

Kluwer Arbitration Blog

Mainland China-Hong Kong Interim Measures Arrangement Swiftly Put into Use

Peter Yuen, Matthew Townsend, John Zhou (Fangda Partners) · Saturday, October 26th, 2019

On 1 October 2019, Mainland Chinese and Hong Kong bodies brought into force a reciprocal arrangement with significant implications for Hong Kong as a seat of arbitration. The arrangement allows the courts of each jurisdiction to award interim measures in support of arbitrations seated in the other territory.

Parties to Hong Kong-seated arbitrations have been quick to adopt the new tools available. [Reports](#) suggest they have already made a number of applications to the PRC courts, with at least one having been granted.

The Arrangement and Announcements

On 2 April 2019, as [reported](#) in this blog, the Chinese Supreme People's Court ('SPC') and Hong Kong's Department of Justice ('DOJ') entered into the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region ('Arrangement').

The Arrangement changes the position under PRC law. Previously, there existed no formal mechanism by which Chinese courts would grant interim measures in support of arbitrations seated outside of Mainland China. Now they are empowered to issue interim measures in aid of institutional arbitrations seated in Hong Kong.

On 26 September 2019, the SPC and DOJ issued further instruments including: an SPC [Judicial Interpretation](#) and accompanying [article](#); as well as a DOJ [announcement](#) and [list of relevant institutions](#) (together referred to as the 'Announcements').

As stated in the accompanying article to the SPC Judicial Interpretation, the Arrangement sets out "*comprehensive provisions on the scope of preservation, the definition of arbitration procedures in Hong Kong, the procedures for applying for preservation, and the handling of preservation applications*". However, as the Announcements themselves clarify, a number of points had been left open when the Arrangement was entered into.

Effective date and qualifying institutions

The Announcements bring the Arrangement into force on 1 October 2019, which applies to both new and ongoing arbitration proceedings as of that date.¹⁾

Specifically, the Arrangement applies only to Hong Kong-seated arbitrations administered by certain “*institutions or permanent offices*”.²⁾ The Announcements now list these bodies as:

- the Hong Kong International Arbitration Centre (‘HKIAC’);
- China International Economic and Trade Arbitration Commission (‘CIETAC’) Hong Kong Arbitration Center (‘HKAC’);
- International Court of Arbitration of the International Chamber of Commerce – Asia Office;
- The Hong Kong Maritime Arbitration Group;
- South China International Arbitration Center (Hong Kong); and
- eBRAM International Online Dispute Resolution Centre.

The list may be updated from time to time in the future.

First cases following the Announcements

Parties to Hong Kong-seated arbitrations have been quick to make use of the mechanism under the Arrangement. Indeed, in an 11 October 2019 [announcement](#) (‘HKIAC update’), the HKIAC noted that it had already received five applications for interim measures to be ordered by the PRC courts. The HKIAC, which had received these applications pursuant to its role under Article 3 of the Arrangement to accept such applications and transfer them to the PRC courts, stated that each of the five cases concerned applications to preserve assets in the PRC.

It has also been reported in [the HKIAC Update](#) that on 8 October 2019, the Shanghai Maritime Court granted one of these applications, thereby rendering the first of such orders under the Arrangement.

Analysis

The Arrangement stands to bolster Hong Kong’s attractiveness as a seat for China-related disputes. As noted in [our previous post](#), it offers parties to China-related transactions a new arbitration option, allowing them on the one hand to enjoy the benefits of ‘offshore’ arbitration (in this case in Hong Kong), while on the other hand enabling them to apply for interim measures in Mainland China.

Parties, who wish to benefit from the Arrangement, need to clearly and unambiguously identify Hong Kong as the seat of arbitration, and specify that such

proceedings are to be administered by one of the recognised institutions as listed in the DOJ Announcement.

Given that this list might later be expanded in due course, it remains to be seen whether well-known institutions which presently have no qualifying operations in Hong Kong pursuant to the Arrangement (Arrangement, Article 2), will seek to establish eligible dispute resolution institutions or permanent offices in Hong Kong so as to benefit from this mechanism.

Of course, parties should note that the scope of interim relief available from PRC and Hong Kong courts differs considerably, as do the applicable standards and procedures. In this regard, Hong Kong courts are accustomed to ordering a diverse range of relief, including injunctive relief, in support of arbitration. By contrast, Mainland Chinese courts have in most circumstances been reluctant to order relief extending beyond preservation measures against assets or property. Further, parties seeking interim measures in Hong Kong may apply directly to the court while applications made to Mainland Chinese courts are commonly made in the first instance through an arbitration institution itself.

The Announcements confirm that each side to the Arrangement will apply their own current standards when reviewing applications made in support of arbitrations seated in the other jurisdiction. That said, in practice both sides have embarked on a considerable programme of cross-border judicial training following the Announcements.

Conclusion

It is unsurprising that arbitration users are swiftly adopting the tools available in the Arrangement in the same month the Arrangement came into force. The mechanism offers significant benefits to parties to transactions and disputes involving Chinese assets, operations or counterparties. This trend can be expected to continue given the hybrid jurisdictional nature of many transactions across the regions, for example investments into China involving offshore structures backed by guarantees from onshore assets.

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The infographic features a dark teal background on the left with a large teal circle containing the number '77%'. To its right, the text 'Increasing Volume and Complexity of Information' is written in a light grey font. A solid teal arrow points from this text to a green circle on the right containing the text 'Kluwer Arbitration' and 'World's essential online resource for international arbitration research'. Below the main graphic, the text 'SURVEY REPORT The 2021 Wolters Kluwer Future Ready Lawyer Moving Beyond the Pandemic Insights' is displayed. At the bottom left is the 'Kluwer Arbitration' logo, and at the bottom right is the 'Wolters Kluwer' logo.

References

- ↑1 See Article 3 of the Arrangement and Section 8 of the Accompanying Article.
- ↑2 See Article 2 of the Arrangement.

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