1 What are the different types of measures?

The different types of precautionary measure are precautionary and judicial seizure and precautionary attachment. Precautionary measures are procedural freezing and conservation injunctions issued by the court on the debtor's assets in order to prevent the opposing party from destroying or alienating the assets concerned or from reducing those assets.

Precautionary seizure consists in freezing the debtor's traceable assets in order to recover them when the creditor has obtained an enforcement order. The Code of Civil Procedure contains a series of special provisions regarding the procedure for execution of precautionary seizure of civil ships.

Judicial seizure consists in freezing assets by entrusting them to a seizure officer for safekeeping.

Judicial seizure may be applied whenever there are legal proceedings dealing with property or another overriding right in rem, with ownership of assets or with the use or management of joint property, the court being competent to approve judicial seizure of an asset.

Precautionary attachment may be applied to monies, securities or other traceable moveable intangible assets owed to a debtor by a third person.

Enforceable attachment is a form of indirect enforcement whereby the monies, securities or other traceable moveable intangible assets are recovered.

Some of the judgments of the first instance court are *legally provisionally enforceable* when their aim is to establish the exercise of parental authority, the right to have a personal relationship with the minor and the minor's residence; remuneration, unemployment benefit; workplace accident compensation; annuities, maintenance obligations; children's allowance and pensions; compensation for death or bodily injury or harm to one's health; immediate repairs; sealing, unsealing or inventorying; claims regarding possession; judgments ruled on grounds of a defendant's admission of a complainant's claims etc. These judgments shall be provisionally enforceable.

The court may admit the provisional enforcement of judgments concerning assets.

For provision of evidence, **any person who is interested in establishing, as a matter of urgency, a person's testimony, an expert's opinion or the condition of certain assets or in having a submission, a fact or a right acknowledged will be entitled to request, both before and during the trial, the administration of such evidence**.

If the holder provides evidence that his/her intellectual property rights are subject to an unlawful, current or imminent action and that such action is likely to cause him/her damage which is difficult to repair, he or she may seek interim measures from the court (prohibition of the infringement or provisional cessation thereof; taking the necessary measures to ensure preservation of evidence).

In the case of damage caused by means of written or audio-visual media, the court may order a provisional cessation of the harmful action only if the damage caused to the complainant is serious, if the action is manifestly not justified and if the measure taken by the court does not appear to be disproportionate in relation to the damage caused.

The court shall decide on the claim in accordance with the provisions relating to the interlocutory injunction. Where the claim is lodged before bringing an action on the merits of the case, the judgment ordering the interim measure shall also set out the time limit within which the action on the merits must be brought, failing which that measure must be automatically terminated. If the measures taken are likely to cause damage to the opposing party, the court may order the complainant to provide security in the amount set by it.

The measures taken prior to bringing legal proceedings to defend the infringed right are automatically terminated if the complainant has not applied to the court within the time limit set by it, but not later than 30 days after the date on which they were taken.

The complainant shall be required to make good, at the request of the party concerned, any damage caused by the interim measures taken if the action on the merits of the case is dismissed as unfounded. However, if the complainant was not at fault or was at minor fault, the court may, in relation to specific circumstances, either refuse to order him/her to pay the damages sought by the opposing party, or order that they be reduced.

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

2.1 The procedure

An injunction of precautionary seizure is admitted by the court and the enforcement is carried out by the enforcement officer without any authorisation or formality other than registration. In addition, seizure shall be applied without notice or prior notice to the debtor.

Orders may be issued only by the first instance court with jurisdiction over the matter (judicial seizure, precautionary attachment) or by the first instance court dealing with the case or by the court in the jurisdiction of which the asset is located (judicial seizure). In such special proceedings, the assistance of a lawyer is not mandatory. The judgments regarding precautionary seizure and precautionary attachment shall be enforced by a bailiff. The seizure officer may prepare all the documents for conservation and administration, receive any revenues and amounts due and pay current debts and debts established under an enforcement order. The foreseeable costs are judicial stamp duties only which, pursuant to Article 11(1)(b) of the Government Emergency Order No 80 of 26 June 2013 on judicial stamp duties, are RON 100 for claims related to precautionary measures and RON 1 000 for claims regarding seizure of ships and aircrafts. The creditor may be obliged to pay a security deposit set by the court. If the creditor's claim is not stated in writing, the security deposit is set by law at half the value claimed.

Enforceable attachment is executed, at a creditor's request, by a bailiff whose office is within the jurisdiction of the court of appeal where the debtor or third party subject to attachment has his or her domicile/office or, in the case of bank accounts, by a bailiff from the place where the debtor has the domicile /registered office or from the place where the credit institution has the head office/secondary office.

For provisional enforcement, the request may be filed in writing and orally in court until the closure of debates. The court may admit the provisional enforcement of injunctions applying to assets whenever it deems that the measure is necessary in relation to the manifest legal grounds or to the debtor's insolvency condition and when it estimates that not enforcing such order immediately is clearly detrimental to the creditor. In these cases, the court may oblige the creditor to pay a security deposit.

For provision of evidence, **the request is addressed, before the trial proceedings, to the district court in the jurisdiction of which the witness or subject-matter of the finding is located and, during the trial proceedings, to the court dealing with the matter at first instance. The party's request states the evidence and facts that they intend to prove, as well as the reasons for the need to provide such evidence or the opposing party's consent**.

2.2 The main conditions

For *precautionary seizure and attachment*, a case must be pending. In the case of judicial seizure, an injunction may be issued even if there is no pending case. A creditor having no enforcement order may request the execution of precautionary seizure or attachment if they prove that they have lodged a claim. In urgent cases, a request for precautionary seizure of a ship may be filed even before bringing an action on the merits of the case.
A court may admit the application of judicial seizure or precautionary attachment if this measure is necessary to preserve the respective right and a case is pending as regards ownership or another overriding right in rem, the possession of assets or the use or administration of joint property.
Judicial seizure may be approved, even in the absence of trial proceedings on the merits regarding an asset that the debtor offers for his/her release, in order to seize an asset with regard to which the party concerned has reasonable grounds to fear that it may be removed, destroyed or altered by the owner; for movable assets accounting for the creditor's guarantee, when he or she claims the insolvency of his/her debtor or when the creditor has reasons to suspect that the debtor will avoid enforcement or fearing of removal or deterioration of assets.
A court issues a decision in connection with the request for a precautionary seizure/precautionary attachment as a matter of urgency in chambers, without summoning parties, under an enforceable conclusion, setting, where applicable, the value of the bail and the time limit for payment of same. A request for judicial seizure is dealt with as a matter of urgency and the parties are summoned. In case of admission, the court may oblige the complainant to pay a security deposit and, in the case of immovable assets, they are listed in the land register.
There is no requirement as regards the urgency of the request but, for the creditor, there is a possibility to show that the order will not be enforced on grounds of the debtor's removal or destruction of the asset concerned, in the case of precautionary seizure and precautionary attachment, even if the claim is not payable.
Enforceable attachment is established without summons, under a conclusion acknowledging the enforcement, by a note also indicating the enforcement order, which is to be sent to the third person, together with that conclusion acknowledging the enforcement. The debtor is also informed of the injunction. The court order of attachment informs the third person, who becomes an attached third person, that they are prohibited to pay to the debtor the monies or movable assets they owe or they will owe, stating that they are subject to attachment insofar as it is necessary to achieve the obligation enforced.
For provision of evidence, the requirement **is that there should be a threat that the evidence is likely to disappear or be difficult to deal with in the future. If the opposing party gives its consent, the request may be filed even in the absence of any urgency. The court will summon the parties and serve a copy of the request to the opposing party. The court will deal with the request in closed session under a conclusion. Where there is danger of delay, the court may admit the request without summoning the parties.**

3 Object and nature of such measures?

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

Bank accounts, intangible assets, securities, etc. may be subject to precautionary attachment.
Tangible movable assets, registered means of transport, immovable assets, etc. may be subject to precautionary seizure.
Immovable assets, movable assets, etc. may be subject to judicial seizure.
Monies, securities or other intangible movable assets may be subject to enforceable attachment.

3.2 What are the effects of such measures?

For precautionary seizure and attachment, seized assets may only be recovered after the creditor has obtained an enforcement order.
An injunction of precautionary seizure of ships is enforced by having the ship restrained by the captain's office of the port where that ship is located. In this case, the port captain's office will not release the required shipping documents and will not allow the ship to leave the port or the harbour.
A fine is imposed as a penalty only if the complainant obtains in bad faith a precautionary measure that is injurious to the defendant. The defendant/debtor may be subject to penalty under the criminal law for non-compliance with court judgments.
If the debtor submits a sufficient guarantee, the court may set aside the precautionary seizure injunction at the debtor's request. The request for the release of assets is dealt with in closed session, as a matter of urgency, the parties being summoned at short notice by a conclusion.
Likewise, if the main request underlying the application of a precautionary measure has been voided, dismissed or has become obsolete by a final judgment or if the person who filed that request relinquished its pursuit, the debtor may request the release of assets from the court that issued the injunction. The court issues a final judgment regarding the request, without summoning the parties.
For enforceable attachment, all the monies and assets subject to attachment are frozen from the date when the attachment injunction has been sent to the third party subject to attachment. From the time of freezing until the full payment of obligations stated in the enforcement order, the third party subject to attachment will not make any payment or conduct any operation that is likely to reduce the frozen assets. When the attached claim is secured with a mortgage or another real guarantee, the attaching creditor will be entitled to request that the attachment be listed in the land register or in other public registers.

3.3 What is the validity of such measures?

For precautionary seizure and attachment, time limits not covering the period of the injunction issued by the court may be set under a court decision (for example, the time limit for the creditor to submit a security deposit subject to penalty of release of assets).
The injunction is valid until the judgment of the request for release of assets if that request has been dismissed, has become obsolete or set aside or, if the request is admitted, until the enforcement of the judgment or until the debtor has provided sufficient guarantees.
The appeal is always settled with the parties being summoned.
For enforceable attachment, all the monies and assets subject to attachment are frozen from the date when the attachment injunction has been sent to the third party subject to attachment. From the time of freezing until the full payment of obligations stated in the enforcement order, including for the period of suspension of the enforcement by attachment, the third party subject to attachment will not make any payment or conduct any operation that is likely to reduce the frozen assets, unless otherwise provided by the law.
A third party subject to attachment must record the amount of money or freeze the intangible movable assets attached within five days of the notice of attachment or from the due date of the amounts owed in the future. The bailiff will release or allot the recorded amount of money.
If a third party subject to attachment fails to meet their obligations, the tracing creditor, the debtor or the bailiff may notify the enforcing court in order to validate the attachment. If the administered evidence shows that the third party subject to attachment owes money to the debtor, the court will issue a decision to validate the attachment, thereby binding the third party subject to attachment to pay to the creditor the amount owed to the debtor and, if not, it decides to set aside the attachment. If the attachment has been executed on intangible movable assets that, on the date of execution, were held by the third party subject to attachment, the court will decide to sell them.
For provision of evidence, **the evidence provided is examined in court, during the judgment of the case, in relation to its admissibility and conclusiveness. The provided evidence may also be used by the party who did not request their administration. Expenses incurred with administration of evidence are recorded by the court dealing with the case on its merits**.

4 Is there a possibility of appeal against the measure?

For precautionary seizure and attachment, the conclusion is only subject to appeal within five days of the ruling or service, depending on whether the trial was held with or without the parties being summoned, before the hierarchically higher court. If first instance jurisdiction pertains to the court of appeal, the remedy is an appeal. The effect of these remedies is either release of assets or maintenance of the precautionary measure. Any interested party may file an objection against the execution of the seizure/attachment injunction.

For enforceable attachment, the decision issued with regard to the validation of attachment is subject only to appeal within five days of service. The final validation decision has the effects of an assignment of claim and accounts for an enforcement order against the third party subject to attachment up to the concurrence of the amounts for which validation was granted. After the attachment has been validated, the third party subject to attachment proceeds to recording or payment within the limits of the amount expressly indicated in the validation decision.

For provisional enforcement, if the request was dismissed by the first instance court, it may be subject to an appeal. The suspension of the provisional enforcement may be requested either by the appeal lodged, or distinctly throughout the appeal proceedings. Until the request for suspension has been settled, the enforcement may be provisionally admitted by an interlocutory injunction even before the arrival of the case file.

For provision of evidence, **the conclusion sustaining the request for provision of evidence is enforceable and is not subject to any remedy. The conclusion dismissing the request may only be appealed against within five days of the ruling, if the parties have been summoned, and from service date, if the parties have not been summoned.**

Evidence to be provided may only be administered as soon as or within the time limit set in this respect. Administration of the provided evidence is ascertained in a conclusion that is not subject to any remedy.

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