

The Optimization Path of China's International Commercial Arbitration Interim Measures System

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Abstract: With the rapid growth of the global economy, international commercial arbitration has become a crucial method for resolving cross-border commercial disputes. It plays a significant role in protecting parties' rights and ensuring the smooth progress of arbitration. However, China's current arbitration law has numerous deficiencies regarding interim measures, making it inadequate for the demands of modern international commercial arbitration. This paper examines the current state and issues of China's interim measures system in international commercial arbitration and proposes specific optimization strategies based on international best practices. It recommends allowing parties to apply for interim measures before the arbitration tribunal is formed and introducing an emergency arbitrator system. Strengthening international cooperation and promoting mutual recognition between domestic and foreign arbitration institutions are also emphasized. Additionally, the paper suggests improving the legal protection mechanism and implementation supervision to ensure effective execution of interim measures both domestically and internationally. Lastly, it advocates for simplifying relief procedures to improve efficiency and quality. These measures aim to enhance the effectiveness and credibility of China's interim measures system, safeguard parties' rights, and boost China's influence in international arbitration.

Keywords: China international commercial arbitration, interim measures, cross-border enforcement, relief mechanism.

1. Introduction

Ad hoc arbitration was the primary method for international commercial arbitration before institutional arbitration, especially in maritime disputes. It protects parties' rights and ensures smooth arbitration awards by preventing property transfer and evidence loss. A robust interim measures system is crucial for fair and effective arbitration. However, as international commercial arbitration has evolved, China's current arbitration law on interim measures has become outdated. The limited types and lack of full authority for arbitral tribunals to issue interim measures hinder Chinese parties from seeking effective relief in cross-border disputes. Thus, there is an urgent need to address issues like lax legislation and delays.

The aim of this paper is to propose a specific path for optimizing China's interim measures system in international commercial arbitration, thereby narrowing the gap between China and developed countries in this area. It will clarify the current state of China's interim measures system, analyze existing issues, and offer practical improvement suggestions to reduce obstacles for Chinese parties

seeking interim measures in cross-border disputes, enhancing their rights protection in foreign-related arbitration cases.

This paper is organized into six sections: the introduction is followed by a literature review that examines the research of domestic and international scholars on the interim measures system in international commercial arbitration. The third section analyzes the current situation and problems of China's interim measures system. The fourth section draws lessons from international practices and identifies applicable insights for China. The fifth section addresses the identified difficulties and proposes specific countermeasures to improve China's interim measures system. The sixth section concludes the paper by summarizing the findings and suggesting directions for future research.

2. Literature Review

Before discussing the optimization path of China's international commercial arbitration interim measures system, it is necessary to review and analyze the research results of scholars at home and abroad in this field.

In view of the existing defects of China's interim measures system, Niu Chenxu highlighted the unique advantages of flexibility and efficiency in international commercial arbitration, making it the preferred choice for dispute resolution. However, he identified several defects in China's interim measures system. By comparing legislation and practices from various countries, Niu analyzed the problems in issuing and implementing interim measures. He emphasized that UNCITRAL (the United Nations Commission on International Trade Law) Model Law on International Commercial Arbitration and the Convention on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Cases provide valuable references for the extraterritorial implementation of interim measures. [1]. Huang Fei also pointed out that the problems existing in China's current interim arbitration include the lax legislation, the laggard "single track" release right mode adopted by the system, the inconsistent legislative provisions on the types of interim measures, and the lack of substantive review criteria for the release conditions. He suggested optimizing the system by refining the draft for comments on the arbitration law, adding provisions for the priority principle of issuing interim measures, and improving the relief mechanism for errors in interim measures [2]. Xu Lei emphasized the importance of interim measures in international commercial arbitration but noted that Chinese arbitration provisions are unclear, with fewer types of interim measures compared to litigation, and lacking authority for arbitral tribunals. He recommended learning from international experience, increasing the types of interim measures, granting arbitral tribunals the power to issue them, establishing an emergency arbitrator system, and promoting treaties for the recognition and enforcement of interim measures [3].

As for the innovation and development of China's interim measures system, Zhang Zizheng highlighted China's recent innovations in its interim measures system, such as the arbitration rules for the China (Shanghai) Pilot Free Trade Zone and the China International Economic and Trade Arbitration Commission, along with systematic revisions of the arbitration law. He suggested that China should focus on making key breakthroughs in practice by amending the arbitration law to enhance the system's effectiveness [4]. Wu Haoran suggested that China should strengthen the training of international commercial arbitration talents, actively participate in formulating international arbitration rules, integrate modern technology with commercial arbitration, improve relevant laws and regulations, and raise awareness of arbitration. This will help establish a sound international commercial arbitration system, optimize the business environment, and promote international economic and trade exchanges [5].

Article 4 of the UNCITRAL Model Law on International Commercial Arbitration clearly stipulates this rule. Domestic case law, however, indicates that the presumption of waiver of the right does not apply without malicious delay [6]. Sun Qi studied the effect of the agreement excluding the

cancellation procedure in international commercial arbitration, stressed the importance of arbitration agreement in commercial transactions, analyzed the role of the cancellation procedure in the arbitration system, and comprehensively reviewed the relevant legal provisions [7]. Meskc Zlatan and gagula Almir mentioned that the principle of minimum intervention of the court in arbitration proceedings is crucial to the success of international commercial arbitration. The parties' autonomy to select arbitrators based on their professional knowledge and the interests of the parties in the confidential procedures shall not be damaged by the supervision or review of the court. Arbitrators must determine the applicable law according to arbitration rules and laws. Accurate analysis of conflict of laws is essential to ensure the fairness of the award [8]. Wang Jiawen mentioned that the development of science and technology and the trend of globalization have spawned new means of international commercial dispute resolution, such as online arbitration. Multi-party arbitration mechanism plays an important role in this context, but it also increases the complexity of dispute resolution [9].

In general, the current research provides a rich theoretical and practical reference for the optimization of China's interim measures system in international commercial arbitration, but there are still deficiencies in the systematic and comprehensive aspects. Specifically, many studies focus on the analysis of a single problem, lacking an integrated system design and comprehensive countermeasures. In addition, there is little research on the detailed mechanism of the implementation of interim measures and cross-border implementation, which affects the feasibility of actual operation. Therefore, this paper will put forward systematic and comprehensive optimization suggestions from the three aspects of legislation, implementation and relief by synthesizing the research results at home and abroad, aiming to make up for the shortcomings of the existing research, and provide more comprehensive and operable countermeasures.

3. Current Situation and Dilemma of China's Interim Measures System for International Commercial Arbitration

3.1. Current Situation

China's interim measures system for international commercial arbitration primarily depends on the arbitration law and related regulations. The arbitration law, as the fundamental legal framework, governs arbitration procedures and interim measures.

Firstly, Article 28 of the arbitration law allows the arbitration tribunal to take protective measures when necessary but does not specify the types or procedures for these measures. This lack of detail creates challenges in actual implementation.

Secondly, the 2015 revised rules of the China International Economic and Trade Arbitration Commission include provisions for interim measures, granting tribunals the authority to take emergency actions to protect parties' rights. While these rules partially address gaps in the arbitration law, they still require further refinement in practice.

Additionally, the civil procedure law permits courts to take property preservation measures at the parties' request during arbitration. Although these provisions support the issuance and enforcement of interim measures, better coordination between courts and arbitration tribunals is needed in practice.

In practice, although China's interim measures of international commercial arbitration have been applied to some extent, the overall frequency and effect of application are not ideal. Although some arbitration institutions have set up an emergency arbitrator system to quickly respond to the application for interim measures, the actual effect is not ideal due to the difficulty of implementation. In addition, cross-border implementation is difficult, and many temporary measures are difficult to be effectively implemented abroad.

3.2. Problems in China's Interim Measures System

3.2.1. Problems of the Interim Measures System Itself

There are obvious deficiencies in the planning and design of China's interim measures system for international commercial arbitration, which can't meet the complex and changeable needs of international commercial arbitration. First of all, the legislation of provisional measures is not rigorous enough, the legal provisions are too general, and there are no detailed provisions on the types, application conditions and release procedures of provisional measures. This led to the lack of a clear legal basis for the arbitral tribunal to handle the application for interim measures, affecting the consistency and impartiality of the award.

Secondly, the current system lacks unified guiding principles and operating rules. Different arbitration institutions have different standards on the application of interim measures, resulting in great differences in the award results. Some arbitral tribunals are too lax in issuing interim measures, while others are too strict and lack uniformity and predictability. In this case, the parties' trust in interim measures are reduced, which affects its application in commercial arbitration.

In addition, the types and release conditions of temporary measures failed to fully cover the actual demand. In practice, the types of commercial arbitration cases are diverse and complex, and the existing types of interim measures cannot fully meet these needs. For example, the law lacks detailed provisions and standards for specific interim measures such as evidence preservation and property preservation, which leads to a greater discretion of the arbitral tribunal in processing these applications and increases the uncertainty of the award.

3.2.2. Problems in the Implementation of Measures

The difficulty of cross-border enforcement is a key factor limiting the development of China's system for international commercial arbitration. Legal conflicts between countries significantly impact the implementation of these measures across borders. Different countries have varying levels of recognition, and some do not acknowledge or enforce decisions from foreign arbitration bodies. For instance, U.S. law is cautious about enforcing such measures from foreign arbitrators, recognizing them only under specific circumstances. This makes it challenging for decisions made by Chinese arbitration tribunals to be enforced in the United States.

Secondly, the judicial assistance mechanism is not perfect, which increases the difficulty of cross-border implementation. Although international treaties such as the New York Convention and the Hague Convention provide a certain legal basis for mutual legal assistance, in practice, there are often problems such as poor communication and complex procedures in the cooperation between the judicial organs of various countries. Cross border enforcement needs to go through many links, including application, review, ruling, etc. each link may cost a lot of time and expenses, which not only increases the economic burden of the parties, but also prolongs the execution time and weakens the timeliness and effectiveness of the interim measures.

In addition, the implementation process may also encounter many objective adverse factors. For example, the parties may quickly transfer assets and destroy evidence after the issuance of interim measures, which further increases the difficulty of implementation. These problems make many parties concerned when applying for interim measures, and reduce the practical application effect of interim measures.

3.2.3. Deficiencies of the Relief Mechanism for Interim Measures

The lack of effective relief mechanism in China's interim measures system for international commercial arbitration has seriously affected the protection of the legitimate rights and interests of

the parties and the credibility of the system. First, the existing relief channels are not smooth enough. If the parties encounter unfair or wrong decisions in the process of issuing interim measures, it is often difficult to obtain timely and effective relief. This is mainly because in the process of issuing and implementing interim measures, the arbitral tribunal has a large discretion, and the law does not clearly stipulate the relief procedure for erroneous interim measures, which makes it difficult for the parties to quickly correct through existing legal channels.

Secondly, the relief procedure is complex and expensive, which further limits the parties' willingness to relief. Even if the parties decide to seek relief, they also need to go through complex legal procedures, which costs a lot of time and expenses. This not only increases the economic burden of the parties, but also reduces the timeliness and effectiveness of the relief. Therefore, many parties choose to give up the relief, resulting in the lack of effective protection of their legitimate rights and interests.

In addition, the relief mechanism of interim measures lacks independence and impartiality. Some arbitration institutions may be affected by external factors when dealing with the application for relief of interim measures and cannot guarantee the fairness and transparency of the relief procedure. In this case, the parties' trust in the relief mechanism is reduced, which further affects the credibility and authority of the interim measures system.

To sum up, China's interim measures system for international commercial arbitration has many problems in its own design, implementation and relief mechanism. It is urgent to improve the effectiveness and credibility of the interim measures system through legislative improvement, system optimization and international cooperation, so as to better protect the legitimate rights and interests of the parties.

4. Extraterritorial Experience of Interim Measures in International Commercial Arbitration

4.1. Relevant International Treaties

The effectiveness and enforceability of protective actions in international commercial arbitration depend largely on relevant legal treaties in various countries. The UNCITRAL Model Law on International Commercial Arbitration, developed by the United Nations Commission on International Trade Law, provides a framework for countries to create and update their arbitration laws. This model law allows tribunals to take necessary actions in emergencies, such as preserving property and evidence, to protect parties' rights. It also requires national courts to recognize and enforce these decisions, promoting smooth arbitration procedures and enhancing the credibility of awards.

The Hague Convention on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Cases, while primarily focused on judgments, also offers principles that guide the cross-border enforcement of protective actions in arbitration. It emphasizes international cooperation and legal assistance, providing a basis for enforcing judgments and arbitral awards across borders. Countries can adopt these principles to improve cooperation and ensure the effective implementation of protective measures internationally.

The New York Convention also impacts the enforcement of protective actions in arbitration. It requires contracting states to recognize and enforce arbitration agreements and awards. Although it does not specifically mention interim measures, its overall support for arbitration procedures and award enforcement indirectly strengthens the effectiveness of protective actions.

4.2. National Experience and Practice

Civil law countries typically emphasize the integrity and unity of their legal systems, often clearly stipulating interim measures for arbitration in written law. For example, France and Germany have

amended their arbitration laws or enacted special legislation to clarify the power of arbitral tribunals to act in emergencies, establishing corresponding enforcement mechanisms. The new French Code of Civil Procedure explicitly grants arbitral tribunals the authority to issue protective actions in emergencies, with these measures being enforceable with court assistance [9]. Germany has stipulated similar provisions through the German Arbitration Act, with special emphasis on the enforceability of interim measures. These countries also pay attention to the connection with international treaties, so that the interim measures of arbitration can be effectively implemented across borders. For example, France and Germany are both parties to the New York Convention, which makes the interim measures issued by their arbitral tribunals have certain legal effect and enforceability in other Contracting States.

The countries of common law system pay more attention to the autonomy and flexibility of arbitration, and their system of interim measures for arbitration is composed of arbitration rules and case law. For example, the arbitration institutions in Britain and the United States have generally established the system of emergency arbitrators, allowing parties to apply for interim measures before the arbitration tribunal is formed. The UK Arbitration Act 1996 clearly defines the powers of emergency arbitrators and the procedures for enforcing protective measures. British courts generally support arbitration and cooperate with arbitral tribunals in enforcing these measures. Similarly, the Federal Arbitration Act in the United States includes provisions that empower arbitral tribunals to issue protective actions and ensure their implementation through mutual legal assistance. Common law countries also facilitate the enforcement of arbitration measures abroad through judicial assistance mechanisms. At the same time, the courts of these countries hold a supportive attitude towards arbitration, which provides a strong judicial guarantee for the implementation of interim measures for arbitration [10].

Through the experience and practice of civil law and common law countries, we can see that the development trend of the interim measures system of international commercial arbitration is to strengthen international cooperation and improve the efficiency of implementation. In terms of institutional arrangements, countries pay attention to the connection with international treaties and the establishment of mutual legal assistance mechanisms and emphasize the flexibility of arbitration in practice to ensure that interim measures for arbitration can play a role in a timely and effective manner. China should also learn from relevant experience.

5. Optimization Countermeasures of China's Interim Measures System in International Commercial Arbitration

5.1. Optimizing the Interim Measures System

First, China should enhance legislative rigor by amending the arbitration law and related regulations to clearly define the power, procedures, and conditions for arbitral tribunals to issue interim measures. This should include detailed provisions on the types of interim measures, application and review procedures, and release conditions, while also clearly defining the scope of the tribunal's authority. For instance, China can adopt the UNCITRAL Model Law's provisions on emergency situations to ensure these measures have legal effect and enforceability. Such improvements will enhance the operability and clarity of interim measures, reducing disputes and implementation difficulties caused by vague laws.

Second, China should improve the system for issuing interim measures by allowing parties to apply for them before the arbitration tribunal is formed. Introducing an emergency arbitrator system would protect parties' rights and interests more effectively and promptly before arbitration proceedings commence. Arbitration institutions could establish a roster of emergency arbitrators, enabling parties to quickly select and apply for interim measures in emergencies. This would improve

arbitration efficiency, protect parties' legitimate rights, and ensure the fairness and authority of interim measures rulings.

Third, China should actively participate in the formulation and revision of international commercial arbitration rules and strengthen cooperation with international arbitration institutions. By engaging in the revision of treaties such as the New York Convention and the Hague Convention, China can promote unified recognition and implementation standards for interim measures globally. Learning from international best practices and technical advancements will improve the internationalization of China's interim measures system. Additionally, promoting mutual recognition and cooperation between domestic and international arbitration institutions will provide a more convenient and efficient arbitration mechanism for Chinese enterprises expanding globally.

5.2. Solving Difficulties in the Implementation of Interim Measures

First, China should improve the legal protection mechanism for the enforcement of interim measures of arbitration. Clarify the procedures and conditions for the implementation of interim measures for arbitration by formulating or revising relevant laws and regulations. For example, a special chapter can be added to the civil procedure law to specify the enforcement procedures of interim measures for arbitration, including application for enforcement, review procedures, enforcement methods, etc. At the same time, we should strengthen judicial assistance and cooperation with foreign courts to ensure the effective implementation of interim measures for arbitration abroad. For example, bilateral or multilateral mutual legal assistance agreements can be adopted to clarify the recognition and implementation standards of interim measures in various countries and reduce the legal barriers to cross-border implementation.

Second, China should strengthen the supervision of the enforcement of interim measures of arbitration. For example, an information management system can be established to monitor the implementation process of temporary measures in real time, and timely find and solve problems in implementation. In addition, support arbitration institutions to adopt advanced technical means, such as electronic evidence preservation and online enforcement, to improve enforcement efficiency.

For example, special research institutions or research groups can be set up to study common problems and solutions in cross-border implementation. By comparing the legal systems, judicial practices and enforcement procedures of different countries and regions, this paper puts forward specific and feasible solutions to help solve the legal conflicts and operational problems encountered in cross-border enforcement.

5.3. Improving the Relief Mechanism for Interim Measures

First, China should clarify the procedures for error relief of arbitration interim measures. By enacting or revising relevant laws and regulations, the relief procedures for the parties who have objections to the arbitral interim measures are clarified. For example, parties should have the right to apply to the arbitration institution or court for reconsideration or cancellation within a specified period after the issuance of interim measures to protect their legitimate rights and interests. Additionally, it is crucial to strengthen the internal and external supervision mechanisms of arbitration institutions to ensure the fairness and effectiveness of relief procedures.

Second, China should simplify the ways and procedures of error relief of interim measures for arbitration, and reduce the cost and time cost for the parties to seek relief. For example, the relief mechanism within the arbitration institution can be optimized, and a special relief committee or arbitrator can be established to quickly process the relief applications of the parties. At the same time, it is important to enhance the court's role in ruling on arbitration interim measures, simplify the relief procedures, and improve the efficiency and quality of relief.

Third, China should take measures to enhance the effectiveness of error relief for arbitration interim measures. This includes strengthening the professional training and education of arbitrators to improve their ability to handle complex cases and respond to emergencies. Furthermore, it is essential to supervise the outcomes of interim measures rulings, identify and correct existing problems promptly, and ensure the impartiality and authority of the arbitration system.

6. Conclusion

This paper examines the current situation and challenges of China's interim measures system in international commercial arbitration. It finds that current provisions are insufficient for modern needs. Therefore, amending the arbitration law to clarify the power, procedures, and conditions for interim measures is essential.

In terms of system optimization, it is suggested to allow parties to apply for interim measures before the arbitration tribunal is formed and to introduce an emergency arbitrator system. Strengthening international cooperation, participating in the formulation and revision of international arbitration rules, and promoting mutual recognition and cooperation between domestic and foreign arbitration institutions are also recommended. To address implementation difficulties, the paper proposes improving the legal guarantee mechanism and strengthening implementation supervision. This includes clarifying the procedures and conditions for implementing interim measures, enhancing judicial assistance with foreign courts, and supporting arbitration institutions in adopting advanced technical means to improve execution efficiency. Regarding the relief mechanism, it is suggested to clarify the error relief procedure, simplify the relief process, reduce costs, and improve efficiency. Strengthening the training of arbitrators to handle complex cases and emergencies will also improve the effectiveness of error relief.

To sum up, this paper provides specific optimization strategies based on international experience. These measures aim to clarify provisions, reduce cross-border barriers, protect parties' interests, and enhance China's influence in international arbitration. Continuous improvements will make China's system more effective, fair, and globally relevant.

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