

Permanent Court of Arbitration Optional Protocol on Emergency Interim Measures

As adopted by the Administrative Council of the Permanent Court of Arbitration on 10 September 2024

Article 1: Scope of Application

1. This Protocol shall apply to arbitration proceedings only if the parties have agreed to the application of this Protocol.
2. Subject to paragraph 1, this Protocol may apply to arbitration proceedings under any arbitration rules adopted by the Administrative Council of the Permanent Court of Arbitration at The Hague, under other arbitration rules, or in *ad hoc* arbitration proceedings, where not incompatible with this Protocol. This Protocol may apply to arbitration proceedings whether or not administered by the International Bureau of the Permanent Court of Arbitration (hereinafter the “International Bureau”).

Article 2: Emergency Interim Measures

1. An emergency interim measure is any temporary measure by which, prior to the constitution of the arbitral tribunal, an emergency arbitrator orders a party, for example and without limitation, to:
 - (a) maintain or restore the status quo pending determination of the dispute;
 - (b) take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;
 - (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
 - (d) preserve evidence that may be relevant and material to the resolution of the dispute.
2. An emergency interim measure under paragraph 1(a) to (c) above shall be granted only if the party requesting a measure satisfies the emergency arbitrator that:
 - (a) the request cannot await the constitution of the arbitral tribunal;
 - (b) 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
 - (c) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
3. With regard to a request for emergency interim measures under paragraph 1(d), the requirements in paragraph 2(a) to (c) shall apply only to the extent the emergency arbitrator considers appropriate.

4. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
5. A request for emergency interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Article 3: Request for Emergency Interim Measures

1. A party seeking the appointment of an emergency arbitrator and emergency interim measures shall submit a request for emergency interim measures to the International Bureau.
2. A request for emergency interim measures may be submitted concurrently with or following the communication of the notice of arbitration, but only prior to the constitution of the tribunal.
3. The requesting party shall, concurrently with its request for emergency interim measures, send a copy of the request to all other parties.
4. The request for emergency interim measures shall include:
 - (a) a description of the dispute and the circumstances giving rise to the request;
 - (b) a statement of the nature of the emergency interim measures sought;
 - (c) an explanation of the reasons why such emergency interim measures are required on an emergency basis that cannot await the constitution of an arbitral tribunal;
 - (d) an explanation of the reasons why the party is entitled to be granted such emergency interim measures, bearing in mind Article 2(2)(b) and 2(2)(c) above;
 - (e) copies of any relevant agreements and, in particular, the arbitration agreement;
 - (f) a copy of the notice of arbitration, any response to the notice of arbitration and any other submissions already made;
 - (g) the names and contact details of the parties and their representatives;
 - (h) an indication of any agreement as to the place of arbitration, the applicable rules of law, or the language of the arbitration;
 - (i) a certification that all other parties have been provided with a copy of the request, failing which, an explanation of the steps taken in good faith by the party to provide a copy or notification of the request to all other parties; and
 - (j) proof of payment to the International Bureau of the initial deposit, in the amount stated on the International Bureau's website on the date the request is submitted.
5. The request for emergency interim measures may include such other documents or information as the requesting party considers appropriate or as may contribute to the efficient examination of the application.

Article 4: Appointment of the Emergency Arbitrator

1. The Secretary-General of the Permanent Court of Arbitration (hereinafter the “Secretary-General”), if *prima facie* satisfied as to the applicability of this Protocol and as to the sufficiency of a party’s request for emergency interim measures, shall appoint an emergency arbitrator within as short a time as possible, normally within two business days of receipt by the International Bureau of such request and payment of the initial deposit.
2. An emergency arbitrator shall be and remain impartial and independent of the parties.
3. When a person is approached in connection with his or her possible appointment as an emergency arbitrator, he or she shall disclose to the Secretary-General any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.
4. An emergency arbitrator, from the time of his or her appointment until such time as he or she has completed his or her functions, shall without delay disclose any such circumstances to the parties and the International Bureau unless they have already been informed by him or her of these circumstances.
5. An emergency arbitrator shall not act in any proceedings relating to the dispute that gave rise to the request for emergency interim measures.

Article 5: Challenge to an Emergency Arbitrator

1. An emergency arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the emergency arbitrator’s impartiality or independence.
2. A party that intends to challenge an emergency arbitrator shall send notice of its challenge within three business days of receipt of the notification of the appointment or from the date when that party became aware of the facts and circumstances on which the challenge is based, if such date is subsequent to the receipt of such notification.
3. The notice of challenge shall be communicated to all other parties, to the emergency arbitrator, and to the International Bureau. The notice of challenge shall state the reasons for the challenge.
4. The challenge shall be decided by the Secretary-General after affording an opportunity for the emergency arbitrator and the other party or parties to provide comments in writing within a suitable period of time and in accordance with the particular circumstances of the case.
5. Pending the resolution of the challenge, the Secretary-General may authorize the emergency arbitrator to continue the emergency interim measures proceedings. Any interim award or order issued by the emergency arbitrator under such circumstances shall be without legal effect in the event that the challenge is subsequently upheld by the Secretary-General.

Article 6: Place of Emergency Interim Measures Proceedings

1. If the parties have agreed on the place of arbitration, such place shall be the place of the proceedings for emergency interim measures.
2. Failing such an agreement, the place of the proceedings for emergency interim measures may be provisionally decided by the emergency arbitrator, having regard to the circumstances of the case, without prejudice to the determination of the place of arbitration pursuant to the applicable arbitration rules.

Article 7: Proceedings

1. Subject to this Protocol, the emergency arbitrator shall conduct the proceedings in such manner as he or she considers appropriate, taking into account the nature and urgency of the request. The emergency arbitrator shall act fairly and impartially and ensure that each party has a reasonable opportunity of presenting its case.
2. The emergency arbitrator shall, as soon as possible, and normally within two calendar days of his or her appointment, establish a schedule for consideration of the request for emergency interim measures.
3. The emergency arbitrator shall provide each party a reasonable opportunity of presenting its case, and may provide for proceedings by telephone, video conference, written submissions, or other suitable means, as alternatives to an in-person hearing.

Article 8: Decisions

1. The emergency arbitrator shall have the authority vested in the arbitral tribunal under the applicable arbitration rules, including the authority to rule on his or her own jurisdiction, without prejudice to the arbitral tribunal's determination of its jurisdiction.
2. The emergency arbitrator shall have the power to grant any emergency interim measure that he or she deems necessary. Such emergency interim measures may take the form of an interim award or order.
3. The emergency arbitrator may require the party requesting an emergency interim measure to provide appropriate security in connection with the measure.
4. The emergency arbitrator shall give summary reasons in writing.
5. The emergency arbitrator shall fix the costs of the emergency interim measures proceedings and may apportion such costs between the parties, subject to the power of the arbitral tribunal to determine finally the allocation of such costs.
6. The emergency arbitrator shall make his or her interim award or order deciding whether to grant emergency interim measures within 14 calendar days from the date of his or her appointment unless, in exceptional circumstances, the International Bureau extends this time limit.

7. Prior to the constitution of the arbitral tribunal, the emergency arbitrator may clarify, modify, suspend, or terminate an emergency interim measure he or she has granted. The emergency arbitrator may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
8. The emergency arbitrator may continue emergency interim measures proceedings and issue an interim award or order even if the arbitral tribunal is constituted in the meantime, unless directed to terminate the interim measure proceedings by the arbitral tribunal. The emergency arbitrator shall otherwise have no power to act after the arbitral tribunal is constituted.

Article 9: Effect of Emergency Interim Measures

1. Any emergency interim measure granted under this Protocol shall have the same effect as an interim measure granted by the arbitral tribunal and shall be binding on the parties when rendered. The parties undertake to comply with emergency interim measures ordered or awarded by the emergency arbitrator without delay.
2. The arbitral tribunal may reconsider, modify, suspend, or terminate any emergency interim measures issued by the emergency arbitrator, either upon application by a party or of its own motion, after inviting the comments of the parties. The arbitral tribunal is not bound by the reasons given by the emergency arbitrator.
3. Emergency interim measures shall cease to be binding upon the parties:
 - (a) If the emergency arbitrator or the arbitral tribunal so decides;
 - (b) Upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise;
 - (c) Upon the termination of the arbitration before the rendering of a final award; or
 - (d) If the arbitral tribunal has not been constituted within 90 calendar days from the date of the emergency interim measures and no request for the appointment of an arbitrator or for the designation of an appointing authority is then pending. This time limit may be extended by agreement of the parties or by the International Bureau.

Article 10: Costs of Emergency Interim Measures Proceedings

1. Prior to fixing the costs of the emergency interim measures proceedings pursuant to Article 8(5) of this Protocol, the emergency arbitrator shall submit his or her fees to the Secretary-General for review and, if deemed appropriate by the Secretary-General, adjustment. The fees and expenses of the emergency arbitrator shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the nature of the emergency proceedings, the amount of work performed, and any other relevant circumstances of the case.
2. The emergency administrative fees of the International Bureau will be published on its website, which may be revised from time to time.

Article 11: Deposits

1. The initial deposit is intended to cover the fees and expenses of the emergency arbitrator and the emergency administrative fees of the International Bureau. The International Bureau will publish on its website the required amount of the initial deposit, which may be revised from time to time.
2. The International Bureau may, at any time during the emergency interim measures proceedings, request additional deposits to cover any increase in the emergency arbitrator's fees or the International Bureau's emergency administrative fees, taking into account, *inter alia*, the nature of the case and the nature and amount of work performed by the emergency arbitrator and International Bureau. If the party which submitted the request fails to pay the additional deposits within the time limit fixed by the International Bureau, the request may be dismissed by the emergency arbitrator.
3. In the event that emergency interim measures proceedings do not take place pursuant to Article 4(1) of this Protocol or are otherwise terminated prior to the issuance of an interim award or order, the International Bureau shall determine the amount to be reimbursed to the requesting party, if any.