

ADVISORY | INDUSTRY INFORMATION

# Grand Court grants leave to enforce a foreign interim arbitration award

On 3 February 2023 the Grand Court of the Cayman Islands delivered a judgment in the matter of *Nasser Sulaiman HM Al Haidar v Jetty Venkata Uma Mahewshawara Rao* (FSD 328 OF 2022 (IKJ)) explaining its decision to grant leave to enforce an interim award made in the course of a foreign arbitration.

Whilst the application was made *ex parte*, and dealt with on the papers without an oral hearing, Kawaley J nevertheless issued a full ruling setting out his reasons for the decision, there having been no published Cayman Islands case dealing with the enforceability of interim awards.

The Court reiterated that the general approach of the Court to arbitral awards was pro-enforcement in keeping with the policy underlying the New York Convention, the expectation being that the majority of applications for leave to enforce would be straightforward and that the limited grounds upon which enforcement might be refused would be construed narrowly.

## Interpretation of the statutory regime for enforcement of interim measures

Whilst section 5 of the Foreign Arbitral Awards Enforcement Act (1997 Revision) (the "FAAEA"), provides that foreign awards from New York Convention states will be enforced in the same manner as domestic awards, subject to the other provisions of the FAAEA, it was held that there was a dearth of authority for the proposition that "award" should be construed as including interim as well as final awards, at least without more. As such, the contention that the FAAEA permitted the enforcement of interim awards in its own right was rejected as too ambitious.

However, the Court was prepared to travel by an alternative route by way of reading the FAAEA in conjunction with the Arbitration Act 2012. Section 52(1) of that Act does contain a freestanding enforcement provision governing interim "measures" on a separate basis to "awards", a provision which is applicable "irrespective of the jurisdiction in which it was issued". There was no inconsistency between that provision and the FAAEA as the latter did not explicitly deal with interim measures or awards at all.

The enforcement provisions within the Arbitration Act therefore gave rise to two possibilities: either it implicitly extended the regime under the FAAEA to encompass interim awards or alternatively it created a separate enforcement regime in respect of foreign interim measures solely governed by the Arbitration Act.

Kawaley J preferred the former. He saw this interpretation as consistent with the traditional view of the FAAEA as an umbrella statute governing the enforcement of foreign awards, incorporating where necessary the more substantive enforcement provisions of the Arbitration Act; although he went on to express the view that even if that analysis was wrong, jurisdiction would still exist if section 52 of the Arbitration Act was read as entirely detached from the FAAEA.

## Comment

This ruling demonstrates in clear terms the supportive approach of the Cayman Islands courts towards foreign arbitrations and makes it clear that a litigant in possession of an interim award will not have to apply for free standing interim relief from the Cayman Court or otherwise await the final determination of the arbitration in order to secure effective real world relief.

By way of caveat, the decision was made on an ex parte basis, and Kawaley J was candid in his ruling that he had adopted a relatively "rough and ready approach" to an application on the papers and did express some "anxiety as to the correct jurisdictional basis for the relief".

There is, then, a chance that the decision will be challenged at some point. However, any challenge would appear to face a stern test in light of the Court's ready acceptance of a "pro-enforcement" approach.

The ability to transpose interim awards into enforceable judgments through a straightforward application is likely to prove a useful tool for litigants and it is one which should be welcomed as a positive and modern development of the law in the light of the continued growth in international arbitration

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