HKIAC REPORT ON THE PRC-HK INTERIM MEASURES ARRANGEMENT: RESPONSES TO FREQUENTLY ASKED QUESTIONS

(last updated 24 August 2020)

Introduction

In light of great interest in the Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in Aid of Arbital Proceedings by the Courts of the Mainland and the Hong Kong Special Administrative Region (“Arrangement”), we have prepared this note to address the most frequently asked questions. They include:

1. **What is the Arrangement and what is its effect?**
2. **Have there been successful applications under the Arrangement?**
3. **What is HKIAC’s role under the Arrangement?**
4. **How may a party submit an application under the Arrangement?**

This note will be updated regularly with new information and additional frequently asked questions.

**1. What is the Arrangement and what is its effect?**

1.1. The Arrangement is an instrument concluded between the Government of Hong Kong and the Supreme People’s Court of the People’s Republic of China (“SPC”). Its text was concluded on 2 April 2019 and it came into effect on 1 October 2019. The Arrangement contains 13 articles. The full text of the Arrangement is available in Chinese [here](#), with an English translation available [here](#).

1.2. Under the Arrangement, any party to arbitral proceedings seated in Hong Kong and administered by HKIAC or another qualified arbitral institution may, prior to the issuance of the arbitral award, apply to a competent Mainland Chinese court for interim measures in relation to the arbitral proceedings in accordance with the relevant laws and regulations of Mainland China. Such interim measures include the preservation of assets, evidence and conduct. Applications for interim relief may be made before or after an arbitration is commenced. If made before, the arbitration shall be commenced within 30 days after the interim measure is taken under the Arrangement (Art. 3 of the Arrangement).

1.3. By virtue of the Arrangement, Hong Kong is the only arbitration venue outside of Mainland China where parties to arbitrations may obtain interim relief in support of arbitration proceedings from Mainland Chinese courts in respect of assets, evidence and conduct on the Mainland.

1.4. The Arrangement is reciprocal in that it also provides that any party to arbitral proceedings administered by a Mainland arbitral institution may apply to the Hong Kong courts for interim measures pursuant to Hong Kong law. However, such recourse to the Hong Kong courts was already available to parties to arbitrations seated outside of Hong Kong by virtue of Section 45 of the Hong Kong Arbitration Ordinance (Cap. 609). Interim measures available under Hong Kong

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1 The other qualified arbitral institutions are the China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center, eBRAM International Online Dispute Resolution Centre, the Hong Kong Maritime Arbitration Group, the International Court of Arbitration of the International Chamber of Commerce – Asia Office and South China International Arbitration Center (HK).
law include injunctions and other interim measures to (i) maintain or restore the status quo pending determination of the dispute; (ii) take actions that would prevent, or refrain from taking actions that are likely to cause, current or imminent harm or prejudice to the arbitral process; (iii) preserve assets; or (iv) preserve evidence that may be relevant and material to the resolution of the dispute.

1.5. On 26 September 2019, the SPC published a note on the interpretation and application of the Arrangement (“SPC Note”). It provides the official guidance issued by the highest court in the Mainland for the courts that will receive applications under the Arrangement (Intermediate People’s Courts). It is also useful guidance for qualified arbitral institutions and users. It is available in Chinese here and HKIAC’s English translation is available here. The SPC also issued twelve template documents that parties may use to submit applications for different purposes under the Arrangement. Those are available in Chinese here and HKIAC’s English translation is available here.

2. Have there been successful applications under the Arrangement?

2.1 Yes. Since its entry into force on 1 October 2019, HKIAC has processed 25 applications under the Arrangement. All applications were made in ongoing arbitrations seated in Hong Kong and administered by HKIAC under its Administered Arbitration Rules. 24 applications were for the preservation of assets and one was an application to preserve evidence. All applications were made on an ex parte basis and were made in arbitrations that had already been commenced.

2.2 The applications were made to 15 different Mainland Chinese courts in the following cities: Beijing, Dalian, Hangzhou, Jinan, Lianyungang, Nanjing, Shanghai, Shenzhen, Xiamen, Yantai and Zhaoqing. They were made in arbitrations involving commercial, corporate, financial, maritime and professional services disputes.

2.3 The total amount sought in asset preservation orders across all applications was RMB 9.4 billion (USD 1.4 billion). HKIAC is aware of at least 17 of the applications for preservation of assets having been granted to the total value of approximately RMB 8.7 billion (USD 1.3 billion).

2.4 The Arrangement is an effective tool for protecting the interests of Mainland Chinese and foreign parties. Approximately 30% of applications in HKIAC’s cases have been made by parties from Mainland China and 70% by foreign parties (from the British Virgin Islands, the Cayman Islands, Hong Kong, Samoa, Singapore and Switzerland). Approximately 50% of applications concerned assets or evidence owned by Mainland Chinese parties and 50% concerned assets on the Mainland owned by foreign parties (from the British Virgin Islands, the Cayman Islands, Hong Kong and the Netherlands).

3. What is HKIAC’s role under the Arrangement?

3.1 HKIAC was recognised as a qualified institution under Art. 2(1) of the Arrangement on 25 September 2019.

3.2 Any party to arbitral proceedings seated in Hong Kong and administered by HKIAC under its Administered Arbitration Rules, other rules issued by HKIAC, or the UNCITRAL Arbitration Rules ("HKIAC Proceedings") may apply to a competent Mainland Chinese court for interim measures in accordance with the Arrangement.
3.3 In HKIAC Proceedings, HKIAC may provide a letter certifying HKIAC’s acceptance of an arbitration for the purposes of the Arrangement (“Letter of Acceptance”). HKIAC does so at no cost. Such certification is required for all applications under the Arrangement. HKIAC may also facilitate applications under the Arrangement by communicating a copy of the application together with a Letter of Acceptance to the competent court upon the request of the court. Where a court requests information in respect of the application or the arbitration from HKIAC pursuant to paragraph 5(1) of the SPC Note, HKIAC may provide the information requested to the extent that it is in a position to do so.

3.4 In order to issue a Letter of Acceptance for an application under the Arrangement, HKIAC requires the applicant to provide the following information and documents:
3.4.1 a request for a Letter of Acceptance from HKIAC under the Arrangement;
3.4.2 a copy of the application to the relevant Mainland court and its supporting materials; and
3.4.3 any other documents required by HKIAC.

4. How may a party submit an application under the Arrangement?

4.1 HKIAC makes available information on the methods of submitting an application under the Arrangement to a Mainland Chinese court and to HKIAC for a Letter of Acceptance. That information is available here.

4.2 HKIAC also makes the following materials available on its website (at the links provided):

- the full text of the Arrangement in Chinese (here) together with an English translation (here);
- the SPC Note (available here in Chinese; unofficial English translation available here);
- 12 template documents prepared by the SPC for the purposes of seeking interim measures before the Mainland Chinese courts under the Arrangement (available here in Chinese; unofficial English translations available here);
- the contact details of the qualified arbitral institutions under Article 2 of the Arrangement (available here);
- relevant Hong Kong and Mainland Chinese laws (Civil Procedure Law of the People’s Republic of China, Arbitration Law of the People’s Republic of China, the Hong Kong Arbitration Ordinance (Cap 609) and the Hong Kong High Court Ordinance (Cap 4));
- links to HKIAC’s publications on the Arrangement (available here); and,
- links to HKIAC’s webinars on the Arrangement in English, Chinese and Korean (available here).