

Interim Measures in International Arbitration

Developed by:

José Manuel García Represa, Founding Partner, Wordstone, France

Mélida Hodgson, Partner, Arnold & Porter, United States; Vice-Chair, ICC Institute of World Business Law

08.30 - 09.00	Registration and welcome coffee
09.00 – 09.05	Welcoming address
09.05 – 09.15	Introduction and presentation of the ICC Institute of World Business Law
09.15 – 10.00	<p><b>Strategic considerations and procedures: When, how and to whom to request interim measures?</b></p> <ul style="list-style-type: none"><li>• Concept: must be temporary</li><li>• Powers of the ICC arbitral tribunals</li><li>• Role of the lex arbitriator</li><li>• When can/should request for interim measures be made?</li><li>• To whom can/should interim measures be requested: emergency arbitrator, arbitral tribunal, national courts (concurrent jurisdiction)</li><li>• ICC procedure and statistics: Art. 28 ICC Rules</li><li>• Specific measures: security for costs, escrow accounts, stop payment orders relating to first demand bank guarantees, and counter-guarantees</li></ul>
10.00 – 10.30	Q&A
10.30 – 11.15	Mock Case
11.15 – 11.30	Coffee break
11.30 – 12.15	<p><b>Practical considerations: The counsel’s perspective</b></p> <ul style="list-style-type: none"><li>• Burden of proof</li><li>• Types of measures that can be requested: a very broad range, but with limitations</li><li>• Ex-parte requests</li><li>• Discovery requests before national courts in aid of international arbitration (e.g., 28 USC 1782 requests)</li><li>• Most common defenses against requests for interim measures</li></ul>
12.15 – 12.30	Q&A
12.30 - 14.00	Lunch
14.00 – 14.45	Mock Case
14.45 – 15.30	<p><b>Practical considerations: The arbitrator’s perspective</b></p> <ul style="list-style-type: none"><li>• Asymmetric information with the parties (especially at the outset of the case)</li><li>• Urgency and due process (can an arbitrator award ex parte measures?)</li><li>• Risks: prejudgment, awarding or denying measures may have a permanent effect (e.g., where one of the parties risks liquidation, where assets may disappear, etc.)</li><li>• Can/should arbitrators take a more active role (e.g., escrow accounts managed by tribunals; order counter-security)</li></ul>
15.30 – 15.50	Q&A
15.50 – 16.15	Coffee break
16.15 – 17.00	<p><b>Compliance, enforcement and other issues arising after interim measures are ordered/awarded</b></p> <ul style="list-style-type: none"><li>• “Order” v. “Award” of interim measures</li><li>• Enforcement considerations: what can the parties do?</li><li>• What can arbitrators do faced with a party’s refusal to comply with interim measures?</li><li>• Relevance of civil v. common law jurisdictions.</li></ul>
17:00 – 17:20	Q&A
17:20 – 17.30	Concluding remarks