

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Taiwan]

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TABLE OF CONTENTS

	Page
I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES	1
A. Is it possible to apply for an interim measure in order to assure the effective enforcement of a Court decision?	1
B. Is it mandatory to pay court fees for this type of application?	1
C. What is the ordinary/average length of time for this kind of procedure?.....	1
II. TYPES OF INTERIM AND PRECAUTIONARY MEASURES.....	1
A. For which types of interim measures are the parties allowed to apply? (e.g., injunction, freezing orders, caveat, restraining order, etc.).....	1
III. PROCEDURE.....	2
A. Competent Court	2
1. Which court has jurisdiction to grant these interim and precautionary measures?.....	2
B. When can the application for interim and precautionary measures be submitted?	2
1. 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?	2
C. 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).....	2
D. Is it possible to apply for interim precautionary measures after filing the main claim? If YES: Are there any special requirements when so doing?	2
E. Criteria used by the court for granting these measures	2
1. What requirements must be fulfilled in order to apply for an interim measure? (e.g., periculum in mora, fumus Boni iuris, security, etc.).....	2
F. Procedure	3

1.	Which are the main steps of the procedure after filing the interim measure application? (e.g., holding a hearing, presenting evidence, etc.)	3
2.	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?	3
3.	What are the main steps of the procedure in this case?	3
G.	Opposition of the defendant.....	3
1.	Is it possible for the defendant to oppose interim and precautionary measures?.....	3
2.	Is it possible for the defendant to ask the Court for the substitution of the interim measure for a guarantee?	4
H.	Appeal.....	4
1.	Are appeals allowed from the court decision ordering the measures or rejecting the defendant’s opposition to them?	4
2.	Is it possible to enforce the interim measure once an appeal is filed?.....	4
IV.	EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES.	4
A.	Is it possible to enforce the interim measure when the other party obstructs it?	4
B.	Is it possible to modify a previous interim measure?	4
C.	When is it possible to raise an interim measure?.....	4
D.	Are there any rules concerning the costs (e.g., lawyers’ fees, etc.) related to the application?.....	5
V.	ARBITRATION	5
A.	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?.....	5
B.	Are the arbitrators, entitled to order an interim measure?.....	5
VI.	FOREIGN PROCEDURE & ARBITRATION	5

A. 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? 5

VII. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION. 5

A. Please state/provide any other issues of interest in your jurisdiction. 5

I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES

A. Is it possible to apply for an interim measure in order to assure the effective enforcement of a Court decision?

Answer: Yes.

According to Taiwan's Code of Civil Procedure (the "Code"), the three main types of interim measures are provisional attachment (Article 522), provisional injunction (Article 532) and temporary orders (Article 538).

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

Answer: According to Article 77-19 of the Code, the court fee for these types of applications is NTD 1,000 (security bonds may be required based on the circumstances).

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

Answer: Subject to actual circumstances, it may take two to six weeks, or even months, to obtain a ruling of an interim measure. Because the court must provide parties with an opportunity to be heard before issuing a temporary order, the ruling of such order may take longer.

II. TYPES OF INTERIM AND PRECAUTIONARY MEASURES.

A. For which types of interim measures are the parties allowed to apply? (e.g., injunction, freezing orders, caveat, restraining order, etc.)

Answer: In monetary claims or claims exchangeable for monetary claims, a creditor may apply for provisional attachment to secure the satisfaction of a compulsory enforcement. In the situations where the claims are subject to conditions or time, provisional attachment may also be made.

In non-monetary claims, a creditor may apply for a provisional injunction to secure the satisfaction of compulsory enforcement. Unless it is impossible or extremely difficult to satisfy the claim by compulsory enforcement if the status quo of the object of the claim is not altered immediately changed now, a provisional injunction will not be granted.

In order to prevent material harm or imminent danger or other similar impact, a creditor may apply for an injunction maintaining a temporary status quo with regard to the legal relation in dispute. Such order may be issued only where the legal relation in dispute may be ascertained in the lawsuit. Except where the court considers inappropriate, the court should accord the parties an opportunity to be heard before issuing the order.

III. PROCEDURE

A. Competent Court

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

Answer: The court at the place where the object of the provisional attachment/provisional injunction/ temporary orders is located has jurisdiction over the application. If the creditor had already filed a lawsuit, the court having jurisdiction over the underlying case also has jurisdiction over the application.

B. When can the application for interim and precautionary measures be submitted?

1. **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. The requirement is generally the same as applying for it before or after the underlying lawsuit is filed.

C. 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. However, according to Articles 529, 533, and 538-4 of the Code, where the underlying lawsuit is yet to be filed, upon the debtor's motion, the court issuing the provisional measure will order the creditor to file the lawsuit within a designated time.

D. 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 for this.

E. Criteria used by the court for granting these measures

1. **What requirements must be fulfilled in order to apply for an interim measure? (e.g., *periculum in mora*, *fumus Boni iuris*, security, etc.)**

Answer: According to Articles 523 and 532 of the Code, the major prerequisites for provisional attachment and provisional injunction are that (a) the applicant can show a prima facie case for the underlying claim; and (b) without the attachment or injunction, it will be impossible or extremely

difficult to satisfy the claim by compulsory enforcement in the future. According to Articles 526 and 533, a preliminary showing of the claim and the ground for the provisional attachment/injunction must be made. If the creditor cannot meet the standard of preliminary showing, the court may assess an amount of the security bond and issue a provisional attachment/injunction with enforcement of such provisional attachment/injunction conditioned on the creditor's provision of such security.

According to Article 538, the major requirement for a temporary order is that the order is necessary for purposes of preventing material harm or imminent danger or other similar impact.

F. Procedure

- 1. Which are the main steps of the procedure after filing the interim measure application? (e.g., holding a hearing, presenting evidence, etc.)**

Answer: Generally, provisional attachment and provisional injunction will be issued on the basis of a written submission by the applicant (Articles 526 and 533 of the Code). For a temporary order, the court usually holds hearing(s) at which the parties present their arguments and both sides are given an opportunity to provide written submissions and other evidence.

- 2. 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: In cases of provisional attachment and provisional injunction, the court may issue orders without hearing the other party. In cases of temporary order, unless the court considers it unnecessary, the other party will have its opportunity to present its arguments in a hearing.

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

Answer: After the party applies for the provisional attachment or provisional injunction, the court will consider and make a ruling on whether it grants or denies the application.

G. Opposition of the defendant

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

Answer: Yes. According to Articles 528 and 533 of the Code, the defendant can appeal provisional attachment and provisional injunction after they are

granted. According to Articles 538 and 538-4, the defendant can also oppose or appeal a temporary order.

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

Answer: Yes. According to Article 527 of the Code, the Court should specify in the ruling granting the interim measure that the defendant may lodge a security bond to stop the interim measure from being enforced.

H. Appeal

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

Answer: Yes.

2. Is it possible to enforce the interim measure once an appeal is filed?

Answer: Yes. The appeal itself would not suspend the enforcement of the interim measure.

IV. EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES.

A. Is it possible to enforce the interim measure when the other party obstructs it?

Answer: Yes.

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

Answer: Yes, depending on the circumstances.

C. When is it possible to raise an interim measure?

Answer: Where the grounds no longer exist, or the court ruling which is against the creditor has become final and binding, or the circumstances requiring a ruling for provisional attachment have changed, the provisional attachment may be revoked (Articles 530, 533 and 538-4 of the Code). If an interim measure is applied and granted before any underlying lawsuit is filed, such interim measure may also be revoked in the event the applicant does not comply with a court order to file the underlying lawsuit within the time designated by the court (Articles 529, 533 and 538-4 of the Code).

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

Answer: See I. B. Generally, attorneys' fees are not recoverable unless the parties have specifically agreed on it.

V. ARBITRATION

A. 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 possible to apply to the courts for an interim measure before or during the arbitration proceedings. Article 39 of the Arbitration Act provides that a party can apply for an interim measure prior to submitting the dispute to arbitration, and the court has to order the applicant to submit to arbitration within a certain time if the other party requests so. If the applicant fails to submit to arbitration within the time limit, the court may revoke the order upon the other party's request.

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

Answer: The Arbitration Act is silent on this issue. However, according to Article 19 of the Arbitration Act, the arbitral tribunal may adopt the Code *mutatis mutandis* or the procedure it finds appropriate.

VI. FOREIGN PROCEDURE & ARBITRATION

A. 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. The same rules of the interim measures above will apply.

VII. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION.

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

Answer: No

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