



ISDS: A WAY FORWARD, 27 MAY 2015

# Emergency Arbitrator in ISDS Cases

Natalia Petrik, legal counsel



## SCC Investment Arbitrations in 2014

- 11 investment arbitrations – all under the SCC Rules
- 2 of 11 cases filed for the appointment of an emergency arbitrator
- Top sectors: energy sector, chemicals, financial sector (1993 – 2014)
- Top nationality of investor: Russia, Germany, Luxembourg/UK (1993 – 2014)

# The SCC introduced the provisions on the emergency arbitrator (EA) in 2010 as a response to a perceived need within the international business community

- Available before arbitration is commenced
- Requires that the SCC does not manifestly lack jurisdiction
- Opt-out provision
- Respondent must be notified / no *ex parte* procedure
- Standard procedure:
  - Appointment within 24 hours
  - Decision within 5 days



The ambitious timeline has shown itself to be workable

- Requests for EA: 14
- Appointments made within 24h: 12
- Decisions delivered within 5 days: 8
- The longest duration was 12 days
- Relief granted: 3
- Relief partially granted: 1

**The SCC emergency arbitrator procedure has generated interest above expectations**



## Examples of the requested measures

- interim postponement of a deadline;
- order to deposit an amount equal to the aggregate amount of claims;
- prohibition to sell ownership;
- order to inform the claimant of any measures resulting in selling/pledging ownership;
- order not to aggravate the dispute;

## Emergency proceedings in the two Treaty-based cases: procedural issues

- Cooling-off periods;
- Prima facie jurisdiction;
- Applicable version of the SCC Rules;
- Criteria for granting interim relief;
- Form of the decision: award or order?
- Costs

## Applicable version of the SCC Rules

” when a treaty should be interpreted in terms whose content is susceptible of evolving over time, it is fair to presume that the contracting states intended their treaty content to evolve accordingly, unless... there is evidence of contrary intention.”

- The treaty referred to an institution instead of a set of rules;
- The arbitration agreement was concluded when the investor accepted the offer to arbitrate;

## Standards for granting interim relief

SCC Rules: "any interim measure EA deems appropriate"

- Prima facie jurisdiction over the substantive claim;
- Prima facie prospect of success on the merits;
  
- Relation to the substantive claims
- Urgency and irreparable harm
- Proportionality

Additional standards: the interim measure should not imply pre-judgment on the merits and should not concern declaratory relief;



## Concluding remarks

---

- Useful and demanded in the international context;
- Swift – efficient – confidential;
- Internationally accepted criteria were applied in all the cases;
- The same principles as in the standard procedure: equal and fair opportunity to present the case, impartiality/independence;
- The weight of EA's decision should not be underestimated



ISDS: A WAY FORWARD, 27 MAY 2015

# THANK YOU!

[Natalia.petrik@chamber.se](mailto:Natalia.petrik@chamber.se)



ARBITRATION INSTITUTE  
OF THE STOCKHOLM CHAMBER OF COMMERCE