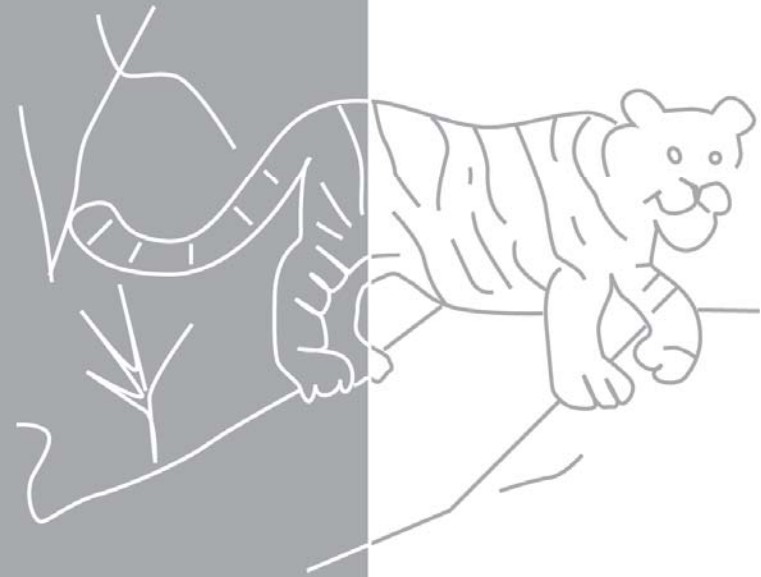


Emergency Arbitrator in International Arbitration Practice

Dr. Beata Gessel-Kalinowska vel Kalisz
Founding and Managing Partner, GESSEL
President of the LEWIATAN Court of Arbitration

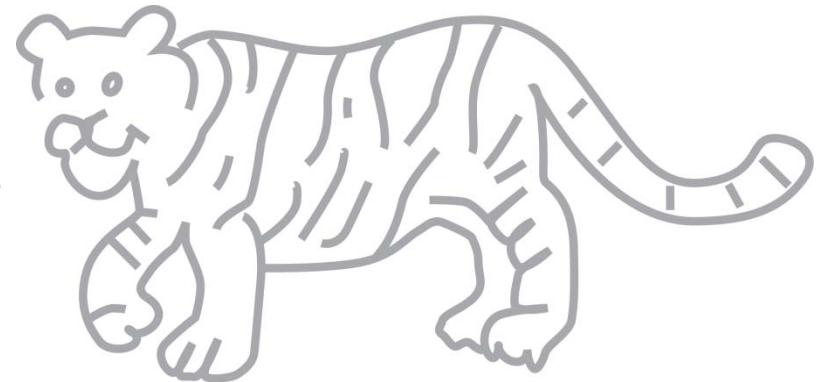


Emergency Arbitrator in International Arbitration Practice

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- American Arbitration Association /International Centre for Dispute Resolution (AAA/ICDR) *since 1st May 2006*
- International Institute for Conflict Prevention & Resolution (CPR) *since 1st November 2007*
- Arbitration Center of Mexico *since 1st July 2009*
- Arbitration Institute of the Stockholm Chamber of Commerce (SCC) *since 1st January 2010*
- Netherlands Arbitration Institute (NAI) *since 1st January 2010*
- Singapore International Arbitration Centre (SIAC) *since 1st July 2010*
- Australian Centre for International Commercial Arbitration (ACICA) *since 1st August 2011*
- International Chamber of Commerce (ICC) *since 1st January 2012*
- P.R.I.M.E. Finance *since 16th January 2012*
- LEWIATAN Court of Arbitration *since 1st March 2012*
- Swiss Chambers' Arbitration Institution *since June 2012*



Time Is of Essence

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	ICC	SCC	SIAC	Swiss Rules	LEWIATAN
Moment of filing the application	Before, with or after filing the request for arbitration		Concurrent with or following the filing of a notice of arbitration	Before, with or after filing the request for arbitration	
Time for filing a request for arbitration	10 days from filing the application, the EA may determine a longer period	30 days from the EA's decision	Only concurrent with a notice of arbitration	10 days from filing the application, the Court may extend this time-limit	30 days from the EA's decision
Appointment of the EA	Within 2 days by the President	Within 24 hours by the Board	Within 1 business day by the Chairman	As soon as possible by the Court	Within 2 business days by the President
Time for EA decision making	15 days, may be extended by the President	5 days, may be extended by the Board	Not specified, until the Tribunal is constituted	15 days, may be extended by the Court	7 business days, may be extended by the President

(*) Under the NAI Rules a party seeking urgent interim relief is not obliged to initiate arbitral proceedings on the merits at all .

General Issues

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	ICC	SCC	SIAC	Swiss Rules	LEWIATAN
Opt out / opt in	Opt out	Not specified, implicitly opt out		Opt out	
Challenge of the EA	Within 3 days	Within 24 hours	Within 1 business day	Within 3 days	Within 24 hours
Proceedings before the EA	In the manner which the EA considers to be appropriate; the EA shall establish a procedural timetable	In such manner as EA considers appropriate	The EA establishes a schedule that provides for a hearing or as an alternative – telephone conference or written submissions	In such manner as EA considers appropriate; each party supposed to have an opportunity to be heard	In the manner EA considers appropriate
Ex parte proceedings	No			Yes – in exceptional circumstances	No

The EA's Decision

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	ICC	SCC	SIAC	Swiss Rules	LEWIATAN
Prerequisites	A need for urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal	Not specified	A party is in need of emergency interim relief	Not specified	Substantiation of a claim
Form	Order	Award, order		Award, preliminary order in exceptional circumstances	Order
Types of permitted measures	Such interim measures as the EA deems necessary or appropriate				
Binding the arbitral tribunal	No; The arbitral tribunal is allowed to modify or terminate the EA's decision				

(* Under the NAI Rules the EA may decide on the merits upon joint request of the parties

Expiry of the EA's Decision

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	ICC	SCC	SIAC	Swiss Rules	LEWIATAN
Lack of further proceedings	Lack of request for arbitration within 10 days from the receipt of the EA's application, unless the EA determined a longer period	Arbitration is not commenced within 30 days or the case is not referred to an arbitral tribunal within 90 days from the EA's decision	The Tribunal is not constituted within 90 days from the EA's decision	Lack of request for arbitration within 10 days from the receipt of the EA's application, unless the Court extended this time-limit	Arbitration is not commenced within 30 days or the case is not the arbitral tribunal is not constituted within 90 days of the EA's decision
Issuance of the final award	Yes, unless the arbitral tribunal decides otherwise	Yes		Yes, unless the arbitral tribunal expressly decides otherwise	Yes, however, if the final award grants the secured claim, the EA's decision expires after 60 days after delivery of the final award

Costs

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	ICC	SCC	SIAC	Swiss Rules	LEWIATAN
Costs determination	In the EA's order	Fixed fee paid upon filing the EA application; may be apportioned between the parties by an arbitral tribunal in a final award	Initially apportioned by the EA, finally the apportionment determined by the tribunal	In the EA's decision	In the final award
Costs of procedure	US \$ 40,000 (US \$ 10,000 for ICC administrative expenses and US \$ 30,000 for the EA's fees and expenses) may be increased by the President	€ 15,000 (€ 12,000 as the EA's fee and € 3,000 as the application fee) may be increased by the Board	S \$ 3,000 + 20% of max sole arbitrator fee (depending on the sum in dispute – from S \$ 5,500 up to a maximum of S \$ 2,000,000)	Non-refundable registration fee of CHF 4,500 and a deposit as an advance for the costs of the emergency relief proceedings of CHF 20,000 may be increased only in exceptional circumstances and with the approval of the Court	30% of arbitration fee (depending on the amount in dispute), no less than PLN 2,000 (≈ EUR 488) and no more than PLN 50,000 (≈ EUR 12,195)

(*) ICDR does not charge an administrative fee, but arbitrators bill hourly.