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Croatian

Securing assets during a claim in EU countries

Croatia

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-----English-----

1 What are the different types of measures?

The Enforcement Act (*Ovršni zakon*) (*Narodne novine* (NN; Official Gazette of the Republic of Croatia) Nos 112/12, 25/13, 93/14, 55/16, 73/17 and 131/20; hereinafter: OZ) prescribes the following measures in the third section entitled: Securing (*Osiguranje*):

- securing by compulsory establishment of right of lien on real estate – title 28
- judicial and notarial securing by lien on the basis of an agreement between the parties – title 29,
- judicial and notarial securing by transfer of ownership of objects and transfer of rights – title 30,
- securing by preliminary enforcement – title 31,
- securing by preliminary measures – title 32,
- interim measures – title 33.

In accordance with the OZ, only measures defined as such by that or another Act may be ordered as precautionary measures. Precautionary measures are not permitted on objects and rights which, under the OZ, may not be subject to enforcement, unless otherwise provided for by that Act.

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

2.1 The procedure

As a (long-term) measure for the compulsory securing of claims, the OZ permits securing by establishment of right of lien on real estate and movables (e.g. pecuniary claims (i.e. claims on money), part of income – salary, pension, etc., bank account, securities and shares) and securing by transfer of ownership of objects and transfer of rights. Securing by establishment of right of lien (right of lien means holding a party's assets until a claim against them is settled) can be voluntary or compulsory, while securing by transfer of ownership of objects and transfer of rights can only be voluntary, in proceedings before a court or a notary public.

Other measures regulated by the OZ are securing by preliminary enforcement, securing by preliminary measures and interim measures. Only a court may make these measures compulsory, either at the request of a party or *ex officio* (i.e. on its own initiative).

Municipal courts (*općinski sudovi*) are competent to order and implement securing, unless this has been entrusted to some other court under law, while commercial courts (*trgovački sudovi*) are competent to order and implement securing in cases in which they are competent to order enforcement.

The jurisdiction to order and implement securing *ex officio* lies with the court with jurisdiction to decide on the applicant's motion, unless otherwise provided for by law.

The jurisdiction to decide on motions to secure pecuniary claims by compulsory establishment of rights of lien on real estate lies with the court that keeps the relevant land registry, i.e. the one in which the entry based on the enforceable document determining the pecuniary claim has to be made. The purpose of ordering this measure is to secure the pecuniary claim by establishment of right of lien on real estate by the entry. The effect of the entry of a lien is such that enforcement on this real estate can also be carried out against third parties who subsequently acquire this real estate.

The court may order judicial securing of a pecuniary claim by establishment of a lien on the basis of an agreement between the parties at the joint request of the applicant and the defendant for certain objects in order to secure the pecuniary claim. The court with territorial jurisdiction to adjudicate on motions to secure the applicant's pecuniary claims on the defendant's objects and rights and for the implementation of securing is determined by appropriate application of the provisions of the OZ that address the territorial jurisdiction of courts in enforcement proceedings for the collection of pecuniary claims (on individual types of objects of enforcement). The court minutes register the agreement of the parties on the existence of a claim and the time of its maturity, and their agreement that this claim is to be secured by establishment of right of lien. The signed agreement has the force of a court settlement.

Notarial securing of a pecuniary claim by establishment of a lien on the basis of an agreement between the parties is possible through an agreement between a creditor and a debtor. That agreement may be in the form of a notarial document or a legalised private document, which also contains a statement by the debtor that a lien may be created on some item of theirs.

Judicial securing by transfer of ownership of objects and transfer of rights is possible based on an agreement between the parties on the transfer of ownership (of some of the defendant's objects to the applicant for the purpose of securing an applicant's specific pecuniary claim) or the transfer of some of the defendant's rights (to the applicant for the same purpose), which is entered in the minutes of the hearing. Future claims may also be secured. The agreement has the effect of a court settlement. The court with territorial jurisdiction to adjudicate on motions to secure pecuniary claims by the transfer of ownership of objects and transfer of rights is determined by the appropriate application of the provisions of the OZ on a court's territorial jurisdiction in enforcement proceedings with respect to pecuniary claims on individual types of objects of enforcement.

Notarial securing by transfer of ownership of objects and transfer of rights, i.e. transfer of shares, stakes or a participating interest, is possible based on an agreement between the creditor and the debtor, made in the form of a notarial document or a legalised private document. The rules on the registered office and territory of notaries public determine whether a notary public is authorised to undertake individual actions of securing.

The territorial jurisdiction to adjudicate on motions for preliminary enforcement and to implement such enforcement lies with the court that would have had jurisdiction for enforcement on the basis of an enforcement instrument. Securing by preliminary enforcement is ordered and implemented by a court. On the basis of a judgment reached in civil proceedings, the court orders preliminary enforcement to secure a non-pecuniary claim that cannot be secured by

preliminary entry in the public register if the enforcement creditor demonstrates that there is a probable risk, due to the deferral of enforcement until the judgment becomes legally effective, of enforcement being made impossible or significantly more difficult and if the enforcement creditor provides security for the damage that the enforcement debtor might incur due to such enforcement.

The territorial jurisdiction to adjudicate on motions to secure by preliminary measures and to implement such measures lies with the court which would have jurisdiction for enforcement on the basis of the enforcement instrument under which the securing was proposed. The test for whether preliminary measures may be ordered is if the applicant demonstrates that there is a probable risk that without these measures the fulfilment of the claim would be impossible or significantly more difficult. In certain cases, the court may condition the preliminary measure on the provision of security for damages that the defendant might incur by its ordering. A reasoned ruling ordering a preliminary measure must include an indication of the value of the claim being secured, including interest and expenses, the measure used to secure the claim and the time for which it is being ordered (no longer than 50 days after the conditions for enforcement have been met).

Before instituting civil proceedings or any other judicial proceedings on a claim that is being secured, the territorial jurisdiction to adjudicate on motions to secure by interim measures lies with the court that would otherwise have had jurisdiction to adjudicate on motions to enforce. The territorial jurisdiction to implement interim measures lies with the court that would otherwise have had jurisdiction to implement the enforcement. After instituting proceedings, the jurisdiction to adjudicate on motions to secure by interim measures lies with the court before which the proceedings were instituted. Where justified by the circumstances of an individual case, a motion may also be filed with the court with territorial jurisdiction to carry out enforcement. The court which would have jurisdiction to adjudicate on an enforcement application on the basis of an enforcement instrument produced in administrative proceedings also has jurisdiction to adjudicate on motions to order interim measures after the termination of such proceedings. Interim measures are ordered by the court on the basis of an application proposed before the institution of, or during the course of, judicial or administrative proceedings and after these proceedings terminate until enforcement is carried out. Rulings on ordering interim measures have the authority of a writ of execution. The types of interim measures depend on whether the interim measure secures a pecuniary or non-pecuniary claim. The court may order several interim measures, if necessary, depending on the circumstances of the case.

Encumbrance, rights or prohibitions on movables, shares, stakes or participating interests are entered, on the basis of a court ruling, a notarial document or a legalised private document, in the Register of creditors' claims subject to court and notarial securing (Register of liens) (*Upisnik založnih prava*) kept at the Financial Agency, which is a unique database of encumbrances, rights or prohibitions, while the entry of liens or changes in property rights to real estate is registered by entries in land registries.

2.2 The main conditions

When ordering securing by compulsory establishment of right of lien on real estate, the court rules on a motion to secure pecuniary claims on the basis of the enforcement instrument pursuant to which the pecuniary claim was established. There are no special requirements for ordering securing, and the court, based on the motion, orders securing and enters the applicant's right of lien on the real estate in the land register, indicating the enforceability of the claim. If the defendant is not entered in the land register as the owner of the real estate, the applicant is obliged to submit, together with the motion, a document that is suitable for the entry of the defendant's right of ownership.

The applicant and the defendant may, for the purpose of providing security for an applicant's pecuniary claim by obtaining a lien on certain objects of security, consensually ask the court to order and implement, to the applicant's benefit, for example, the registration of a lien on the defendant's real estate, movables, pecuniary claim and other objects and rights, or they may reach such an agreement in the form of a notarial document or a legalised private document, including a statement of agreement by the debtor that a lien may be created on some item of theirs. The signed judicial record, notarial document or legalised private document has the authority of a court settlement against the person who has granted their agreement that a lien be created on their object or right. With a view to collecting a secured claim, these documents may be used to directly propose enforcement against a third party with respect to the item on which a lien was obtained for the purpose of securing a claim.

Parties may jointly ask the court to enter into the minutes of the hearing their agreement on the transfer of ownership of one of the defendant's objects to the applicant for the purpose of securing the applicant's particular pecuniary claim, or to transfer a specific right from the defendant to the applicant for that purpose. Future claims may also be secured. Such an agreement may be signed as a notarial document or as a legalised private document. The agreement should contain a provision stating when the secured claim will mature or how this will be determined. The defendant may also be a person against whom the applicant does not have a claim that is being secured, i.e. a third party who consents to this way of securing a claim. The agreement may also apply to securing non-pecuniary claims; however, in this event, the agreement must specify the pecuniary value of the claim. The claim should be specified or definable. A statement of consent by the defendant allowing the applicant, pursuant to the minutes, to seek enforcement against them directly for the surrender of the object of security after the secured claim's maturity may be added to an agreement. Minutes containing such a statement constitute an enforcement instrument. When ownership of real estate entered in the land register is transferred by the agreement, this agreement should contain the defendant's statement of consent that the transfer can be directly executed in the land register on the basis of the agreement and that the entry in the land register will transfer the ownership of the real estate to the applicant, with a note that the transfer has been carried out for the purpose of securing a specific claim of the applicant. Except where provided otherwise, the defendant is authorised to continue to use the object whose ownership has been transferred to the applicant, i.e. to exercise the right transferred to the applicant, while the applicant is authorised to sell the property or right transferred to him upon the maturity of his claim, or to encumber the real estate with a mortgage.

Securing by a preliminary measure may be ordered to secure pecuniary claims based on a decision of a court or administrative body that has not yet become legally effective, a settlement made before a court or administrative body, if the claim determined therein has not yet matured, or a notarial decision or notarial document, if the claim determined therein has not yet matured. On the basis of these documents, the court will order a preliminary measure if the applicant demonstrates as probable the risk that the recovery of the claim would be made impossible or significantly more difficult if it is not secured. The risk is considered probable if the ordering of a preliminary measure has been proposed on the basis of a payment order or writ of execution on the basis of an authentic document issued pursuant to a public document or a document legalised by a notary public, bill of exchange or cheque, against which an objection has been raised in due time; a judgment reached in criminal proceedings on a property law claim against which a retrial is possible; a decision that has to be enforced abroad; a judgment on the basis of an admission against which an appeal has been lodged; a settlement concluded before a court or administrative authority, if the claim determined in it has not yet matured, which is being challenged in the manner provided for by the law; a notarial decision or document, if the claim determined in it has not yet matured, which is being challenged in the manner provided for by the law. The court will reject the motion to secure by a preliminary measure, i.e. revoke a specific preliminary measure and suspend proceedings, if the defendant demonstrates as probable that there is no risk or that it has ceased.

Securing by an interim measure may be proposed before, or during the course of, judicial or administrative proceedings and after these proceedings terminate until execution is carried out. In a motion to order an interim measure the applicant must put forward a request in which they indicate precisely the claim that they want to secure, determine the type of measure that they are seeking and its duration and, when necessary, the means of securing by which the interim measure is to be compulsorily enforced, as well as the object of security. The motion must contain an indication of the facts on which the request

for ordering an interim measure is founded and contain evidence that corroborates these statements. The applicant is obliged to attach this evidence to the motion, if possible. An interim measure may be ordered to secure non-matured and conditional claims, but it is not permitted if the conditions have been met for ordering a preliminary measure by which the same effect of securing can be achieved. An interim measure to secure a pecuniary claim may be ordered if the applicant demonstrates as probable the existence of the claim and the risk that without such a measure the defendant would prevent, or make significantly more difficult, the collection of the claim by alienating their property, concealing it or disposing of it in some other way. An applicant does not have to prove a risk if they show it is probable that the defendant would sustain only insignificant damage by the proposed measure; it is considered that the risk has been demonstrated if the claim has to be enforced abroad. For the purpose of securing a non-pecuniary claim an interim measure may be ordered if the applicant demonstrates that the existence of their claim is probable, and if they demonstrate as probable the risk that the defendant would, without this measure, prevent or make significantly more difficult the enforcement of the claim, in particular by altering the current situation, or if they demonstrate that the measure is probably necessary to prevent violence or the occurrence of irreparable damage. Furthermore, an applicant does not have to prove that there is a risk if they show that it is probable that the defendant would sustain only insignificant damage by the proposed measure; it is considered that the risk has been demonstrated if the claim has to be enforced abroad. The court may order an interim measure following the applicant's proposal even when they have not demonstrated as probable the existence of a claim and the risk, if they have previously, within a time limit set by the court, provided security for damage that the defendant might incur by the ordering and implementation of an interim measure. If the applicant does not provide the security deposit within the set time limit, the court rejects the motion to secure. The court may, in view of the circumstances of a case, order several interim measures, if this is necessary; if in a given case it is possible to order several interim measures, the court orders the one which is most appropriate for achieving the purpose of the securing (and if they are all equally suitable, the court orders the one which is least onerous for the defendant).

3 Object and nature of such measures?

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

The subject of securing measures and interim measures may be any object or right owned by the debtor, e.g. real estate, movables, pecuniary claims related to salary, pensions, disability benefits, cash deposits in bank accounts or savings accounts and other property rights, provided that they are not items exempt from enforcement under the law or there is no legally restricted right to enforcement on the items concerned (e.g. items that are not in circulation, agricultural land and farm buildings of farmers to the extent required for their subsistence and the subsistence of immediate family members and other persons legally requiring support, etc.)

The court will reject an application for enforcement if enforcement is requested in order to settle a secured claim that is less than or equal to the amount in principal of HRK 40 000.00, irrespective of the note regarding the enforceability of the claim in land registers and other public records.

3.2 What are the effects of such measures?

Securing real estate by the establishment of right of lien (voluntary or compulsory, judicial or notarial), is carried out by the entry of the lien in the land register in which the real estate is recorded.

Through judicial and notarial securing involving the transfer of ownership of objects and transfer of rights, the applicant becomes the owner of an object or right by an entry in the legally required public books or registers. The applicant and the defendant may, for the purpose of providing security for the applicant' s pecuniary claim by obtaining a lien on certain objects of security, consensually ask the court to order and implement, to the applicant's benefit:

1. registration of a lien on the defendant's real estate,
2. depositing at the land register court of an agreement between the parties on the establishment of right of lien on real estate not entered in land registers,
3. entry of a lien on the defendant's movables,
4. entry of a lien on a pecuniary claim of the defendant,
5. entry of a lien on part of the defendant's income based on an employment or service contract,
6. entry of a lien on part of the pension, disability benefit or compensation for lost income,
7. entry of a lien on the defendant's claim against a bank account or savings book,
8. entry of a lien on a claim to surrender or deliver movables or to surrender real estate,
9. entry of a lien on other property rights or material rights,
10. entry of a lien on share certificates and other securities and their delivery for safekeeping,
11. entry of a lien on shares for which no share certificates have been issued and on stakes and participating interests in companies,
12. entry of a lien on securities kept with the Depository Company (*Depozitno društvo*).

Securing by preliminary enforcement: in order to provide security for non-pecuniary enforcement that cannot be secured by conditional registration in a public book, the court may order preliminary enforcement on the basis of a judgment reached in civil proceedings.

Securing by preliminary measures: the court may order the following preliminary measures:

1. Registration of a lien on the defendant's real estate or on a right entered with respect to real estate,
2. depositing at the land register court of an agreement between the parties on the establishment of a lien on real estate not entered in land registers,
3. entry of a lien on the defendant's movables,
4. entry of a lien on a pecuniary claim of the defendant,
5. entry of a lien on part of the defendant's income based on an employment or service contract,
6. entry of a lien on part of the pension, disability benefit or compensation for lost income,
7. entry of a lien on the defendant's claim against a bank account or savings book,
8. entry of a lien on a claim to surrender or deliver movables or to surrender real estate,
9. entry of a lien on other property rights or material rights,
10. entry of a lien on share certificates and other securities and their delivery for safekeeping,
11. entry of a lien on shares for which no share certificates have been issued and on stakes and participating interests in companies,
12. entry of a lien on securities kept with the Depository Company,
13. prohibition for a bank to pay, at the defendant's request, from the account of the defendant or a third party, an amount for which a preliminary measure has been ordered.

An applicant may obtain a lien on the object of security based on a preliminary measure. Where a payment ban has been ordered with respect to an amount of a defendant's money held at a bank, that amount may not be transferred from the account for the duration of the prohibition, except to pay the secured claim.

Interim measures

- For the purpose of securing a pecuniary claim any measure which achieves that purpose may be ordered, and specifically the following:

1. to prohibit the defendant from alienating or encumbering movables, to seize these objects and entrust them to the applicant or a third party for safekeeping;
2. to seize and deposit cash, securities and similar items with a court or notary public;

3. to prohibit the defendant from alienating or encumbering real estate or rights in rem that are registered on the real estate in their favour, and to enter a note of this prohibition in the land register;
4. to prohibit a defendant's debtor from fulfilling their obligation to the defendant voluntarily and to prohibit the defendant from receiving the fulfilment of this obligation, i.e. disposing of their claims;
5. to order a bank to refuse payment from the defendant's account to the defendant or a third party, at the defendant's request, in the amount for which the interim measure has been ordered.
- For the purpose of securing a non-pecuniary claim any measure which achieves that purpose may be ordered, and specifically the following:
1. to prohibit the alienation and encumbrance of movables against which the claim is directed, to seize them and entrust them to the applicant or a third party for safekeeping;
2. to prohibit the alienation and encumbrance of shares, stakes or participating interests against which the claim is directed, and to enter a note of this prohibition in the register of shares, stakes or participating interests and, where necessary, in the court minutes; to prohibit the use or exercise of rights on the basis of such shares, stakes or participating interests; to entrust shares, stakes or participating interests to the management of a third party; to set up an interim management board in a company;
3. to prohibit the alienation and encumbrance of other rights against which the claim is directed and to entrust the management of these rights to a third party;
4. to prohibit the alienation and encumbrance of real estate against which the claim is directed or of rights in rem recorded on the real estate against which the claim is directed, and to enter a note of the ban in the land register; to seize the real estate and entrust it to the applicant or a third party for safekeeping;
5. to prohibit a debtor of the defendant from surrendering an object, transferring a right or undertaking any other non-pecuniary obligation against which the claim is directed, to the defendant;
6. to prohibit the defendant from undertaking any actions which might cause damage to the applicant and to prohibit any alterations to the objects against which the claim is directed;
7. to order the defendant to undertake certain actions necessary to preserve movables or real estate or to preserve the current state of objects;
8. to authorise the applicant to retain the defendant's objects kept by the applicant to which the claim refers until the litigation is settled;
9. to authorise the applicant to undertake certain actions or obtain certain objects alone or by proxy, especially for the purpose of restoring a prior state of affairs;
10. to temporarily return an employee to work; to pay compensation during a work dispute, if this is necessary for their upkeep and the upkeep of persons whom they are obliged to support under the law.

3.3 What is the validity of such measures?

As a rule, judicial and notarial securing by lien or by transfer of ownership of objects and transfer of rights are valid until the final conclusion of the proceedings.
A ruling ordering a preliminary measure must include an indication of the value of the claim being secured, including interest and expenses, the measure used to secure the claim, and the period of time for which it is being ordered. This period of time may not last more than 15 days after the conditions for enforcement have been met. If it elapses before the decision on the basis of which the preliminary measure has been ordered becomes enforceable, the court – on the basis of an applicant's request submitted to court before the expiry of the period for which the preliminary measure has been ordered – extends it, provided that the circumstances under which this measure was ordered have not changed.
The ruling by which an interim measure is ordered also specifies the duration of this measure and, if the measure is ordered before an action has been filed or some other proceedings have been instituted, it also defines the time limit within which the applicant must bring an action, i.e. submit a motion to initiate other proceedings, in order to justify the measure. At the applicant's request, the court extends the duration of the interim measure, provided that the circumstances under which the measure was ordered have not changed.

4 Is there a possibility of appeal against the measure?

An appeal may be filed against a first-instance ruling within eight days of the day on which the first-instance ruling was served, unless provided otherwise by the OZ. As a rule, an appeal does not postpone the enforceability of a ruling. A court of appeal decides on the appeal.
An appeal against a ruling on a motion to issue an interim measure is not sent to the opposing party for a reply, and the court of appeal delivers its ruling on the appeal within thirty days of its receipt.
There is no judicial remedy available against a notarial document or a legalised private document, but a debtor may bring their objections against notarial securing in special litigation in which they challenge the agreements. Third parties may bring their objections against notarial securing in a procedure before court in accordance with the rules that apply to objections against judicial securing.
A review is only allowed in securing proceedings if the judgment reached in the second instance depends on the resolution of a substantive or procedural matter that is important for ensuring uniform application of the law and the equality of all parties in the application thereof, in accordance with the rules of litigation. A retrial is not allowed, and restoration of a prior state of affairs is allowed only where the deadline for lodging an appeal or objection has been missed.

Last update: 06/02/2023

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