

PROTECTIVE PRELIMINARY ORDERS UNDER THE 2025 SIAC RULES: ANALYSING ENFORCEABILITY IN INDIAN COURTS

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ABSTRACT

The new 2025 SIAC Rules introduce the tool of Protective Preliminary Orders [‘PPOs’] to strengthen the emergency arbitration process and enable an applicant to obtain urgent interim reliefs without notifying the opposing party. PPOs represent an expedited component of emergency arbitration to protect the applicant from the actions of a recalcitrant opposing party. However, given that emergency arbitration itself is an expedited procedure intended to grant similar urgent reliefs, the necessity and utility of PPOs is contentious. In this article, the author argues that PPOs may be enforceable in India under the same framework and principles adopted for the enforcement of interim reliefs from emergency arbitration and the critiques levelled against the PPO process may be misplaced. The enforceability of PPOs in India is assessed from the lens of the existence of consent for the PPO mechanism as well as the fairness of the framework adopted by the Rules for granting the relief.

1. INTRODUCTION

The Singapore International Arbitration Centre (‘SIAC’) recently introduced the seventh edition of its institutional arbitration rules. The new Rules (‘Rules’) have come into effect from 1st January 2025. While the Rules introduce changes to multiple components of the earlier edition,¹ this article focuses on the incorporation of the power to provide protective preliminary orders (‘PPO’) in emergency arbitration.

The SIAC has been a pioneer in emergency arbitration – it was the first arbitral institution in the region to incorporate emergency arbitration as

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1. Highlights of the SIAC Rules 2025 <<https://siac.org.sg/wp-content/uploads/2024/06/Highlights-of-the-SIAC-Rules-2025.pdf>> accessed 25 February 2025.

part of its arbitral tools back in 2010.² Its Annual Report has indicated the success of the emergency arbitration procedure with 152 applications being filed for emergency arbitration since 2010.³ The Rules introduce the tool of PPOs to strengthen the emergency arbitration process and enable an applicant to obtain urgent interim reliefs without notifying the opposing party. PPOs represent an expedited component of emergency arbitration to protect the applicant from the actions of a recalcitrant opposing party. However, given that emergency arbitration itself is an expedited procedure intended to grant similar urgent reliefs, the necessity and utility of PPOs is contentious.

Another issue with PPOs pertains to their enforceability in jurisdictions other than the seat court. In India, despite the absence of statutory provisions, the courts have given effect to interim reliefs obtained through SIAC emergency arbitration. However, there is no clarity on whether courts will enforce PPOs with some authors expressing doubt over their enforceability owing to procedural limitations.⁴

In this article, the author addresses the enforceability of PPOs as well as their utility. The author argues that PPOs may be enforceable in India under the same framework and principles adopted for the enforcement of interim reliefs from emergency arbitration and the critiques levelled against the PPO process may be misplaced.

The article consists of two parts. First, the author describes the PPO mechanism, evaluating its procedures and timelines. A comparison between the processes for the grant of a PPO and an interim relief through emergency arbitration is undertaken to understand the differences between them. Second, the author examines the enforceability of PPOs in India. This involves assessing the existence of consent for the PPO mechanism as well as the fairness of the framework adopted by the Rules for granting the relief.

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2. Rishabh Malaviya, 'SIAC Rules 2025: Breaking New Ground in Emergency Arbitration with Protective Preliminary Orders' *Kluwer Arbitration Blog* (6 January 2025) <<https://arbitrationblog.kluwerarbitration.com/2025/01/06/siac-rules-2025-breaking-new-ground-in-emergency-arbitration-with-protective-preliminary-orders/>> accessed 25 February 2025.
 3. *SIAC Annual Report 2023*, p 18 <https://siac.org.sg/wp-content/uploads/2024/04/SIAC_AR2023.pdf> accessed 25 February 2025.
 4. Gayatri Kondapalli and Aditi Kanoongo, 'Emergency Arbitration: Will the SIAC's New Rules Face Judicial Resistance in India?' *IndiaCorpLaw* (24 February 2025) <<https://indiacorp.in/2025/02/emergency-arbitration-will-the-siacs-new-rules-face-judicial-resistance-in-india.html>> accessed 25 February 2025.

2. THE PROCESS OF GRANTING A PPO

Schedule I governs the procedure for emergency arbitration. Paragraph 25 to Paragraph 34 of Schedule I of the Rules deal with the procedure for the grant of a PPO. PPOs are intended to be a component of emergency arbitration since the same emergency arbitrator grants them as part of the same proceedings initiated through the same application. They are provided to direct a party “not to frustrate the purpose” of the emergency arbitration.⁵ What distinguishes the application for a PPO from an emergency arbitration is the absence of notice to the other parties.⁶ Therefore, if a party makes an application solely for emergency arbitration, it will be compelled to issue notice to the other parties but if the party adds a request for a PPO to the application for emergency arbitration, it is exempted from the need to issue notices to the other parties.

If the application for PPO is accepted by the SIAC President, an emergency arbitrator is appointed as per the procedure laid out in Paragraph 7.⁷ Once the emergency arbitrator is appointed, the request for PPO is to be determined within 24 hours.⁸ If the emergency arbitrator grants the PPO, the order is delivered to the SIAC Secretariat and the applicant is required to provide a copy of all the case papers, the PPO and all other communications to the other parties within 12 hours.⁹ The Rules impose a duty on the SIAC Secretariat as well as the applicant to communicate the PPO to the other party. If the applicant fails to communicate the relevant information to the other parties within 12 hours or take effective measures for the same, the PPO expires after 3 days.¹⁰ The Rules also enable the other parties to raise objections to the PPO “at the earliest practicable time” and direct the emergency arbitrator to promptly decide on the objection.¹¹ The PPO expires 14 days after it is issued.¹² The PPO can be adopted or modified in the interim relief granted through the emergency arbitration process.¹³

5. sch I, para 25.

6. *ibid.*

7. sch I, para 26.

8. sch I, para 27.

9. sch I, paras 28 & 29.

10. sch I, para 30.

11. sch I, paras 31 & 32.

12. sch I, para 33.

13. *ibid.*

In a situation where the request for a PPO is rejected by the SIAC President, the applicant must send notice to the other parties. This application is then treated as a request for emergency arbitration.¹⁴

The PPO process has three key differences from the emergency arbitration process. The first difference pertains to the availability of avenues to challenge the emergency arbitrator's appointment. Once the SIAC accepts a request for emergency arbitration, the emergency arbitrator must be appointed within 24 hours.¹⁵ While this timeline is identical for the grant of a PPO, the other party can challenge the appointment of the emergency arbitrator since they receive notice of the appointment.¹⁶ When an application is filed for a PPO, the other party cannot challenge the appointment of the emergency arbitrator prior to the grant of relief. It is only possible for the other party to raise an objection after the PPO has been granted. This is supported by the fact that the procedure for appointment of an emergency arbitrator under Paragraph 7 alone is made applicable for the PPO process and not the challenge procedure under Paragraphs 9 to 11. Therefore, the PPO process results in the unilateral appointment of an emergency arbitrator that can be challenged only after the PPO has been granted.

The second difference pertains to the duration for which the reliefs operate. The PPO, subject to the applicant's compliance with the notice requirements under Paragraph 29, remains in effect for 14 days from the date of issue. Given that emergency arbitration is to be concluded within 14 days of the appointment of the emergency arbitrator and the grant of PPO is determined within 24 hours of the appointment, the PPO is intended to operate for the duration of the emergency arbitration. On the other hand, the emergency interim relief (granted through the emergency arbitration process) operates till the tribunal modifies or revokes it or passes an award. Therefore, while both the PPO and the emergency interim relief are aimed at preventing the other party from frustrating the purpose of arbitration, their scope of application is significantly different. The emergency interim relief is broader and operates till the tribunal conclusively determines the issue, while the PPO is extremely narrow and operates till the emergency arbitrator decides on the grant of emergency interim relief.

14. sch I, para 34.

15. sch I, para 7.

16. sch I, para 9.

The third difference relates to the manner in which the reliefs are granted. The PPO is granted by the emergency arbitrator without hearing the other party. This is based on the premise that if notice is given, the other party might frustrate the purpose of arbitration before the proceedings are completed. The sole objective is to ensure that the other party does not have an opportunity to take any adverse actions during the pendency of the emergency arbitration. Any opportunity to challenge the PPO is provided only after the relief has been granted. However, in emergency arbitration, both parties have an opportunity to present their case before the interim relief is decided.

Therefore, a PPO is decided by a unilaterally appointed emergency arbitrator whose appointment can be challenged only after the relief is granted. The PPO is granted before hearing the other parties and operates for an extremely narrow time period. The author will subsequently argue that though there are substantial procedural differences from the emergency arbitration procedure this might not render the PPO unenforceable in India.

3. THE ENFORCEABILITY OF PPOS IN INDIA

An interim relief is only useful to the extent that it can be enforced. Therefore, it becomes important to analyse the enforceability of PPOs prior to discussing their utility or limitations.¹⁷ While the Indian courts have enforced interim reliefs obtained through emergency arbitration under SIAC Rules, there have been concerns over the enforceability of PPOs.

A large part of this critique has been centred on the consent for the PPO procedure and its procedural fairness.¹⁸ Under the former, the argument has been that since the PPO procedure is a new addition to the Rules and many arbitration agreements may have been entered into when these Rules did not exist, it cannot be said that the parties consented to them. This may be referred to as the *consent critique*. Under the latter, it has been argued that the unilateral appointment process and the lack of hearing provided to the other party lead to violations of the principle of fairness. There is an apprehension that courts may not enforce such procedurally unfair reliefs and may be referred to as the *procedural fairness critique*.

17. Zachary Song, Alex Green and Laura Niday, 'SIAC Rules 2025: Innovation in International Arbitration – Ex Parte Applications' *StepToe* (18 February 2025) <<https://www.stepToe.com/en/news-publications/siac-rules-2025-innovation-in-international-arbitration-ex-parte-applications.html>> accessed 25 February 2025.

18. Kondapalli and Kanoongo (n 4).

Indian courts have extensively dealt with the consent critique while enforcing emergency interim reliefs. The courts have adopted the approach that when commercial entities draft an arbitration agreement containing a reference to institutional rules (like the SIAC Rules), it is presumed that they have complete knowledge of the rules and acquiesce to them (unless specifically excluded).¹⁹ The institutional rules are deemed to have been incorporated into the arbitration agreement and are binding on the Parties.²⁰ Therefore, if the arbitration agreement contains a reference to the SIAC Rules and the PPO process (or emergency arbitration) has not been specifically excluded by the Parties, PPOs remain a mechanism for seeking interim relief prior to the constitution of the tribunal. Moreover, the parties' consent can be gauged from the language of their arbitration agreement. The SIAC model arbitration clause refers to conducting the arbitration in accordance with "the SIAC Rules for the time being in force." This signifies the consent of the parties to arbitrate according to the SIAC Rules that are in operation when the dispute is referred to arbitration. If the parties intended to adhere to a specific edition of the SIAC Rules, it is always open to them to make a reference to that specific edition. Therefore, there is a presumption that parties have conveyed their consent to the PPO process unless specifically excluded and the mere fact that the PPO process is not found in earlier editions of the SIAC Rules does not preclude parties' consent to it.

The procedural fairness critique presents a more significant challenge to the enforcement of PPOs. The challenge is exacerbated by the fact that the courts have not hesitated to judge arbitral procedures on the threshold of constitutional principles like equality under Article 14.²¹ An example of this can be seen in *Godrej Properties Ltd v Goldbricks Infrastructure (P) Ltd*²² ["*Godrej Properties*"] where the court struck down an *ex parte* interim order passed by a tribunal. The court held that *ex parte* orders did not form a part of the IAA and constituted a violation of fair procedure for failing to hear the other party. However, a situation akin to the one in *Godrej Properties* might not arise in the context of SIAC PPOs for both

19. *Future Retail Ltd v Amazon.com Investment Holdings LLC* 2020 SCC OnLine Del 1636 (paras 107 & 109).

20. *Amazon.com NV Investment Holdings LLC v Future Retail Ltd* (2022) 1 SCC 209 (paras 28 & 46); *Amazon.com NV Investment Holdings LLC v Future Coupons (P) Ltd* 2021 SCC OnLine Del 1279 (para 143).

21. *Central Organisation for Railway Electrification v ECI SPIC SMO MCML (JV) A Joint Venture Company* 2024 INSC 857 (para 163).

22. (2021) 2 HCC (Bom) 542 : 2021 SCC OnLine Bom 3448.

legal and factual reasons. *Godrej Properties* involved ad hoc arbitration where the procedural rules governing arbitration and the law of the seat [i.e. the IAA] did not provide for ex parte interim orders. Moreover, the court was of the opinion that there was no factual basis for an urgent relief in the form of an ex parte order. However, in the case of SIAC PPOs, the institutional arbitration rules, which the parties incorporate by reference into their arbitration agreement, specifically provide for such orders. The fact that the SIAC President assesses the need for a PPO and appoints an emergency arbitrator only if the request is legitimate ensures that no frivolous requests for PPOs are entertained by emergency arbitrators.

In addition to these case-specific differences, the procedural fairness critique is limited for at least three structural reasons. First, commercial parties, operating under the presumption of full knowledge, have conveyed their consent to the adoption of the Rules for their arbitral proceedings. Akin to the response to the consent critique, the fact that the parties have conveyed their consent to the Rules operates to blunt the procedural fairness critique. Commercial parties engage in concerted negotiations over contractual terms and have the option to specifically exclude the PPO procedure from their dispute resolution process.

However, even where the parties have conveyed their consent, the courts have held that an absence of procedural fairness (like unilateral appointments) can vitiate the arbitration.²³ This is where the balancing adopted in the PPO process between the need for preventing the purpose of arbitration from being frustrated and ensuring procedural fairness comes into effect. As noted above, the purpose of the PPO is to prevent the other party from frustrating the purpose of emergency arbitration and operates for an extremely narrow time period. Unlike the emergency arbitration where any relief that the emergency arbitrator “deems necessary” can be provided,²⁴ the PPO is tailored for the specific objective of conserving the purpose of the emergency arbitration. The emergency arbitrator is appointed by the SIAC President and not by or upon the suggestion of the applicant – ensuring that it does not fall victim to the issue of unilateral appointments.²⁵ Even in this case, the other parties have the option of raising objections after the PPO is granted and these must be decided expeditiously. Moreover, some authors have argued that the short period for which the PPO remains applicable makes it extremely difficult to enforce in

23. *ibid.*

24. *sch I*, para 17.

25. *sch I*, para 7.

courts.²⁶ The 14-day period (at the most) for which PPO remains in force is extremely short to seek and obtain enforcement in foreign courts. Instead, the PPOs serve a signalling and deterrent purpose since they indicate the existence of an arbitrator's order prohibiting the other party from carrying out an action that defeats the purpose of the emergency arbitration. Any action contrary to PPO indicates non-compliance with binding reliefs granted through the arbitration process and may have implications for the other parties' case in the arbitration proceedings. Therefore, the balance between procedural fairness and maintaining the effectiveness of arbitral proceedings that is sought to be maintained in the PPO procedure limits the procedural fairness critique.

Third, the SIAC's PPO procedure is in line with the UNCITRAL Model Law ["Model Law"]. Articles 17B and 17C of the Model Law provide for the grant of preliminary orders, which are akin to PPOs, for preventing the purpose of the interim measure requested during arbitration from being frustrated. The preliminary orders are granted following a procedure akin to the one for PPOs and are valid for an extremely short duration (20 days). However, a key difference between the Model Law and the SIAC PPO process is that the former requires the tribunal to specifically assess whether the "prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure."²⁷ The Rules do not require the emergency arbitrator to undertake such an assessment prior to waiving the notice requirement to the other parties. The Rules mandate the applicant to communicate the PPO to the other parties and provide an opportunity to the latter to raise "any objections" which must be expeditiously addressed. However, a blanket exemption from notifying the other parties merely on requesting a PPO might be prima facie disproportionate. However, this criticism too can be addressed by the fact that the SIAC President scrutinises each request for a PPO and it is only upon their acceptance that the notice requirement is waived. This is further supported by the fact that if the President refuses the application for a PPO, the applicant is required to give notice to the other parties and the application is deemed to be a request solely for emergency arbitration.²⁸ Therefore, as long as the SIAC President effectively scrutinises the PPO application and there is no blanket waiver of the notice requirement, the PPO procedure is in line with the Model Law and effectively addresses the procedural fairness critique.

26. Malaviya (n 2).

27. Model Law, art 17B(2).

28. sch I, para 34.

4. CONCLUSION

The introduction of PPOs in the SIAC Rules 2025 represents an innovative addition to the emergency arbitration framework. While emergency arbitration has been a successful mechanism for obtaining interim reliefs in urgent situations, PPOs serve a distinct purpose by providing expedited relief without prior notice to the opposing party when there is a risk that the purpose of emergency arbitration might be frustrated.

Despite their procedural differences, this article argues that PPOs may be enforceable in Indian courts under the same principles that have been applied to emergency arbitration reliefs. The consent critique can be addressed through the established judicial principle that parties who refer to institutional rules in their arbitration agreements are presumed to have knowledge of those rules and consent to them unless specifically excluded. The procedural fairness critique, while more substantial, can be mitigated by three factors: the express consent of commercial parties to the Rules, the careful balancing between procedural fairness and preventing frustration of arbitral proceedings, and the alignment of the PPO procedure with the UNCITRAL Model Law provisions on preliminary orders.

The PPO mechanism, when properly scrutinised by the SIAC President to ensure that notice is not waived without justification, represents a proportionate response to the challenge of maintaining the effectiveness of emergency arbitration in the face of potentially recalcitrant parties. While the short duration of PPOs may limit their practical enforceability in foreign courts, they serve an important signalling and deterrent function that may encourage compliance without formal enforcement.

In conclusion, the SIAC's introduction of PPOs is a significant development in international arbitration that addresses a practical gap in the emergency arbitration framework. Although certain procedural concerns exist, the PPO mechanism appears to be carefully designed to balance competing interests and may find recognition in the Indian arbitration landscape as part of the broader judicial acceptance of emergency arbitration.

