

# **COURT-SUBSIDIARITY AND INTERIM MEASURES IN COMMERCIAL ARBITRATION: A COMPARATIVE STUDY OF UK, SINGAPORE AND TAIWAN**

*Joseph Lee* \*

## **ABSTRACT**

*The granting of interim measures has a dynamic function in safeguarding the efficacy of arbitration and the effectiveness of the award. Such a function was traditionally reserved to state courts but has gradually been given to, and exercised by, arbitral tribunals based on the principle of party autonomy. Party autonomy, however, is a relative concept and its definition and implementation depend on the legal framework of each state legal system. In the UK and Singapore, the legislation, supported and supplemented by case law, provides arbitral tribunals with an extensive range of powers to grant interim measures both prior to and during the arbitration. The courts have also taken a non-interventionist position aim at facilitating the granting of interim measures by the arbitral tribunal. Such a court-subsidiarity model, brought about by legislation as well as by the courts' approach in favour of arbitration, has spurred "legal innovation" by arbitration institutions to develop their rules in the highly competitive commercial arbitration market. The UK and Singapore appear to tell a success story regarding the court-subsidiarity model, and is reflected in the arbitrators' power to grant interim measures. In Taiwan, the principle of party autonomy has also affected the development of arbitration, in that the power to*

---

\* PhD (Lond) Lecturer in law, University of Exeter; Collaborateur scientifique, University of Liège (Belgium).

*grant interim measures may be available by the tribunal if parties so agree. Yet the range of interim measures available to arbitrators is limited and does not include freezing injunctions, security for costs, or anti-suit injunctions. A legislative framework affirming the principle of party autonomy as the default position can reduce transaction costs. Court intervention could be framed in a more specific and precise way, thus respecting the autonomy of arbitration. This would allow arbitration institutions in Taiwan to be granted more freedom in developing commercially competitive rules, in order to attract commercial arbitration.*

**KEYWORDS:** *court-subsidiarity, interim remedy, UK, Taiwan, Singapore, arbitration*