Making Arbitration Effective: Expedited Procedures, Emergency Arbitrators and Interim Relief

6 CONTEMP. ASIA ARB. J. 349 (2013)

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

Chan Leng Sun S.C. & Tan Weiyi*

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
I. INTRODUCTION

In recent years, there have been a number of developments in international arbitration practices, arising from changes in institutional rules and in some cases, national laws. This paper focuses on three such developments:
1. Introduction of expedited arbitration;
2. Appointment of emergency arbitrators;
3. Enforcement of interim reliefs granted by arbitral tribunals.

These recent developments are aimed at improving the effectiveness of arbitration as the preferred means of dispute resolution. Providing for speedier relief, including final and interim relief, will no doubt have that effect. The focus of this paper is on institutional rules and national laws in Asian jurisdictions, including the Republic of China (hereinafter Taiwan), Hong Kong, Singapore and the People's Republic of China (hereinafter PRC).

This paper will also consider the impact of these measures on other aspects of arbitration in general. It will do so through the themes of party autonomy and the balance between arbitration as an independent dispute resolution mechanism and its reliance on the very state organs which it seeks to work around.

II. EXPEDITED PROCEDURES IN INTERNATIONAL ARBITRATION

A. History of the Expedited Procedure

Arbitration has traditionally been sold as the cheaper and faster method of dispute resolution. However, the problems of delays and increasing costs have long been recognized\(^1\) by practitioners and academics. This perception creates an impetus for arbitral institutions — no doubt driven at least in part by competitive sentiment — to streamline arbitrations so that their particular institution's rules will be more attractive, and will allow the institution to administer more arbitrations, more quickly.

Apart from time and costs, delays in arbitral proceedings have the same downsides as delays in any other dispute resolution mechanism: parties are unable to get on with their commercial lives when their legal rights and obligations are uncertain pending the outcome of any dispute resolution process.

The earliest modern\textsuperscript{2} institutional rules for expedited procedures were introduced as a fast-track procedure under the Rules of Arbitration of the International Court of Arbitration of the International Chamber of Commerce (hereinafter ICC Rules).\textsuperscript{3}

Since arbitration is a party-driven process, in practice delays in arbitration usually arise from parties themselves. These include a desire to choose a particular arbitrator, which requires mutual agreement and which thereafter binds the parties to the arbitrator’s schedule. It also requires a rigid adherence to rules of civil procedure more suited to litigation; or conversely, a lack of adherence to arbitral rules and a disregard for timelines set by the Tribunal (perhaps due to the limited sanctions that the Tribunal can lay down for such failures). Of course, some delays are caused by the Tribunals themselves.

Various arbitral institutions in Asia have introduced some sort of expedited procedure and these rules will be considered in detail below.

\textbf{B. Chinese Arbitration Association (Taipei) Expedited Procedure}

The Chinese Arbitration Association (Taipei) (hereinafter CAA) introduced its Expedited Procedure in 2001.\textsuperscript{4} Under Article 44 of the CAA’s Rules, read with Article 36 of the Republic of China Arbitration law, parties may by agreement adopt expedited procedures where the amount in dispute is not more than NTD 500,000 (about USD 15,000).

Where parties opt for the expedited procedure, the CAA is required to appoint a sole arbitrator who shall, “\textit{in principle, render its final award within three months}”.\textsuperscript{5} Although not expressly stated in the CAA Rules, in practice, this timeline is taken to be three months from the date the arbitrator is appointed. The parties may agree to dispense with a hearing so that the Tribunal may render an award based only on written submissions and documentary evidence.\textsuperscript{6}

\textsuperscript{2}Procedures similar to modern expedited procedures were already used in Venice between the 12th and 16th centuries, where awards from that period showed that disputes were usually resolved within days or a few weeks. \textit{See generally F. Marella & A. Mozzato, Alle Origini dell’Arbitrato Commerciale Internazionale [The Origins of International Commercial Arbitration] (2001); see generally M. Philippe, Are Specific Fast-track Arbitration Rules Necessary?, 3 Peace Palace Papers 267 (2001).}


\textsuperscript{5}Id. art. 50.

\textsuperscript{6}Id. art. 49.
C. Singapore International Arbitration Centre’s Expedited Procedure

The Singapore International Arbitration Centre (hereinafter SIAC) had in 2010 provided for an Expedited Procedure, which is retained under Rule 5 in the SIAC's 2013 Rules. Rule 5.1 provides that a party may apply to the Registrar in writing for the arbitral proceedings to be conducted in accordance with the Expedited Procedure if any of the following three criteria is satisfied. First, that the amount in dispute does not exceed the equivalent amount of SGD 5,000,000 (about USD 4 million), representing the aggregate of the claim, counterclaim and any setoff defence. Second, where the parties so agree to use the Expedited Procedure. Third, the Expedited Procedure is available in cases of exceptional urgency.\(^7\) The President of the SIAC decides whether the arbitral proceedings shall be conducted with the Expedited Procedure under Rule 5.2.

Rule 5.2 provides for the effect of arbitral proceedings being conducted in accordance with the Expedited Procedure. Procedurally, the Registrar has the power to shorten any time limits provided under the SIAC Rules, and the award shall be made within six months from the date when the Tribunal is constituted unless the Registrar extends the time. Notably, the case is to be referred to a sole arbitrator unless the President of the SIAC determines otherwise. Parties are also allowed to agree that the dispute shall be decided on the basis of documentary evidence only, but in the absence of agreement the Tribunal shall hold a hearing for the examination of all witnesses and expert witnesses.

With the introduction of SIAC’s expedited procedure in 2010, SIAC received 20 requests for cases to be administered under the Expedited Procedure, of which 12 cases were accepted under Rule 5.1(a) and 1 case was accepted under Rule 5.1(b).\(^8\) In 2011, 8% of SIAC-administered cases (i.e., 15 cases) filed in that year were conducted pursuant to the Expedited Procedure.

D. Hong Kong International Arbitration Centre’s Expedited Procedure

Hong Kong International Arbitration Centre (hereinafter HKIAC) recently released their revised Rules, which came into effect on 1

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November 2013 (hereinafter *HKIAC Rules*). Under these Rules, parties may apply for their case to be heard under an expedited procedure where (i) the amount in dispute representing the aggregate of any claim and counterclaim does not exceed HKD 25,000,000 (about USD 3 million), (ii) both parties agree or (iii) in situations of exceptional urgency. Notably, this differs from the previous Article 38 of the 2008 Edition of the HKIAC Rules, which provided for the automatic application of the Expedited Procedure (unless the parties agree or the HKIAC Secretariat decides otherwise) if the amount in dispute representing the aggregate of any claim and counterclaim does not exceed USD 250,000.

The effect of a case being administered under an Expedited Procedure is provided for under Article 41.2 of the HKIAC Rules. Procedurally, the HKIAC Secretariat may shorten the time limits for the appointment of arbitrators, and the award is to be made within six months from the date the HKIAC Secretariat transmits the file to the arbitral tribunal. Notably, the Tribunal shall decide the dispute on the basis of documentary evidence only unless it decides that it is necessary to hold one or more hearings.

**E. China International Economic and Trade Arbitration Commission Arbitration Rules**

Chapter IV of the China International Economic and Trade Arbitration Commission (hereinafter *CIETAC*) Rules provides for a “Summary Procedure”, which applies to any case where the amount in dispute does not exceed RMB 500,000 (about USD 80,000), or where parties agree. Article 50 of the CIETAC Rules further provides that where no monetary claim is specified or the amount in dispute is not clear, the CIETAC shall determine whether the Summary Procedure will apply after considering factors such as the complexity of the case and interests involved.

Under the Summary Procedure, a sole arbitrator will be appointed and the Tribunal may examine the case in the manner it considers appropriate. The Tribunal may in its full discretion, decide to examine the case only on the basis of written materials and evidence submitted by the parties, or conduct oral hearings. If the Tribunal decides to hear the case orally, only one oral hearing shall be held “unless it is otherwise truly necessary”.

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10 Hong Kong International Arbitration Centre, Administered Arbitration Rules [hereinafter *HKIAC Rules*] art. 41.1 (Nov. 1, 2013).
11 Id. art. 41.2(c).
Article 56 of the CIETAC Rules provides that the Tribunal shall render an arbitral award within three months from the date on which the Tribunal is formed. The Chairman of the CIETAC may extend the time period upon the request of the Tribunal if it is "truly necessary" and the reasons for the extension "truly justified".

**F. ICC's Expedited Procedure**

Article 38.1 of the ICC Rules provides that parties may agree to shorten various time limits set out in the Rules. Any such agreement entered into subsequent to the constitution of an arbitral tribunal shall become effective only upon the approval of the arbitral tribunal.

Separately, the International Court of Arbitration of the ICC, which administers the ICC Rules, may on its own initiative extend any time limit which has been modified pursuant to Article 38.1 if it decides that it is necessary to do so in order that the Tribunal and the Court may fulfill their responsibilities in accordance with the Rules.

Although the ICC does not have a prescribed "expedited procedure" that stipulates a timeline for the rendering of awards, Article 30.1 of the ICC Rules requires the Tribunal to render its final award in six months. This time limit is comparable to that in the SIAC and HKIAC arbitrations. Time runs from the date the Terms of Reference are finalised (either when the parties and the Tribunal sign the Terms of Reference, or when such Terms of Reference are approved by the Court and the Secretariat notifies the Tribunal of such approval).

**G. Comparison of Various Jurisdictions' Expedited Procedures**

<table>
<thead>
<tr>
<th>Rules</th>
<th>Applicability of Expedited Procedure</th>
<th>Number of Arbitrators</th>
<th>Oral Hearing</th>
<th>Time for award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitration Institution</td>
<td>Amount in Dispute</td>
<td>1 only,</td>
<td>Yes, but the Tribunal may render an award based only on written submissions and documentary evidence without a hearing if parties agree. Hearings recommended to be completed within one day.</td>
<td>3 months from the date the Tribunal is constituted.</td>
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<tr>
<td>CAA</td>
<td>Amount in dispute (\leq) NTD 500,000 (about USD 15,000) AND Parties agree</td>
<td>1 only.</td>
<td>Yes, unless the President determines otherwise.</td>
<td>6 months from the date the Tribunal is constituted.</td>
</tr>
<tr>
<td>SIAC</td>
<td>Amount in dispute (\leq) SGD5,000,000 (about USD 4 million) OR Parties agree OR Exceptional urgency</td>
<td>1 only, unless parties agree otherwise.</td>
<td>No, unless the Tribunal decides otherwise.</td>
<td>6 months from the date the Secretariat hands the file to the Tribunal.</td>
</tr>
<tr>
<td>HKIAC</td>
<td>Amount in dispute (\leq) HKD 25,000,000 (about USD 3 million) OR Parties agree OR Exceptional urgency</td>
<td>1 only, unless the arbitration agreement provides for 3 arbitrators. If so, the HKIAC will invite parties to agree to refer the case to a sole arbitrator.</td>
<td>No, unless the Tribunal decides otherwise.</td>
<td>6 months from the date the Secretariat hands the file to the Tribunal.</td>
</tr>
<tr>
<td>CIETAC</td>
<td>Amount in dispute ≤ RMB 500,000 (about USD 80,000) OR Parties agree OR CIETAC determines that Summary Procedure will apply after considering factors such as the complexity of the case and interests involved (where no monetary claim is specified or the amount in dispute is not clear).</td>
<td>1 only.</td>
<td>Tribunal decides. If the Tribunal decides to hear the case orally, only one oral hearing shall be held unless further hearings are necessary.</td>
<td>3 months from the date the Tribunal is constituted.</td>
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</tr>
<tr>
<td>ICC</td>
<td>No prescribed requirements, parties may agree to shorten various time limits set out in the Rules.</td>
<td>No prescribed requirements</td>
<td>No prescribed requirements for expedited procedure. However, the ICC Rules state that the Tribunal may decide the case solely on the</td>
<td>No prescribed requirements for expedited procedure. However, the ICC Rules state that the award must be</td>
</tr>
</tbody>
</table>
1. Differences in Criteria for Expedited Procedure. — Under the CAA Rules and the ICC Rules, parties must agree to the expedited procedure before it may be invoked, regardless of the value of the claims in the dispute. In comparison, the SIAC, HKIAC and CIETAC Rules provide other criteria that may allow a party to invoke the expedited procedure even where other party is not in favour of such procedure.

The criteria set out in the SIAC and HKIAC Rules are almost identical, with the exception of the monetary limit on claims that may be subject to the expedited procedure.

The criteria in the CIETAC Rules is unique in that it provides that where no monetary claim is specified or the amount in dispute is not clear, the CIETAC itself may determine whether the Summary Procedure will apply. When making the consideration, it will take into account factors such as the complexity of the case and interests involved. The rules of the other arbitral institutions do not stipulate alternative criteria where the monetary value of the claim involved is not ascertained.

The approach taken in the CIETAC Rules reflects the reality that the quantum of a claim or a dispute may not necessarily be reflective of its complexity and consequently, the suitability of the expedited procedure. There are quite possibly cases where the amount in dispute exceeds the threshold stipulated by the institution’s rules, but involve issues that are fairly straightforward and can be effectively resolved through the expedited procedure. This may be an area that could warrant further consideration by the institutions, as regards their respective criteria for the expedited procedure.

2. Differences in Constitution of Tribunal. — The preference for a sole arbitrator in the expedited procedures of the various arbitral institutions is apparent. Practically, having a sole arbitrator may facilitate a speedier process as the Tribunal is likely to be constituted faster and parties may face fewer challenges in the scheduling of timelines.

13 ICC Rules art. 25.6.
14 Id. art. 30.1.
With the exception of the ICC Rules, the rules of the other arbitral institutions provide for a sole arbitrator to be appointed as the "default" position. The CAA Rules and the CIETAC Rules state that a sole arbitrator will be appointed for the expedited procedure/summary procedure, with no exceptions. The SIAC Rules provide that a sole arbitrator will be appointed unless the President of the SIAC decides otherwise. The HKIAC Rules is unique in this regard as it is the only one that provides that a three-member Tribunal will be constituted where the arbitration agreement provides for such a Tribunal. However, the HKIAC will invite parties to agree to a sole arbitrator. If they do, a sole arbitrator will hear the case.

3. Differences in Conduct of Arbitration: — There appears to be some flexibility on whether oral hearings will be convened in expedited arbitrations under the different institutional rules.

The CAA and SIAC Rules provide for oral hearings, unless the parties agree otherwise. The HKIAC Rules, on the other hand, state that there will be no oral hearing as part of the expedited procedure, unless the Tribunal itself decides otherwise. Discretion under the CIETAC Rules similarly lies with the Tribunal, which will decide if an oral hearing should be convened. Where the Tribunal decides to hear the case orally, only one hearing should be convened unless otherwise necessary.

The ICC Rules are unique in that they do not prescribe specific requirements in respect of its expedited procedure. However, generally, the Tribunal may decide the case solely on the documents submitted by the parties unless any of the parties requests a hearing.\footnote{Id. art. 25.6.}

4. Practical Issues and Considerations in the Adoption of Expedited Procedures. — In practice, notwithstanding the rules that have been put in place by the various arbitral institutions, the expedited procedure requires full cooperation of the parties and robust control by the Tribunal. Parties have to progress the matter expeditiously and efficiently throughout the proceedings in order to meet the timelines prescribed under the relevant institutional rules, and for the Tribunal to have sufficient time to consider parties submissions before an award is rendered, either 3 months (under the CAA and CIETAC Rules) or 6 months (under the SIAC, HKIAC and ICC Rules) after the Tribunal is constituted.

Given the relatively short time frame for the Tribunal to issue its award, consideration has also been given by certain arbitral institutions on the level of detail required in an award issued under the expedited procedure. The SIAC Rules and the newly revised HKIAC Rules provide that the Tribunal shall state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given. The CAA Rules provide that an award made under the expedited procedure
shall contain a brief statement of facts and reasons, unless the parties have agreed that no such brief statement of facts and reasons is necessary. The CIETAC and ICC Rules, on the other hand, are silent on this issue. That said, a brief statement may be something that can be agreed between the parties at the outset of the expedited proceedings.

In reality, exceptional circumstances may also justify an extension of timelines under the expedited procedure. It would be important for the institutions to retain the discretion to modify timelines where necessary, and consider each matter on a case-by-case basis. Naturally, the availability of such extensions must not be abused and the competing interests of expediency and ensuring that due process is carried out may not always be an easy balance to achieve.

III. EMERGENCY ARBITRATORS

A. History of the Emergency Arbitrator

The raison d'être for an emergency arbitrator is the need for urgent interim relief in circumstances where parties cannot wait for the constitution of an arbitral tribunal. The modern precursor to the emergency arbitrator is arguably the ICC Pre-Arbitral Referee Procedure, implemented in 1990. As its name suggests, the procedure provides for “the immediate appointment of a person” known as the “Referee” who has the power to make certain “orders prior to the arbitral tribunal or national court competent to deal with the case being seized of it”.

Since then, many major institutional rules have been amended to contain emergency arbitrator provisions. For instance, the 2010 Rules of the SIAC, the 2013 Revised Rules of the HKIAC, the 2012 Rules of the ICC and the 2009 Rules of the International Centre for Dispute Resolution (hereinafter JCDR) all provide for emergency arbitrators. The CAA and the CIETAC, on the other hand, have not introduced emergency arbitrator provisions to their arbitration rules.

B. SIAC Rules

Under Rule 26.2 of the SIAC Rules, the parties may seek interim relief prior to the constitution of the Tribunal. When a party does so, the President of the SIAC will determine if the SIAC should accept the application. If so, the SIAC President will appoint an emergency arbitrator within one business day of receipt by the Registrar of such application. The emergency arbitrator will then within two business days of appointment

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establish a schedule for consideration of the application for emergency relief, and may provide for proceedings by telephone conference or written submissions as an alternative to a hearing.\textsuperscript{17}

There were 2 applications each in 2010 and 2011 for an Emergency Arbitrator pursuant to Rule 26.2.\textsuperscript{18} In 2012, there were 7 Emergency Arbitrator appointments.\textsuperscript{19} In 2013, as of October 2013, SIAC received 16 applications for emergency arbitration.

To illustrate, one of the cases under these provisions related to a cargo of rapidly deteriorating coal at a Chinese port. The Applicant contacted the SIAC in the morning indicating their intention to file the application. After filing their papers at 2 pm local time, an arbitrator of neutral nationality (who was also an experienced shipping lawyer) was appointed merely three hours later. The arbitrator gave his preliminary directions that same evening, and a hearing was scheduled for the next day. An order was made immediately thereafter.

\section*{C. HKIAC Rules}

The HKIAC is introducing new Rules for emergency procedures under its 2013 Revised Rules. Under these Revised Rules, parties can apply for emergency relief either at the time of filing a notice of arbitration or at any time following it. The HKIAC will appoint an emergency arbitrator within 2 days of receipt of the application, and decisions are to be made within 15 days of the emergency arbitrator’s appointment.

\section*{D. ICC Rules}

Under the ICC Rules, the Tribunal may seek interim relief prior to the constitution of the Tribunal.\textsuperscript{20} Where a party does so, the Secretariat of the ICC will accept the application only if it receives it prior to the transmission of the file to the arbitral tribunal, but irrespective of whether the party making the application has submitted its request for arbitration.

The emergency arbitrator’s decision takes the form of an order. It is not binding on the arbitral tribunal, and does not prevent parties from seeking interim or conservatory measures from a competent judicial authority whether prior to or even after an application for an emergency arbitrator.

\textsuperscript{17} SIAC Rules Schedule I.
\textsuperscript{20} ICC Rules art. 29.
The ICC also has a separate “Pre-Arbitral Referee Procedure”, which only applies if parties explicitly agree to it in writing. Under this procedure, a party will send a request to the ICC for the appointment of a referee and simultaneously notify the other party of the request. The referee, once appointed, has the power to order interim relief and issue an order within 30 days of receiving the file. The referee’s order is not binding on the Tribunal or a national court, either of which may order further interim measures. In practice, the procedure is very rarely used, and commentators have dismissed the utility of the procedure because it requires the agreement of parties and it takes time for the referee to be appointed.21

E. ICDR Rules

The ICDR was founded by the American Arbitration Association (hereinafter AAA) in 1996 to provide international access to the mediation and arbitration services provided by the AAA. The ICDR administers all of the AAA's international matters and the ICDR Rules apply to such matters, except where parties choose otherwise.

Under the ICDR Rules, the Tribunal may seek interim relief prior to the constitution of the Tribunal.22 The provisions of the ICDR Rules are similar to the SIAC Rules. Where a party applies under the emergency arbitrator provisions, the administrator will appoint an emergency arbitrator within one business day of receipt of notice in writing by the applicant. The emergency arbitrator will then within two business days of appointment establish a schedule for consideration of the application for emergency relief, and may provide for proceedings by telephone conference or written submissions as an alternative to a hearing.23 The emergency arbitrator may issue an interim or conservancy measure in the form of an award or order. Further, the emergency arbitrator provisions do not prevent parties from concurrently seeking a request for interim measures from a judicial authority.

F. Comparison of Various Jurisdictions’ Rules on Emergency Arbitrators

The various rules on emergency arbitrators can be compared across several criteria which may have an impact on the effectiveness of the emergency arbitrator procedure provided for.

23 Id.
1. Opt-out Provisions. — The ICC's Emergency Arbitrator Procedure allows parties to opt out of the emergency arbitrator provisions. It will not apply if, for instance, parties agree that it should not apply or if parties have agreed to another pre-arbitral procedure that provides for the granting of conservatory, interim or similar measures. This opt-out provision is also found in Article 37(1) of the ICDR Rules. However, under the SIAC and HKIAC Rules, the emergency arbitrator procedure applies automatically and no provision is made for parties to contract out.

2. Pre-arbitral Procedure. — Some rules, such as the ICC's Emergency Arbitrator Procedure are available to any party immediately, even before a Request of Arbitration is filed, although the party must also file a Request for Arbitration within 10 days.

In contrast, an application under the SIAC's Emergency Arbitrator Procedure must be made concurrent with or following the filing of a Notice of Arbitration under Rule 1, Schedule 1 of the SIAC Rules. This model appears to be contemplated by the HKIAC under its Revised Rules coming into force in November 2013.

3. Ex-parte Applications. — The emergency arbitrator procedure under the SIAC and the HKIAC Rules do not envisage ex-parte applications. The SIAC Rules provide that a party in need of emergency relief is required to notify both the Registrar and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The HKIAC Rules provide that the Emergency Arbitrator may conduct proceedings in a manner that he/she considers appropriate, taking into account the urgency and ensuring that each party has a reasonable opportunity to be heard.

The ICC and ICDR Rules similarly appear to preclude ex-parte applications, as they provide that the emergency arbitrator shall ensure that each party has a reasonable opportunity to present its case.

The 2006 amendments to the UNCITRAL Model Law, on the other hand, provides that a party may make an ex-parte application for an interim measure where there is a risk that the opposing party will frustrate the purpose of the measure. UNCITRAL was established by the United

24 ICC Rules art. 29(6)(a)-(c).
25 See SIAC Rules schedule 1; HKIAC Rules schedule 4.
26 ICC Rules art. 29(1).
27 ICC Rules Appendix 5 art. 1.
28 SIAC Rules schedule 1.1. (The Rule also requires that an application for emergency relief must be accompanied by a statement that "certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties").
29 HKIAC Rules schedule 4 art. 11.
30 ICC Rules Appendix 5 art.5; ICDR Rules art. 16.1.
Nations in 1966 to further the progressive harmonization and unification of the law of international trade. UNCITRAL adopted the Model Law on International Commercial Arbitration (i.e. the Model Law) in 1985 and the 1985 Model Law has been adopted in many countries as part of their domestic legislation. However, the 2006 amendments have not yet received widespread adoption. In particular, the 2006 amendments on *ex-parte* application (called Preliminary Orders) are controversial.

The UNCITRAL Model Law is to be contrasted with the widely used UNCITRAL Arbitration Rules (hereinafter *UNCITRAL Rules*). The UNCITRAL Rules were drafted in 1976 as an option for parties to contractually adopt in ad hoc proceedings or in institutional arbitrations where permitted. The UNCITRAL Rules are widely used throughout the world. The Working Group which revised the UNCITRAL Rules in 2010 declined to follow the 2006 Model Law amendments on *ex-parte* Preliminary Orders. Under the UNCITRAL Rules 2010, the general principle is still that the Tribunal must hear both parties and parties must share communications to the Tribunal with all other parties.\(^{32}\)

This may be an area in which interim relief by courts will sometimes be necessary, given the controversy over a Tribunal hearing only one party on an *ex-parte* basis and the real need for *ex-parte* applications in exceptional circumstances.

**G. Comparison Table of Various Jurisdictions' Rules on Emergency Arbitrators**

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H. Utility of the Emergency Arbitrator

Apart from the global ICC and ICDR, the SIAC is the first Asian arbitral institution to implement an emergency arbitrator procedure. So far, practitioners have commented positively on the speed of the Emergency Arbitrator procedure.33 Between 1 July 2010 (when the 2010 SIAC Rules came into effect) and December 2012, there were eleven applications for Emergency Arbitration made and accepted by the Chairman. The following cases illustrate the speed of the procedure.

1. Case 1. — Claimant filed an application for emergency interim relief, received by SIAC at 2130hrs; the Chairman appointed the Emergency Arbitrator (hereinafter EA) the next day. The EA then established a schedule for consideration of the application for emergency relief a day after his appointment. Parties made written submissions and conducted a telephonic hearing within a week of the EA’s appointment, and the EA made an interim order a day after the hearing (total of 9 days).

2. Case 2. — Claimant filed an application for the appointment of an EA at 1900hrs; the Chairman appointed the EA the next day. On the same day the EA conducted a procedural hearing and issued a procedural order for submissions. Within six days of appointment the EA published an interim award (total of 7 days).

3. Case 3. — Claimant filed an application for emergency interim relief and the EA was appointed the next day. A procedural order was issued the following day. A hearing was conducted three days after, and within five days a consent order was issued (total of 10 days).

IV. Enforceability of Tribunal-Ordered Interim Relief

A. Interim Relief in Arbitration

Interim relief protects a party's rights pending the final resolution of a dispute. In the context of arbitration, interim relief may be granted by national Courts or arbitral tribunals under the applicable curial law and rules of arbitration. Nearly all arbitration rules provide for some form of interim relief. For example, Article 36 of the CAA’s rules provides that the

Tribunal may take any interim measures as agreed by the parties in respect of the subject-matter of the dispute for purposes of preserving perishable goods or providing immediate protection, such as ordering their sales or other interim measures the Tribunal considers appropriate. Under the SIAC Rules, a Tribunal may grant an injunction or any other interim relief it deems appropriate pursuant to Rule 26.

The orders made by an emergency arbitrator are also in the form of interim relief, as they are provisional or protective measures rather than decisions disposing of the substantive merits of the case.

Although interim relief may be granted by arbitral tribunals, the issue of whether such orders are generally recognised and enforced by national courts may not be as straightforward. Previously, many arbitration statutes did not expressly address the judicial enforceability of Tribunal-ordered interim measures, leaving enforcement of such measures to general statutory provisions regarding arbitral awards. This also led to the issue of whether interim orders granted by a Tribunal can be regarded as "awards" for purposes of enforcement.

The enforcement issue is changing as some jurisdictions have, in order to address these issues, enacted specific legislation providing for judicial enforcement of Tribunal-ordered interim measures, including interim measures ordered by emergency arbitrators.

**B. Developments in the Law**

In 2006, the UNCITRAL Model Law was amended to provide for judicial enforcement of interim measures. In particular, Article 17H of the 2006 Amendments to the UNCITRAL Model Law provides for interim measures ordered by arbitral tribunals to be recognised and enforced by courts irrespective of where it was issued. Articles 17 and 17A of the Model Law were also amended in 2006 to provide more details on the types of interim measures that an arbitral tribunal may order.

Since then, jurisdictions such as Singapore and Hong Kong have implemented laws which provide for the recognition and enforcement of interim measures ordered by arbitral tribunals.

In Singapore, for example, amendments have been made to the International Arbitration Act (hereinafter IAA) to address the issue of whether interim orders granted by a Tribunal can be enforced as "awards" for purposes of enforcement. Section 27(1)(a) of the IAA, revised in 2012, provides that the definition of "award" under the New York Convention includes interim orders made by a Tribunal seated outside Singapore. It thereby permits foreign interim orders to be enforced as "awards" under

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34 International Arbitration Act, 2002, c. 143A, §§3(1), 12 (Sing.).
35 Arbitration Ordinance, 2011, c. 609, §4(1) (Sing.).
scheme of the New York Convention. Interim orders made by a Tribunal seated in Singapore can be enforced by a Singapore Court under another statutory provision.

In Hong Kong, the Arbitration (Amendment) Bill 2013 will contain amendments on emergency or interim relief to support the enforcement in Hong Kong of awards obtained under the emergency provisions of both the HKIAC’s Revised Rules as well as the emergency provisions of other arbitral institutions.

Other jurisdictions, such as Taiwan, have had laws in force which provide for the recognition and enforcement of awards. However, there may arguably still be some ambiguity as to whether such “awards” include interim orders. Some authorities hold that only “final” awards can be enforced and that “provisional” or “interim” orders are not “final”.

C. The Alternative - Court Ordered Interim Relief

Notwithstanding the developments outlined above, in particular the 2006 Amendments to the Model Law which provide more clarity on the types of interim measures that may be ordered by a Tribunal and the enforceability of such measures, it bears noting that the 2006 Amendments are not widely adopted. Interim measures may, at present, still not be enforceable in certain jurisdictions.

Separately, there are also certain limitations to interim reliefs that may be ordered by a Tribunal. For example, a Tribunal has no authority to make orders against third parties and can only make orders that pertain to the subject matter of the dispute. A Tribunal may also be wary of hearing ex-parte applications, which may be necessary in certain circumstances in order to protect a party from an opposing party’s bad faith attempt to remove assets or destroy evidence after receiving notice of an interim application. In certain situations therefore, it may still be necessary for parties in an arbitration to apply to national courts to seek interim relief.

V. CONCLUSION

The recent developments in international arbitration practices, brought about by changes in institutional rules and national laws across jurisdictions. These changes reflect common themes and serve to enhance the arbitration process as an effective and desirable means of dispute resolution. Commercial interests of disputing parties, such as the expediency of the arbitration process, the availability of interim relief and

\[36\] The Republic of China Arbitration Act art. 48.
the enforceability of such interim orders can be said to be of paramount importance given the commercial realities of present-day disputes.

The efficacy of the expedited arbitration process and utility of the emergency arbitrator provisions which have been introduced so far appears to be supported by the statistics of the relevant arbitral institutions. Given this positive experience, it is envisaged that similar developments and trends may be adopted in a more widespread manner in the near future, both in the Asian region and beyond.
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