

THE EMERGENCY ARBITRATOR MECHANISM: IS IT WORKING?

Martin J. Valasek

Norton Rose Fulbright Canada LLP

Introduction

What is an emergency arbitrator?

When is an emergency arbitrator available?

What other options are available for emergency relief?

Outline of the presentation

What Are the Applicable Rules?

Many leading arbitral institutions have adopted a mechanism for the appointment of an emergency arbitrator.

Review, compare and contrast the leading rules.

Suggested Materials

- The various applicable arbitration rules of
 - International Chamber of Commerce (ICC)
(<https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/>)
 - The International Centre for Dispute Resolution of the AAA (ICDR)
<http://internationalarbitrationlaw.com/about-arbitration/international-arbitration-rules/icdr-arbitration-rules/icdr-arbitration-rules/>
 - The Singapore International Arbitration Centre (SIAC)
<http://www.siac.org.sg/our-rules/rules/siac-rules-2016>
 - The Stockholm Chamber of Commerce (SCC)
https://sccinstitute.com/media/169838/arbitration_rules_eng_17_web.pdf
 - The London Court of International Arbitration (LCIA)
http://www.lcia.org/dispute_resolution_services/lcia-arbitration-rules-2014.aspx

How Is the Mechanism Working?

Describe several examples of the mechanism being used in practice, identifying what appears to have worked and what appears not to have worked so well.

Based on the reported matters to date, identify whether there appears to be a trend toward voluntary compliance with the decisions of emergency arbitrators.

Is a Decision of an Emergency Arbitrator Enforceable?

Have enforcement mechanisms kept pace with the development of the emergency arbitrator mechanism?

Do the *New York Convention* and the *Model Law* apply to the enforcement of emergency arbitrator decisions?

Compare to the enforcement of interim measures issued by arbitral tribunals.

Suggested Materials

- **The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the **New York Convention**)**
<http://www.newyorkconvention.org/new+york+convention+texts>
- **UNCITRAL Model Law on International Commercial Arbitration (the **Model Law**) (both the 1985 and updated 2006 versions)**
https://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf
https://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/06-54671_Ebook.pdf
- **Arbitration laws of Hong Kong and Singapore**
<https://www.elegislation.gov.hk/hk/cap609>
<https://sso.agc.gov.sg/Act/IAA1994>
- ***Yahoo! v. Microsoft Corporation*, 983 F. Supp. 2d 310 (S.D.N.Y. 2013)**
See attached.
- ***Island Creek Coal Sales Company v. City of Gainesville Florida* (1985), 729 F2d 1046**
See attached.
- **Swiss Federal Tribunal, Judgment of 13 April 2010, DFT 136 III 200**
See attached.

Concluding Remarks

What are the prospects for the emergency arbitrator mechanism?
Any obvious areas requiring reform or improvement?

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