

## Cayman Court confirms interim arbitration awards may be enforced as judgments

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The wide-ranging enforceability of an arbitration award is one of the major attractions for seeking to arbitrate against clients with assets in different jurisdictions. The costs, length and complexity of arbitral proceedings may factor against them. In a helpful judgment of the Cayman Islands Grand Court, Justice Kawaley has confirmed, for the first time, that interim arbitration awards may be enforced as judgments in the Cayman Islands. This may provide a useful strategic opportunity for parties to ongoing arbitrations.

In the Cayman Islands, the Foreign Arbitral Awards Enforcement Act of 1997 (**FAAEA**) provides a straightforward process for the recognition of arbitration awards made in pursuance to an arbitration agreement of a state (other than the Cayman Islands) which is a party to the New York Convention (the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards). For more detail see our 2021 article [Snapshot: enforcement of foreign arbitral awards in the Cayman Islands](#). As of January this year the New York Convention has 172 state parties, which provides for much greater recognition in the Cayman Islands than for foreign judgments. For the enforcement of domestic arbitration awards there is the Cayman Islands Arbitration Act of 2012 (**2012 Act**).

Both the Act and the FAAEA expressly provide for the recognition of an arbitration award at an *ex parte* hearing. Each provide for very limited grounds upon which the Court may refuse judgment, which are to be construed narrowly.

However, the 2012 Act expressly provides for enforcement of provisional or interim awards. The FAAEA does not, and the point has not been the subject of any reported judgment in the Cayman Islands.

In the matter of *Al-Haidar v Rao et al* (FSD 328 of 2022, IKJ) Justice Kawaley was asked to grant leave to enforce an interim award made in favour of the plaintiff (details of the award were not given). Although counsel referred to Singaporean authority that addressed awards by

emergency arbitrators there was no judicial authority that the term "award" used in a foreign enforcement statute such as the FAAEA should, without more, be construed as including an interim as well as a final award and Justice Kawaley considered the argument "resting on academic text authority alone...too ambitious to be accepted in the context of the present ex parte application."

Justice Kawaley then went on to consider whether reading the FAAEA with the 2012 Act provided a more solid alternative jurisdictional argument. Justice Kawaley accepted that the FAAEA had priority in the event of a conflict between the two but considered there to be no inconsistency given that the FAAEA did not explicitly deal with interim measures or awards at all.

Justice Kawaley adopted a "somewhat rough and ready approach" in the context of adjudicating an ex parte application, and "not without some anxiety" preferred the view that with the introduction of the 2012 Act the scope of the FAAEA was implicitly expanded to incorporate not just the final award enforcement provisions of the 2012 Act but the interim measure enforcement provisions as well. Justice Kawaley considered "this approach preserves the traditional view of the FAAEA as the umbrella statute governing the enforcement of foreign arbitration awards which incorporates to the extent necessary the substantive enforcement provisions found in the general Arbitration Act." He also noted that if the approach were technically unsound, the Court had jurisdiction to make an order with the same practical effect under the 2012 Act.

Although the practical approach taken by Justice Kawaley is beneficial to arbitration creditors and is consistent with the theme that arbitration awards are paramount, the fact that the decision was made at an *ex parte* hearing leaves open the opportunity for a challenge – an *ex parte* order can be easier to obtain than it is to maintain. Orders of this nature usually contain a provision staying enforcement for a particular period (usually at least 28 days if served outside of the jurisdiction) and so it is not yet known whether there will be a contest to set aside this judgment.

We will continue to watch the space, but interim award holders should continue to consider appropriate steps to ensure the effective enforceability of those awards pending the determination of the final proceedings.

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