

## ***Inter-American convention on Execution of Preventive Measures (OAS)***

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May 8, 1979.

The Governments of the Member States of the Organization of American States, desirous of concluding a Convention on Execution of Preventive Measures, have agreed as follows:

### **I. TERMS EMPLOYED ➔**

**Article 1:** For the purposes of this Convention, the terms "preventive measures" or "security measures" or "guarantee measures" are deemed to be equivalent when they are used to mean procedures or measures whose purpose is to guarantee the findings or effects of a pending or future proceeding concerning the security of persons, property, or of obligations to give, to do or not do a specific thing in civil, commercial or labor matters, or in criminal trials in which civil damages are sought. The States Parties may declare that they are limiting this Convention exclusively to one or more of the preventive measures provided for in it.

### **II. SCOPE OF THE CONVENTION ➔**

**Article 2:** The judges or courts of the States Parties to this Convention shall execute the preventive measures that are decreed by a judge or court of another State Party competent in the international sphere, and whose purpose is:

- a. To execute measures necessary to guarantee the security of persons, such as the protective custody of minor children or provisional maintenance.
- b. To execute measures necessary to guarantee the security of property, such as the preventive attachment of immovable and movable property, the registration of the suit or the administration and seizure of businesses.

### **III. APPLICABLE LAW ➔**

**Article 3:** The grounds for a preventive measure shall be decided in accordance with the laws and by the judges of the place of the proceedings. However, its execution and the counter preventive measure or guaranty shall be determined by the judges of the place

where execution is sought, in accordance with its law.

The guaranty that the requesting party is to provide and any guaranty that the party affected may offer to provide in the place where the measure is to be executed shall be governed by the law of the place where the measure is executed.

**Article 4:** Amendment of the preventive measure, as well as the sanctions resulting from malicious or unwarranted claims, shall be governed by the law of the place where the measure is executed.

Only in the event that the party affected justifies the absolute lack of grounds for the measure or when the petition is based on the impairment of the guaranty provided, the judge of the State of execution may lift such measure in accordance with his own law.

**Article 5:** When an attachment or any other preventive measure involving property has been executed, the person affected by this measure may plead his third-party claim or pertinent objections before the judge to whom the letter rogatory was addressed, for the sole purpose of having that claim communicated to the judge of origin when the letter rogatory is returned to him. When the judge of origin has been notified of the filing of a third-party claim or assertion of rights, he shall suspend the principal proceedings for a period not to exceed sixty days so that the third-party claimant may assert his rights.

The objection shall be heard by the judge of the principal proceedings, in conformity with his law. Any objector who appears before the court after the expiration of the indicated term must accept the existing status of the case.

If the third-party claim excludes ownership or rights in rem over the property attached, or the objection is based on possession or ownership of the property attached, it shall be decided by the judges in accordance with the law of the place where the property is located.

**Article 6:** The execution of preventive measures by a judge or court of the State of destination shall not entail any commitment to recognize and execute the foreign judgment that may have been rendered in the proceeding concerned.

**Article 7:** The judge or court to which the request for execution of a foreign judgment is addressed may, without additional proceedings and upon petition of one of the parties, take the necessary preventive measures, in accordance with its law.

**Article 8:** Without prejudice to the rights of third parties, the consular authorities of a State Party may receive the personal effects of a national of that State Party when, because of death, they are placed at the disposal of the relatives or heirs presumptive of the national and there are no such relatives or heirs, unless otherwise provided in international conventions. The same procedure shall be followed when a person is unable to administer his property as a result of a criminal proceeding.

**Article 9:** When the preventive measure relates to the custody of minors, the judge or court of the State of destination may limit, in his territory, the scope of the effects of the measure pending the final judgment of the judge of the principal proceedings.

**Article 10:** The judges or courts of the States Parties to this Convention shall, upon a well-founded request by one of the parties, order and execute all preventive or urgent measures of a territorial nature whose purpose is to guarantee the result of a pending or potential suit. This shall apply regardless of which judge or court is competent in the international sphere in any of the States Parties to hear the merits of the case, provided that

the property or right that this measure will affect is located in the territory under the jurisdiction of the judge or court addressed by the party. If the case is pending, the court that ordered the measure shall immediately inform the judge or court of the principal proceedings.

If proceedings have not been instituted, the judge or court that ordered the measure shall set a date by which the petitioner must appear in court to assert his rights; he must abide by the final judgment on them rendered by the judge competent in the international sphere in any of the States Parties.

**Article 11:** Should the judge or court addressed find that it lacks jurisdiction to execute the letter rogatory, it shall ex officio forward the documents and antecedents of the case to the judicial authority of the State that has jurisdiction.

**Article 12:** The State of destination may decline to execute a letter rogatory concerning preventive measures that are manifestly contrary to its public policy (ordre public).

#### **IV. PROCESSING** ➔

**Article 13:** The preventive measures covered by this Convention shall be executed by means of letters rogatory, which may be transmitted to the judge or court addressed by the interested parties themselves, through judicial channels, through consular or diplomatic agents, or through the Central Authority of the State of origin or of the State of destination, as the case may be.

Each State Party shall inform the General Secretariat of the Organization of American States of its Central Authority competent to receive and distribute letters rogatory.

**Article 14:** Letters rogatory shall be executed in the States Parties provided that they meet the following requirements:

- a. The letter rogatory is legalized. The letter rogatory shall be presumed to be duly legalized in the State of origin when legalized by a competent consular or diplomatic agent.
- b. The letter rogatory and the accompanying documentation are duly translated into the official language of the State of destination. The authorities may require them to be translated in conformity with their own laws.

**Article 15:** Letters rogatory shall be accompanied by the following documents, which shall be delivered to the Central Authority or judge or court of the State of destination:

- a. Authenticated copy of the request or petition for the preventive measure, and of the attached documentation and of the rulings that ordered it;
- b. Information concerning the procedural rules that establish any special procedure that the judge or court of the State of origin may request the judge or court of the State of destination to follow;
- c. Where appropriate, information on the existence and address of the court appointed defense counsel or of competent legal aid societies in the State of origin.

**Article 16:** The costs and other expenses involved in the processing and execution of letters rogatory concerning preventive measures shall be borne by the interested parties.

The State of destination may, at its discretion, execute a letter rogatory that does not indicate the interested party to be held responsible for expenses and costs when incurred, except when provisional maintenance is involved, in which case the court of the State of destination shall process it ex officio. The judge or court of the State of origin shall specify the content and scope of the respective measure. Either in the letter rogatory or at the time of its execution, the identity of the person empowered to represent the interested party for legal purposes may be specified. A declaration in forma pauperis recognized in the State of origin shall be recognized in the State of destination.

## **V. GENERAL PROVISIONS** ➔

**Article 17:** States Parties belonging to economic integration systems or having common borders may agree directly among themselves upon special methods and procedures more expeditious than those provided for in this Convention. These agreements may be extended to include other States in the manner in which the parties may agree.

**Article 18:** This Convention shall not limit any provisions regarding preventive measures in bilateral or multilateral agreements that may have been signed or may be signed in the future by the States Parties, or preclude the continuation of more favorable practices in this regard that may be followed by these States.

## **VI. FINAL PROVISIONS** ➔

**Article 19:** This Convention shall be open for signature by the Member States of the Organization of American States.

**Article 20:** This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

**Article 21:** This Convention shall remain open for accession by any other State. The instrument of accession shall be deposited with the General Secretariat of the Organization of American States.

**Article 22:** Each State may, at the time of signature, ratification or accession, make reservations to this Convention provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purpose of the Convention.

**Article 23:** This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

**Article 24:** If a State Party has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or

only to one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

**Article 25:** This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in effect for the denouncing State, but shall remain in effect for the other States Parties.

**Article 26:** The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which will forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the Member States of that Organization and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession and denunciation as well as of reservations, if any. It shall also transmit the information mentioned in the second paragraph of Article 13 and the declarations referred to in Article 24 of this Convention.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE AT MONTEVIDEO, Republic of Uruguay, this eighth day of May, one thousand nine hundred and seventy-nine.