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EMERGENCY ORDER: AN EXPEDITIOUS INTERIM RELIEF IN INTERNATIONAL COMMERCIAL ARBITRATION

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ABSTRACT
Emergency Order is a significant interim relief for parties to prevent imminent risks despite awaiting the formation of an arbitration tribunal. This is becoming increasingly popular in the realm of international commercial arbitration. However, there is confusion whether Emergency Orders are internationally enforceable because they are not Awards. UNCITRAL Law and arbitral rules should be modified to empower international enforceability of an Emergency Order. The best practice would be the 'case-based' decision making, which means parties, should plan and assess the outcome of Emergency Arbitration before applying for it.
KEYWORDS: *International Commercial Arbitration, Emergency Order, Interim Measure, Preliminary Order, Injunction Order*

1. INTRODUCTION

The concept of Emergency Order ('EO') is turning immensely popular in the realm of international commercial arbitration. It is an expeditious non-judicial interim relief[1] which could prevent imminent risks before forming an arbitral tribunal which may sometimes take longer.[2] It could be considered an expansion of facilities offered to the parties in terms of dispute resolution.[3] According to a survey conducted in March 2015, there were 49 emergency claims received by ICDR,[4]42 by SIAC,[5] and 15 by the International Chamber of Commerce (ICC).[6]Although there are certain methods available to speed up the formation of arbitration tribunals[7], they are not sufficient in matters of urgency while tribunals have no powers to issue any provisional measures before they are formed.[8]

To avoid any irreparable damages which would likely to cause and also to preserve the goods and evidence before the formation of the arbitration

[1] Gary B. Born, *International Arbitration: Law and Practice* (Kluwer Law International 2012) 210.
[2] Leonie Parkin and Shai Wade, 'Emergency arbitrators and the state courts: will they work together?' Arbitration (2014) 80 (1) 48.
[3] Raja Bose and Ian Meredith, 'Emergency arbitration procedures - a comparative analysis', Int. A.L.R. (2012) 15(5) 186, 188.
[4] The International Centre for Dispute Resolution (ICDR).
[5] The Singapore International Arbitration Centre (SIAC).
[6] Sussman and Dosman, 'Evaluating the Advantages and Drawbacks of Emergency Arbitrators', New York Law Journal (2015) S3.
[7] The London Court of International Arbitration (LCIA) Arbitration Rules, art 9.
[8] Gary B. Born, *International Arbitration: Law and Practice* (Kluwer Law International 2012) 207.

tribunal, an Emergency Arbitrator could be appointed and thereafter an EO could be claimed. According to ICC Arbitration Rules, a party who needed urgent interim or conservatory measures before the constitution of an arbitral tribunal has a right to make an application under emergency arbitrator rules.[9]

The CIETAC Arbitration Rules mention that a party could appoint an Emergency Arbitrator.[10] The LCIA Arbitration Rules mention that it is possible to appoint an Emergency Arbitrator under special circumstances as mentioned under it.[11]Arbitration Rules such as ACICA, ICDR, SCC, HKIAC, NAI, PRIME and Swiss Rules have introduced provisions, allowing parties to appoint an Emergency Arbitrator and to claim EO.[12]

2. THE BENEFITS ACCRUABLE FROM AN EO

There are many successful stories where an EO had been effectively utilized by parties. For instance, in *Yahoo! Inc. v Microsoft Corporation*[13] ', the Microsoft Corporation had successfully used emergency measures against Yahoo Inc. in terms of a contractual dispute between them by following the procedure of the American Arbitration Association.[14] This Emergency Arbitrator's Order has been upheld by a domestic Court.

Although arbitral tribunals could issue Interim Reliefs and Preliminary Orders, both are possible only after the tribunal is properly constituted. Hence, Emergency Order is useful for an aggrieved party to prevent the other party from avoiding the effective compliance of the final Award.

In addition, parties could seek emergency measures to protect critical evidence that is expected to be submitted to the arbitral tribunal during future proceedings.[15]

Eventhough parties had not expressly consented to the emergency measures, such measures would imply to the arbitration procedure through the agreed arbitral rules unless expressly opted out.[16] On the other hand, since the EO does not bind the arbitral tribunal[17], it does not become an obstacle to the dispute resolution mechanism.

Therefore, Emergency Orders do not avoid the freedom of the tribunal to further investigate anything related to emergency and issue any subsequent Order to modify or completely terminate the measures which have been taken.[18] Since the Emergency Arbitrator has a wider authority for issuing of Orders, during that period[19], the party which is in danger necessarily has a substantial possibility of receiving benefits out of it.

Another advantage of the emergency measures is the flexibility to be opted out by parties' agreement.[20] Thus, it is not against the consensual nature of arbitration and autonomy of the parties. Since the EO is no bar in preventing the domestic Court to investigate the matter[21], parties still would have alternative measures which could be selected based on their discretion.

Further, there is protection within emergency measures to avoid the abuse of it. For instance, in the ICC Rules of Arbitration, the Emergency Arbitrator could order the requesting party to furnish a security.[22] Additionally, if the defending party is genuinely disposing his assets, such disposal may not be unreasonably delayed because emergency proceedings would be terminated if the applicant was unable to file an arbitration request within a period of 10 days.[23]

[9] ICC Rules of Arbitration 2017, art 29 (1) and app V.

[10] China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules 2015, art 23 (2) and app III.

[11] The London Court of International Arbitration (LCIA) Arbitration Rules 2014, art 9 B.

[12] Australian Centre for International Commercial Arbitration (ACICA) Arbitration Rules 2016, art 33.1 (a) and sch 1; The International Centre for Dispute Resolution (ICDR), Arbitration Rules 2014, art 6; Stockholm Chamber of Commerce (SCC) Arbitration Rules 2017, app II, art 1-10; The Hong Kong International Arbitration Centre (HKIAC) Arbitration Rules 2013, art 23.1 and sch 4; Netherlands Arbitration Institute (NAI) Rules 2015, art 36; and Panel of Recognised International Market Experts (PRIME) Rules 2016 art 26 a ; Swiss Arbitration Rules 2012, art 43; and Japan Commercial Arbitration Association (JCAA) Arbitration Rules 2015, section 2, rules 70 and 72.

[13] [2013] No.13 CV 7237, DC USA.

[14] American Arbitration Association (AAA) Commercial Arbitration Rules 2013, r 38.

[15] Nigel Blackaby, Constantine Partasides, Alan Redfern and Martin Hunter, *Redfern and Hunter on International Arbitration*, (6th edn, OUP 2015) para 7.37.

[16] Nigel Blackaby, Constantine Partasides, Alan Redfern and Martin Hunter, *Redfern and Hunter on International Arbitration*, (6th edn, OUP 2015) para 4.18.

[17] ICC Rules of Arbitration 2017, art 29 (3).

[18] ICC Rules of Arbitration 2017, art 29 (3).

[19] ICC Rules of Arbitration 2017, appendix V art 6 (7).

[20] ICC Rules of Arbitration 2017, art 29 (6) (b).

[21] ICC Rules of Arbitration 2017, art 29 (7).

[22] ICC Rules of Arbitration 2017, appendix V art 6 (7).

[23] ICC Rules of Arbitration, app V, art 1(6).

3. THE SHORTCOMINGS OF INTERIM MEASURES AND PRELIMINARY ORDERS

An Interim Measure is a temporary measure which could be issued by the arbitral tribunal at any given time before the issuance of the final Award.[24] Arbitration Act No.11 of 1995 of Sri Lanka states that, "an arbitral tribunal may, at the request of a party, order any other party to take Interim Measures as it may consider necessary to protect or secure the claim which forms the subject matter of the dispute".[25]. But, other than in exceptional cases no such order should be made except after hearing the other parties.[26]

The UNCITRAL Model Law on International Commercial Arbitration indicates that once a party had made a request, the arbitral tribunal has powers to grant interim relief[27] including temporary measures defined in Articles 17(2) (a)-(d).[28] The same has been incorporated in Article 26 of the UNCITRAL Arbitration Rules.[29] The Model Law indicates that interim measures could preserve the assets[30] and evidence[31] relating to the subject matter of the dispute. For instance, if goods are not of a perishable nature, then the tribunal could order for the deposit of them with a third party, or the sale of.

Furthermore, parties are required to satisfy certain conditions when obtaining an Interim Order. First, the claimant should prove that the potential harm is irreparable by an Award of damages[32] and the possibility of being successful on the merits of the claim.[33] In addition, there are certain safeguards to be adhered to avoid the misuse of Interim Measures.

For instance, arbitral tribunals have the capacity to amend, suspend or cancel the Interim Order in any situation.[34]The Tribunal could also order parties to provide security.[35] Additionally, Model Law mentions that the requesting party would be liable for cost or damages.[36]

Many arbitral rules have followed mainly three approaches regarding the Interim Measures.[37]The first approach is following the Model law and the inclusion of a general description concerning the Interim Measures. The second approach is the inclusion of a detailed description about such measures. The third approach is the non-inclusion of any Interim Measures in arbitration rules.[38] For instance, JCAA Rules 2008 have followed the first approach and provided a general description concerning the Interim Measures.[39] Subsequently JCAA Rules 2015have followed the second approach and provided detail description concerning interim measures.[40]

SIAC and ACICA Rules have followed the second approach and introduced more extended versions of Interim Measures. Following the UNCITRAL Model Law, certain arbitration rules have provided an opportunity to obtain *'ex parte'* Interim Measures. For instance, Article 26 (3) of the Swiss Arbitration Rules states that interim proceedings could be commenced on an *'ex parte'* basis.[41] This provision has been made to speed up the processing of urgent claims.

Preliminary Orders are controversial as they could be issued on an *'ex parte'* basis. According to the UNCITRAL Model Law, unless otherwise agreed by the parties, any party may, without prior notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.[42] This may not be unreasonable, because domestic Courts

[24] UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006), art 17 (2).
[25] The Arbitration Act No.11 of 1995, s 13 (1).
[26] The Arbitration Act No.11 of 1995, s 13 (1) proviso.
[27] UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006), art 17 (1).
[28] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006), art 17 (2) (a)-(d).
[29] UNCITRAL Arbitration Rules 2013, art 26 (1) and (2).
[30] UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006), art 17 (2) (c).
[31] UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006), art 17 (2) (d).
[32] UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006), art 17 A (1) (a).
[33] art 17 A (1) (b).
[34] art 17 D.
[35] art 17 E.
[36] art 17 G.
[37] Simon Greenberg, Christopher Kee and J. RomeshWeeramantry, *International Commercial Arbitration: An Asia-Pacific Perspective* (CUP 2010) para 7.183.
[38] Simon Greenberg, Christopher Kee and J. RomeshWeeramantry, *International Commercial Arbitration: An Asia-Pacific Perspective* (CUP 2010) para 7.183-7.185.
[39] Japan Commercial Arbitration Association (JCAA) Arbitration Rules 2008, r 48.
[40]Japan Commercial Arbitration Association (JCAA) Arbitration Rules 2015, s 1, rules 66-69.
[41] Swiss Arbitration Rules 2012, art 26 (3).
[42] UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006), art 17 B (1).

have also on many occasions issue *'exparte'* Orders.[43]

However, an argument could be advanced that issuing an *'ex parte'* Order is against the concept of consensual nature of commercial arbitration.[44]Consequently, many arbitration rules have not introduced *'ex parte'* Orders.

4. WHY AN INJUNCTION ORDER SHOULD NOT BE PREFERRED?

A. Sri Lankan perspective

There are certain restrictions upon injunctive reliefs in respect of commercial matters where parties have agreed to arbitrate. According to Arbitration Act No.11 of 1995 of Sri Lanka, "Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the matter in respect of which the arbitration agreement is entered into is contrary to public policy or, is not capable of determination by arbitration".[45]

If a party failed to submit the dispute to arbitration as agreed upon and instead files Action in the Commercial High Court, then Section 5 of the said Act could be applied. Accordingly, "where a party to an arbitration agreement institutes legal proceedings in a Court against another party to such agreement in respect of a matter agreed to be submitted for arbitration under such agreement, the Court shall have no jurisdiction to hear and determine such matter if the other party objects to the Court exercising jurisdiction in respect of such matter".[46]

In *Munasinghege Don Eranga Indrajith v George Steuart Finance Limited*[47], the Supreme Court upheld the decision of the Commercial High Court dismissing the plaintiff's Action seeking *inter alia*, an enjoining order and an interim injunction, because there was an arbitration clause and the defendant had objected to the Courts exercising jurisdiction.[48]

It was held in *Elgitread Lanka (Pvt) Ltd v Bino Tyres (Pvt) Ltd*, that the Action filed by the Respondent in the Commercial High Court should stand dismissed as there was an arbitration clause in the franchise agreement and the Appellant objected to the jurisdiction of the Commercial High Court on that basis.[49]

Further, the modern view of arbitration expects a certain level of delocalization, which means the exclusion of the intervention of Court up to certain extent. That is the reason why the remedy of 'EO' had been introduced within the Arbitration Rules, rather than within domestic law. In *Channel Tunnel Group Ltd v Balfour Beatty Constr. Ltd*, Court held that the judicial authority must be very careful in issuing Interim Measures regarding arbitration disputes.[50]

B. Other jurisdictions

In certain jurisdictions, obtaining a Court Order is possible in an emergency before or during the process of arbitration. For instance, in Malaysia, the High Court has the powers to issue an Injunction Order in such a situation.[51]In China, the domestic Court has powers to issue such Injunctions.[52] Similar provisions could be witnessed in Thailand and Vietnam.[53]In Hong Kong, the Court has powers to determine any Interim Measures despite any application to arbitration tribunal.[54]In the UK, unless otherwise agreed by the parties, Courts have the power to issue Interim Injunction Orders to appoint a receiver,[55]to preserve evidence[56]and for the sale of goods subject of the arbitration proceedings[57] These Orders could be either issued on *inter partes*[58] or *ex parte*[59]on an emergency basis. However, Court cannot intervene in the matter against the agreement of the parties if the parties have otherwise agreed.[60]

However, when claiming an Injunction Order, parties must make sure that there is enough evidence to satisfy Courts. In *Clough Engineering Ltd v Oil and Natural Gas Corporation Ltd,* Court held that it was impossible to obtain an Injunction if there are no valid and arguable points regarding the merits of the case.[61]

C. Model law and ICC rules

According to the UNCITRAL Arbitration Rules it is possible to make a request from a judicial authority

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[43] KajHober, 'Why Arbitrators should have the power to order *ex parte* interim relief' (Kluwer 2004) 12 ICCA 272.

[44] Simon Greenberg, Christopher Kee and J. RomeshWeeramantry, *International Commercial Arbitration: An Asia-Pacific Perspective* (Cambridge University Press 2010) para 7.188.

[45] Arbitration Act No.11 of 1995 of Sri Lanka, s 4.

[46] Arbitration Act No.11 of 1995 of Sri Lanka, s 5.

[47]S.C. (L.A.) Application S.C. (HC) LA 42/2013.

[48] S.C.(L.A.) Application S.C.(HC)LA 42/2013 (Priyasath Dep, PC, J).

[49]SC (Appeal) No. 106/08.

[50] [1993] A.C. 334, 358.

[51] Malaysian Arbitration Act 2005 (as amended in 2011), s 11(1) (h).

[52] Civil Procedure Law China art 258; and Chinese Arbitration Law 1994, arts 28 and 68.

[53] Thailand Arbitration Act 2002, s 16.; and Commercial Arbitration Law 2010 Vietnam, arts 48 (1) and 53 (1).

[54] Arbitration Ordinance of Hong Kong 2011 (as amended in 2017), s 45 (2)

[55] Arbitration Act 1996 UK, s 44 (2) (e).

[56] Arbitration Act 1996 UK s 44 (2) (b).

[57] Arbitration Act 1996 UK, s 44 (2) (d).

[58] Arbitration Act 1996 UK, s 44 (4).

[59] Arbitration Act 1996 UK, s 44 (3).

[60] Arbitration Act 1996 UK, s 44 (1)

[61] [2008] FCAFC 136.

to issue an Interim Measure by satisfying the Court that 'Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and there is a reasonable possibility that the requesting party will succeed on the merits of the claim'.[62]Such interim measure is not incompatible with the process of arbitration and not considered a waiver.[63] The ICC Rules have mentioned that seeking the intervention of Court with respect to Interim Measures does not invalidate the arbitration agreement.[64] It says '…The application of a party to a judicial authority for such measures or for the implementation of any such measures ordered by an arbitral tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitral tribunal'.[65]

According to ICC arbitration Rules, 'The Emergency Arbitrator Provisions are not intended to prevent any party from seeking urgent Interim or Conservatory Measures from a competent judicial authority'.[66] This right is applicable not only prior to the application for emergency proceedings, but even after submitting emergency claims.[67]Certain arbitral institutes have followed this approach. For instance, the CIETAC Rules followed that approach and mention that when there is a claim for an Interim Measure, the tribunal could forward that matter to a domestic Court.[68]

5. COULD EO BE ENFORCED UNDER NYC?

Compared with enforcement of arbitration Awards, there is an issue regarding the enforceability of Emergency Orders under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (NYC) because only 'Awards' are enforceable under that.[69] Whereas Article III of the convention says that 'Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles'.[70] For instance, domestic Courts have the discretion to refuse the enforcing of any Interim Orders issued by arbitral tribunals, because they are not binding as final Awards.[71] Therefore, though the EO is supportive in urgent situations, parties must be aware of its limitations in terms of enforceability both domestically and internationally.[72]

According to Article 29 of the ICC Rules, EO is an Order[73], but not an Award; and it does not limit or bind the tribunal's capacity to further investigate the dispute.[74] However, in CIETAC Arbitration Rules, Emergency Arbitrator's decision could be either an Order or an Award.[75]It says '…The emergency arbitrator may decide to order or award necessary or appropriate emergency measures…'.[76] The ICDR Arbitration Rules state that an Order or an Award could be made by the Emergency Arbitrator.[77] Both Swiss and the SCC Rules have used the term 'decision' to represent the outcome of emergency proceedings.[78]

Nevertheless, when considering the situation of Interim Measures before 2006 UNCITRAL Model Law (Model Law) revision, even Interim Measures were unenforceable in certain situations. For instance, in *Resort Condominiums International Inc. v Ray Bolwell & Anor.*, it was held that the Court has the discretion whether to enforce an arbitral Award or not to which had been rendered by a foreign arbitral tribunal.[79]

This issue has been sorted after the Model Law 2006 revision. At present, an Interim Measure is binding and enforceable in any state.[80] Enforceability could be refused only in special circumstances given in Article 17 I.[81] Certain jurisdictions have recognized EOs as Awards.

For instance, in Singapore the term 'Emergency Arbitrator' has been included in to the

[62]UNCITRAL Arbitration Rules 2013, art 26 (3) (a) and (b).
[63] UNCITRAL Arbitration Rules 2013, art 26 (3) (b).
[64] ICC Rules of Arbitration 2017, art 28 (2).
[65]ICC Rules of Arbitration 2017, art 28 (2).
[66] ICC Rules of Arbitration 2017, art 29 (7).
[67] ICC Rules of Arbitration 2017, art 29 (7).
[68] CIETAC Arbitration Rules 2015, art 23 (1).
[69] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (NYC), art III.
[70]New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (NYC), art III.
[71] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (NYC), art V (1) (e).
[72] Raja Bose and Ian Meredith, 'Emergency arbitration procedures - a comparative analysis', Int. A.L.R. (2012) 15(5) 186, 193.
[73] ICC Rules of Arbitration 2017, art 29 (2).
[74] ICC Rules of Arbitration, art 29 (3).
[75] CIETAC Arbitration Rules 2015, art 23 (2).
[76]CIETAC Arbitration Rules 2015, art 23 (2).
[77] ICDR Arbitration Rules 2014, art 6 (4).
[78] Swiss Arbitration Rules 2012 art 43 (7); and SCC Arbitration Rules 2017, app II art 9 (1).
[79] Supreme Court of Queensland (1993) 118 ALR 655; XX Y.B. COM. ARB. 628 (1995).
[80] UNCITRAL Model Law 2006 on International Commercial Arbitration, art 17 H (1).
[81] UNCITRAL Model Law 2006 on International Commercial Arbitration, art 17 I (1).

definition of 'Arbitral Tribunal'.[82] They further included the term 'Order' under the definition of 'Arbitration Award'.[83] This means EOs could be sometimes considered Awards in Singapore. Consequently, it could be enforced under NYC.

Moreover, parties must comply with any EO[84] and it has a binding nature.[85] In *Blue Cross Blue Shield of Michigan v Medimpact Healthcare Systems Inc.*, Court held that an EO is important in terms of enforcing the contract between the two parties.[86] According to ICC Rules, the arbitral tribunal has legal capacity to decide upon any party's requests or claims relating to the emergency arbitrator proceedings, including the claims and costs regarding the compliance or non-compliance of an EO.[87]

6. CONSTRAINTS UPON THE EO

The powers vested in the Emergency Arbitrator are not absolute because of two reasons. First, EO could be obtained only if there is a 'genuine urgency'.[88] Secondly, once the tribunal is appointed, emergency proceedings would get terminated.[89] Issuing an EO without considering whether the sale is *mala fide*or *bona fidei* it could create adverse consequences in a genuine sale.

There are certain limits in the process of issuing an EO. First, the emergency arbitrator lacks the power to issue an Interim order against third parties. For instance, Emergency Arbitrator lacks the legal capacity to order a bank to seize an account or withhold transactions. In contrast, the domestic Court has much wider legal capacities to seize such bank accounts.

Secondly, the Emergency Arbitrator is unable to impose any criminal penalties in case of disobeying his Orders, whereas domestic Courts are stricter in considering it a contempt of Court and impose strict criminal charges.

Thirdly, unlike the ordinary arbitration procedure, in Emergency Arbitration, the parties' choice to select their own arbitrator is limited[90]as many arbitration rules have reserved the selection powers to the institution rather than to parties. Since there are such limits, parties may in certain situations, tend to seek interim reliefs from domestic Courts rather than seeking an EO.

7. A BEST PRACTICE: 'CASE-BASED' APPROACH

Since intervention of the domestic Court is not widely accepted in conventional arbitration, the best practice would be the 'Case-based' decision making, which means parties should plan and assess the outcome of an Emergency Order before claiming it.

For instance, if the arbitration tribunal is likely to be formed immediately while the risk is not substantially imminent, it would be appropriate to wait until the formation of such tribunal rather than seeking an EO. In addition, where ever possible, parties could take a reasonable effort to exhaust methods such as expedited formation of tribunal or appointment of a sole arbitrator, in less urgent circumstances.

Based on the urgency of the matter, two approaches have been followed by rules regarding the 'time' limit which would allow the parties concerned to bring in an emergency claim. The first approach is, permitting parties to bring in such claims with or after the Notice of Arbitration, but before the formation of the tribunal. For instance, ICDR Rules have mentioned, it could be claimed concurrent with or following the submission of Notice of Arbitration but before forming the tribunal.[91]

The second approach is, permitting parties to bring in emergency claims even before the Arbitration Notice. For instance, in view of the ICC Rules, irrespective of arbitration request, emergency measures could be claimed.[92] This means, the ICC Rules are substantially flexible in terms of the time of application of emergency measures.

However, certain arbitration rules have provided strict conditions on the timing issue of the EO claim. For instance, Swiss Rules have mentioned that if the emergency application has been filed before the Arbitration Notice, then Court has discretion to refuse such claim.[93]

8. CONCLUSION

Arbitration Centres and Institutes could introduce emergency measures within their rules and procedures. The Legislation and Institutional Rules could be reformed to convey authority to Emergency Arbitrators to seize the respondent's assets which had been withheld by third parties. At least there should be provisions to do such seizures with the

[82]International Arbitration (Amendment) Act 2002 of Singapore, s 2.; and Arbitration Act 37 of 2001 (Revised in 2002) s 2.

[83] International Arbitration (Amendment) Act 2002 of Singapore, s 10.

[84] ICC Rules of Arbitration 2017, art 29 (2).

[85] ICC Rules of Arbitration 2017, app V 6 (6).

[86] [2010] WL 2595340; 09-14260 DC (E.D. Michigan) USA.

[87] ICC Arbitration Rules 2017, art 29 (4).

[88] Raja Bose and Ian Meredith, 'Emergency arbitration procedures - a comparative analysis', Int. A.L.R. (2012) 15(5) 186, 187.

[89] SIAC Arbitration Rules 2016, sch 1 para 10.

[90] International Comparative Legal Guide, 'Emergency Arbitration: The Default Option for Pre-Arbitral Relief?' International Arbitration 2015 <http://www.iclg.co.uk/practice-areas/international-arbitration-/international-arbitration-2015/01-emergency-arbitration-the-default-option-for-pre-arbitral-relief> Accessed 15 November 2015.

[91] ICDR Rules of Arbitration 2014, art 6 (1).

[92] ICC Arbitration Rules 2017 , art 29 (1).

[93] Swiss Arbitration Rules 2012, art 43 (3).

cooperation of a Domestic Court without any delay. Such provisions would increase the validity and recognition of the Emergency Orders. UNCITRAL Model Law and the Arbitral Rules could be reformed by including provisions empowering the international enforceability of Emergency Orders in commercial arbitration.