement of this Act, the provisions then in force remain applicable.

(Transitional Measures upon the Partial Amendment of the Personal Status Litigation Procedure Act)

Article 6 With regard to a case involving a provisional disposition based on an application for an order of provisional disposition prescribed in Article 16 of the Personal Status Litigation Procedure Act filed prior to the enforcement of this Act, the provisions then in force remain applicable.

(Transitional Measures upon the Partial Amendment of the Real Property Registration Act)

Article 8 The provisions of Article 146-2, paragraph (3) of the Real Property Registration Act amended under the provisions of the preceding Article apply mutatis mutandis to the cancellation of a registration that is made after the registration of a provisional disposition prohibiting the disposal of property in order to preserve the right to claim the registration of a right related to real property, which was issued based on an application for an order of provisional disposition that was filed prior to the enforcement of this Act (for a provisional disposition referred to in Article 15-3, paragraph (1) of the Act on Adjudication of Domestic Relations, limited to a provisional order prior to rulings prescribed in Article 12 of the Supplementary Provisions), the cancellation of which is based on an application filed by the obligee.

(Transitional Measures upon the Partial Amendment of the Act on Adjudication of Domestic Relations)

Article 12 With regard to an adjudication of a case involving a provisional order prior to rulings prescribed in Article 15-3, paragraph (1) of the Act on Adjudication of Domestic Relations (including a judicial decision referred to in paragraph (5) of the same Article) that was made prior to the enforcement of this Act, the provisions then in force remain applicable.