Journal of Ecohumanism
2025
Volume: 4, No: 1, pp. 4270 – 4280
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v4i1.6310

The Optimization Paths of China's International Commercial Arbitration Interim Measures System

MengXin[1], Mohd Shahril Nizam Md Radzi[2]

Abstract

As globalization gains momentum, international commercial arbitration has emerged as a pivotal mechanism for addressing cross-border commercial conflicts. Interim measures, integral to the arbitration process, serve to safeguard the interests of parties and mitigate potential harm during disputes. Yet, China's system of interim measures within international commercial arbitration exhibits certain shortcomings, particularly concerning the application and enforcement of legal provisions, necessitating further refinement. This paper, grounded in the context of interim measures in international commercial arbitration, examines the fundamental functions and current application of these systems. It also scrutinizes the legislative and practical challenges China faces in this domain. Drawing from the experiences of other jurisdictions, the author offers preliminary insights into enhancing China's relevant systems, thereby contributing to the ongoing development of international commercial arbitration in the country.

Keywords: *International Commercial Arbitration, Interim Measures System, Application of Law, Legislative Perfection, International Comparison.*

Introduction

As the tapestry of global economic interconnection weaves ever tighter, the incidence of commerce straddling national borders is witnessing a marked escalation. International commercial arbitration, standing sentinel as a pivotal apparatus in the quiver of international dispute resolution, is commanding the escalating focus of an expanding cohort of sovereign states and corporate entities. Within the arbitration odyssey, interim measures emerge as a bulwark of preemptive defense, adeptly forestalling losses that, once incurred, cannot be rectified prior to the pronouncement of an arbitral decree, thereby shielding the vested interests of the contending parties. These measures, as a vanguard of protection, are instrumental in averting irreparable harm in the pre-award phase, ensuring the preservation of party rights (Dilboboev, 2022). To illustrate, in the realm of international commercial arbitration where intellectual property rights are at stake, a litigant may be tempted to shuffle or obscure assets tied to such rights or obliterate pivotal evidence as the arbitration unfolds. Such actions can cast a long shadow over the tribunal's capacity to mete out a fair judgment and the victorious party's prospects of securing rightful recompense (Thuan and Linh, 2021). The timely interposition of interim measures can place a freeze on pertinent assets and safeguard critical evidence, furnishing a sturdy underpinning for the unimpeded advance of arbitration proceedings and the realization of the ultimate award. The extant Arbitration Law and Civil Procedure Law of China exhibit certain lacunae in the realms of legislative precision, the matrix of issuance authority, the spectrum of measures, and the calibration of review standards. The practice of international commercial arbitration in China, with its interim measures system and application, is still in the throes of maturation, evidencing a discrepancy when juxtaposed with the vanguard of international practice. The ambit of this paper is to dissect the pivotal role and practical application of interim measures in the context of international commercial arbitration, to delve into the systemic inadequacies ensconced within China's prevailing legal architecture, and to proffer conceptual blueprints for the refinement of China's pertinent legal ecosystem by leveraging international exemplars.

[1] Faculty of law, Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor Malaysia, 43600, Email: mengxinlaw0623@163.com, (Corresponding Author)

[2] 2School of Law, Nan Tong University, Nantong City, Jiangsu Province, China, 226019

Journal of Ecohumanism
2025
Volume: 4, No: 1, pp. 4270 – 4280
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v4i1.6310

Concept and Importance of Interim Measures

Relevant Overview of Interim Measures

The notion of interim measures was initially articulated within the sphere of international law under the aegis of the United Nations Commission on International Trade Law (UNCITRAL). The phrase "interim measure of protection" made its debut in the Model Law on International Commercial Arbitration, promulgated by UNCITRAL in 1985, subsequently serving as the genesis for the concept of "interim measures."

In the practice of different countries, there are different names for them. In China's Civil Procedure Law and Arbitration Law, the term "conservatory measures" is used, and in Britain, it is called "Mareva Injunction". Different scholars have different opinions, but their essence is the same, the more representative is the definition made by the American scholar Gary born. In his view, the so-called provisional measure refers to a protective measure used to protect both parties and their assets throughout the pending arbitration proceedings, and this protective measure can be used to circumvent the factors that may affect the final arbitral award due to procedural problems (Latilo et al., 2024). Uch as bias or procedural delays. Domestic scholars on this concept also have a different view, for example, Professor Zhao Xiuwen in the "modernization of international commercial arbitration," a book to make the following explanation, in China, interim measures historically known as preservative measures refers to the substantive issues of the case to make a final award, based on the request of one party, in view of the subject matter involved in the case. Measures depending on the circumstances of the case, in order to avoid one party to the arbitration proceedings from transferring or eliminating evidence or property by virtue of its favourable conditions, so that the arbitral tribunal cannot make a reasonable ruling, or even if it is made, because interim measures have different names in the legal traditions of different countries, so in order to avoid confusion, this article uses the original name of the case. Are referred to collectively as “interim measures” (Tang, 2022).

Interim measures are widely used in practice, but for a long time, there has been no unified understanding of the definition and nature of interim measures, resulting in a variety of criteria for its classification in practice. Some countries divide the interim measures in international commercial arbitration into four categories with reference to the second paragraph of Article 17 of the Model Law; China follows the needs of arbitration practice and takes this as the standard, and it is most appropriate to divide them into the following three categories with reference to the contents of the internationally accepted Model Law (Bizikova, 2022). The measure of preserving status quo refers to the temporary measure used to require the parties to do certain acts or prohibit them from doing certain acts in order to prevent the occurrence of damage after the dispute is accepted and before the final arbitral award is made (Kalantzi, 2023). This kind of measure is close to the behaviour preservation measure of our country. Measures to prevent the transfer of property (Orders for Preservation or Inspection of Property), also known as property preservation measures, include: the seizure of property related to arbitration, the appointment of a third person to keep the property involved, the issuance of an injunction prohibiting the parties from transferring property, and so on. Property preservation measures are also reflected in the law of our country.

Evidence preservation measures are a series of measures taken to prevent one party from concealing or destroying evidence during the period from the acceptance of disputes by the arbitral tribunal to the making of the arbitral award. The laws of all countries basically provide for such interim measures, and China's Arbitration Law also expressly provides for evidence preservation measures. In addition to the main types of measures described above. There are also issues such as prohibition of aggravation of a dispute (Prohibiting Aggravation of Parties' Dispute), A series of measures requiring the performance of specific contractual or other obligations (Orders Requiring Specific Performance of Contractual or Other Obligations), cost guarantees, etc. However, they only exist in the practice of individual countries and are not universal, so they will not be discussed (Pascale, 2021).

Journal of Ecohumanism
2025
Volume: 4, No: 1, pp. 4270 – 4280
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v4i1.6310

Importance of Interim Measures

In the context of international commercial arbitration, the complexity of cases is heightened due to the multinational origins of the parties involved. Additionally, the diverse nationalities of arbitrators contribute to the extended timeframe required for the constitution of an arbitral tribunal (Grodl, 2021). The presence of a malevolent party, employing tactics to impede or obstruct the arbitration process, underscores the critical importance of interim measures. Statistics indicate that the ICC International Arbitration Court requires a minimum of one and a half years to resolve international disputes prior to the conclusion of arbitration proceedings. Throughout this period, unscrupulous parties may engage in asset transfer and evidence tampering.

To forestall adverse outcomes and preserve the rightful entitlements of the opposing party, the institution of interim measures has become indispensable. Such measures are pivotal for safeguarding interests within the arbitration context (Biresaw, 2022). Safeguarding evidence, real property, personal effects, and financial holdings requires robust mechanisms to uphold the existing state of affairs. The function of the arbitral tribunal, along with the execution of interim measures, is to defend the legitimate claims of the involved parties. If parties were to depend exclusively on the judiciary for the effective safeguarding and post-decision enforcement, the relevance of the arbitral tribunal's role would be significantly undermined. The promulgation and execution of interim measures enhance the credibility of arbitration, ensuring the seamless conduct of arbitration processes and the attainment of arbitration's intended benefits. In parallel, they ensure the protection of the parties' interests and contribute to realizing the overarching goals of arbitration. Moreover, the effective implementation of interim measures is conducive to the evolution of international commercial arbitration (Zhang and Shen, 2022). For the international commercial arbitration system to be selected and to flourish, it must address the needs of the parties. Only those entities capable of safeguarding party interests can be recognized as the preeminent avenues for resolving disputes (Budidjaja, 2021). As protective mandates, the enforcement of interim measures removes procedural impediments, assists in the fulfillment of arbitral decisions, instills confidence in the parties, and stimulates the growth of international commercial arbitration.

Main Problems Existing in the Interim Measures System of International Commercial Arbitration in China

The Rigor of the Legislation of Interim Measures Needs to Be Improved

The current Chinese legislative framework concerning interim measures in arbitration exhibits a certain lack of formal rigor, evident in three primary areas. Initially, the terminology employed in the Arbitration Law and the Civil Procedure Law's interim measures provisions is not sufficiently precise. To start, the phrase "interim measures" is absent from China's arbitration legislation, despite the system's transient nature being a defining characteristic. The modern scope of interim measures extends beyond mere preservation, rendering the use of "preservation measures" as a proxy for "interim measures" increasingly outdated. Furthermore, the frequent use of the term "people's court" in the foreign-related arbitration interim measures provisions limits the applicability of these provisions, as they fail to account for scenarios where the referenced "court" could be a foreign entity, thereby restricting the provisions' utility. Secondly, there are issues with the phrasing of some temporary measures clauses in both the Arbitration Law and the Civil Procedure Law, such as ambiguous semantics and ill-defined criteria.

For instance, Article 28, Paragraph 3 of the Arbitration Law states: "In the event that the application is found to be mistaken, the applicant is liable to indemnify the respondent for any losses sustained as a result of the property preservation measures." This wording fails to elucidate the precise meaning or the criteria for determining an "erroneous application," and it does not delineate the scope of "indemnification for losses" that the applicant is obligated to offer. In a similar vein, Article 103, Paragraph 1 of the Civil Procedure Law contains the ambiguous expression "may arise from the actions of one party or other causes," leaving uncertainty as to whether "actions" encompass legal behaviors and what exactly "other causes" entail. Furthermore, the regulations concerning interim measures are scattered within both the Arbitration Law and the Civil Procedure Law. The Arbitration Law references these measures in Articles 28, 46, and 68, whereas the Civil Procedure Law discusses them across Chapters 6, 9, 12, 26, and 27.

Journal of Ecohumanism
2025
Volume: 4, No: 1, pp. 4270 – 4280
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v4i1.6310

Additionally, the Arbitration Law's treatment of interim measures in foreign-related arbitrations is confined to evidence preservation in Article 68 of Chapter 7. For property preservation, one must refer to Article 65 of the same chapter and Article 28 (2) of the Arbitration Law, which mandates: "Should a party seek property preservation, the Arbitration Commission is required to forward the party's request to the people's court in conformity with the pertinent provisions of the Civil Procedure Law." This procedure necessitates referencing numerous chapters across both legal documents, reflecting a lack of cohesion in the legislative approach to interim measures (Fan, 2021).

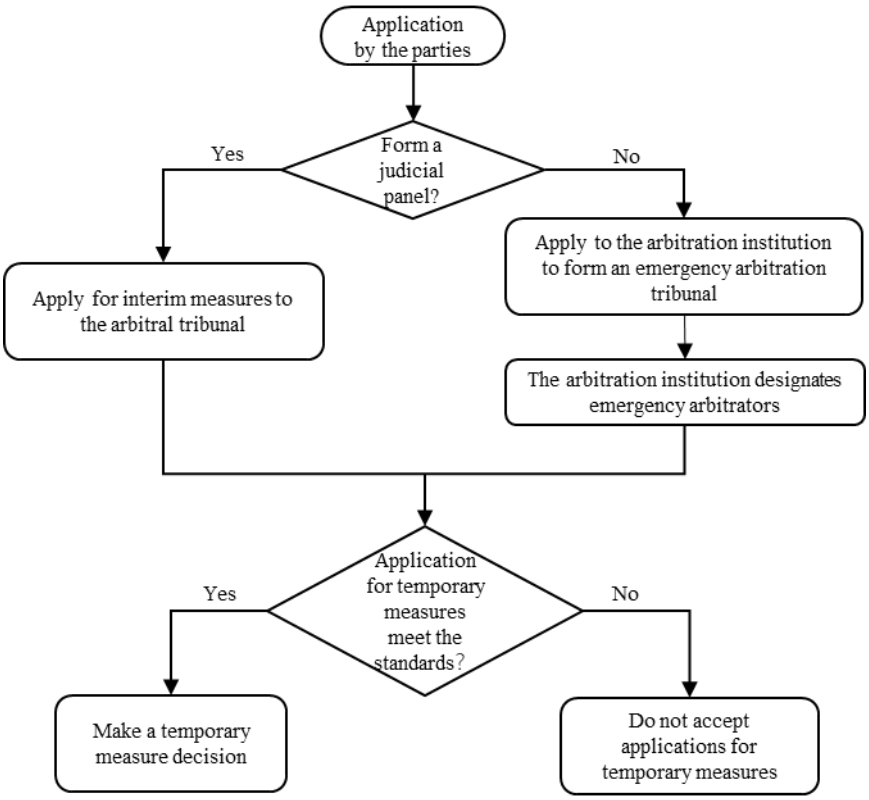

Figure 1. Flow Chart of the Parties' Application for Arbitration

During the arbitration process (as depicted in Figure 1), the initial step for the parties is to ascertain whether an arbitral tribunal is in place. In the absence of a constituted tribunal, parties have the option to approach the arbitration body (like the Arbitration Commission) to request the urgent formation of a tribunal or the designation of emergency arbitrators. Conversely, if the tribunal is already established, parties can directly submit an application for interim measures to it. Throughout the review phase, it is crucial to assess whether the application for interim measures adheres to the requisite criteria, leading to either a decision on granting interim measures or a rejection of the application (Murthy, 2022). This flowchart effectively encapsulates the procedural steps and pivotal decision nodes for applying interim measures within the arbitration framework, offering a visual aid that enhances comprehension of the arbitration process.

The System of Interim Measures Adopts the Lagging "Single-Track System" Mode of Issuing Power

The Arbitration Law and the Civil Procedure Law both dictate that the authority to issue interim measures resides solely with the court, operating under a "single-track" system. Nevertheless, when the court is tasked with determining the issuance of interim measures in arbitration matters, it entails a re-examination of the case's facts, evidence, and additional documentation. This process inevitably extends the duration from the application for interim measures to their execution, thereby contravening the principles of timeliness and procedural expediency that are hallmarks of arbitration, and it also diminishes the autonomy inherent in

Journal of Ecohumanism
2025
Volume: 4, No: 1, pp. 4270 – 4280
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v4i1.6310

international commercial arbitration (Picht, 2023). In contrast, both the Model Law and arbitration legislations from other jurisdictions confer upon the arbitral tribunal varying degrees of discretion to decide on interim measures. As opposed to the "single-track" approach where either the court or the arbitral tribunal exclusively holds the power to issue such measures, a majority of countries have adopted a "dual-track" system where both entities share this prerogative. The "single-track" model, as adhered to by China's arbitration legislation, has exerted a detrimental influence on arbitration practice. A prime example is the arbitration case involving Yingrui Cayman Limited (hereafter "Yingrui") and the Rugao Glass Fiber Factory in Jiangsu Province (hereafter "Glass Fiber Factory"), which was accepted by the China International Economic and Trade Arbitration Commission (hereafter "CIETAC") in 2001. The Glass Fiber Factory lodged an application for evidence preservation in August 2001. Owing to the discord among the panel of judges at the Nantong Intermediate People's Court, it was not until February 2002, after consulting with a higher court, that the court issued a ruling on evidence preservation.

This protracted procedure spanned six months, affording the Anglo-Swiss Company ample opportunity to manipulate and obliterate evidence, thereby adversely impacting the claimant's prospects of securing restitution via the ultimate adjudication. The root cause of this issue lies in the fact that China's arbitration legislation does not vest the arbitral tribunal with the authority to enact interim measures. Essentially, the arbitral tribunal, being the primary adjudicator of the dispute, possesses a deeper understanding of the case's intricacies compared to the court, which has limited knowledge of the case's factual basis. As a result, the judicial procedure for promulgating safeguarding interim measures is comparatively onerous and protracted, which might afford the defendant an opportunity to evade legal responsibilities. It is worth highlighting that before the promulgation of the Civil Procedure Law of the People's Republic of China (for Trial Implementation) in 1982 [hereafter known as the Civil Procedure Law (for Trial Implementation)], the 1956 Provisional Rules of Procedure of the Foreign Trade Arbitration Commission of the China Council for the Promotion of International Trade included Article 15, which stated: "The Chairman of the Arbitration Commission may, at the behest of a party, establish provisional measures related to the materials and proprietary interests of the parties to protect their rights." This provision historically empowered the chairman of the China Arbitration Commission to enact interim arbitration measures, diverging from the "single-track system" where the court alone held the power to issue such measures under the Chinese Arbitration Rules. Nevertheless, after the Civil Procedure Law (for Trial Implementation) came into effect, CIETAC revised its arbitration regulations to assert that the power to issue interim measures is vested solely with the courts, thus leading to a regression of the more advanced arbitration regulations.

Inconsistent Legislative Provisions on the Types of Interim Measures

The stipulations regarding the categories of interim measures diverge between the Arbitration Law and the Civil Procedure Law. Specifically, the Arbitration Law enumerates solely two forms of interim measures: those pertaining to the preservation of property and the safeguarding of evidence, omitting any reference to measures of behavioral preservation. In practical scenarios, where there is a necessity to impose temporary actions on a party, either mandating certain conduct or proscribing specific behaviors—for instance, halting ongoing acts of infringement—to shield the interests of the opposing party or to maintain the unimpeded progression of arbitration, the reliance on the limited scope of interim measures provided by the Arbitration Law appears to be strained. The arbitration process is delineated in Figure 2.

Journal of Ecohumanism
2025
Volume: 4, No: 1, pp. 4270 – 4280
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v4i1.6310

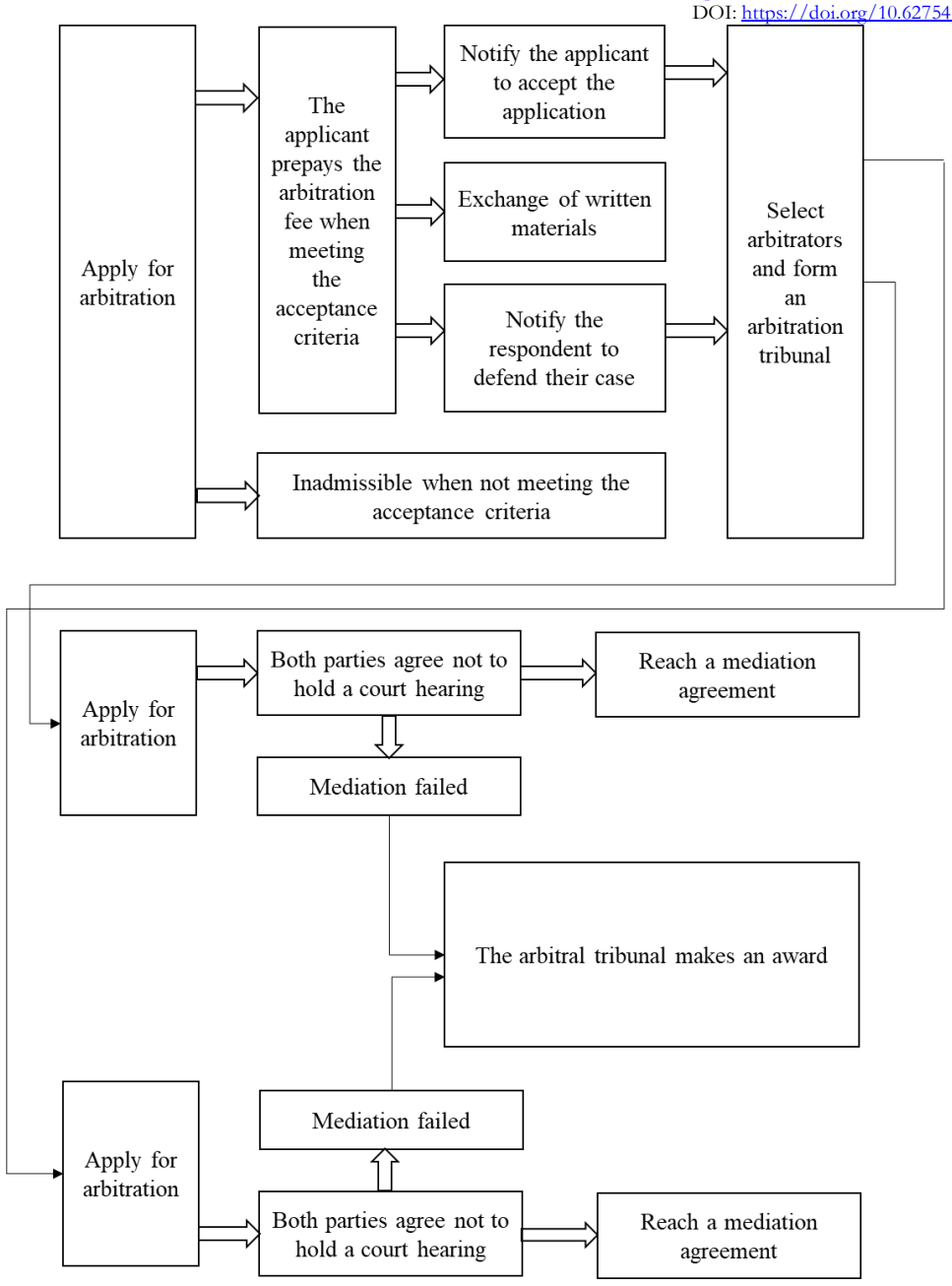

Figure 2. Schematic Diagram of the Arbitration Process

Nonetheless, when the Civil Procedure Law was updated in 2012, it included a clause for the preservation of actions. Conversely, the Arbitration Law, when it was revised in 2017, failed to immediately synchronize with this update, thus affecting the consistency of China's civil and commercial legal system. According to Articles 28, 46, and 68 of the Arbitration Law, during the arbitration proceedings, when there are applications for the preservation of property and evidence, the Arbitration Commission is required to submit these applications to the court. The court then takes on the responsibility of issuing interim measures in line with the relevant provisions of the Civil Procedure Law. However, these provisions in the Civil Procedure Law do not align harmoniously with the aforementioned articles of the Arbitration Law. For example, Article 84 of the Civil Procedure Law states that "parties may apply to the people's court for the preservation of evidence during litigation," but it does not address whether such applications are applicable in arbitration proceedings. The origin of these inconsistencies may lie in the lack of authority of Chinese

Journal of Ecohumanism
2025
Volume: 4, No: 1, pp. 4270 – 4280
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v4i1.6310

arbitral tribunals to issue interim measures (Łągiewska, 2024). In arbitration, the application of interim measures depends on the powers granted to the courts by the Civil Procedure Law within the context of civil litigation, in order to avoid duplication in legislation. As a result, the provisions of the Arbitration Law regarding the issuance of interim measures are applied in conjunction with the Civil Procedure Law, which inevitably leads to discrepancies.

Lack of Substantive Review Standards for the Conditions for the Issuance of Interim Measures

The issuance of interim measures is contingent upon both formal and substantive review criteria. Formal review criteria encompass, for instance, assessing whether the application and supporting evidence submitted by the applicant for property preservation comply with the stipulated requirements, as well as whether the applicant has furnished the requisite guarantees. Substantive review criteria involve evaluating the presence of circumstances warranting the application of interim measures and the necessity of their issuance (Gu, 2021). Currently, China's legislative framework for interim measures is deficient in substantive review standards. Broadly speaking, the provisions in China's existing arbitration legislation regarding the circumstances under which interim measures can be applied are overly simplified and general. Articles 28 and 46 of the Arbitration Law provide only a rough outline of the situations in which applicants may seek property and evidence preservation. Similarly, Articles 84 and 103 of the Civil Procedure Law offer general guidelines for when applicants may petition and when courts may independently issue interim measures. Moreover, neither the Arbitration Law nor the Civil Procedure Law specifies any additional conditions for the issuance of interim measures (Wouters and Hegde, 2022). The vagueness and generality of these legislative provisions result in poor operability, and the absence of substantive review standards hinders the court's ability to directly ascertain whether the "circumstances" cited by the applicant for interim measures align with those that legally permit such measures. Judicial interpretations issued by the Supreme People's Court have only addressed the application of act preservation in intellectual property disputes (encompassing both litigation and arbitration cases) and have outlined some substantive review standards for evidence preservation in litigation procedures, but they do not extend to the application of act preservation and evidence preservation in other arbitration case types.

As far as property preservation in international commercial arbitration is concerned, not only the judicial interpretation does not clearly stipulate the substantive review standard of property preservation, but also the rulings made by Chinese courts lack the reasoning that property preservation in arbitration meets the substantive review standard and the citation of relevant legal provisions. On the one hand, the above problems reflect the inconsistency between legislation and practice, on the other hand, they also lower the legal threshold for issuing interim measures, which easily leads to the abuse of arbitration rights by the parties. For example, in practice, because property preservation is easy to obtain permission, the phenomenon of forcing the other party to reconcile with property preservation or even damaging the legitimate rights and interests of others through malicious preservation occurs frequently. In addition, the lack of substantive review standards for the issuance of interim measures will also lead to uncertainty in the responsibility of the court. Because interim measures may cause damage to the rights and interests of the parties, the court should be subject to more explicit conditions when exercising the right of issuance, so that it can know the authorized and unauthorized matters in form and substance, and determine the scope of authority. The lack of clear provisions on substantive review standards in legislation means that the judiciary will lack a specific judgment on whether the right to apply for preservation is necessary, which will either make it difficult for the court to restrict its discretion, which may lead to abuse of interim measures, or make the court over-review and delay the issuance period (Nordlund, 2022). Or it may make the court more inclined to apply the clause that the applicant provides security to avoid the risk and responsibility of issuing interim measures, which leads to the trend that the court pays more attention to formal review than substantive review in the current judicial practice, and even replaces substantive review with security review.

Suggestions on the optimization of China’s international commercial arbitration interim measures system

Journal of Ecohumanism
2025
Volume: 4, No: 1, pp. 4270 – 4280
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v4i1.6310

To Enhance the Formal Rigor of Legislation on Interim Measures

Comparatively speaking, the Exposure Draft of Arbitration Law is similar to the Model Law, which formally adopts the term of "interim measures" for the first time, collectively referring to three kinds of protective measures, and sets up a special section in Chapter 4 "Arbitration Procedure" to stipulate the three kinds of protective measures, which is more centralized and integrated in style. It is noteworthy that the Draft Arbitration Law also recognizes the term "act preservation" which is not used in the Arbitration Law and the Civil Procedure Law. Nevertheless, certain provisions within the Draft Arbitration Law still present issues, including ambiguous language and ill-defined criteria. For instance, Article 47, Paragraph 3, states that "a party causes damage due to an erroneous application," yet it fails to define what constitutes an "erroneous application," does not enumerate the particular scenarios that would qualify as such, and lacks clarity regarding the attribution principle for an "erroneous application" (Sacerdoti and Borlini, 2023).

To address this, enhancing the provision's clarity can be achieved by detailing the common instances of "application error" and incorporating a catch-all provision. Furthermore, the designation "people's court" is consistently applied in all interim measures clauses referencing the judiciary in Chapter 4, Section 3 of the Draft Arbitration Law, which is subject to scrutiny. This is because, in certain foreign-related arbitration cases, the foreign court empowered to issue an interim measure ruling cannot be accurately termed or easily construed as a "people's court." This leads to a predicament where the applicant's interim measure application struggles to gain support from the foreign court. Such a dilemma has arisen in past arbitration practices due to the use of the term "people's court" in arbitration rules (Wouters and Hegde, 2022). To circumvent this issue, Article 23 (1) of the 2024 CIETAC Arbitration Rules specifies that if a party applies for conservatory measures, the Arbitration Commission shall forward the party's request to the court with jurisdiction as designated by the party. The term "court with jurisdiction" is utilized in lieu of "people's court" to resolve the aforementioned practical dilemma (Hamann, 2021). Consequently, the Draft Arbitration Law could also substitute the term "people's court" in specific provisions with "court with jurisdiction" to preempt potential issues.

Add the Provisions of The Principle of Priority of the Right to Issue Interim Measures

To a certain degree, China's "single-track" approach to the issuance of interim measures by the court represents a more conservative regulatory model. The Draft for Soliciting Opinions of the Arbitration Law, specifically Articles 46 and 49, which grant arbitral tribunals the authority to issue interim measures, signifies a significant advancement in China's arbitration legislation. However, it does not further elucidate the principle of priority for issuing interim measures under a "dual-track" system. Should we take inspiration from the British arbitration legislation's "arbitration tribunal priority" model, it would, in effect, empower the arbitral tribunal, a mechanism of civil autonomous dispute resolution, with the prerogative to supersede state public power organs. The absence of judicial oversight could readily result in the arbitrary exercise of the tribunal's power to issue measures, potentially undermining the authority of China's extant legal framework.

Emulating the "court priority" model from German arbitration legislation might raise concerns about excessive judicial interference in the autonomy of arbitration, potentially diminishing arbitration efficiency (Sacerdoti and Borlini, 2023). In line with China's civil and commercial legislative requirements to prevent the abuse of rights and to support arbitration through the judiciary, a middle ground can be established regarding the priority of issuance rights: Arbitral tribunals would be endowed with the authority to issue interim measures. Should an applicant successively approach both the court and the arbitral tribunal for such measures, precedence would be given to the entity first petitioned; in cases of simultaneous application, the court's decision would take priority. Furthermore, without impeding the arbitration process, the court retains the right to review, at any time and upon request or suo motu, any interim measure issued by the arbitral tribunal. If the court deems it necessary for the measure's enforcement, it may offer recommendations or proceed to amend, annul, or reissue the measure. This "compromise" approach to the issuance of interim measures empowers parties to independently select the issuing authority. When the arbitral tribunal serves as the issuer, the court's non-involvement in the review process enhances the arbitration's procedural efficiency (Chahine et al., 2021). Such judicial restraint ensures that arbitration

Journal of Ecohumanism
2025
Volume: 4, No: 1, pp. 4270 – 4280
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v4i1.6310

proceedings are not disrupted, thereby preventing undue interference. The court's intervention is reserved for instances where the arbitral tribunal may be misusing its issuance rights, allowing for timely adjustments in response to applications or inherent authority, thus balancing power oversight with arbitration autonomy. It is imperative for China's arbitration interim measures system to adopt this "compromise" issuance rights model to effectively bridge and transition from the long-standing "single-track" approach.

Delete The Words "Other Short-Term Measures Deemed Necessary by the Arbitral Tribunal"

The Draft for Soliciting Opinions of the Arbitration Law, in its Article 43, introduces the objectives of the interim measures system and outlines that the court may order measures such as property preservation, act preservation, and evidence preservation, thereby addressing the gaps in China's existing arbitration legislation. Nonetheless, this provision also states that an arbitral tribunal is not only empowered to issue the aforementioned measures but also has the discretion to implement "other short-term measures as deemed necessary by the arbitral tribunal." This is akin to the British arbitration legislation, effectively imposing no restrictions on the types of interim measures that an arbitral tribunal can issue (Labanieh et al., 2021). At its core, this provision aims to grant the arbitral tribunal full discretion, thereby maximizing the remedial function of interim measures in specific cases. However, it represents a rigid transplantation of equitable legislative concepts that do not align with the characteristics of China's legal system and arbitration practices. Firstly, should the arbitral tribunal issue a measure restricting the personal freedom of the parties, it would encroach upon the exclusive public power of specific state organs to dispose of citizens' personal rights, clearly constituting a misplacement of authority. Secondly, as per Article 48, parties may seek the people's court's assistance in enforcing "other interim measures" issued by the arbitral tribunal, which raises questions about the court enforcing measures it has no authority to issue or may never have occasion to issue. Thirdly, the Draft Arbitration Law fails to establish any limitations on the discretion granted to the arbitral tribunal under this provision, potentially leading to an abuse of power by the arbitral tribunal (Nottage, 2021).

The parties to the arbitration may also request the arbitral tribunal to issue the above-mentioned unreasonable interim measures in accordance with the provisions of Article 43, which constitutes an abuse of the rights of the parties. According to the principle of "power restriction" and "prohibition of abuse of rights", it is suggested that the provision of "other short-term measures deemed necessary by the arbitral tribunal" should be deleted. Comparatively speaking, the Draft Arbitration Law is similar to the Model Law, which only stipulates the purpose or application of each measure, but does not stipulate the specific application mode of the measure, and the practical operability is not strong. Therefore, we can refer to the British arbitration legislation appropriately and add specific applicable methods such as "seizure, seizure and freezing of relevant property" under the provisions of property preservation. In the preservation of conduct, it is not appropriate to list the temporary measures to restrict personal freedom. In view of the experience of German arbitration legislation, such measures are too strict and not practical, and the damage they may cause is difficult to conform to the principle of proportionality, so they should be excluded. Appropriate consideration can be given to enumerating the applicable ways of act preservation similar to the German arbitration legislation "temporary injunction" and stipulating its special applicable circumstances.

Fill the Gaps in the Substantive Review Criteria for Interim Measures

The condition of issuance is a restriction on the right to issue interim measures, and the substantive review standard is a necessary component of the condition of issuance. Firstly, for the publishing subject, in a sense, the more detailed the publishing conditions, the more formal and substantive review standards, the clearer the list of responsibilities, the smaller the risk the publishing subject bears, and the exercise of the publishing right. However, the Draft Arbitration Law only stipulates the formal review standard of "according to the application of the parties", and does not mention the substantive review standard that any court or arbitral tribunal should meet when issuing interim measures, so it is necessary to fill the legislative gap (Marotti, 2021). Secondly, some studies have shown that in the practice of the system of interim measures in international commercial arbitration, there are often unreasonable situations in which the standard of interim measures issued by arbitral tribunals is lower than that of courts, and the advantages

Journal of Ecohumanism
2025
Volume: 4, No: 1, pp. 4270 – 4280
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v4i1.6310

and disadvantages of the power of interim measures issued by arbitral tribunals granted by Chinese arbitration legislation have not yet been demonstrated in practice, according to the principles of "power restriction" and "prohibition of abuse of rights". The conditions for the arbitral tribunal to issue interim measures should be higher than those for the court, and can be reflected in the provisions of substantive review standards. Finally, the Draft Arbitration Law stipulates that the applicant may apply for interim measures in the case of "risk of damage" or "possibility of loss of evidence", but it is not clear whether the "risk" or "possibility" mentioned must be urgent, so it can also be clearly stipulated in the substantive review standard. Through judicial interpretations and guiding cases, the Supreme People's Court has set the substantive review standards that the court should follow when issuing specific interim measures, such as the necessity standard for the application of evidence preservation in intellectual property civil proceedings and the principle of proportionality of damage for the application of act preservation in intellectual property disputes. Another example is the reasoning of the Supreme People's Court's Guiding Case No.217 on the application of the necessity standard of act preservation and the principle of proportionality of damage to disputes over infringement of utility model patents. Although these standards of substantive review are relatively specific, scattered and have different legal effects, they all provide a plan for the legislation of the standards of substantive review of interim measures in arbitration, and also provide a reference for how the system should be coordinated with practice, but the deficiency is that they do not discuss the standard of the possibility of the applicant winning the lawsuit, so the following provisions can be added to the Draft for Soliciting Opinions of the Arbitration Law. First, increase the standard of prima facie evidence. The Draft Arbitration Law may stipulate that the applicant must submit authentic prima facie evidence to prove that the issuance of interim measures is necessary, that is, to prove that there is an urgent and significant risk of damage to his rights and interests, which will be difficult to remedy if the interim measures are not issued in time. The attestation must reach the degree of reliance of the issuing subject. Second, increase the standard of the possibility of winning a case. The Draft Arbitration Law may provide that the issuing body must examine the applicant's likelihood of winning the case and issue interim measures only when the applicant is likely to win. The review of the likelihood of success shall not affect the subsequent judgment on the substantive issues of the case. Among them, the criteria for judging the size of "possibility" can be determined by judicial interpretation, or by the discretion of the issuing subject according to the facts of the case. Third, the principle of increasing the proportion of damage. The Exposure Draft of the Arbitration Law may provide that an interim measure may only be issued if the harm that may result from its issuance is less than harm that may result from its failure to issue. Among them, the quantification or judgment criteria of "less than" can also be determined by judicial interpretation or at the discretion of the issuing subject. Fourthly, the standard of substantive review of interim measures issued by arbitral tribunals should be appropriately raised. When the arbitral tribunal examines whether an interim measure should be issued, the prima facie evidence on which it is based must have stronger probative force, and the applicant's case must be more likely to win. In terms of the principle of the proportion of damage, we can draw lessons from the provisions of the Model Law and apply the judgment standard of "far less than".

Conclusions

Within the realm of international commercial arbitration, the interim measures system stands as a vital instrument for safeguarding the legitimate interests of the parties involved, fulfilling an essential function. Nonetheless, China's current legislative framework for interim measures confronts several inadequacies. These include a lack of rigor in legislative form, an outdated "single-track system" for the issuance of measures, and inconsistencies in the types of provisions, all of which impede their effective utilization in arbitration proceedings. To foster the advancement of international commercial arbitration in China, it is imperative to refine the existing system. Specifically, legislative clarity regarding the categories and conditions for the application of interim measures is required, along with enhancements to the substantive review standards and the exploration of a "dual-track system." In this system, both the arbitral tribunal and the court would share the authority to issue measures. Such reform initiatives would serve to augment the timeliness and flexibility of interim measures, bolster the credibility and efficiency of international commercial arbitration, and elevate the global competitiveness and influence of China's arbitration system.

Journal of Ecohumanism
2025
Volume: 4, No: 1, pp. 4270 – 4280
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v4i1.6310

References

Dilboboev, N. (2022). Issues for Enforcement of Decisions of the International Investment Arbitration on Interim Measures. Available at SSRN 4299453.

Thuan, H. Q., & Linh, T. H. T. (2021). The Possibility of Recognizing Emergency Arbitration in National Laws of Countries with Development Commercial Arbitration: Experience from VietNam. Contemp. Asia Arb. J., 14, 185.

Latilo, A., Uzougbo, N. S., Ugwu, M. C., Oduro, P., & Aziza, O. R. (2024). Management of complex international commercial arbitrations: Insights and strategies.

Tang, Z. (2022, January). A Study of China's Arbitration System Based on a Review of International FTA Arbitration Mechanisms. In 2021 International Conference on Social Development and Media Communication (SDMC 2021) (pp. 610-614). Atlantis Press.

Bizikova, L. (2022). On Route to Climate Justice: The Greta Effect on International Commercial Arbitration. Journal of International Arbitration, 39(1).

Kalantzi, A. (2023). Parallel Arbitral Proceedings: An Analysis of the Issue of Parallel Arbitrations in International Commercial Arbitration within the European Legal Space. The Italian Review of International and Comparative Law, 3(1), 1-27.

Pascale, G. (2021). Provisional Measures Under the African Human Rights System. Provisional Measures Issued by International Courts and Tribunals, 253-275.

Grodl, L. (2021). England to become the prime jurisdiction for international commercial disputes–anti-suit injunction as a tool for assurance. The Lawyer Quarterly, 11(2).

Biresaw, S. M. (2022). Appraisal of the Success of the Instruments of International Commercial Arbitration vis-a-vis International Commercial Litigation and Mediation in the Harmonization of the Rules of Transnational Commercial Dispute Resolution. J. Disp. Resol., 1.

Zhang, B., & Shen, W. (2022). When International Commercial Arbitration meets China's sanction laws: living together but remaining apart?. Journal of International Dispute Settlement, 13(4), 665-688.

Budidjaja, T. (2021). Country Update: Commercial Arbitration in Indonesia. Asian Dispute Review, 23(4).

Fan, K. (2021). The 2021 Proposed Amendments to the Arbitration Law of China: A New Era of Arbitration?. ICC Dispute Resolution Bulletin, (3).

Murthy, R. R. (2022). Why Can't We Be FRANDs?: Anti-Suit Injunctions, International Comity, and International Commercial Arbitration in Standard-Essential Patent Litigation. Vand. L. Rev., 75, 1609.

Picht, P. G. (2023). Arbitration Through the Unified Patent Court's Arbitration Centre. Research Handbook on Intellectual Property Rights and Arbitration, Edward Elgar Publishing, Forthcoming.

Łągiewska, M. (2024). New technologies in international arbitration: a game-changer in dispute resolution?. International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique, 37(3), 851-864.

Gu, W. (2021). China's Law and Development: A Case Study of the China International Commercial Court. Harvard International Law Journal, Forthcoming, University of Hong Kong Faculty of Law Research Paper, 14.

Wouters, J., & Hegde, V. (2022). Reform of global trade governance: the role of the European Union. Journal of European Integration, 44(5), 715-730.

Nordlund, F. (2022). Determining the applicable law to the arbitration agreement in the absence of a choice of law clause under Hong Kong Law: a call for renewed internationalism. Arbitration International, 38(1-2), 43-57.

Sacerdoti, G., & Borlini, L. (2023). Systemic changes in the politicization of the international trade relations and the decline of the multilateral trading system. German Law Journal, 24(1), 17-44.

Wouters, J., & Hegde, V. (2022). Reform of global trade governance: the role of the European Union. Journal of European Integration, 44(5), 715-730.

Hamann, A. (2021). Living without the WTO Appellate Body–Procedural Developments in International Trade Dispute Settlement. The Law & Practice of International Courts and Tribunals, 20(1), 166-190.

Sacerdoti, G., & Borlini, L. (2023). Systemic changes in the politicization of the international trade relations and the decline of the multilateral trading system. German Law Journal, 24(1), 17-44.

Chahine, J. H., Lombardi, E. M., Lutran, D., & Peulvé, C. (2021). The acceleration of the development of international business mediation after the Singapore convention. European Business Law Review, 32(4).

Labanieh, M. F., Hussain, M. A., & Mahdzir, N. (2021). The legal capacity of international conventions and laws to legalise e-arbitration. Journal of International Studies, 17, 211-237.

Nottage, L. (2021). International commercial and investor-state arbitration: Australia and Japan in regional and global contexts. Edward Elgar Publishing.

Marotti, L. (2021). A "Game of Give and Take": The ITLOS, the ICJ and Provisional Measures. Provisional Measures Issued by International Courts and Tribunals, 131-146.