

# Kluwer Arbitration Blog

## Strategies for Seeking Interim Measures in the Philippines and Singapore

David Perrett (Freshfields Bruckhaus Deringer) · Monday, July 6th, 2020 · YSIAC

A special [COVID-19-themed SIAC Philippines webinar](#) took place on 18 June 2020. The webinar examined the availability of [interim relief](#) to parties to commercial disputes, both in international arbitration and through courts in the Philippines and [Singapore](#), with the panel members sharing their observations on trends and changes since the outbreak of the COVID-19 pandemic.

The panel was moderated by Ms Thea Elyssa Vega (Associate Counsel, SIAC) and comprised Mr Bazul Ashhab (Managing Partner, Oon & Bazul LLP, Singapore), Mr Donemark Calimon (Partner and Head of Quisumbing Torres' Dispute Resolution Practice Group, Manila), Mr Philip Jeyaretnam, SC (Global Vice-Chair and ASEAN CEO, Dentons, Rodyk & Davidson LLP, Singapore), Mr Louie T. Ogsimer (Partner, Romulo Law Firm, Manila) and Ms Patricia-Ann T. Prodigalidad (Senior Partner, ACCRALAW, Manila).

### Panel discussion

The panel considered the current state of international arbitration in both the Philippines and Singapore, including discernible trends resulting from COVID-19. Mr Calimon noted that the COVID-19 pandemic had, to some degree, disrupted the forward momentum of international arbitration in the Philippines, but that arbitral institutions such as the [Philippine Dispute Resolution Center, Inc. \(PDRCI\)](#) and the [Construction Industry Arbitration Commission \(CIAC\)](#) have embraced the challenges arising, including through the CIAC's issuance of guidelines on virtual hearings, enabling accessibility to parties throughout the Philippines. In the case of Singapore, Mr Ashhab noted that virtual hearings have been—and will continue to be—essential to ensuring that life (and business) goes on, recognizing that virtual hearing solutions have been very successfully implemented during the lockdown period.

The panel members then turned to discuss interim relief specifically. Their observations included the following:

- **Instances where interim relief will be needed:** Mr Ogsimer said that he generally is seeing a trend of interim applications where one party seeks to restrain the other from, *e.g.*, calling on performance bonds or other security put up in the context of construction contracts, in order to prevent the termination of the contract. In Singapore, Mr Jeyaretnam noted that the government

already has dealt with many potential legal consequences through temporary “freezes” in certain areas (e.g., construction), which have kept many disputes away from the courts and arbitration. However, he sees potential down the track for claims of *force majeure*, frustration, etc, particularly for projects where legislative intervention does not apply.

- **Emergency arbitration vs interim relief court applications.** In the Philippines context, Ms Prodigalidad noted several benefits of having emergency arbitration, such as: (a) the potential for delay in the courts due to community lockdown; (b) some courts’ potential lack of familiarity with electronic modes of transmission or virtual hearings; (c) the potential for judges to issue “traditional” relief rather than coming up with relief to address the specific needs of the parties; (d) not being assured that a judge will have the required sector or technical expertise to properly determine the application; and (e) emergency arbitration decisions being enforceable across jurisdictions. From the perspective in Singapore, Mr Ashhab recognized that courts have the power to intervene in arbitral proceedings in limited situations, and accordingly that courts were more appropriate where urgent relief on an *ex parte* basis is sought due to, e.g., the risk of dissipation of assets.
- **Tips on advocacy in emergency arbitration proceedings.** Mr Jeyaretnam stressed that it was very important for practitioners to be well prepared in terms of what they want to demonstrate to the decision-maker and, in particular, being ready to make use of technology for sharing documents (e.g., online platform or PowerPoint presentation containing document excerpts and/or demonstratives). Virtual hearings can be very effective and, in some instances, better than in-person hearings, as it requires both the advocate and the emergency arbitrator to focus on what is being presented.
- **Enforcement of emergency arbitration relief.** Ms Prodigalidad noted the silence of the law in the Philippines (and the Supreme Court rules, at that) on the ability to enforce emergency arbitration decisions. However, she views the silence as providing the flexibility to at least fashion an argument for enforcement. That argument includes avoiding the [New York Convention](#) altogether and arguing that an emergency arbitration order is, in fact, an “interim measure”, which the Supreme Court rules recognize. At the end of the day, much will depend on the appreciation that judges have of the distinction, but for now the law’s silence is “good” for the argument.

## Conclusion

With the Philippines described by the panelists as arbitration-friendly, it is to be expected that the upward trend of international arbitration use by parties in the Philippines will continue, notwithstanding (and, perhaps, because of) the challenges arising from the COVID-19 pandemic. With the support of interim relief and emergency arbitration provisions in various arbitral rules such as the [SIAC Rules](#), one would expect that such applications involving parties in the Philippines similarly will increase—notwithstanding potential challenges to enforcement in the Philippines.


To make sure you do not miss out on regular updates from the *Kluwer Arbitration Blog*, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).


### **Profile Navigator and Relationship Indicator**

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



 Wolters Kluwer

The graphic features a black background with white text and a circular icon. The icon depicts a magnifying glass over a group of stylized human figures, representing a search or investigation process. The text is arranged in a clean, modern layout with horizontal lines above the main title.

This entry was posted on Monday, July 6th, 2020 at 8:00 am and is filed under [Arbitration](#), [Courts](#), [Enforcement](#), [interim relief](#), [Philippines](#), [Singapore](#), [Virtual hearings](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.