

P.R.I.M.E. Finance

Panel of Recognized International Market Experts in Finance

EMERGENCY ARBITRATORS

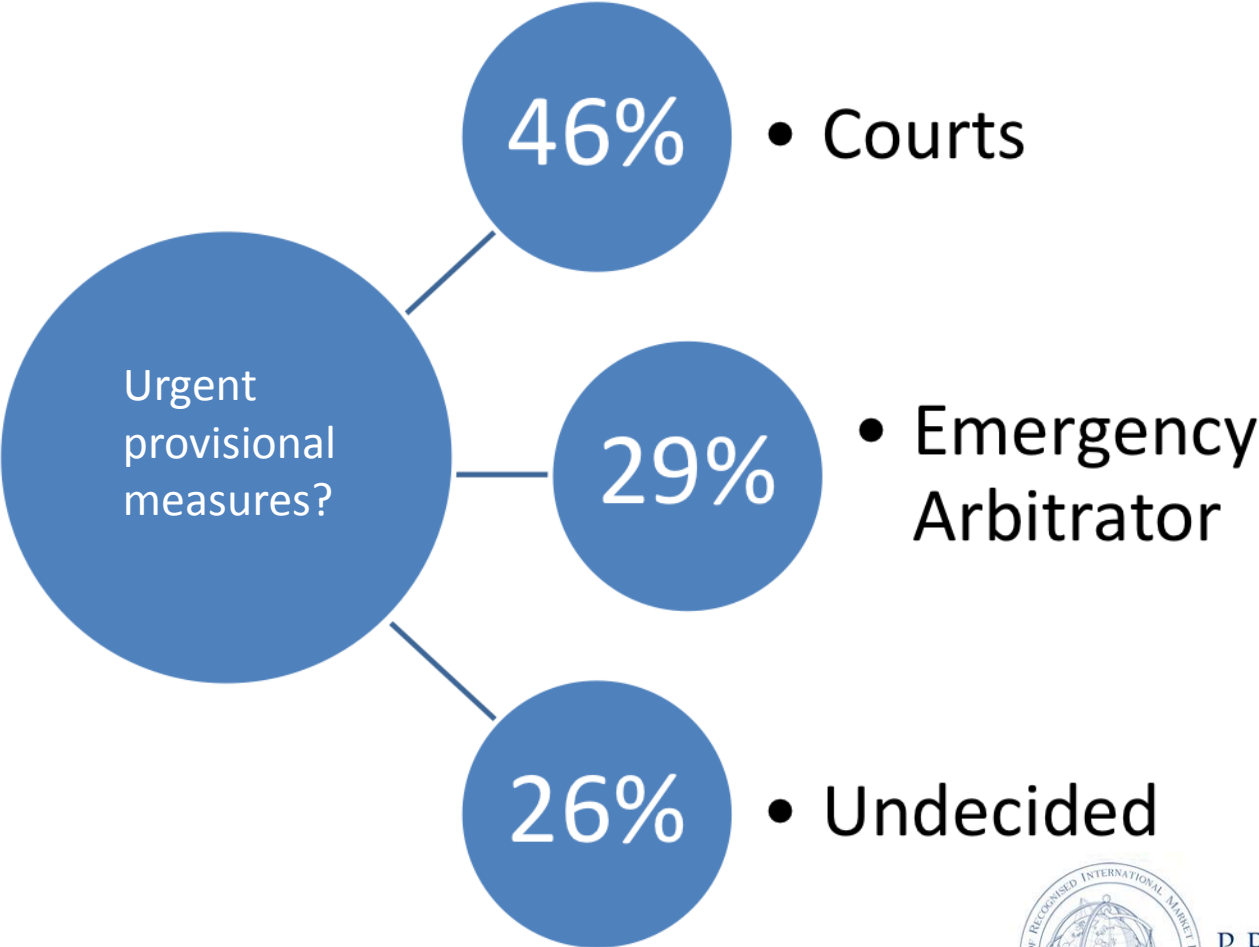


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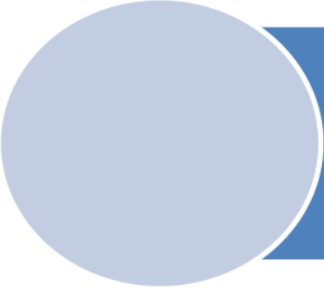


JUDITH GILL QC
P.R.I.M.E. Finance Annual Conference 2019
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2015 Queen Mary Survey on Improvements and Innovations in International Arbitration



ISSUES ARISING



How is a claim that the EA has a conflict of interest to be addressed?



Does the EA have power to rule on a challenge to his or her jurisdiction?



WHAT DO THE RULES SAY?

2018 HKIAC Rules provide expressly that: “The emergency arbitrator shall have the power to rule on objections that the emergency arbitrator has no jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration clause or of the separate arbitration agreement, and shall resolve any disputes over the applicability of this Schedule.”



ISSUES ARISING

Should the EA's decision be in the form of an order or an award?

Does the EA have power to make more than one order or award?

Can the EA make an interim order pending a final ruling on the EA application?



Access to the Courts

Prime
Finance
Art. 26a.6

“By submitting to these Rules, the parties do not waive any rights that they may have under the relevant applicable laws to submit a request for interim measures to a judicial authority.”

Art 9.12 of
the LCIA
Rules

EA provisions “shall not prejudice any party’s right to apply to a state court or other legal authority for any interim or conservatory measures before the formation of the Arbitration Tribunal; and it shall not be treated as an alternative to or substitute for the exercise of such right.”

ICC’s Rule
29.7

“The Emergency Arbitrator Provisions are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority”



Arbitration Act 1996

Section 44(3)

If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.

Section 44(5)

In any case the court shall act only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.



THE FUTURE

- Continued widespread use for many of the reasons parties choose arbitration in the first place
- Development of institutional rules to refine and elaborate on the EA's role
- Some will opt out in order to preserve the right to go to national courts

