

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Bosnia & Herzegovina]

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I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES¹

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. Effective enforcement can be achieved by applying for an interim measure (“**Interim measure**”) or by applying for a precautionary measure (“**Precautionary measure**”) simultaneously with the Interim measure. The difference between Interim and Precautionary measure is that the court can determine a Precautionary measure without notifying and hearing the opposite party. Once the court issues a decision on a Precautionary measure and delivers it to the counter party, the counter party has 3 days to submit an answer with the reasons for contestation. The court must schedule a hearing within 3 days and decide whether Precautionary measure will be revoked or an Interim measure will be determined.

The proposition for an Interim measure can be submitted to the court without proposition for determination of Precautionary measure. After submission of the proposal for an Interim measure, the court delivers such proposal to the counter party for an answer. Only after submission of an answer by a counter party, can the court determine the Interim measure.

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: Interim measure: The procedure could last several months or longer depending on the type and amount of evidence that needs to be presented.

¹ The state Bosnia and Herzegovina (“**BiH**”) consists of two entities - Federation of BiH (“**FBiH**”) and Republika Srpska (“**RS**”), as well as one autonomous district - Brčko District (“**BD**”), where different legal regimes apply. The next level of the BiH's political subdivision is manifested in cantons - they are unique to the FBiH entity, which consists of ten of them. The municipalities and cities represent the final level of political division in BiH, with their local administrations.

Precautionary measure: 10 – 15 days

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:

For the purpose of securing monetary claims, the following Interim or Precautionary measures may be determined:

- 1) Prohibition of selling, hiding, burdening or disposing the property;
- 2) Keeping of the property by depositing it in the court deposit, if possible, or by handing it over to a third party;
- 3) Prohibiting the debtor of the counter party to make payments or hand over a property to the counter party, as well as prohibiting the counter party from receiving the payment/property.
- 4) Pre-registration of the pledge right on the property of the counter party.

The following Interim or Precautionary measures may be set for the purpose of securing non-monetary claims:

- 1) Prohibition of selling, hiding, burdening, or disposal of the property to which the claim is directed.
- 2) Keeping the property to which the claim is directed by depositing such property in the court deposit, if possible, or by handing it over to a third person;
- 3) Prohibiting the counter party to undertake any actions that may cause damage to the property to which the claim is directed or to perform certain actions necessary to preserve the property or maintain its present state;
- 4) Authorization of the proposer of the interim measure to undertake certain activities.

III. PROCEDURE

1. Competent Court

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

Answer: The competent court which has jurisdiction over an underlying lawsuit also has jurisdiction over such measures.

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. Application for Interim or Precautionary measures can be submitted after the lawsuit is filed and there are no special requirements when doing so.

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. In case the interim measure is determined before filing the lawsuit, the court determines a deadline, which cannot be longer than 30 days, in which the lawsuit must be filed.

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. Interim measures can be applied for after filing the main claim, up until the enforcement is completed.

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: There are no specific requirements that must be fulfilled to apply for an Interim measure i.e. any party is authorized to submit the application for issuance of the interim measure. However, in order for the court to determine Interim measures the applicant must prove the probability of its right or claim; and that there is a danger that without such measure the counter-party could prevent or hamper collection of the claim by selling, concealing, encumbering or otherwise disposing of his/her assets, or would

in some way change the current status quo or adversely affect the rights of the proponent.

The court will determine the Interim measure only on the condition that the applicant, based on the proposal of the counter party, provides guarantee for the damage which may arise to the counter party by determining and implementing the Interim measure. If the applicant does not provide a guarantee, the court will reject the application for an Interim measure.

If the applicant submits the request for a Precautionary measure with the request for an Interim measure, than the applicant must prove that their claim is justified and urgent and that without a Precautionary measure the purpose of the Interim measure would be lost.

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: Interim measure

1. Submission of the application for an Interim measure
2. Delivering the application to the opposing party
3. Opposing party submits the response
4. Hearing(s)
5. Issuance of the decision on Interim measure/Rejection of the application
6. Appeal
7. Decision by second instance court

Interim measure with Precautionary measure

1. Submission of the application for an Interim measure with an application for a Precautionary measure
2. Issuance of the resolution on the Precautionary measure (in case the Precautionary measure is not determined the

court decides on the Interim measure as described above)

3. Delivering the resolution on the Precautionary measure to the opposing party and the application for Precautionary measure and Interim measure
4. Providing answer by the opposing party
5. Hearing(s)
6. Deciding on revocation of Precautionary measure and determination of Interim measure
7. Appeal
8. Decision by second instance court

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. See answer no. 5.

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

Answer: Please see answer no. 6.

7. Opposition of the defendant

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

Answer: Yes for Interim measures. No for 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. But, the applicant must agree with such proposal.

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.

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 resolution on the Interim measure has the force of an enforcement title.

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

Answer: Yes.

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

Answer: Before, during and after the dispute (until enforcement of the judgement).

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

Answer: The party that loses generally pays the costs (lawyers and court fees) of the party that succeeded.

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: Based on the applicable laws, it is unclear whether the court would issue the Interim measure in this case, since there is no

lawsuit to be filed and it would be difficult to implement this in practice.

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

Answer: No.

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: This is not explicitly regulated by the applicable laws. Presumably it would be difficult to obtain an Interim measure in this case in the practice.

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