

# Enforcement of Foreign Judgments

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Interim and Precautionary Measures [Russia]

2020



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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, referring to Chapter 8 of the Arbitration Procedural Code (APC).

The arbitration court can take urgent temporary measures (interim measures) once applied for by a party to the case as well as upon an application of another person in the instances covered by this code. These urgent measures may relate to interim relief or be used to secure the property interests of the applicant.

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

**Answer:** Applications to the arbitration court for interim measures require a state tax be paid for the amount set by the federal law. This is equal to the amount paid for enforcement order applications.

The APC judicial expenses are composed of the state tax and the court costs connected to the legal proceedings conducted by the arbitration court.

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

**Answer:** Proceedings on the application for interim measures shall take place no later than the next day after the application is brought to the court.

The decision of the court on the interim measures shall be executed immediately according to the rules established for enforcement of judicial acts of the arbitration court. Based on the decision on interim measures made by the arbitration court, an enforcement order shall be issued.

In case of satisfaction of the claim, interim measures shall apply until the actual enforcement of the judicial act delivered at the end of legal proceedings on the merits of the case.

## **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:** Interim measures include, but are not limited to:

1) seizure of funds (including incoming funds on the bank account) or other property of the defendant in his or her possession or in possession of other persons (amended by Federal law of 19.07.2009 no. 205-FZ);

2) interdiction for the defendant and other persons to perform certain actions concerning the subject-matter of the dispute;

- 3) imposition of the obligation on the defendant to perform certain actions aimed at the prevention of damage and deterioration of the disputed property;
- 4) transfer of the disputed property for custody to the claimant or another person;
- 5) suspension of the sanction concerning the enforcement or other document disputed by the claimant, when the sanction is executed by uncontested procedure (without acceptance); and
- 6) suspension of disposal of property in case a lawsuit is filed to release property from seizure.

The arbitration court can take other interim measures, and several interim measures can be taken simultaneously.

### **III. PROCEDURE**

#### **1. Competent Court**

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

**Answer:** Interim and precautionary measures shall be granted by the arbitration court in which the relevant case is heard. Cases subject to the jurisdiction of arbitration courts shall be considered by arbitration courts of the republics, territories, regions, cities of federal significance, autonomous areas, and autonomous districts. The application shall be filed to the arbitration court of the Russian Federation according to the territory jurisdiction or the place where the defendant is established (*forum rei*).

#### **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:** Interim measures can apply at any phase of the arbitration proceedings when non-adoption of such measures can limit or render impossible the execution of the judicial act, including cases when the judicial act is to be executed outside of the territory of the Russian Federation, as well as to prevent serious damage to the applicant.

#### **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:** Arbitration courts have the right to take preliminary interim measures at the application of an individual or a legal entity aimed at the security of property interests of the claimant before filing the lawsuit.

**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:** The application for interim measures can be brought to the arbitration court simultaneously with the claim or during the case proceedings before the delivery of the judicial act ending the proceedings on the merits.

**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:** For interim measures to apply, two conditions must be fulfilled (part.2 art.90 of the APC of the Russian Federation):

– difficulty or lack of possibility to fulfill the judicial act in case of non-adoption of interim measures;

– risk of serious damage for the applicant.

Thus, the lack of the above conditions leads to the dismissal of the application for interim measures (part 3 art. 93 of the APC of the Russian Federation). Part 2 of the Informational Letter of the Presidium of the Supreme Arbitration Court of the Russian Federation No. 83 specifies that if the applicant does not provide any evidence proving that non-adoption of relevant measures can have the consequences specified in part 2 art.90 of the APC of the Russian Federation, the application for the suspension of the disputed act or decision cannot be granted. A similar explanation is also provided in part 9 of the Sentence of the Plenary Assembly of the Supreme Arbitration Court of the Russian Federation No. 55. Taking into account that interim measures shall be taken only if reasonable, the arbitration court can fulfill the application for interim measures only having the evidence proving the existence of at least one of the conditions specified by part 2 art.90 of the APC of the Russian Federation

## 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:** After the application for interim relief is filed to the arbitration court, it is considered by an individual judge without notifying the parties.

- 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. It is possible if it was made to defend the person's interests. The arbitration court can take urgent temporary measures aimed at enforcement of the claim or in the property interests of the applicant (interim measures) once applied for by a party to the case as well as upon an application of another person in cases provided by the APC.

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

**Answer:** The arbitration court shall consider the application for interim measures simultaneously with the proceedings on the case according to the rules of legal proceedings in courts of the competent instance as defined by the APC of the Russian Federation.

## 7. Opposition of the defendant

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

**Answer:** Yes. The defendant can object to these measures.

It is defined by the APC and is based on the fundamental concepts of arbitration proceedings such as the equality before the law and courts, equality of the parties, and the adversarial principle.

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

**Answer:** An interim measure can be replaced with another one by application of the claimant or the defendant (art. 95 of the APC).

The question about the replacement of an interim measure with another one shall be resolved by the arbitration court no later than the next day after the application for the replacement of an interim measure with another one according to the rules established by the APC is brought to the court.

Since the list of interim measures contained in art. 91 of the APC is not exhaustive, the defendant can ask the court to substitute the interim measure for a guarantee.

## **8. Appeal**

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

**Answer:** Yes, the court judgment can be appealed against based on the rules of proceedings.

The parties to the case and other persons in cases specified in the APC have the right to appeal against the judgment of the arbitration court of primary jurisdiction that has yet not entered into force according to the rules of appeal proceedings.

The appeal shall be filed through the arbitration court of primary instance that delivered the judgment in question; then it is transferred to the arbitration court of appeals. Appeals can be filed within a month of the delivery of the judgment in question, unless otherwise provided by the APC.

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

**Answer:** Yes, as long as the application does not imply cessation of the interim measures.

## **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:** The decision of the arbitration court on interim measures shall be executed immediately according to the rules established for enforcement of judicial acts of the arbitration court. Based on the decision on interim measures made by the arbitration court, an enforcement order shall be issued.

For non-execution of the court decision on interim measures, the person with the obligation to take interim measures can be charged with a court fine to the extent provided by Chapter 11 of the APC.

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

**Answer:** Yes. An interim measure can be replaced with another one by application of the claimant or the defendant.



The question about the replacement of an interim measure with another one shall be resolved by the arbitration court no later than the next day after filing the application on the replacement of an interim measure with another one according to the rules established by the APC.

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

**Answer:** The application for interim measures can be brought to the arbitration court simultaneously with the claim or during the case proceedings before the delivery of the judicial act ending the proceedings on the merits. Therefore, interim measures can be raised at any stage of arbitration proceedings.

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

**Answer:** There are no specific regulations.

Judicial expenses are composed of the state fee and court expenses in connection with the legal proceedings conducted by the arbitration court.

**V. ARBITRATION**

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

**Answer:** Yes. The judicial acts of the arbitration courts shall be executed after they enter into force, except cases of immediate enforcement established by the APC and other federal laws on enforcement proceedings.

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

**Answer:** Yes. Enforcement of a judicial act shall be conducted based on the enforcement order issued by the arbitration court, unless otherwise provided by the APC.

**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:** No. In the Russian Federation interim relief can only be applied for in the context of national legislation.

Russia

*Submitted by*  
*Alexander*  
*Bolomatov YUST*  
*Law Firm*  
*bolomatov@yust.r*  
*u Tel: 7 495 795*  
*08 43*  
*www.yust.ru*