



Emergency Arbitration – the SCC experience

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Kiev Arbitration Days
15 November 2012



ARBITRATION INSTITUTE
OF THE STOCKHOLM CHAMBER OF COMMERCE

Bridging the gap with an Emergency Arbitrator



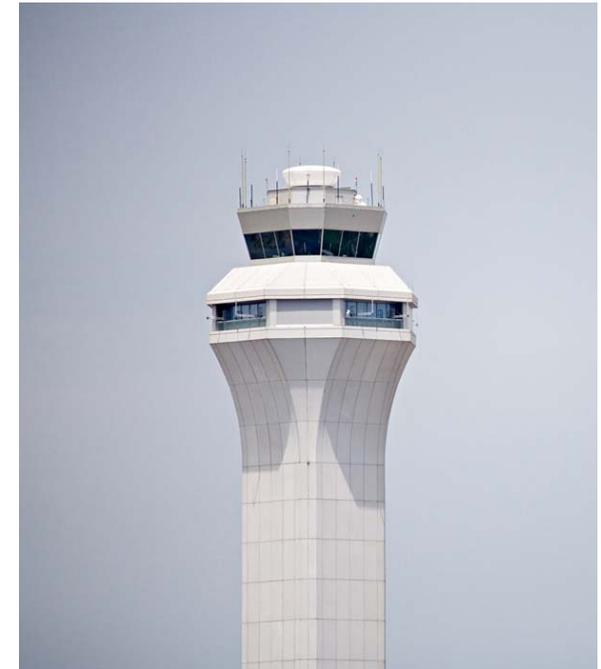
- Introduced January 1, 2010
- Now: interim measure before referral to Tribunal
- Before 2010, only interim measure after referral
- 1-3 months from request to referral to Tribunal = gap
- Opt-out mechanism (“unless otherwise agreed by the parties”)
- Do not prevent requests to court

Particulars

- Request made prior to or after commencement of arbitration
- Respondent must be notified, no ex parte
- Appointment within 24 hours
- Challenge to arbitrator within 24 hours
- Decision within 5 days – may be extended
- Equal and reasonable opportunity to present its case
- Cost EUR 15.000, paid by the applicant

The power of the Emergency Arbitrator

- The EA may grant "any interim measure it deems appropriate"
 - > Broad authority, EA will apply legal standards
- Power until case is referred to Tribunal. No overlapping power.
- Emergency decision may be amended or revoked upon request by a party.
- Emergency decision is binding, but the effect ceases if arbitration is not commenced within 30 days of the emergency decision



The SCC experience 2010 - 2012

- Four cases in 2010, two in 2011 and two (so far) in 2012
- SCC has appointed EA within 24-hour in all cases
- The appointed EA's have all been leading arbitrators
- Five out of eight decisions were rendered within five days
- Extensions were granted in three cases (less than 12 days)

The applications for an Emergency Arbitrator

- Parties from: Cyprus, Netherlands, Finland , Norway, Georgia, Sweden, Israel, Switzerland, Lithuania, Russia, Germany, USA and China
- Value of claims: EUR 1 million – 100 million

The decisions by the Emergency Arbitrator

- One request for interim measures has been successful, seven requests have been denied.
- Applications were rejected because (can be a combination):
 - No “**urgency**” (5 of 8)
 - No “**irreparable harm**” (4 of 8)
 - No **jurisdiction to bind third parties** (2 of 8)
 - Relief sought was a **substitute for judgement** (1 of 8)
- But: “**prima facie case**” / “reasonable possibility of success on the merits” found in 4 of 7 applications that were rejected
- Also, undertakings from the Respondents in 2 of 8 applications

SCC Emergency Arbitration 187/2010

- Swiss Applicant - Swedish Respondent
- Seat was Gothenburg
- The Emergency Arbitrator appointed was Swedish
- Swedish law applicable

EA 187/2010 Background

- The parties were shareholders in Company X and had entered into a Shareholders Agreement. During 2009 and 2010, Company X made share issues to third parties in order to secure further financing.
- The Claimant's shareholding should not be less than a certain percentage of the shares in Company X. After a number of share issues the Claimant's shareholding was below the said minimum level, which according to the Claimant triggered an obligation for the Respondent to transfer its shares.
- Two months prior to the request for the appointment of an Emergency Arbitrator the Claimant had notified the Respondent of alleged breaches under the Shareholders Agreement and requested a transfer of shares to uphold the Claimant's guaranteed minimum level under the agreement.
- A week prior to the request for the appointment of the EA, the Respondent sent an offer to the shareholders of Company X to sell its shares. However, this offer was not sent to the Claimant.



23 dec 19.00

24 h

28 dec 15.00

5 days

Claimant
Applies for the appointment of an
Emergency Arbitrator and pays
the costs

23 dec 13.00

SCC
Notifies Respondent

SCC
Appoints the Emergency Arbitrator,
sends CV and Confirmation to the parties

SCC
Refers the application to the
Emergency Arbitrator

Claimant
Submits any additional comments

Emergency Arbitrator
Contacts the parties and makes
timetable

Respondent
Submits an Answer

Emergency Arbitrator
Makes its decision on written submissions or after
hearing the parties

Emergency Arbitrator makes a
decision

SCC
Closes the file



EA 187/2010 Reasoning by the EA

- Only prerequisite for granting an application for an interim measure is that the measure shall be deemed to be “appropriate”
 - > establish **probable cause** for its case and that the requested interim measure is **necessary to safeguard the substantive rights** of the applicant.
- The Shareholders Agreement in conjunction with the subsequent developments supported the Claimant’s application
 - > the Claimant had shown probable cause for its case and for breach of contract by the Respondent, which triggered a right to redeem the Respondent’s shares.
- Respondent’s offer to sell shares to other shareholders was sufficient proof of a need for interim measures to protect the Claimant’s position.
 - > Respondent was ordered not to sell, assign, transfer, pledge or otherwise dispose of any of its shares in Company X.

Concluding remarks

- The EA procedure has proven to be swift and efficient from a procedural point of view – time limits have worked
- The EA is a useful choice when there is need for interim measures before the Tribunal has been established and where the Applicant, for example, wishes to maintain confidentiality, or, does not feel comfortable of going to local courts
- Applicants should ensure that there really is an "urgency" and that the interim measure cannot wait for the Tribunal to be established
- Applicants should also ensure that the measures sought are targeting a contractual party and not a third party
- Respondents should feel comfortable in knowing that experienced EA will do a thorough legal analysis of the need for the interim measure



THANK YOU

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