

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Saudi Arabia]

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. However, there are two paths for interim measures in Saudi Arabia.

The first is a Provisional Attachment, which is a part of the Saudi Enforcement Law ("**SEL**"), and can be found in Chapter 2, Articles 23-33 of the SEL.

The second is a Summary Proceeding, and set out in Chapter 4, Part 12 of Articles 205-217 of the Saudi Law of Civil Procedure ("**SCPL**").

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

Answer: No, but in some cases the party seeking a Provisional Attachment or Summary Proceeding cases shall present to the court or competent authority notarized written security from a solvent guarantor, or a guarantee to satisfy all rights of the defendant as well as any sustained damages in case the claim is proved to be invalid.

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

Answer: There is no exact length set out in the SEL relating to a Provisional Attachment, and it varies depending on the nature of the case; e.g., it could range from one week to one month.

However, for a Summary Proceeding, Article 207 of the SCPL requires that the period for appearance in summary cases shall be within 24 hours. Such a period may, in compelling circumstances, be further reduced by court order.

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 Provisional Attachment is a remedy or protective measure that seizes property to ensure the satisfaction of a later judgment by the courts, and immobilizes or freezes the attached assets, as the debtor is deprived of his right to dispose of or encumber the assets. It can be enforced according to the conditions and requirements set out in the SEL. (See Chapter 2 of the SEL.)

Summary Proceedings include the following matters, and can be enforced according to the conditions and requirements set out in the SCPL, as follows:

- inspections to establish a condition;
- injunctions banning travel;
- injunctions banning interference with possession and recovery of possession;
- suspension of new actions;
- requests for receivership;
- cases relating to daily wages; and
- other cases deemed urgent by law, such as those referenced in a Provisional Attachment.

(See Article 206 of the SCPL.)

III. PROCEDURE

1. Competent Court

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

Answer: The court that has jurisdiction over the main claimant case.

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: The court with jurisdiction over consideration of the subject shall provisionally consider the case on the merits in urgent matters relating to the same case **that may adversely affected with the lapse of time.**

Yes, the claimant may submit interim and precautionary measures on the same application with the main claim, or as a supplemental request after filing the main claim or on the hearing of the main petition.

- 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. The same requirements and steps for interim precautionary measures are taken for standard cases submitted to the court. Special requirements may include a need for definite proof that the debt is evident and due, and the court that has jurisdiction to grant these interim and precautionary measures is the same court that has jurisdiction over the main claim after its filing.

Also, a claimant who submits an injunction banning travel before filing the underlying lawsuit must file the main claim within 7 days from submitting the interim precautionary measures.

- 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. An application can be made at any time in the proceedings so long as: (i) there are circumstances justifying the application; and (ii) the conditions and requirements of the Provisional Attachment or Summary Proceeding is met.

- 5. Criteria used by the court for granting these measures**

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

Answer: The Claimant should provide proof that the lapse of time may have a negative effect, and that the debt is evident and due. However, the specific criterion depends on the type of interim measure – Provisional Attachment or Summary Proceeding. The court may request security equal to potential damages of the defendant in the event the claim is found invalid.

The Court 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: For the Provisional Attachment, if the court order includes an attachment order, the defendant and garnishee shall be notified within a maximum period of ten days from the date of issuance of such order, otherwise the attachment shall be deemed null and void. The claimant shall, within the same ten days, institute a claim before the court of the competent authority to prove the right and validity of the attachment; otherwise, the

attachment shall be deemed null and void. Also, the party seeking the attachment shall present to the court notarized written security from the solvent guarantor or a guarantee satisfying all the rights of the defendant as well as any sustained damage in case the claim is proved to be invalid. (See Articles 28-32 of the SEL.)

For the Summary Proceeding, after submitting the case, the court on the hearing will decide. However, each type of Summary Proceeding has specific steps to enforce if the court issued the order. (See Articles 205-207 of the SCPL.)

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: For the Provisional Attachment, if the party seeking the attachment represents to the court that it satisfies all requirements and needs, the court may order the attachment without hearing or investigation.

For the Summary Proceeding, if the other party defendant has been properly notified, but did not attend the hearing, the court will issue the order without the attendance of the other party.

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

Answer: For the Provisional Attachment, the debt should be evident and due. The application should be submitted to the court which has jurisdiction over the underlying lawsuit and the court may then decide whether to approve the application and send the order, or if it needs more investigation on the matter. The court then will issue the order, or require more investigation from the competent authority. (See Articles 28-32 of the SEL.)

For the Summary Proceeding, the application should be submitted to the court that has jurisdiction over the underlying lawsuit. The defendant then should be notified according to the legal procedures for a normal case. The law requires that the period for appearance in Summary Proceedings shall be within 24 hours. Such period may, in compelling circumstances, be reduced by court order. (See Articles 205-207 of SCPL).

6. Opposition of the defendant

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

Answer: Yes, if the defendant did not receive a legally valid notice.

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

Answer: No.

7. Appeal

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

Answer: Yes. However, it is enforced expeditiously by the court even if the decision is subject to appeal, or it has already been appealed before the Court of Appeals.

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

Answer: Yes. Filing of an appeal does not affect the enforcement of the interim measure.

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. The court will take all necessary actions to enforce the interim measure and will work with all competent authorities.

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

Answer: No.

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

Answer: At any time that the claimant can prove that the time might affect the enforcement of the main case the claimant raised.

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

Answer: No.

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. Same as the procedure described above.

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

Answer: Yes, according to Article 22 of the Saudi Arbitration Law.

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. Same as the procedure described above.

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