

Article

Arbitration Conference Reinforces the Preeminence of BVI for Enforcement of Arbitration Awards

Authors: Richard G. Evans, Partner | Jane Fedotova, Associate

One consistent message resounded throughout the 3rd Annual BVI Arbitration Conference, which took place in November 2019: BVI courts take a pro-enforcement approach to arbitration awards and have no issue in exercising their broad powers to grant interim measures in support of arbitration proceedings.

Conyers Partner Tameka Davis spoke about the advantages of enforcing a foreign arbitral award, as opposed to a foreign judgment, in the BVI. Since accession by the BVI to the New York Convention, enforcement of arbitral awards became swift and straightforward; they can be initiated on *ex-parte* basis. The courts are prepared to relax formal rules in exceptional circumstances. For example, the BVI court recently held that the applicant's inability to supply the original or a certified copy of the arbitration agreement was no bar to enforcement of the award. A party may skip the formal procedure for recognition and enforcement of an arbitral award and appoint a liquidator based on an unpaid international arbitral award. This arbitration-friendly approach makes BVI an attractive jurisdiction for the purposes of enforcement of arbitral awards. Once the award is recognised, it is treated as a judgment of the BVI court and all local enforcement measures against assets located in the BVI are available to the applicant.

The BVI Arbitration Act 2013 (the Act), which is based on the UNCITRAL Model Law (as amended in 2006), provides that as a general rule all arbitration matters are heard in closed court proceedings and information relating to the court proceedings cannot be published. The court will publish only judgments of major legal or public interest, and will accommodate a party's reasonable request for concealment of any matter. On balance, enforcement of foreign arbitral awards is more straightforward than enforcement of foreign judgments in the BVI, for a number of reasons. If there are no reciprocal arrangements with a foreign jurisdiction, a judgment can only be recognized at common law by issuing a debt claim. There is a need to obtain a permission to serve the claim out of the jurisdiction where the respondent is a foreign party. Recognition and enforcement is only available if the judgment is for a sum of money.

Alain Choo Choy QC (Essex Court Chambers) talked about interim measures in support of arbitration obtained under sections 43 and 58 of the Act. Generally, the court has broad

jurisdiction to grant interim measures in support of the arbitration proceedings and will grant such relief if a party is able to demonstrate that the arbitral award may be enforced in the BVI. Unlike in England, where the court would only grant interim measures if the tribunal is powerless to act, or after the permission has been sought from the tribunal or with the other parties' consent, the Act has no equivalent limitations on the court's jurisdiction (*PT Ventures SGPS SA v Vidtel Ltd*). This opens the possibility of applying in the BVI for an *ex-parte* injunction during the course of the arbitral proceedings, unless the parties' arbitration agreement provides otherwise. The distinctive powerful feature of the Act is that the BVI court's order for interim measures is not subject to an appeal and can only be set aside at the return date. As things currently stand, relief under section 43 and 58 would not extend to third parties to arbitration and, therefore, the usual common law principles found in *Black Swan Investment ISA v Harvest Vie Limited and another* would apply.

Finally, the conference considered the broader question of the future of arbitration in the BVI. It has been noted that the choice of the BVI seat in tandem with the BVI IAC Rules facilitates achieving the best enforcement results in the BVI. This is because the BVI IAC Rules do not require a party to seek permission from the arbitral tribunal or consent from the other party before applying for interim measures to the court. As discussed above, no such requirement is imposed under the Act. The Rules also do not contain provisions about emergency arbitrator, thereby eliminating any competition between the jurisdiction of the court and the emergency arbitrator to grant urgent interim measures before appointment of an arbitral tribunal.

Conference participants were in agreement that the BVI courts have provided solid support to enforcement of arbitration awards and continue to support international arbitration proceedings by issuing interim measures in urgent circumstances. It has been noted that although there is

currently no reported case law on the point of enforcement of interim measures granted by an arbitral tribunal or an emergency arbitrator, section 59 of the Act would serve this purpose and such relief would be enforced in the BVI.

For more information on enforcing arbitration awards in the BVI, [click here](#) and on choosing the BVI as the seat of arbitration [click here](#).

Authors:

Richard G. Evans

Partner

richard.evans@conyers.com

+1 284 852 1115

Jevgenija (Jane) Fedotova

Associate

jane.fedotova@conyers.com

+1 284 852 1140

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

For further information please contact: media@conyers.com