

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

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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.

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