

Emergency Arbitrators in Thailand: Legal Gaps and Reform Proposals

อนุญาโตตุลาการฉุกเฉินในประเทศไทย: ช่องว่างทางกฎหมายและข้อเสนอในการปฏิรูป

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Abstract

This article addresses the legal gap in Thailand's arbitration system, which currently lacks provisions for the appointment of an emergency arbitrator in situations requiring urgent interim measures before the arbitral tribunal is formally constituted. While arbitration offers a faster, more private, and neutral dispute resolution process compared to traditional court proceedings, the process of appointing arbitrators can be time-consuming. This delay poses significant risks to parties facing urgent circumstances or potential irreparable harm that cannot wait for a final decision. Several leading arbitration jurisdictions—such as Singapore, Hong Kong, and England—have adopted mechanisms for appointing emergency arbitrators to issue interim measures during the interim period before the main arbitral tribunal is established. This article conducts a comparative study of the legal frameworks in these jurisdictions, focusing on legal recognition, application procedures, enforceability of interim orders, and grounds for challenging the emergency arbitrator. Through an analysis of relevant domestic and international legal documents, the article proposes amendments to Thailand's Arbitration Act B.E. 2545 to enable the appointment of emergency arbitrators.

Keywords: Emergency Arbitrator; Interim Measures; Arbitration in Thailand; Legal Reform

บทคัดย่อ

บทความฉบับนี้ กล่าวถึงช่องว่างทางกฎหมายในระบบอนุญาโตตุลาการของประเทศไทย ซึ่งยังไม่มีบทบัญญัติรองรับการแต่งตั้ง “อนุญาโตตุลาการฉุกเฉิน” ในกรณีที่มีความจำเป็นต้องขอความคุ้มครองชั่วคราวเร่งด่วนก่อนการแต่งตั้งคณะอนุญาโตตุลาการ แม้ว่าอนุญาโตตุลาการจะเป็นกระบวนการระงับข้อพิพาทที่มีความรวดเร็ว มีความเป็นส่วนตัว และเป็นกลางเมื่อเทียบกับกระบวนการของศาล แต่กระบวนการคัดเลือกคณะอนุญาโตตุลาการนั้นใช้เวลาซึ่งส่งผลให้เกิดความเสี่ยงต่อคู่กรณีที่ประสบกับสถานการณ์เร่งด่วนหรือความเสียหายที่ไม่อาจรอการแก้ไขได้นานหลายประเทศที่เป็นศูนย์กลางอนุญาโตตุลาการ เช่น สิงคโปร์ ฮ่องกง และอังกฤษ ได้จัดให้มีกลไกการแต่งตั้งอนุญาโตตุลาการฉุกเฉินเพื่อพิจารณาออกคำสั่งคุ้มครองชั่วคราวในช่วงเวลาก่อนที่คณะอนุญาโตตุลาการจะได้รับการแต่งตั้งอย่างเป็นทางการ บทความนี้ได้ศึกษากรอบกฎหมายของประเทศดังกล่าว โดยเปรียบเทียบในประเด็นการรับรองโดยกฎหมาย

ขั้นตอนการยื่นคำร้อง การบังคับใช้คำสั่งชั่วคราว และกระบวนการคัดค้านอนุญาโตตุลาการฉุกเฉิน โดยการวิเคราะห์จากเอกสารทางกฎหมายที่เกี่ยวข้องทั้งในและต่างประเทศ นอกจากนี้ บทความนี้นำเสนอแนวทางในการแก้ไขเพิ่มเติมพระราชบัญญัติอนุญาโตตุลาการ พ.ศ. 2545 ของไทย เพื่อให้สามารถรองรับการแต่งตั้งอนุญาโตตุลาการฉุกเฉินได้อย่างเหมาะสม

คำสำคัญ: อนุญาโตตุลาการฉุกเฉิน; มาตรการชั่วคราว; การอนุญาโตตุลาการในประเทศไทย; การปฏิรูปกฎหมาย



Introduction

Arbitration is a preferred alternative to litigation due to its speed, confidentiality, and use of expert adjudicators. However, there is a period of time before an arbitral tribunal is established during which parties could be subject to acts that would cause irreversible harm. To address this, several jurisdictions, such as Singapore, Hong Kong, and England, have introduced emergency arbitrator procedures that allow urgent interim measures before the formation of a tribunal. Because Thailand's Arbitration Act B.E. 2545 lacks such safeguards, parties must turn to the courts for temporary protection, undermining the advantages of arbitration. This article argues for the necessity of emergency arbitrator mechanisms in Thai arbitration law to prevent legal uncertainty and enforce interim measures effectively.

The article also compares the legal frameworks of Singapore, Hong Kong, and England to develop suitable recommendations for Thailand.

Problems Concerning Emergency Arbitrators in Thailand

The arbitration framework in Thailand, primarily regulated by the Arbitration Act B.E. 2545, does not acknowledge emergency arbitrators, resulting in significant procedural deficiencies in offering interim measures before the arbitral tribunal is constituted.

The Arbitration Act B.E. 2545 adopts the UNCITRAL Model Law in part but omits provisions that empower arbitral tribunals to issue interim measures.

Section 16 authorizes Thai courts—not arbitrators—to grant such measure before or during arbitration. If arbitration is not initiated within 30 days after the court's provisional order, it is deemed terminated.

Institutional rules, such as those of the Thai Arbitration Institute (TAI) and the Thailand Arbitration Center (THAC), reflect this statutory limitation. Although the TAI Rules allow arbitral tribunals to issue interim measures after they are formed, they do not recognize emergency arbitrators. Similarly, the THAC Rules lack any provisions for interim measures or emergency arbitration, leaving parties to rely solely on the courts in urgent matters.

Moreover, the Act is silent on whether arbitral tribunals can independently issue enforceable interim orders, creating legal ambiguity. While Article 17 of the UNCITRAL Model Law permits such authority, the Thai Act does not adopt this provision. There is disagreement among academics; some maintain that enforcement is dependent on statutory authority, while others claim that arbitrators have inherent powers. The Thai Supreme Court has yet to clarify the issue. Arbitral tribunals are not able to

enforce their rulings or bind third parties like courts are. Their interim measure depends on voluntary compliance, further weakening their effectiveness without court support.

When urgent measure is needed before tribunal formation, Thai parties face two insufficient options, either seeking interim measures from courts or awaiting the tribunal's constitution. Furthermore, the confidentiality of arbitration would be jeopardized, and judges who are not subject-matter specialists might be involved, if it were assumed that the parties would rather use the legal system. Besides, the court orders are also appealable, potentially delaying relief. Last but not least, waiting for tribunal formation, however, risks irreparable harm such as asset dissipation or evidence loss because appointing arbitrators can take weeks, especially in complex or adversarial cases. Thus, the lack of emergency arbitrators defeats the primary purpose of arbitration as a speedy, confidential, and effective alternative to litigation.

Despite the introduction of emergency arbitrators, there are still issues with their orders being enforced. Arbitral rulings must be upheld by courts because they lack the capacity to execute themselves. Interim orders are not legally binding in many jurisdictions, which only enforce final awards. On the other hand, others regard them as legally binding.

Thailand's laws do not define emergency arbitrators or address the enforcement of their orders. The absence of statutory recognition leads to unpredictability, as enforcement depends entirely on judicial discretion. Moreover, cross-border enforcement is challenging since emergency arbitrators' interim measures are not explicitly covered by the New York Convention.

Comparative Legal Frameworks for Emergency Arbitrators

1. Singapore Singapore leads with strong statutory support. Both the Arbitration Act 2001 and the International Arbitration Act 1994 include emergency arbitrators in the definition of an "arbitral tribunal." These statutes empower emergency arbitrators to issue enforceable interim orders, including injunctions and asset preservation, equivalent to court orders.

In *CVG v CVH* case, the Singapore High Court confirmed for the first time that an emergency arbitrator's award issued in a foreign-seated arbitration is enforceable under Part 3 of the Singapore International Arbitration Act 1994. The case arose from a dispute between CVG and its Singapore franchisee, CVH, which led to the termination of their agreements and a subsequent emergency arbitration seated in Pennsylvania. The emergency arbitrator granted relief in favor of CVG, and CVG sought to enforce the award in Singapore. Although the Court ultimately refused enforcement on procedural grounds—finding that CVH had not been given a fair opportunity to respond to new arguments raised by CVG—the Court made a landmark ruling in principle. It held that the IAA allows enforcement of such emergency awards even though Part 3 does not explicitly mention emergency arbitrators. The Court relied on a purposive interpretation of the legislation, referencing the 2012 amendments and legislative intent to treat emergency arbitrators as arbitral tribunals. This decision resolves previous uncertainty on the matter and affirms Singapore's pro-arbitration stance.

Under SIAC Rules, a party may apply for emergency relief before the tribunal formation and thereafter The SIAC President appoints an emergency arbitrator within 24 hours.

The arbitrator must issue a decision within 14 days, and such decisions are binding and enforceable with High Court permission. In order to ensure promptness and efficacy, parties are not permitted to contest or postpone the implementation of emergency awards.

2. Hong Kong Hong Kong uses a hybrid approach. While the Arbitration Ordinance (Cap. 609) does not mention emergency arbitrators, Section 19 allows parties to adopt institutional rules like the HKIAC Rules 2024, which provide detailed emergency arbitrator procedures.

HKIAC can appoint an emergency arbitrator within 24 hours of receiving a complete application. The arbitrator must render a decision within 14 days, balancing urgency with due process. Interim relief issued is binding and enforceable through the courts, even though it is not statutory. The courts also support interim measures, regardless of whether the arbitration is seated in Hong Kong or abroad.

In the case of *GD v HY* (2022), the Hong Kong High Court considered the enforcement of an emergency arbitrator's award issued in a foreign-seated arbitration. The emergency arbitrator had granted interim relief in favor of GD, requiring HY to disclose and preserve certain assets. GD subsequently applied to the Hong Kong court for enforcement of the award, and the court granted *ex parte* leave—meaning HY was not initially notified—under the Arbitration Ordinance (Cap. 609), which allows for enforcement of emergency relief issued by arbitrators.

However, HY later challenged the enforcement order on jurisdictional grounds, arguing that there was no valid arbitration agreement between the parties. Upon reviewing the case, the Court found that the arbitration clause relied upon by GD was not binding, as

it had not been properly incorporated into the parties' agreement. Consequently, the Court ruled that the emergency arbitrator had no jurisdiction to issue the award and set aside the enforcement order, despite acknowledging that Hong Kong law generally permits enforcement of emergency arbitrator decisions.

This case is significant because it reaffirms that while emergency arbitrator awards are enforceable in Hong Kong, such enforcement is still contingent on the existence of a valid and binding arbitration agreement.

3. England England's Arbitration Act 2025 now expressly recognizes emergency arbitrators. Article 9B of the LCIA Rules authorizes them to issue binding orders that courts can enforce unless otherwise agreed by the parties. The reforms bridge institutional rules and national law, clarifying the emergency arbitrator's powers and court cooperation.

Under the LCIA Rules, applications must be submitted before the tribunal formation. The LCIA Court appoints an emergency arbitrator within three days. A decision must follow within 14 days, and the emergency arbitrator can revise or supplement earlier decisions until the full tribunal is formed. The emergency arbitrator's orders are binding but subject to modification or revocation by the final tribunal. Court enforcement is also explicitly permitted under the revised Section 44.

Comparative Analysis of Emergency Arbitrator in Singapore, Hong Kong, and England

Singapore, Hong Kong, and England recognize the need for an interim measure prior to tribunal formation, but the legal basis varies: Singapore embeds it in legislation; Hong Kong permits it through party agreement under institutional rules; England now explicitly

incorporates it in law via the 2025 Act.

Application timing is similar across the board—permitted any time before the tribunal constitution. Appointments are rapid: SIAC and HKIAC aim for 24-hour appointments; LCIA allows three days. All institutions mandate decisions within 14 days, subject to extension.

Regarding binding effect and enforceability, Singapore offers direct court enforcement, Hong Kong provides judicial support via institutional rules, and England enables enforcement under revised statutory provisions. Emergency measures remain effective until modified by the main tribunal.

Challenge procedures also vary slightly: Singapore allows 24 hours, Hong Kong permits 3 days with a pause in proceedings, and England allows prompt challenges reviewed by the LCIA Court.

To summarize, Singapore has the most complete and enforceable structure. Hong Kong blends contractual flexibility and judicial support, whereas England's recent reforms provide explicit legislative power. All three exhibit strong institutional backing, rapidity, enforceability, and procedural safeguards, providing useful examples for Thai legal reforms.

Establishing an Effective Emergency Arbitrator Framework in Thailand

Thailand's Arbitration Act B.E. 2545 (2002) lacks clarity on whether arbitral tribunals have the authority to grant interim measures. Even though the Act was amended in 2019, the issue remains unresolved, especially concerning the enforcement of tribunal-issued interim measures in Thai courts and potential conflicts with court-issued measures.

Other jurisdictions like Singapore, Hong Kong, and England have already introduced emergency arbitrator provisions into institutional rules and national laws. These systems provide rapid appointment of emergency arbitrators and fast issuance of interim measures, supported by enforceability through local courts. Consequently, Thailand could follow this model by amending its Arbitration Act and establishing a supporting legal framework. The proposed components of such a framework in Thailand introducing as follows:

Application for Interim Measure

Parties should be able to apply for interim measure before a tribunal is formed, provided their arbitration agreement incorporates relevant institutional rules. The law should clarify submission requirements and the criteria for urgency.

Appointment of Emergency Arbitrators

A neutral body such as a local arbitral institution should appoint the emergency arbitrator swiftly—ideally within 24 hours—ensuring efficiency and neutrality in the process.

Challenges to Emergency Arbitrators:

As with regular arbitrators, parties must be able to challenge emergency arbitrators on grounds such as bias or lack of independence, within a defined timeframe.

Conduct of Proceedings:

Emergency arbitration should be conducted on an expedited basis, with the option for virtual hearings and limited procedural requirements to accommodate the urgency.

Powers of Emergency Arbitrators:

Emergency arbitrators should be authorized to issue interim measures like asset freezes, injunctions, and evidence protection. They should also be able to require security from the applicant to safeguard against misuse.

Duration and Effect of Measure:

Unless the main tribunal confirms or modifies them, measures issued by emergency arbitrators shall automatically expire after a predetermined amount of time. For example, under SIAC rules, such orders expire 14 days after issuance unless otherwise extended. Thailand should adopt a similar model, including rules for transitioning authority to the main tribunal once it is constituted.

Thailand's arbitration framework might be modernized by adding emergency arbitration into national legislation and institutional rules. This would instill confidence in international investors, relieve the pressure on Thai courts, and improve Thailand's status as a regional arbitration hub.

Enforceability of Emergency Arbitrator Decisions

While emergency arbitration is gaining acceptance worldwide, enforceability remains a major concern. Unlike final awards, emergency decisions lack self-enforcing power. Therefore, parties must rely on national courts for enforcement. The legal treatment of such interim measures varies significantly across jurisdictions. While some nations accept both interim and final arbitral decisions for enforcement, others only recognize final awards.

Enforcement is impacted by two significant legal difficulties. The first is whether the enforcement of emergency arbitration rulings is expressly permitted by a nation's domestic legislation. This is still ambiguous or nonexistent in many locations. The second question is whether the New York Convention permits the enforcement of such rulings, particularly those rendered by foreign arbitrators. The Convention only specifically addresses final awards; hence emergency measures are not

always enforced.

Amending the New York Convention to include emergency arbitration decisions is highly unlikely due to the political and procedural challenges of reaching a unanimous agreement among its signatories. It would be preferable if each state updated its legislation to accept and uphold emergency arbitration rulings. Countries like Singapore and Hong Kong have already done so. Thailand, however, has not yet introduced emergency arbitration provisions into either its Arbitration Act or institutional rules. This disparity reduces confidence in the efficacy of Thailand's arbitration system and deters parties from seeking arbitration as an interim option.

Recognizing and enforcing emergency arbitrator decisions would yield multiple benefits for Thailand. It would enhance Thailand's reputation as an arbitration-friendly jurisdiction, attract international commercial parties, and protect parties' rights in urgent cases. It would also reduce the caseload of Thai courts by allowing arbitrators to handle time-sensitive issues independently.

Several jurisdictions offer valuable models:

Singapore: The International Arbitration Act explicitly recognizes enforceable emergency measures, and SIAC has detailed rules for appointment and conduct. This combination of legislative and institutional support ensures high functionality.

Hong Kong: The UNCITRAL Model Law is adopted by the Arbitration Ordinance, which also recognizes emergency arbitrators through revisions. Their rulings provide legal certainty and can be implemented similarly to court orders.

England: Emergency arbitrators are mentioned in the amended Arbitration Act, and their decisions are binding unless the parties agree

otherwise. This maintains party autonomy while strengthening judicial support.

Recommendations for Thailand–Supporting Emergency Arbitrators through Legal Reform

To establish an effective and internationally competitive emergency arbitration system, Thailand must undertake comprehensive legal reform through developing its institutions and amending its statutes. A crucial starting point is the amendment of the Arbitration Act B.E. 2545 which includes express recognition of “emergency arbitrators.” Through the addition of the afore-mentioned term into the definition of an arbitral tribunal, even before the entire arbitral panel is constituted, the law would provide emergency arbitrators the power to issue temporary orders. Such legal recognition would legitimize their role and close a significant procedural gap that currently leaves parties vulnerable during urgent situations

In addition to statutory recognition, the enforceability of emergency orders must be addressed. Drawing lessons from jurisdictions such as Singapore and England, Thailand should revise its laws to enable domestic courts to recognize and enforce emergency arbitrator orders. This step would provide meaningful legal backing to the interim measure and prevent parties from undermining emergency decisions due to lack of enforcement mechanisms. A streamlined judicial process, ideally modeled on international best practices, should be introduced to support the swift and efficient enforcement of such measures.

Institutional reform is also critical. Thai arbitration institutions both the Thailand Arbitration Center (THAC) and the Thai Arbitration Institute (TAI) should develop and implement procedural guidelines controlling the

employment of emergency arbitrators. These rules should set out clear provisions on appointment procedures, timelines, the scope of authority, and the qualifications required for emergency arbitrators. Establishing a transparent and predictable process would enhance user confidence and make Thai arbitration institutions more attractive to both local and international users.

Furthermore, a legal framework should be established in place that would allow parties to contest the selection or actions of emergency arbitrators. This framework must allow for expedited challenges in cases of conflict of interest, bias, or other procedural issues. Without such a mechanism, the integrity and fairness of the process may be called into question.

Alongside legal and institutional reform, capacity-building efforts are essential. Thai institutions should develop and promote model arbitration clauses that incorporate emergency arbitration provisions, thereby making it easier for contracting parties to access this mechanism. Simultaneously, training programs should be implemented to educate arbitrators, legal practitioners, and judges on emergency arbitration procedures. Increased awareness and understanding would ensure more consistent application and enforcement of interim measures across the arbitration community.

Finally, new sections should be added to the Arbitration Act to comprehensively address all procedural aspects related to emergency arbitration. These provisions should cover the appointment process, scope of powers, binding effect of decisions, grounds for challenge, and conditions for enforcement. Such legislative amendments would eliminate existing uncertainties, align Thailand’s arbitration framework with global standards, and enhance

the country's reputation as a dependable and modern arbitration seat.

Conclusion

The proposed legal and institutional reforms are critical for developing a functional and enforceable emergency arbitration framework in Thailand. By addressing the current procedural gap, these revisions would enable parties to obtain urgent interim measures without

unnecessary delay, ensuring the arbitral process's integrity. In doing so, Thailand would not only enhance access to justice in time-sensitive disputes but also demonstrate its commitment to implementing international best practices. Over time, the implementation of these measures would elevate Thailand's status as a competitive, reliable, and forward-thinking jurisdiction in the field of international arbitration.



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