

1. Provisional and protective measures are important both in domestic and cross-border litigation to secure effective enforcement or to otherwise preserve rights and prevent (further) harm prior to the commencement of proceedings or pending final judgment. A provisional or protective measure is a temporary measure given by the court in support of a claim already brought before the court or to be brought in the future. Its temporary nature is inherent in provisional and protective measures, which will cease to have any effect, at the latest, when final judgment has been delivered. Provisional and protective measures may be thought as a means of enhancing in some fashion the effectiveness of pending or future (but contemplated) litigation. is to preserve parties' rights pending the decision on the merits.
2. The essential function of provisional and protective measures is to preserve parties' rights pending (or in the light of) the decision on the merits. A provisional or protective measure can be defined as any temporary order that has one or more of the following functions: (a) to ensure effective enforcement of final decisions concerning the substance of the proceedings, attaching debtor's assets; or (b) to secure evidence relevant to the merits or prevent its destruction or concealment; or (c) to preserve the existence and value of goods or other assets which form or will form the subject-matter of proceedings (pending or otherwise); or (d) to prevent irreparable harm from being suffered by regulating the disputed issues pending final judgment.
3. Different terminology is used for provisional and protective measures, for instance: provisional relief, preliminary measures, preservation measures, *interim* relief and *interim* orders. The use of "*provisional and protective measures*" is a generic terminology that tries to catch all these variously described measures all of which serve the functions enumerated above.
4. Conservatory measures are aimed at securing enforcement of the judgment on the merits. They typically cover, but are not limited to, asset preservation measures. Anticipatory measures are those temporary measure that can, on a provisional and temporary basis, award either partially or in full what is or will be claimed in the proceedings. These include measures requiring a party to perform or to abstain from carrying out certain acts, requiring interim specific performance of a contractual obligation or interim payments.
5. Provisional and protective measures do not have any *res judicata* effect in respect of the substantive proceedings as they may be revoked, modified and will be in any case superseded by the final judgment on the merits.
6. Provisional and protective measure can be granted to the applicant insofar as (i) her or his claim for relief has a good chance of succeeding on its substantive merits, and (b) it is likely that, without such a measure, enforcement of a final judgment against the respondent will be impossible or exceedingly difficult or he or she will suffer irreparable harm. The two criteria are cumulative, meaning that the likelihood that the applicant will succeed on the substantive merits of the dispute should not influence the assessment of whether there is a real risk concerning the enforceability of a final judgment or the suffering of an irreparable harm unless the measure is granted by the court.
7. As far as regards cross-borders issues, the court having jurisdiction on the merits of the claim to be protected by the provisional and protective measures will have jurisdiction to grant them. The court that has jurisdiction over the substantive proceedings is the natural forum for granting provisional and protective measures.
8. Another court may grant such provisional and protective measures necessary to protect interests located within the jurisdiction or the subject-matter of which have a real connecting link with the territory of that other court. For instance, it is widely and generally accepted that a court

which does not have jurisdiction on the merits of the controversy may grant provisional measures with respect to assets located in that jurisdiction or where there is an otherwise close connection between the measures sought and that jurisdiction (e.g., a restraining order relating to acts taking place in that jurisdiction).

**9.** There is no requirement that proceedings on the merits have already been brought for validly seeking for a provisional and protective measure. The request for such a measure can be made prior to the commencement of the proceedings or once it has been already started. In the first case, the request may be referred to as *ante causam* application. Most of national legislation provide for the need of initiating the proceeding on the merits within a specified term after the measure is granted, otherwise the measure will cease to have effect. This rule shall apply, in particular, in respect of conservatory measures.

**10.** Provisional and protective measures may be granted *ex parte* (without notice) or *inter partes* (with notice). *Ex parte* procedure means that the measure will be granted and enforced without giving prior notice of the application to the defendant. This is necessary to secure the so-called surprise effect, especially in respect of conservatory measures as orders for attaching the debtor's assets. In the event an *ex parte* order has been granted, the debtor should be given notice of the order and of all the matters relied upon before the court to support as soon as possible, in order to have the possibility to be heard and to present its defences at the earliest possible time.