

# Enforcement of Foreign Judgments

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Interim and Precautionary Measures [Malta]

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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. Although Maltese law does not specifically provide for an *interim measure*, it is possible to obtain such measures upon the request of the applicant to prevent the defendant from acting in a way that will prejudice the rights of the applicant in the course of legal proceedings.

The law then specifically speaks of particular precautionary measures which are regulated by the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta (hereinafter the '**COCP**').

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

**Answer:** Yes. Specific court fees need to be paid for the filing of an application for a precautionary warrant which depend, amongst other factors, on the number of persons on whom the application is served. The court fees for filing the application are initially borne by the applicant, but the defendant may subsequently be ordered to pay the costs.

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

**Answer:** The length of such a procedure may vary depending on a number of circumstances.

Where there is opposition by the defendant who files a counter-warrant requesting that the precautionary act be revoked, either totally or partially, the court shall decide the application with urgency either *in camera* or after hearing the advocates of the parties, where necessary. However, only one sitting may be fixed for such purpose. No appeal can be filed from a court decree acceding to such an application.

## 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:** The precautionary warrants laid down in the COCP are the following: -

- (a) **Warrant of Description:** This is issued in order to secure a right over movable objects, such as to ensure that such objects remain in their actual place or condition. The warrant is executed by describing the items in detail stating the number and quality thereof.
- (b) **Warrant of Seizure:** This is issued to seize movable property equal in value to the sum claimed by the creditor from the possession of the debtor.

- (c) **Warrant of Seizure of a Commercial Going Concern:** This may solely be issued to secure a debt or claim which could be frustrated by the sale, in part or in whole, of the said enterprise and, for this purpose, no other warrant may be issued against the enterprise. This warrant preserves the totality of the assets of the business, including licences and good-will, to prevent their sale in part or in whole and to ensure that the institution stays in business.
- (d) **Garnishee Order:** This is issued to attach in the hands of a third party moneys or movable property claimed to be due or belonging to a debtor.
- (e) **Warrant of Arrest of Sea Vessels:** A precautionary warrant of arrest of any sea-going vessel having a length exceeding ten metres may solely be issued to secure a debt or claims whether *in personam* or *in rem*, which could be frustrated by the departure of the said ship. No other warrant may be issued against a sea-going vessel unless it is a warrant of arrest, and whether such vessel is at sea or at some other place.
- (f) **Warrant of Arrest of Aircraft:** A precautionary warrant of arrest of any aircraft may solely be issued to secure a debt or claim, whether *in personam* or *in rem* which could be frustrated by the departure of the said aircraft. No other warrant may be issued against an aircraft unless it is a warrant of arrest.
- (g) **Warrant of Prohibitory Injunction:** This warrant seeks to restrain a person from doing anything whatsoever which might be prejudicial to the person suing. The warrant may also be issued to restrain any person from taking any minor outside Malta.

### III. PROCEDURE

#### 1. Competent Court

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

**Answer:** In terms of the provisions of the COCP the inferior courts cannot issue any warrant of description or impediment of departure if its sole purpose is to cross-examine the counterparty.

Similarly, warrants of seizure are not to be issued by the inferior courts, unless the warrant is accompanied by a demand that the credit or claim is judicially acknowledged and the debt or claim exceeds one thousand one hundred and sixty four euros and sixty nine cents (€1,164.69), or the demand for the warrant is for an article which, as stated, is property belonging to the person suing out.

In the case of warrants of arrest of sea vessels, a warrant may be demanded and obtained before the Court of Magistrates (Malta), or the Court of

Magistrates (Gozo) in its inferior jurisdiction, or before the First Hall of the Civil Court, in security of a debt or any other claim whatsoever amounting to not less than seven thousand euros (€7,000).

With regard to warrants of arrest of aircraft, a warrant may be demanded and obtained before the Court of Magistrates (Malta), or the Court of Magistrates (Gozo) in its inferior jurisdiction, or before the First Hall of the Civil Court in security of a debt or any other claim whatsoever amounting to not less than seven thousand euros (€7,000). In case of an aircraft being used for public air transport of passengers or goods, this should not be less than one million euros (€ 1,000,000), provided that the limitations on the amount of the claim do not apply to holders of a mortgage or an international interest when such mortgage or interest has been registered or is recognised according to law.

Other precautionary warrants may be issued either by the Court of Magistrates (Malta), or the Court of Magistrates (Gozo) in its inferior jurisdiction, or by the First Hall of the Civil Court [or the Court of Magistrates (Gozo) in its superior jurisdiction], depending on the territory and the amount of the claim.

**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:** It is possible to file an application for a precautionary warrant simultaneously with the filing of the lawsuit in which case the Court will subsequently determine whether the necessary criteria is met in order to grant the issue of the warrant.

**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 possible to request the issue of a precautionary measure prior to filing the lawsuit. However, in such cases, the applicant is bound to bring the action in respect of the right stated in the warrant within twenty (20) days from the issue of the warrant. In default, the applicant at whose request a precautionary act was issued may be ordered to pay a penalty in favour of the person against whom the precautionary act was issued.

**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 possible to request the issue of a precautionary warrant after filing the main claim, and the application for the issue of the warrant may specify and include all judicial costs.

**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:** In terms of the provisions of the COCP, the demand for the issue of a precautionary measure must be made by an application containing:-

- (a) The origin and nature of the debt or claim sought to be secured;
- (b) When the right sought to be secured by the act is a debt, or a demand which may be satisfied by the payment of a sum of money, the amount of such demand;
- (c) The application is to be confirmed on oath by the applicant.

If the above conditions are not included in the application, it will be considered null and void.

It shall be lawful for the court, on good cause being shown, upon the demand by application of the person against whom a precautionary act has been issued, to order the party suing to give, within a time fixed by the court, sufficient security for the payment of the penalty that may be imposed, and of damages and interest, and, in default, to rescind the precautionary act.

The application for the precautionary act must not be frivolous or vexatious.

In the case of a warrant of seizure of a commercial enterprise, the court must be satisfied that the measure is necessary to protect the rights belonging to the applicant who *prima facie* appears to have such rights.

A precautionary warrant of arrest of a sea-going vessel having a length exceeding ten metres may solely be issued to secure a debt or claim, whether *in personam* or *in rem*, which could be frustrated by the departure of the said ship. The application for the issue of such warrant of arrest shall under pain of nullity state in a clear manner such particulars as may enable the identification of the ship or vessel, the name of the authority in whose hands or under whose power or control the arrested ship or vessel may be, as well as the place where the ship or vessel is to be found.

As regards security, it shall be lawful of the court, on good cause being shown, upon the demand by application by a person whose ship or vessel is detained, by the master of the ship or by any person in charge thereof or by its agent, to order the party suing to give, within a time fixed by the court, sufficient security, in an amount not less than eleven thousand six hundred euros (€11,600), for the payment of the penalty, damages and interest and, in default, to rescind the warrant.

A precautionary warrant of arrest of an aircraft may solely be issued to secure a debt or claim, whether *in personam* or *in rem* which could be frustrated by the departure of the said aircraft. The application for the issue of a warrant of arrest shall, under pain of nullity, state in a clear manner such particulars as may enable the identification of the aircraft, the name of the authority in whose hands or under whose power or control the arrested aircraft may be, as well as the place where the aircraft is to be found. Provisions on security are similar to those which apply for the arrest of sea vessels.

For the issue of a warrant of prohibitory injunction, the court must be satisfied that such warrant is necessary in order to preserve any right of the person suing out the warrant, and that *prima facie* such person appears to possess such a right. Where the warrant refers to specific immovables, the application is to describe them in the manner provided for in the Public Registry Act.

A warrant restraining a person from taking a minor outside Malta shall contain the name and surname of the minor and any other particulars that may be established by regulations so as to enable the persons served with the warrant to establish the identity of the minor.

## **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:** If an application for the issue of a precautionary measure is filed prior to the main suit, the applicant is bound to bring the action in respect of the right stated in the warrant within twenty days from the issue of such.

An application for a warrant of prohibitory injunction is to be served on the party against whom it is issued, who must file a reply within ten days. After appointing the application for hearing, the court will make its decision on the merits, after receiving any evidence it deems fit within the shortest time possible, but not later than one month from the day when the warrant has been filed and confirmed on oath and the parties have been duly notified.



With regard to a warrant of seizure of a commercial going concern, the court shall, after hearing the parties, appoint an administrator and an expert. The appointed administrator is then responsible for the commercial going concern and has the right to sell and administer the ordinary running of the concern.

An application for the precautionary act to be revoked on specific grounds may be filed together with all submissions and documents in support of the demand. This application is served on the opposite party who may, within seven days from the service, file a note containing all submissions to be made together with all documents in support of the demand that is being filed.

The Court then decides the application with urgency either *in camera* or after hearing the advocates of the parties, if it deems fit, provided that not more than one sitting may be fixed for such purpose.

**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:** In so far as the warrant of prohibitory injunction, the court may in urgent cases reduce the ten-day period for the filing of a reply to the application. In default of opposition, the court may accede to the demand.

Applications for the issue of precautionary warrants may be upheld or rejected without being appointed for hearing before the Court, but if they are, the parties are represented by lawyers who will make the submissions on their clients' behalf.

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

**Answer:** The party against whom the precautionary measure is issued may oppose it, as explained above.

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

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

**Answer:** Yes.

The grounds upon which the defendant may oppose the application for a precautionary measure are as follows:

(a) That the precautionary act ceased to be in force;

- (b) That any one of the conditions requested by law for the issue of the precautionary act does not in fact subsist;
- (c) That other adequate security is available to satisfy the claim of the person at whose request a precautionary act was issued, either by the issue of some other precautionary act, or if such other security can, to the satisfaction of the court, adequately secure the claim; or
- (d) If it is shown that the amount claimed is not *prima facie* justified or is excessive; or
- (e) If the security provided is deemed by the court to be sufficient; or
- (f) If it is shown that, in the circumstance,s it would be unreasonable to maintain in force the precautionary act in whole or in part, or that the precautionary act in whole or in part is no longer necessary or justifiable.

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

**Answer:** Yes. A precautionary act can be rescinded if the party against whom the act is issued makes such deposit or gives such security as, in the court's opinion, according to the circumstances of the case, may be sufficient to safeguard the rights or claims stated in the act.

**8. Appeal**

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

**Answer:** When a Court upholds a request for the issue of a precautionary warrant, it is possible for the defendant to file a counter-warrant requesting that the precautionary act be revoked, either totally or partially.

No appeal and no challenge shall lie from a decree acceding to a counter-warrant and such decree shall be final and irrevocable.

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

**Answer:** It is not possible to appeal from a decision acceding to a counter-warrant.

#### 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.

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

**Answer:** Yes. The defendant who is directly affected by an interim/ precautionary measure may apply to the court which issued such measure to have the order varied or discharged.

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

**Answer:** The Court will proceed to rescind a precautionary warrant if the party against whom the act is issued makes such deposit, or gives such security as, in the court's opinion according to the circumstances of the case, may be sufficient to safeguard the rights or claims stated in the act, or if it is shown in specific circumstances established by law that a judicial act accepting liability has been filed in the proper registry.

It is also possible for the Courts to rescind a precautionary act if the party suing, upon being so ordered by the Court, fails to give sufficient security within a specified time-frame for the payment of the penalty that may be imposed and of damages and interest.

In the case of a warrant of arrest of a sea-vessel, it is possible for the Court, following the arrest of a ship or vessel in any port or harbour or in the territorial waters of Malta, and on an application of the Authority for Transport in Malta, to rescind the warrant of arrest and order that the ship or vessel leaves Malta and its territorial waters without delay, if it is satisfied that because of the nature of its cargo and, or other circumstances concerning safety or pollution it is advisable that the ship or vessel should leave port and, or Maltese territorial waters. The same principles apply to the warrant of arrest of an aircraft.

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

**Answer:** When the opposition to precautionary measures is upheld by the court, the applicant of the warrant will generally be ordered to pay the fees and expenses. If the opposition is rejected, the defendant will generally be ordered to pay the fees and expenses.

## **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:** Yes. Interim or precautionary measures may be issued by the Arbitration Tribunal.

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

**Answer:** Yes. The Arbitral Tribunal may order such precautionary measures.

## **VI. FOREIGN PROCEDURE & ARBITRATION**

- 1. Is it possible to apply for an interim measure before your country 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. The procedure would be the one stipulated in the COCP.

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

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

**Answer:** Other than in the case of arrest of a sea-vessel or an aircraft or to prevent a person from taking a minor outside Malta, it is no longer possible to issue a warrant of impediment of departure in order to prevent a person from leaving the island, other than by a Court order in criminal proceedings.

Malta

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