PRC-HK INTERIM MEASURES ARRANGEMENT

FREQUENTLY ASKED QUESTIONS

In light of great interest in the Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in Aid of Arbitral 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:

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I. Background Information

1. What is the Arrangement?

1.1. The Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and the Hong Kong Special Administrative Region 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.

1.2. The Arrangement contains 13 articles. The full text of the Arrangement is available in Chinese here, with an English translation (provided by HKIAC) available here.

1.3. 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. It also provides useful guidance for qualified arbitral institutions and users. It is available in Chinese here, with an English translation (provided by HKIAC) available here.

2. What is the effect of the Arrangement?

2.1. Before the Arrangement came into force, the legal basis for Mainland Chinese Courts (“Mainland Court(s)”) to grant interim measures in support of arbitral proceedings seated outside Mainland China was extremely limited. Interim measures obtained from an emergency arbitrator or an arbitral tribunal in arbitral proceedings seated outside Mainland China are not enforceable by Mainland Courts. The Arrangement provides a means for parties to Hong Kong seated-arbitrations to seek interim measures from Mainland Courts.

2.2. 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 Court for interim measures in relation to the arbitral proceedings in accordance with the relevant laws and regulations of Mainland China (“Application”).

2.3. 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 Courts.

2.4. The Arrangement is reciprocal in that it also provides that any party to arbitral proceedings in Mainland China 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).

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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). The contact details of the qualified arbitral institutions under Article 2 of the Arrangement are available here.
3. What categories of interim measures may Mainland Courts order?

3.1. Under the Arrangement, Mainland Courts may order interim measures including the preservation of assets, evidence, and conduct.

3.2. Applications may be made either before or after the commencement of an arbitration. If made before, the arbitration shall be commenced within 30 days of the application under the Arrangement (Art. 3 of the Arrangement).^2

3.3. An application may also be made on an *ex parte* basis. Unless the applicant requests HKIAC to also communicate copies to any other parties to the arbitration when making the request for a Letter of Acceptance (defined hereafter), HKIAC will communicate the Letter of Acceptance to the requesting party only.

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

4.1. Under Article 4 of the Arrangement, an applicant applying to a Mainland Court for an interim measure shall submit a letter from the relevant arbitration institution certifying the institution’s acceptance of the relevant arbitration case ("Letter of Acceptance"). HKIAC may provide a Letter of Acceptance for the purposes of the Arrangement.

4.2. HKIAC may also facilitate applications under the Arrangement by transferring the Application together with a Letter of Acceptance to the competent Mainland Court upon the request of the court.

4.3. Where a Mainland Court requests information regarding 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.

4.4. HKIAC does not carry out a substantive review of whether the criteria under Article 5(3) of the Arrangement has been fulfilled. However, as the Arrangement does not apply to *ad hoc* arbitrations or arbitrations that are not seated in Hong Kong, HKIAC will refrain from issuing a Letter of Acceptance in relation to such arbitral proceedings.

II. Implementation of the Arrangement

5. How many successful applications have been made under the Arrangement?

5.1. The information below is accurate as of 23 April 2021:

5.1.1. Since the Arrangement entered into force on 1 October 2019, HKIAC has issued Letters of Acceptance in respect of 43 applications. 40 applications were made for the preservation of assets, two were for the preservation of evidence, and one was for the preservation of conduct. All applications were made in arbitrations that had already been commenced.

^2 In accordance with Article 3 Section 3 of the Arrangement, "[w]here a party makes an application for interim measure before the relevant institution or permanent office has accepted the arbitration case, but the people’s court of the Mainland has not received a letter from the said institution or permanent office certifying its acceptance of the arbitration case within 30 days after the interim measure is taken, the people’s court of the Mainland shall discharge the interim measure."
5.1.2. HKIAC is aware of 28 decisions issued by Mainland Courts. Of these 28 decisions, 26 granted the applications for preservation of assets upon the applicant’s provision of security and two rejected such an application. The total value of assets preserved by the 26 decisions amounted to RMB 13.8 billion or approximately USD 2.1 billion.

6. **How many Mainland Courts have processed applications for interim measures in aid of arbitral proceedings in Hong Kong?**

   6.1. The information below is accurate as of 23 April 2021:

   6.1.1. Since the Arrangement’s entry into force on 1 October 2019, Applications were made to 21 different Mainland Courts in the following cities: Beijing, Shanghai, Shenzhen, Dalian, Dongying, Fuzhou, Guangzhou, Hangzhou, Jinan, Lianyungang, Nanjing, Qingdao, Xiamen, Yantai, Zhangzhou, Zhaoqing, and Zhoushan.

7. **What are the percentages of Mainland/foreign applicants and/or Mainland/foreign respondents?**

   7.1. The information below is accurate as of 23 April 2021:

   7.1.1. Applicants are split approximately 27% Mainland Chinese/73% foreign parties. Respondents are split approximately 57% Mainland Chinese/43% foreign parties.

8. **How long does it usually take for HKIAC to issue a letter of acceptance?**

   8.1. HKIAC issues Letters of Acceptance within 24 hours of receipt of a complete application.

9. **How long does it usually take for a Mainland Court to make a preservation order?**

   9.1. The information below is accurate as of 23 April 2021:

   9.1.1. Based on the information available in respect of 24 of the 28 decisions issued by the Mainland Courts, the average time taken by Mainland Courts to issue a decision was 20 days from receipt of an Application. The median time was 9.5 days.

III. **Practical Questions**

10. **Who is eligible to apply for interim measures in Mainland Courts?**

    10.1. Under the Arrangement, any party to arbitral proceedings may apply to a competent Mainland Court for interim measures in relation to the arbitral proceedings if:

        10.1.1. the arbitration is seated in Hong Kong;

        10.1.2. the arbitration is administered by an arbitral institution qualified under Article 2(1) of the Arrangement (HKIAC is a qualified institution; the full list of qualified institutions is available [here](#)), and

        10.1.3. the Application is made prior to the issuance of the arbitral award.
11. May I request HKIAC to issue a Letter of Acceptance in an *ad hoc* arbitration? What about an arbitration that is not seated in Hong Kong?

11.1. As the Arrangement does not apply to *ad hoc* arbitrations or arbitrations that are not seated in Hong Kong, HKIAC will not issue a letter of acceptance in relation to the foregoing arbitral proceedings.

11.2. HKIAC will issue a Letter of Acceptance in an arbitration under the UNCITRAL Arbitration Rules which is administered by the HKIAC.

12. May I request HKIAC to issue a Letter of Acceptance *before* the commencement of the arbitration?

12.1. No. Pursuant to Articles 3 to 5 of the Arrangement, a party applying for interim measures to a Mainland Court before the commencement of the arbitration shall submit its application *directly* to the court. HKIAC may issue a Letter of Acceptance after the Mainland Court has granted the Application and after the applicant has commenced arbitration (which must be within 30 days).

13. What are the procedural steps for submitting an interim measure application to a Mainland Court?

Application Before the Commencement of Arbitration

Applicant makes an Application for interim measure to the Relevant Mainland Court

- The court grants the Application
  - Applicant commences arbitration and makes a request to HKIAC for a Letter of Acceptance
  - HKIAC issues a Letter of Acceptance
  - Does the Court request HKIAC to transfer the Letter of Acceptance?
    - Yes: HKIAC transfers the Letter of Acceptance to the court
    - No: HKIAC couriers the Letter of Acceptance to Applicant
  - Applicant submits the Letter of Acceptance to the court
- The court rejects the Application
  - HKIAC couriers the Letter of Acceptance to Applicant
14. What information should the applicant provide HKIAC when it requests a Letter of Acceptance? Are there any templates?

14.1. The applicant shall provide the following documents and information to HKIAC:

14.1.1. request for a Letter of Acceptance, including the following information:

(i) an indication that the applicant requests HKIAC to issue a Letter of Acceptance;
(ii) name of the Mainland Court to which the applicant intends to submit the application;
(iii) an indication as to whether any other party to the arbitration should be copied on communications in relation to the request; and
(iv) an indication as to whether the Mainland Court requests HKIAC to transfer the Application; and if yes, the address and any other contact information of the Mainland Court.

14.1.2. a copy of the Application to the Mainland Court including any supporting materials;
14.1.3. if an application has been made before the commencement of the arbitration, a copy of the Mainland Court’s decision on the application; and

14.1.4. any other documents or information required by HKIAC.

14.2. There is no template for requests to HKIAC for a Letter of Acceptance.

15. Is it necessary to provide HKIAC with the original Application or originals of any supporting documents? What about authenticated copies of any supporting documents?

15.1. HKIAC usually does not require originals to issue a Letter of Acceptance. However, originals may be requested where HKIAC sees fit. If HKIAC requests any documents other than those provided as listed at Question 14, it will so inform the applicant after receipt of the request for a Letter of Acceptance.

16. After HKIAC has issued a Letter of Acceptance, who will communicate the Letter of Acceptance to the Mainland Court?

16.1. Unless the Mainland Court requests HKIAC to transfer the Application directly to the court, HKIAC will communicate the Letter of Acceptance to the applicant. The applicant may submit the Application together with the Letter of Acceptance to the Mainland Court.

16.2. Where the Mainland Court requests HKIAC to transfer the Application, HKIAC will communicate the Application, together with the Letter of Acceptance, to the Mainland Court.

17. Does HKIAC charge any fees for issuing a Letter of Acceptance or transferring the Application to the relevant Mainland Court?

17.1. HKIAC does not charge a fee for issuing a Letter of Acceptance.

17.2. However, HKIAC may charge fees for transferring the Application and for providing any additional assistance under the Arrangement.

18. Would HKIAC assist the applicant in fulfilling any additional requests made by the relevant Mainland Court?

18.1. Whether HKIAC will fulfill the courts’ additional requests will be assessed on a case-by-case basis, depending on the request.

18.2. Since the Arrangement entered into force, HKIAC has received several information-verification requests from Mainland Courts which were communicated to HKIAC by the applicants. In some of these instances, HKIAC verified the information to the Mainland Court where it was in a position to do so.

18.3. Mainland Courts may directly contact HKIAC based on the contact details provided by the Department of Justice of Hong Kong.
19. If the preservation order expires, can the applicant request HKIAC to issue another Letter of Acceptance in support of its application for extension of the preservation order?

19.1. Yes. Since the Arrangement entered into force on 1 October 2019, HKIAC has issued Letters of Acceptance in support of extension applications.

20. After the relevant Mainland Court grants an application, can the respondent in the application request HKIAC to issue a Letter of Acceptance in support of its application to revoke the preservation order?

20.1. As the Arrangement does not provide a legal basis for HKIAC to issue a Letter of Acceptance in such a circumstance, HKIAC will not issue a Letter of Acceptance in the circumstances.

21. Are there any other useful resources?

21.1. HKIAC also makes the following materials available on its website (at the links provided). All English translations are provided by HKIAC:

21.1.1. the full text of the Arrangement in Chinese ([here](#)) together with an English translation ([here](#));

21.1.2. the SPC Note in Chinese ([here](#)) together with an English translation ([here](#));

21.1.3. 12 template documents prepared by the SPC for the purposes of seeking interim measures before the Mainland Chinese courts under the Arrangement, in Chinese ([here](#)) together with an English translation ([here](#));

21.1.4. the contact details of the qualified arbitral institutions under Article 2 of the Arrangement (available [here](#));

21.1.5. 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)](#);

21.1.6. links to HKIAC’s publications on the Arrangement (available [here](#)); and,

21.1.7. links to HKIAC’s webinars on the Arrangement in English ([here](#)), Chinese ([here](#)) and Korean ([here](#)).