

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Italy]

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I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES

- 1. Is it possible to apply for an interim measure in order to assure the effective enforcement of a Court decision?**

Answer: YES, interim measures are possible in Italy

- 2. Is it mandatory to pay court fees for this type of application?**

Answer: YES, as for almost any kind of civil proceedings

- 3. What is the ordinary/average length of time for this kind of procedure?**

Answer: The ordinary/average length of time depends on cases. It is possible to obtain interim measure in a few weeks, or, if necessary, very quickly, *inaudita altera parte*, without hearing the other party.

II. TYPES OF INTERIM AND PRECAUTIONARY MEASURES.

- 1. For which types of interim measures are the parties allowed to apply? (e.g., injunction, freezing orders, caveat, restraining order, etc.)**

Answer: The civil procedure code, as well as some specific Acts (in particular, the intellectual property code) provide for specific interim measures, such as freezing orders and injunctions. In addition, Section 700 of the civil procedure code provides for a general and broad right to obtain in light of existing circumstances the most adequate interim measure for ensuring on a temporary basis the effective enforcement of a court decision. Sections 669-bis through 669-quaterdecies of the civil procedure code provide the procedural rules applying to all interim measures.

III. PROCEDURE

- 1. Competent Court**

- a) Which court has jurisdiction to grant these interim and precautionary measures?**

Answer: The court where the underlying lawsuit is already pending has jurisdiction. Lacking any such lawsuit, the interim order must be requested to the court which would have jurisdiction for the merits of the case. If the Italian judge has no jurisdiction for the merits, the competent court is the court of the place where the measure sought should be enforced. If an arbitration tribunal has

jurisdiction, the competent court is the court which would have jurisdiction, in the lack of the relevant arbitration clause.

2. When can the application for interim and precautionary measures be submitted?

a) Is it possible to apply for it at the time the underlying lawsuit is filed? If YES: Are there any special requirements when so doing?

Answer: YES, it is possible. When the underlying lawsuit starts with the service to the defendant of a writ of summons, the application for the interim measure is filed when the original writ and accompanying documents are lodged with the Court clerk. If the underlying lawsuit is pending abroad, the application is filed with the Italian court where the measure sought should be enforced. If the underlying lawsuit is pending before an arbitration tribunal, the application is filed with the Italian court which would have jurisdiction, in the lack of the relevant arbitration clause.

3. Is it possible to apply for interim precautionary measures before filing the underlying lawsuit? If YES: Are there any special requirements when so doing? (e.g., deadline to submit the lawsuit)

Answer: YES, it is possible. Unless the measure is granted pursuant to section 700 of the civil procedure code or is a special measure fit for anticipating the effects of a court decision in the merits for the case, the plaintiff has the obligation to submit the lawsuit within 60 days as from notice to the parties of the granting of the measure, unless the court sets forth a shorter term.

4. Is it possible to apply for interim precautionary measures after filing the main claim? If YES: Are there any special requirements when so doing?

Answer: YES, it is possible. The application must be lodged with the same Judge.

5. Criteria used by the court for granting these measures

a) What requirements must be fulfilled in order to apply for an interim measure? (e.g., *periculum in mora*, *fumus boni iuris*, security, etc.)

Answer: In general, the granting of a precautionary measure is subject to the existence of two requirements:

1) the *periculum in mora*, that is the well-founded fear that, in the time necessary for the adoption of the decision of merit, the right to the protection of which caution is required, may suffer irreparable damage;

2) the *fumus boni juris*, that is the probable validity of the claim.

6. Procedure

a) Which are the main steps of the procedure after filing the interim measure application? (e.g., holding a hearing, presenting evidence, etc.)

Answer: The application must be accompanied by the relevant documentary evidence, although it is possible to ask that witnesses are heard, with no particular formalities (i.e. at the hearing). The designated judge schedules a hearing, and the plaintiff must duly and timely serve to the defendant(s) a true copy of the application and the court decree issued. At least one hearing is held.

b) Is it possible for the Court to order an interim measure without hearing the other party? (*in audita parte debitoris*). If YES, under what circumstances can the parties apply for it?

Answer: YES, pursuant to the Article 669 *sexies* CPC, it is possible when the calling of the defendant may jeopardize the enforcement of the interim measure.

c) What are the main steps of the procedure in this case?

Answer: The court may issue a decree granting the interim measure and scheduling the hearing within 15 days, where the defendant must be called, within 8 days, for the measure to be confirmed, modified or revoked.

7. Opposition of the defendant

a) Is it possible for the defendant to oppose interim and precautionary measures?

Answer: YES, it is possible under the Article 669 *terdecies* CPC with the procedure for appealing the granted measure

b) Is it possible for the defendant to ask the Court for the substitution of the interim measure for a guarantee?

Answer: YES, it is possible under the Article 669 *terdecies* CPC with the procedure for appealing the granted measure.

8. Appeal

a) Are appeals allowed from the court decision ordering the measures or rejecting the defendant's opposition to them?

Answer: YES. Article 669 *terdecies* CPC provides that precautionary measures can be appealed. The appeal can be filed within 15 days as from the granting the measure. The Court must confirm, modify or revoke the interim measure, within 20 days, and the decision cannot be appealed or challenged

b) Is it possible to enforce the interim measure once an appeal is filed?

Answer: YES, it is possible and the appeal does not suspend the enforceability of the measure in the meantime. Nonetheless, when the measure is likely to cause severe harm as a consequence of newly occurred circumstances, the Court requested to examine the appeal can suspend such enforceability or condition it upon an adequate surety. This decision cannot be challenged.

IV. EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES.

1. Is it possible to enforce the interim measure when the other party obstructs it?

Answer: YES, it is possible according to Article 669 *duodecies* CPC. The measures concerning sums of money are enforced in accordance with the rules set forth for seizures; the obligations to do or not to do are enforced under the supervision of the granting judge, who sets forth the necessary modalities.

2. Is it possible to modify a previous interim measure?

Answer: YES according to the Article 669 *decies* CPC, it is possible applying when the measure is not appealed.

Pursuant to the Article 669 *terdecies* CPC, the Court can modify or revoke the interim measure if the circumstances have

changed or additional facts are produced. If the underlying lawsuit has not been started or has ceased, or if a foreign court or an arbitration tribunal is vested with the relevant jurisdiction, the same request can be filed with the judge who granted the measure.

If the underlying lawsuit has not been started or has ceased, or if a foreign court or an arbitration tribunal is vested with the relevant jurisdiction, the same request can be filed with the judge who granted the measure.

3. When is it possible to raise an interim measure?

Answer: It is always possible to raise an interim measure, subject to its enforceability.

4. Are there any rules concerning the costs (e.g., lawyers' fees, etc.) related to the application?

Answer: Costs are usually awarded by the court handling the underlying lawsuit. When the measure is granted pursuant to section 700 of the civil procedure code or is a special measure fit for anticipating the effects of a court decision in the merits for the case, costs are awarded by the court ruling upon the interim measure.

V. ARBITRATION

1. Is it possible to apply for an interim measure in order to assure the effective enforcement of an Arbitration Award in your country? If YES: what is the enforcement procedure?

Answer: YES it is possible to apply for an interim measure to be enforced in Italy, during the time necessary for obtaining the enforceability of the relevant arbitration award.

Article 669 quinquies CPC provides that "*if the dispute is subject to arbitration clause or is compromised in arbitration, even non-ritual or if the arbitral proceedings is pending, the interim request is proposed before the Court which would have been competent on the merit*".

The plaintiff should bring the recognition procedure aimed at obtaining enforceability and ask the competent Court of appeal to issue the interim measure. The plaintiff should allege and prove to the court the *periculum in mora* during the time necessary for the recognition procedure, in particular orders aimed at freezing all counterpart's assets.

The effective enforcement of a domestic arbitration award is obtained through a procedure to be started before a Court of appeal, where the defendant is allowed within a limited scope to appeal against the award and its enforceability.

2. Are the arbitrators, entitled to order an interim measure?

Answer: NO, according to the Article 818 CPC arbitrators are not entitled to order seizures or interim measure, which can be requested to ordinary Courts competent on the merits.

VI. FOREIGN PROCEDURE & ARBITRATION

1. Is it possible to apply for an interim measure before your country Courts in order to assure the effective enforcement of a foreign Court Decision or Arbitration Award? If YES: how is this procedure executed?

Answer: YES, it is possible to apply for an interim measure to be enforced in Italy, during the time necessary for obtaining the enforceability in Italy of the relevant foreign Court Decision or Arbitration Award.

If the underlying lawsuit is pending abroad, the application for an interim measure is filed with the Italian court where the measure should be enforced.

If the underlying lawsuit is pending in front of an arbitral tribunal, the application is filed with the Italian court which would have jurisdiction, in lack of arbitration clause.

Moreover, Article 669 novies CPC provides that if the main claim is devolved to the jurisdiction of a foreign judge or to Italian or foreign arbitration, the interim measure could lose its effectiveness, if: "1) *the party who had requested it does not submit a request for enforcement in Italy of the foreign sentence or the arbitration award within the time limits provided for by law or international conventions;* 2) *a foreign ruling is pronounced, even if it has not become final, or an arbitration award that declares the right for which the provision was granted non-existent. The second paragraph of this article applies to the declaration of ineffectiveness of the precautionary provision and the restoration provisions*".

VII. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION.

- 1. Please state/provide any other issues of interest in your jurisdiction.**

Answer: Under sect. 669-undecies CPC the court may impose to the plaintiff a surety for the damages which may be caused by the granted measure.

Italy

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