

Interim Relief from Mainland Chinese Court will become available for Hong Kong Arbitrations



On 2 April 2019, the Hong Kong Government and the Mainland Supreme People's Court 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**”). Once implemented, the Arrangement will allow parties to arbitral proceedings seated in Hong Kong to apply, at any time before an arbitral award is made, to Mainland courts for interim measures including property preservation, evidence preservation and conduct preservation.

Prior to the Arrangement, while parties to arbitral proceedings in Mainland China (as well as those in other jurisdictions) might apply to the Hong Kong court for interim relief such as injunction pursuant to section 45 of the Arbitration Ordinance, the Mainland courts had no power to grant interim relief in aid of arbitrations seated outside of Mainland China.



Once the Arrangement comes into force, Hong Kong will become the only jurisdiction outside of Mainland China which, as an arbitral seat, will offer reciprocal access to interim measures from the Mainland courts. The exact commencement date of the Arrangement will be announced at a later date.

Arbitral proceedings in Hong Kong are defined in the Arrangement to cover arbitration seated in Hong Kong and administered by:



- (i) arbitral institutions established or headquartered in Hong Kong and with their principal place of management located in Hong Kong;



- (ii) dispute resolution institutions or permanent offices set up in Hong Kong by international intergovernmental organisations of which China is a member; or



- (iii) dispute resolution institutions or permanent offices set up in Hong Kong by arbitral institutions which satisfy criteria prescribed by the Hong Kong Government.

It is expected that a full list of such institutions will be issued by the Hong Kong Government following consultation with the Mainland Supreme People's Court.

Under the Arrangement, a party to arbitral proceedings in Hong Kong may apply, in accordance with the provisions of the PRC Civil Procedure Law, to the Intermediate People's Court of the place of residence of the counterparty or the place where the property or evidence is situated. Applications may be made before or after an arbitral institution has accepted the arbitration case. If an application is made before such acceptance and is granted by an Intermediate People's Court, then unless the relevant Intermediate People's Court receives a letter from the arbitral institution certifying acceptance of the case **within 30 days** of the granting of interim measures, such measures would be discharged. If the application is made after the arbitral institution has accepted the case, the application shall be made to the institution which would forward the application to the competent Mainland court.

The availability or otherwise of interim relief from Mainland courts has always been an important consideration in parties' choice of the arbitral seat for disputes arising out of contracts with a Chinese party or involving underlying assets in Mainland China. The Arrangement is a welcome development as it ensures unprecedented access to interim relief from Mainland courts for parties to arbitrations seated in Hong Kong. It will also further enhance Hong Kong's status as a regional arbitral seat for China-related disputes and particularly disputes related to the Belt and Road Initiative which are expected to increase significantly in the years to come.

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