

Matteo Zanotelli su GGI - Litigation and Dispute Resolution news

Alcune brevi considerazioni sulle “interim measures” nei procedimenti arbitrali internazionali, a valle di alcune recenti esperienze professionali.

Interim measures under arbitral proceedings: a few brief considerations

by Matteo Zanotelli

Drawing from my own recent experience, I will briefly report a few considerations on interim measures in arbitral proceedings.

Generally speaking, when considering whether or not to introduce an interim measure request, a party should first evaluate if such an application is more appropriate during the course of arbitral proceedings or directly before national courts.

The most common arbitral procedural rules, if rules, in fact grant the arbitral court the power to award interim measures upon a party's request (see UNCITRAL Arb. Rules, LCIA Arb. Rules, ICC Arb. Rules, IBA Arb. Rules).

Alongside specific arbitral rules, in granting the interim measure the arbitral court could also consider other applicable rules of law, typically in absence of an express choice by the parties, the law of the forum (i.e. the national law of the place where the arbitral proceeding is held) shall also determine the applicable procedural law and, as a consequence, the content or the extent of the interim measure.

Once granted (usually in the form of an enforceable order or a partial award), the interim measure shall be recognized and enforced in a specific nation, frequently different from the one where the arbitral proceeding is held.

As a result, when considering whether or not to apply for an interim measure during arbitral proceedings, a party should consider if the request complies with all the specific arbitral

tion rules applicable to the proceedings; (b) the national procedural rules applicable to the dispute; (c) the national law of the place where the interim measure shall be enforced.

If one of the above-mentioned requirements cannot be met, a party should seriously consider applying for the interim measure directly before the national court of the place where the interim measure shall be enforced.

(2) National law can restrict the power of available measures. (after example, under Italian law, the arbitrator's authority to grant interim measures is not recognized). An interim measure awarded by an international arbitral court is likely to be unenforceable in Italy.

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170 - GGI DR NEWS | No. 66 | Spring 2017