



Major Breakthrough for PRC Interim Measures in HK Arbitrations

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Mainland courts have long been unable to provide interim measures (including property preservation, evidence preservation and conduct preservation) in aid of overseas arbitral proceedings, including arbitral proceedings in the Hong Kong Special Administrative Region (“**Hong Kong**”), with the exception of maritime matters. Despite this, parties to Mainland arbitral proceedings may apply for interim measures with Hong Kong courts in accordance with the current laws of Hong Kong. This longstanding state of affairs is about to change.

On April 2, 2019, the Supreme People's Court of the People's Republic of China and the Government of Hong Kong 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**”) in Hong Kong. According to the Arrangement, parties to institutional arbitral proceedings in Hong Kong may apply to Mainland courts for interim measures.

In this article, we will briefly introduce the contents of the Arrangement relating to applying for interim measures with Mainland courts, and present matters requiring attention in planning overseas arbitration mechanisms for cross-border transactions.

I. Under what types of international arbitration proceedings are parties entitled to apply to Mainland courts for interim measures?

International arbitral proceedings must conform to the following conditions under Article 2 of the Arrangement to be eligible for interim measures in the Mainland:

1. The arbitration is seated in Hong Kong;
2. The arbitration may only be administered by a designated arbitral institution (or its permanent office) (e.g. by the Hong Kong International Arbitration Centre), excluding *ad hoc* arbitration;
3. The arbitral institution administering the arbitration (or its permanent office) should be included in a list jointly confirmed by the Hong Kong Government and the Supreme People's Court (the list is to be released).

In addition, the Arrangement currently applies only to commercial arbitrations between parties of equal

standing, and excludes investment arbitrations.

II. What interim measures can be applied for to Mainland courts?

According to Article 1 of the Arrangement, interim measures which may be applied for to Mainland courts include:

1. Property preservation (which refers to measures taken by a court in the form of seizure, detainment, freezing of property, etc., to ensure the enforcement of a judgment or award);
2. Evidence preservation (which refers to measures taken by a court, including seizure and detainment of evidence, taking photographs, making audio or video recordings, making reproductions, etc., to avoid evidence being destroyed, lost or becoming difficult to obtain);
3. Conduct preservation (which refers to measures taken by the court ordering one party to take certain actions or prohibit it from taking certain actions, to ensure the enforcement of a judgment or award and avoid increased losses).

III. When may interim measures be applied for to Mainland courts?

According to Article 3 of the Arrangement, parties to arbitral proceedings in Hong Kong may apply to a Mainland court for interim measures before the arbitral award is made, no matter whether the arbitral proceedings have been initiated or not. If a party applies for interim measures before the acceptance of the arbitration case, it has to ensure that the Mainland court may receive a letter from the arbitral institution or permanent office certifying its acceptance of the arbitration case within 30 days after the interim measure is adopted, or the Mainland court shall discharge the interim measure.

IV. To which Mainland courts may applications for interim measures be submitted? What laws govern applications for interim measures?

According to Article 3 of the Arrangement, a party to arbitral proceedings in Hong Kong may make an application for interim measures to the Intermediate People's Court of the place of residence of the party against whom the application is made or the place where the property or evidence is situated, by reference to the provisions of the *Civil Procedure Law of the People's Republic of China*, the *Arbitration Law of the People's Republic of China* and relevant judicial interpretations. The applicant may only make an application to one of the above courts.

V. What materials need to be submitted when applying for interim measures?

According to Articles 4 and 8 of the Arrangement, a party to arbitral proceedings in Hong Kong is required to submit the following materials when applying for interim measures with a Mainland court:

1. The application for interim measure;
2. The arbitration agreement;
3. Documents of identity: where the applicant is a natural person, a copy of his/her identity card is

to be submitted; where the applicant is a legal person or an organization which is not a legal person, copies of its certificate of incorporation or registration and the identity card(s) of its legal representative(s) or responsible person(s) are to be submitted; where a document of identity is issued outside the Mainland, such document of identity shall be certified in accordance with the provisions of the relevant laws of the Mainland;

4. Where a party makes an application for interim measure after the relevant institution or permanent office has accepted the arbitration case, the request for arbitration setting out the main claim of the arbitration and the facts and justifications on which the claim is based, together with the relevant evidential materials, as well as a letter from the relevant institution or permanent office certifying its acceptance of the relevant arbitration case;
5. Where a document submitted to a people's court of the Mainland is not in the Chinese language, the applicant shall submit an accurate Chinese translation;
6. Appropriate security and corresponding certification materials at request by the Mainland court;
7. Any other materials as requested by the Mainland court.

VI. Has the Arrangement come into force?

According to Article 13 of the Arrangement, the Arrangement will come into force on a date announced by the Mainland and Hong Kong upon promulgation of a judicial interpretation by the Supreme People's Court and the completion of the relevant procedures in Hong Kong.

VII. According to the Arrangement, what issues require attention when designing overseas arbitration arrangements for cross-border transactions?

Overseas arbitration is a common dispute resolution mechanism in cross-border transactions, although it can often be a long process. If a transaction counterparty who has its principal assets in the Mainland is at risk of default and overseas arbitration is required, it would clearly be necessary to consider applying for interim measures against the counterparty's assets in the Mainland before or during the arbitral proceedings.

In such cases, according to the Arrangement, the parties should pay attention to the following matters when designing overseas arbitration clauses:

1. Expressly stipulate in the arbitration clause that the seat of arbitration is Hong Kong;
2. Provide that the arbitral proceedings be administered by an arbitral institution, which means the dispute should be submitted to institutional arbitration rather than ad hoc arbitration;
3. Confirm whether the selected arbitral institution is included on the list jointly confirmed by the Hong Kong Government and the Supreme People's Court.

It bears mentioning that parties to a contract must evaluate many factors when designing a dispute resolution clause which can effectively protect their interests. The foregoing are merely some of those matters that deserve attention.

Important Announcement

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