

**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
ISBN 978-1-937518-20-2

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	xxxix
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 <i>Casaceli</i> : 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 <i>Dampskibsselskabet</i> : Parties Seeking to Avoid Arbitration Awards Bear the Evidentiary Burden	23
B.3 <i>Traxys Europe</i> : Public Policy Cannot Be Used to Escape an Award	25
B.4 <i>Castel Electronics v. TCL Air Conditioner</i> : Breach of Natural Justice Strictly Interpreted in Favor of Enforcing Awards	26
B.5 <i>TCL Air Conditioner (Zhongshan) v. Castel Electronics</i> : 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 <i>Jura Novit Curia</i> 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	<i>Momentous.ca Corp. v. Canadian American Association of Professional Baseball Ltd.</i>	91	
B.2	<i>Telestat Canada v. Juch-Tech Inc.</i>	92	
B.3	<i>Nearctic Nickel Mines v. Canadian Royalties Inc.</i>	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 Díaz 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 <i>Ne Ultra Petita</i> 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

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 <i>Exequatur</i> 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	<i>ENERSUR v. EGEMSA et al.</i> (pending)	322
B.2	<i>KALLPA and EDEGEL v. COES</i> (in excess of USD 100 million)	323
B.3	<i>ACTIVOS MINEROS</i> (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 ADR335

 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 Standards340

 A.5 Trends and Tendencies.....341

B. Cases342

 B.1 Foreign Corporations Doing Business in the Philippines without a License May Seek to Enforce Foreign Arbitral Awards342

 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 Arbitration344

 C.1 Tribunal-Ordered Interim Measures344

 C.2 Court-Ordered Interim Measures.....345

 C.3 Enforcement of Interim Measures346

POLAND

Marcin Aslanowicz and Sylwia Piotrowska..... 349

A. Legislation, Trends and Tendencies.....349

 A.1 Sources of Arbitration Law in Poland349

 A.2 Arbitrability349

 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 <i>Novolipetsk Steel OJSC v. Maksimov Nikolay Victorovich)</i>	365
B.2 <i>Russian Telephone Company v. Sony Ericsson Mobile Communications Rus LLC (RF)</i>	370
B.3 <i>Kubik LLC v. Regus Business Center Metropolis LLC</i>	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 of Contents

SINGAPORE

Gerald Kuppusamy and Jennifer Fong381

A. Legislation, Trends and Tendencies.....381

A.1 Amendments to the International Arbitration Act381

B. Cases383

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 Law383

B.2 Award Will Be Set Aside for Breach of Natural Justice
if Material Excluded Could Reasonably Have
Made a Difference385

B.3 The Role of Pleadings in Arbitration.....389

B.4 Interim Orders Cannot Be Set Aside as They Are
Not Awards.....392

C. The Grant and Enforcement of Interim Measures in
International Arbitration393

C.1 Tribunal-Ordered Interim Measures393

C.2 Court-Ordered Interim Measures.....396

C.3 Enforcement of Interim Measures399

SOUTH AFRICA

Gerhard Rudolph and Darryl Bernstein403

A. Legislation, Trends and Tendencies.....403

A.1 Legislation403

A.2 Proposed Changes to the Arbitration Act404

A.3 Trends and Tendencies405

B. Cases406

B.1 *Lufuno Mphaphuli & Associates (Pty) Ltd. v. Andrews
and Another*407

Table of Contents

B.2	<i>Road Accident Fund v. Cloete NO and Others</i>	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

SPAIN

	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

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

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 <i>Lis Pendens</i>	453
B.4 Substantive Public Policy	455
B.5 Lack of Challenge against a Decision of the <i>Juge d'Appui</i> to Reject the Challenge of an Arbitrator	457
B.6 Arbitrability	459
B.7 Negative <i>Kompetenz-Kompetenz</i>	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 <i>Ad hoc</i> 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. Mamounas531

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 Korobeinikov559

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