



# ENFORCEMENT OF FOREIGN JUDGEMENTS

## INTERIM AND PRECAUTIONARY MEASURES



LITIGATION AND DISPUTE RESOLUTION  
PRACTICE GROUP

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 ensure the effective enforcement of a court decision?**

**Answer:** Yes

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

**Answer:** no court fees

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

**Answer:** It depends on the provisional measure adopted and the agility with which the Court of Justice resolves them. The most immediate are decreed after requested; but there are others in which a separate file is processed with a variable time that can be between 30 and 60 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:** various measures from warning, restriction of lifting of assets, seizure of assets, custody, among others.

## **III. PROCEDURE**

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

**Answer:** The courts with territorial jurisdiction of each particular case.

**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, the adoption of the measure, the time of the measure and the scope must be justified. Sometimes as a requirement a guarantee is requested as a guarantee but for the case as a seizure in the executive process no guarantee is requested.

**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, the applicant must submit the claim within 30 days after its adoption of the precautionary measure.

**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:** It is possible, the justification for the adoption of the measure and the damage that could result in the delay of its adoption.

**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 general requirements of any precautionary measure: *periculum in mora*, *fumus boni iuris*, security also the justification for the adoption of the measure, the temporality and proportionality.

## **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:** The bond must be lent, then if it is a measure that entails a registration procedure, the rules for registration are followed. There are other measures that are decreed without hearing from the opposite party.

- (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, when you have all the budgets and requirements for adoption

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

**Answer:** Make the request for the measure with all its requirements, offer the guarantee that would be a caution and render the caution.

## **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

## **8. Appeal**

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

**Answer:** An appeal is not contemplated on the adoption of a precautionary measure.

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

**Answer:** Does not apply

#### **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, using the instances of the relevant authority.

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

**Answer:** Yes

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

**Answer:** Before the presentation of the demand or during the process.

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

**Answer:** No

#### **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, this measure must be requested to the supreme court of justice with suitable justification.

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

**Answer:** No, they can decree but it has to be validated by a judge.

## **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:** Yes, a procedure must be followed with the supreme court of justice.



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