

Mainland Chinese Court Grants First Interim Measures Under the New Arrangement in Support of Hong Kong Arbitrations

11 October 2019

As reported in our earlier update on [“Interim Relief In Support Of Hong Kong-Seated Arbitrations Now Available In Mainland Chinese Courts”](#), the Hong Kong government and the Supreme People’s Court of the Republic of China earlier this year signed 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 (the “Arrangement”).

Interim measures are important tools in arbitration, enabling parties to preserve evidence or assets pending a final decision on the merits of a dispute. The Arrangement enables parties to certain Hong Kong arbitral proceedings to apply to Mainland Chinese courts for interim measures in support of their claims. These interim measures may cover a wide range of court orders, including the freezing of bank accounts, the seizure of assets and evidence, and a variety of injunctions. With rare exceptions, Mainland Chinese courts have been reluctant to grant interim relief in support of arbitrations seated outside Mainland China.

Hong Kong is the only jurisdiction which now has the benefit of such support from Mainland Chinese courts. Currently, the Arrangement extends to arbitrations seated in Hong Kong before the Hong Kong International Arbitration Centre (“HKIAC”), the China International Economic and Trade Arbitration Commission (“CIETAC”), the International Court of Arbitration of the International Chamber of Commerce (“ICC”), the Hong Kong Maritime Arbitration Group, the South China International Arbitration Center (HK) and the eBRAM International Online Dispute Resolution Centre. The Arrangement came into force on 1 October 2019 and applies to arbitral proceedings commenced (but not yet concluded) prior to and after that date.

Already within its first week the Arrangement has been successfully utilised. On 8 October 2019, the Shanghai Maritime Court granted interim measures in support of an arbitration administered by the HKIAC. Prior to the Arrangement coming into force, a Hong Kong shipping company had commenced arbitration against a Shanghai-based company in respect of an alleged breach of a settlement agreement. The Hong Kong company applied to the Shanghai Maritime Court on 8 October 2019 to seize and freeze

the Shanghai company's bank account and other assets located in Mainland China. The Shanghai Maritime Court granted the requested measures on the same day.

This is the first case in which Mainland Chinese courts have granted interim measures in support of Hong Kong arbitrations since the Arrangement came into effect. These measures took the form of an asset preservation order. In addition to such orders, Mainland Chinese courts are also empowered to grant interim relief for the preservation of evidence and for the preservation of conduct (which mostly pertains to orders compelling or prohibiting parties in intellectual property disputes to take certain steps). Under PRC law, an applicant generally only needs to show that it faces a substantial threat of irreparable damage if the measure is not granted. This is a lower threshold than that faced under Hong Kong law, where an applicant must also show a likelihood of success on the underlying merits of the claim.

The speed at which relief has already been granted by a Mainland Chinese court illustrates that the Arrangement has changed the landscape of Hong Kong arbitration. Parties to potential or existing Hong Kong arbitrations should be alert to the possibility that assets and evidence located in Mainland China may be targeted in interim relief applications and that relief may follow rapidly.

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Please do not hesitate to contact us with any questions.

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