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- Compulsory Execution

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### A. Introduction

Compulsory execution, the last stage in civil proceedings, enables a court judgment, or other instrument, to take effect, in order to satisfy the claims of the winning party. Compulsory execution is governed by the Cambodian Code of Civil Procedure (“CCP”).

In compulsory execution, the property of the losing party, or the debtor, is attached in favor of the winning party, or the creditor, in satisfaction of his or her judgment, or debt.

In civil procedure, the property of a party may be subjected to two modes of remedies: provisional remedies (sometimes called “preservative measures”) and compulsory execution. During the course of litigation, a party can request the court to grant provisional remedies, when it fears that the integrity of the property of another party would be impaired, (because of damages or diversion, for example), so the former would not be able to collect that property, when it wins the judgment (Article 530, CCP). Provisional remedies are aimed at preserving the status quo of the property, and occur during the interlocutory phase of the civil proceedings (any time before the trial or plenary hearing of the merits).

While both modes of remedies concern a party’s property, compulsory execution differs from provisional remedies in that the compulsory execution is implemented, when the court judgment is finally rendered, in order to seize the property, and to apply the sales proceeds to satisfy the winning party’s claims. .

### Instruments of Execution

Various instruments can effectuate an execution order (Article 350, CCP). Some examples of the instruments of execution include, but are not limited to:

- The conclusive and binding judgment of the

Cambodian court (a judgment where an appeal is no longer permitted)

- The ruling on the demand of payment, authentic instrument (or notarial deed) made by the notary
- A final judgment rendered by a foreign court, arbitral award, court-conciliated settlement procès-verbal.

### Conclusive and binding judgments:

A conclusive and binding judgment is one in which a case is finally disposed of, and no further recourse or appeal is available to the parties. To enable an execution, a conclusive and binding judgment of the court must contain an enacting clause, instructing a losing party to pay for the object of the complaint.

### Rulings on a demand of payment:

The court of first instance may issue an order, called “ruling on a payment demand” (deika samreich das toern), upon application by a creditor to demand payment from a debtor. To enable execution, the ruling on a payment demand must contain a clause of provisional execution. The debtor has a 2 week time frame, from the date of notification, to appeal against the demand of payment decision (Article 328, CCP).

### Authentic instruments:

An authentic instrument, or notarial deed, is a written letter, certified by and before a notary, regarding a claim for a fixed sum of money, in which the debtor assents to immediate compulsory execution. According to the Law on the implementation of the Civil Code, certain transactions are required to be executed in form of notarial deeds. For example, the agreement for the transfer or acquisition of ownership over immovable property (Article 336, CC); sub-mortgage, transfer or waiver of mortgage, or the change of ranking of the mortgage (Article 862, CC). Other transactions, such as the sale-purchase agreement, may need notarization as well. (Article 516, CC). Notarial deeds can be enforced without resorting to a court judgment.

### Foreign judgments:

The final judgment of the foreign court can be an instrument of execution in Cambodian jurisdiction, as long as it meets the criteria under Article 352 of the Code of Civil Procedure. First, the final foreign judgment must be recognized by the Cambodian court. A Cambodian court would recognize the judgment of a foreign court if:



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(1) The jurisdiction of the foreign court is recognized by Cambodian law, treaties, or conventions, to which Cambodia is party

(2) The judgment debtor has received a summons commencing the proceedings; or the debtor has not received such a summons, but has responded to the complaint in the foreign jurisdiction

(3) The content and procedures that drive the complaint are contrary to public order, or to the accepted customs of Cambodia

(4) Cambodian court judgments are treated with equal importance by foreign jurisdictions (Article 199, CCP).

Second, a Cambodian court must issue a judgment, called “judgment of execution,” to render the foreign judgment effective in Cambodia. The judgment creditor must file an application, with either the Cambodian court of first instance in which jurisdiction the judgment debtor is residing, or with the court in which jurisdiction the object of the claim, or the judgment debtor’s property, is located (Article 352, CC). In the judgment of execution, the court must include a clause allowing the compulsory execution of the foreign judgment. The court does not look into the merits of the foreign judgment.

### Arbitral award:

The arbitral award, be it foreign or domestic is also an instrument of execution. The party who wins the arbitral award must file an application with the Cambodian court, requesting it to issue an “order” to enforce the arbitral award” (deika samreich anuwat) (Article 353, CCP).

### Court-conciliated settlement statements:

The court-conciliation settlement statement is another form of execution instrument. In civil litigation preparatory stages, the court must try to conciliate disputes between the parties (Article 104, CCP), in order to bring about a conciliated agreement. When parties agree either to give up or accept a claim, the court can log this agreement in its records, which has the same effect as a conclusive and binding court judgment (Article 222, CCP).

## B. Parties of the execution

Parties and non-parties of litigation can seek implementation from the enforcement institutions (see next section). If a plaintiff wins a case, he or she will obtain a judgment, and seek its enforcement against the respondent. The plaintiff, in this case, is called “creditor in execution.” (Article 351, CCP). The respondent, against whom the enforcement is sought, is called “debtor in execution.” Both parties are named in the instrument of execution.

Interested third parties can also lay claim in an execution, as long as they are named in the instrument of execution. A third party who applies for compulsory execution is a creditor

in execution, while the party against whom the compulsory execution is sought, is a debtor in execution (Article 347, CCP).

## C. Institutions that deal with compulsory execution

There are two institutions that are responsible for the compulsory execution: the court and the enforcement officer (achna sala or bailiff- Br English) (Article 336, CPP).

### Court of Execution

In regards to a court judgment, it is a Court of First Instance (provincial and municipal courts) that is responsible for its execution, and is known as, the “Court of Execution.” When compulsory execution is enforced against immovable property, the Court of Execution is the court of first instance in which geographical jurisdiction of the immovable property is situated (Article 418, CCP). For example, if the immovable is situated in Phnom Penh Municipality, then the Phnom Penh Municipal Court is the Court of Execution. The judge is the execution officer in execution against immovable property. In practice, the judge has a supervisory role over the process of compulsory execution, while the hands-on tasks of execution are entrusted with the prosecutor attached to the Court of Execution.

### Bailiffs (Achna Sala or the court marshal)

Execution can be performed by the bailiff (Achna Sala- Kh or court marshal Am. English), when the object of execution is movable property (Article 384, CCP). Currently, there is no law to regulate the profession of bailiff. The only legal text that currently defines the duties of a bailiff is in the Prakas relating to the officer in charge of bailiff duties (No. 30, 29 July 2007, Ministry of Justice). Under this Prakas, the bailiff is responsible for discharging all duties allowed by law or the CCP, as well as any task related to the custody and management of the property subjected to compulsory execution, or any other activity prescribed in court decisions.

At the moment, pending the adoption of a law to regulate the profession of bailiff, the Prakas entrusts bailiff duties to the prosecutor of the Court of First Instance.

## D. Procedures in compulsory execution

The first step requires the creditor in execution to obtain an authenticated instrument of execution.

Second, the creditor in execution must apply for an execution clause from the court clerk. For the purpose of simplicity and faster processing, an execution clause is not necessary in cases concerning small claim rulings on demands of payment (explanatory note 2 of the Article 354 of the CCP). After issuing the execution clause, the clerk will deliver a copy of the authenticated instrument of execution, along with the execution

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clause, to the debtor in execution (Article 360, CCP). The creditor in execution can file a petition against a clerk who unlawfully refuses to issue an execution clause. The same applies to the debtor in execution, when the clerk unlawfully issues an execution clause (Article 362 and 364).

Third, if the object of the compulsory execution is the recovery of a debt, for which the date of repayment has been set in the instrument of execution, then execution can only come into force from the official repayment date (Article 361.1, CCP).

If the instrument of execution mentions that the compulsory execution is contingent on a security deposit, then the execution can start only if the creditor in execution has filed a letter indicating that the security deposit has been supplied to the execution authorities (Article 361.2, CCP).

Fourth, compulsory execution can be suspended or cancelled. The court can order the suspension of the compulsory execution when a party files a motion for retrial, on the grounds spelled out in Article 307, including, but not limited to:

- the trial panel was not legally constituted
- the evidence upon which the judgment stood has now been found to be tampered, or altered, or was obtained as a result of perjury or fraud
- parties were not granted the opportunity to present or defend their case

When a party files an appeal against a judgment of a lower court, in which provisional execution is granted, the Court of Execution can order the cancellation of the execution on the party's motion, whether a security deposit was furnished or not (Article 366.1.c).



## LEGAL UPDATE

*Instruction N.8727 dated 14 June, 2016 on the implementation of collecting Tax on Stamp for the transfer of ownership or possession on immovable properties*

In order to ensure the effectiveness, transparency, and convenience for people with highly responsibility, the General Department on Tax would like to instruct as the following:

**- For the Registered Immovable Property ( with hard title)**

When the registered immovable property (with hard title) are transferred the ownership or are allocated some part of it, the new ownership has a responsibility to pay tax on ownership transfer with the rate of 4%.

To pay that tax, it requires the owner to submit the application follow by the Form PT 02 at the Cadastral or local authority office. Beside the

Form PT 02, it also requires the attachment of the relevant documents relating to land transfer, map of the property, and a certified actual size of the property including other supporting documents. After completing the application of Form PT 02, the owner or possessor has to submit those supporting documents to the Tax office in order to evaluate the cost for tax payment.

The Form PT 02 can be available at office of Cadastral, Office of Land Management, Urban Planning, and Construction, Administrative office, One-door Office at district or Khan, or download from the General Department of Tax ([www.tax.gov.kh.download.php](http://www.tax.gov.kh.download.php)) or even request it from ([pttinfo@tax.gov.kh](mailto:pttinfo@tax.gov.kh))

**- For Immovable Properties that have not been registered ( without hard titles)**

For the immovable properties that have not been registered, it also required paying 4% of Tax on Stamp in accordance with the existing laws when there is a possession transfer wholly or partly.

The process payment of the Tax on Stamp, the applicant has to follow the same procedure as the one with the hard title. It required the possessor to submit the application form to Cadastral office and fill up the form of Tax on Stamp based on Form PT02 format attaching all necessary supporting documents such as the application of possessor transfer, map of immovable property, a certified size of property by authority, and other relevant documents. After filling all those form and documents, it can be submitted to Tax Department for evaluation on the fee to pay for taxation. The Form PT02 is available as mentioned above.

**- The Exception for the Tax on Stamp**

It is not required to pay the Tax on Stamp for the situation as the following:

- All the granted concession or ownership to the poor people and/or homeless people who do not have land to building a house or do agricultural activities. They receive those lands from the Government with the purpose to benefits of economy and society.
- All the receiving of ownership or possession on the immovable properties registered in the fiscal list of governmental institutions.
- All the receiving of ownership or possession through the diplomats, international organizations, or other technical cooperation agencies with the governments.
- All the receiving of ownership or possession within family bonding.

Tax exemption with regarding to the family bonding requires the supporting documents to notify the relationship. Those documents are family book, birth certificate, marriage certificate, and other documents that can claim those connections.