

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Cyprus]

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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, interested parties may apply for interim measures as a means of securing the effective enforcement of a judgment.

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

Answer: Yes. However, such fees are minimal and depend on the scale of the case.

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

Answer: The time required varies depending on whether the application is opposed or not and whether other interim applications are filed in the context of the said interim measure proceedings.

Interim applications are usually made on an ex-parte basis, that is without giving notice to the other side. The order can be granted on that basis on the same day or soon after and a return hearing date is scheduled usually within 7 days. By the date set, the applicant shall serve on the respondent the order granted along with all supporting documentation and the respondent may appear on the said return date to oppose it. After the filing of the opposition, the application is scheduled for a hearing and an interim judgment is issued within approximately 3 months.

If the court is not satisfied that the order should be granted on an ex-parte basis, directions are given to render the application a by summons application and a hearing takes place after the filing of the opposition of the respondent.

In the context of the said application, other interim applications may also be filed by either party, such as an application for leave to file a supplementary affidavit or an application for leave to cross-examine any of the affiants. Such applications are dealt with prior to the hearing of the application for the issuance of interim orders, thus the hearing process is accordingly prolonged as required for the determination of all matters raised.

As a general principle and as of their urgent nature, interim applications are heard within a short period of time.

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:

- a) Prohibitive injunctions including freezing injunctions, anti-suit injunctions and gagging orders
- b) Mandatory injunctions
- c) Attachment and sequestration orders
- d) Restraining injunctions in relation to land
- e) Security for costs orders
- f) Disclosure and tracing orders
- g) Search and seizure orders
- h) Appointment of a receiver and/or administrator

III. PROCEDURE

- 1. Competent court**

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

Answer: District Courts have jurisdiction to hear such applications for matters of a civil and commercial nature. Cases are allocated before District Judges, Senior District Judges and Presidents of District Courts depending on the value of the claim. The Rent Control Tribunal, the Industrial Disputes Tribunal and the Family Court also have jurisdiction to hear applications for the issuance of interim orders where the subject matter falls under their exclusive jurisdiction.

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

Answer: Such applications may be filed either simultaneously with the filing of a case or at any subsequent time, provided that the facts and circumstances of each case justify the filing of such applications at a later stage. Usually there must be a change in circumstances to justify the filing of an application at a later 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: No, this is not possible for domestic lawsuits nor in aid of foreign court proceedings. However, it is possible to obtain an interim order in aid for foreign arbitration proceedings of a commercial basis, prior to the filing of the foreign arbitration proceedings. This is pursuant to section 9 of the International Commercial Arbitration Law 101/1987. For domestic cases, the applicant can file the shortest form of a lawsuit/originating summons in the form of a writ 2.1, without including the full details of the statement of claim which can be filed at a later stage. This shortest form will only include the names of the parties, their addresses and what remedies are being sought. So, simultaneously with the filing of this shortest form of a lawsuit, an application for the issuance of an interim order can 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. However, the applicant shall adduce evidence justifying the necessity for the filing of the application at a subsequent stage, in particular where new facts or circumstances arose that were not present at the time of the commencement of the proceedings in order to justify the timing at which the application is made.

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: Pursuant to section 32 of the Courts of Justice Law, Law 14/1960 that grants jurisdiction to courts to issue such orders, the party applying has to satisfy the court that:

- a. there is a serious matter to be tried, and
- b. that it is probable that the applicant will be successful in obtaining relief, and
- c. that unless the interim relief is issued, it will be difficult or impossible to do complete justice at a later stage.

In relation to the burden of proof, the applicant has to prove that there is more than a mere probability of success but less than the balance of probabilities, which is the standard of proof in civil matters.

The applicant also needs to adduce evidence as to the urgency of the matter and the significance of the time of applying for an interim remedy that justifies the issuance of such an order at an intermediary stage, in particular in the absence of the opposing party.

Urgency is a jurisdictional ground for the issuance of such orders on an ex-parte basis pursuant to section 9 of the Civil Procedure Law, Cap. 6.

In any case, the fact that the above criteria are satisfied do not automatically lead to the conclusion that the application will succeed. Section 32 of the Courts of Justice Law, Law 14/1960 further provides that the court has the power to issue such orders where it is just and convenient to do so, in the interests of justice. Therefore, courts retain full discretionary powers when assessing applications for the issuance of interim orders. When determining what is just and convenient, the court takes into consideration the risk of injustice that may be caused to the opposing party if the order sought is granted, weighted against the risk that the applicant may suffer if the interim order is not granted.

Other criteria that are taken into consideration pursuant to the established case law principles, are the balance of convenience and the preservation of the status quo.

Prior to the issuance of the interim order on an ex-parte basis, the courts also give directions for the filing of a guarantee (cross-undertaking) pursuant to the provisions of section 9(2) of the Civil Procedure Law, Cap. 6 to cover any damages the respondent may suffer because of the issuance of the order. The amount of such guarantee is again a matter for the court to decide pursuant to its discretionary powers, taking into consideration the subject matter, the complexity of the claim and the value of each claim.

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: Where the application is made on an ex-parte basis, if the order is issued on such basis, a return date is scheduled usually within 7 days when the respondent may ask for time to file an opposition. After the filing of the opposition, the application is scheduled for a hearing for the issuance of an interim judgment as to whether the order granted will remain in force until the final determination of the matter or whether it will be cancelled.

Where the application is made by summons, the respondent may appear at the date the application is scheduled for directions and ask the court for time to file an opposition. Again, a hearing is scheduled for the issuance of an interim judgment.

- 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. This is justified on grounds of urgency and that it will be difficult or impossible to do complete justice at a later stage (for example, where evidence is adduced as to the risk of dissipation of assets or other risk that may be done to the party applying, for which damages will not be an adequate remedy at a subsequent stage). Another ground that the court will take into consideration in issuing an interim order without hearing the other party, is where the said order will assist in the preservation of the status quo and is thus just and convenient to grant such interim relief.

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

Answer: The ex-parte application along with a supporting affidavit and exhibits attached therein is filed and it is scheduled the same day or within 1-2 days for a hearing. If the order is granted, the applicant has to file to the Court Registrar the guarantee (cross-undertaking) ordered by the court by means of a bank guarantee or as otherwise directed by the court and the Court Registrar issues the order. The applicant shall then serve on the respondent and any other interested parties the order issued along with the supporting documentation, informing the respondent of the return hearing date.

7. Opposition of the defendant

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

Answer: Yes – either on the return hearing date if the order is issued on an ex-parte basis or on the date when the by summons application is scheduled.

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

Answer: Yes.

8. Appeal

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

Answer: Yes, appeals are filed and heard before the Supreme Court.

Additionally, a certiorari procedure can be filed before the Supreme Court seeking an invalidation of an interim order issued on the ground that the first instance court has exceeded its powers in granting the interim order.

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

Answer: Yes. The interim order remains enforceable irrespective of the appeal filed against it.

Applying for a suspension of the execution of the interim order pending the hearing of the appeal is also available to the parties. Such application should be first filed before the first instance court that issued the interim order and if unsuccessful, then before the Supreme Court that will hear the appeal filed against the said interim judgment.

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, contempt proceedings may be initiated against persons who are duly served with an order and fail to abide by it. Such persons may be imprisoned, be fined or have their assets seized.

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

Answer: Yes, upon relevant application filed by any of the parties. Such an application is served on the other party and may be opposed; in that case a hearing takes place for the issuance of a relevant interim judgment.

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

Answer: At any time, particularly as circumstances or evidence change. An interim measure could be lifted when a judgment is issued in favour of the claimant, as usually the interim measure is said to be in force until the issuance of a final judgment. Additionally, upon the claim being stayed or if both parties consent to the lifting of the order, usually when a settlement has been reached between the parties.

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

Answer: Yes. The general rule is that the loser will pay the winner's costs. For example, if the respondent successfully opposes the application, then the applicant will be ordered to pay the respondent'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: In relation to domestic arbitration proceedings, the applicant can file an application for interim measures before the court on the basis of the Arbitration Law, Cap. 4.

Interim measures may also be sought before the court in aid of foreign arbitration proceedings, before such proceedings are filed or after they are filed, pursuant to section 9 of the International Commercial Arbitration Law 101/1987. Interim measures can also be sought when an application for the enforcement of a foreign arbitral award is filed.

As regards the enforcement procedure of foreign arbitral awards, the applicant shall apply for the recognition, registration and enforcement of the said award in Cyprus pursuant to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 as well as the Judgments of Foreign Courts (Recognition, Registration and Enforcement) Law of 2000, Law 121(I)/2000 and the International Commercial Arbitration Law 101/1987, in order to be able to proceed with all available means for execution, as provided in the Civil Procedure Rules and the relevant applicable laws.

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

Answer: The arbitrators are not entitled to order an interim measure in relation to domestic arbitration proceedings.

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. As explained above, interim measures may be sought in aid of foreign arbitration proceedings before such proceedings are filed or after they are filed, pursuant to section 9 of the International Commercial Arbitration Law 101/1987. Interim measures can also be sought when an application for the enforcement of a foreign arbitral award is filed.

As regards the enforcement procedure of foreign arbitral awards, the applicant shall apply for the recognition, registration and enforcement of the said award in Cyprus pursuant to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 as well as

the Judgments of Foreign Courts (Recognition, Registration and Enforcement) Law of 2000, Law 121(I)/2000 and the International Commercial Arbitration Law 101/1987, in order to be able to proceed with all available means for execution, as provided in the Civil Procedure Rules and the relevant applicable laws.

In relation to foreign court decisions, Cyprus has concluded various bilateral treaties with other countries which provide for the recognition, registration and enforcement of a foreign court's judgment. In relation to judgments issued by the European Union courts, we also note the application of the European Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

As regards the procedure, pursuant to the provisions of the Judgments of Foreign Courts (Recognition, Registration and Enforcement) Law of 2000, Law 121(I)/2000, a by summons application is filed by the party interested in having a foreign judgment or arbitral award recognised and registered in Cyprus, supported by an affidavit, attaching the original or a certified copy of the judgment or award, along with its certified translation into Greek. The respondent may appear on the date the application is scheduled, to oppose the application, and a hearing is held for the issuance of a relevant judgment. Judgment is issued within 3-4 months as of the date of the filing of the initiating application unless other interim measures are commenced e.g. an application to obtain the court's leave to adduce a supplementary affidavit.

VII. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION.

1. Please state/provide any other issues of interest in your jurisdiction.

Answer: A vital development as a means of modernising the Cypriot justice system is the establishment of a Commercial Court in Cyprus that will have exclusive jurisdiction to hear cases of a commercial nature at a local and international level. The Commercial Court will have jurisdiction over claims arising from contracts or disputes between companies and shareholders, the purchase or sale of goods, the exploitation of oil or gas, the carriage of goods by land, sea (except matters that fall under the exclusive jurisdiction of the Supreme Court of Cyprus acting as Admiralty Court), air or pipeline, matters related to ship, truck and aircraft construction, banking, intellectual property and insurance affairs, among others, with the aim of dealing with interim measures and the substance of the said claims within a set period of time (9-12 months). The Commercial Court will also hear disputes arising from transactions taking place abroad when the parties have agreed that the governing law of their dispute will be Cypriot law and they subject to the jurisdiction of the said Commercial Court. As per the last draft of the Commercial Court legislation, the Commercial Court will hear cases where

the value at stake is over EUR 2 million. The relevant legislation will be enacted within the following months.

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