

# New Procedural Rules Allowing to Apply for Interim Measures in Foreign Court Judgement Enforcement Proceedings



by Olena S. PEREPELYNSKA

**O**n 22 September 2011 the Ukrainian Parliament adopted long expected amendments to the *Civil Procedure Code of Ukraine* regarding interim measures in foreign court judgements enforcement proceedings. The respective *On Amending the Civil Procedure Code of Ukraine regarding Interim Measures in Recognition and Enforcement of Foreign Court Judgements Act of Ukraine No.3776-VI* (the Act No.3776) comes into effect on 19 October 2011.

Act No.3776 expressly confers upon a competent court the powers to grant interim measures during recognition and enforcement proceedings and provides respective procedural rules.

New rules allow foreign creditors to apply for interim measures while recognition and enforcement proceedings are still pending and thus, to ensure, or at least to increase the chances of, actual execution of respective foreign state court decision, foreign arbitral award or an arbitral award rendered in Ukraine according to the *On International Commercial Arbitration Act of Ukraine*.

## Competent courts

The request for interim measures shall be submitted to the same court before which the recognition and enforcement of the judgement is sought.

## Terms and conditions

The request for interim measures may be submitted by the party applying for recognition and enforcement of the foreign judgement, and such measures may be granted by the court at any stage of the respective enforcement proceedings if failure to order such interim measures may complicate or render the enforcement of the judgement impossible.

## Types of interim measures

The court may order any of the interim measures envisaged by civil procedure legislation (Article 152 of the *Civil Procedure Code of Ukraine*), e.g. attachment of a debtor's assets or money, injunction against certain debtor's actions, order to the debtor to carry out certain actions, injunction against transfer of money or assets to

the debtor by third parties, order to transfer the object in dispute in custody of third parties, etc.

## Procedure

The request for interim measures shall be considered by the court in ex parte proceedings on the day of its submission. While granting interim measures, the court, in order to prevent possible abuses, may request suitable security to be transferred from the applicant to the deposit account of the court.

A court ruling on granting interim measures could be enforced immediately according to the procedures established for the court judgements. Interim measures could be changed or cancelled by the court at the request of any party to the proceedings.

Thus, Act No.3776 has filled a significant gap in the procedural legislation of Ukraine. It will certainly facilitate actual enforcement of foreign court judgements and arbitral awards in Ukraine and decrease bad faith practices employed by some Ukrainian debtors to avoid fulfillment of their contractual obligations toward foreign creditors.

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