

Interim and precautionary measures - Poland

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1 What are the different types of measures?

The type of measure depends on the nature of the claim to be secured. Under Article 747 of the Code of Civil Procedure (*kodeks postępowania cywilnego*), monetary claims are secured through:

- the seizure of movable assets, wages and salaries, claims from a bank account or other claims, or another property right;
- the encumbrance of real estate of the obligated entity with a compulsory mortgage;
- the establishment of a prohibition on the disposal or encumbrance of real estate for which there is no land and mortgage register or for which the land and mortgage register has been lost or destroyed;
- the encumbrance of a vessel or a vessel under construction with a maritime mortgage;
- the establishment of a prohibition on the disposal of the cooperative ownership right to premises;
- the establishment of receivership over an enterprise or agricultural holding of the obligated entity or an establishment forming part of an enterprise or a part thereof, or a part of an agricultural holding of the obligated entity.

If a claim other than a monetary claim is secured, the court provides the security it deems appropriate in the case concerned, not excluding measures designed to secure monetary claims (Article 755 of the Code of Civil Procedure). In particular, the court may:

- standardise the rights and obligations of the parties to or participants in the proceedings for the duration of those proceedings;
- establish a prohibition on the disposal of the items or rights covered by the proceedings;
- suspend enforcement proceedings or other proceedings aimed at implementing a judgment;
- regulate issues of custody of children (minors) and contact with children;

- order that an appropriate caveat be entered in the land and mortgage register or another appropriate register.

The interests of the parties to or participants in proceedings should be taken into account when selecting the form in which security is provided, so as to ensure proper legal protection for the entitled entity and not to burden the obligated entity excessively.

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

2.1 The procedure

Proceedings for providing security are instituted:

- at the request of a party to or participant in proceedings lodged with the court competent to examine the case in first instance. If this court cannot be identified, the competent court is the court of the place where the decision on security is to be implemented or, in the absence of this basis or if the decision on security is to be implemented within the jurisdiction of different courts, the district court (*sąd rejonowy*) for the capital city of Warsaw. An application for security lodged during proceedings is considered by the court of the instance in which the case is pending, except where this court is the Supreme Court (*Sąd Najwyższy*). In such cases, the court of first instance decides whether or not the security should be provided (Article 734 of the Code of Civil Procedure).
- *ex officio* in cases where proceedings may be instituted *ex officio* (Article 732 of the Code of Civil Procedure).

Applications for security are lodged in writing. They should meet the requirements for pleadings and specify the form in which security is provided and, in the case of a monetary claim, also the amount of the security (which cannot exceed the amount of the claim pursued, calculated together with interest from the date on which the decision on security is handed down, as well as with the costs of providing the security, and may also include the projected costs of the proceedings) as well as the circumstances justifying the application. If an application for security is lodged before proceedings are instituted, the subject-matter of the case should also be briefly described (Article 736 of the Code of Civil Procedure).

Security may be provided before proceedings are instituted or during proceedings. After the entitled entity has obtained an enforceable title, security may be provided only if it is intended to secure a claim for which the deadline for performance has not yet expired (Article 736(2) of the Code of Civil Procedure).

When security is provided before proceedings are instituted, the court sets the deadline by which a letter instituting proceedings should be lodged, on pain of annulment of the security (Article 733 of the Code of Civil Procedure).

Applications for security must be considered without undue delay, within one week of the date on which they are lodged with the court, unless special provisions stipulate otherwise. If an act of law provides for applications to be examined during a hearing, that hearing should be scheduled within one month of the date on which the application was lodged (Article 733 of the Code of Civil Procedure).

Security is provided on the basis of a court judgment.

2.2 The main conditions

Security may be requested in all civil matters examined by a court or court of arbitration (Article 730 of the Code of Civil Procedure).

The conditions for providing security are as follows: the claim and the legal interest in providing security must be substantiated. There is a legal interest in providing security if it will be impossible or very difficult to implement the judgment handed down in the case or it will otherwise be impossible or very difficult to achieve the aim of the proceedings if the security is not provided (Article 730¹ of the Code of Civil Procedure).

The purpose of security cannot be to satisfy a claim, unless an act of law stipulates otherwise (Article 731 of the Code of Civil Procedure).

The court may make the implementation of a decision on security conditional on the provision of a deposit by the entitled entity to secure the obligated entity's claims resulting from the implementation of the decision on security, except where the entitled entity is the Treasury and where security is provided for claims for maintenance, disability pension or amounts owed to an employee in matters related to labour law in a part not exceeding the full monthly remuneration of an employee (Article 739 of the Code of Civil Procedure).

3 Object and nature of such measures?

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

Security may be provided for:

- movable assets,
- wages and salaries,
- claims from a bank account or other claims, or another property right,
- real estate,
- vessels or vessels under construction,
- the cooperative ownership right to premises,
- an enterprise or agricultural holding, an establishment forming part of an enterprise or a part thereof, or a part of an agricultural holding

Security cannot cover items, debts or rights excluded from enforcement. Perishable goods may serve as security if the obligated entity has no other property with which to secure the entitled entity's claims and the goods can be sold promptly.

3.2 What are the effects of such measures?

The main purpose of security proceedings is to ensure that the entitled entity (most frequently the creditor) is protected against the potential adverse effects of delay in cases pending before the court and to improve the entitled entity's situation in enforcement proceedings if the subject of court proceedings and security is an enforceable claim. To a limited extent, security may also allow the entitled entity to obtain cash benefits.

Furthermore, security may be a response to the obligated entity's actions to the detriment of the entitled entity's justified interests.

The effects of security for the obligated entity differ depending on the form in which security is provided and may be as follows:

- if movable assets are seized, the management of the movable assets after seizure has no impact on the further course of proceedings, and enforcement proceedings for the movable assets seized may also be conducted against the buyer,
- if the bank account of an undertaking or owner of an agricultural holding is seized as security, the obligated entity may collect only the amounts specified by the court for the payment of current wages and salaries, together with payroll tax and other statutory amounts, as well as overheads,
- limited use can be made of other debts and property rights seized (the manner of use is determined by the court),
- a bailiff sells all the items seized along with the rights to financial instruments recorded on a securities account or other account within the meaning of the rules on trading in financial instruments, and the amount obtained is deposited in the court's deposit account,
- a prohibition on the disposal or encumbrance of real estate and the cooperative ownership right to premises is established,
- a vessel or a vessel under construction is encumbered with a maritime mortgage,
- the obligated entity is deprived of management rights and receivership is established, and the income from receivership serves as security,
- in matters related to maintenance, the obligated entity is required to pay a specific sum to the entitled entity on a one-off basis or periodically.

3.3 What is the validity of such measures?

The obligated entity may request at any time that a legally binding decision to provide security be revoked or amended if the reason for the security ceases to exist or changes (Article 742 of the Code of Civil Procedure).

Security is annulled if:

- the obligated entity deposits the amount of security requested by the entitled entity in the application for security in the court's deposit account,
- a claim or application is lawfully returned or rejected,
- a claim or application is dismissed or proceedings are discontinued,
- the entitled entity does not apply for the entire claim in proceedings or applies for other claims than that secured before proceedings were instituted,
- a judgment allowing a secured claim becomes final (the security is annulled one month after the judgment becomes final),

- the entitled entity does not apply for further enforcement measures within two weeks of a judgment allowing a claim becoming final in cases in which security was provided through the seizure of movable assets, wages and salaries, claims from a bank account or other claims, another property right or through the establishment of receivership over an enterprise or agricultural holding of the obligated entity or an establishment forming part of an enterprise or a part thereof, or a part of an agricultural holding of the obligated entity.

4 Is there a possibility of appeal against the measure?

Both the entitled entity and the obligated entity may lodge a complaint against the decision of the court of first instance regarding security (Article 741 of the Code of Civil Procedure).

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