

Interim and precautionary measures - Croatia

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1 What are the different types of measures?

The Enforcement Act (*Ovršni zakon*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia), No 112/12, 25/13, 93/14, 55/16 and 73/17; hereinafter: OZ) in the third section entitled: Securing by preliminary measures (*Osiguranje*), prescribes the following measures:

- 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 of 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.

According to the OZ, only measures defined as such by this or another Act may be determined as precautionary measures. Precautionary measures are not permitted on objects and rights which, according to OZ, may not be subject to enforcement, unless otherwise provided for by that law.

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

2.1 The procedure

As a (long-term) measure within the meaning of compulsory securing of claims, the OZ enables securing by compulsory establishment of right of lien on real estate and movables (e.g. pecuniary claims, 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 can be voluntary or compulsory, while securing by transfer of ownership of objects and transfer of rights can only be voluntary, either 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. These measures may only be determined by the court in a compulsory manner, either at the request of a party or *ex officio*.

Municipality courts are competent to order and implement securing, unless this has been entrusted to some other court under law, while commercial courts 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 secured creditor'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 land registry in which the entry based on the enforceable document determining the pecuniary claim has to be carried out. The purpose of determining this measure is securing the pecuniary claim by establishment of right of lien on real estate by the entry. The effect of an entry of a lien is such that enforcement on this real estate can also be implemented 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 secured creditor and the secured debtor for certain objects in order to secure the pecuniary claim. The territorial jurisdiction to adjudicate on motions to secure the secured creditor's pecuniary claims on the secured debtor's objects and rights and for the implementation of securing, is determined by the appropriate application of the provisions of the OZ on the territorial jurisdiction of the court 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, as well as the agreement of the parties that this claim 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 based on an agreement of a creditor and a debtor, made in the form of a notarial document or a private document legalized as to content, that also contain the debtor's statement of agreement that, a lien may be created on some item of his.

Judicial securing by transfer of ownership of objects and transfer of rights is possible based on an agreement between the parties that an agreement between them on the transfer of ownership (of some of the secured debtor's objects to the secured creditor for the purpose of securing a secured creditor's specific pecuniary claim) or the transfer of some of the secured debtor's rights (to the secured creditor for the same purpose), be entered into 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 for the enforcement of 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 private document legalised as to content. The authorisation of a notary public to undertake individual actions of securing is determined in accordance with the rules on the registered office and territory of notaries public.

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 title document. Securing by preliminary enforcement is ordered and implemented by court. On the basis of a judgment reached in civil proceedings, the court orders a 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 that would have had jurisdiction for enforcement on the basis of an enforcement title document pursuant to which the securing was ordered. The test for whether preliminary measures may be ordered is if the secured creditor 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 secured debtor 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 15 days after the conditions for enforcement have been met).

Before instituting litigation 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. If the circumstances of an individual case so justify, a motion may also be filed with the court with territorial jurisdiction to implement the enforcement. The court which would have had jurisdiction to adjudicate on an enforcement application on the basis of an enforcement title document produced in administrative proceedings shall also have jurisdiction to adjudicate on motions to order interim measures after the termination of such proceedings. Interim measures are ordered by 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 the enforcement is implemented. Rulings on ordering interim measures have the authority of a writ of execution. Types of interim measures depend on the fact whether the interim measure secures a pecuniary or non-pecuniary claim. The court may, depending on the circumstances of the case, order several interim measures, if necessary.

Encumbrance, rights or prohibitions on movables, shares, stakes or participating interests are entered on the basis of a court ruling, i.e. notarial document or a private document legalized as to content into 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 entered encumbrances, rights or prohibitions, while the entry of liens or changes in property rights of 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 an enforcement title document pursuant to which the pecuniary claim was ordered. There are no special requirements for ordering securing and the court, based on the motion, orders securing and on the real estate entered in the land register enter a right of lien of the secured creditor, as well as indicate the enforceability of the claim. If the secured debtor is not entered in the land register as the owner of the real estate, the secured creditor shall, together with the motion, submit a document suitable for the entry of the secured debtor's right of ownership.

The secured creditor and the secured debtor may, for the purpose of providing security for a secured creditor's pecuniary claim by obtaining a lien on certain objects of security, consensually ask the court to order and implement, to the secured creditor's benefit, the registration of a lien on the secured debtor's real estate, movables, pecuniary claim and other objects and rights of the secured debtor, or they may reach such an agreement in the form of a notarial document or a private document, including a debtor's statement of agreement that a lien may be created on some item of his.

The signed judicial record, i.e. notarial document or a private document legalised as to content, also has the authority of a court settlement against the person who has granted his agreement that a lien be created on his object or right, and on the basis of these documents, in order to collect the secured claim, directly propose enforcement against the person from on the item on which a lien was obtained for the purpose of securing a claim.

Parties may jointly ask the court to schedule a hearing and to enter into the minutes of this hearing their agreement on the transfer of ownership of some of the secured debtor's objects to the secured creditor for the purpose of securing a secured creditor's particular pecuniary claim, or to transfer some of the secured debtor's right to the secured creditor for that purpose. Future claims may also be secured. Such an agreement may be signed as a notarial document or a private document, legalised as to content. The agreement should contain a provision on time of the secured claim's maturity, as well as how this will be determined. The secured debtor may also be a person against whom the secured creditor does not have the claim that is being secured, i.e. a third party who consents to this kind of claim being secured. 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 ascertained or ascertainable. A statement of consent from the secured debtor's statement allowing the secured creditor to directly, pursuant to the minutes, seek enforcement against him 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 title document. When ownership of real estate entered into the land register is transferred by the agreement, this agreement should contain the secured debtor'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 secured creditor, with an annotation that the transfer has been carried out for the purpose of securing a specific secured creditor's claim. Unless otherwise provided for, the secured debtor is authorised to continue to use the object whose ownership has been transferred to the secured creditor, i.e. exercise the right transferred to the secured creditor, while the secured creditor 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 preliminary measures may be ordered to secure pecuniary claims based on a decision of a court or administrative body that has not yet become legally effective, based on a settlement made before a court or administrative body, if the claim determined therein has not yet matured, or based on a notarial decision or notarial document, if the claim determined therein has not yet matured. The court shall, on the basis of these documents, order a preliminary measure if the secured creditor demonstrates as probable the risk that the realisation of the claim would be made impossible or significantly more difficult if 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 judgement on the basis of an admission against which an appeal has been lodged; a settlement that is challenged in the manner provided for by the law; a notarial decision or document, if the claim determined in it still has not matured, that is being challenged in the manner provided for by the law. The court shall reject the motion to secure by preliminary measure, i.e. revoke a certain preliminary measure and suspend proceedings, if the secured debtor demonstrates as probable that there is no risk or that it has terminated.

Securing by interim measure may be proposed before the institution or during the course of judicial or administrative proceedings and after these proceedings terminate until the execution is implemented. In a motion to order an interim measure a secured creditor must put forward a request in which he shall exactly indicate the claim that he wants to secure, determine the type of measure he seeks and its duration and, when necessary, the means of securing by which the interim measure is 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 put forward evidence that corroborates these statements. The secured creditor is obliged to attach this evidence, if possible, to the motion. An interim measure may be ordered to secure non-matured and conditional claims, and it is not permitted if the conditions for ordering a preliminary measure by which the same effect of securing can be achieved have been met. An interim measure to secure a pecuniary claim may be ordered if the secured creditor demonstrates as probable the existence of the claim and the risk that without such a measure the secured debtor would prevent or make significantly more difficult the collection of the claim by alienating his property, concealing it or disposing of it in some other way. A secured creditor does not have to prove a risk if he shows it is probable that the secured debtor would sustain only insignificant damage by the proposed measure and 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 can be ordered if the secured creditor demonstrates the existence of his claim is probable, and if he demonstrates as probable the risk that the secured debtor would, without this measure, prevent or make significantly more difficult the enforcement of the claim, in particular by altering the current situation, or if he demonstrates that the measure is probably necessary to prevent violence or the occurrence of irreparable damage. Furthermore, a secured creditor does not have to prove there is a risk if he shows that it is probable that the secured debtor would sustain only insignificant damage by the proposed measure, and it is considered that the risk has been demonstrated if the claim has to be enforced abroad. The court may order an interim measure at the secured creditor's proposal even when he has not demonstrated as probable the existence of a claim and risk, if he has previously, within a time limit set by the court, provided security for damage that the secured debtor might incur by the ordering and implementation of an interim measure. If the secured creditor does not provide the security deposit within the set time limit, the court shall reject the motion to secure. The court can, 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 shall order the one which is most appropriate for achieving the purpose of the securing (and if they are all equally suitable, the court shall order that which is least onerous to the secured debtor).

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 secured debtor, e.g. real estate, movables, pecuniary claims, pensions, disability benefits, cash deposits in bank accounts or savings accounts and other property rights insofar as they are not items exempt from enforcement under the law or there is no legally restricted right to enforcement on items (e.g. items that are not in circulation, agricultural parcels and farm buildings of farmers in the extent required for subsistence and the subsistence of immediate family members and other persons legally requiring to support, etc.)

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 established by the entry of the lien in the land register in which the real estate has been entered.

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

1. registration of a lien on the secured debtor's real estate,
2. depositing an agreement between parties on the establishment of right of lien on real estate not entered into land registers to the land register court,
3. entry of a lien on the secured debtor's movables,
4. entry of a lien on the secured debtor's pecuniary claim,
5. entry of a lien on part of the secured debtor's income based on an employment contract or service,
6. entry of a lien on part of the pension, disability benefit or compensation for lost income,
7. entry of a lien on the secured debtor'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 or real 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 share certificates have not been issued and on stakes and participating interests in companies,
12. entry of securities kept with the Depositary Company (*Depozitno društvo*).

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

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

1. Registration of a lien on the secured debtor's real estate or on a right entered on real estate,
2. depositing of the agreement between parties on the establishment of right of lien on real estate not entered into land registers to the land register court,
3. entry of a lien on the secured debtor's movables,
4. entry of a lien on the secured debtor's pecuniary claim,
5. entry of a lien on part of the secured debtor's income based on an employment contract or service,
6. entry of a lien on part of the pension, disability benefit or compensation for lost income,
7. entry of a lien on the secured debtor's claim against a bank account or savings book,
8. entry of a lien on the claim to surrender or deliver movables or to surrender real estate,
9. entry of a lien on other property or real 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 share certificates have not been issued and on stakes and participating interests in companies,
12. entry of securities kept with the Depositary Company (*Depozitno društvo*).
13. Prohibition of a bank to pay from the account of a secured debtor or a third party an amount for which a preliminary measure has been ordered.

A secured creditor can obtain a lien on the object of security based on a preliminary measure. Where a payment ban has been ordered on an amount of a secured debtor's money held at a bank, that amount cannot 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 can be ordered that achieves that purpose, and specifically the following:

1. to prohibit the secured debtor from alienating or encumbering movables, to seize these objects and entrust them to the secured creditor or third party for safekeeping;
2. to seize and deposit cash, securities and similar with court or a notary public;
3. to prohibit the secured debtor from alienating or encumbering real estate or rights *in rem* that are registered on the real estate in his favour, with an annotation of this prohibition in a land register;
4. to prohibit the secured debtor's debtor from fulfilling his obligation to the secured debtor voluntarily and to prohibit the secured debtor from receiving the fulfilment of this obligation, i.e. disposing of his claims;
5. to order a bank to refuse payment from the secured debtor's account to the secured debtor or third party at the secured debtor's request, in the amount for which the interim measure has been ordered.

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

1. to prohibit the alienation and encumbrance of movables against which the claim is directed, their seizure and entrusting them for safekeeping with the secured creditor or third party;
2. to prohibit the alienation and encumbrance of shares, stakes or participating interests against which the claim is directed, with an annotation of the prohibition in the register of shares, and where necessary in the court minutes; to prohibit the use or exercise of rights on the basis of such shares or equity shares; 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 rights *in rem* recorded on the real estate against which the claim is directed, with an annotation of the ban in the land register; to seize the real estate and entrust it to the secured creditor or third party for safekeeping;
5. to prohibit a debtor of the secured debtor's from surrendering an object, transfer a right or undertake any other non-pecuniary obligation against which the claim is directed to the secured debtor;
6. to prohibit the secured debtor from undertaking any actions which might cause damage to the secured creditor and to prohibit any alterations to the objects against which the claim is directed;
7. to order the secured debtor to undertake certain actions necessary to preserve movables or real estate or to preserve the current state of objects;
8. to authorise the secured creditor to retain the secured debtor's objects that are kept with him and to which the claim refers until the litigation is settled;
9. to authorise the secured creditor 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 the employee to work; to pay compensation during a work dispute, if this is necessary for his upkeep and the upkeep of persons whom he is obliged to support under the law.

3.3 What is the validity of such measures?

Judicial and notarial securing by lien or by transfer of ownership of objects and transfer of rights are, as a rule, valid until the final conclusion of the procedure.

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 time for which it is being ordered. The time for which a preliminary measure is ordered can last no longer than 15 days after the conditions for enforcement have been met. If the time elapses before

the decision on the basis of which the preliminary measure has been ordered becomes enforceable, the court, at the secured creditor's proposal submitted to the court before the expiry of the period for which the preliminary measure has been ordered, extends this time provided that the circumstances under which this measure was ordered have not changed.

The ruling by which an interim measure is ordered also defines the duration of this measure and if the measure is ordered before an action has been filed or some other proceeding instituted it also defines the time limit within which the secured creditor must bring an action, i.e. motion to initiate other proceedings, in order to justify the measure. The court, at the secured creditor's proposal, extends the interim measure's duration, 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 ruling made in the first instance within eight days of the day the first instance ruling is 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 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 private document legalised as to content, however, a debtor may bring his objections against notarial securing in a special litigation in which he shall 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 solution of a substantive or procedural matter important for ensuring uniform application of the law and the equality of all parties in its application, in accordance with the rules of litigation. A retrial is not allowed, and the restoration of a prior status is allowed only on the basis of missing the deadline for appeals or objections.

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