**Table: Decision Tree for Interim Measures (Letter of Guarantee during Arbitration)**

| **Step** | **Question / Condition** | **Code** | **Answer** | **Sub-Code** | **Action / Outcome** |
| --- | --- | --- | --- | --- | --- |
| Start | Is there a need to take an interim measure, such as calling on a letter of guarantee during the arbitration process? | Q1 | Yes | Q1.1 | Proceed to **Node 1** |
|  |  |  | No | Q1.2 | Outcome: Interim measures are not pursued; proceed with standard arbitration. Stop. |
| Node 1 | Does the arbitration agreement explicitly allow, or is it silent on, interim measures? | Q2 | Allows | Q2.1 | Proceed to **Node 2** |
|  |  |  | Silent | Q2.2 | Proceed to **Node 3** |
| Node 2 | Has the tribunal been constituted? | Q3 | Yes | Q3.1 | Proceed to **Node 4** |
|  |  |  | No | Q3.2 | Outcome: Consider seeking interim measures from a court if tribunal not yet formed. Stop. |
| Node 3 | Do the applicable arbitration law/rules (e.g., ICC, UNCITRAL) allow interim measures? | Q4 | Yes | Q4.1 | Proceed to **Node 2** |
|  |  |  | No | Q4.2 | Outcome: Interim measures may be challenging; seek judicial assistance. Stop. |
| Node 4 | Does the interim measure meet urgency/necessity criteria to avoid irreparable harm? | Q5 | Yes | Q5.1 | Proceed to **Node 5** |
|  |  |  | No | Q5.2 | Outcome: Request likely denied by tribunal or court. Stop. |
| Node 5 | Is there risk of counterparty dissipating assets or undermining arbitration? | Q6 | Yes | Q6.1 | Proceed to **Node 6** |
|  |  |  | No | Q6.2 | Outcome: Without risk, interim measures harder to obtain. Stop. |
| Node 6 | Has the requesting party provided adequate security/counter-guarantee? | Q7 | Yes | Q7.1 | Proceed to **Node 7** |
|  |  |  | No | Q7.2 | Outcome: Security may be required before granting interim measure. Stop. |
| Node 7 | Can the tribunal/court issue the interim measure without prejudicing final outcome? | Q8 | Yes | Q8.1 | Outcome: Interim measure (e.g., calling guarantee) likely granted. Stop. |
|  |  |  | No | Q8.2 | Outcome: Interim measure rejected to avoid prejudicing final decision. Stop. |

**Notes & Explanation**

1. **Start – Necessity of Interim Measure**: The process begins with identifying whether urgent relief (e.g., calling a bank guarantee) is required. If not, arbitration proceeds normally.
2. **Agreement Scope (Node 1)**: Arbitration clauses may explicitly allow interim measures or remain silent. Silence often shifts authority to institutional rules or national laws.
3. **Constitution of Tribunal (Node 2)**: Before the tribunal is formed, parties often rely on courts for interim relief. Once constituted, the tribunal may issue orders directly.
4. **Legal Framework (Node 3)**: Institutional rules like ICC, UNCITRAL, or local arbitration acts usually empower tribunals to order interim measures even if contracts are silent.
5. **Urgency & Necessity (Node 4)**: Courts and tribunals require proof that delay would cause irreparable harm (e.g., asset dissipation).
6. **Risk of Dissipation (Node 5)**: Establishing real risk strengthens the case for interim relief.
7. **Security Requirement (Node 6)**: A party seeking interim measures may be asked to post counter-security to protect against wrongful enforcement.
8. **Non-Prejudice to Merits (Node 7)**: Interim measures must not prejudge the merits of the case, ensuring fairness in the final award.

**Common Interim Measures in Construction Arbitration**

1. **Preservation of Evidence**
   * **Description**: Orders to preserve physical evidence, documents, or electronic data relevant to the dispute.
   * **Purpose**: Ensures that all necessary evidence is maintained and available for the arbitration proceedings, preventing its destruction, alteration, or loss.
2. **Security for Costs**
   * **Description**: An order requiring one party to provide security for the potential legal costs of the other party.
   * **Purpose**: Protects a party (usually the contractor) from incurring arbitration costs that they may not be able to recover if the opposing party (often the employer) is found liable but unable to pay.
3. **Interim Payments or Advance on Damages**
   * **Description**: An order requiring one party to make a provisional payment to the other before the final arbitration award.
   * **Purpose**: Provides financial relief to the requesting party (often the contractor) if there is strong prima facie evidence that they are entitled to some compensation.
4. **Freezing Orders (Mareva Injunctions)**
   * **Description**: Orders that prohibit a party from disposing of, transferring, or dealing with certain assets.
   * **Purpose**: Prevents the dissipation of assets that might otherwise be used to satisfy an arbitration award, ensuring that these assets remain available for enforcement purposes.
5. **Stay of Parallel Proceedings**
   * **Description**: An order to temporarily halt ongoing court or arbitration proceedings related to the dispute.
   * **Purpose**: Prevents conflicting judgments or duplication of efforts and ensures that the arbitration process is not undermined by other legal actions.
6. **Injunctions or Prohibitory Orders**
   * **Description**: Orders to stop a party from taking certain actions that may cause harm or prejudice the arbitration.
   * **Purpose**: Prevents actions like continuing construction works, calling on a performance bond, or other behaviors that could exacerbate the dispute or lead to irreparable harm.
7. **Orders for Specific Performance**
   * **Description**: Orders that compel a party to perform a specific contractual obligation that is not under dispute.
   * **Purpose**: Ensures that essential contractual duties, such as maintaining equipment or providing access to the construction site, are fulfilled pending the outcome of arbitration.
8. **Orders for Security of Performance**
   * **Description**: Orders that require a party to provide a guarantee or bond to secure the performance of specific obligations.
   * **Purpose**: Protects against the risk of non-performance, ensuring that one party can enforce their rights effectively if the other party defaults.
9. **Appointment of an Independent Expert or Auditor**
   * **Description**: An order to appoint an independent third party to assess specific technical or financial aspects of the dispute.
   * **Purpose**: Provides neutral, expert insight into complex construction issues, such as the quality of work, delay analysis, or financial accounting.
10. **Return or Preservation of Property**
    * **Description**: Orders requiring the return or preservation of property, equipment, or materials that are in dispute.
    * **Purpose**: Ensures that assets crucial to the arbitration (e.g., specialized equipment or materials) are preserved and not damaged, altered, or disposed of.

**Purpose and Application of Interim Measures**

Interim measures are essential tools in construction arbitration, where disputes often involve complex technical details, significant financial stakes, and the potential for substantial project delays. They serve to:

* **Preserve the status quo** until the final arbitration decision is made.
* **Prevent irreparable harm** to a party’s rights or interests.
* **Ensure enforceability** of the final award by safeguarding assets or evidence.

The party requesting an interim measure typically needs to demonstrate that:

* **There is a prima facie case** in their favor.
* **Urgency** necessitates immediate action to prevent harm.
* **Potential harm** would be irreparable or difficult to compensate with damages alone.
* **The balance of convenience** favors granting the measure.

In all cases, the arbitration tribunal will consider the necessity and proportionality of the requested interim measure before granting it.

References

mentioning cite from section 'remedies for fraud in arbitration proceeding' of publication:

(2016). arbitration and lc fraud disputes: a comparative approach. Russian Journal of Comparative Law, 8(2). https://doi.org/10.13187/rjcl.2016.8.59

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“…In the arbitration process, interim measures are those remedies which are granted before announcement of final award [24]. Power of arbitration tribunals to award interim measure was limited for many years, or not recognized in many jurisdictions as it was considered to be granted only under court's discretion [36].After coming into force of the UNCITRAL Model Law on International Commercial Arbitration, granting interim measures are included among powers which signatory countries provided for arbitral tribunals [37].…”

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