XIII.2.5 - Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

Commentary:
It is generally acknowledged today that the legal basis for the arbitral tribunal's competence to issue 'interim orders of protection' or 'conservatory measures' lies in its competence to decide on the merits of the dispute. In authorizing a private tribunal to decide existing or future disputes between them, the parties have vested in the arbitrators the inherent power to issue measures of provisional relief connected to the subject matter of the dispute, which serve to safeguard the efficiency of the tribunal's decision-making. One is dealing here with an 'accessory' competence of the arbitrators. Thus, provisions in modern arbitration laws such as Art. 17 UNCITRAL Model Law, which authorize the tribunal, at the request of a party, to order any interim measures of protection it considers necessary in respect of the subject-matter of the dispute, do not establish the tribunal's power to issue interim relief, but merely confirm a general principle of international procedural law.