

Interim measures in practice

Interim relief prior to starting arbitrations under the Federal Arbitration Law: a note on recent experiences by Chatura Randeniya of Afridi & Angell.

Afridi & Angell was recently successful in obtaining interim orders from the Dubai Courts attaching bank guarantees pending commencement of arbitration proceedings. The first matter involved two guarantees issued as performance bonds in two separate construction contracts, both which contained an arbitration clause under the Dubai International Arbitration Centre (DIAC) Rules. The second matter involved an advance payment guarantee for a transport contract which contained an arbitration clause under the Singapore

International Arbitration Centre (SIAC) Rules seated in Singapore. Some observations relating to these proceedings are set out below.

1. The applications for provisional relief in both cases were filed in the Dubai Court of Appeal. The Federal Arbitration Law (Law No. 6 of 2018) provides that a party may seek interim relief either from the tribunal, or the 'Competent Court', being the Court of Appeal of the relevant Emirate, and that the Chief Judge of the Court of Appeal may issue orders for interim relief at the request of a party or a tribunal in respect of existing



or future arbitrations. In both matters, the orders were issued for arbitrations which had not yet commenced.

2. The court fee for provisional relief is AED320 per application. In contrast, the court fee for interim relief in support of litigation can be as much as AED20,020. A comparable fee was payable when obtaining interim relief in support of arbitration before the Federal Arbitration Law came into effect.

3. It can take up to two weeks for the court to issue its decision. In the past, it was common for applications for interim relief to be decided on the same day as the application being filed, or within 24 to 48 hours after filing. However, the electronic case registration process of the Dubai Courts usually means that a day or two will be taken up before the matter is placed before a judge. This should be borne in mind as interim relief is often time sensitive.

4. The application is determined ex-parte. Notice to the defendant is not issued by court prior to hearing the application for provisional relief.

5. A single application may be made for multiple contracts, provided that the parties to the contract are the same. In the first of the two matters, the guarantees which were attached were issued in relation to two separate projects and contracts. However, they were between the same parties, and the dispute resolution provisions were identical, and the Court of Appeal accepted a single application and ordered attachment over both guarantees.

6. A party which is not party to the arbitration agreement may be a party to an application for interim relief. In the second of the two matters,

the guarantee was procured by a related third party which, although having certain rights under the transport contract was not a party to the arbitration agreement. This third party was named as a co-applicant, together with the party that was subject to the arbitration agreement. Although the court did not provide any reasoning, it is unlikely that the court would have accepted the application for interim relief under the Federal Arbitration Law if at least one of the applicants was not a party to the arbitration agreement.

7. It is no longer necessary to file a substantive suit in court. Under the Federal Arbitration Law, a 'notice of a request for arbitration' is deemed to satisfy the requirement of a substantive suit and a separate substantive suit need not be filed in court. In practical terms, the applicant should be ready to demonstrate to the court that the notice of arbitration was issued within eight days of the order for interim relief being granted. It should be noted that until last year, the time period for filing a substantive suit was eight days from the date on which the order for interim relief was implemented. However, following amendments to the UAE Civil Procedure Law in 2019, the time period is now eight days from the date on which the order for interim relief was issued.

It is important to bear in mind that, as there is no system of binding precedent in the UAE, it is possible that the court might take a different approach in future cases in relation to points 5 and 6. 📄

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