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	Applying the standard for interim measures under article 17a of the Model Law on International Commercial Arbitration (*Principles of construction of each element of the standard*)	
	Principles of construction	Reasoning
1. General principles of construction applicable to article 17A		
Principles that cannot be contradicted		
1.1	Article 17A's travaux préparatoires must be considered, and article 17A cannot be applied in a way that contradicts those travaux préparatoires	Article 2A mandates that when applying article 17A, "regard is to be had to its international origin"
1.2	The decisions by courts and arbitrators around the world that have applied article 17A and the scholarly writings that have analyzed it must be considered, but are not binding	Article 2A mandates that when applying article 17A, "regard is to be had" "to the need to promote uniformity in [its] application"
1.3	Article 17A's standard cannot be construed solely under the canons of construction that would be applied to a domestic statute in the relevant jurisdiction	Article 2A mandates that when applying article 17A, "regard is to be had to its "international origin" and "the need to promote uniformity in [its] application"
1.4	Equitable considerations must be factored in, like for example whether granting or denying the interim measures would reward a party that (i) is acting in bad faith, (ii) delaying the proceedings, or (iii) delaying enforcement of a future award	Article 2A mandates that when applying article 17A, "regard is to be had" to "the observance of good faith," i.e., equitable considerations

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2. Burden of proof		
Principles that cannot be contradicted		
2.1	If the applicant does not meet Article 17A's standard, arbitrators have no discretion to issue interim measures, except when the measures seek to preserve evidence	Article 17A's travaux préparatoires show that the Working Group chose the word "shall" to obligate applicants to meet the standard
2.2	Article 17A's standard does not establish what burden of proof applicants must meet; each jurisdiction determines that burden of proof	Article 17A's travaux préparatoires show that the word "satisfy" establishes a "neutral" burden of proof, and that each jurisdiction sets the burden of proof
3. Urgency		
Principles that cannot be contradicted		
3.1	Urgency is not a separate element of article 17A's standard	Article 17A's travaux préparatoires show that urgency was intentionally eliminated as a separate element of the standard
Principles that must be considered but are not binding		
3.2	The element of urgency is (i) implicitly included in the requirement of "harm not adequately reparable by an award of damages," (ii) satisfied when the relief requested cannot await a final award, or (iii) in	Decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities but are not bound to follow them

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	emergency arbitrations, satisfied when the relief requested cannot await the constitution of the tribunal	
4. Harm to the applicant "not adequately reparable by an award of damages"		
Principles that cannot be contradicted		
4.1	Applicants need not prove that harm "will result" if the measure is not granted	Article 17A's travaux préparatoires show that the Working Group decided to lower the burden of proof from harm that "will result" to harm that is "likely"
4.2	Article 17A's concept of "harm not adequately reparable by an award of damages" covers harm that is truly irreparable	Article 17A's travaux préparatoires show that the term "not adequately reparable by an award of damages" covers truly irreparable harm, and list as an example the loss of an irreplaceable piece of art Arbitrators have held, for example, that the loss of evidence or of the ability to participate in the arbitration are truly irreparable harm covered by article 17A
4.3	Article 17A's concept of "harm not adequately reparable by an award of damages" also covers harm that can be compensated by an award of damages, but that it would	Article 17A's travaux préparatoires show that the term "not adequately reparable by an award of damages" also covers damages that would be "comparatively complicated to

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	be "comparatively complicated to compensate" through such award	compensate" by an award of damages, and list as an example losing a business opportunity, or forcing a party into insolvency. Arbitrators have found that this covers, for example, cases where the applicant would suffer a significant disruption of business relations or would go out of business altogether
4.4	To prove a harm "not adequately reparable by an award of damages," applicants need not prove that their harm is of large quantity	Article 17A's travaux préparatoires show that the term "not adequately reparable by an award of damages" refers to the quality of the harm, not to its large quantity
Principles that must be considered but are not binding		
4.5	Harm of small quantity might be insufficient. The application might fail if the quantity of the applicant's harm is too low, regardless of its quality	Decisions and/or scholarly writings have concluded this. Pursuant to Article 2A, practitioners must consider those authorities but are not bound to follow them
4.6	If the respondent is unlikely to honor a final award, the applicant's harm will "not [be] adequately reparable by an award of damages"	Numerous decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities, and are likely to follow them, but not bound to do so

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5. Balance of convenience (the "substantially outweigh" requirement)		
Principles that cannot be contradicted		
5.1	Irrelevant to the balance of convenience is any harm to the applicant that would not be avoided or mitigated by the interim measures	Article 17A's travaux préparatoires show that the word "such" captures harm likely to occur if the interim measures are not granted
5.2	Irrelevant to the balance of convenience is any harm to the applicant that can be "adequately compensated by an award of damages"	Article 17A's travaux préparatoires show that the word "such" captures harm not "adequately compensated by an award of damages"
5.3	Harm to parties who are "affected by the measure," but are not the party "against whom the measure is directed," is irrelevant to the balance of convenience	Article 17A's travaux préparatoires show that the relevant harm is only that caused to the party "against whom the measure is directed" and not to any other party "affected by the measure"
Principles that must be considered but are not binding		
5.4	Parties who present an undertaking that would cover the damages the other side would suffer if the measures are granted/rejected are more likely to show that the balance of convenience tilts in their favor	Decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities but are not bound to follow them

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5.5	A declaration by respondent that it will not infringe the applicant's rights at issue might help respondent show that the balance of convenience does not tilt in the applicant's favor	Decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities but are not bound to follow them
5.6	If arbitrators deny the interim measures based on a declaration by the respondent not to infringe the rights at issue, and the respondent later reneges on that declaration, arbitrators may issue the measures	Decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities but are not bound to follow them
5.7	If the interim measures would cause the respondent "limited" damages, the applicant is likely to show that the balance of convenience tilts in its favor	Numerous decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities, and are likely to follow them, but not bound to do so
5.8	If the interim measures would cause the respondent "irreparable harm," respondent is likely to show that the balance of convenience tilts in its favor	Decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities but are not bound to follow them
5.9	It is harder for applicants to show that the balance of convenience tilts in their favor if they seek an affirmative injunction	Decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities but are not bound to follow them

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5.10	The stronger the merits of the underlying claim relevant to the application for interim measures, the lower the applicant's burden of proof on the balance of convenience	Decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities but are not bound to follow them
5.11	A refusal by the applicant to accept a unilateral imposition by the respondent, which imposition would arguably mitigate the applicant's harm, is irrelevant to the balance of convenience	Decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities but are not bound to follow them
6. Reasonable possibility of success on the merits of the claim		
Principles that cannot be contradicted		
6.1	Applicants need not prove a "reasonable possibility of success on the merits of the" application for interim measures	Article 17A's travaux préparatoires show that applicants must prove a reasonable possibility of success on the merits of the underlying claim, not the application for interim measures
6.2	Applicants need not prove a "reasonable possibility of success on the merits of the" claims not relevant to the application for interim measures	Article 17A's travaux préparatoires show that applicants must prove a reasonable possibility of success on the merits only of the underlying claim relevant to the application rather than of the entire "dispute" or "underlying case"

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6.3	A decision on interim measures does not prejudge a future determination on either an award on the merits or procedural orders	Article 17A's travaux préparatoires show that under article 17A a decision on interim measures does not prejudge future determinations in either awards or procedural orders
6.4	The determination of whether an applicant showed "a reasonable possibility of success on its claim" will be influenced by (i) how early in the proceedings the applicant seeks the interim measures; and (ii) how much information is available then	Article 17A's travaux préparatoires show that the "reasonable possibility of success on the merits of the claim will be assessed differently in view of the different information available to the arbitral tribunal at different stages of the arbitral proceedings"
Principles that must be considered but are not binding		
6.5	To show a "reasonable possibility of success on the merits," an applicant should show that the merits of its claim fall between "plausible" and "more likely than not"	Numerous decisions and scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities, and are likely to follow them, but not bound to do so
6.6	An applicant might show "a reasonable possibility of success on its claim" even when the respondent presents "credible" defenses	Decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities but are not bound to follow them

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	Principles of construction	Reasoning
6.7	An applicant might show "a reasonable possibility of success on its claim" even if its claim is supported only on inferences, rather than direct evidence	Decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities but are not bound to follow them
7. Jurisdiction		
Principles that cannot be contradicted		
7.1	Any jurisdictional requirement that exists under article 17A does not refer to the ability of the arbitrator to issue interim measures	Article 17A presupposes the arbitrator's ability to issue interim measures
7.2	If, to get the interim measures, the applicant needs to show that the arbitrator has jurisdiction, the applicant likely needs to show only a "reasonable possibility" of jurisdiction. In any event, the applicant would need to show a "reasonable possibility" of jurisdiction only over the underlying claim relevant to the application rather than over the entire "dispute or underlying case"	Numerous decisions and scholarly writings have concluded that as part of the "reasonable possibility of success on the merits," applicants must prove a reasonable possibility of jurisdiction. Pursuant to article 2A, practitioners must consider those authorities, and are likely to follow them, but not bound to do so. Yet, if practitioners follow those authorities, i.e., conclude that an applicant must make a showing of jurisdiction, they must limit the requirement to jurisdiction over the underlying claim relevant to the application, because article 17A's travaux

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		préparatoires show that practitioners must prove a reasonable possibility of success on the merits of that claim only
7.4	A finding of a "reasonable possibility" of jurisdiction over the underlying claim does not preclude a subsequent finding to the contrary	Article 17A's travaux préparatoires show that a decision on interim measures does not prevent future determinations to the contrary
Principles that must be considered but are not binding		
7.5	For purposes of interim measures, arbitrators might be satisfied of their jurisdiction simply when (i) the contract, or treaty, refers to arbitration under the rules of the institution that appointed the arbitrators; and (ii) any pre-arbitration conditions seem inapplicable	Decisions and/or scholarly writings have concluded this. Pursuant to article 2A, practitioners must consider those authorities but are not bound to follow them
8. Other elements and considerations		
Principles that can be considered but are not binding		
8.1	In general, interim measures might be granted to prevent aggravating the parties' dispute, but this does not apply "to protect against an increase of the amount in dispute"	Article 17A is silent on this, and so are its travaux préparatoires. Practitioners are thus free to follow or disregard the authorities that have concluded this

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8.2	In general, interim measures might be denied if they seek the same relief sought in the main case. (But this should not apply if both types of relief are closely related and cannot be untangled)	Article 17A is silent on this, and so are its travaux préparatoires. Practitioners are thus free to follow or disregard the authorities that have concluded this