

ONLINE DIGEST*

Chapter 13 Provisional measures

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Introduction

➤ IIAs and other treaties

- * Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018)

Available at:

<https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5672/download>

➤ Arbitration rules

- * Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC Rules of Arbitration) (2017)

Available at:

https://sccinstitute.com/media/1407444/arbitrationrules_eng_2020.pdf

- * Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) (1965)

Available at:

<https://icsid.worldbank.org/sites/default/files/documents/ICSID%20Convention%20English.pdf>

* The textbook analyses a number of selected international investment agreements (IIAs), awards and other materials that illustrate the rules and practices of international investment law and arbitration as well as the nuances and differences that they display. To enable readers to use all these materials easily and swiftly and to have a holistic view of them, the on-line digest compiles them for each chapter and section; it also provides an internet link to access each of these materials.

- * ICSID Rules of Procedure for Arbitration Proceedings (ICSID Arbitration Rules) (2006)

Available at:

<https://icsid.worldbank.org/sites/default/files/documents/ICSID%20Convention%20English.pdf>

- * Proposed Arbitration Rules for ICSID Convention Proceedings (Proposed ICSID Arbitration Rules) (ICSID, 'Proposals for Amendment of the ICSID Rules – Working Paper n° 3' (August 2019)

Available at:

https://icsid.worldbank.org/sites/default/files/amendments/WP_3_VOLUME_1_ENGLISH.pdf

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- * United Nations Commission on International Trade Law Arbitration Rules (1976)

Available at:

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/arb-rules.pdf>

- * United Nations Commission on International Trade Law Arbitration Rules (with new Article 1, paragraph 4, as revised in 2013) (UNCITRAL Rules of Arbitration)

Available at:

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral-arbitration-rules-2013-e.pdf>

➤ Awards, decisions, judgments and opinions

- * *Fouad Alghanim & Sons Co. for General Trading & Contracting, W.L.L. and Mr Fouad Mohammed Thunyan Alghanim v Hashemite Kingdom of Jordan* (ICSID Case No ARB/13/38) - Statement of Dissent of Prof Marcelo G Kohen (24 November 2014)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3288/DS10817_En.pdf

- * *Merck Sharp & Dohme (I.A.) LLC v The Republic of Ecuador* (PCA Case No 2012-10) - Decision on Interim Measures (7 March 2016)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw8813.pdf>

- * *Nova Group Investments, B.V. v Romania* (ICSID Case No ARB/16/19) - Procedural Order No 7 – Decision on Claimant's Request for Provisional Measures (29 March 2017)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw9338.pdf>

- * *Rizzani de Eccher S.p.A., Obrascón Huarte Lain S.A., and Trevi S.p.A. v State of Kuwait* (ICSID Case No ARB/17/8) - Decision on Provisional Measures (23 November 2017)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw9396.pdf>

- * *United Utilities (Talinn) B.V. and Aktsiaselts Tallinna Vesi v Republic of Estonia* (ICSID Case No ARB/14/24) - Decision on Respondent's Application for Provisional Measures (12 May 2016)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3845/DC8212_En.pdf

➤ Other instruments and documents

- * Statute of the International Court of Justice (1945)

Available at:

https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf

13.1 The Notion of Provisional Measures

➤ Arbitration rules

- * Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC Rules of Arbitration) (2017)

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- * Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) (1965)

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- * ICSID Rules of Procedure for Arbitration Proceedings (ICSID Arbitration Rules) (2006)

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<https://icsid.worldbank.org/sites/default/files/documents/ICSID%20Convention%20English.pdf>

- * Proposed Arbitration Rules for ICSID Convention Proceedings (Proposed ICSID Arbitration Rules) (ICSID, 'Proposals for Amendment of the ICSID Rules – Working Paper n° 3' (August 2019)

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- * United Nations Commission on International Trade Law Arbitration Rules (1976)

Available at:

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/arb-rules.pdf>

- * United Nations Commission on International Trade Law Arbitration Rules (with new Article 1, paragraph 4, as revised in 2013) (UNCITRAL Rules of Arbitration)

Available at:

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral-arbitration-rules-2013-e.pdf>

➤ Awards, decisions, judgments and opinions

- * *Georg Gavrilović and Gavrilović d.o.o. v Republic of Croatia* (ICSID Case No ARB/12/39) - Decision on the Claimants' Urgent Application for Provisional Measures (19 March 2015)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw9865.pdf>

- * *Igor Boyko v Ukraine* (UNCITRAL, PCA Case No 2017-23) - Procedural Order No 3 on Claimant's Application for Emergency Relief (3 December 2017)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw9400.pdf>

- * *Mohammed Munshi v The State of Mongolia* (SCC Case No EA 2018/007) - Award on Emergency Measures (5 February 2018)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw9756.pdf>

- * *Perenco Ecuador Ltd v The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)* (ICSID Case No ARB/08/6) - Decision on Provisional Measures (8 May 2009)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C301/DC1050_En.pdf

13.2 The Rights and Interests Protected by Provisional Measures

➤ Arbitration rules

- * Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC Rules of Arbitration) (2017)

Available at:

https://sccinstitute.com/media/1407444/arbitrationrules_eng_2020.pdf

- * Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) (1965)

Available at:

<https://icsid.worldbank.org/sites/default/files/documents/ICSID%20Convention%20English.pdf>

- * ICSID Rules of Procedure for Arbitration Proceedings (ICSID Arbitration Rules) (2006)

Available at:

<https://icsid.worldbank.org/sites/default/files/documents/ICSID%20Convention%20English.pdf>

- * Proposed Arbitration Rules for ICSID Convention Proceedings (Proposed ICSID Arbitration Rules) (ICSID, 'Proposals for Amendment of the ICSID Rules – Working Paper n° 3' (August 2019)

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- * United Nations Commission on International Trade Law Arbitration Rules (1976)

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<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/arb-rules.pdf>

- * United Nations Commission on International Trade Law Arbitration Rules (with new Article 1, paragraph 4, as revised in 2013) (UNCITRAL Rules of Arbitration)

Available at:

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral-arbitration-rules-2013-e.pdf>

➤ Awards, decisions, judgments and opinions

- * *Fouad Alghanim & Sons Co. for General Trading & Contracting, W.L.L. and Mr Fouad Mohammed Thunyan Alghanim v Hashemite Kingdom of Jordan* (ICSID Case No ARB/13/38) - Order on Application for the Grant of Provisional Measures (24 November 2014)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3288/DS10817_En.pdf

- * *Fouad Alghanim & Sons Co. for General Trading & Contracting, W.L.L. and Mr Fouad Mohammed Thunyan Alghanim v Hashemite Kingdom of Jordan* (ICSID Case No ARB/13/38) - Statement of Dissent of Prof Marcelo G Kohen (24 November 2014)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3288/DS10817_En.pdf

- * *Interocean Oil Development Company and Interocean Oil Exploration Company v Federal Republic of Nigeria* (ICSID Case No ARB/13/20) - Procedural Order No 6 – Decision on the Respondent’s Application for Provisional Measures (1 February 2017)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3043/DS11475_En.pdf

- * *Nova Group Investments, B.V. v Romania* (ICSID Case No ARB/16/19) - Procedural Order No 7 – Decision on Claimant’s Request for Provisional Measures (29 March 2017)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw9338.pdf>

- * *Perenco Ecuador Ltd v The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)* (ICSID Case No ARB/08/6) - Decision on Provisional Measures (8 May 2009)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C301/DC1050_En.pdf

- * *Rizzani de Eccher S.p.A., Obrascón Huarte Lain S.A., and Trevi S.p.A. v State of Kuwait* (ICSID Case No ARB/17/8) - Decision on Provisional Measures (23 November 2017)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw9396.pdf>

- * *Valle Verde Sociedad Financiera S.L. v Bolivarian Republic of Venezuela* (ICSID Case No ARB/12/18) - Decision on Provisional Measures (25 January 2016)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw7089.pdf>

13.3 The Substantive Conditions to Grant Provisional Measures

➤ Arbitration rules

- * Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC Rules of Arbitration) (2017)

Available at:

https://sccinstitute.com/media/1407444/arbitrationrules_eng_2020.pdf

- * Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) (1965)

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- * ICSID Rules of Procedure for Arbitration Proceedings (ICSID Arbitration Rules) (2006)

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<https://icsid.worldbank.org/sites/default/files/documents/ICSID%20Convention%20English.pdf>

- * Proposed Arbitration Rules for ICSID Convention Proceedings (Proposed ICSID Arbitration Rules) (ICSID, 'Proposals for Amendment of the ICSID Rules – Working Paper n° 3' (August 2019)

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- * United Nations Commission on International Trade Law Arbitration Rules (with new Article 1, paragraph 4, as revised in 2013) (UNCITRAL Rules of Arbitration)

Available at:

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral-arbitration-rules-2013-e.pdf>

➤ Awards, decisions, judgments and opinions

- * *Caratube International Oil Company LLP v Republic of Kazakhstan* (ICSID Case No ARB/08/12) - Decision Regarding Claimant's Application for Provisional Measures (31 July 2009)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/ita0129.pdf>

- * *Case Concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v Rwanda)* (Provisional Measures), Order of 10 July 2002

Available at:

<https://www.icj-cij.org/files/case-related/126/126-20020710-ORD-01-00-EN.pdf>

- * *Georg Gavrilović and Gavrilović d.o.o. v Republic of Croatia* (ICSID Case No ARB/12/39) - Decision on Claimants' Request for Provisional Measures (30 April 2015)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw9866.pdf>

- * *Fouad Alghanim & Sons Co. for General Trading & Contracting, W.L.L. and Mr Fouad Mohammed Thunyan Alghanim v Hashemite Kingdom of Jordan* (ICSID Case No ARB/13/38) - Statement of Dissent of Prof Marcelo G Kohen (24 November 2014)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3288/DS10817_En.pdf

- * *Italba Corporation v Oriental Republic of Uruguay* (ICSID Case No ARB/16/9) - Decision on Claimant's Application for Provisional Measures and Temporary Relief (15 February 2017)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw8472.pdf>

- * *Merck Sharp & Dohme (I.A.) LLC v The Republic of Ecuador* (PCA Case No 2012-10) - Decision on Interim Measures (7 March 2016)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw8813.pdf>

- * *Merck Sharp & Dohme (I.A.) LLC v The Republic of Ecuador* (PCA Case No 2012-10) - Second Decision on Interim Measures (6 September 2016)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw9571.pdf>

- * *Millicom International Operations B.V. and Sentel GSM SA v The Republic of Senegal* (ICSID Case No ARB/08/20) - Decision on the Application for Provisional Measures Submitted by the Claimants on 24 August 2009 (9 December 2009)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw1244.pdf>

- * *Occidental Petroleum Corporation and Occidental Exploration and Production Company v The Republic of Ecuador* (ICSID Case No ARB/06/11) - Decision on Provisional Measures (17 August 2007)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C80/DC661_En.pdf

- * *Perenco Ecuador Ltd v The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)* (ICSID Case No ARB/08/6) - Decision on Provisional Measures (8 May 2009)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C301/DC1050_En.pdf

- * *PNG Sustainable Development Program Ltd v Independent State of Papua New Guinea* (ICSID Case No ARB/13/33) - Decision on the Claimant's Request for Provisional Measures (21 January 2015)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3264/DC5412_En.pdf

- * *Quiborax S.A., Non Metallic Minerals S.A. v Plurinational State of Bolivia* (ICSID Case No ARB/06/2) - Decision on Provisional Measures (26 February 2010)

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<https://www.italaw.com/sites/default/files/case-documents/ita0698.pdf>

- * *Rizzani de Eccher S.p.A., Obrascón Huarte Lain S.A., and Trevi S.p.A. v State of Kuwait* (ICSID Case No ARB/17/8) - Decision on Provisional Measures (23 November 2017)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/italaw9396.pdf>

- * *Sergei Paushok, CJSC Golden East Company, CJSC Vostokneftegaz Company v The Government of Mongolia* (UNCITRAL) - Order on Interim Measures (2 September 2008)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/ita0621.pdf>

- * *Teinver S.A., Transportes de Ceranías S.A. and Autobuses Urbanos del Sur S.A. v The Argentine Republic* (ICSID Case No ARB/09/1) - Decision on Provisional Measures (8 April 2016)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C520/DC7892_En.pdf

- * *Víctor Pey Casado and President Allende Foundation v Republic of Chile* (ICSID Case No ARB/98/2) - Decision on Provisional Measures (25 September 2001)

Available at:

<https://www.italaw.com/sites/default/files/case-documents/ita0630.pdf>

13.4 Procedural Aspects and Legal Force of Provisional Measures

➤ Arbitration rules

- * *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (ICSID Convention) (1965)

Available at:

<https://icsid.worldbank.org/sites/default/files/documents/ICSID%20Convention%20English.pdf>

- * *ICSID Rules of Procedure for Arbitration Proceedings* (ICSID Arbitration Rules) (2006)

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- * Proposed Arbitration Rules for ICSID Convention Proceedings (Proposed ICSID Arbitration Rules) (ICSID, 'Proposals for Amendment of the ICSID Rules – Working Paper n° 3' (August 2019)

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- * United Nations Commission on International Trade Law Arbitration Rules (with new Article 1, paragraph 4, as revised in 2013) (UNCITRAL Rules of Arbitration)

Available at:

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral-arbitration-rules-2013-e.pdf>

➤ Awards, decisions, judgments and opinions

- * *Emilio Agustín Maffezini v Kingdom of Spain* (ICSID Case No ARB/97/7) - Procedural Order No 2 (28 October 1999)

Available at:

http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C163/DC564_En.pdf

- * *Fouad Alghanim & Sons Co. for General Trading & Contracting, W.L.L. and Mr Fouad Mohammed Thunyan Alghanim v Hashemite Kingdom of Jordan* (ICSID Case No ARB/13/38) - Statement of Dissent of Prof Marcelo G Kohen (24 November 2014)

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- * *United Utilities (Talinn) B.V. and Aktsiaselts Tallinna Vesi v Republic of Estonia* (ICSID Case No ARB/14/24) - Decision on Respondent's Application for Provisional Measures (12 May 2016)

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