

Does the protective preliminary order mechanism in the SIAC Arbitration Rules 2025 give an edge to SIAC over AIAC?

1. One of the key features of the recent Singapore International Arbitration Centre (SIAC) Arbitration Rules 2025 is the introduction of protective preliminary order mechanism within the emergency arbitrator procedure.¹
 - 1.1 The emergency arbitrator procedure enables a party seeking emergency interim or conservatory relief to apply for the appointment of an emergency arbitrator even before the filing of the Notice of Arbitration.²
 - 1.2 The protective preliminary order mechanism allows a party to apply for a preliminary order directing another party not to frustrate the purpose of the emergency interim or conservatory measure requested.³ Such an application can be made without notice to the other parties.⁴
 - 1.3 The emergency arbitrator must decide on the protective preliminary order application within 24 hours after its appointment.⁵
2. This key feature of the SIAC Arbitration Rules 2025 is highly commendable as it addresses the growing demand for a more responsive and efficient mechanism in commercial arbitration.
3. In Malaysia, the Asian International Arbitration Centre (AIAC) Arbitration Rules 2023 do not specifically provide for a protective preliminary order mechanism.
 - 3.1 The rules on emergency arbitration do not appear to contemplate the appointment of an emergency arbitrator before the issuance of a Notice of Arbitration, which itself will give notice that a dispute is being referred.⁶
 - 3.2 Additionally, the party applying for the appointment of the emergency arbitrator must notify the other parties.⁷

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¹ Para. 1 of Schedule 1, SIAC Arbitration Rules 2025.

² Paras. 1 and 2 of Schedule 1, SIAC Arbitration Rules 2025.

³ Para. 25 of Schedule 1, SIAC Arbitration Rules 2025.

⁴ Para. 25 of Schedule 1, SIAC Arbitration Rules 2025.

⁵ Para. 27 of Schedule 1, SIAC Arbitration Rules 2025.

⁶ Para. 1.2(a) of Schedule 3 and Rule 2, AIAC Arbitration Rules 2023.

⁷ Para. 1.2(a)(iii) of Schedule 3, AIAC Arbitration Rules 2023.

4. While the AIAC Arbitration Rules 2023 may seem lacking in this regard, it is important to note that section 11 of the Arbitration Act 2005 empowers the High Court to grant interim measures even prior to arbitral proceedings.
 - 4.1 In essence, when matters are very urgent, a party to an arbitration agreement seeking interim reliefs may turn to the High Court.⁸
 - 4.2 The High Court will consider if the reliefs sought are necessary to preserve the integrity of the arbitration process and to enhance the effectiveness of the arbitral tribunal's final decision on the merits of the dispute.⁹
5. The High Court may refuse or hesitate to exercise its discretion in granting interim measures, as the arbitral tribunal is considered the primary forum.¹⁰
 - 5.1 The High Court has in *Macro Dimension Concrete Sdn Bhd v Jimah Energy Ventures Sdn Bhd* [2024] MLJU 2122 exercised such a discretion to a limited extent on the premise that the arbitral tribunal has not been constituted.
 - 5.2 However, the High Court in that case did not appear to consider the emergency arbitration mechanism in the AIAC Arbitration Rules 2023. It is unclear whether the High Court would have granted the limited interim relief had it considered the availability of the emergency arbitration mechanism.
6. Nevertheless, in urgent cases justifying *ex parte* applications, the High Court arguably still plays a supporting role, as the current rules do not expressly provide for applications in such manner.
7. Notwithstanding the supporting role of the courts, it may be worthwhile to consider including a protective preliminary order mechanism in the AIAC Arbitration Rules. In the meantime, given the progressive evolution of institutional rules, parties choosing Kuala Lumpur as the arbitral seat may wish to specify in their dispute resolution clause that the AIAC Arbitration Rules applicable at the time of dispute will govern, rather than the rules in force at the time of contract formation.

DISCLAIMER:

This article is for general information only and should not be relied upon as legal advice.
The position stated herein is as at the date of publication on 29 January 2025.

⁸ *Cobrain Holdings Sdn Bhd v. GDP Special Projects Sdn Bhd* [2010] CLJU 1834; *Thye Hin Enterprise Sdn Bhd v DaimlerChrysler Malaysia Sdn Bhd* [2004] 3 CLJ 591; and *Ong Ching Fong v Matrix Triumph Sdn Bhd and 2 Others & Another Case* [2024] CLJU 467.

⁹ *Ong Ching Fong v Matrix Triumph Sdn Bhd and 2 Others & Another Case* [2024] CLJU 467.

¹⁰ *MCC Overseas (M) Sdn Bhd v Damai City Sdn Bhd* [2021] CLJU 160; and *Malaysia Resources Corporation Bhd v Desaru Peace Holdings Club Sdn Bhd* [2023] 4 CLJ 91.