

# Enforcement of Foreign Judgments

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Interim and Precautionary Measures [Portugal]

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## **I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES**

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

**Answer:** Yes.

The interim measures are instrumental to general procedure.

In general, the aim of adopting an interim or precautionary measure is to prevent the dangers that, before or during the pending suit, can eventually compromise the outcome of the main procedure, to conditionally regulate the conflicts of interest, or to anticipate the legal effects of a final decision in order to avoid damages, which presumably can be recognized by the court.

Legislation on civil proceedings (essentially the Civil Procedure Code) is the main statute on interim measures.

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

**Answer:** Yes.

The court fees required to lodge an interim measure are paid by the claimant. If the defendant files an opposition, he must also pay court fees.

The court fees for the interim and precautionary measures advanced by the parties are taken into consideration in the final account of fees and may be recovered by the winning party.

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

**Answer:** Interim measures are classified under Portuguese law as “urgent procedures”.

The Civil Procedure Code determines a maximum period of two months in order for the interim measure to be decided (if the defendant is to be summoned before the ruling) or, 15 days if the defendant is to only be summoned after the ruling.

Nevertheless, the length of time may vary and it depends on the amount of pending matters that each court has to decide.

## **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 Portuguese Civil Procedure Code foresees “specific” interim measures and “general” interim measures.

The parties are only allowed to lodge general interim measures if it is not possible to apply for a specific interim measure.

Some of the specific interim measures include:

- a) **Seizure:** which can be launched by any party who is a creditor of the defendant. The creditor has to evidence the probability of the existence of the credit and justify the fear of losing the assets guarantee - (i.e. the defendant's assets).
- b) **Inventory of property:** consists of a description, evaluation and deposit of assets and documents with the aim of avoiding their dissipation or loss;
- c) **Provisional Restitution of Possession:** seeks the restitution of the property to the legal possession of the plaintiff who was victim of violent dispossession;
- d) **Temporary alimony:** used as a provisional dependence of an alimony proceeding, contentious divorce, judicial separation, exercise of parental responsibility, action of disability or, paternity law suit.
- e) **Adjustment of interim repair:** an interim request that is dependent on a claim of damages related to death or the suffering of physical harm. The claimant, who is in a situation of subsistence, requests the defendant to pay an amount which constitutes interim relief.
- f) **Suspension of corporate resolutions:** an interim measure in which a partner of a company may request the suspension of effects of corporate decisions that are contrary to the law or company statutes.
- g) **Embargo of new construction works:** an interim measure that envisages the suspension of construction works that may cause or threaten to cause damage to the claimant.

Nonetheless, this list is not exhaustive. Indeed, there are other types of specific interim measures referenced in other legal statutes.

### III. PROCEDURE

#### 1. Competent Court

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

**Answer:** It depends on the specific case. According to the Civil Procedure Code:

- a) The seizure and inventory of property shall be presented to the court where the main lawsuit should be filed or in the court where property is located (or if there is property in several territorial jurisdictions, in any of such);
- b) The embargo of new constructions shall be requested in the court where the works are located;
- c) The remaining interim measures should be requested in the court where the main suit should be filed;

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

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 to apply for interim measures before, at the time of and during a main claim. There are no special requirements for the filing at this stage.

#### 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 (see answer above). In general, the party should file the main lawsuit within 30 days from the decision of the interim measure.

#### 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. There are no special requirements.

**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, for a court to grant an interim measure, all of the following requirements must be met:

- *Fumus boni iuris* - there should be a likelihood of the existence of the rights that the claimant is alleging;
- *Periculum in mora* - a serious fear that the normal delays relating to a dispute will cause an “irreparable” or “hardly reparable” harm.
- Proportionality - the Civil Procedure Code requires that the interim measure should not be granted if the harm arising from the interim measure considerably exceeds the harm which the claimant intends to prevent.

**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 general rule is that, before interim measures are granted, the judge should determine whether the defendant should be preliminary summoned to file its opposition.

If the court decides that the defendant should first be summoned, the defendant shall file its opposition, then a evidence hearing shall be conducted, and finally, the decision.

If the court decides that the defendant should not be summoned, an evidence hearing shall be conducted after the claimant files its initial request without participation of the defendant. Only after the decision is taken will the defendant be summoned to file its opposition or an appeal.

- 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.

Interim measures may be determined without preliminary hearing the defendant when this is justified on grounds of urgency, and/or when hearing the defendant may result in jeopardizing the practical effect of the interim measure. Seizure and restitution of possession are two interim measures which, due to their nature, are always conducted without a preliminary hearing.

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

**Answer:** If the court decides that the defendant should not be preliminary heard, an evidence hearing shall be conducted after the claimant files its initial request. Only after the decision is taken will the defendant be summoned to file its opposition or an appeal.

**7. Opposition of the defendant**

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

**Answer:** Yes.

In general, the party against whom the interim measure is lodged may submit an opposition based on the facts of the claim and with the submission of evidence.

The defendant can oppose the interim measure:

- Before it is granted, if he was previously summoned and heard; or
- After the granting of the interim measure, when the defendant was not previously summoned, through an opposition or an appeal.

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

**Answer:** Yes.

The defendant may ask the court to replace the interim measure with a guarantee which is deemed to be sufficient to prevent damage or repair it fully (such as a “guarantee on first demand”).



## **8. Appeal**

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

**Answer:** Yes.

Decisions concerning interim measures may be appealed to the Court of Appeals.

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

**Answer:** Yes.

The appeal does not suspend the enforceability of the precautionary measure. However, the defendant can apply for a bond in order to try to suspend the said enforceability.

## **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.

Parties may request a penalty payment in order to ensure the effectiveness of the interim measure. Furthermore, anyone who does not comply with the interim measure ordered by the court may be criminally prosecuted.

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

**Answer:** In general, no.

The petitioner would require a new interim measure that would then be cumulated with the previous one. If the previous interim measure has become useless the court shall determine its expiration. Nevertheless, it is possible that in certain cases the judge accommodates a request for modification.

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

**Answer:** An interim measure can be raised when:

- a) the defendant voluntarily fulfills or recognizes the right of the claimant;
- b) the court decides the main proceedings against the claimant with *res judicata* effect;

- c) the claimant does not lodge the main proceedings within the legal deadline;
- d) the claimant does not follow the required legal steps to proceed with the proceedings (e.g. an interim measure procedure cannot be stalled for more than 30 days).

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

**Answer:** Yes.

In Portugal, each party should bear its own costs during the proceedings. Nevertheless, depending on the outcome of the decision, the winning party may claim back the costs from during the process, from the other party (such as court fees).

The lawyer's fees should be borne by each party. Nevertheless, the final costs account includes a quota which has the goal of compensating the winning party for the lawyer's fees which should be paid by the other party (it equates to 50% of the court fees paid by both parties).

Furthermore, parties can apply for public legal support (e.g.: exemption of court fees and/or nomination of a public attorney).

**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.

Parties to an arbitration procedure can apply for interim measures in order to assure the effective enforcement of an arbitration award. Such measures can be requested by the parties to the arbitration tribunal or to the State Courts.

Parties can request the State Courts to enforce the interim measure. The enforcement procedure does not vary substantially when comparing it to interim measures lodged within the context of judicial procedures. Nonetheless, it should be noted that arbitrators can also issue "preliminary orders" (Article 20 of the Portuguese arbitration law) in order to assure that the goal of the interim measure is not frustrated.

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

**Answer:** Yes.

According to Article 20 of the Portuguese Arbitration Law, unless otherwise agreed by the parties, the arbitration tribunal may, at the request of a party and after hearing the opposing party, grant the interim measures it deems necessary in relation to the subject-matter of the dispute.

As stated above, arbitrators can also issue “preliminary orders” (Article 20 of the Portuguese arbitration law) in order to assure that the goal of the interim measure is not frustrated.

**VI. FOREIGN PROCEDURE & ARBITRATION**

**1. Is it possible to apply for an interim measure before your country’s 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.

Under Article 27 of the Portuguese Arbitration Law, an interim measure issued by an arbitration tribunal shall be enforced upon application to the competent state court, irrespective of the arbitration in which it was issued being seated abroad.

Portugal

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