

# Enforcement of Foreign Judgments

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Interim and Precautionary Measures [Denmark]

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 assure the effective enforcement of a Court decision?**

**Answer:** Yes.

- 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:** It depends very much on the average case duration of the court as well as on the urgency of the matter at hand when the interim measure is processed by the court. From the point of time when the court initiate the process and until a decision has been reached, it is most likely that the duration of the process is 2-3 weeks.

Additionally, a party who have been granted an interim measure must commence legal proceedings to prove his or her right within two weeks after the interim measure was finally decided, in order to uphold the measure. If those validation proceedings are included in the average length of this procedure, the duration is 1-2 years if the decision of the validation procedure is not appealed.

## **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:** Attachment of assets, injunction, freezing orders, restraining orders, seizing or confiscation of assets or revenue, court orders to continue, change or halt an activity. If an interim measure is within the scope of a court decision, and the requirements for an interim measure are fulfilled, the interim measure can be effected. For instance, an application for a caveat shall under Danish law be filed with the Land Registry and does not fall within the scope of possible interim measures at the court.

## **III. PROCEDURE**

- 1. Competent Court**

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

**Answer:** The local bailiff's court which has jurisdiction in the area where the debtor is domiciled shall decide on the matter.

**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:** Yes. You can apply for an interim measure before the underlying lawsuit (validation proceedings) is filed. When the interim measure is granted, the validation proceedings must be commenced within two weeks.

**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. See above.

**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. Supposing that the validation proceedings are pending, there are no additional requirements.

**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:** It shall be noted that an interim measure is an exception and that it is not often granted by a Danish court that:

Prohibitions or injunctions may be granted by the court if the party requesting the prohibition or the injunction demonstrates and to a certain degree proves to the court

- The party is entitled to be protected by the prohibition or injunction (meaning that the party shall be entitled to a certain right which the validation proceedings shall prove),

- The acts or negligence by the counterparty necessitates the granting of a prohibition or injunction (because there is a very high risk for violation or an actual violation of the party's right), and

- The party will lose their opportunity to obtain their right if they are referred to await the court proceedings of the dispute.

## **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:** Written evidence to fulfill the three criteria mentioned just above shall be presented with the application for an interim measure to the court. The next step is that the court will call for a hearing, which both parties are to attend as soon as possible. The debtor will also be able to present evidence either before or at the hearing. At or shortly after the hearing, the court will decide whether the application is granted or rejected. If granted, the applicant shall commence legal proceedings to validate that the party is entitled to the right which the interim measure is to protect.

- 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 only possible if the interim measure is extremely urgent, or if hearing the other party will compromise the purpose of the interim measure, for instance if the debtor is suspected of trying to hide the assets in question.

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

**Answer:** The party applying for an interim measure without hearing the other party shall file an application for such measure with the requested evidence as mentioned above, as well as further evidence that a hearing of the other party will severely and negatively impact the purpose of the interim which is to protect the applicant's right. Hereafter, the bailiff's court shall decide whether an interim measure without hearing may take place. When an interim measure with or without hearing the other party is granted or rejected, each party is entitled to appeal the decision to the second instance court. If the interim measure is upheld, it will stay in effect until a final judgment has been made.

## **7. Opposition of the defendant**

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

**Answer:** Yes.

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

**Answer:** Yes. But it will depend on the reasons for the interim measure. If the reason is to secure debtor's assets in order for him to pay what he owes, then sufficient guarantee will always be accepted.

**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. The bailiff court's decision will stay in effect until the appeal has been tried.

**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. If necessary, with the aid of the bailiff's court and/or the police.

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

**Answer:** Yes. Once the measures have been adopted, they may be modified if facts and circumstances are put forward and proven which were not taken into account when the measures were adopted or within the period laid down for opposing the measure.

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

**Answer:** The measure will be raised if the requirements for the interim measure are no longer fulfilled, if the validation procedure is not commenced in time, if the procedure is discontinued or rejected, or when the validation proceeding is final. Additionally, if the debtor provides sufficient guarantee or payment for the claim, the interim measure shall be raised.

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

**Answer:** The losing party will pay legal fees and lawyers' fees as awarded by the court.

## **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. The procedure is the same as for a judgment from the court.

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

**Answer:** No. Interim measures are granted only by the bailiff's court, but the arbitration court will have the final say as to whether the interim measures should be raised.

## **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:** Yes. If a foreign court decision or arbitration award fulfills the requirements to be recognized and enforced, and further fulfills the requirements for an interim measure, an application for an interim measure may be granted.

## **VII. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION.**

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

**Answer:** N/A

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