Kluwer Arbitration Blog

LIDW 2025: A Practitioner's Guide to Emergency Measures and Interim Relief in Arbitration

Silvia Lamprinopoulou · Saturday, June 14th, 2025

As part of the final day of London International Disputes Week ("LIDW") 2025, Atkin Chambers and CMS hosted a panel titled *"Interim Relief and Other Skirmishes – An Arbitration Practitioner's Perspective"*. Focusing on both pre-emptive and interim measures in arbitration, the session brought together Camille Slow KC (Atkin Chambers), Riaz Hussain KC (Atkin Chambers), and Philip Norman (CMS) to examine the procedural manoeuvres, tactical considerations, and legal ambiguities that arise when parties seek relief outside the final award. From emergency arbitrator appointments to security for costs and preservation orders, the discussion provided a detailed analysis of the complex interplay between tribunals, national courts, and emergency relief mechanisms.

When Urgency Strikes: Choosing the Right Forum

The session opened with the fundamental question: where should parties seek interim relief before a tribunal is constituted? Camille Slow identified two options— emergency arbitration or recourse to national courts—but stressed that the correct choice depends on the context. What relief is sought? Where are the assets? Which jurisdiction offers enforceability? For each scenario, one option might be more appropriate than the other. Philip Norman illustrated this through a case involving a Singapore-seated arbitration governed by English law. One party initiated insolvency proceedings in Indonesia before the tribunal was constituted. The question became: was interim relief available, and if so, where? A Singaporean court? An emergency arbitrator? What motivates a party to undermine an arbitration agreement, he said, may range from a lack of trust in the arbitrators or the seat, to a strategic attempt to secure a more favourable outcome, or even a basic misunderstanding of the arbitration process. Regardless of the reason, such actions create disruption, particularly as a tribunal can never override the sovereignty of a national court. The key takeaway, he noted, is that the integrity of the arbitration agreement must be kept front and centre, even when navigating multiple jurisdictions.

Emergency Arbitrators: Quick Relief, Fragile Authority

Riaz Hussain turned to emergency arbitrators ("EAs"), highlighting both their utility and

limitations. Designed for speed, EAs can provide swift intervention before a tribunal is in place. The very point of interim relief is that if you wait, you risk losing the opportunity to obtain it altogether. But their decisions typically do not bind the tribunal, and can be equally overturned or reinforced later. Even on issues such as costs, EAs may issue decisions that ultimately must be incorporated into the final award to have a binding effect. While institutional rules governing emergency arbitration were said to vary, unpredictability remains a common risk. There is detailed guidance on how to appoint emergency arbitrators, but far less on how they should exercise their powers once appointed. Their discretion often mirrors that of a court or full tribunal, but the lack of binding precedent or clearly defined standards means parties operate in a legal grey zone.

The Court Route: Sovereignty and Jurisdictional Challenges

Even with a valid arbitration agreement, national courts can still play a critical role in interim relief. Hussain noted that courts will only intervene where permitted by institutional rules and national law, and typically only in emergencies, unless agreed otherwise by the parties. He emphasized the strongest advantage of court intervention: courts can compel third parties (such as banks), whereas tribunals cannot. However, the interplay between institutional rules and national court procedures can be difficult to navigate, requiring careful consideration of factors such as the location of assets and the respondent's domicile. Under section 44 of the English Arbitration Act, for instance, courts can grant relief even when the seat lies outside the UK—but only in rare, practically justified cases. This reflects the broader reality that national courts can serve as a supportive mechanism, but their role is limited to clearly justified situations.

Security for Costs, Preservation, Testing and Tactical Complexity

Slow explained that security for costs remains one of the most contentious forms of interim relief. While most arbitral rules allow tribunals to grant it, they rarely define clear thresholds or criteria. Practitioners are left to navigate based on jurisdictional practice and the tribunal's broad discretion, which is often exercised with little procedural guidance. Simply showing that the other side might not pay is not sufficient. Nor is the mere existence of assets in multiple jurisdictions persuasive, given the inherently international nature of arbitration. However, indications that a party is actively moving assets could be a decisive factor. In her experience, practical difficulties can also arise—for instance, when an arbitral institution is unwilling to hold a large sum as security. In such cases, parties are often asked to identify alternative arrangements for securing costs. Consent-based arrangements for security also carry risks. Once the arrangement is made, you cannot go back and ask for additional protection, simply because there was no narrative in the first place to return to.

Hussain addressed evidentiary preservation measures. Unless explicitly excluded by the arbitration agreement, most tribunals will have—and exercise—the discretion to grant such relief. This may include orders relating to the sale of goods, the collection of samples, or other protective measures. He emphasised that the threshold for any interim measure is typically a risk of irreparable harm—harm that cannot be adequately compensated by damages. However, meeting this threshold can be particularly challenging when the opposing party is a state or has significant assets, making the threat of non-compensation less compelling. In his experience, tribunals are generally more willing than courts to grant interim relief, but he cautioned practitioners against carrying this

pessimism. In particular, when it comes to security for costs, persuading a tribunal to engage with the substance of the dispute at an early stage can be difficult.

Slow offered examples from construction disputes, where tribunals were asked to permit destructive testing of built structures. In one instance, the tribunal allowed limited testing and deferred compensation decisions to the final award. In another case, a party requested to exclude the opposing expert from site visits unless their own expert was present—a request that was declined. These examples illustrate the tribunal's broad discretion in managing procedural matters, balancing the interests of both parties while upholding fairness.

Closing Reflections

Norman concluded the session by noting that none of the topics discussed are straightforward. Indeed, what became clear through this panel discussion is that practitioners in international disputes must navigate legal ambiguities across jurisdictions and institutional regimes. Whether sought before the constitution of a tribunal or during the arbitral process, these interventions demand not only urgency and precision but also a clear strategic vision. While interim measures may not determine the final result, they frequently shape the pace, strategy, and pressure points of the arbitration.

This post is part of Kluwer Arbitration Blog's coverage of London International Disputes Week 2025.

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