

- Tribunal-ordered vs court-ordered interim relief: pros and cons



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● Advantages of tribunal-ordered interim relief

- Specific business or industry knowledge
- Confidentiality
- Impartiality
- Knowledge of file
- Translation of documents

● Advantages of tribunal-ordered interim relief (continued)

- Range of potential measures
- Lower standards to obtain interim relief
- State court reluctant to grant interim relief
- No challenge of tribunal-ordered interim relief

● Lower standards to obtain interim relief from an arbitral tribunal?

Requirements applied by arbitral tribunals:

- Prima facie jurisdiction
- Risk of serious/ irreparable harm or injury
- No prejudgment of the merits
- Reasonable chance of success on the merits
- Urgency of the measure
- Provision of appropriate security (if ordered by the arbitral tribunal)

● Limitations of tribunal-ordered interim relief

- Before constitution of arbitral tribunal
- Third parties
- Ex parte relief
- Enforcement

● Limitations of tribunal-ordered interim relief: before the constitution of the arbitral tribunal

Emergency Arbitrator Procedures - a viable alternative to state courts prior to the constitution of the arbitral tribunal?

- Arbitration Rules:
 - Art. 43 Swiss Rules
 - Art. 29 ICC Rules, Appendix V
 - Appendix II SCC Rules
 - Art. 23 HKIAC, Appendix, Schedule 4
 - Art. 26.2 SIAC, Schedule 1
 - Art. 9B draft revised LCIA Rules

● Limitations of tribunal-ordered interim relief: enforcement

- Lack of coercive power to enforce
- No immediate enforcement
- Judicial enforcement of tribunal-ordered interim relief/
assistance of state courts required

● Sanctions available to the arbitral tribunal

- Threat of criminal sanctions (e.g. Art. 292 Swiss Criminal Code): permissible?
- Adverse Inferences
- Imposing Costs
- Awarding Damages
- Astreintes: permissible?

● Judicial enforcement of tribunal-ordered interim relief

Do tribunal-ordered interim measures qualify as «arbitral awards» for enforcement?

- Controversial
- Specialized national arbitration legislation

● Judicial enforcement of tribunal-ordered interim relief

Specialized national arbitration legislation: «sui generis enforcement mechanism»

- Article 183(2) Swiss PILA
- Section 42 of the English Arbitration Act
- Art. 17 H and 17 I UNCITRAL Model Law



Thank you

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