

Interim Relief Now Available in Mainland China in Support of Hong Kong-Seated Arbitrations

October 18, 2019

In an important development for the best choice of a seat, or legal place, of arbitration in Asia, the "Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR" entered into effect on October 1, 2019.

Signed in April this year by the Supreme People's Court of the People's Republic of China and the Hong Kong SAR Government, the arrangement is groundbreaking in that it allows parties in arbitrations seated in Hong Kong to apply to courts in Mainland China for interim relief.

The arrangement is unique because it makes Hong Kong the only jurisdiction outside of Mainland China to benefit from such support by the Chinese courts, significantly enhancing Hong Kong's position as an attractive seat for international arbitrations with a Chinese nexus. Previously, courts in Mainland China were not empowered to grant interim relief in aid of any arbitrations seated offshore, and parties who placed a priority on being able to obtain such relief had no choice but to arbitrate in Mainland China.

Under the arrangement, Mainland Chinese courts may grant interim relief, including injunctions, to preserve assets and evidence, or to address conduct. Importantly, however, the arrangement only applies to arbitrations administered by one of six qualifying arbitral institutions. The list published by the SPC and Hong Kong Department of Justice includes the Hong Kong International Arbitration Centre (HKIAC), China International Economic and Trade Arbitration Commission – Hong Kong Arbitration Center (CIETAC) and the International Court of Arbitration of the International Chamber of Commerce – Asia Office (ICC). The list also includes the Hong Kong Maritime Arbitration Group, South China International Arbitration Center and eBRAM International Online Dispute Resolution Centre.

An explanatory memorandum released by the SPC on September 26, 2019 describes key aspects of the arrangement and its implementation, including the procedure for making applications and the role of arbitral institutions. The memorandum further clarified that the arrangement will apply to all ongoing arbitral proceedings initiated prior to October 1, 2019. A party can apply for interim relief regardless of its nationality.

Within the first week of the arrangement taking effect, the Chinese courts have already seen their first case. Specifically, on October 8, 2019, a Shanghai Maritime Court became the first ever Mainland Chinese Court to grant interim measures in support of a HKIAC arbitration seated in Hong Kong. While details of the arbitration are confidential, sources report a Hong-Kong based shipping company brought the application for preservation of property against a Shanghai-based company and successfully obtained an asset preservation order. In an article published by the Shanghai Maritime Court, the court explained that this was an effective ruling in accordance with the judicial interpretation of the Supreme Court, which timely safeguarded the legitimate rights and interests of the parties.

While it is still early days, the arrangement is a potential game-changer for Hong Kong as an arbitral seat, especially at a time when Hong Kong is seeking to position itself as the leading seat for arbitration of disputes related to China's Belt and Road Initiative.

For now, parties concluding transactions with a connection to Mainland China should keep the arrangement in mind when selecting the arbitral seat and the administering arbitral institution. Similarly, parties to existing Hong Kong arbitrations should assess the impact this development could have on assets, evidence and operations located in Mainland China.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree

that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our <u>legal notices</u>.

Key Contacts

Marc Suskin	msuskin@cooley.com
New York	+1 212 479 6466
Rachel Thorn	rthorn@cooley.com
New York	+1 212 479 6465

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.