P.R.I.M.E. Finance
Panel of Recognized International Market Experts in Finance

EMERGENCY ARBITRATORS

JUDITH GILL QC
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2015 Queen Mary Survey on Improvements and Innovations in International Arbitration

Urgent provisional measures?

- 46% Courts
- 29% Emergency Arbitrator
- 26% Undecided
Widespread use of EA procedures

Emergency relief upheld in Afghanistan helicopter dispute

04 September 2018

A Texas court has confirmed an American Arbitration Association interim order granting emergency relief to an Ireland and South Africa-based aviation group in a dispute over the leasing of helicopters used to support US military operations in Afghanistan.

The dispute concerns a deal to lease helicopters for use in Afghanistan. (Credit: Gillespie)

The dispute centres around the leasing of helicopters from a Texan-based company to an Afghan government agency. (Credit: Gillespie)

The High Court in London has prevented an investor from pursuing an allegedly valid claim under a joint venture agreement. (Credit: Gillespie)

The High Court in London has granted an investor interim relief against a US-based company. (Credit: Gillespie)

Arbitrator in mainland China rules in mainland China

An emergency arbitrator in mainland China has enforced in Hong Kong a ruling by a mainland Chinese court. (Credit: Gillespie)

HKIAC favours evidence preservation

25 April 2018
ISSUES ARISING

How is a claim that the EA has a conflict of interest to be addressed?

Does the EA have power to rule on a challenge to his or her jurisdiction?
WHAT DO THE RULES SAY?

2018 HKIAC Rules provide expressly that: “The emergency arbitrator shall have the power to rule on objections that the emergency arbitrator has no jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration clause or of the separate arbitration agreement, and shall resolve any disputes over the applicability of this Schedule.”
ISSUES ARISING

Should the EA’s decision be in the form of an order or an award?

Does the EA have power to make more than one order or award?

Can the EA make an interim order pending a final ruling on the EA application?
Access to the Courts

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Art. 26a.6

“By submitting to these Rules, the parties do not waive any rights that they may have under the relevant applicable laws to submit a request for interim measures to a judicial authority.”

Art 9.12 of the LCIA Rules

EA provisions “shall not prejudice any party’s right to apply to a state court or other legal authority for any interim or conservatory measures before the formation of the Arbitration Tribunal; and it shall not be treated as an alternative to or substitute for the exercise of such right.”

ICC’s Rule 29.7

“The Emergency Arbitrator Provisions are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority ....”
Section 44(3)

If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.

Section 44(5)

In any case the court shall act only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.
THE FUTURE

• Continued widespread use for many of the reasons parties choose arbitration in the first place

• Development of institutional rules to refine and elaborate on the EA’s role

• Some will opt out in order to preserve the right to go to national courts