



East Asia
Branch

CI Arb

香港法律服务论坛2018

汇聚湾区 迈向国际

梁偉強大律師, JP

Former Chair of CI Arb (EAB)

Barrister, MA LLB

Chartered Arbitrator, Accredited Mediator

FCPA, FCS, FCI Arb, CTA

HK Court Assistance in Granting Interim Measures in aid of arbitration



香港法院对仲裁提供的协助

1. What are interim measures 何謂臨時措施
2. Articles 17-17I of the Model Law (示范法) are replicated in Articles 35-44 of the Arbitration Ordinance (仲裁條例)
3. Article 17J of the Model Law is materially changed to Article 45 of the Arbitration Ordinance 香港仲裁條例第45条与示范法有区别
4. HK Court Assistance in aid of arbitration under Article 45 of the Arbitration Ordinance 香港法院以香港仲裁條例第45条对仲裁提供协助
5. Past cases for reference 案例参考
6. Emergency Arbitrator 紧急仲裁员
7. The Chartered Institute of Arbitrators and East Asia Branch 特许仲裁学会(东亚分会)

1. What are interim Measures

何謂臨時措施

- Interim measures (a) preserving the status quo pending final determination (b) acting to prevent imminent harm (c) preservation of assets (d) preservation or production of evidence
- 临时措施 (a) 保持现状等待最终裁决 (b) 采取措施防止即时伤害 (c) 保护资产 (d) 保护或出示证据

1. What are interim Measures

何謂臨時措施

- Examples of situations
- (i) Party likely to dissipate relevant and material evidence
- (ii) Party likely to transfer assets out of jurisdiction
- (iii) Calling of an on-demand performance bond
- (iv) Party likely to expropriate intellectual property

- 例子
- (i) 一方有机会破坏有关及重要的证据
- (ii) 一方有机会从司法管辖区中转移资产
- (iii) 行使无条件履约保证金
- (iv) 一方有机会征收知识产权

2. Articles 17-17I of the Model Law are replicated in Articles 35-44 of the Arbitration Ordinance

示范法条例的17至17I条已成为香港仲裁条例的35至44条

Model Law	HK Arb Ord	Contents
17	35	Power of arbitral tribunal to order interim measures 仲裁庭下令臨時措施的權力
17A	36	Conditions for granting interim measures 准予臨時措施的條件
17B	37	Application for preliminary orders and conditions for granting preliminary orders 初步命令的申請和下达初步命令的條件
17C	38	Specific regimes for preliminary orders 初步命令的具体制度
17D	39	Modification, suspension and termination 修改, 中止和終結

2. Articles 17-17I of the Model Law are replicated in Articles 35-44 of the Arbitration Ordinance (continued)

示范法条例的17至17I条已成为香港仲裁条例的35至44条

Model Law	HK Arb Ord	Contents
17E	40	Provision of security提供擔保
17F	41	Disclosure披露
17G	42	Costs and damages費用与損害賠償
17H	43	Recognition and enforcement承認和執行
17I	44	Grounds for refusing recognition and enforcement拒絕承認或執行的理由



3. Article 17J of the Model Law is materially changed to Article 45 of the Arbitration Ordinance 香港仲裁條例第 45条与示范法有区别

Article 17J of the Model Law

“A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.”

示范法第17J條

「法院发布与仲裁程序有关的临时措施的权力应当与法院在法院诉讼程序方面的权力相同，不论仲裁程序的进行地是否在本国境内。法院应当根据自己的程序，在考虑到国际仲裁的具体特征的情况下行使这一权力。」

3. Article 17J of the Model Law is materially changed to Article 45 of the Arbitration Ordinance (continued)

香港仲裁条例第45条与示范法有区别

Article 45 of the HK Arbitration Ordinance provides

- “(1) Article 17J of the Model Law does not have effect.
- (2) On the application of any party, the Court may, in relation to any arbitral proceedings which have been or are to be commenced in or outside Hong Kong, grant an interim measure.
- (3) ..
- (4) ..
- (5) In relation to arbitral proceedings which have been or are to be commenced outside Hong Kong, the Court may grant an interim measure under subsection (2) only if-
- (a) the arbitral proceedings are capable of giving rise to an arbitral award (whether interim or final) that may be enforced in HK under this Ordinance or any other Ordinance
- (b) the interim measure sought belongs to a type .. of interim measure that may be granted in Hong Kong in relation to arbitral proceedings by the Court

香港仲裁条例第45条：

- (1) 《贸法委示范法》第17J条不具效力。
- (2) 原讼法庭可应任何一方的申请，就已在或将会在香港或香港以外地方展开的任何仲裁程序，批给临时措施。
- (3) ..
- (4) ..
- (5) 原讼法庭只有在以下情况下，方可根据第(2)款，就已在或将会在香港以外地方展开的仲裁程序，批给临时措施 ——
- (a) 该仲裁程序能引起一项可根据本条例或任何其他条例在香港强制执行的仲裁裁决(不论是临时裁决或最终裁决)；
及
- (b) 所寻求的临时措施，属原讼法庭可就仲裁程序而在香港批给的临时措施的类型或种类。

3. Article 17J of the Model Law is materially changed to Article 45 of the Arbitration Ordinance (continued)

香港仲裁条例第45条与示范法有区别

- (6) Subsection (5) applies even if
- (a) The subject matter of the arbitral proceedings would not give rise to a cause of action over which the Court would have jurisdiction.
 - (b) The order sought is not ancillary or incidental to any arbitral proceedings in Hong Kong.
- ..
- ..
- (10) A decision, order or direction of the Court under this section is not subject to appeal.”

- (6) 即使有以下情况，第(5)款仍适用 ——
- (a) 若非因该款，仲裁程序的标的事宜不会引起原讼法庭对之具有司法管辖权的诉讼因由；或
 - (b) 所寻求的命令，并非附属于或附带于任何在香港进行的仲裁程序。
- ..
- ..
- (10) 任何人不得针对本条所指的原讼法庭决定、命令或指示提出上诉。

4. HK Court assistance in aid of arbitration under Article 45 of the Arbitration Ordinance

香港法院以香港仲裁條例第45條對仲裁提供協助



Key Features重點(about seeking interim measures)

1. Court's power is concurrent with that of the arbitral tribunal與仲裁庭同權
2. In aid of arbitrations in Hong Kong or overseas適用海外仲裁
3. Conditions for granting such measures in aid of foreign arbitrations
 - capable of giving rise to an award enforceable in HK仲裁裁決可在香港執行
 - measures are similar to usual measures granted by the HK Courts措施與香港法院的措施相近
4. No requirement that there is to be a cause of action over which the HK Courts have jurisdiction不需要法院具管轄權

5. Past cases for reference 案例参考

1. **VE GlobaUK Ltd v Charles Allard J & Intelita Ltd, HCMP 1678/2017**

Suspecting D setting a rival business in HK in breach of a Licence Agreement for online business, P applied to HK Court for injunction against D and its HK subsidiary pending the arbitration in London under ICC rules

原告人怀疑被告人在香港成立了竞争业务，违反了网上业务的特许权协议。
原告人对被告人及其香港附属公司向香港法院寻求禁制令，等候受到ICC
规则规管下伦敦仲裁结果。

2. **Great Wall Pan Asia International Investment Company Ltd v Cervera Holdings Ltd & Yeung Wing Yan, HCCT 13/2016**

Suspecting D was in breach of a shareholders agreement in transferring his shares out to 3rd party, P applied to HK Court for injunction against D pending the arbitration in HK but before the serving of Notice of Arbitration.

原告人怀疑被告人转移股份予第三者，违反了股份買賣协议。
原告人在送达仲裁通知书前，对被告人向香港法院寻求禁制令，
等候香港的仲裁结果。

6. Emergency Arbitrator 紧急仲裁员

1. The main objective of appointing an emergency arbitrator under the relevant arbitration rules is to seek emergency relief or interim measures prior to the formation of the arbitration rules.

在相关的仲裁规则下委任一名紧急仲裁员的主要目的是在组成仲裁庭或规则前寻求紧急救济或临时措施。

2. Depends on the *lex arbitri*, interim measures may seek from the supervisory court.

取决于程序法，临时措施可能要向监管法庭寻求。

6. Emergency Arbitrator 紧急仲裁员

3. However, for practical reason, parties may wish to seek the emergency relief from the emergency arbitrator instead.

但实际上，双方可能希望向紧急仲裁员寻求紧急济助。

3. Alternatively, the *lex arbitri* may not have any provision for the court to grant interim measures prior to the formation of the arbitration tribunal or serving of the Notice of Arbitration.

或者，程序法可能未有任何的条文赋予法庭在组成仲裁庭或送达仲裁通知书前提供临时措施。

6. Emergency Arbitrator 紧急仲裁员

1. Part 3A Enforcement of Emergency Relief of the Arbitration Ordinance (Cap 609) was enacted in 2013.

第609章仲裁条例下的第3A部紧急救济在2013年制定。

2. The key provision is section 22B(1) which provides:

“Any emergency relief granted, WHETHER IN OR OUTSIDE Hong Kong, by an emergency arbitrator UNDER the relevant ARBITRATION RULES is enforceable in the same manner as an order or direction of the Court that has the same effect, but only with the leave of the Court.”

主要的条文是在第22B(1) 条中：

“紧急仲裁员根据有关仲裁规则批给的任何紧急救济，不论是在香港或香港以外地方批给的，均可犹如具有同等效力的原讼法庭命令或指示般，以同样方式强制执行，但只有在原讼法庭许可下，方可如此强制执行。”

6. Emergency Arbitrator 紧急仲裁员

3. The enactment of Part 3A demonstrates the pro-arbitration stance of Hong Kong.

第3A部的制定顯示了香港支持仲裁的立場。

4. Section 22 applies to reliefs grants by emergency arbitrator, whether in or outside Hong Kong.

第22條應用於由仲裁員批給的濟助，不論是否在香港境內。

5. In fact, Part 3A was enacted PRIOR To the promulgation of the HKIAC Arbitration Rules 2013

事實上，第3A部是制定於香港國際仲裁中心公布仲裁規則前。

6. Emergency Arbitrator 紧急仲裁员

1. Emergency arbitration procedures was first adopted by the SIAC in 2010. It follows by, *inter alia* the ICC in 2012, the HKIAC in 2013 and both BJAC and CIETAC in 2015.

紧急仲裁程序最先于**2010**年由新加坡国际仲裁委员中心采纳，随后由国际商会于**2012**年、香港国际仲裁中心于**2013**年、及北京仲裁委员会和中国国际经济贸易仲裁委员会于**2015**年采纳。

2. Given the urgency of the application, all arbitration rules with the emergency arbitrator procedures place very strict time limit in
 - (a) Time within which an emergency arbitrator will be appointed;
 - (b) Time allotted for challenge to emergency arbitrator; and
 - (c) Time for emergency arbitrator to render an order/ award

考虑到申请的紧急性，有紧急仲裁程序的所有仲裁规则对以下事项设下了很严谨的时间限制

- (a) 委任紧急仲裁员的时间；
- (b) 分配予质疑紧急仲裁员的时间；及
- (c) 紧急仲裁员作出命令或判决的时间

6. Emergency Arbitrator 紧急仲裁员

3. The first emergency arbitral award from mainland China (under BJAC Arbitration Rules 2015) was enforced in Hong Kong on 3 October 2017 by DHCJ To under HCCT 55 of 2017.

中国首次的紧急仲裁裁决（在北京仲裁委员会的仲裁规则下）由暂委高等法院杜法官在HCCT 55 of 2017 于2017年10月3日执行。

7. The Chartered Institute of Arbitrators and the EAB

特许仲裁学会及東亞分會

CI Arb is a leading professional membership organization in the UK representing the interests of alternative dispute practitioners worldwide.

特许仲裁学会（CI Arb）是一个非牟利性的在英注册的慈善团体通过拥有众多分支机构的国际网络为公共利益务

With over 15,000 members located in more than 133 countries spreading in 6 continents, CI Arb supports the global promotion, facilitation and development of all forms of private dispute resolution.

在全球拥有15,000名(分布约133国家)的会员分布在6大洲，他们在促进和发展私法争端解决领域

As a not-for-profit, UK registered charity, CI Arb works in the public interest through an international network of 37 Branches and EAB is the largest overseas Branch outside UK.

作为非牟利组织，英国注册慈善机构，特许仲裁学会通过37个分支机构和国际网络为公众利益工作，東亞分會是英国以外最大的海外分支机构，

7. The Chartered Institute of Arbitrators and the EAB



As a professional Chartered Institute, CI Arb offers a range of education and vocational training courses and qualifications from introductory to advanced levels in the various disciplines of dispute resolution, including arbitration, mediation and construction adjudication.

作为一个专业特许学会，他们为仲裁员、调解员及裁判员提供教育及培训，从争议解决的各个学科的入门到高级，包括仲裁，调解和建筑裁决

Membership of CI Arb (ACI Arb, MCI Arb, FCI Arb, Chartered Arbitrator) is widely recognized. It carries a worldwide reputation of knowledge, experience and excellence. Besides, there are benefits of networking, attending seminars or trainings, receiving journals and newsletters and also YMG activities

CI Arb (ACI Arb, MCI Arb, FCI Arb, 特许仲裁员) 的成员资格被广泛认可，它具有世界范围内的知识，经验和卓越的声誉，此外，还有网络的好处，参加研讨会或培训，接收期刊和通讯以及**YMG**活动

7. The Chartered Institute of Arbitrators and the EAB

Who can become an arbitrator? 谁可以成为仲裁员

1. Anyone can become an arbitrator. While many arbitrators are in the legal profession, many are not and come from various professional and technical backgrounds. 任何人都可以成为仲裁员，虽然许多仲裁员有法律专业，但许多来自各行各业
2. Arbitration is a secondary profession. 仲裁是另一专业
3. The arbitrator has a judicial role in listening to the facts and evidence presented by the parties, applying the relevant law and issuing a final award, hence training and education is important (especially in the international context) 仲裁员在听取双方提交的事实和证据方面及裁决均具有法律作用，要正确适用有关法律并颁发最终裁决书，因此培训和教育很重要 (特别是在国际仲裁背景下)

SO, WELCOME TO JOIN CIARB

所以欢迎加入特许仲裁学会