

Questionnaire

**PROVISIONAL MEASURES IN CIVIL PROCEEDINGS**

**I**

**A. Sources/ competent courts**

1. Where in the law of your country are the rules on this subject to be found (code of civil procedure, special statute(s), case law)?
2. May provisional measures only be given within the framework of a pending case or also apart from that? If so, are there different rules for these two kinds of procedures?
3. Are special courts or judges designated for ordering provisional measures?

**B. Kinds of provisional measures available**

4. Please describe the kinds of provisional measures available in your system. In particular, are the following kinds of provisional orders available:
  - (a) Orders (interdict/injunction) prohibiting *ad interim* the commission of an alleged wrongful act (e.g. breach of contract, infringement of copyright etc);
  - (b) Orders regulating the interim possession of property which is the subject of dispute;
  - (c) Orders requiring performance of a positive act, such as the execution of a deed transferring property;
  - (d) Orders requiring the payment of money; and
  - (e) Orders which are merely declaratory in effect - such as a provisional declaration that a particular activity or action constitutes an infringement of a trademark, or other intellectual property right.
5. Is it an objection to the competency of granting provisional measures that the measure sought has practical consequences which are not easily reversible?
6. Is there always an express or implied time limit to the duration of a provisional measure (c.f. Art. 50 of the Agreement for Trade-Related Aspects of Intellectual Property annex to the WTO [T.R.I.Ps] )?

**C. Grounds and procedure for granting provisional measures**

7. In general terms, what does the party seeking provisional measures have to demonstrate in order to justify his request for such measures?
8. Does the complex character of a case (factual or legal) constitute a ground for not ordering a provisional measure?

9. Please indicate briefly the procedure to be followed in seeking provisional measures. In particular,
- (a) Is an application for provisional measures always a separate process or is it made as part of the process of the principal claim?
  - (b) Must the opposing party always be heard before a provisional measure is granted?
  - (c) If not, what steps may the opposing party take to have the measure recalled?
10. In establishing grounds for the granting of provisional measures, does the applicant have to follow the normal rules of evidence for proving the facts? If not, what approach or procedures may be adopted by the Court where the facts are disputed at a hearing on provisional measures?

**D. Incidental consequences of the granting of provisional measures**

11. a. Is the party obtaining a provisional measure always liable in damages for the consequences of the measure, in the event that he ultimately fails in his principal claim, or if the provisional measure is later reversed on appeal?
- b. Is it possible to make the grant of provisional measures conditional on the applicant providing security for the eventuality of his being liable in damages?
- c. If so, to what extent is that power usually exercised in practice?
12. What sanctions are available in the event of the infraction of an interim, or provisional order? Is it possible to specify in advance a sum to be deposited as security for the due observance of the provisional order?
13. In what circumstances may a provisional order be altered or recalled. In particular, may alteration or recall be ordered on
- (a) a material change in factual circumstances;
  - (b) a material change in the procedure in the action (for example, a definitive judgment on the merits, or part of the merits, of the principal action, even though subject to appeal).
14. Does an appeal or request to change a measure suspend the effect of the measure?

**E. International aspects**

15. To what extent is it possible for the Courts in your country to grant provisional measures with (pretended) effect in another country?

[For countries who are contracting states under the Brussels and Lugano Convention]

16. To what extent is recourse made to Art.24 of the Conventions? Please indicate any observations which you may have on the working of this provision in your country.

**F. Particular problems and plans for reform**

17. Are you satisfied with your national law on this subject? Are there any plans for reform?

**II**

18. What points would you like to discuss in detail?

**III**

(to prepare the conclusions)

**19. What changes in the law on this subject do you suggest ?**

**IV**

**20. What subject do you suggest for next year?**