CENTRAL EUROPEAN UNIVERSITY

EMERGENCY ARBITRATION AS AN EFFECTIVE TOOL FOR GRANTING INTERIM MEASURES: LESSONS FOR KYRGYZSTAN

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I, the undersigned, Zhibek Tenizbaeva, candidate for the LL.M. degree in Global Business Law and Regulation declare herewith that the present thesis titled "Emergency Arbitration as an Effective Tool for Granting Interim Measures: Lessons for Kyrgyzstan" is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography.

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ABSTRACT

This thesis examines the critical role of interim measures in international commercial arbitration, with particular emphasis on emergency arbitration. The study begins by analyzing the functions, classifications, and legal requirements for granting interim relief. Interim measures serve as essential tools to protect parties' rights. It further addresses the challenges associated with the enforcement of such measures.

Building on this foundation, the thesis explores the evolution and legal framework of emergency arbitration, highlighting its procedural distinctiveness. The research provides an analysis of the legal nature and key features of emergency arbitration. Despite growing acceptance in international practice, enforcement remains inconsistent and problematic, underscoring the need for clearer legislative guidance.

The final part focuses on Kyrgyzstan's national legal framework governing interim measures. It identifies gaps and proposes legislative reforms aimed at harmonizing Kyrgyzstan's arbitration laws with international standards. The thesis concludes that the introduction of emergency arbitration will enhance legal certainty within Kyrgyzstan's arbitration regime. This mechanism will ensure timely and effective interim relief before the tribunal's formation.

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INTRODUCTION

Interim measures are an essential tool for providing a party in arbitration with immediate and temporary protection of their rights or property pending a decision on the merits. Such measures are issued to safeguard the rights of parties before a final decision is rendered. "Interim and conservatory measures ... aim to preserve evidence, protect assets, and maintain the status quo of the pending award."[1] Historically, arbitrators did not have any power to order interim measures. However, over time, more countries have recognized and introduced the power of arbitral tribunals to issue such measures.[2] The effectiveness of interim relief in arbitration often conflicted with procedural delays, particularly the time required to constitute an arbitral tribunal. Jurisdictions lacked clear procedures for handling pre-arbitral requests for interim measures. This created a significant gap in arbitration and undermined the effectiveness of such relief. The only option for parties seeking urgent relief before the formation of an arbitral tribunal was to apply to national courts. As Dr. Peter Binder stated, "the issuance of interim measures by the court is the only way assets can be saved for a future arbitration".[3] While national courts can grant enforceable interim relief, this option may compromise the core advantages of arbitration, such as confidentiality, procedural autonomy, and the neutrality of decision-makers. For parties engaged in commercial disputes, recourse to courts can raise jurisdictional complexities, risk inconsistent rulings, and introduce delays that defeat the purpose of urgent relief. To address this gap, various arbitral institutions introduced emergency relief mechanisms, allowing parties to seek urgent interim measures directly from the arbitral institution without resorting to the courts.[4] This mechanism ensures that parties can obtain

[1] Rania Alnaber, 'Emergency Arbitration: Mere Innovation or Vast Improvement' (2019) 35 Arbitration International 442.
[2] Gary Brian Born, *International Commercial Arbitration* (vol II Wolters Kluwer Law and Business 2009) 1951.
[3] Peter Binder, *International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions* (2nd edn, repr, Sweet & Maxwell 2005) 100.
[4] Alnaber (n 1) 442.

effective relief within the arbitral framework itself, preserving the integrity of the arbitration agreement and reducing reliance on state courts.

Since its first institutional appearance in 2006, emergency arbitration has gained rapid acceptance across major arbitral forums, including the ICC, SIAC, LCIA, ICDR, and SCC. This thesis analyzes the institutional rules of the leading arbitration institutions regarding the formation and functioning of emergency arbitration. By identifying procedural similarities and evaluating effectiveness, the study highlights why emergency arbitration has become "a twenty-first-century innovation"[5] adopted by many institutions and jurisdictions. The thesis critically examines the legal framework, operation, and enforcement of emergency arbitration. It analyzes whether decisions rendered by emergency arbitrators can or should be treated as arbitral awards and explores the practical challenges parties face in seeking recognition and enforcement of such decisions.

Furthermore, the thesis considers the legal framework in the Kyrgyz Republic. The current legislation permits arbitral tribunals to issue interim measures. However, due to the absence of emergency arbitration parties should wait for the constitution of an arbitral tribunal or refer to national courts. Such reliance on courts undermines the confidentiality and efficiency that arbitration seeks to offer. The study emphasizes the lessons Kyrgyzstan can draw from international practice to establish a more effective pre-tribunal interim relief mechanism. It argues that emergency arbitration is a necessary enhancement to Kyrgyzstan's arbitration framework. Incorporating emergency arbitration would help ensure that urgent relief is granted within arbitration proceedings. It preserves the integrity of arbitration. Moreover, it keeps proceedings confidential, reduces delays, and strengthens party autonomy. Aligning the

[5] Cameron Sim, *Emergency Arbitration* (Oxford University Press 2021) 49.

national legal framework with global best practices would support Kyrgyzstan's ambition to become a more arbitration-friendly jurisdiction.

The thesis is composed of an introduction, three chapters, and a conclusion. Chapter One examines the legal regulation of interim measures in international commercial arbitration. The first subchapter discusses the function and classification of interim measures. The second subchapter deals with the legal requirements for granting interim measures. While the third subchapter focuses on the enforcement of interim measures. Chapter Two explores the concept and legal framework of emergency arbitration and is divided into three subchapters. It begins with the evolution and establishment of emergency arbitration, followed by an analysis of its legal nature and key features. The third and fourth subchapters address decision-making in emergency arbitration proceedings and the enforcement challenges, particularly jurisdictional and practical obstacles. Chapter Three focuses on Kyrgyzstan's legal landscape on emergency arbitration. The first subchapter reviews the national legal framework governing interim measures in Kyrgyzstan. The second subchapter proposes reforms for introducing emergency arbitration. The third subchapter examines the applicable legal standards for the successful implementation of emergency arbitration in Kyrgyzstan.

CHAPTER 1: INTERIM MEASURES IN INTERNATIONAL COMMERCIAL ARBITRATION

In an era when international commercial arbitration is shifting toward greater efficiency, the role of interim measures cannot be overstated. Commercial arbitration is used by parties to save time and money and keep proceedings confidential. Arbitration allows parties greater flexibility in choosing the rules of procedure, the place of arbitration, and the arbitrators. The decision of the arbitrators is final and legally binding. However, arbitral proceedings take time, and in order to successfully implement future arbitral awards, the risk of harm during the proceedings must be eliminated. Parties may attempt to hide, transfer, or sell assets, or destroy evidence that is

crucial to arbitration. To counteract such risks, interim measures are granted. Interim measures are designed to prevent harm or damage caused by actions that could frustrate the arbitration process. The UNCITRAL Model Law defines interim measures as "any temporary measure, whether in the form of an award or in another form, by which, at any time before the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party 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, current or imminent harm or 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."[6] Interim measures serve as an essential safeguard that protects the integrity and enforceability of the arbitral process. This chapter will focus on the function and classification of interim measures, the legal requirements for granting them, and their enforcement.

1.1. Function and Classification of Interim Measures in International Commercial Arbitration

Interim measures are fundamentally protective. They are issued in response to urgent situations that require immediate action. A party must request the granting of interim measures, meaning that this procedure "...excludes any *ex officio* action by the tribunal."[7] The Model Law stipulates the phrase "unless otherwise agreed by the parties"[8], indicating that the provision is non-mandatory and applies only when the parties have not agreed otherwise. The interim measure ordered by the arbitral tribunal must be related to the subject matter of the arbitration agreement,

[6] United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985: with amendments as adopted in 2006* (United Nations 2008) art 17.
[7] Binder (n3) 152.
[8] UNCITRAL Model Law (n6) art 17(1).

and the tribunal has the discretion to determine the type of interim measure while providing appropriate security.[9]

As evident from the Model Law, the list of interim measures is non-exhaustive. Interim measures may take various forms depending on the nature of the dispute and the relief sought. These measures can be classified into several categories: preservation of evidence, maintenance of the status quo, provision of security for costs, injunctions, and other types.[10] A common example is a request to preserve the status quo at the time of the dispute. The status quo prevents either side from taking actions that could compromise the integrity or fairness of the proceedings. "The status quo has been frequently defined as the last uncontested status which preceded the pending controversy."[11] Dr. Peter Binder described the status quo concept as "well established and understood in many legal systems as being an important purpose of an interim measure."[12] Measures relating to the preservation of evidence ensure that critical evidence is not destroyed before a formal record is created.[13] A party may also request the prevention of initiating or continuing legal proceedings in another jurisdiction or forum; commonly referred to as an anti-suit injunction. Another recognized type of interim measure is security for costs, which is "usually requested by the claimant if there is reasonable cause to believe that the claimant is insolvent and will not pay if he or she loses that arbitration"[14]. In contrast to active measures, interim measures could also be passive. These are intended to assist both parties in establishing clear and structured procedures for the arbitration process.[15] Passive measures are

[9] Binder (n3) 152.
[10] Alan Redfern and Martin Hunter, *Law and Practice of International Commercial Arbitration* (student edn, Sweet & Maxwell 2003) 350.
[11] Flood v. Kuhn, 309 F.Supp. 793, quoted in *William Michael Reisman, International Commercial Arbitration*. Hauptbd.' (Foundation Press 1997) 801.
[12] Binder (n3) 163.
[13] Redfern and Hunter (n10) 351.
[14] 'Kinds of Interim Measures in Arbitration', (Expert Evidence, March 2016), <https://expert-evidence.com/kinds-of-interim-measures-in-arbitration/#:~:text=Common%20types%20of%20interim%20measures,of%20an%20award%2C%20and%20injunctions> accessed 13 June 2025.
[15] Ibid.

designed to set rules without requiring either party to take or refrain from specific actions related to the dispute.

All types of interim measures help ensure that the arbitration proceedings proceed smoothly and mitigate risks during the arbitration. Arbitration often involves complex commercial disputes with high stakes. That is why interim measures are frequently sought at the outset of proceedings and even before the arbitral tribunal is constituted. The period prior to the constitution of the arbitral tribunal presents a critical window during which parties may face risks such as the destruction of evidence, dissipation of assets, or actions that could cause irreparable harm.[16] This thesis specifically focuses on interim measures granted before the constitution of the arbitral tribunal. The timely implementation of such measures is crucial to preserving the integrity of the arbitration process without prejudging the merits of the case.

1.2. Legal Requirements for Granting Interim Measures

The granting of interim measures in arbitration is subject to certain legal requirements designed to ensure that such measures are justified, proportionate, and equitable. These requirements may vary slightly depending on the applicable legal framework or the institutional rules. However, they generally reflect well-established principles outlined in the UNCITRAL Model Law. Before seeking an interim measure, a party must demonstrate that the relief sought is urgent and cannot be deferred until the issuance of the final award.[17] Urgency is one of the main criteria of interim measures. The party should ensure that immediate measures are needed. Otherwise, serious harm may appear.

[16] Sim (n5) 12.
[17] UNCITRAL Model Law (n6) art 17A.

Article 17 A of the Model Law sets out two primary conditions, namely harm not adequately reparable by an award of damages, and a reasonable possibility that the requesting party will succeed on the merits of the claim.[18] As mentioned earlier, arbitration is often chosen for its time efficiency. Therefore, a party must show that, if the requested measure is not granted promptly, it may suffer harm that would undermine the efficacy of the arbitral process. In the author's view, the requesting party should conduct essential investigations to identify assets or evidence requiring protection and perform a thorough risk assessment. The party must establish a credible threat to those assets or evidence or other conduct that can compromise arbitration proceedings or the enforceability of the final award.[19] Such a request must be made in good faith. The potential harm must "substantially outweigh the harm that is likely to result to the party against whom the measure is directed if the measure is granted".[20] Although many rulings refer to the requirement of irreparable harm, tribunals often do not strictly enforce this standard, instead focusing on whether there is a significant risk of serious harm.[21] This means there must be a risk of harm that cannot be reparable or remedied later. The second sentence of Article 17 A(1(a) of the Model Law requires the tribunal to assess the potential hardship to the opposing party, emphasizing that interim measures should only be granted if the harm prevented by the measure substantially outweighs the harm its issuance may cause.[22] Therefore, proportionality is another important criterion that arbitrators must access.

The second condition under Article 17A(1(b) requires the requesting party to demonstrate a reasonable possibility of success on the merits.[23] This test does not require the tribunal to decide

[18] UNCITRAL Moder Law (n6) art 17A (1).
[19] Andrey Kotelnikov, Sergey Kurochkin, 'Conservatory and Interim Measures in Arbitration' (2019) et al. (eds), Arbitration in Russia, Kluwer Law International 152.
[20] UNCITRAL Model Law (n6) art 17A(1(a).
[21] 'Interim Measures in International Arbitration: A Need for Irreparable Harm' (Aceris Law, 10 May 2019) <https://www.acerislaw.com/interim-measures-in-international-arbitration-a-need-for-irreparable-harm/> accessed 13 June 2025.
[22] UNCITRAL Model Law (n6) art 17A(1(a).
[23] UNCITRAL Model Law (n6) art 17A(1(b).

on the merits of the case. As explained in the *Paushok* case "the Tribunal needs to decide only that the claims made are not, on their face, frivolous or obviously outset the competence of the Tribunal".[24] In other words, the tribunal is not expected to evaluate the strength of the claims. It is supposed to confirm that the claims fall within the tribunal's jurisdiction and appear reasonable at face value. If the claims meet this threshold, interim measures may be granted. A party strengthens its position by thoroughly assessing the risks, demonstrating the likelihood of potential harm, and establishing a reasonable possibility of prevailing on the merits. These requirements function as checks and balances which help to prevent the abuse of interim measures and to uphold procedural fairness in arbitral proceedings.

1.3. Enforcement of Interim Measures

Parties in arbitration are generally expected to comply voluntarily with interim measures. This aligns with the fundamental principles of arbitration, promoting effectiveness and party autonomy. However, in practice, voluntary compliance is not always forthcoming. The enforceability of interim measures often depends heavily on the jurisdiction in which enforcement is sought. "Many national arbitration statutes do not expressly address the judicial enforceability of tribunal-ordered provisional measure issue, leaving enforcement of tribunal-ordered provisional measures to general statutory provisions regarding arbitral awards."[25] Therefore, parties seeking interim relief must carefully assess the legal environment of the jurisdiction where enforcement may be necessary. Harmonization of national laws with international instruments such as the Model Law becomes critical.

[24] David D. Caron and Lee M. Caplan, *The UNCITRAL Arbitration Rules* (2nd edn Oxford University Press 2012) 523.
[25] Born (n2) 2019.

The UNCITRAL Model Law recognizes the binding nature of interim measures and provides that such measures shall be enforced irrespective of the country in which they were issued, subject to limited grounds for refusal.[26] The Model Law's wording "is an obvious reference to the fact that an interim measure may be issued by an arbitral tribunal situated in the territory of one State and enforced in the territory of another".[27] While the Model Law establishes a legal framework for such cross-border recognition and enforcement, practical implementation remains inconsistent. This inconsistency is partly because not all jurisdictions have adopted the 2006 amendments or have applied them consistently. Domestic courts may be reluctant to enforce foreign interim measures due to procedural formalities, lack of reciprocity, or concerns about public policy. For instance, in *Inforica Inc. v. CGI Information Systems and Management Consultants Inc.,* a Canadian court held that the judge lacked jurisdiction to set aside an arbitrator's order for security for costs, reasoning that it did not constitute an 'award' under section 46(1) of the Arbitration Act.[28]

One of the most contentious issues in this area is whether a decision on interim measures qualifies as an arbitral award. A group of scholars argues that interim measures cannot be considered awards, emphasizing that a defining feature of an award is its finality, meaning it conclusively resolves a legal issue and carries a res judicata effect.[29] Interim measures are inherently temporary by nature and subject to revision or modification. From this perspective, interim measures do not meet the threshold of finality and therefore should not be treated as awards. However, this view is not universally accepted and tends to change. Notably, scholars like Gary B. Borne argue that interim measures of protection should indeed be classified as

[26] UNCITRAL Model Law (n6) art 17H-17I.
[27] Ilias Bantekas and others, 'UNCITRAL Model Law on International Commercial Arbitration: A Commentary' (2020) 1st edn Cambridge University Press 464.
[28] Inforica Inc v CGI Information Systems and Management Consultants Inc [2009] ONCA 642.
[29] Jonathan Hill, 'Is an Interim Measure of Protection Ordered by an Arbitral Tribunal an Arbitral Award?' (2018) 9 Journal of International Dispute Settlement 603.

awards. He contends that "provisional measures are 'final' in the sense that they dispose of a request for relief pending the conclusion of the arbitration".[30] This suggests a broader and more flexible interpretation of finality that focuses on the nature of the decision. The effectiveness of the arbitral process depends heavily on national courts' ability to enforce provisional measures, as without this enforcement, parties may be more likely to disregard such orders, undermining their intended protective function.[31] Classifying an arbitral decision as an award brings both advantages and drawbacks. On the one hand, it enables enforcement under the New York Convention, thereby enhancing the cross-border effectiveness of interim relief. On the other hand, it opens the door for judicial review or annulment at the seat of arbitration, potentially undermining the autonomy and efficiency of the arbitral process.[32]

"The policy argument for treating interim measures as awards is all about promoting their enforceability; but, the Model Law shows that interim measures can be made enforceable without treating them as awards, thereby protecting them against the possibility of being set aside and better preserving the autonomy of the arbitral process."[33] The author believes that this approach allows for effective enforcement without exposing interim decisions to annulment proceedings. Thereby it will offer stronger protection for the integrity and independence of arbitration.

CHAPTER 2: THE CONCEPT AND LEGAL FRAMEWORK OF EMERGENCY ARBITRATION

"One of the shortcomings of arbitration is that the tribunal does not have any power to grant interim measure until it is established."[34] Parties seeking interim relief in arbitration were required to wait for the formal constitution of an arbitral tribunal. However, such delays can

[30] Born (n2) 2023.
[31] Ibid.
[32] Hill (n29) 607.
[33] Hill (n29) 608.
[34] Alnaber (n1) 442.

significantly undermine the effectiveness of the arbitration process, particularly in cases requiring urgent relief. Considering the time-consuming constitution of the tribunal and the urgency of interim measures, most arbitral institutions have incorporated emergency arbitration provisions into their procedural rules to address this need.[35] This chapter examines the emergence and evolution of emergency arbitration as a mechanism for obtaining immediate interim relief. The chapter also analyzes the nature and key features of emergency arbitration, including the decision-making process and enforceability of emergency arbitrators' decisions. Particular attention is given to the legal status of such decisions under national laws, international conventions, and institutional rules. Finally, the chapter evaluates whether emergency arbitrator decisions may be treated as arbitral awards and addresses the challenges that arise in enforcing these decisions across different jurisdictions.

2.1. Evolution and Establishment of Emergency Arbitration

The formation of an arbitral tribunal often takes several weeks or even months. It happens due to the time required for appointing arbitrators, securing party agreements, and resolving any challenges to nominations. In this way, the need for immediate interim measures clashes with the time it takes to form an arbitral tribunal. In urgent situations, the absence of a constituted tribunal leaves parties with no choice but to seek interim relief from national courts. "The issue with this option is that a party requiring urgent relief may wish to avoid requesting urgent measures from a court for the very reason that it entered into an arbitration agreement in the first place."[36] Resorting to national courts can undermine key principles that led the parties to choose arbitration in the first place.

[35] Nigel Blackaby and others, *Redfern and Hunter on International Arbitration* (7th edn, Oxford University Press 2022) para 5.26.
[36] Sim (n5) 10.

One of the core reasons for choosing arbitration is the principle of confidentiality. "Confidentiality is typically used to refer to the parties' asserted obligations not to disclose information concerning arbitration to third parties. Confidentiality obligations not only restrict third parties from attending arbitral hearings, but also prohibit sharing transcripts, written pleadings and submissions, evidence presented, and any materials produced during the arbitration.[37] Court proceedings are generally public, meaning that case documents and evidence may become accessible to third parties. As noted, "the 'privacy' of arbitration hearings is therefore uncontroversial".[38]

Moreover, arbitration provides parties with the opportunity to select decision-makers. Parties can either appoint or influence the selection of arbitrators with specific expertise relevant to the dispute, increasing confidence in a fair and informed outcome.[39] In contrast, court proceedings assign judges without party input, and the appointed judge may lack the specialized knowledge necessary for the case. Additionally, the court proceedings may be conducted in a different language than that of the contract, and the applicable law might be foreign to the court.[40] These factors increase the risk of incorrect decisions, including the possibility that legitimate requests may be wrongly denied.

Another core advantage of arbitration is the neutrality of decision-makers. This issue becomes sensitive in jurisdictions where the respondent is a state-owned entity, as arguments based on state immunity may be used to block the request for interim measures.[41] Emergency arbitration follows the institutional rules that the parties have agreed upon, and it is governed by internationally recognized standards, providing greater consistency in transnational disputes.

[37] Born (n2) 2252.
[38] Blackaby and others (n35) para 2.182.
[39] Sim (n5) 10.
[40] Sim (n5) 11.
[41] Sim (n5) 11.

Emergency arbitration is designed to act promptly by delivering a decision within five to fifteen days of receiving the application depending on the applicable institutional rules. In contrast, traditional court proceedings can take longer due to procedural complexities and the workload of the court. "Applying for a certain national court means that a party may be requested to submit a translation of the underlying contract or the applicable foreign law in addition to hiring a local counsel for the purpose of this application."[42] Resorting to a national court creates additional costs for parties and requires them to refer to two separate institutions. Emergency arbitration and court-ordered interim measures serve the same fundamental purpose of providing urgent measures. However, emergency arbitration can be a more efficient and flexible solution compared to traditional court-based measures and allows parties to stay within arbitration.

Emergency arbitration has emerged as an innovation in international arbitration, allowing parties to obtain urgent interim measures before the constitution of the arbitral tribunal.[43] Emergency arbitration fills the gap between the initiation of arbitration proceedings and the formal constitution of the arbitral tribunal. It ensures the integrity of arbitration and assists parties in requesting interim measures within the framework of arbitration. Each institution has its own set of rules and mechanisms to govern the emergency arbitration procedure. The emergency arbitration originated from the ICC Pre-Arbitral Referee Rules introduced in 1990, but it required a separate opt-in agreement and was rarely used.[44] In 2006 the International Center for Dispute Resolution (ICDR) introduced opt-out emergency arbitration. The Singapore International Arbitration Centre (SIAC) and the Stockholm Chamber of Commerce (SCC) introduced emergency arbitration in 2010. The International Chamber of Commerce (ICC)

[42] Alnaber (n1) 444.
[43] Sim (n5) 49.
[44] Grant Hanessian and Alexandra Dosman, 'Songs of Innocence and Experience: Ten Years of Emergency Arbitration' (2018) American Review of International Arbitration <https://arbitrationlaw.com/sites/default/files/free_pdfs/aria_-_songs_of_access.pdf> 216.

introduced similar provisions in 2012. The London Court of International Arbitration (LCIA) incorporated emergency procedures in its 2020 Arbitration Rules. Under the ICC Rules of Arbitration, emergency arbitration provisions "shall apply only to parties that are either signatories of the arbitration agreement under the Rules that is relied upon for the application or successors to such signatories."[45] "The Emergency Arbitrator Provisions shall not apply if: a) the arbitration agreement under the Rules was concluded before 1 January 2012; b) the parties have agreed to opt out of the Emergency Arbitrator Provisions; or c) the arbitration agreement upon which the application is based arises from a treaty".[46] Most institutional rules like the ICC Arbitration Rules contain the date of the introduction of emergency arbitration into the applicable rules, after which parties can apply for emergency arbitration and more likely that agreement concluded before that date has the right to opt-in. The second rule, upon which the parties cannot apply for emergency arbitration is the opt-out structure. One practical consequence of the opt-out structure of the emergency arbitrator procedure is its broad accessibility to parties. This means that unless the parties specifically decide not to use emergency arbitration, the option is automatically available to them. Because of the easy access, more parties are likely to take advantage of the procedure. This consistency across institutions shows how emergency arbitration has become a widely accepted and practical tool in international dispute resolution mechanisms. Institutional rules typically require emergency arbitrators to issue decisions within five to fifteen days, ensuring prompt relief when needed. Emergency arbitration thus fills a critical gap by allowing parties to obtain interim relief prior to the constitution of the tribunal. However, the use of emergency arbitration does not preclude parties from seeking interim relief from national courts. "Agreeing to the availability of emergency arbitration, absent agreement to the contrary, a party should not be seen to have

[45] International Chamber of Commerce, ICC Rules of Arbitration (2021) art 29(5).
[46] ICC Rules (n45) art 29(6).

restricted its rights to seek interim measures from a court."[47] It worth mentioning that certain types of interim measures remain outside the scope of an emergency arbitrator. For example, interim orders directed at third parties, such as the freezing bank account, require judicial authority. Arbitral bodies lack the coercive power over third parties and cannot compel compliance in such scenarios without court intervention. [48] Emergency arbitration is a valuable tool for addressing urgent needs in the early stages of arbitration. Nonetheless, in some cases, its effectiveness depends on the cooperation of state courts. Thus, emergency arbitration is intended to complement judicial mechanisms rather than replace them.

2.2. Legal Nature and Key Features of Emergency Arbitration

Parties choose arbitration because of the flexibility of standards and the specialized expertise of arbitrators. Emergency arbitration "provide[s] parties with a means of obtaining interim relief from an emergency arbitrator appointed on an expedited basis (usually within one or two business days) before the constitution of the arbitral tribunal, providing an alternative to seeking relief before the national courts."[49] An emergency arbitrator's authority is strictly limited to issuing interim measures. This means that emergency arbitrators cannot decide the merits of the case, and their jurisdiction terminates once the arbitral tribunal is constituted. Most institutional rules permit parties to request the appointment of an emergency arbitrator as soon as the notice of arbitration is submitted, and in certain instances, even before that stage.[50] For instance, the SIAC Arbitration Rules allow an application for emergency arbitration to be filed prior to the filing of the notice, provided that the notice of arbitration is submitted within seven days.[51] For the ICC[52] is within 10 days and 30 days for the SCC Rules[53]. Arbitration rules specify what

[47] Sim (n5) 22.
[48] Sim (n5) 40.
[49] Blackaby and others (n35) para 6.27.
[50] Ibid.
[51] Singapore International Arbitration Centre, SIAC Arbitration Rules (2025) sch 1 para 6.
[52] ICC Rules (n45) app V, art 1(6).
[53] Stockholm Chamber of Commerce, SCC Arbitration Rules (2023) app II, art 9(4(iii).

information should be included in the emergency arbitration application. Typically, the application must include: full names, descriptions, addresses, and contact details of all parties and their representatives; a summary of the dispute and events leading to arbitration; a statement of the emergency measures requested and the reasons for their urgency; and details of any relevant agreements, including the arbitration clause, the agreed place, governing law, and language of arbitration; proof of payment of the application fee. The applicant must link the requested relief to the specific reasons it is needed to ensure that the request is limited to what is genuinely necessary.[54]

Once the application is received, the arbitral institution conducts a preliminary assessment to determine the prima facie applicability of the relevant rules, which cannot be subject to review.[55] The emergency arbitrator is not expected to conduct a full jurisdictional analysis as a tribunal would; instead, they typically apply a limited test of 'manifest lack of jurisdiction'.[56] After a preliminary assessment, emergency arbitration is appointed. Unlike the appointment of a regular arbitral tribunal, emergency arbitrators are appointed by the institutions. This institutional appointment is driven by the urgent nature of the relief sought, requiring procedural speed and efficiency. Under the SIAC Arbitration Rules, once an application for emergency interim relief is submitted and the relevant fee is paid, the President of the SIAC Court of Arbitration must appoint an emergency arbitrator within just 24 hours.[57] Similarly, under the LCIA Arbitration Rules, the Court has up to three days from the receipt of the emergency application to appoint an emergency arbitrator.[58] Although slightly longer than the SIAC's

[54] Sim (n5) 111.
[55] Sim (n5) 60.
[56] Alnaber (n1) 450.
[57] SIAC Rules (n51) sch 1 para 7.
[58] London Court of International Arbitration, LCIA Arbitration Rules (2020) art 9B (6).

timeline, this still reflects a fast-tracked procedure tailored to the urgency of emergency measures.

Generally, institutional rules do not expressly permit ex parte relief. Upon receiving the application, the institution is required to notify the opposing party to ensure both sides are given an equal chance to present their arguments.[59] Some arbitration rules require applicants to notify all other parties of the emergency arbitration application, with certain rules demanding certification of such notice or details of attempted notification, while others only require proof of dispatch or a simple notice.[60] The emergency arbitration procedure operates within a framework that prioritizes fairness and procedural balance. Most institutional rules emphasize transparency by requiring the respondent to be notified. This approach ensures that emergency measures are not granted without allowing both parties the opportunity to be heard. The level of formality required in this notification process may vary, but the underlying principle remains consistent. Emergency arbitration must not compromise due process in pursuit of speed.

Emergency arbitrators are granted limited and short-term powers, which end once the main arbitral tribunal is constituted. Like the general principles governing arbitration, emergency arbitrators must remain impartial and independent. Most institutional rules require that "before being appointed, a prospective emergency arbitrator shall sign a statement of acceptance, availability, impartiality and independence."[61] This means that emergency arbitrators must maintain neutrality throughout the process. Emergency arbitration should ensure that their decisions are not influenced by either party or any external interests. Emergency arbitrators are expected to balance the urgency of the application with the principles of due process.[62] Both parties must be allowed to present their case, except in narrowly defined situations where ex

[59] Alnaber (n1) 447.
[60] Sim (n5) 60.
[61] ICC Rules (n45), app V, art 2.
[62] Sim (n5) 155.

parte relief is permitted. Emergency arbitration rules encourage applicants to include all relevant information to ensure efficient and fair proceedings, as omitting material facts can cause delays, prompt multiple rounds of submissions, and potentially harm the applicant's chances of success.[63]

Article 9B (7) of the LCIA Arbitration Rules stipulates that "the emergency arbitrator may conduct the emergency proceedings in any manner determined by the emergency arbitrator to be appropriate in the circumstances, taking account of the nature of such emergency proceedings, the need to afford to each party, if possible, an opportunity to be consulted on the claim for emergency relief (whether or not it avails itself of such opportunity)".[64] Meaning that the arbitrator is trusted to balance fairness with urgency when deciding how to handle the case. It should also be noted that under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, enforcement and recognition of an arbitral award can be denied in case a party provides evidence that it was prevented from presenting the case.[65] In such case "ex-parte relief will not be enforced".[66] Despite the fact that some of the procedural details of the emergency arbitration mechanism may vary, institutional frameworks collectively demonstrate a shared commitment to providing timely, efficient, and enforceable interim relief.

Moreover, emergency arbitrators must similarly evaluate two key tests to those used in granting interim measures. As outlined in Chapter One, the presence of irreparable harm and the likelihood of success on the merits serve as guiding principles to ensure that the requested interim measure is both necessary and justified. The requirement for irreparable harm ensures that the applicant faces damage that cannot be adequately remedied at a later stage. Urgency

[63] Sim (n5) 112.
[64] LCIA Rules (n58) art 9B (7).
[65] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), art V(1(b).
[66] Alnaber (n 1) 447.

and irreparable harm are closely linked and assessed together, with the urgency standard being met if there is a significant risk of harm occurring before the tribunal is constituted.[67] The likelihood of success test assesses whether the applicant has a prima facie case that deserves protection pending the outcome of the arbitration.[68] The discussed core principles illustrate the role of emergency arbitration as a transnational mechanism for delivering urgent interim relief.

2.3. Decision-Making in Emergency Arbitration Proceedings

The author examines how emergency arbitrators make their decisions, the steps they follow, and the rules they apply. Emergency arbitrators must issue their decisions within the timeframes prescribed by institutional rules. For instance, in the Stockholm Chamber of Commerce (SCC) Arbitration Institute it is "no later than five days from the date the application was referred to the emergency arbitrator.[69] While in the ICC Arbitration Rules[70] the timeframe is no later than fifteen days and according to the Arbitration Rules of SIAC[71] and LCIA[72] no later than fourteen days. These strict timelines reflect the urgent nature of emergency relief and aim to balance expediency with procedural fairness. In the author's opinion, adherence to such deadlines ensures that the emergency arbitrator's role remains effective in addressing time-sensitive disputes where immediate interim measures are sought. "There is evidence that emergency arbitrators have a predilection to utilize the maximum prescribed timeframe."[73] This means that emergency arbitrators ensure that parties are given more time to submit and present their defense and maybe to reduce the possibilities of challenges. However, failure to comply with the prescribed timeframes may compromise the enforceability of the granted relief. Therefore,

[67] 'Emergency Arbitration: Balancing Urgency and Fairness' (Aceris Law, 2024) <Emergency Arbitration: Balancing Urgency and Fairness • Aceris Law> accessed 15 June 2025.
[68] Sim (n5) 27.
[69] SCC Rules (n53) app II art 8.
[70] ICC Rules (n45) app V art 6.
[71] SIAC Rules (n51) sch 1 para 17.
[72] LCIA Rules (n58) art 9B.
[73] Sim (n5) 292.

both the parties and the emergency arbitrator must cooperate to facilitate efficient proceedings and ensure the timely resolution of the matter.

According to the ICC Arbitration Rules, an emergency arbitrator's order must be made in writing and shall state the reasons upon which it is based.[74] If a decision lacks valid reasoning, it can be easily challenged. Giving reasons forces the arbitrator to think carefully. It ensures that the emergency arbitrator properly checks if the application meets the basic rules, such as whether the case is allowed if the arbitrator has the right to decide it, and if the request is acceptable.[75] Moreover, emergency arbitration should comply with general procedural rules such as dating and signing an order or award.

Emergency arbitrators' decisions may be issued "in the form of an award or order, or an award, order, or decision".[76] According to ICC Arbitration Rules 2021, "the emergency arbitrator's decision shall take the form of an order".[77] In accordance with the AMINZ Arbitration Rules 2022, decisions are taken in the form of an award.[78] While the majority of institutional rules such as SIAC[79], LCIA[80], allow emergency arbitrators to make decisions in the form of an award or order. This raises the question of how the emergency arbitrator decides the form the decision should take. The LCIA Notes on Emergency Procedures suggest that, where the relevant rules allow the emergency arbitrator to choose the form of the decision, the arbitrator should not make this choice alone. Rather, the arbitrator should discuss with parties the matter at hand to understand their preferences regarding the form of the decision.[81] Meaning that the parties

[74] ICC Rules (n45) app V art 6.
[75] Sim (n5) 296.
[76] Sim (n5) 288.
[77] ICC Rules (n45) art 29(2).
[78] Arbitrators' and Mediators' Institute of New Zealand, AMINZ Arbitration Rules (2022) r 15.
[79] SIAC Rules (n51) sch 1 para 17.
[80] LCIA Rules (n58) art 9B.
[81] London Court of International Arbitration, LCIA Notes for Arbitrators on Emergency Procedures (2020) para 48.

should be given a choice on the preferred form of decision. The reason why the author focuses on labeling the decision is the possible influence on its enforceability. "In order to increase enforcement prospects, where available, use of the label 'award' may be preferable".[82]

Most institutional rules affirm the binding nature of emergency arbitrators' decisions. This ensures that the interim measures granted are respected and observed by the parties. For example, institutions such as the ICC[83], SCC[84] and SIAC[85], explicitly state that emergency arbitrators' orders or decisions are binding and must be promptly complied with. Notably, "there has been a high reported incidence of compliance with emergency arbitration decisions".[86] In the author's view, this reflects the effectiveness of emergency arbitration as a mechanism for securing interim relief. Other motivations for voluntary compliance may include reputational concerns, the risk of adverse inferences by the main arbitral tribunal, and the possibility of enforcement through national courts. Nevertheless, despite the high rate of voluntary compliance, enforceability remains a critical issue, particularly in cross-border disputes. While some jurisdictions have enacted legislation expressly recognizing and enforcing emergency arbitrator decisions, others remain hesitant or silent on the issue. This disparity creates uncertainty and may influence parties' decisions on initiating emergency arbitration or not. The competence of the emergency arbitrator does not cease upon the issuance of the decision. Most institutional rules foresee that before the constitution of the arbitral tribunal, the emergency arbitrator, on its initiative or upon the reasoned request of a party, shall have the power to reconsider, modify, or vacate any order or award; and make an additional order or award.[87]

[82] Sim (n5) 288.
[83] ICC Rules (n45) art 29(2).
[84] SCC Rules (n53) app II art 9.
[85] SIAC Rules (n51) sch 1 para 23.
[86] Sim (n5) 319.
[87] LCIA Rules (n58) art 9B, SIAC Rules (n51) sch 1 para 19, ICC Rules (n45) app V art 6.

Given that the interim relief is temporary, emergency arbitrators' decisions have an expiration period. Institutional rules vary in how they handle this aspect. For instance, under the SIAC Arbitration Rules, an order or decision of the emergency arbitrator will cease to be valid in case both parties agree on it; if either the emergency arbitrator or the arbitral tribunal decides to cancel it; in case of failure to form the arbitral tribunal within 90 days from the date of the order or decision; if the arbitration ends early or the claims are withdrawn before the final decision is made; or when the final award is issued unless the arbitral tribunal decides to keep the emergency measures in place.[88] However, in the SCC Arbitration Rules an emergency decision stops being binding in fewer situations compared to the SIAC. The decision will no longer apply if the emergency arbitrator or the arbitral tribunal decides to end it; the arbitral tribunal issues a final award; the arbitration is not started within 30 days of the emergency decision; or the case is not handed over to an arbitral tribunal within 90 days of the emergency decision.[89] Some institutional rules grant broader discretion over the duration and termination of emergency decisions, while others impose more rigid limitations. These differences can significantly affect how parties choose an arbitral institution, especially when interim relief is anticipated. As such, the enforceability of emergency measures is not solely determined by the decision itself, but also by the institutional framework regulating how long those measures remain in effect. This underscores the importance of carefully reviewing procedural rules when drafting arbitration agreements.

2.4. Enforcement Challenges: Jurisdictional and Practical Obstacles

Despite the increasing use of emergency arbitration, it still raises concerns about its effectiveness as uncertainties remain around the enforceability of rulings by emergency

[88] SIAC Rules (n51) sch 1 para 20.
[89] SCC Rules (n53) app II art 9.

arbitrators.[90] Like interim measures, emergency arbitrators' decisions are supposed to be voluntarily complied with. The reason is usually the parties' consent to emergency arbitration, which means a contractual agreement on the binding nature of such decisions. However, if a party fails to comply with an emergency interim measure, the other party has three options.

First, the party may request the emergency arbitrator to revisit the decision. For instance, the LCIA Arbitration Rules foresee the right of the emergency arbitrator before the formation of the arbitral tribunal to "confirm, vary, discharge or revoke, in whole or in part, any order of the Emergency Arbitrator and/or issue an additional order; … make an additional award as to any claim for emergency relief presented in the emergency proceedings but not decided in any award of the Emergency Arbitrator".[91] A similar provision is found in the SIAC Arbitration Rules. Second, the party may refer the matter to the arbitral tribunal and request a review of the emergency arbitrator's decision. The drawback of this approach is the need to wait for the tribunal's constitution. However, once formed, the tribunal may award damages if it finds that the opposing party's failure to comply with the emergency decision caused harm. "This will require the claimant to establish a chain of causation between the non-compliance and the further loss or damage allegedly suffered".[92] Additionally, the party may request that adverse inferences be drawn from the non-compliance. "If a party is unable to provide a valid reason for failing to comply with such measures, it is both natural and logical to assume that the information withheld is adverse to the party's interests".[93] The tribunal will assess whether the non-compliance was justified or simply an excuse. Moreover, the tribunal has the discretion to take non-compliance into account when allocating costs. "Any failure to comply with the

[90] Alessandro Villani, Manuela Caccialanza 'Interim Relief through Emergency Arbitration: An Upcoming Goal or Still an Illusion?' (2019) Kluwer Arbitration Blog <https://arbitrationblog.kluwerarbitration.com/2017/07/14/interim-relief-emergency-arbitration-upcoming-goal-still-illusion/> accessed 15 June 2025.
[91] LCIA Rules (n58) art 9B (12).
[92] Sim (n5) 324.
[93] Sim (n5) 326.

emergency arbitrator's decision is a factor which the arbitral tribunal would be fully entitled to take into account in reaching a determination on costs."[94]

Third, the party may refer to national courts. "The first issue is whether an emergency arbitration decision is expressly enforceable under the laws of the place of enforcement."[95] If not, another key issue is whether such a decision constitutes an arbitral award under the New York Convention. The New York Convention is silent on interim measures. It traditionally applies to final and binding awards that resolve substantive issues. Emergency arbitrator decisions are typically temporary and subject to revision or termination by the arbitral tribunal once constituted. However, a decision does not need to address the parties' substantive legal claims to be considered a final arbitral award; it is enough for the decision to resolve a specific request for relief, even if that relief is interim.[96] In *Publicis Communication v. True North Communications Inc.*, the US Court of Appeals for the Seventh Circuit court viewed the order as a 'discrete, time-sensitive issue' that was 'final and ripe for confirmation', and thus held that the interim order was enforceable under the New York Convention.[97] It seems that the interpretation of whether the decision on interim measures could be enforceable or not depends on the jurisdiction and discretion of a court. "From the time the emergency arbitration decision is issued, until such time as it no longer remains in force, the emergency arbitrator's decision remains binding on the parties, and settles the claimant's request for interim relief for that period".[98]

Notably, the Model Law does not explicitly cover emergency arbitration. As discussed in Chapter One of this thesis, Article 17H (1) of the Model Law provides that "interim measures

[94] Sim (n5) 328.
[95] Ibid.
[96] Sim (n5) 338.
[97] Ibid
[98] Sim (n5) 339.

issued by an arbitral tribunal shall be recognized and binding".[99] This raises the question of whether an emergency arbitrator qualifies as an arbitral tribunal. To remove such uncertainties, national laws should be amended. For instance, Singapore's International Arbitration Act explicitly empowers courts to enforce orders of emergency arbitrators.[100] Similarly, Hong Kong's Arbitration Ordinance includes provisions allowing enforcement of such decisions.[101] In contrast, jurisdictions lacking such provisions may present significant obstacles. Courts may refuse enforcement on procedural grounds, question the emergency arbitrator's jurisdiction, or find that the relief does not meet local standards of arbitral finality or due process. Thus, while institutional rules give binding force to emergency arbitrators' decisions, their enforceability across borders remains fragmented and depends heavily on the domestic legal framework of the enforcing jurisdiction. This highlights the importance of carefully selecting not only the arbitral institution but also the seat of arbitration, and of evaluating the enforcement landscape in all relevant jurisdictions. The core purpose of emergency arbitration is to provide swift and enforceable interim relief before the main tribunal is in place. These decisions should be efficiently enforceable and should not disrupt the arbitration process. "The enforcement of emergency arbitration decisions has both a sound and principled basis and also gives effect to the intention of the parties in consenting to the availability of the procedure."[102]

CHAPTER 3: KYRGYZSTAN'S LEGAL LANDSCAPE ON EMERGENCY ARBITRATION

Interim measures play a critical role in ensuring the effectiveness and integrity of arbitration by safeguarding the rights of parties and preserving the subject matter of the dispute pending final resolution. Without effective interim measures, parties may face significant risks that

[99] UNCITRAL Model Law (n6) art 17H (1).
[100] Sim (n5) 331.
[101] Sim (n5) 330.
[102] Sim (n5) 329.

undermine the arbitral process. Under the Civil Procedure Code of the Kyrgyz Republic, interim measures shall be allowed only after the court has accepted the claim for proceedings at any stage of consideration of the case, if failure to take such measures may make it difficult or impossible to execute the court decision.[103] This chapter provides a critical overview of the Kyrgyz national legal regime governing interim measures in arbitration. It argues that the current absence of emergency arbitration provisions represents a significant gap and that introducing it is a necessary reform. The chapter examines how institutionalizing the emergency arbitration mechanisms could substantially improve the functionality and global competitiveness of Kyrgyzstan as a preferred seat of arbitration. Furthermore, it discusses the legal standards that should be adopted to ensure the effective implementation of emergency arbitration.

3.1. National Legal Framework Governing Interim Measures in Kyrgyzstan

Arbitration proceedings in Kyrgyzstan are governed by the Law of the Kyrgyz Republic "On Arbitration Courts in the Kyrgyz Republic", adopted in 2002. The Law on Arbitration Courts provides that "unless the parties have agreed otherwise, the arbitral tribunal may, at the request of either party, order interim measures to secure the claim concerning the subject matter of the dispute". [104] The Rules of the International Court of Arbitration under the Chamber of Commerce and Industry of the Kyrgyz Republic (ICA CCI KR) similarly allow a tribunal to grant interim measures upon a party's request.[105] In practice, the ICA CCI KR, as the most active and well-established arbitral institution in the jurisdiction, has applied this provision by issuing interim relief. However, parties most frequently request measures directed at third

[103] Civil Procedure Code of the Kyrgyz Republic No 14 (25 January 2017) art 142.
[104] Law of the Kyrgyz Republic "On Arbitration Courts in the Kyrgyz Republic" No 135 (30 July 2002) art 22.
[105] International Court of Arbitration under the Chamber of Commerce and Industry of the Kyrgyz Republic, Arbitration Rules (2021) art 36.

parties, such as freezing the opposing party's assets.[106] Since the tribunal lacks authority over non-signatories to the arbitration agreement, such measures fall outside the tribunal's competence.

Article 22 of the Law on Arbitral Courts emphasizes the voluntary nature of interim measures and the parties' right to exclude the tribunal's power to review interim measures.[107] Moreover, the requested interim relief shall be connected to the subject of the dispute. However, neither the Law on Arbitral Courts nor the institutional rules specify the types of interim measures that may be granted, nor do they establish a detailed procedural framework for issuing such relief. In the absence of detailed legislative regulation for arbitration procedures, arbitrators rely on analogies from procedural law, specifically on the validity of the application and the proportionality of those measures to prevent significant harm.[108] The Civil Procedure Code provides a non-exhaustive list of interim measures available to parties seeking judicial support in safeguarding their rights. These include, inter alia, the seizure of property or funds belonging to the respondent, limited to the amount claimed and associated legal costs; prohibitory injunctions restraining the respondent from engaging in specified conduct; mandatory injunctions compelling the respondent to undertake certain actions; injunctions addressed to third parties, preventing them from disposing of the property or discharging obligations about it; suspension of the enforcement or sale of property in cases where the claimant seeks its release from seizure; and suspension of enforcement proceedings where the underlying enforcement instrument is being challenged in court.[109]

[106] Asel Sherboto, Aibek Chekoshev, 'Measures to Secure a Claim in Arbitration Proceedings' ICA CCI KR < https://www.arbitr.kg/index.php?act=view_material&id=117> accessed 15 June 2025.
[107] Law on Arbitration Courts (n104), art 22.
[108] Sherboto, Chekoshev (n106).
[109] Civil Procedure Code (n103) art 144.

The ICC CCI Rules provide that the arbitral tribunal is entitled to issue intermediate decisions on interim measures.[110] The definition of 'award' under the ICA CCI KR Rules includes decisions on interim measures, and such decisions are enforceable in the same manner as arbitral awards.[111] Decisions of the arbitral tribunal shall be executed voluntarily in accordance with the procedure and within the time limits set out in arbitral tribunal's decision.[112] The arbitral tribunal's authority to issue interim measures does not preclude the possibility of their enforcement through the issuance of an execution writ by a competent court. However, its practical application remains highly improbable and, in most instances, arguably ineffective.[113] The reason is the possibility of appealing to higher courts.[114] As noted by Natalia Alenkina, a party in possession of the tribunal's decision may apply to the national courts and request a writ of execution. However, the opposing party may subsequently challenge the decision in appeal and cassation instances, which may significantly delay the appeal process.[115] "…It may often be more practical to seek interim measures directly from the Kyrgyz courts rather than seeking recognition and enforcement of tribunal-ordered interim measures within the Kyrgyz legal system…".[116]

Moreover, it is important to distinguish between voluntary compliance with interim relief issued by the tribunal and the enforcement of such measures through coercive measures, requiring court intervention.[117] A party of arbitration may file a request for interim measures at the place

[110] ICA CCI KR Rules (n105) art 45.2.
[111] ICA CCI KR Rules (n105) art 1, 36.
[112] Law on Arbitration Courts (n104) art 40.
[113] Sherboto, Chekoshev (n106).
[114] Natalia Alenkina, 'Kyrgyzstan: Court Seizes Aircraft in Support of International Arbitration' (2024) no 2 ICC 37.
[115] Interview with Natalia Alenkina, (Associate Professor at American University of Central Asia; Member of the Scientific Advisory Council of the Supreme Court of the Kyrgyz Republic; Former Member of the ICC International Court of Arbitration), telephone interview, 14 June 2025.
[116] Alenkina (n114) 37.
[117] Sherboto, Chekoshev (n106).

of the arbitration, the defendant's residence, or the location of the defendant's assets.[118] As noted in relevant commentary, "the court's jurisdiction to grant interim measures is based on the connection between the parties or the arbitral proceedings and Kyrgyzstan".[119] Such application must include a certified copy of the statement of claim submitted to the arbitral tribunal, along with a notarized copy of the arbitration agreement.[120] However, notarizing a copy of the arbitration agreement poses a challenge in most applications.[121] In practice, Kyrgyz law prohibits notarizing copies of documents that were not originally notarized. Thus, it is at the discretion of a judge to decide on sufficient compliance of a party with this requirement. For instance, the court accepted a copy of the arbitration agreement and a letter from the arbitral institution on the receipt and registration of the request for arbitration.[122] According to the Research on the Attitude of National Courts to Arbitration in Kyrgyzstan, 45% of surveyed judges reported having personally considered cases involving applications for interim measures in the context of arbitration proceedings, with the majority of such cases concerning the seizure of property.[123] An application for securing a claim must be reviewed by the court no later than the day after it is received without notifying the respondent or other parties involved in the case.[124] However, in that case, any interested party may file a private complaint in response. This means that although interim relief may be granted ex parte in urgent situations, the rights of affected parties are preserved through judicial oversight. Moreover, Article 145 of the Civil Procedure Code allows courts to request case materials from the arbitral tribunal when considering appeals related to interim measures. The abovementioned provisions undermine

[118] Civil Procedure Code (n103) art 143.
[119] Alenkina (n114) 36.
[120] Civil Procedure Code (n103) art 143.
[121] Alenkina (n114) 36.
[122] Alenkina (n114) 35.
[123] 'Arbitration Proceedings in the Kyrgyz Republic: Modern Challenges and Solutions' (2020) 3/2020 Turar <https://jusmundi.com/en/document/pdf/publication/ru-treteiskoe-razbiratelstvo-v-kyrgyzskoi-respublike-sovremennye-vyzovy-i-puti-resheniia-2020> accessed 16 June 2025.
[124] Civil Procedure Code (n103) art 145.

both arbitral confidentiality and the principle of non-intervention. Interim measures may be canceled by the same court upon application of the people participating in the case.[125] Although Kyrgyz law recognizes the concept of interim measures in arbitration, the practical enforceability of such measures remains limited.

Further limitations arise from the absence of provisions allowing parties to request interim relief before the constitution of the arbitral tribunal under the ICA CCI KR Rules. The party should refer to national courts or wait for the formation of the tribunal. The parties are given fifteen days to appoint arbitrators and fifteen days for arbitrators to appoint the chairperson.[126] However, in case of failure to appoint an arbitrator within the stipulated timeframe, the President of the institution makes such appointment within five days.[127] As noted by Natalia Alenkina, the formation of the tribunal can take weeks or months due to arbitrators' challenges and the complexity of the dispute matter.[128] As was discussed, this gap is particularly problematic in urgent cases where immediate action is required to prevent irreparable harm.

3.2. Reforming the Framework for Emergency Arbitration in Kyrgyzstan

The current legal framework in Kyrgyzstan does not adequately address the practical needs of parties seeking urgent interim relief in arbitration proceedings. One of the most significant shortcomings is the absence of a legal provision allowing for interim measures to be granted before the constitution of the arbitral tribunal. The party should not only wait for the tribunal's formation but also for the time to decide on interim measures. "The arbitral tribunal will require time following formation to organize the proceedings before it is in a position to consider such an application".[129] Emergency arbitration is not solely a tool for addressing extreme urgency

[125] Civil Procedure Code (n103) art 148.
[126] ICA CCI KR Rules (n105) art 25, 26.
[127] ICA CCI KR Rules (n105) art 25, 26.
[128] Interview (n115).
[129] Sim (n5) 234.

before tribunal formation. It serves additional critical functions that strengthen the arbitration process as a whole. In the author's view, the institutionalization of emergency arbitration would significantly enhance both the effectiveness and the credibility of Kyrgyzstan's arbitral framework.

First, it will keep the integrity of arbitration. Parties often choose arbitration due to its perceived advantages, such as neutrality, efficiency, and flexibility. Parties generally prefer to resolve all procedural and substantive matters within the arbitral framework rather than involving national courts. Thus, it is important to allow for the effective issuance and enforcement of emergency interim measures within arbitration itself. This supports party autonomy and minimizes the risk of forum fragmentation. Second, emergency arbitration preserves the confidentiality of disputes. Unlike proceedings in national courts, which are often public and may expose sensitive commercial or financial information, emergency arbitration ensures that urgent disputes are resolved within the confidential nature of the arbitral process. This is particularly important where reputational risks, trade secrets, or other confidential data may be at stake. Confidentiality can be a strong incentive to prefer the possibility of seeking interim relief within arbitration. Moreover, the role of the emergency arbitrator is limited in scope and carefully tailored. Emergency arbitrators are not requested to adjudicate the merits of the dispute. Their function is narrowly tailored to assess whether interim measures are justified under the circumstances. Emergency arbitration mechanisms promote the competence and impartiality of arbitrators. Emergency arbitrators are typically appointed by reputable arbitral institutions based on subject-matter expertise and neutrality. This institutional vetting process ensures a high standard of professionalism. Moreover, resorting to state courts for interim relief not only risks undermining the arbitral process but may also introduce issues of jurisdictional conflict and forum shopping.

The absence of an emergency arbitration mechanism in Kyrgyzstan represents a substantial gap in its arbitration infrastructure. Even where interim measures are granted by a constituted arbitral tribunal, Kyrgyz courts demonstrate inconsistent approaches to their enforcement. This inconsistency stems from the absence of clear procedural guidelines. To provide legal certainty and encourage its use, the Law on Arbitration Courts should be amended to introduce a clear definition of emergency arbitration. This definition should reflect international standards and explicitly state that emergency arbitration refers to proceedings initiated for urgent interim relief before the arbitral tribunal is formally constituted. Institutional rules should establish a strict timeframe within 24 to 48 hours for the appointment of emergency arbitrators by arbitral institutions. The author believes that applicants should be given an opportunity to request interim measures even prior to submitting a formal notice of arbitration, provided that such submission is carried out within seven to ten days thereafter. Upon receiving the application, the president of the arbitral institution should determine its admissibility based on the application.[130] This means that the requesting party must explain why interim measures are being requested, why the relief cannot await the constitution of a tribunal, and should provide as many supporting reasons as possible.

The powers and authority of emergency arbitrators must be established in the Law on Arbitration Courts and Civil Procedure Code. These should include the power of emergency arbitrators to order interim measures that are binding on the parties, with legal effect equivalent to orders issued by a constituted arbitral tribunal. As it was noted in Chapter Two, the enforceability of emergency arbitrators' decisions is the most debated issue. To address this, the Law on Arbitration Courts of the Kyrgyz Republic should expressly define the legal status, powers, and scope of authority of emergency arbitrators. A reference in this regard is the Singapore International Arbitration Act, which underlines that any order or direction issued by

[130] ICC Rules (n45) app V art 1(5).

an arbitral tribunal during arbitration proceedings can be enforced like a court order, and defines the term of arbitral tribunal to include emergency arbitrators.[131] Moreover, the enforceability of emergency arbitrators' decisions should be expressly foreseen in the Civil Procedure Code of the Kyrgyz Republic, requiring national courts to recognize and enforce such decisions unless exceptional grounds for refusal apply. To ensure consistency with international standards, the national laws should be harmonized with Article 17 H of the Model Law, which provides that an interim measure shall be recognized as binding and enforced upon application to the competent court, irrespective of the country in which it was issued.[132] This clarity will reduce judicial hesitation and enhance parties' confidence in emergency procedures.

3.3. Applicable Legal Standards for Successful Implementation of Emergency Arbitration in Kyrgyzstan

Countries that have not yet incorporated an emergency arbitration mechanism can learn from the shortcomings observed in jurisdictions where such measures are already in place. Once appointed, the emergency arbitrator should consider the jurisdictional issue. For instance, the jurisdictional applicability of the ICC Emergency Arbitrator Provisions depends on whether the parties are signatories to, or successors to an arbitration agreement under the ICC Rules, provided that the agreement was concluded after 1 January 2012, the parties have not opted out, and the arbitration is not based on a treaty.[133] The next stage involves an admissibility text. Under Article 29 (1) of the ICC Rules, the admissibility of an emergency arbitration application depends on whether the applicant can demonstrate the need for urgent interim measures that cannot await the tribunal constitution. The ICC Task Force distinguishes between urgency as an admissibility criterion and urgency on the merits, allowing the fully constituted tribunal to

[131] International Arbitration Act (Singapore, Cap 143A, 2002 Rev Ed) s 12(6).
[132] UNCITRAL Model Law (n6) art. 17 H.
[133] ICC Rules (n45) art 29(5)-(6).

reassess urgency independently.[134] Thus, urgency should be analyzed by the president of the arbitral institution for admissibility purposes, and subsequently by the emergency arbitrator at a later stage when deciding the merits of the application. Urgency is the main criterion for granting emergency relief. Article 29 of the ICC Rules requires that the interim relief be so urgent that it cannot wait for the tribunal's constitution. While most emergency arbitrators followed this standard, some have also considered factors like the applicant's role in creating urgency, compelling reasons for the request, and the need to prevent imminent irreparable harm.[135] The strong connection between urgency and the risk of irreparable harm is critical, as tribunals generally decline to grant interim measures when the requested relief can be adequately addressed by the tribunal.[136]

Although various institutional rules phrase the requirement of irreparable harm differently, what is common is that harm is immediate, substantial, and irreversible.[137] According to the ICC Task Force analysis of the first 80 ICC emergency arbitrator cases, in at least 21 cases, emergency arbitrators interpreted 'irreparable harm' broadly, viewing it as serious and substantial harm rather than requiring a strict or literal definition.[138] Interpreting this term in its strictest literal sense would limit the granting of interim measures to only the most severe circumstances; therefore, it is generally more appropriate for the emergency arbitrator to adopt a flexible or less rigid approach.[139] The burden of proof regarding the possible irreparable harm should rest with the applicant, rather than the respondent.[140]

[134] ICC Commission on Arbitration and ADR, *Report of the ICC Commission on Arbitration and ADR: Emergency Arbitrator Proceedings* (Task Force Report, 2019) 5.
[135] Task Force Report (n134) 24.
[136] Sim (n5) 243.
[137] Sim (n5) 226.
[138] Task Force Report (n134) 26.
[139] Alnaber (n1) 451.
[140] Sim (n5) 248.

Another core requirement is the establishment of a prima facie case. Although the merits of the case will be accessed by the arbitral tribunal, the emergency arbitrator must look at the reasonable prospect of success. Notably, the Model Law requires to show "a reasonable possibility that the requesting party will succeed on the merits of the claim".[141] The emergency arbitrator's role is confined to determining the need for urgent relief before the tribunal constitution, without assessing the full merits of the case due to time and evidentiary limitations.[142]

The next requirement is a balance of hardship, referring also to a proportionality test. "The emergency arbitrator is tasked with balancing justice between the parties, by identifying the course which is most likely to avoid or minimize eventual injustice in the event that emergency measures are wrongly imposed or refused."[143] This means that the emergency arbitrator is required to assess whether if relief is denied the harm to the requesting party would substantially outweigh the potential harm to the respondent if relief is granted. The emergency arbitrator shall prevent excessive hardship. All the above-mentioned requirements are standards that are designed to ensure that emergency relief is granted only when strictly necessary. Such standards preserve the integrity of the arbitration process. Adopting similar criteria in Kyrgyzstan's arbitration framework would align national law with international best practices.

CONCLUSION

This thesis examined the importance of interim measures in arbitration, emphasizing the necessity for parties to be granted such relief before the constitution of the arbitral tribunal. The absence of a pre-tribunal mechanism creates legal uncertainty and undermines the effectiveness

[141] UNCITRAL Model Law (n6) art 17A (1(b).
[142] Sim (n5) 252.
[143] Sim (n5) 257.

of arbitration, as parties may be unable to preserve their rights or prevent harm promptly. Emergency arbitration has been introduced by most arbitral institutions as an innovation in response to this gap. Urgency is the primary reason for emergency arbitration, but it has other advantages, including integrity of the arbitration, confidentiality, the appointment of neutral arbitrators with sector-specific experience, relevant linguistic and cultural. The thesis explored procedural requirements for granting interim measures and practical challenges with its enforcement. The thesis analyzed reasons why the emergency mechanism became a worldwide trend. It looked at institutional rules of leading arbitration institutions from various parts of the world such as the LCIA, SIAC, ICC, and SCC and explored common features of emergency arbitrations that are successfully implemented in practice. Moreover, the thesis explored practical challenges related to the enforcement of emergency relief and examined how various jurisdictions are addressing these issues.

The legal framework in Kyrgyzstan, being the author's jurisdiction was critically assessed. Although Kyrgyz law grants arbitral tribunals the power to issue interim measures, in practice this authority is rarely utilized effectively. The current underdeveloped regulatory framework highlights a need for reform to ensure the availability and enforceability of timely interim relief. The thesis concludes that Kyrgyz legislation should be amended to incorporate provisions for emergency arbitration, ensuring the binding nature and enforceability of emergency measures. National laws should be harmonized with the UNCITRAL Model Law, particularly Article 17 H, to bring the domestic framework in line with international standards. Institutionalizing emergency arbitration in Kyrgyzstan is not merely a procedural reform. It is a step toward aligning with global arbitration practices and promoting a more efficient, fair, and reliable legal environment.

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