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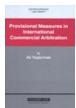
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[Provisional Measures in International Commercial Arbitration](#)
Yesilirmak (2005)

Practical Insights on Interim and Conservatory Measures

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I. Introduction

Interim or conservatory measures are forms of remedy or relief aimed at protecting and preserving the rights of a party pending the final resolution of a dispute. That is, they are necessarily temporary in character, although depending on the circumstances they may have a decisive effect on certain issues in a case or on the claimant's ability to prosecute its claim. In international arbitration, interim or conservatory measures are also synonymously referred to as provisional and protective measures, preliminary measures, preliminary injunctive measures, urgent measures, precautionary measures, or holding measures.

Interim or conservatory measures in international arbitrations may be granted by arbitral tribunals, by emergency arbitrators (where the applicable rules permit) and by competent national courts.

Interim or conservatory measures granted by arbitral tribunals (or by emergency arbitrators) often hinge on voluntary compliance. Arbitrators possess various quasi-enforcement powers and tools to help ensure compliance with interim or conservatory measures granted. However, where a party fails to voluntarily comply with the relevant measure, the counterparty will often need to petition the competent national court(s) to exercise its enforcement powers to ensure that the terms of the order, decision or award are complied with.

The appropriate forum in respect of interim or conservatory measures will depend on the applicable laws and arbitration rules. Where two or more avenues are seemingly open for the applicant, the most effective and advantageous avenue will need to be identified. However, parties should beware of any rules and/or judicial (or arbitral) attitudes forbidding a second 'bite at the cherry' in case the first avenue fails to produce the desired outcome.

The types of interim or conservatory measures that an arbitral tribunal, emergency arbitrator and/or a national court judge, as applicable, may grant differ depending on the applicable laws and arbitration rules, but they generally include:

- preservation of the *status quo* until the tribunal's final decision on the merits, such as an order restricting financial or other transfers outside the ordinary course of business that are made principally to evade enforcement efforts;
- preservation of property or evidence; payment of deposits or advances on arbitration costs;
- interim orders requiring performance of obligations; orders prohibiting aggravation of the parties' dispute; and
- security for costs.

As evident from the above, interim or conservatory measures generally fall within one of two buckets: measures that are necessary to preserve the effectiveness of an eventual final arbitral award (items 1, 4 and 6 above) and measures required to preserve the integrity of the arbitration process (items 2, 3 and 5).

Interim or conservatory measures may be issued in the form of orders, decisions, awards (interim or partial) or recommendations. The form granted may differ on a case-by-case basis, and also depending on the applicable arbitration rules and/or laws.

II. Important considerations

Important matters to consider when seeking an interim or conservatory measure include:

- Whether an interim or conservatory measure from the arbitral tribunal will assist in realising the desired aim or outcome. A party must consider carefully the outcome it seeks to achieve from seeking an interim or conservatory measure and whether the measure, if obtained, will assist in realising that outcome. This includes an assessment of the ability to enforce such a measure.
- Whether the arbitral tribunal possesses the power to and can effectively grant the required interim or conservatory measure required in the circumstances of the case.
 - First, a party considering seeking an interim or conservatory measure must determine whether, under the applicable laws and arbitration rules, the arbitral tribunal is empowered to grant the interim or conservatory measure in question. Arbitral tribunals are generally empowered, under both national laws and arbitration rules, with wide powers to grant any appropriate interim or conservatory measure. However, a case-by-case analysis is required. If the arbitral tribunal lacks the power to issue interim or conservatory measures, an application to the competent national court(s) may be required.
 - Second, a party considering seeking an interim or conservatory measure must determine whether, under the applicable laws and arbitration rules, the types of interim or conservatory measures available would provide effective protection in light of the circumstances of the case. If the prospects look bleak, again an application to the competent national court(s) may be needed.
- Whether any interim or conservatory measure granted by the arbitral tribunal will be voluntarily complied with by the counterparty. If not, a national court's assistance may be required in respect of enforcing the tribunal-issued measure. There are substantial divergences between various jurisdictions as regards the legal test that must be satisfied for a national court to intervene and assist with the enforcement of a tribunal-issued measure, as well as in respect of the types of measures available. The same divergence exists where interim or conservatory measures are alternatively (or additionally, where permitted) sought directly from a national court(s).

III. Practical steps

1. Making an application

2. Responding to an application for interim or conservatory measures

IV. Suggested reading

a. Key cases

b. Key commentary

c. Recent blog posts

[X v. Y, Regional Court of Istanbul, 16th Civil Chamber, File No. 2018/706, Decision No. 2018/650, 14 March 2018](#)

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[Court Decisions](#)

Case: 14 Mar 2018

[Raffles Design International India Private Limited v. Educomp Professional Education Limited, High Court of Delhi, O.M.P.\(I\) \(COMM.\) 23/2015 & CCP\(O\) 59/2016, IA Nos. 25949/2015 & 2179/2016, 07 October 2016](#)

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[Court Decisions](#)

Case: 07 Oct 2016

[Granting of Interim Measures to preserve the subject matter of the arbitration and maintain the market conditions, Seventh District Court in Civil Matters of the Federal District, 410/2016-II, 05 September 2016](#)

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[Court Decisions](#)

Case: 05 Sep 2016

[Discovery Geo Corporation v. STP Energy Pte Ltd, High Court of New Zealand, 19 December 2013](#)

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Case: 19 Dec 2013

[Yahoo! v. Microsoft, United States District Court, Southern District of New York, 21 October 2013](#)

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Case: 21 Oct 2013

[Nikola Rotenberg v. Sucafina S.A., Court of Appeal of England and Wales, Civil Division, 16 May 2012](#)

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[Court Decisions](#)

Case: 16 May 2012

[Michael Wilson & Partners Limited v. John Forster Emmott, High Court of Justice, Queen's Bench Division \(Commercial Court\), 2008 Folio 1300, 12 January 2009](#)

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[Court Decisions](#)

Case: 12 Jan 2009

[NCC International AB v. Alliance Concrete Singapore Pte Ltd, Singapore Court of Appeal, CA 47/2007, 26 February 2008](#)

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[Court Decisions](#)

Case: 26 Feb 2008

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