

[Home](#) > ... > [Money/monetary Claims](#) > [Securing Assets During a Claim In EU Countries](#) > Ireland

# Securing assets during a claim in EU countries

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(in civil and commercial  
matters)



## 1 What are the different types of measures?

The different types of interim measures available in the Irish courts are injunctions. An injunction is a court order directing a party to an action to do or to refrain from doing a particular thing. Breach of an injunction is a contempt of court and a person who breaches such an order may be committed to prison. An injunction is either :

- (i) permanent,
- (ii) for a specified period of time, or
- (iii) granted on a temporary basis pending the trial of the action.

If the plaintiff is of the view that the defendant may remove or destroy essential items or documents, they he or she may apply *ex parte* to the court for an 'Anton Piller' order, which is a form of injunction that requires a defendant to permit a plaintiff to enter his or her premises to inspect documents or other items and to remove anything that belongs to the plaintiff. If a plaintiff is concerned that a defendant may dispose of any or all of his or her assets and may not be in a position to satisfy the plaintiff's claim if ultimately successful at the trial, then the plaintiff can apply to court for a 'Mareva injunction' or a freezing order, which prevents the defendant from dealing with his or her assets during the term of the order. Generally, a Mareva injunction prevents a defendant who is not within the jurisdiction but who has assets within the jurisdiction from removing those assets pending trial.

Where the plaintiff's claim is for a sum of money, he or she can ask the court to make an order directing the making of an interim payment by the defendant of a portion or all of the sum claimed into court. Conversely, a defendant, who is concerned that if the plaintiff loses his or her claim he or she may not be able to pay the defendant's legal costs of successfully defending the proceedings, may ask the court to order the plaintiff to provide security for the costs of the proceedings by paying a sum of money into court. If a 'security for costs' order is made in favour of a defendant, then the plaintiff will not be able to proceed with their claim unless they pay the sum of money into court as directed by the court order.

The High Court also has jurisdiction to make interim orders in support of proceedings in another jurisdiction if it is expedient to do so. It may grant a 'worldwide freezing injunction' which applies to assets in other jurisdictions if there is a fear or an apprehension that the defendant may seek to dissipate his or her assets to escape a judgment against him or her.

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

## 2.1 The procedure

Most injunction applications may be made either in the Circuit Court or in the High Court. However, certain forms of interim relief may only be obtained in the High Court, such as freezing orders, Anton Piller orders and orders in respect of foreign proceedings.

The party seeking the interim order must file an application supported by an affidavit. The applicant must make full disclosure of all relevant facts, particularly if the application is made without notice to the other side. A draft order should also be exhibited in the affidavit, setting out exactly what is required of the court. More information on the necessary court forms is available on the [Courts Service](#) website.

If an applicant for an injunction succeeds in obtaining the order sought, she or he will usually have to give what is called 'an undertaking as to damages' in the event that he or she is ultimately unsuccessful at trial so that the other party against whom the injunction was made can recover the costs incurred as a result of the order.

Applications for injunctions may be made *ex parte* or without notice to the other side if there are good reasons for proceeding in that manner. Such applications may also be made prior to the institution of the proceedings if there is a certain urgency about the plaintiff's situation. [For interlocutory or interim relief in the Commercial Court, see Ord. 63A, r. 6(3) of the [Rules of the Superior Courts 1986](#)].

## 2.2 The main conditions

The courts have a discretion in determining whether to grant an interlocutory injunction or not and will grant such an order when it is just and convenient to do so. [Ord. 50 r. 6(1) of the [Rules of the Superior Courts 1986](#)]. In considering whether it is appropriate to grant an interlocutory injunction, the court should determine:

- (i) Whether there is a fair bona fide issue to be determined.
- (ii) Whether an award of damages or compensation would be an adequate remedy if the applicant was refused the injunction and then went on to succeed at the trial.
- (iii) Where the balance of convenience lies in making its determination.

The first requirement is that the applicant must show that there is a fair issue to be tried. This is a relatively low hurdle to be cleared by the applicant but in recent years this limb of the test has been harder to satisfy where the relief the applicant is seeking at the interlocutory stage is an injunction to compel the other party to do something. In such a case it is now clear from the authorities that the applicant must show that he has a strong case that he is likely to succeed at the hearing.

## 3 Object and nature of such measures?

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

Injunctions may be sought for a multitude of reasons including to prevent a party from developing or using land in breach of planning conditions or covenants, to allow property to be searched and for items to be removed, to compel an employer to continue to pay an employee or to prevent an employer from hiring any new employees pending the outcome of a dispute. If a freezing order or a 'Mareva' type order is made, then the party to whom the order is directed cannot deal with their assets in any manner that would be incompatible with the court order. For example, he or she may only be allowed to withdraw set amounts of cash from a bank account and may not reduce the value of their assets below a certain amount until such time as the proceedings have been concluded in full.

### 3.2 What are the effects of such measures?

If a party breaches an interim order, that person may be treated as being in contempt of court and that person may be committed to prison, fined or have their assets sequestered. The front page of the order should contain a 'penal order', notifying the recipient of the possible consequences of a breach of the terms of the injunction. Similarly if a third party knowingly assists a defendant in disposing of assets the subject of a freezing order, then that person may also be guilty of a contempt of court. As a result, copies of any freezing orders made by the

court will usually be served on any interested third parties, such as bank managers, accountants and solicitors engaged by or in the service of the party to whom the order is directed.

Any contract made in breach of an injunction is illegal and will be unenforceable by a party with knowledge of the existence of the order. However, ownership may still be transferred under an illegal contract, and therefore once any such contract is performed, it is generally not possible to recover the transferred asset and the plaintiff's only remedy in such a situation will be an award of compensation.

### 3.3 What is the validity of such measures?

Normally, an injunction is valid until the conclusion of the trial (an interlocutory injunction). If an interim injunction is made without notice to the other party, then it will usually only last for a limited period of time after which another court order will then be required.

## 4 Is there a possibility of appeal against the measure?

Yes. The defendant or any party affected by the making of an interim injunction may apply to court at any time to have the injunction varied or discharged. The party wishing to challenge the injunction must give notice of their application to the other side's solicitor. The Court may discharge an injunction where the defendant can show that it should not have been granted in the first place, where there has been some significant change in circumstances since the making of the order or where it is just and equitable to do so. As was mentioned above, a court may require a party seeking an injunction to pay what is known as "an undertaking as to damages" into court so that if they are ultimately unsuccessful at the trial, the party against whom the injunction was made will have some protection as regards any costs incurred as a result of the order.

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