

Hong Kong–Mainland China Interim Measures Arrangement: One Year On

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INTRODUCTION

On 1 October 2019, 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”) came into force. The Arrangement enables parties to certain Hong Kong arbitration proceedings to apply to Mainland Chinese Courts for interim measures to secure claims pending their final determination. Mainland Chinese Courts are empowered to grant three types of interim measures in aid of the arbitration, including for the preservation of property, the preservation of evidence, and the preservation of conduct. These measures cover a wide range of orders, including the freezing of bank accounts, seizure of assets and evidence, and a variety of injunctions. The applicant must demonstrate that there is a substantial threat that it will suffer irreparable damage if the measure is not granted.

Currently, the Arrangement extends to arbitrations seated in Hong Kong before six arbitral institutes, including the Hong Kong International Arbitration Centre (“HKIAC”), the China International Economic and Trade Arbitration Commission (“CIETAC”), and the International Court of Arbitration of the International Chamber of Commerce (“ICC”). For further details on the Arrangement, see our earlier update [“Interim Relief In Support Of Hong Kong-Seated Arbitrations Now Available In Mainland Chinese Courts”](#).

THE ARRANGEMENT IN PRACTICE

Since the Arrangement came into force just one year ago, the HKIAC has reported 25 applications.¹ The ICC and CIETAC have not yet reported any applications having been made in support of arbitrations administered by either institute.

¹ Hong Kong–Mainland China Arrangement on Interim Measures: HKIAC Update, 27 August 2020 (<https://www.hkiac.org/news/hk-prc-interim-measures-arrangement-hkiac-update>).

As for the HKIAC applications, all of these were made in arbitrations seated in Hong Kong administered by the HKIAC under its rules. Each application was made on an ex parte basis, i.e., without notice being given to the opposing party. The ability to file an application on an ex parte basis is often of great importance to an applicant for interim measures, particularly where there is a risk of dissipation of assets in the event that notice is provided.

These applications were filed in 15 Intermediate People's Courts ("IPCs") spread across Mainland China, illustrating the nation-wide reach of the Arrangement.² All but one of these applications concerned the preservation of assets (with the remaining application directed at the preservation of evidence). Applicants sought to preserve assets amounting to RMB 9.4 billion (approximately USD 1.4 billion). The IPCs granted 17 applications, ordering the preservation of assets amounting to RMB 8.7 billion (approximately USD 1.3 billion). Evidently, several applicants utilising the Arrangement have enjoyed resounding successes.

The HKIAC has reported that 70% of applications were made by parties from jurisdictions outside of Mainland China. Half of the applications concerned assets or evidence owned by Mainland Chinese parties, and the other half concerned assets in Mainland China owned by non-Mainland Chinese parties.

Applications under the Arrangement can move at speed. By way of illustration, as reported in our earlier update "[Mainland Chinese Court Grants First Interim Measures Under the New Arrangement in Support of Hong Kong Arbitrations](#)", in the very first application under the Arrangement, the Shanghai Maritime Court granted a preservation order just six days after the application had first been submitted to the HKIAC, and on the same day that the Court received the application. However, delays have been experienced by parties where they have provided insufficient information with their applications. In one case, the applicant suffered a delay of 24 days after filing insufficient evidence in support.³ Delays can often be fatal in applications for interim relief, as by the time the application is granted, the feared dissipation of assets, destruction of evidence, or other harmful development, may already have occurred. It is thus vital that parties ensure that they provide the necessary information and documents when applying for interim measures under the Arrangement, such that unnecessary delays are avoided, and the application is not rendered futile in the meantime.

² Beijing, Dalian, Hangzhou, Jinan, Lianyungang, Nanjing, Shanghai, Shenzhen, Xiamen, Yantai and Zhaoqing.

³ Hu 74 Cai Bao No.7 (2020), Shanghai Financial Court.

MAIN OBSTACLES TO OBTAINING INTERIM MEASURES

In determining applications under the Arrangement, Mainland Chinese Courts consider whether without the requested measures there is a risk that (a) the applicant will suffer irreparable damage, and/or (b) the prospects of enforcing the award may be harmed. To date, Mainland Chinese Courts have not yet provided guidelines as to what might constitute “irreparable damage”. In contrast to applications for interim relief in most jurisdictions, applicants under the Arrangement do not need to demonstrate that their underlying claims have reasonable prospects of success.

Whilst the Arrangement does not mandate the provision of security by an applicant,⁴ reported decisions reveal that applicants who have successfully and expeditiously obtained interim measures under the Arrangement have provided appropriate security when filing their applications. For example, in an application granted by the IPC of Lianyungang Municipality in Jiangsu, the applicant, a Hong Kong industrial company, provided a letter of guarantee issued by the China Pacific Property Insurance Co as security and obtained an order in effect freezing the respondent’s bank account.⁵ In another successful application, the applicant had obtained Litigation Property Preservation Liability Insurance as security,⁶ once again resulting in an order from the IPC No. 1 in Shanghai, which had the effect of freezing the respondent’s bank account.⁷ Prospective applicants should therefore consider the availability and appropriateness of offering security in order to secure the desired relief.

CONCLUSION

After just one year of its operation, it is already clear that the Arrangement is an effective and popular mechanism for parties to Hong Kong arbitrations seeking to protect their interests in Mainland China. Parties should consider the benefits afforded by the Arrangement when negotiating the dispute resolution provisions of their agreements. Those benefits will militate in favour of a Hong Kong seat and arbitration under the auspices of one of the specified institutions.

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Please do not hesitate to contact us with any questions.

⁴ Arrangement, Article 8.

⁵ Su 07 Cai Bao No. 10 (2019), Intermediate People’s Court of Lianyungang Municipality, Jiangsu Province.

⁶ Litigation Property Preservation Liability Insurance (LPPL) is a product available in Mainland China, which enables a plaintiff in civil proceedings to apply to the court for security for the preservation of the defendant’s assets up to the claimed value of the suit.

⁷ Hu 01 Cai Bao No.13 (2020), Shanghai No.1 Intermediate People’s Court.

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