

Decision Tree

Section Interim Measures

Step 1:	Need for Interim Measures	2
Step 2:	Choose Forum	3
Step 3.1:	Proceedings for Emergency Interim Relief	7
Step 3.2:	Proceedings for Interim Relief	8
Step 3.3:	Availability of Ex Parte Interim Measures	9
Step 4:	Requirements for Interim Measures	10
Step 5:	Enforcing Interim Relief	11

ASA Swiss Arbitration Association

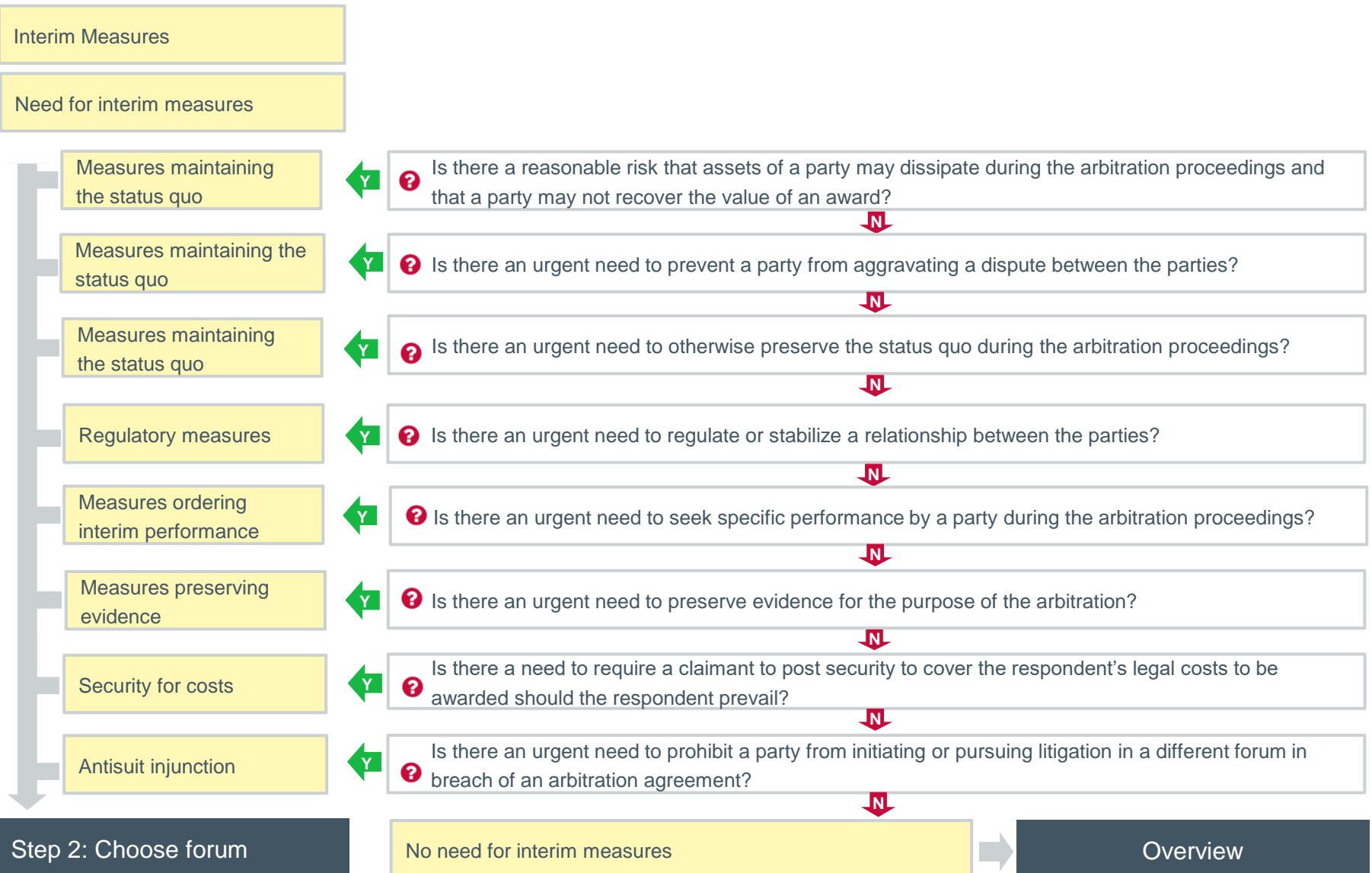
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Step 1: Need for Interim Measures



Step 2: Choose Forum

? Is there an urgent need to seek interim measures prior to the constitution of the arbitral tribunal?



Option between emergency arbitrator and state courts



Continue with **1**

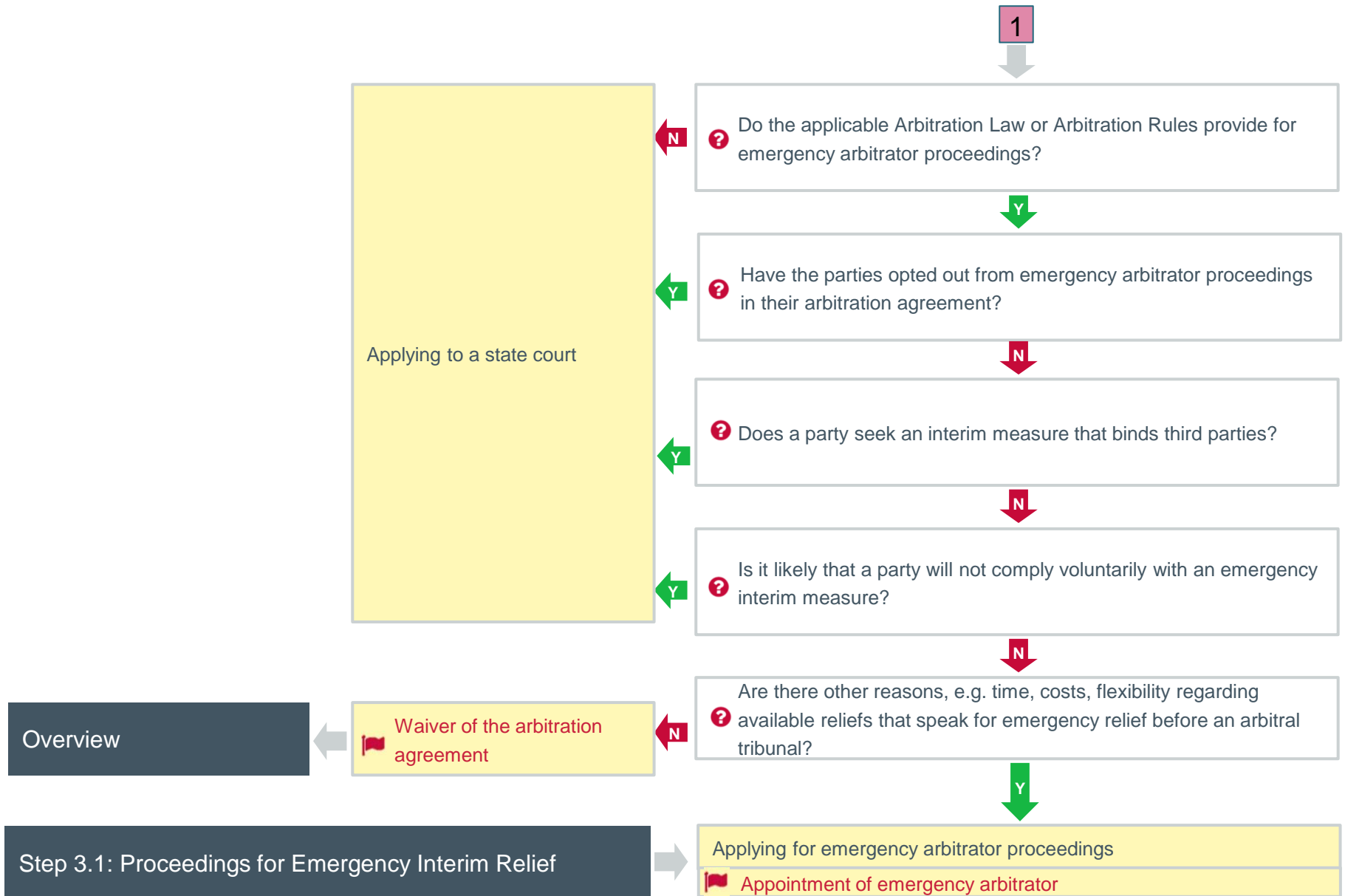


Option between arbitral tribunal and state courts

🚩 Waiver of the arbitration agreement



Continue with **2**



Overview

Waiver of the arbitration agreement

Step 3.1: Proceedings for Emergency Interim Relief

Applying for emergency arbitrator proceedings
Appointment of emergency arbitrator

Overview

Applying to a state court

2

Do the Arbitration Law and the Arbitration Rules allow the parties to seek interim relief before a state court?

Y

Have the parties opted out from interim measures before state courts in the arbitration agreement?

N

Does a party seek an interim measure that is reserved to state courts?

Y

Does a party seek an interim measure that is intended to bind third parties?

Y

Is it likely that a party will not comply voluntarily with an order on interim relief?

Y

N

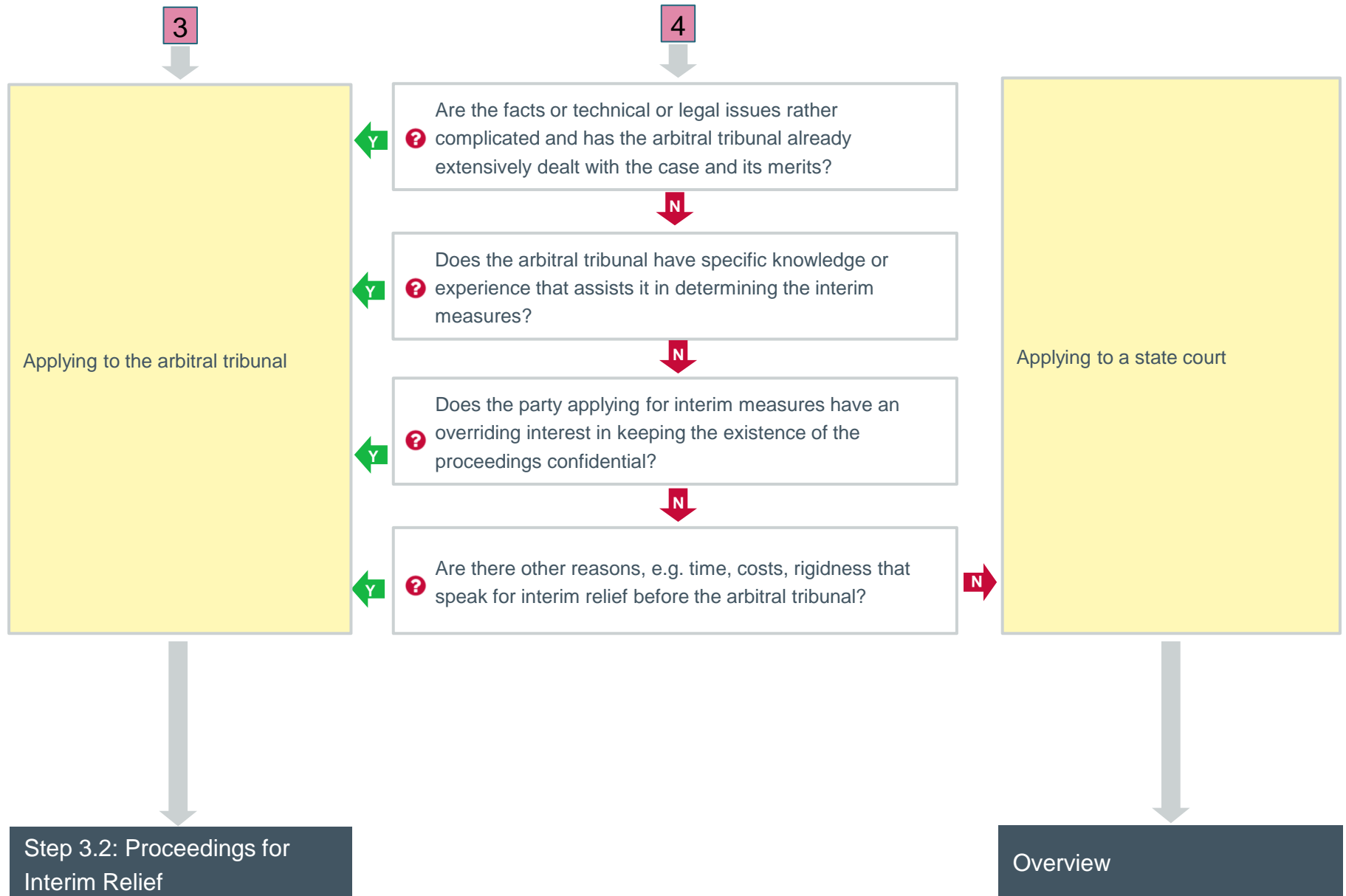
N

Y

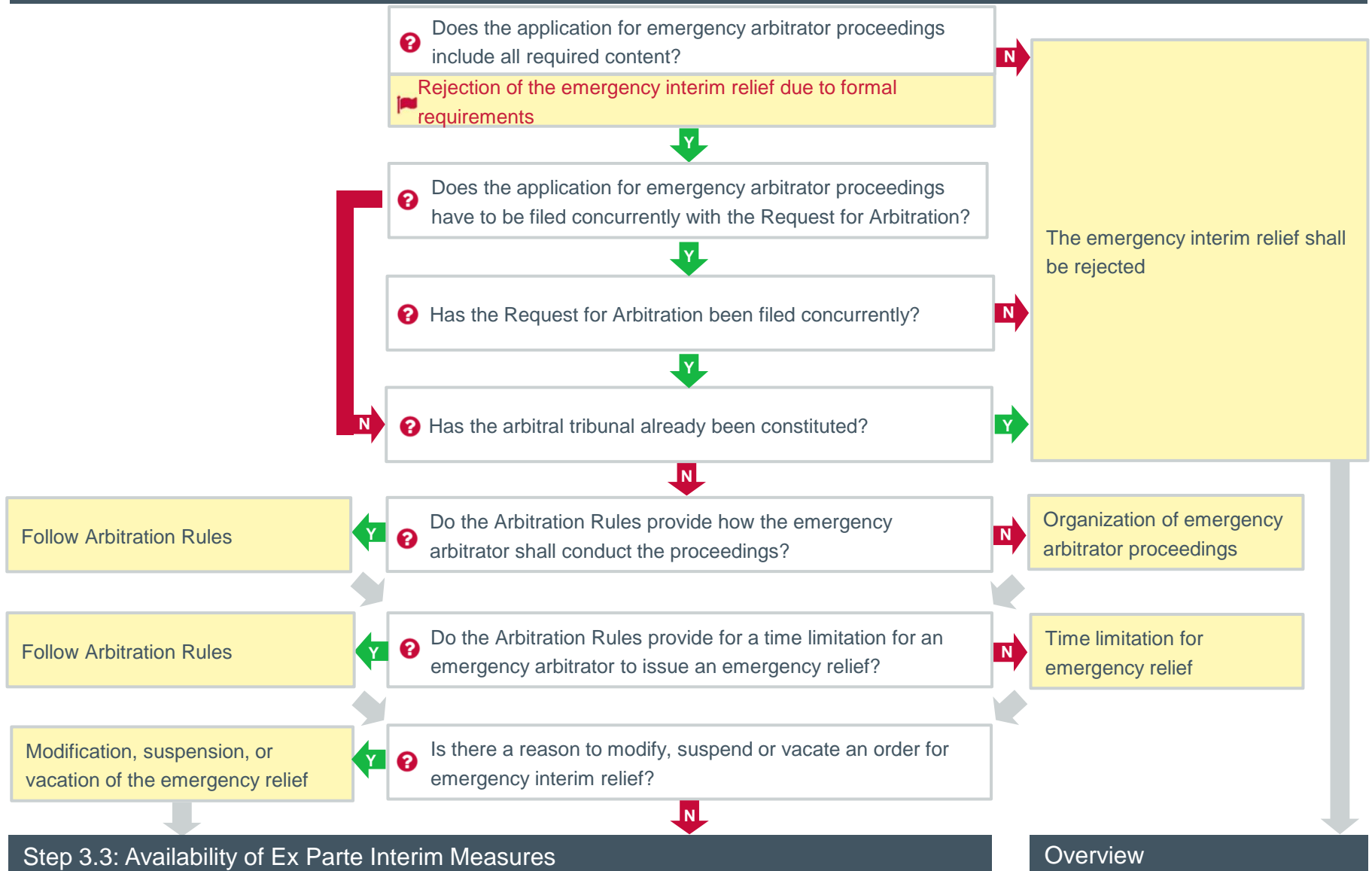
N

Continue with 3

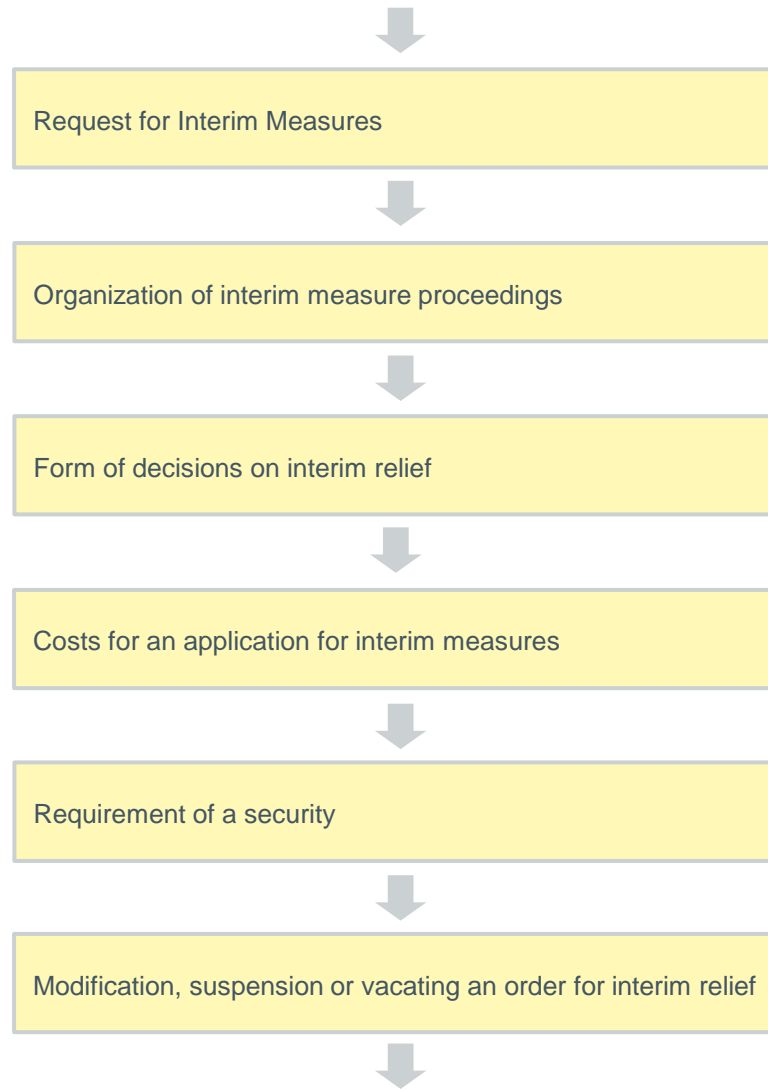
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Step 3.1: Proceedings for Emergency Interim Relief



Step 3.2: Proceedings for Interim Relief



Step 3.3: Availability of Ex Parte Interim Measures

Step 3.3: Availability of Ex Parte Interim Measures

? Do the applicable Arbitration Law or Arbitration Rules explicitly provide for ex parte interim relief?



? Is there a need to apply for interim measures without notice to the other party or parties?



Ex parte interim measures



Application for ex parte interim measures without a clear provision



Step 4: Requirements for Interim Measures

Step 4: Requirements for Interim Measures

Requirements for Interim Measures

? Does the arbitral tribunal have power to order interim measures?

N



? Does the arbitral tribunal have jurisdiction to order interim measures?

N



? Is there a likelihood of success on the merits?

N



? Is there a risk of serious harm that would be caused to the applicant in the absence of the requested interim measure?

N



? Is the requested interim measure urgent?

N



? When balancing the interests, should the interim measure be ordered?

N

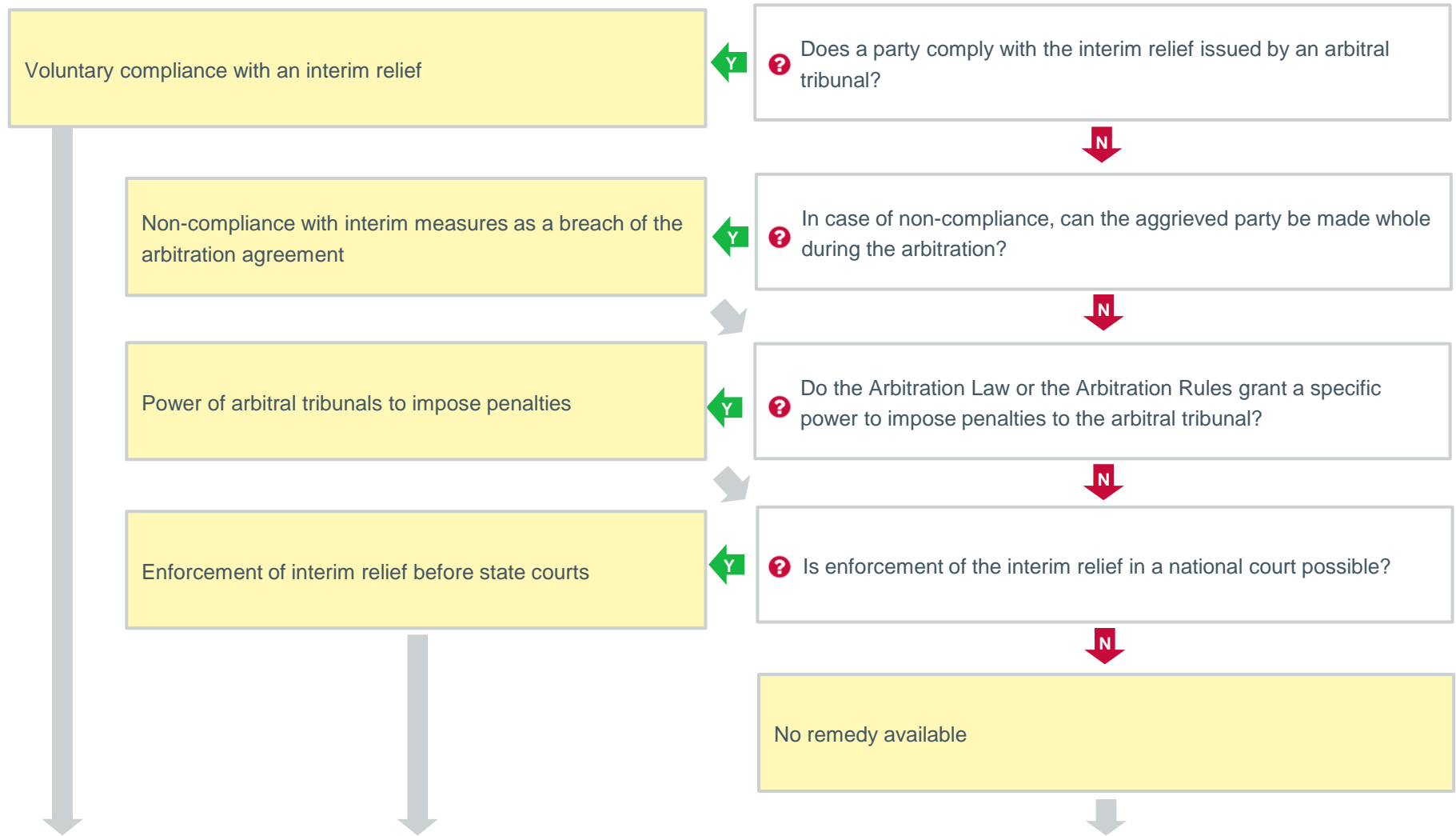


The interim measure shall be granted.

The interim measure shall not be granted.

Step 5: Enforcing Interim Relief

Step 5: Enforcing Interim Relief



Overview