

# Enforcement of Foreign Judgments

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Interim and Precautionary Measures [Peru]

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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:** In general, Peruvian law allows request a precautionary measure before and during a judicial process.

For the specific case of foreign judgment, first you must request the recognition of the foreign judgment. Once you have the resolution of a Peruvian judge that recognize the foreign judgment, you can execute it and before or during that judicial process of execution, you can request a precautionary measure.

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

**Answer:** Yes, all the private company's or particular persons must pay the court fees.

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

**Answer:** The length for the recognize of a foreign judgment its between seven to ten months.

It takes between two to three years -considering first and second instance and an eventual cassation stage- for execute a foreign judgment.

## 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:** Peruvian law recognizes precautionary measure for future forced execution, temporary on the merits, precautionary measures to innovate and not to innovate. It is also possible to request generic precautionary measures (embargo in the form of retention, sequestration of goods including vehicles, embargo of properties, embargo in the form of inscription, among others).

### III. PROCEDURE

#### 1. Competent Court

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

**Answer:** The Judge that knows the demand is who has jurisdiction. In that sense, it would be the Judge specialized in the civil matters with subspecialisation in commercial matters.

#### 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:** Once the foreign judgment is recognized, you can initiate the execution process and before or during that execution process you can request the precautionary measure.

Yes, it is possible to apply for a precautionary measure at the time that the underlying lawsuit of foreign judgment is filed, the petitioner must accredit the appearance of the right invoked, *periculum in mora*, *fumus boni iuris*.

#### 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, it is. In order to request a precautionary measure, the petitioner must accredit the appearance of the right invoked, *periculum in mora* and *fumus boni iuris*. The beneficiary with the precautionary measure must submit the lawsuit in the ten business days after the execution of the precautionary measure.

If the lawsuit is not submitted or the Judge rejects it, the precautionary measure expires in full right.

#### 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, it is. The petitioner must accredit the appearance of the right invoked, *periculum in mora* and *fumus boni iuris*.

**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 law requires that the petitioner accredits the appearance of the right invoked, *periculum in mora* and *fumus boni iuris*.

**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:** Once the precautionary measure is submitted, the Judge analyse the grounds and evidence provided, there are not hearings or audience. The precautionary measure is granted or rejected without the knowledge of the defendant.

**(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, the interim measure is a private request and it is only known for the part that request it and the Judge, who decides without hear the other party.

If resolution of the Judge of first instance that rejects the precautionary measure, can be appeal, in which case the superior resolves without notify or hear the other party.

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

**Answer:** There are no since the judge takes a decision without hear the other party.

**7. Opposition of the defendant**

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

**Answer:** Yes, the defendant can oppose in the term of five business days since it takes knowledge from the resolution that grants the precautionary

measure. The opposition does not suspend the execution of the precautionary measure.

If the Judge grants the opposition, the precautionary measure is without effect.

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

**Answer:** If the precautionary measure guarantees a money claim, the affected party may deposit the amount fixed in the precautionary measure and the Judge will substitute it.

The amount will keep guaranteeing the money claim and it will accrue legal interest.

It is also possible the substitution of the precautionary measure when the affected party offers enough guarantee to the Judge's criteria, who resolves after informing the party that requested the precautionary measure in the first place.

## **8. Appeal**

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

**Answer:** It is possible to appeal the resolution that grants a precautionary measure, there is no law that forbids it.

It is possible to appeal the resolution that rejects the defendant's opposition to the precautionary measure, however, that does not suspend its execution.

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

**Answer:** The appeal does not suspend the execution of the precautionary 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:** If the circumstances require the help of the security forces, the Judge will send an office to the police and the police authority will have to execute it immediately, under criminal responsibility.

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

**Answer:** The beneficiary with the precautionary measure can request the variation in any state of the process, this may be varied either by modifying its form, varying the assets on which it falls or its amount, or by replacing the judicial assistance body.

The Judge will resolve the request attending the particular circumstance of the case.

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

**Answer:** In addition to the regulated precautionary measures, the Judge may adopt anticipated measures designed to avoid irreparable damage or provisionally ensure the execution of the final judgment.

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

**Answer:** Peruvian law established that the cost and judicial rates must be paid by the defied part.

**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, it is. You can request a precautionary measure and accredit the appearance of the right invoked, periculum in mora and fumus boni iuris.

The Judge grants or rejects the request without knowledge of the other party. The defendant can oppose in the term of five business days since it takes knowledge from the resolution that grants the precautionary measure. The opposition does not suspend the execution of the precautionary measure.

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

**Answer:** Yes, they can modify, vary, or cancel the precautionary measure given by a Judge before the constitution of the arbitral tribunal.



## 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:** No, it is not possible request an interim measure to assure the effective enforcement of a foreign court decision. First, you must request the recognition of the foreign judgment. Once you have the resolution of a Peruvian judge that recognize the foreign judgment, you can execute it and before or during that judicial process of execution, you can request an interim measure.

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