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Securing assets during a claim in EU countries

Letland

1 What are the different types of measures?

Under Latvian legislation the interim and precautionary measures available pending a final decision may be aimed at securing an actual or potential claim, or securing the protection of intellectual property rights that are in dispute, or at securing evidence. These measures can be ordered only by a court and at the request of an interested party. The procedure is laid down in the Law on Civil Procedure (*Civilprocesa likums*).

At the time a claim is brought, or earlier, the following measures are available in order to secure the claim:

- attachment of movable property or funds belonging to the defendant;
- entering an endorsement indicating a prohibition (*aizlieguma atzīme*) in a register of the respective movable property or any other public register;
- entering an endorsement regarding the securing of a claim in the land register or ship register;
- seizure of a vessel in connection with a maritime claim;
- a prohibition preventing the defendant from performing certain acts;
- attachment of payments due from third parties, including funds held with credit institutions and other financial institutions;
- postponement of enforcement (which includes prohibiting bailiffs from transferring money or property to a judgment creditor or debtor, or suspending the sale of property).

A claim can be secured only if it is of a property nature.

If the claim is to be secured by entering an endorsement to indicate a prohibition in a moveable property register or other public register, the decision must indicate the type of prohibition to be entered.

If the subject-matter of an action is the ownership of property, movable or immovable, or if the action seeks confirmation of ownership rights, the claim can be secured by attaching the disputed movable property, or by entering an endorsement to indicate a prohibition in the appropriate immovable property division of the land register.

If the subject-matter of an action is a monetary claim, the claim can be secured against immovable property by entering an endorsement showing a right of pledge (*kīlas tiesības atzīme*) in the appropriate immovable property division of the land register.

If the subject-matter of an action is a right *in rem* in respect of immovable property, the claim can be secured by entering an endorsement indicating an encumbrance (*apgrūtinājuma atzīme*) in the appropriate immovable property division of the land register.

Vessels can be seized only in maritime claims.

The suspension of the sale of property is not allowed in cases where the claim concerns the recovery of money.

The attachment of payments due from third parties, including funds held with credit institutions and other financial institutions is not allowed in cases where the claim is for compensation which is at the discretion of the court.

In intellectual property disputes, the following provisional protection measures are possible:

- the attachment of movable property with which it is alleged that intellectual property rights are being infringed;
- an obligation to recall goods with which it is alleged that intellectual property rights are being infringed;
- a prohibition on the performance of specific acts by the defendant, or by persons providing services that are used in order to infringe intellectual property rights, or by persons who make it possible for such infringements to be committed.

Securing evidence

If a person has reason to believe that the submission of evidence that they will need may become impossible or problematic, they may ask for such evidence to be secured.

Applications to have evidence secured may be submitted at any stage of the proceedings, and even before an action is brought in court.

Before an action is brought evidence can be secured by the district court (*rajona tiesa*) or city court (*pilsētas tiesa*) of the place where the source of evidence to be secured is located. Once an action has been brought the evidence can be secured by the court adjudicating the matter.

2 What are the conditions under which such measures may be issued?

2.1 The procedure

Securing a claim

If there is reason to believe that the enforcement of the court's judgment in a case before it may become problematic or impossible, the court or judge may, in response to a reasoned application by the plaintiff, take a decision securing the claim. A claim can be secured only if it is of a property nature. An application to secure a claim may be considered at any stage of the proceedings, and even before an action is brought in court.

An application to have a claim secured must contain:

- the name of the court to which the application is submitted;
- the applicant's given name, surname, personal identity number and registered place of residence, or failing that, the *de facto* place of residence; for a legal person – the name, registration number and registered office. If the applicant agrees to communicate with the court by electronic means, and if they are included among the persons/entities listed under Section 56(23) of the Law on Civil Procedure, an e-mail address and, where they are registered in the online system for correspondence with the court, the registration reference should also be indicated. The applicant may, in addition, provide another address for correspondence with the court;
- the given name, surname, personal identity number and registered place of residence, or failing that, the *de facto* place of residence of the respondent and any third party; for a legal person – the name, registration number and registered office. The personal identity number or registration number of the respondent is to be indicated if known;
- the given name, surname, personal identity number and address for correspondence of the applicant's representative (if the action is brought by a representative); for a legal person – the name, registration number and registered office. If the applicant's representative, with a registered place of residence or an address for correspondence in Latvia, agrees to communicate with the court by electronic means, an e-mail address and, if they are registered in the online system for correspondence with the court, the registration reference should also be indicated. If the registered place of residence or address for

correspondence of the applicant's representative is outside Latvia, their e-mail address and participation in the online system for correspondence is to be indicated too. If the applicant's representative is a lawyer, the e-mail address of their chambers should be added;

the subject-matter of the claim;

the amount of the claim;

the means of securing the claim whose enforcement the applicant is requesting;

the circumstances by which the applicant justifies the need to secure the claim.

An application to have a claim secured before the claim is brought in court must be submitted to the court that is to hear the claim itself. Where the parties have agreed to submit the dispute to arbitration, an application must be submitted to the ordinary court of the place where the debtor or the property is located.

The suspension of the sale of property is not allowed in cases where the claim concerns the recovery of money.

The attachment of payments due from third parties, including funds held with credit institutions and other financial institutions is not allowed in cases where the claim is for compensation which is at the discretion of the court.

When hearing an application from one of the parties, the court may replace the means to secure the claim requested by other means.

A prospective plaintiff may petition to have a claim secured even before bringing a court action, and even before an obligation has become due, if the debtor, with the purpose of avoiding performance of the obligation, removes or alienates their property, vacates their place of residence without informing the creditor, or performs other actions which indicate that the debtor is not acting in good faith. When submitting an application to secure a claim before bringing a court action, the prospective plaintiff must submit evidence in support of their rights and the necessity of securing the claim.

A decision on an application to secure a claim is taken by a court or a judge no later than the day following, without giving prior notice to the defendant or other interested parties. In reaching its decision the court or judge considers the *prima facie* formal legal basis. If the application to have the claim secured is accepted, the court or judge may require that the plaintiff provide security for any losses that the defendant may suffer as a result of the measure securing the claim, by lodging a specified sum of money to a bailiff's deposit account.

If a decision is taken to secure an actual or potential claim, the court issues an enforcement order (*izpildu raksts*), which is to be given for enforcement to a certified bailiff (*zvērināts tiesu izpildītājs*).

The claim is secured until the day the final judgment takes legal effect. If the claim is left unadjudicated or the proceedings are terminated, the court decision will cancel the measure securing the claim. The claim is secured until the day the decision takes legal effect. If the claim is dismissed, the court's ruling cancels the measure securing the claim.

If the decision securing a claim is taken before the claim itself is brought in court, and the claim is not in fact brought in court within the time that the court specified, the judge may decide to cancel the measure securing the claim upon application from the prospective plaintiff or from the prospective defendant.

Provisional protection measures

If there is reason to believe that the rights of an intellectual property holder are being infringed or may be infringed, a court may, on a reasoned application from a plaintiff, order provisional protection measures. An application for provisional protection measures must indicate the provisional protection measures to be taken (Section 250.10 of the Law on Civil Procedure).

An application for provisional protection measures may be submitted at any stage of the proceedings, and even before an action is brought in court.

An application for provisional protection measures will be decided by a court or a judge within 10 days of receipt of the application, or of the initiation of proceedings if the application for provisional protection measures is lodged together with the claim itself.

If delay may cause irreversible harm to the holder of an intellectual property right, the court or judge must decide on an application for provisional protection measures no later than the next day after the receipt of the application, without previously notifying the defendant and other interested parties. If a decision ordering provisional protection measures is taken in the absence of the defendant or any other interested party, they are to be notified of the decision no later than the moment the decision is enforced.

If a court or judge accepts an application to have the claim secured before the claim itself is brought, the court or judge may require the plaintiff to provide security for any losses which may be caused to the defendant or to service providers as a result of the provisional protection measures, by lodging a specified sum of money to a bailiff's deposit account or by providing an equivalent guarantee.

Upon application by the plaintiff, the court may replace the provisional protection measures previously ordered with other measures.

Provisional protection measures may be cancelled by the same court upon application by an interested party.

If the court dismisses a claim, its judgment cancels the provisional protection measures. The provisional protection measures remain in force up to the day when the judgment takes legal effect.

If the claim is left unadjudicated or the proceedings are terminated, the court decision will cancel the provisional protection measures. The provisional protection measures remain in force up to the day when the judgment takes legal effect.

If the decision ordering provisional protection measures is taken before the claim itself is brought in court, and the claim is not in fact brought in court within the time that the court specified, the judge may decide to cancel the provisional protection measures upon application by the prospective plaintiff or another interested party or by the prospective defendant.

If the application of provisional protection measures is lodged together with the claim itself, a decision ordering provisional protection measures must be enforced with 30 days of the day the decision is taken. The fact that an ancillary objection (*blakus sūdzība*) has been lodged against the decision does not prevent the decision from being enforced.

A decision ordering provisional protection measures taken on the ground that delay might cause irreversible harm to the holder of an intellectual property right is to be enforced after the plaintiff has paid the sum specified by the court or judge into the bailiff's deposit account or provided an equivalent guarantee. The enforcement document is served after the receipt of payment of the sum specified or the equivalent guarantee.

A decision ordering provisional protection by attachment of the movable property with which the intellectual property rights are allegedly being infringed is to be enforced in accordance with the procedure laid down in the Law on Civil Procedure for directing recovery against movable property.

A decision ordering provisional protection by imposing a prohibition on the performance of certain acts or an obligation to recall goods with which intellectual property rights are allegedly being infringed is to be enforced by a bailiff, and will be notified to the defendant or any other interested party against signature or by registered mail.

If a provisional protection measure is cancelled, the cancellation will be enforced by the bailiff who enforced the order initially imposing it.

If a provisional protection measure is cancelled, the cancellation will be enforced by the bailiff who enforced the order initially imposing it.

Moreover, Chapter 30.5 of the Law on Civil Procedure provides for provisional protection against violence.

Provisional protection against violence may be ordered in connection with actions for divorce or annulment of marriage; actions arising out of personal injury; actions for recovery of maintenance; actions seeking the division of the joint home, or specification of the use of the joint home, if the parties live in the same household; and matters arising out of trusteeship and access rights.

An application for provisional protection against violence may be submitted by spouses or ex spouses; persons between whom there is a parent and child relationship; persons between whom there is or has been a trusteeship relationship or any other extrafamilial care relationship; persons between whom there is a relationship of kinship or affinity; persons who live or have lived in the same household; persons who have or are expecting a common child, irrespective of whether or not they have been married or have lived together; or persons between whom there is or has been a close personal or intimate relationship.

Several measures to provide provisional protection against violence may be imposed simultaneously.

If a person has suffered any physical, sexual, psychological or economic violence that takes place between former or current spouses or otherwise mutually related persons, irrespective of whether the inflicting party lives or has lived in the same household with the victim, a court or judge may order provisional protection against violence in response to a reasoned application by the person or an application submitted via the police.

Similar measures are available if a person suffers abusive control, i.e. an act or a set of acts, including harassment, sexual coercion, threats, humiliation, intimidation or other abusive acts, which are aimed at harming, penalising or intimidating the victim.

Provisional protection against violence may be sought at any stage of the proceedings, and even before an action is brought in court.

Securing evidence

If a person has reason to believe that the submission of evidence that they will need may become impossible or problematic, they may ask for such evidence to be secured. Applications to have evidence secured may be submitted at any stage of the proceedings, and even before an action is brought in court.

An application to have evidence secured is considered at a court hearing to which the applicant and interested parties are summoned. However, the court may hear the application even if any of these persons fails to appear.

Where an application to have evidence secured is submitted before an action is brought, a court or judge takes a decision on the application within 10 days of receiving it.

Evidence may be secured without summoning potential interested parties only in urgent cases, including violations or potential violations of intellectual property rights or instances where it cannot be established who the interested parties may be.

If a decision on securing evidence is taken in the absence of the defendant or any other interested party, they are to be notified of the decision no later than the moment the decision is enforced.

If a judge accepts an application to have evidence secured before an action is brought in court, the judge sets a time limit for the lodging of the action, which may not be longer than 30 days.

If the judge accepts the application to have the evidence secured before the claim itself is brought, the judge may require the plaintiff to provide security for any losses which may be caused to the defendant as a result of the measure securing the evidence, by lodging a specified sum of money to a bailiff's deposit account or by providing an equivalent guarantee

The minutes of the court sitting and any documents assembled in the course of securing the evidence will be kept until required by the court that adjudicates the main action.

If the court considering a case is unable to gather evidence located in another city or district, the court or a judge will ask the appropriate court to take specified procedural steps on the first court's behalf.

2.2 The main conditions

Provisional protection measures may be ordered only if there is reason to believe that the enforcement of a court judgment in a dispute of a property nature may become problematic or impossible; or that the rights of an intellectual property holder are being infringed or may be infringed; or that the submission of necessary evidence may become impossible or problematic.

3 Object and nature of such measures?

An application for provisional protection of intellectual property must indicate the provisional protection measure sought.

The provisional protection measures available are:

the attachment of movable property with which it is alleged that intellectual property rights are being infringed;

an obligation to recall goods with which it is alleged that intellectual property rights are being infringed;

a prohibition on the performance of specific acts by the defendant, or by persons providing services that are used in order to infringe intellectual property rights, or by persons who make it possible for such infringements to be committed.

An application to have a claim secured must indicate the measure sought in order to secure the claim.

The measures available to secure a claim are:

attachment of movable property or funds belonging to the defendant;

entering an endorsement indicating a prohibition (*aizlieguma atzīme*) in a register of the respective movable property or any other public register;

entering an endorsement regarding the securing of a claim in the land register or ship register;

seizure of a vessel in connection with a maritime claim;

a prohibition preventing the defendant from performing certain acts;

attachment of payments due from third parties, including funds held with credit institutions and other financial institutions;

postponement of enforcement (which includes prohibiting bailiffs from transferring money or property to a judgment creditor or debtor, or suspending the sale of property).

An application for provisional protection against violence must indicate the measure to be imposed.

The measures available to provide provisional protection against violence are:

the defendant may be ordered to leave the home where the plaintiff is habitually resident, and forbidden from returning or staying there;

the defendant may be forbidden from coming within a specified distance of the home where the plaintiff is habitually resident;

the defendant may be forbidden from visiting certain places;

the defendant may be forbidden from meeting the plaintiff and from making physical or visual contact with the plaintiff;

the defendant may be forbidden from entering into any kind of communication with the plaintiff;

the defendant may be forbidden from arranging through the intermediation of other persons to meet the plaintiff or enter into communication with the plaintiff;

the defendant may be prohibited from using the plaintiff's personal data;

the court or judge may impose other prohibitions and obligations on the defendant in order to give the plaintiff provisional protection against violence.

3.1 What types of assets can be subject to such measures?

Movable and immovable property, including vessels, cash and funds at credit institutions and other financial institutions.

3.2 What are the effects of such measures?

A debtor's movable property is attached by taking an inventory of the property, sealing the property (indicating who has attached the property and in what way), and placing it under protection. The property need not be sealed if that might damage the property or significantly affect its value.

The bailiff delivers the attached property into the care of a natural person, who signs for receipt. The debtor or members of his or her family may still use the property if, owing to the characteristics of the property, its use does not destroy the property or substantially decrease its value.

If a court or judge accepts an application to have a claim secured before the claim itself is brought in court, the court or judge may require that the prospective plaintiff provide security for any losses that the defendant may suffer as a result of the measure securing the claim, by lodging a specified sum of money to a bailiff's deposit account. Deposits and other securities belonging to a debtor held at credit institutions or elsewhere may be attached only on the basis of an enforcement document issued by a court, or a bailiff's warrant, or a public prosecutor's warrant.

An endorsement in the register of immovable property indicating recovery or the securing of a claim prevents any voluntary registration on the owner's part.

If a judge accepts an application to have evidence secured before an action is brought in court, the judge may require that the prospective plaintiff provide security for any losses that the defendant may suffer as a result of the measure securing the evidence, by lodging a specified sum of money to a bailiff's deposit account or providing an equivalent guarantee.

Provisional protection measures allow an author to ask a court to secure a civil claim even if it is not of a property nature, thus decreasing the number of potential violations of intellectual property rights and the scope of the losses suffered by the author. Such measures make it possible to prevent violations of intellectual property rights and to restore the lawful interests and rights of the author that are being breached by the violation.

3.3 What is the validity of such measures?

Measures to secure a claim remain in force up to the day when the judgment takes legal effect or the proceedings are terminated, or until a judge cancels the measure securing the claim, or until a judge replaces the measure securing the claim with another measure.

The provisional protection measures remain in force up to the day when the judgment takes legal effect.

Provisional protection measures may be cancelled by the same court upon application by an interested party. If the court dismisses a claim, its judgment cancels the provisional protection measures. If the claim is left unadjudicated or the proceedings are terminated, the court decision will cancel the provisional protection measures. The provisional protection measures remain in force up to the day when the judgment takes legal effect.

If the decision ordering provisional protection measures is taken before the claim itself is brought in court, and the claim is not in fact brought in court within the time that the court specified, the judge may decide to measure securing the evidence upon application by the prospective plaintiff or another interested party or by the prospective defendant.

If the decision ordering a measure to secure evidence is taken before an action is brought in court, and the action is not in fact brought in court within the time that the court specified, the judge may decide to cancel the measure securing the evidence upon application from the prospective plaintiff or from the prospective defendant.

Provisional protection against violence remains in force until the day when the final judgment in the case takes legal effect. In certain cases, a court may specify in its judgment that the provisional protection against violence is to remain in force after the judgment takes legal effect, but no longer than for one year after that date. If provisional protection against violence has been ordered against a defendant who was habitually resident in the same home as the plaintiff, for example where the defendant has been required to leave the home where the plaintiff is habitually resident and has been forbidden from returning or staying there, or where the defendant has been forbidden from coming within a specified distance of the home where the plaintiff is habitually resident, a court may specify that the provisional protection against violence is to remain in effect no longer than for 30 days after the judgment takes legal effect.

Measures providing provisional protection against violence remain in force until the day when a judge's decision cancelling the measure takes legal effect or until a judge's decision replacing the provisional protection measure with another measure.

4 Is there a possibility of appeal against the measure?

Securing of a claim

In response to a reasoned application by a party, a measure securing a claim may be cancelled by the same court that ordered it, or by a court which is due to hear the case on the merits.

An ancillary objection (*blakus sūdžība*) may be lodged within 10 days against a court decision to replace a measure securing a claim with another measure, against a decision dismissing an application to have a claim secured, or against a decision dismissing an application for the cancellation of a measure securing a claim.

If an application to have a claim secured is accepted, the plaintiff may lodge an ancillary objection against a part of the court decision that requires the plaintiff to provide security for any losses that may occur as a result of the measure securing the plaintiff's claim.

If a decision to secure a claim is taken in the absence of an interested party, the ten day time limit for the submission of an ancillary objection runs from the day when the party receives the decision.

Provisional protection measures

Provisional protection measures may be cancelled by the same court upon application by an interested party.

An ancillary objection may be lodged against a decision on a plaintiff's application to replace a provisional protection measure previously ordered with a different measure, against a decision dismissing an application for a provisional protection measure, or against a decision dismissing an application for the cancellation of a provisional protection measure.

If a decision ordering provisional protection is taken in the absence of an interested party, the 10 day time limit for the submission of an ancillary objection runs from the day the decision is served.

Securing evidence

A decision accepting an application to have evidence secured is not open to challenge. However, the defendant may seek compensation for losses incurred as a result of the measure securing the evidence where:

evidence is secured before a claim is brought, and the claim is not in fact brought within the time allowed by the court;

the claim brought against the defendant is dismissed;

the claim is left unadjudicated;

the proceedings are terminated because the claim was brought by a person who was not entitled to do so or because the plaintiff has withdrawn the claim.

An ancillary objection may be lodged against a judge's decision to dismiss an application to have evidence secured, or against a decision taken without summoning the prospective parties. If a decision securing evidence is taken in the absence of an interested party, the 10 day time limit for the submission of an ancillary objection runs from the day the decision is served or dispatched.

Provisional protection against violence

In response to a reasoned application by a party, a measure providing provisional protection against violence may be replaced with another measure by the same court that ordered it or by a court that is due to hear the case on the merits.

In response to a reasoned application by a party, a measure providing provisional protection against violence may be cancelled by the same court that ordered it or by a court that is due to hear the case on the merits.

An ancillary objection may be lodged within 10 days against a decision to replace a measure providing provisional protection against violence with another measure, against a decision dismissing an application for provisional protection against violence, or against a decision dismissing an application for the cancellation of a measure providing provisional protection against violence. If the decision is taken in the absence of an interested party, the 10 day time limit for the submission of an ancillary objection runs from the day the decision is served.

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