

MAKING ARBITRATION EFFECTIVE: EXPEDITED PROCEDURES, EMERGENCY ARBITRATORS AND INTERIM RELIEF

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ABSTRACT

Recent commentaries have lamented that arbitration is losing its reputation as the quick and informal alternative to court proceedings. Although initially conceived as an attractive means of dispute resolution because of its flexibility and potential to save time and costs for all parties concerned, preconceived notions of what constitutes a fair dispute resolution process may have inevitably resulted in protracted and lengthy proceedings. Where urgent and interim relief was required, there were also limitations on the arbitral process which meant that court proceedings remained more effective and desirable.

In recent years, arbitral institutions around the world have sought to address the need for swifter resolution of disputes through the introduction of expedited procedures. For example, the Chinese Arbitration Association, Taipei (hereinafter CAA), Singapore International Arbitration Centre (hereinafter SIAC) and Hong Kong International Arbitration Centre (hereinafter HKIAC) all presently have rules for expedited procedures, with slight differences as to requirements and process.

Various institutional rules also now provide for the appointment of emergency arbitrators. The raison d'être for an emergency arbitrator is the need for urgent interim reliefs in circumstances

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where parties cannot wait for the constitution of an arbitral tribunal. How effective is such a mechanism? In Singapore, practitioners have commented positively on the speed of the Emergency Arbitrator procedure under the SIAC Rules, and statistics show that the procedure is both efficient and effective. Has the experience been similar across jurisdictions?

Once an arbitral tribunal is constituted, it is often empowered by the rules of arbitration or the curial law to grant interim reliefs. Should it be the national courts or the arbitral tribunal which grants interim reliefs, such as interim injunctions or orders for the preservation of property? Is an order made by an arbitral tribunal for interim relief effective or enforceable?

Article 17H of the 2006 Amendments to the UNCITRAL Model Law on International Commercial Arbitration (hereinafter UNCITRAL Model Law) provides for interim measures ordered by arbitral tribunals to be recognised and enforced by courts irrespective of where it was issued. However, the 2006 Amendments to the UNCITRAL Model Law are not widely adopted and such interim measures may not be enforceable in certain jurisdictions. On the other hand, countries such as Singapore have introduced amendments to its national laws to provide for the enforceability of such interim measures. What are the implications of these developments?

This paper seeks to compare the expedited procedure and emergency arbitrator mechanisms under the various institutional rules and explore the legal and practical issues that may arise, as well as how well they have worked since they were introduced.

KEYWORDS: *recent developments, jurisdictional comparison, expedited procedure, emergency arbitrators, interim relief*