

Singapore Court decides that interim awards made by an emergency arbitrator in a foreign seated arbitration can be enforced in Singapore

By Prakaash Silvam and Tan Yu Hang

In an important decision, the Singapore High Court recently confirmed that an interim award made by an emergency arbitrator in a foreign seated arbitration was, in principle, enforceable in Singapore. In the case of CVG v. CVH [2022] SGHC 249, Justice Chua Lee Ming relied on purposive interpretation of the International Arbitration Act ("IAA") and held that such an interim award could meet the definition of a "foreign award" under the Act and therefore could be enforced.

Factual and procedural background

The case concerned disputes under four franchise agreements, each of which provided for arbitration in Pennsylvania, USA. The Defendant was the Claimant's franchisee in Singapore. The Claimant alleged breach of the franchise agreements. The Defendant then purported to terminate the franchise agreements for the Claimant's breaches and/or anticipatory repudiation. The Claimant commenced arbitration proceedings with the International Centre for Dispute Resolution ("ICDR") and sought emergency relief, including injunction relief and enforcement of post-termination provisions of the franchise agreements.

An emergency arbitration then proceeded, with three weeks elapsing from the time of the Claimant's application for an emergency arbitration award to the date of the emergency arbitrator granting the award ("**Emergency Award**"). The Emergency Award was issued by the arbitrator on 15 June 2022, with the Claimant filing an application to enforce the Emergency Award in Singapore 2 weeks later on 29 June 2022.

Shortly after, the Singapore Court granted the Claimant permission to enforce the Emergency Award in Singapore on an ex parte basis ("**Enforcement Order**"). The Defendant subsequently applied to set aside the Enforcement Order on a number of grounds and raised the issue of "whether section 29 of the IAA applied to awards made by emergency arbitrators".

Parties' arguments

Amongst other things, the Defendant argued that foreign emergency awards could not be enforced in Singapore. This issue as to whether Singapore would enforce foreign emergency awards has often been debated because the amendments made to the Singapore International Arbitration Act in 2012, which amended the definition of "arbitral tribunal" to include "an emergency arbitrator", did not apply to Part 3 of the IAA which deals with the enforcement of foreign arbitral awards. As such, the Defendant ran the argument that the legislative intent was for emergency awards to be excluded from Part 3 of the IAA.

The Court rejected the Defendant's argument that an interim award made by a foreign emergency arbitrator is not enforceable in Singapore. The Court analyzed the meaning of 'foreign award' under the IAA and in adopting a purposive interpretation approach, held that it included awards made by emergency arbitrators.

Purposive interpretation of the IAA

For the purposive interpretation of section 27(1)



of the IAA, the court placed reliance on the Singapore Court of Appeal decision in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 (“*Tan Cheng Bock*”), which adopted a three-step approach for purposive interpretation of a legislative provision:

1. Ascertain the possible interpretations of the provision, having regard to the text of the provision and its context within the written law as a whole.
2. Ascertain the legislative purpose or object of the statute.
3. Compare the possible interpretations of the text against the purpose or objects of the statute.

The Court went through the three steps giving purposive interpretation of the 2012 amendment to IAA to ascertain the actual intent of the Singapore Parliament behind effectuating the 2012 amendment. For step one, the court observed that even though section 27(1) of the IAA does not define ‘arbitral tribunal’, the text of section 27(1) can be interpreted to include emergency arbitrators. While dealing with step two, the court considered the amendment to the definition of ‘arbitral tribunal’ in section 2(1) of the IAA to include emergency arbitrators and the definition of ‘arbitral award’ in section 27(1) to include orders or directions made or given in respect of matters set out in section 12(1)(c) to (i) of the IAA.

The court observed that the intent of the legislature behind amending IAA in 2012 was to include foreign interim awards by emergency arbitrators. The court therein placed reliance on the press release of the Ministry of Law dated 8th March 2012, wherein it was stated that the Bill ought to give the same legal status to emergency arbitrators as that to an ordinary arbitral tribunal and the awards/orders made by them in a foreign or local arbitration to be enforceable under IAA. The court also clarified foreign arbitration to mean foreign *seated* arbitration.

That the Singapore Parliament intended for the IAA to encompass orders made by emergency arbitrators can also be evidenced in the second reading speech of the Minister for Law,

K Shanmugam, which was given on 9 April 2012 in pursuance of the International (Amendment) Bill 2011. Although this does not appear to have been relied upon by the parties or referenced in the judgment of CVG v CVH, it nevertheless renders support to the purposive interpretation of section 2(1) read with section 27(1) of the IAA. In his speech, the Minister clearly stated that one of the purposes of the 2012 amendment was to recognize emergency arbitrators. By virtue of the amendment to the IAA, section 27 was made to include interim measures made by an arbitral tribunal under section 12 (1)(c) to (i), whereas section 2(1) was amended to include emergency arbitrator in the definition of 'arbitral tribunal'.

The court then held that the requirement under

step three is met as the interpretation of the term 'arbitral award' in section 27(1) of the IAA to include emergency arbitrators is consistent with the legislative purpose of the statute.

Key takeaway

CVG v CVH confirms that the Singapore Courts will enforce emergency awards made in a foreign seated arbitration. This is a welcome decision, particularly given the lack of consensus in other jurisdictions. For example, in jurisdictions like India and the United States, there is still some uncertainty as regards to the enforceability of emergency awards made in foreign seated arbitration.

About the authors



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Prakaash specialises in commercial litigation and arbitration with a focus on international commodity trade, trade finance, marine insurance, and "dry" shipping work (including charterparty and bill of lading disputes).

He has been spotlighted by legal publications as being "business-oriented and practical" (Chambers & Partners) and for providing "timely, practical, and focused solutions on a cost-effective basis" (The Legal 500).

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