The Baker & McKenzie International Arbitration Yearbook 2012-2013

JURIS
Questions About This Publication

For assistance with shipments, billing or other customer service matters, please call our Customer Services Department at:
1-631-350-2100.

To obtain a copy of this book, call our Sales Department at: 1-631-351-5430
Fax: 1-631-351-5712 or 1-631-351-5430
Toll Free Order Line: 1-800-887-4064 (United States and Canada)

See our web page about this book:
www.arbitrationlaw.com

COPYRIGHT © 2013 by JurisNet, LLC
All rights reserved. No part of this publication may be reproduced in any form or by any electronic or mechanical means including information storage and retrieval systems without permission in writing from the publisher.

Printed in the United States of America

This is the sixth edition of The Baker & McKenzie International Arbitration Yearbook, an annual series established by the Firm in 2007. This collection of articles comprises reports in key jurisdictions around the globe on arbitration. Leading lawyers of the Firm’s International Arbitration Practice Group, a division of the Firm’s Global Dispute Resolution Practice Group, report on recent developments in national laws relating to arbitration and address current arbitral trends and tendencies in the jurisdictions in which they practice.

For this 2012-2013 edition, the topic of Section C of each chapter is the grant and enforcement of interim measures in international arbitration. Each jurisdiction examines whether arbitral tribunals are authorized to grant interim measures in that jurisdiction, and if so, the conditions under which those measures are granted and the means by which they are enforced.

The aim of this Yearbook is to highlight the more important recent developments in international arbitration, without aspiring to be an exhaustive case reporter or a textbook on arbitration in the broad sense. It is hoped that this volume will prove a useful tool for those contemplating and using arbitration to resolve international business disputes.

JurisNet, LLC
71 New Street
Huntington, New York 11743 USA
www.arbitrationlaw.com
**TABLE OF CONTENTS**

Foreword .................................................................................................................. xxix
About the 2012-2013 B&M Yearbook Editors ..................................................... xxxi
Yearbook Topics .................................................................................................. xxxv
Abbreviations and Acronyms ................................................................................. xxxvii

**ARGENTINA**
Gonzalo E. Cáceres and Santiago L. Capparelli ............................................... 1

A. Legislation, Trends and Tendencies ................................................................. 1
   A.1 Legislation .................................................................................................... 1
   A.2 Draft Legislation ....................................................................................... 5
B. Cases ................................................................................................................ 6
   B.1 Arbitrability I: Scope of Arbitration Agreement ............................................ 6
   B.2 Arbitrability II: Arbitral Jurisdiction to Decide Constitutional Claims .......... 7
   B.3 Annulment Request Filed against a Jurisdictional Decision ......................... 8
C. The Grant and Enforcement of Interim Measures in International Arbitration ...... 10
   C.1 Tribunal-Ordered Interim Measures .......................................................... 10
   C.2 Court-Ordered Interim Measures ............................................................... 12

**AUSTRALIA**
Leigh Duthie, Alex Wolff and Mia Livingstone ...................................................... 17

A. Legislation, Trends and Tendencies ................................................................. 17
   A.1 Legislative Framework .............................................................................. 17
   A.2 Amendments to Australia’s Legislative Framework ..................................... 18
   A.3 Specialist Arbitration Lists ....................................................................... 18
   A.4 Australian Arbitral Institutions .................................................................. 20
   A.5 Trends ....................................................................................................... 21
Table of Contents

B. Cases .................................................................................................................. 22

B.1 *Casaceli*: Parties Will Be Compelled to Arbitrate
Even if the Arbitration Is to Be Seated Abroad
and Includes Claims That Fall under Australia’s
Mandatory Consumer Laws ............................................................................. 22

B.2 *Dampskibsselskabet*: Parties Seeking to Avoid
Arbitration Awards Bear the Evidentiary Burden ........................................... 23

B.3 *Traxys Europe*: Public Policy Cannot Be Used
to Escape an Award .................................................................................................. 25

B.4 *Castel Electronics v. TCL Air Conditioner*:
Breach of Natural Justice Strictly Interpreted in Favor of Enforcing Awards .......... 26

B.5 *TCL Air Conditioner (Zhongshan) v. Castel
Electronics*: Validity of the IAA ........................................................................... 28

C. The Grant and Enforcement of Interim Measures in
International Arbitration ............................................................................................. 29

C.1 Tribunal-Ordered Interim Measures ................................................................. 29

C.2 Court-Ordered Interim Measures ....................................................................... 31

C.3 Enforcement of Interim Measures ........................................................................ 33

AUSTRIA
Alexander Petsche and Heidrun E. Preidt .......................................................... 35

A. Legislation, Trends and Tendencies ................................................................. 35

B. Cases .................................................................................................................. 36

B.1 Lack of Oral Hearing Does Not Constitute a Violation
of the Right to Be Heard .......................................................................................... 36

B.2 The Parties and Not the Arbitral Institution Are
Liable for Payment of the Arbitrators’ Fees ............................................................ 37

B.3 Claim for Annulment of a Shareholders’
Resolution is Arbitrable Even if the Award
Might Have an Effect on Third Parties ................................................................. 38
Table of Contents

C. The Grant and Enforcement of Interim Measures in International Arbitration ................................................................. 39
  C.1 Tribunal-Ordered Interim Measures ....................................... 39
  C.2 Court-Ordered Interim Measures ............................................ 41
  C.3 Enforcement of Interim Measures .......................................... 42

AZERBAIJAN
Gunduz Karimov and Jamil Alizada ................................................... 45
  A. Legislation, Trends and Tendencies ................................................ 45
    A.1 General ................................................................................... 45
    A.2 Types of Arbitration ............................................................... 45
    A.3 Regulation of International Arbitration .................................. 46
    A.4 Protection of Foreign Investment ........................................... 47
    A.5 Public Policy Considerations .................................................. 49
    A.6 The International Commercial Arbitration Court ................... 50
  B. Cases ............................................................................................... 52
    B.1 General ................................................................................... 52
    B.2 Recognition of Cases in 2012 ................................................. 52
  C. The Grant and Enforcement of Interim Measures in International Arbitration ................................................................. 53
    C.1 Tribunal-Ordered Interim Measures ....................................... 53
    C.2 Court-Ordered Interim Measures ............................................ 53
    C.3 Enforcement of Interim Measures .......................................... 55

BELARUS
Alexander Korobeinikov ................................................................. 57
  A. Legislation, Trends and Tendencies ................................................ 57
    A.1 Domestic Legislation .............................................................. 57
    A.2 International Treaties ............................................................. 60
Table of Contents

A.3 Trends and Tendencies ................................................................. 60
B. Cases ............................................................................................. 61
C. The Grant and Enforcement of Interim Measures in
   International Arbitration ................................................................. 62

BELGIUM
Koen De Winter and Michaël De Vroey ............................................. 65
A. Legislation, Trends and Tendencies ................................................ 65
B. Cases ............................................................................................. 65
   B.1 State Courts Competent Notwithstanding Valid
       Arbitration Clause .................................................................. 65
   B.2 State Courts Competent to Order Interim or
       Conservatory Measures .......................................................... 68
C. The Grant and Enforcement of Interim Measures in
   International Arbitration ................................................................. 69
   C.1 Tribunal-Ordered Interim Measures ....................................... 69
   C.2 Court-Ordered Interim Measures ............................................ 71

BRAZIL
Joaquim T. de Paiva Muniz, Luis Alberto Salton Peretti
and Leonardo Mäder Furtado .............................................................. 75
A. Legislation, Trends and Tendencies ................................................ 75
   A.1 Commission to Review Brazilian Arbitration Act ................. 75
   A.2 Brazil Ratified the CISG ........................................................ 76
B. Cases ............................................................................................. 76
   B.1 Anti-Arbitration Injunction in Connection With
       an Arbitration Agreement Deemed Null and Void ............... 76
   B.2 State Courts Are Competent to Grant Interim
       Measures before the Commencement of Arbitration .......... 78
# Table of Contents

B.3 The Application of the *Jura Novit Curia* Principle to Arbitration ................................................................. 79  
B.4 Disputes Deriving from Consumer Relations Are Not Arbitrable ................................................................... 80  
B.5 Awards Set Aside at the Seat of the Arbitration Are Not Enforceable in Brazil ................................................ 81  

C. The Grant and Enforcement of Interim Measures in International Arbitration ................................................................. 83  
C.1 Tribunal-Ordered Interim Measures .............................................. 83  
C.2 Court-Ordered Interim Measures ............................................. 84  
C.3 Enforcement of Interim Measures ........................................ 85  

## CANADA  
Matthew J. Latella and Christina I. Doria ........................................ 89  

A. Legislation, Trends and Tendencies ................................................................. 89  
A.1 Legislation ......................................................................................... 89  
A.2 Trends and Tendencies ................................................................. 90  

B. Cases ........................................................................................................ 91  
B.1 *Momentous.ca Corp. v. Canadian American Association of Professional Baseball Ltd.* ........................................ 91  
B.2 *Telestat Canada v. Juch-Tech Inc.* ....................................................... 92  
B.3 *Nearctic Nickel Mines v. Canadian Royalties Inc.* ............... 93  

C. The Grant and Enforcement of Interim Measures in International Arbitration ................................................................. 96  
C.1 Tribunal-Ordered Interim Measures ............................................... 96  
C.2 Court-Ordered Interim Measures ......................................... 97  
C.3 Enforcement of Interim Measures ........................................ 98
Table of Contents

CHILE
Antonio Ortúzar, Sr., Rodrigo Diaz de Valdés and Francisco Grob ................................................................. 101

A. Legislation, Trends and Tendencies .............................................. 101
   A.1 Legislative Framework ......................................................... 101
   A.2 Enforcement of Foreign Arbitral Awards ............................. 102
   A.3 Trends and Tendencies ......................................................... 102

B. Cases ............................................................................................. 102
   B.1 Application for the Complaint Appeal in an International Arbitration ....................................................... 103
   B.2 Application for Interim Measures in an International Arbitration ............................................................... 103

C. The Grant and Enforcement of Interim Measures in International Arbitration .................................................. 104
   C.1 Tribunal-Ordered Interim Measures ..................................... 104
   C.2 Court-Ordered Interim Measures .......................................... 106
   C.3 Enforcement of Interim Measures ........................................ 107

CHINA
James Kwan, Peng Shen and Sarah Zhu ......................................... 111

A. Legislation, Trends and Tendencies .............................................. 111
   A.1 Revision of the CIETAC Arbitration Rules ......................... 111
   A.2 Disputes among CIETAC Branches .................................... 116
   A.3 South China International Economic and Trade
       Arbitration Commission Arbitration Rules ......................... 118
   A.4 Amendments to PRC Civil Procedure Law ....................... 118

B. Cases ............................................................................................. 120

C. The Grant and Enforcement of Interim Measures in
   International Arbitration ............................................................... 121
Table of Contents

C.1 Tribunal-Ordered Interim Measures ..................................... 121
C.2 Court-Ordered Interim Measures .......................................... 122
C.3 Enforcement of Interim Measures ........................................ 124

COLOMBIA
Claudia Benavides ................................................................. 125

A. Legislation, Trends and Tendencies ................................. 125
   A.1 Overview of the Arbitral Legal Framework ................. 125
   A.2 International Arbitration Specifics ....................... 129
   A.3 Trends and Tendencies ............................................ 133

B. Cases ............................................................................... 134

C. The Grant and Enforcement of Interim Measures in
   International Arbitration .................................................. 136
   C.1 Tribunal-Ordered Interim Measures ...................... 136
   C.2 Court-Ordered Interim Measures ......................... 137
   C.3 Enforcement of Interim Measures ......................... 138

CZECH REPUBLIC
Martin Hrodek and Jan Zrcek ...................................................... 141

A. Legislation, Trends and Tendencies .............................. 141
   A.1 Recent Developments in Legislation ................. 141
   A.2 Trends ................................................................. 142

B. Cases ............................................................................... 142
   B.1 Courts Cannot Review Merits of Awards in
       Proceedings to Enforce Foreign Arbitral Awards ...... 142
   B.2 New Grounds for Setting Aside an Award Can
       Be Asserted until First Oral Hearing in the
       Set Aside Proceedings ............................................. 144
   B.3 Matters within the Scope of an Arbitration
       Agreement Can Be Assessed by Courts as
Table of Contents

Preliminary Issues in Other Claims ................................................. 145
B.4 Arbitration Clause in a Lease Not Affected by
Transfer of Title or Termination of the Lease ......................... 146
C. The Grant and Enforcement of Interim Measures in
International Arbitration ...................................................... 148
C.1 Tribunal-Ordered Interim Measures .................................. 148
C.2 Court-Ordered Interim Measures ....................................... 149
C.3 Enforcement of Interim Measures ....................................... 153

FRANCE
Jean-Dominique Touraille, Eric Borysewicz and
Karim Boulmelh .......................................................................... 155
A. Legislation, Trends and Tendencies ....................................... 155
B. Cases ...................................................................................... 156
   B.1 Enforcement of an Arbitral Award during an
       Action to Set Aside the Award or during
       Appeal Proceedings against the Recognition
       and Enforcement Order .................................................... 156
   B.2 Scope of the Arbitration Clause ........................................... 159
C. The Grant and Enforcement of Interim Measures in
International Arbitration ............................................................ 160
   C.1 Tribunal-Ordered Interim Measures ................................ 160
   C.2 Court-Ordered Interim Measures ..................................... 163
   C.3 Enforcement of Interim Measures ..................................... 165

GERMANY
Ragnar Harbst, Heiko Plassmeier and Jürgen Mark .................. 167
A. Legislation, Trends and Tendencies ....................................... 167
   A.1 New Act on the Promotion of Mediation and
       Other Procedures of Alternative Dispute Resolution
Table of Contents

Comes into Force.................................................................167
A.2 Changes within the German Institution of Arbitration ....169

B. Cases ..................................................................................170
  B.1 An Arbitral Tribunal May Be Composed of
      More Than Three Arbitrators ......................................170
  B.2 Breach of Ne Ultra Petita Rule Is Contrary to Public
      Policy and Justifies the Setting Aside of an Award .......171
  B.3 Interpretation of “Arbitration Agreement” ..................174
  B.4 An Arbitral Tribunal That Determines the Amount
      in Dispute for Purposes of a Cost Decision Does
      Not Inadmissibly Act as a Judge in Its Own
      Affairs..............................................................................175
  B.5 Attorneys’ Time Charges Recognized as Recoverable
      Costs................................................................................177
  B.6 Non-compliance with an Agreed Procedure for the
      Taking of Evidence Justifies Vacation of an Award ....180
  B.7 Termination of an Arbitration Agreement because
      of Allegations of Procedural Misconduct and Fraud ....182
  B.8 Preclusion of Reliance on Reasons to Vacate after
      Failure to Challenge in the Country of Origin ..........183
  B.9 No Recognition of Awards Vacated in Their Country
      of Origin..........................................................................186

C. The Grant and Enforcement of Interim Measures in
   International Arbitration ..................................................189
  C.1 Tribunal-Ordered Interim Measures..............................190
  C.2 Court-Ordered Interim Measures..................................193
  C.3 Enforcement of Interim Measures ................................198

HONG KONG
James Kwan and Jasmine Chan..............................................201
Table of Contents

A. Legislation, Trends and Tendencies .................................................. 201
   A.1 Proposed Changes to the HKIAC Administered Arbitration Rules .................................................. 201
   A.2 Latest Developments in Hong Kong Arbitration ................................. 204

B. Cases ............................................................................................. 206
   B.1 Court of Appeal Refused to Set Aside ICC Award ............................. 206
   B.2 Derivative Action Based on Enforcement Order Dismissed .............. 210
   B.3 Application to Set Aside Enforcement Order on Public Policy Ground Dismissed .................. 213

C. The Grant and Enforcement of Interim Measures in International Arbitration .................................................. 215
   C.1 Tribunal-Ordered Interim Measures ............................................. 215
   C.2 Court-Ordered Interim Measures .................................................. 218
   C.3 Enforcement of Interim Measures .................................................. 224

HUNGARY
József Antal Anna Ménes and Dávid Kovács .................................. 227
   A. Legislation, Trends and Tendencies .............................................. 227
      A.1 Legislation ............................................................................ 227
      A.2 Trends and Tendencies ......................................................... 234
   B. Cases ......................................................................................... 235
   C. The Grant and Enforcement of Interim Measures in International Arbitration ........................................ 236
      C.1 Tribunal-Ordered Interim Measures ....................................... 236
      C.2 Court-Ordered Interim Measures ............................................. 237
      C.3 Enforcement of Interim Measures .......................................... 238
Table of Contents

ITALY
Gianfranco Di Garbo and Emanuela Banfi ........................................... 239
A. Legislation, Trends and Tendencies .................................................. 239
   A.1 The Italian Constitutional Court Declares Compulsory
       Mediation Illegitimate in Civil and Commercial
       Disputes ........................................................................... 239
B. Cases ............................................................................................... 241
   B.1 Arbitration Clauses in International Arbitration .................... 241
   B.2 Binary Arbitration Clauses in International
       Arbitration ........................................................................ 241
   B.3 Arbitration Clauses in Corporate Arbitration ....................... 241
   B.4 Recourse for Nullity of the Arbitral Award ......................... 242
   B.5 The Interpretation of the Arbitral Clause ......................... 242
C. The Grant and Enforcement of Interim Measures in
   International Arbitration ............................................................. 243
   C.1 Tribunal-Ordered Interim Measures ..................................... 243
   C.2 Court-Ordered Interim Measures ........................................ 244
   C.3 Enforcement of Interim Measures ........................................ 246

JAPAN
Haig Oghigian, Mami Ohara and Hiroyuki Hamai .......................... 247
A. Legislation, Trends and Tendencies ............................................... 247
   A.1 Historical Background ....................................................... 248
   A.2 Main Features of the Arbitration Law ................................ 249
B. Cases ............................................................................................. 253
   B.1 Court Assistance in Taking Evidence ................................ 253
   B.2 Separability of Arbitration Agreement ............................... 255
   B.3 Public Policy ....................................................................... 258
Table of Contents

B.4 Enforcement Order ............................................................... 259
B.5 Grounds for Setting Aside the Arbitral Award ..................... 261
C. The Grant and Enforcement of Interim Measures in
     International Arbitration ............................................................... 262
     C.1 Tribunal-Ordered Interim Measures ..................................... 262
     C.2 Court-Ordered Interim Measures .......................................... 263
     C.3 Enforcement of Interim Measures ........................................ 264

KAZAKHSTAN
Alexander Korobeinikov and Yekaterina Kolmogorova .............. 265
   A. Legislation, Trends and Tendencies .............................................. 265
      A.1 Domestic Legislation ............................................................ 265
      A.2 International Treaties ............................................................ 267
      A.3 Trends ................................................................................... 267
   B. Cases ............................................................................................. 268
      B.1 Commercial Arbitration Disputes ......................................... 268
   C. The Grant and Enforcement of Interim Measures in
      International Arbitration ............................................................... 269
      C.1 Tribunal-Ordered Interim Measures ..................................... 269
      C.2 Court-Ordered Interim Measures .......................................... 270
      C.3 Enforcement of Interim Measures ........................................ 271

KOREA
June Junghye Yeum and Wonyoung Yu .................................. 273
   A. Legislation, Trends and Tendencies .............................................. 273
      A.1 The Korea Arbitration Act .................................................... 273
      A.2 The Korean Commercial Arbitration Board ......................... 275
      A.3 Latest Developments in Korean Arbitration ......................... 277
Table of Contents

B. Cases .............................................................................................278
   B.1 Reliance on Public Policy for Resisting Enforcement.......278
   B.2 Reliance on Fraud for Refusing Enforcement
       of a Foreign Arbitral Award......................................................280
C. The Grant and Enforcement of Interim Measures in
   International Arbitration ...............................................................280
   C.1 Tribunal-Ordered Interim Measures.................................280
   C.2 Court-Ordered Interim Measures........................................281
   C.3 Enforcement of Interim Measures........................................282

KYRGYZSTAN
Alexander Korobeinikov ...............................................................283
A. Legislation, Trends and Tendencies ..............................................283
   A.1 Domestic Legislation............................................................283
   A.2 International Treaties............................................................284
   A.3 Trends and Tendencies .........................................................284
B. Cases .............................................................................................285
   B.1 Refusal to Refer Parties to Arbitration due to
       Non-Binding Arbitration Clause ...........................................285
C. The Grant and Enforcement of Interim Measures in
   International Arbitration ...............................................................286

MALAYSIA
Elaine Yap ..........................................................................................287
A. Legislation, Trends and Tendencies ..............................................287
   A.1 Legislative Framework..........................................................287
   A.2 Trends and Tendencies .........................................................287
B. Cases .............................................................................................290
   B.1 Applicable Law to Challenge an Arbitration Award ............290
Table of Contents

B.2 Setting Aside of Arbitral Awards on Questions of Law......292
B.3 Requirement of a Written Arbitration Agreement ..............293
C. The Grant and Enforcement of Interim Measures in
International Arbitration ......................................................296
C.1 Tribunal-Ordered Interim Measures ..................................296
C.2 Court-Ordered Interim Measures ......................................297
C.3 Enforcement of Interim Measures .....................................300

MEXICO
Salvador Fonseca-González and Juan Carlos
Zamora Müller ...........................................................................301
A. Legislation Trends and Tendencies .........................................301
A.1 2011 Legal Reform ..........................................................301
A.2 Minor Amendments to the Legislation .................................302
A.3 Constant Positive Trend ....................................................302
B. Cases .................................................................................303
B.1 Available Legal Remedies against Decisions Rendered
within Proceedings to Set Aside Arbitral Awards ...................303
B.2 Recent Decision on the Concept of Public Policy
(Amparo Proceedings 755/2011) .............................................306
C. The Grant and Enforcement of Interim Measures in
International Arbitration ......................................................307

THE NETHERLANDS
Frank Kroes and Saskia Temme .............................................309
A. Legislation, Trends and Tendencies ......................................309
A.1 Legislative Proposal to Amend Dutch Arbitration
Act ........................................................................................309
A.2 Trends and Tendencies ......................................................310
Table of Contents

B. Cases .................................................................................................................313
   B.1 Court Proceedings: Appeal against *Exequatur* Inadmissible .........................313
   B.2 Arbitration Proceedings: Acceptance of Jurisdiction in Arbitral Summary Proceedings .................................................................314
   B.3 Arbitration Proceedings: Document Production Order .........................315

C. The Grant and Enforcement of Interim Measures in International Arbitration .................................................................316
   C.1 Tribunal-Ordered Interim Measures ..................................................316
   C.2 Court-Ordered Interim Measures .................................................317
   C.3 Enforcement of Interim Measures .................................................319

PERU
Ana María Arrarte Arisnabarreta .................................................................321

A. Legislation, Trends and Tendencies .........................................................321
   A.1 Legislative Framework—Overview ........................................321
   A.2 Training: A Key Element .............................................................322

B. Cases .................................................................................................................322
   B.1 *ENERSUR v. EGEMSA et al.* (pending) ......................................322
   B.2 *KALLPA and EDEGEL v. COES* (in excess of USD 100 million) ..........323
   B.3 *ACTIVOS MINEROS* (settled—USD 140 million) .........................323

C. The Grant and Enforcement of Interim Measures in International Arbitration .................................................................324
   C.1 Tribunal-Ordered Interim Measures ........................................325
   C.2 Court-Ordered Interim Measures .............................................330

D. Conclusions ........................................................................................................332
Table of Contents

PHILIPPINES
Donemark J.L. Calimon, Lemuel D. Lopez and
Jay Patrick R. Santiago................................................................. 335
A. Legislation, Trends and Tendencies.............................................. 335
 A.1 Special Rules of Court on ADR ............................ 335
 A.2 Executive Order No. 78 (series of 2012)................. 338
 A.3 Executive Order No. 97 (series of 2012)................. 339
 A.4 ADR Accreditation Guidelines and Training Standards ........................................... 340
 A.5 Trends and Tendencies ................................................. 341
B. Cases ............................................................................................. 342
 B.1 Foreign Corporations Doing Business in the Philippines
without a License May Seek to Enforce Foreign
Arbitral Awards ............................................................. 342
 B.2 An Agreement to Submit Any Dispute to Arbitration
May Be Construed as an Implicit Waiver of Immunity
from Suit ........................................................................ 343
C. The Grant and Enforcement of Interim Measures in
International Arbitration ......................................................... 344
 C.1 Tribunal-Ordered Interim Measures ........................... 344
 C.2 Court-Ordered Interim Measures ............................... 345
 C.3 Enforcement of Interim Measures ............................. 346

POLAND
Marcin Aslanowicz and Sylwia Piotrowska................................. 349
A. Legislation, Trends and Tendencies.............................................. 349
 A.1 Sources of Arbitration Law in Poland ......................... 349
 A.2 Arbitrability ................................................................. 349
 A.3 Arbitration Agreement .................................................. 350
Table of Contents

A.4 Arbitrators .................................................................351
A.5 Jurisdiction of an Arbitral Tribunal ..................................352
A.6 Proceedings before an Arbitral Tribunal ............................352
A.7 Conclusion of Arbitral Proceedings ..................................353
A.8 Appeals against Arbitration Awards ...................................354
A.9 Recognition and Enforcement of an Arbitral Award ............355

B. Cases ..................................................................................356

C. The Grant and Enforcement of Interim Measures in International Arbitration ........................................357
C.1 Tribunal-Ordered Interim Measures ....................................357
C.2 Court-Ordered Interim Measures ........................................359
C.3 Enforcement of Interim Measures ........................................361

RUSSIAN FEDERATION

Vladimir Khvalei and Irina Varyushina .....................................365
A. Legislation, Trends and Tendencies ........................................365
B. Cases ..................................................................................365
   B.1 Novolipetsk Steel OJSC v. Maksimov Nikolay Victorovich) .................................................................365
   B.2 Russian Telephone Company v. Sony Ericsson Mobile Communications Rus LLC (RF) ......................................370
   B.3 Kubik LLC v. Regus Business Center Metropolis LLC ....373
C. The Grant and Enforcement of Interim Measures in International Arbitration ........................................375
   C.1 Tribunal-Ordered Interim Measures .................................375
   C.2 Court-Ordered Interim Measures .......................................376
   C.3 Enforcement of Interim Measures .......................................380
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SINGAPORE</strong></td>
<td></td>
</tr>
<tr>
<td>Gerald Kuppusamy and Jennifer Fong</td>
<td>381</td>
</tr>
<tr>
<td>A. Legislation, Trends and Tendencies</td>
<td>381</td>
</tr>
<tr>
<td>A.1 Amendments to the International Arbitration Act</td>
<td>381</td>
</tr>
<tr>
<td>B. Cases</td>
<td>383</td>
</tr>
<tr>
<td>B.1 Lack of Jurisdiction May Not Be Invoked as Grounds for Resisting Enforcement of a Singapore Award after the Time Limits in Articles 16 and 34 of the Model Law</td>
<td>383</td>
</tr>
<tr>
<td>B.2 Award Will Be Set Aside for Breach of Natural Justice if Material Excluded Could Reasonably Have Made a Difference</td>
<td>385</td>
</tr>
<tr>
<td>B.3 The Role of Pleadings in Arbitration</td>
<td>389</td>
</tr>
<tr>
<td>B.4 Interim Orders Cannot Be Set Aside as They Are Not Awards</td>
<td>392</td>
</tr>
<tr>
<td>C. The Grant and Enforcement of Interim Measures in International Arbitration</td>
<td>393</td>
</tr>
<tr>
<td>C.1 Tribunal-Ordered Interim Measures</td>
<td>393</td>
</tr>
<tr>
<td>C.2 Court-Ordered Interim Measures</td>
<td>396</td>
</tr>
<tr>
<td>C.3 Enforcement of Interim Measures</td>
<td>399</td>
</tr>
<tr>
<td><strong>SOUTH AFRICA</strong></td>
<td></td>
</tr>
<tr>
<td>Gerhard Rudolph and Darryl Bernstein</td>
<td>403</td>
</tr>
<tr>
<td>A. Legislation, Trends and Tendencies</td>
<td>403</td>
</tr>
<tr>
<td>A.1 Legislation</td>
<td>403</td>
</tr>
<tr>
<td>A.2 Proposed Changes to the Arbitration Act</td>
<td>404</td>
</tr>
<tr>
<td>A.3 Trends and Tendencies</td>
<td>405</td>
</tr>
<tr>
<td>B. Cases</td>
<td>406</td>
</tr>
<tr>
<td>B.1 Lufuno Mphaphuli &amp; Associates (Pty) Ltd. v. Andrews and Another</td>
<td>407</td>
</tr>
</tbody>
</table>
Table of Contents

B.2  *Road Accident Fund v. Cloete NO and Others* .......................... 408

C.  The Grant and Enforcement of Interim Measures in International Arbitration .......................................................... 410
   C.1  Tribunal-Ordered Interim Measures ..................................... 410
   C.2  Court-Ordered Interim Measures ........................................ 412

**SPA IN**

José María Alonso, Alfonso Gómez-Acebo, José Ramón Casado and Víctor Mercedes ................................................................. 415

A.  Legislation, Trends and Tendencies ........................................ 415
   A.1  Arbitration Regulations for Tourist Agreements ................. 415
   A.2  Mediation in Civil and Commercial Matters .................. 416
   A.3  Arbitration in the Electrical Power Production Market in Spain: Decision of 23 July 2012 Adopted by the Secretary of State for Energy .................................................. 416
   A.4  Arbitration Related to Royalties for Private Copies in Intellectual Property Law ......................................................... 417

B.  Cases .................................................................................. 417
   B.1  Review of Arbitrator’s Competence .................................. 417
   B.2  Judicial Designation of Arbitrators .................................... 418
   B.3  Annulment of Awards ....................................................... 418
   B.4  Form of the Arbitration Clause ......................................... 418
   B.5  Failure to Serve Notice or Improper Notice of the Designation of the Arbitrator or the Arbitral Proceedings .................................................... 419
   B.6  Scope of the Arbitration Clause ........................................ 419
   B.7  Matters Not Open to Arbitration ...................................... 420
   B.8  Public Policy ................................................................. 420
Table of Contents

B.9  Lack of Independence and Impartiality of the Arbitral Institution .......................................................... 420
B.10 Lack of Reasoning of the Award................................................................. 421
B.11 Breach of a Party’s Right of Defense  ......................................................... 422
B.12 Action to Set Aside an Award Brought after Expiry of the Limitation Period .............................. 423
B.13 Effects of the Declaration of Nullity of an Award ............ 423
B.14 Electronic Records and Service ................................................................. 423
B.15 Award for Less Than Was Petitioned For ......................................................................................... 424
B.16 Adoption of an Arbitration Clause by Joint Owners ............ 425

C. The Grant and Enforcement of Interim Measures in International Arbitration ................................. 425
C.1 Tribunal-Ordered Interim Measures  ................................................................................................. 425
C.2 Court-Ordered Interim Measures ................................................................................................. 427
C.3 Enforcement of Interim Measures .............................................................................................. 429

SWEDEN

Jonas Benedictsson, Stefan Bessman, Magnus Stålmarker and Gustav Ståhl ................................................................. 431

A. Legislation, Trends and Tendencies ............................................................ 431
B. Cases ......................................................................................................................... 431
B.1 The Doctrine of Assertion ......................................................................................... 432
B.2 Request for Production of Documents .............................................................................. 433
B.3 Ordre Public ............................................................................................................... 434
B.4 Conflict of Interest ............................................................................................................. 436
B.5 Scope of an Arbitration Agreement ................................................................................. 436

C. The Grant and Enforcement of Interim Measures in International Arbitration ................................. 438

xxii
Table of Contents

C.1 Tribunal-Ordered Interim Measures.................................438
C.2 Court-Ordered Interim Measures.................................440

SWITZERLAND
Joachim Frick, Urs Zenhäusern, Anne-Catherine Hahn and Luca Beffa

................................................................................................443

A. Legislation, Trends and Tendencies..............................443
A.1 Revised Swiss Rules of International Arbitration........443
A.2 Pending Legislative Motions.................................448
A.3 Institutional Revisions, Swiss Arbitration Center........449
A.4 Swiss Arbitration Association Appoints Executive
  Director.................................................................450
A.5 General Trends.....................................................450

B. Cases .................................................................451
B.1 Conformity of a Waiver to Appeal against an
  Award with Article 6 ECHR ..................................451
B.2 Consequences of the Failure by an Arbitral Tribunal
  to Take into Consideration the Post-Hearing
  Brief of a Party.....................................................452
B.3 Jurisdiction of the CAS, WADA’s Standing to Appeal,
  and Lis Pendens....................................................453
B.4 Substantive Public Policy .........................................455
B.5 Lack of Challenge against a Decision of the Juge d’Appui
  to Reject the Challenge of an Arbitrator.....................457
B.6 Arbitrability..........................................................459
B.7 Negative Kompetenz-Kompetenz................................460
B.8 Multiple Appoints of an Arbitrator............................462

C. The Grant and Enforcement of Interim Measures in
  International Arbitration........................................464
# Table of Contents

C.1 Tribunal-Ordered Interim Measures ........................................... 464  
C.2 Court-Ordered Interim Measures ............................................. 467  
C.3 Enforcement of Interim Measures .......................................... 469

**TAIWAN**  
**Tiffany Huang and Amber Hsu** ................................................. 471

A. Legislation, Trends and Tendencies .............................................. 471  
A.1 Overview .............................................................................. 471  
A.2 Arbitration Associations ....................................................... 472  
A.3 Recent Developments across the Taiwan Strait ..................... 473  

B. Cases ............................................................................................. 475  
B.1 Definition of a Valid and Effective Arbitration Agreement ........... 475  
B.2 *Ad hoc* Arbitration ................................................................. 477  
B.3 Appointment of Arbitrators by the Court or Arbitration Association .................................................. 478  
B.4 Challenge and Withdrawal of Arbitrators .............................. 479  
B.5 Notification of and Intervention in the Arbitration ............... 481  
B.6 Time Limit for Rendering Arbitral Awards ......................... 482  
B.7 Enforceability of Arbitral Awards ........................................ 483  
B.8 Revocation of Arbitral Awards ............................................. 485  
B.9 Enforcement of Foreign Arbitral Awards ........................... 486

C. The Grant and Enforcement of Interim Measures in International Arbitration .......................................... 489  
C.1 Tribunal-Ordered Interim Measures ........................................... 489  
C.2 Court-Ordered Interim Measures ............................................. 490  
C.3 Enforcement of Interim Measures .......................................... 490
Table of Contents

**TURKEY**
Ismail G. Esin and Ali Yesilirmak .......................................................... 491
   A. Legislation, Trends and Tendencies .............................................. 491
   B. Cases ............................................................................................. 491
      B.1 The Incorporation of an Arbitration Clause by Reference .................. 491
      B.2 The Fees Payable for the Enforcement and Recognition of a Foreign Arbitral Award ...................................................... 492
      B.3 The Timing of an Arbitration Objection....................................... 493
      B.4 The Timely Issuance of an Arbitral Award .................................... 494
   C. The Grant and Enforcement of Interim Measures in International Arbitration ............................................................... 495
      C.1 Tribunal-Ordered Interim Measures ........................................ 495
      C.2 Court-Ordered Interim Measures ............................................ 496
      C.3 Enforcement of Interim Measures ............................................. 497

**UKRAINE**
Igor Siusel, Olga Shenk, Taras Aleshko and Kseniia Pogruzhalska .......................................................... 499
   A. Legislation, Trends and Tendencies .............................................. 499
      A.1 Introduction ........................................................................... 499
      A.2 Short Overview of Ukrainian Legislation regarding Arbitration .............................................................. 501
      A.3 Recently Adopted Ukrainian Legislation regarding Arbitration .............................................................. 507
      A.4 International Commercial Arbitration Court of Ukrainian Chamber of Commerce (“ICAC”) .............................. 507
   B. Cases ............................................................................................. 508
      B.1 Investment Disputes .............................................................. 508
Table of Contents

B.2 Arbitration Disputes against Ukraine ..........................509
B.3 Shares Sale and Purchase Agreement Is Not a "Corporate Relationship" under Ukrainian Law ..............512
B.4 Refusal to Recognize and Enforce an Arbitral Award against a Ukrainian Debtor for Failure of Notice ..........513
B.5 Ukrainian State Enforcement Service Refused to Enforce Arbitral Award against a Ukrainian Debtor on a Technicality .................................................................514
C. The Grant and Enforcement of Interim Measures in International Arbitration .............................................515
   C.1 Tribunal-Ordered Interim Measures ..............................515
   C.2 Court-Ordered Interim Measures .................................516
   C.3 Enforcement of Interim Measures ..............................517

UNITED KINGDOM
Edward Poulton, Thomas Yates and Carinne Maisel ............519
A. Legislation, Trends and Tendencies .....................................519
B. Cases ...................................................................................520
   B.1 Governing Law of Arbitration Agreements ....................520
   B.2 Anti-Suit Injunctions ..................................................521
   B.3 Enforceability of Awards under Section 66 of the Arbitration Act 1996 ......................................................522
   B.4 Impact of Decisions of Foreign Courts to Enforce Awards .................................................................523
C. The Grant and Enforcement of Interim Measures in International Arbitration .............................................524
   C.1 Tribunal-Ordered Interim Measures ..............................524
   C.2 Court-Ordered Interim Measures .................................526
   C.3 Enforcement of Interim Measures ..............................529
Table of Contents

UNITED STATES
Donald J. Hayden, Ethan A. Berghoff and
Joseph J. Mamounas ................................................................. 531
  A. Legislation, Trends and Tendencies .............................................. 531
     A.1 Legislation ............................................................................ 531
     A.2 Trends and Tendencies ......................................................... 532
  B. Cases ............................................................................................. 532
     B.1 Second Circuit Dismisses Petition to Confirm an
        International Arbitral Award on Grounds of
        *Forum Non Conveniens* .......................................................... 532
     B.2 Eleventh Circuit Upholds District Court’s Grant
        of Discovery Applied for in Assistance of a Foreign
        Arbitration, Recognizing That an Arbitral Tribunal
        Is a Foreign Tribunal Qualifying for Assistance
        under Section 1782 ............................................................... 534
     B.3 Sixth Circuit Upholds District Court’s Judgment to
        Compel Arbitration in New Jersey in Face of
        Ambiguous Arbitration Clause ............................................. 536
  C. The Grant and Enforcement of Interim Measures in
     International Arbitration ............................................................ 538
     C.1 Tribunal-Ordered Interim Measures ..................................... 538
     C.2 Court-Ordered Interim Measures ......................................... 546
     C.3 Enforcement of Interim Measures ........................................ 554

UZBEKISTAN
Alexander Korobeinikov ............................................................... 559
  A. Legislation, Trends and Tendencies .............................................. 559
     A.1 Legislation ............................................................................ 559
     A.2 International Treaties ............................................................. 559
     A.3 Trends and Tendencies ............................................................ 561
Table of Contents

B. Cases .................................................................................................................. 561

C. The Grant and Enforcement of Interim Measures in
   International Arbitration ..................................................................................... 562

VIETNAM

Chi Anh Tran, Andrew Fitanides and Quy Hoai Nguyen ............. 563

A. Legislation, Trends and Tendencies ................................................................. 563
   A.1 Background and Overview of the Applicable Law .................. 563
   A.2 Arbitration in Vietnam .............................................................................. 565
   A.3 Trends and Tendencies ............................................................................. 570

B. Cases .................................................................................................................. 570
   B.1 Lack of Capacity to Enter Arbitration Agreement .................. 571
   B.2 Violations of Arbitration Proceedings .............................................. 572
   B.3 Dispute Resolution Body Unspecified ................................................. 574
   B.4 Public Policy Objections ......................................................................... 575

C. The Grant and Enforcement of Interim Measures in
   International Arbitration ..................................................................................... 576