

## Emergency Arbitration: When and How to Use It

In the evolving landscape of [international arbitration](#), the concept of emergency arbitration has emerged as a critical tool for parties seeking urgent interim relief before the constitution of an arbitral tribunal. Traditionally, parties in international disputes had to approach national courts for provisional measures while waiting for the tribunal to be established, a process that could take weeks or months. Emergency arbitration bridges this gap by offering swift and decisive relief, ensuring that parties can preserve the status quo or prevent irreparable harm during the early stages of a dispute. This article explores the concept of emergency arbitration, the circumstances under which it should be used, its procedural framework, and its advantages and challenges.

### 1. Understanding Emergency Arbitration

Emergency [arbitration](#) allows parties to apply for interim relief from an emergency arbitrator before the formal constitution of the tribunal in a pending arbitration. The process is typically fast-tracked, with the arbitrator appointed within days of the request, and a decision rendered within a short period. This mechanism ensures that parties are not left without recourse during the critical window before the tribunal is fully established. Emergency arbitration is a relatively recent development in international arbitration and has been adopted by many arbitral institutions, including the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), and others. Each institution has its own rules governing emergency arbitration, but the essential principles remain consistent across jurisdictions.

### 2. When to Use Emergency Arbitration

Emergency arbitration is designed for situations where one party needs urgent relief to avoid irreparable harm or to maintain the status quo pending the [resolution of the dispute](#). Common scenarios where emergency arbitration may be appropriate include:

- **Asset freezing or security:** A party may seek an order to freeze assets or secure funds to prevent the other party from dissipating assets during the arbitration process. This is particularly common in cases involving financial disputes or fraud allegations.
- **Preservation of evidence:** In situations where there is a risk that key evidence may be destroyed or tampered with, emergency arbitration can be used to secure an order preserving such evidence.
- **Injunctions or specific performance:** Emergency arbitration may be used to seek injunctive relief, such as stopping a party from taking certain actions that could cause irreparable harm, or requiring them to take specific actions (e.g., performing under a contract).
- **Confidentiality breaches:** Where a party is at risk of disclosing confidential information in violation of an agreement, emergency arbitration can provide swift intervention to prevent such breaches.

The key criterion for invoking emergency arbitration is the urgency of the situation. If the party seeking relief can show that waiting for the arbitral tribunal to be constituted would cause irreparable harm or render the arbitration process futile, emergency arbitration may be the appropriate course of action.

### **3. How to Initiate Emergency Arbitration**

The process of initiating emergency arbitration varies depending on the arbitral institution, but there are several common steps that parties should follow:

#### **a. Check the Arbitration Agreement**

Before pursuing emergency arbitration, parties should review their arbitration agreement to determine whether the institution under which the arbitration is conducted permits emergency arbitration. Not all arbitral institutions provide for emergency arbitrators, and in some cases, parties may have opted out of emergency arbitration in their arbitration clause.

#### **b. Submit an Application for Emergency Relief**

The party seeking emergency relief must submit an application to the arbitral institution administering the case. This application typically includes the following:

- A description of the dispute and the relief sought;
- Evidence demonstrating the urgency of the situation;
- The legal basis for the request, such as a contractual or statutory right to interim measures;
- Proof of the party's ability to satisfy any adverse costs order that may arise if the relief is later deemed unwarranted.

#### **c. Appointment of the Emergency Arbitrator**

Once the application is submitted, the arbitral institution will promptly appoint an emergency arbitrator. In most cases, the arbitrator is appointed within 24 to 48 hours of the application. The emergency arbitrator is typically chosen from the institution's panel of experienced arbitrators who have expertise in the relevant area of law and are capable of handling urgent matters.

#### **d. Procedural Framework for the Emergency Arbitration**

The emergency arbitrator will establish a procedural timetable for the proceedings, which may involve written submissions, hearings (often conducted via video or teleconference), and oral arguments. Given the urgency of the proceedings, these steps are expedited, and the emergency arbitrator will aim to render a decision within a matter of days—often within 15 days of the appointment.

#### **e. Enforcement of the Emergency Arbitrator's Decision**

The decision of an emergency arbitrator is usually rendered in the form of an "emergency order" or "emergency award." While the procedural rules of most arbitral institutions treat these decisions as binding on the parties, enforcing them can be more complex. Unlike final arbitral awards, which are enforceable under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, emergency decisions may not always be recognized or enforced by national courts. Some jurisdictions have enacted legislation that explicitly recognizes and enforces emergency arbitrator decisions, while others remain silent on the issue. In such cases, parties may need to seek enforcement through local courts, which may or may not honor the emergency arbitrator's ruling.

### **4. Benefits of Emergency Arbitration**

Emergency arbitration offers several key advantages over traditional court proceedings and interim relief applications:

**a. Speed and Efficiency**

One of the primary advantages of emergency arbitration is its speed. In urgent situations, the parties may not have the luxury of waiting for a full tribunal to be constituted. Emergency arbitration ensures that relief can be obtained swiftly, often within days. This is crucial in cases where immediate action is necessary to prevent irreparable harm.

**b. Expertise of Arbitrators**

Unlike national courts, where the judge assigned to a case may not have specific expertise in the relevant area of law or industry, emergency arbitrators are often selected for their expertise in handling complex international disputes. This ensures that the parties receive decisions from arbitrators who are well-versed in both the legal issues and the commercial context of the dispute.

**c. Neutral Forum**

For international disputes, emergency arbitration offers a neutral forum where both parties can feel assured of fairness and impartiality. This is particularly important in cases involving parties from different jurisdictions, where the prospect of seeking interim relief in a national court may raise concerns about bias or uneven application of the law.

**d. Confidentiality**

Emergency arbitration proceedings are typically conducted confidentially, providing an added layer of privacy for parties. This is particularly appealing in cases where sensitive commercial information or trade secrets are at stake, as national court proceedings are often public.

**5. Challenges and Limitations of Emergency Arbitration**

While emergency arbitration has many advantages, it also presents certain challenges and limitations:

**a. Enforcement Issues**

One of the most significant challenges with emergency arbitration is the enforcement of the emergency arbitrator's decision. While some jurisdictions have enacted laws recognizing and enforcing these decisions, others have not. This creates uncertainty for parties seeking interim relief in countries that do not have a clear legal framework for enforcing emergency arbitrator orders.

**b. Limited Availability in Certain Jurisdictions**

Not all arbitral institutions provide for emergency arbitration, and some arbitration agreements may explicitly exclude the possibility of emergency relief. In such cases, parties may be left with no choice but to seek interim relief from national courts, which can be time-consuming and unpredictable.

**c. Cost Considerations**

Emergency arbitration can be costly, especially when compared to seeking interim relief from national courts. The expedited nature of the proceedings means that parties must prepare and present their cases quickly, which can drive up legal fees. Additionally, the party seeking emergency relief may be required to post security for costs, further increasing the financial burden.

#### **d. Effectiveness in Practice**

In practice, emergency arbitration may not always be as effective as intended. For example, if the opposing party refuses to comply with the emergency arbitrator's decision and the relevant national courts do not recognize or enforce the decision, the party seeking relief may still suffer the harm they sought to avoid.

#### **6. Conclusion**

Emergency arbitration has emerged as a valuable tool in international dispute resolution, providing parties with a mechanism to obtain urgent interim relief without the need to rely on national courts. It offers numerous advantages, including speed, efficiency, expertise, and neutrality, making it an attractive option for parties involved in high-stakes commercial disputes. However, it also presents certain challenges, particularly in relation to enforcement and cost. When and how to use emergency arbitration depends on the specific circumstances of each case. Parties should carefully consider the urgency of the situation, the availability of emergency arbitration under their arbitration agreement, and the likelihood of enforcement in the relevant jurisdiction. As international arbitration continues to evolve, emergency arbitration will likely play an increasingly prominent role in providing timely and effective relief in global disputes.