

WINNING THE LAWSUIT IS NOT ALWAYS ENOUGH: PROVISIONAL MEASURES AS A TOOL TO SECURE LITIGATION OUTCOMES

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A favorable judgment does not guarantee the recovery of a debt. In practice, many companies invest time and resources in commercial litigation, obtain a ruling in their favor, and upon enforcement discover that the debtor no longer holds sufficient assets, has emptied accounts, transferred property, or declared insolvency. Provisional measures are the procedural tool designed to prevent that scenario, but their effectiveness depends on timely action and an adequate strategy.

THE PROBLEM: WINNING THE CASE AND BEING UNABLE TO COLLECT

One of the most frustrating scenarios for a company in litigation is obtaining a favorable judgment that, in practice, proves unenforceable.

During the course of proceedings, there is a risk that the debtor's estate may prove insufficient at the time of enforcement. The transfer of assets, the disposition of funds held in accounts, the creation of encumbrances, or simply the deterioration of the obligor's financial situation may cause a legally favorable judgment to have limited economic utility.

For this reason, in certain commercial disputes it is advisable to analyze from the earliest stages of the conflict not only the viability of the claim, but also the realistic possibilities of enforcing a potential judgment.

WHAT ARE PROVISIONAL MEASURES IN COMMERCIAL MATTERS?

Provisional measures, regulated in Mexico's Commercial Code under the concept of providencias precautorias, constitute a relevant procedural tool for

preserving assets susceptible to enforcement and ensuring that a potential favorable judgment retains material effectiveness.

In commercial matters, the Commercial Code provides for various modalities: the retention of assets, precautionary attachment, the freezing of bank accounts, and other measures aimed at preserving the obligor's estate while the dispute is resolved.

Their purpose is not to resolve the merits of the case or to anticipate a judgment; it is to maintain the conditions necessary so that, if the company obtains a ruling in its favor, it can effectively enforce it.

STRATEGIC TIMING: WHEN TO SEEK A PROVISIONAL MEASURE

One of the most significant factors in the effectiveness of a provisional measure is the moment at which it is requested. Providencias precautorias may be sought before filing the complaint, at the commencement of proceedings, or during their course.

Each stage carries distinct implications.

From a strategic standpoint, seeking a providencia precautoria prior to filing the complaint may be particularly relevant when objective elements suggest a risk regarding the permanence or sufficiency of the prospective defendant's assets. In such cases, waiting for the ordinary course of proceedings could diminish the measure's utility.

However, procedural timing must be carefully analyzed. The mere existence of a debt does not necessarily justify the adoption of a provisional measure. It is essential to identify and establish the requirements imposed by law for the specific measure sought, as well as to provide sufficient elements for the court to assess its necessity.

Therefore, the decision to seek a provisional measure should not respond solely to procedural logic. It also requires evaluating the characteristics of the credit, the information available regarding the debtor's estate and conduct, the existing evidence, the cost of the measure, any guarantees that may need to be posted, and the consequences that its pursuit may have within the overall litigation strategy.

RISKS AND LIMITATIONS

Provisional measures are not automatically granted. For a court to issue them, it is generally necessary to establish the existence of a liquid and enforceable credit, to express a well-founded concern that assets may be concealed or disposed of, and to demonstrate the proportionality of the measure requested.

A poorly substantiated request may be denied, which not only delays the creditor's protection but may prematurely reveal the litigation strategy.

Likewise, if the measure is granted but subsequently revoked or the creditor does not obtain a favorable judgment, it may be exposed to a claim for damages arising from the provisional measure.

For this reason, the technical quality of the request and the strength of the supporting evidence are critical factors. A well-crafted provisional measure protects; a poorly executed one can become an additional problem.

CONCLUSION

Provisional measures are not a procedural luxury or a mere ancillary step in litigation. They are a strategic decision that can determine whether the lawsuit produces an economically meaningful result for the company or ends in a favorable but unenforceable judgment.

The difference between recovering a debt and facing a judgment with no assets to execute may depend on whether the company acted in time to secure assets before they disappeared.

In this context, the assessment of whether a provisional measure is warranted must be approached with a business perspective, not merely a procedural one. Each case requires analyzing the strength of the credit, the debtor's financial situation, the appropriate timing, the risks of the request, and the proportionality of the measure.