

Client Alert

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Landmark development allows interim relief protection in China for Hong Kong arbitrations

On 2 April 2019, the Hong Kong Government and China's Supreme People's Court entered into a landmark arrangement¹ ("**Arrangement**") that will allow, for the first time, parties to arbitrations² seated outside of Mainland China to obtain interim relief protection³ from the Chinese Courts that will be enforceable in China. The Arrangement is reciprocal and allows parties to China-seated arbitrations to obtain similar protection from the Courts in Hong Kong. The Arrangement will come into effect on a date to be announced.

The Arrangement has significant implications for the local and international business communities. Previously, such protection was only available if the contracting parties opted for an arbitral seat in Mainland China. However, given the well-established legal and arbitration system in Hong Kong, many international parties have preferred to adopt Hong Kong arbitration, foregoing their ability to obtain interim relief in China.

Now, for the first time, the Arrangement will allow parties to opt for Hong Kong arbitration, while at the same time, allowing them, if needed, to obtain interim relief protection in China.

On a macro-level, this development comes at an important juncture. It is closely tied to the myriad of positive steps that China has taken in recent years to amend and bring its arbitration and related laws, judiciary and legal framework into the modern era. The Arrangement will be important to the implementation of key policy initiatives such as the Greater Bay Area Initiative ("**GBA**") and the Belt and Road Initiative ("**BRI**"). The Arrangement also consolidates and enhances Hong Kong's role as a key legal services and disputes hub for the region.

How it will work

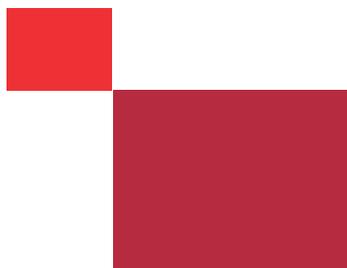
The Arrangement will apply to Hong Kong-seated arbitrations that are administered by relevant arbitral institutions or permanent offices of international intergovernmental organisations of which China is a member⁴. The list of relevant institutions and permanent offices is being prepared and will be mutually confirmed by the Hong Kong Government and the Supreme

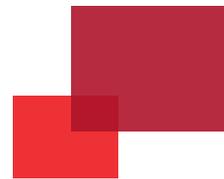
¹ The "Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region".

² Institutional only. The Arrangement does not apply to non-Hong Kong-seated or ad hoc arbitrations.

³ Including orders for the preservation of assets and/or evidence.

⁴ These will comprise: (i) arbitral institutions established or having their headquarters established in Hong Kong, and with their principal place of management in here; (ii) dispute resolution institutions or permanent offices that are set up in Hong Kong by international intergovernmental organisations of which the PRC is a member; or (iii) dispute resolution institutions or permanent offices that are set up in Hong Kong by other arbitral institutions which satisfy certain criteria prescribed by the Hong Kong Government.





People's Court. These will include the HKIAC and possibly the ICC and CIETAC Hong Kong.

There is a two-step process for securing interim relief:

- i. A party to a Hong Kong arbitration may bring an application for interim relief (accompanied by relevant supporting information and material) to the relevant arbitral institution or permanent office; and
- ii. The institution or permanent office will then forward the application to the relevant Mainland Chinese Court.

The Arrangement will have retrospective effect and will apply to arbitrations commenced before the Arrangement enters into force.

What this means for you

If interim relief protection is of key importance in your investment or project, at the negotiation stage, you will now be able to opt for Hong Kong-seated institutional arbitration in the safe knowledge that not only will your dispute be handled and finally resolved according to a well-established arbitration and legal framework and best practices, you will also be able to obtain interim relief protection from the Courts in Mainland China as and when needed.

Your options for non-Hong Kong-seated arbitrations remain unchanged.

To ensure that you are able to benefit from the Arrangement, please seek appropriate legal advice. It would be prudent to ensure that your arbitration clause clearly and unequivocally:

- Designates Hong Kong as the seat (legal place) of arbitration; and
- Specifies that the arbitration shall be administered under one of the confirmed relevant institutions and permanent offices.

Conclusion

Hong Kong has long been regarded as the preferred seat for China-related arbitrations. The Arrangement will enhance the role and status of Hong Kong and make it more attractive now for parties to opt for Hong Kong arbitration.

As a leading Global Firm, we have unparalleled presence and capabilities across all the major arbitral seats globally. If you need support in formulating your arbitration or dispute avoidance strategy, please get in touch.

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