

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Netherlands]

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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. Even before a court decision is actually enforceable, prejudgment attachments on most assets are possible.

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

Answer: Yes.

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

Answer: Most prejudgment attachments can be accomplished within a week.

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: In the Netherlands it is possible to apply for interim measures, both in the main action as well as in interim injunction proceedings. Parties may ask for any measure that can also be part of a definitive ruling in the main action, this means the judge can order any party to give something, to do something or not to do something, including but not limited to injunction, freezing orders, caveat and restraining orders.

III. PROCEDURE

- 1. Competent Court**

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

Answer: In most cases, the court that would have jurisdiction in the main proceedings has jurisdiction concerning interim measures as well. In some cases, e.g. attachment of real estate, there may be alternative rules of jurisdiction. Formally, it is the specific judge on preliminary proceedings of a certain District Court that has jurisdiction.

- 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 can be done as part of the underlying lawsuit but also in separate proceedings. There are no special requirements.

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, but if prejudgments attachments are part of the precautionary measures, the judge will order the claimant to start the main proceedings within a certain period of time, in most cases 4 weeks after the attachments are made.

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, see II A.

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: This really depends on the sort of measure that one applies for. If one applies for an interim measure during the main proceedings, one can only apply at certain limited stages in the proceedings. If a party applies for interim measures in separate proceedings, a writ of summons must be served, or, in attachments cases, a petition must be filed with the court. In general, the court only grants these measures in cases where there is an urgent interest. The applicant has to prove to the court that there is a time sensitive matter, which cannot wait until the main proceeding (e.g. assets that are about to be sold).

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: If a party applies for a prejudgment attachment, there will not be a hearing after the petition has been filed, unless it is an attachment on salary for example. There are only a few requirements for evidence, the system of the law is that a party that does not agree with the attachment must start preliminary proceedings themselves to remove it.

If a party applies for any measures in a preliminary procedure, after the writ of summons has been served there will be a hearing. The rules of evidence are less formal than they would be in the main proceedings, everything has to happen within the specific hearing.

- 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: Only on prejudgment attachment issues, otherwise the other party will always have to be summoned. However, if the other party has been duly summoned, but chooses not to appear, an interim measure may be ordered anyway.

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

Answer: See III F1.

7. Opposition of the defendant

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

Answer: Yes, if a party applies for a prejudgment attachment, there will not be a hearing after the petition has been filed, unless it is an attachment on salary for example. But the defendant may start preliminary proceedings themselves to remove the attachment. In all other cases the defendant has the chance to plead at the hearing and argue against the court order that has been requested.

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

Answer: Yes, if such a guarantee should offer the same security as the court order would, the court will allow such a substitution.

8. Appeal

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

Answer: Appeals are not permitted in cases of prejudgment attachments. They are in all other court decisions ordering or rejecting those measures. An appeal should start within the 4 weeks after the court order or the decision not to give such an order.

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

Answer: Yes, as long as the order has been declared provisionally enforceable, which will be the case most of the times.

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, with the help of a bailiff and if necessary the police.

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

Answer: Yes, but in order to do so a party should once again apply for interim measures, this time applying to change the measures that are already in place.

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

Answer: Anytime, see II A.

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

Answer: There are fixed amounts for court registry fees that vary depending on the sort of court order that the claimant is looking for. In cases of prejudgment attachments, the claimant will bear the costs initially, but the defendant may be ordered to pay the costs in the ruling of the main proceedings. In other cases of applying for interim measures, that usually start by serving a writ of summons, the court can order either party to pay the costs, depending on whether or not the court order has been granted. The cost – also for the attorneys' fees – are fixed to a certain amount by law. They usually do not cover the actual costs.

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, this does not differ from the procedure as described, but the claimant does have to ask the court to obtain a judicial authorisation that makes the Award actually enforceable. As soon as this authorisation has been obtained, the enforcement takes place as if it were based on a regular Dutch court ruling.

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

Answer: Only as far as the parties have agreed to in the arbitration clause that is the basis of the arbitration proceedings in the first place. The parties can however always ask for preliminary measures by court order, even if the main proceedings are actually arbitration proceedings.

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, attachment on all assets is possible, but the claimant has to make sure that they start the necessary proceedings to enforce the foreign court ruling of Arbitration Award. If the Dutch court would not have a legal basis for the enforcement (for example if there is no treaty applicable), it would not grant an interim measure.

VII. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION.

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

Answer: Compared to most other jurisdictions, it is relatively easy to get prejudgment attachment in the Netherlands. It may be a very useful tool and is often used to put pressure on the opposite party. Misuse may lead to liability however.

The Netherlands

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