

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Serbia]

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. It is possible to obtain a freezing order to stop a person (or company) from disposing of or dealing with their assets. Evidence of a risk of / intention to dissipate assets is required.

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

Answer: Yes – fees vary.

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

Answer: It varies. But it can be said that the average length of time is 2-6 months.

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 for monetary claims are as follows:

- Freezing injunction;
- Other interim injunctions to prevent the defendant from putting assets out of the reach of creditors;
- Prohibition against the enforcement debtor's debtor from satisfying the enforcement debtor's claim or handing over items, or prohibiting the enforcement debtor from collecting claims or receiving those items or disposing of them;
- Order to enforced collection organisation to order banks to transfer enforcement debtor's funds in the amount of secured claims to a public enforcement agent's deposit;
- Order to the Central Securities Registry to register a ban on the alienation or burden of the shares of the enforcement debtor and to prohibit the enforcement debtor from exercising the right to vote from the shares and disposal of this right;

- Seizure of money or securities and their placement in a court deposit or with a public enforcement agent.

Interim measures for non-monetary claims are as follows:

- Freezing injunction related to assets that are subject of the claim;
- Other interim injunctions to prevent the defendant from putting assets out of the reach of creditors;
- Prohibition against the enforcement debtor to take actions that may cause damage to the enforcement creditor and the prohibition to change the subject of the claim;
- Prohibition against the enforcement debtor's debtor to handover subject of the claim to the enforcement debtor;
- Order to the Central Securities Registry to register a ban on the alienation or burden of the shares of the enforcement debtor that are the subject of the claim and to prohibit the enforcement debtor from exercising the right to vote from the shares and disposal of this right;
- Order to enforcement debtor to take actions necessary to preserve the immovable or movable property and prevent their physical alteration, damage or destruction;
- Temporary arrangement of the disputed relationship, if it is necessary to eliminate the danger of violence or the occurrence of greater irreparable damage.

III. PROCEDURE

1. Competent court

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

Answer: The Court which has jurisdiction to decide on the merits of the case has also jurisdiction to grant interim and precautionary measures. The commercial courts have subject matter jurisdiction in commercial disputes. The basic courts have subject matter jurisdiction in civil disputes, except in case that some of these disputes are under the subject matter jurisdiction of another court, such as the high courts' jurisdiction in copyright disputes, as well as in civil disputes when the value of the subject matter of the dispute allows for a revision to 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. 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. The court determines in its decision on the interim measure deadline for the submission of 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: Yes. There are no special requirements.

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: Likelihood of success on the merit of the case – the creditor must convince the court that the claim is likely to exist.

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: Even though holding a hearing is defined in the Enforcement and Security Act as an arbitrary rule, in practice the courts always hold the 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: Yes. There are no special rules for the court to order an interim measure without hearing the other party. As previously mentioned, holding a hearing is defined in the Enforcement and Security Act only as a possible solution, but in practice the courts always hold a hearing.

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

Answer: The court and the public enforcement agent would probably act on the basis of written submissions and other written documents.

7. Opposition of the defendant

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

Answer: Yes. The defendant can file an appeal on interim and precautionary measures within 8 days of the delivery of the decision on interim or precautionary measures.

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 order a guarantee, before or after the interim measure has been determined.

8. Appeal

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

Answer: Yes.

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

Answer: Yes, this does not affect the enforcement of the interim measure in the meantime.

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.

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 – before the commencement of the proceedings, during the proceedings, until the completion of the enforcement proceedings, i.e. until the full settlement of the claim.

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

Answer: The loser will generally pay the winner's costs.

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 procedure is the same as with courts decisions.

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

Answer: Yes.

VI. FOREIGN PROCEDURE & ARBITRATION

1. Is it possible to apply for an interim measure before your country's courts in order to ensure the effective enforcement of a foreign court decision or arbitration award? If YES: how is this procedure executed?

Answer: Yes, if the party owns property in Serbia.

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