

# Kluwer Arbitration Blog

## The 2022 Agreement between Mainland China and Macau: Judicial Interim Measures in Support of Arbitration in the Pearl River Delta

Ana Coimbra Trigo (PLMJ Law Firm) · Thursday, May 19th, 2022

On 25 February 2022, the Supreme People's Court ("SPC") and the Secretary for Administration and Justice of the Macau Special Administrative Region ("Macau") signed an Agreement for mutual assistance regarding interim measures issued in arbitration proceedings in Mainland China and Macau ("Agreement"), which entered into force on 25 March 2022.

The [Agreement](#) permits parties to institutional arbitration seated in Mainland China or Macau to cross-request judicial measures from courts in the other jurisdiction. The available measures to applicant of one jurisdiction and their respective requirements are in accordance with the civil procedural rules of the other jurisdiction. Further, applications for court-ordered interim measures must be processed as expeditiously as possible. In addition, subject to the applicable local legal requirements in each jurisdiction, courts may make request that parties provide certain guarantees prior to issuing the interim measure (Article 7) and parties may have a right to appeal (Article 8).

### Features of the Agreement

Specifically, parties to civil and commercial disputes which have been submitted to institutional arbitrations in Macau in accordance with Macanese arbitration legislation can request the Second Instance People's Courts of the domicile of the responding party in Mainland China or of the location of the assets or evidence, to issue measures to safeguard assets, preserve evidence or preserve certain conducts (Articles 1 and 2). If parties apply for such measures prior to commencing arbitration proceedings, they shall furnish evidence of having initiated the institutional arbitration proceedings within 30 days of the issuance of such measures, or such measure will otherwise be discharged (Article 2).

On the other hand, parties to institutional arbitrations in Mainland China may file their request with the First Instance Court of Macau for interim measures seeking to conserve or anticipate certain effects in protection of the rights of the applicant (Article 1). Similarly, where the request for interim measures is filed with the Macanese Court prior to commencing the arbitration, evidence that an arbitration is commenced must be provided within the specified statutory period, failing which the granted measures will expire (Article 5).

In terms of requirements, parties seeking the support of Mainland Chinese courts must provide, *inter alia*, the arbitration agreement, documents related to the arbitration request and proof of admission of the case by the relevant arbitral institution; non-Chinese materials must be accompanied by Chinese translation (Article 3). They may also provide information of any assets located in Mainland China for the provision of warranties and certificates of financial standing (Article 4). In parallel, parties applying to the Macanese Court are required to submit comparable materials in either Portuguese or Chinese, or to provide translation in either of the two official languages. Specifically, parties will need to provide proof of threat to the legitimate rights of the applicant and of justification of such fear of harm to such rights (Article 6).

### **Commercial Context of the Agreement**

The Macanese government officials highlighted in a [recent announcement](#) that not only does this Agreement contribute to an improved and increasingly comprehensive judicial cooperation in civil and commercial matters between Mainland China and Macau, it also facilitates the promotion of Macau as a viable choice of seat of arbitration. This is in line with the development plans attached to the [Hengqin Cooperation Zone](#) between Guangdong and Macau, as well as the Greater Bay Area economic plan to promote regional development and cooperation in the Pearl River Delta (previously reported [here](#)), which altogether support the “One Belt, One Road” global investment initiative announced in 2013, as [Macau was considered to have strategic internationalization value](#) due to its exceptional legal environment as a civil law country with trilingual capacity, as well as its favourable infrastructure and hospitality conditions.<sup>1)</sup>

### **Legal Context of the Agreement**

This Agreement comes as no surprise to regional practitioners.

Tellingly, the new [2019 Macau Arbitration Law](#) (reported [here](#)) provides in its Article 15(4) that courts have jurisdiction to render interim measures related to arbitration proceedings irrespective of whether the seat is in Macau. However, until this Arrangement, parties that sought to rely on interim relief rendered and enforced in Mainland China had to initiate arbitration proceedings in Mainland China.

In addition, the model of cooperation adopted in the Agreement follows and complements the [2007 Agreement on the Mutual Confirmation and Enforcement of Arbitral Awards between Mainland China and Macau](#). Interestingly, Article 11 of this 2007 instrument allows the award creditor to request that the enforcement court, under *lex loci executionis*, to issue interim measures before or after recognition of the award.

Most relevantly, the Agreement mirrors in structure and content (with adaptations to Macanese legal particularities), the [2019 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](#) (“PRC-Hong Kong Arrangement”) (reported [here](#) in a previous post). The [experience already accumulated](#) by Hong Kong and Chinese arbitration institutions and courts under the PRC-Hong Kong Arrangement is relevant,<sup>2)</sup> and may guide

Macanese institutions and courts which appear to have limited track-record in this regard. It is noted that the SPC has issued a Note regarding the interpretation and application of the PRC-Hong Kong Arrangement, as well as template documents to be used in the process (English translation available [here](#) and [here](#)). Similar guidance and templates will be useful under this Agreement.

Overall, the existence of the Agreement and the PRC-Hong Kong Arrangement appears to be a unique feature of arbitration in the Pearl River Delta, as no similar framework seems to exist in the international arena for the request of judicial interim measures outside of the arbitral seat in aid of arbitration.

## The Future

Where there is a will, there is a way. China's persistent plan for Macau's role as a global tourism and leisure center, as well as an economic and trade cooperation platform between China and the Lusophone countries, has led to the establishment of several recent arbitration initiatives worth mentioning. These include the promulgation of the Model Law-inspired 2019 Arbitration Law, an innovative Macau tax incentive scheme to choose arbitration in lease agreements in 2020, as well as the consolidated revision of the two Macanese main arbitration institution rules (both reported [here](#)).

On the one hand, it can be said that this Agreement constitutes an additional promising commercial advantage to parties seeking to arbitrate in Macau, now able to seek help from Mainland Chinese courts in cases of urgency. The reverse can also take place. Therefore, parties to arbitrations taking place in China and Macau and with assets in these locations should be aware of this Agreement, and the implications arising thereof. All in all, this Agreement has the potential to contribute to effective safeguarding of the rights and interests of parties to arbitration in the Pearl River Delta.

On the other hand, these arbitration modernization steps are attempts to compete with Hong Kong and Singapore, which remain Asia's favorite arbitral seats. Arbitration institutions and courts in Macau will be further involved in building this arbitration bridge between Mainland China and Macau. It will be interesting to see how the results of these steady and complementing efforts, including the Agreement, will materialize in the coming years in promoting Macau as an arbitration seat.

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## References

- Ana Coimbra Trigo, “Arbitragem e Providências Cautelares no Delta do Rio das Pérolas. Comentário ao Ac. do Tribunal de Segunda Instância da Região Administrativa Especial de Macau de 15 de março de 2018” [Arbitration and Interim Measures in the Pearl River Delta], PLMJ Arbitration Review, N. 3, 63-80, 2019.
- Statistics available from the HKIAC show that as of 22 March 2022, there were 67 HKIAC applications related to pending arbitral proceedings and show that 38 out of the reported 41 decisions issued by Chinese courts on requests for interim measures were granted.

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