

Hong Kong arbitration - First applications for interim relief by Mainland courts in support of Hong Kong arbitrations

October 2019

The first applications have been made under the Hong Kong-Mainland Arrangement on Interim Measures since it came into force in 1 October 2019. Of those applications, one has already been granted by the Mainland courts in support of a Hong Kong-seated arbitration administered by the Hong Kong International Arbitration Centre (the HKIAC) under its rules.

Background

The Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of Hong Kong (the **Arrangement**) was signed on 2 April 2019 and came into force on 1 October 2019. Under the Arrangement, parties to certain arbitration proceedings¹ seated in Hong Kong and administered by eligible arbitral institutions² may apply to the Mainland courts for interim measures in support of such arbitrations, including orders requiring the preservation of property/assets and evidence.

On 11 October 2019, the HKIAC [announced](#) that within the first few days of the Arrangement

coming into force it had received five applications related to ongoing arbitrations seated in Hong Kong and administered pursuant to its rules. In just a few days, in one of those applications, the Shanghai Maritime Court granted an order for the preservation of certain assets in the Mainland pending the determination of the arbitral proceedings in Hong Kong. As Hong Kong's Secretary for Justice, Ms. Teresa Cheng, GBS, SC, JP, put it, "*parties to HKIAC administered arbitrations in Hong Kong are quick to take advantage of the Arrangement to seek assistance from the Mainland courts and that [how] efficient the process has been.*"

The Arrangement

Prior to the Arrangement coming into force, parties to arbitration proceedings seated in Hong Kong (or indeed anywhere) could not easily obtain interim measures from the Mainland courts - the Mainland courts have traditionally been reluctant to grant interim measures in support of arbitrations seated in a jurisdiction other than the Mainland. A consequence of this was that parties may prefer resolving the dispute by way of arbitration seated in the Mainland if Mainland assets are involved and they foresee that assistance from the Mainland courts would be needed.

¹ The Arrangement applies to arbitration proceedings commenced both before and after 1 October 2019 (although in respect of proceedings commenced before 1 October 2019, they cannot have been concluded prior to that date).

² At present, the eligible institutions under Article 2 of the Arrangement include the HKIAC, CIETAC (the China

International Economic and Trade Arbitration Commission), the ICC (the International Court of Arbitration of the International Chamber of Commerce), the Hong Kong Maritime Arbitration Group, the South China International Arbitration Center (Hong Kong) and the eBRAM International Online Dispute Resolution Centre.

The rationale behind the Arrangement is to enhance Hong Kong's competitiveness as a provider of international arbitration services as well as strengthening its status as a hub for international dispute resolution services in the Asia-Pacific region. It seeks to facilitate access to interim measures in the Mainland, which are an important tool for parties involved in arbitration. For example, the court granting the interim measures can require one of the parties to preserve certain property/assets in order to avoid their destruction or dissipation pending the final determination of the arbitration. Such measures aim to ensure the robustness of the arbitral process and enhance its effectiveness.

Under the Arrangement, parties to arbitration proceedings in Hong Kong can, before the final award is made, apply for interim measures from the Mainland Courts (see the Practical Considerations section below for further guidance). The Arrangement compliments the fact that, under the Arbitration Ordinance (Cap 609), parties to arbitration proceedings in any jurisdiction outside Hong Kong can apply to the Hong Kong courts for interim measures.

Comment

The Arrangement represents closer cooperation between Hong Kong and the Mainland in the context of commercial disputes. For example, in January 2019 we published a [Client Alert](#) regarding the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters between the Courts of the Mainland and Hong Kong, which introduced a wider range of civil and commercial judgments which may be recognised and enforced by the courts of the respective jurisdictions.

Both arrangements are welcome developments in terms of increased scope and greater clarity when it comes to prospects of, and options for, protection/enforcement (albeit in different contexts). This should be of assistance to parties with Mainland-related disputes but who wish to take advantage of Hong Kong's status as a leading

jurisdiction, particularly in this context as a centre for international arbitration.

The most striking aspect of the Arrangement is that Article 8 of the Arrangement stipulates that the court to which a party applies for interim measures "*shall examine [the] party's application for interim measure expeditiously*". The fact that the Shanghai Maritime Court has dealt with one of the applications made via the HKIAC within days gives credence to the effectiveness of the Arrangement.

Hong Kong is currently the only jurisdiction to have entered into an agreement with the Mainland equivalent to the Arrangement. As such, there is a clear attraction to Hong Kong as an arbitration centre for parties with Mainland-related arbitrations wanting to have those arbitrations seated in a non-Mainland jurisdiction but from which they can nevertheless obtain interim measures in the Mainland. The Arrangement will also be of interest to parties yet to enter into contracts but who think they might need to obtain interim relief against Mainland-based assets.

Practical Considerations

Parties to contracts to which the Arrangement applies (or indeed parties yet to enter into contracts) and who might need interim measures in the Mainland to preserve the *status quo* pending the determination of the arbitral proceedings in Hong Kong should consider taking advantage of the Arrangement.

When applying for interim measures under the Arrangement, the applicant should bear in mind the following:

1. Under Article 3, parties can **apply for interim measures before or after acceptance of the case** by an eligible arbitral institution. If the application is made **before** acceptance, the Mainland courts must receive a letter from the administering arbitral institution certifying its acceptance of the case within 30 days after the interim measures are taken -

failing which the Mainland courts will discharge the interim measures. If the application is made after acceptance, the party's application will be passed to the Mainland courts by the relevant arbitral institution (i.e. as in the five HKIAC cases referred to above).

2. The applicant should submit the **relevant materials**, which include: (i) the substantive application for interim measures; (ii) the underlying arbitration agreement; (iii) relevant identification documents; (iv) in respect of existing arbitrations, certain case documents and a letter from the administering arbitral institution certifying its acceptance of the arbitration; and (v) any other materials required by the Mainland court (see Article 4).
3. The **substantive application** for interim measures should specify the information required by Article 5, including: (i) the particulars of the parties; (ii) the specific interim measures being sought; (iii) reasons in support of the application, supported by evidence; (iv) evidence of any property to be

preserved; (v) whether other applications under the Arrangement have already been made; and (vi) any other matters specified.

4. The applicant should bear in mind that the Mainland courts might require the applicant to **provide security** pending its determination of the application (Article 8), any **appeal** would be subject to Mainland law (Article 9) and the applicant would be responsible for any **fees** of the Mainland courts connected to the application (Article 10).

Conclusion

The Arrangement is a welcome development and greatly enhances Hong Kong's status as a centre for international arbitration. Hong Kong already enjoys a reputation as a major centre for international arbitration, with excellent facilities and leading practitioners. Its proximity to the Mainland should also be of convenience and attraction to parties with arbitrations which might benefit from the Arrangement. The fact that the Arrangement has already been utilised and interim measures granted is encouraging.

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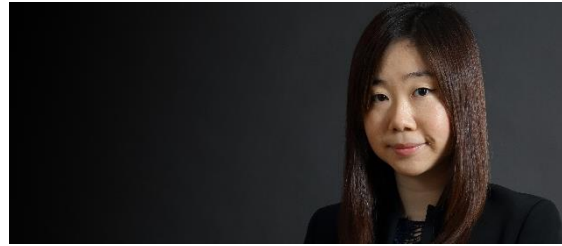
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