

Mainland-HK Interim Measures Arrangement in Aid of Arbitration: Latest Developments

MARCH 27, 2024

On March 8, 2024, the Hong Kong International Arbitration Centre (HKIAC) released statistics on applications it processed under 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) since the Arrangement came into effect on October 1, 2019. The statistics reflect the Mainland China courts' robust judicial assistance in aid of Hong Kong-seated arbitration provided under the framework of the Arrangement.

BACKGROUND OF THE ARRANGEMENT

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). On September 26, 2019, the SPC published judicial interpretations on the application of the Arrangement which provides the official guidance for the courts in Mainland China (Mainland Courts) that will review applications under the Arrangement.

In summary, the Arrangement allows parties in Hong Kong-seated arbitral proceedings that are administered by qualified institutions^[1] including HKIAC to apply for interim measures from Mainland Courts, including preservation of assets, evidence and conduct, prior to the issuance of the arbitral award. The Arrangement is reciprocal in that it also allows parties to arbitral proceedings in Mainland China to 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 by virtue of Section 45 of the Hong Kong Arbitration Ordinance (Cap. 609).

APPLICATIONS TO THE MAINLAND COURTS UNDER THE ARRANGEMENT

Under the Arrangement, applications to the Mainland Courts may be made before or after the commencement of an arbitration and shall satisfy the criteria under Article 4 of the Arrangement. If made before, the application shall be directly submitted to the intermediate level Mainland Court of the place of domicile of the party against whom the application is made or the place where its assets or evidence are located, and the arbitration shall be commenced within 30 days of the application under the Arrangement.

If made after, the application shall be transferred by a qualified institution to the relevant Mainland Court and must include a letter from the relevant qualified institution certifying the institution's acceptance of the relevant arbitration

case (Letter of Acceptance). However, as the Arrangement does not apply to ad hoc arbitrations or arbitrations not seated in Hong Kong, qualified institutions are expected to refrain from issuing a Letter of Acceptance in relation to such arbitral proceedings.

IMPLEMENTATION OF THE ARRANGEMENT AT THE HKIAC

Since the Arrangement entered into force on October 1, 2019 and up to March 8, 2024, HKIAC has issued Letters of Acceptance in respect of 114 applications. Among these, 108 were made for preservation of assets, 2 for preservation of evidence, and 4 for preservation of conduct. All applications were made after the commencement of arbitrations.

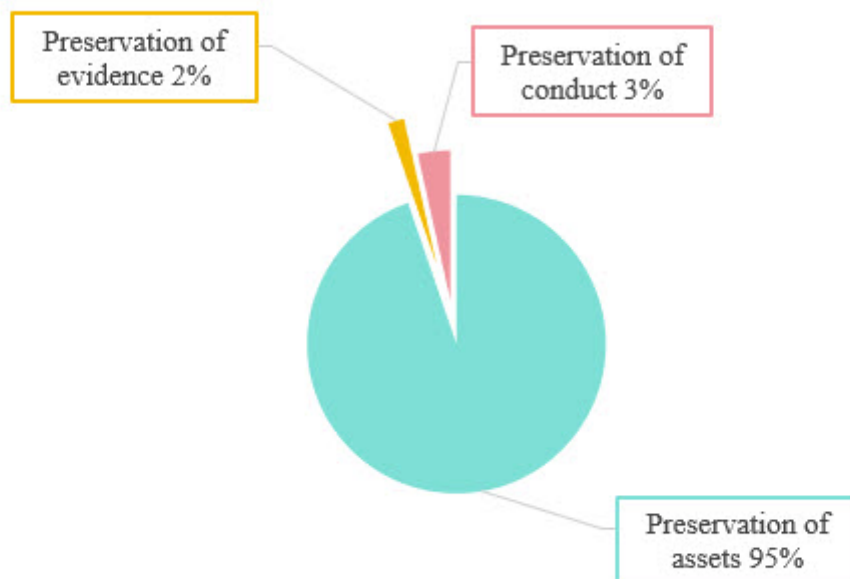


Chart 1: Proportional Representation of Different Types of Preservation Applications

In total, the value of assets requested to be preserved amounts to RMB29.4B (approximately US\$4.1B). In terms of the processing time, HKIAC issues Letters of Acceptance within 24 hours of receipt of a complete application.

DECISIONS ISSUED BY MAINLAND COURTS UNDER THE ARRANGEMENT

As of March 8, 2024, among the 71 decisions known to HKIAC made by Mainland Courts, 67 granted the applications for preservation of assets upon the applicant's provision of security, while four rejected such an application. The total value of assets preserved amounts to RMB16.3B (approximately US\$2.3B).

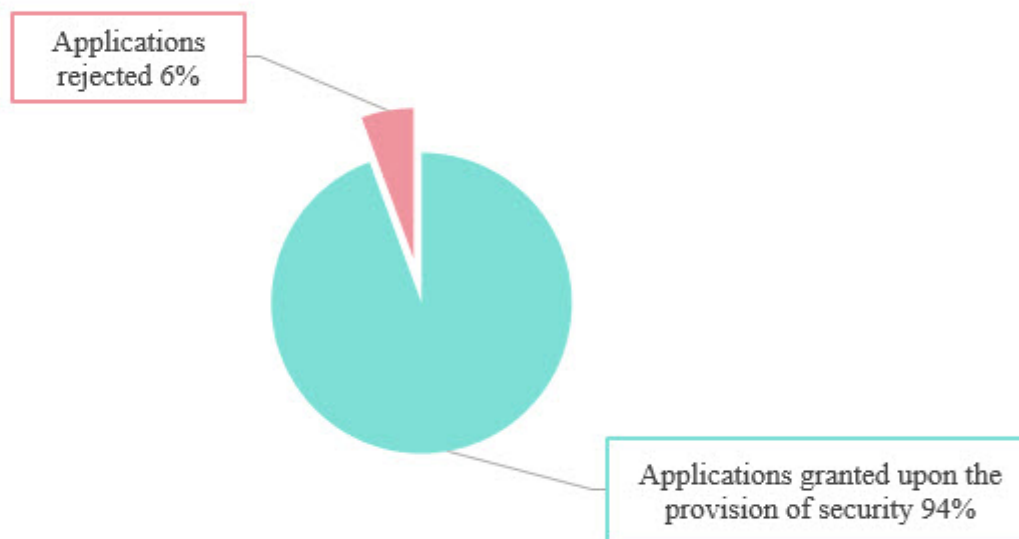


Chart 2: Proportional Representation of Mainland Court's Decisions on Preservation Applications

According to the HKIAC, preservation applications were made to a total of 39 Mainland Courts. Further, in respect of 52 out of the 67 decisions issued by Mainland Courts, the average duration for the Mainland Courts to render a decision was 20.5 days from the receipt of an application. The median duration stood at 13 days.

GEOGRAPHIC DISTRIBUTION OF PARTIES

In total, approximately 19.5% of the applicants are from Mainland China, while approximately 80.5% are foreign parties. Approximately 61% of the respondents are from Mainland China, and approximately 39% are foreign parties.

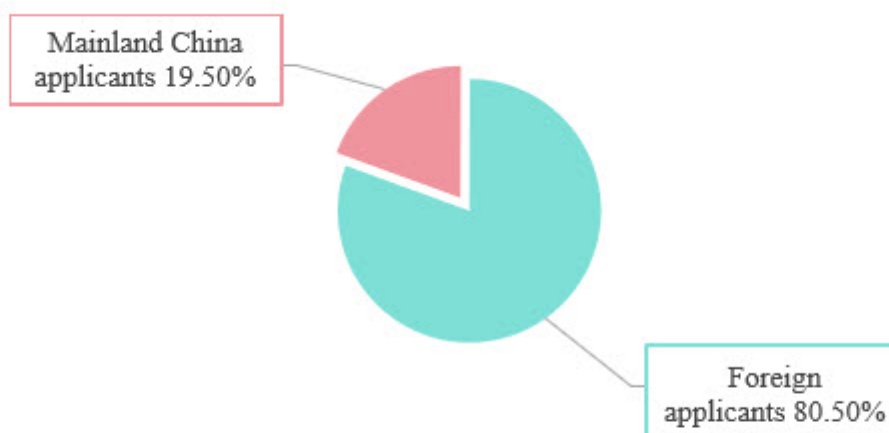


Chart 3: Proportional Representation of Mainland China and Foreign Applicants

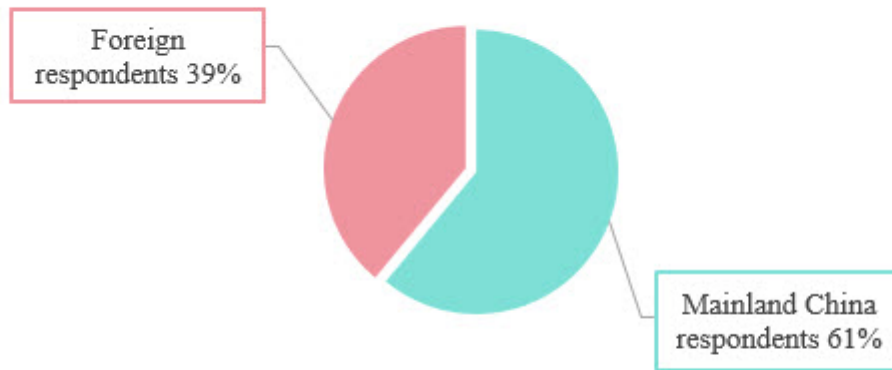


Chart 4: Proportional Representation of Mainland China and Foreign Respondents

TAKEAWAYS

With the exception of Macau which has similar arrangements with Mainland China, the Mainland Courts' assistance of Hong Kong-seated arbitration conferred by the Arrangement are benefits otherwise not available to arbitration seated elsewhere outside of Mainland China. The increasing number of applications made under the Arrangement and the high success rate of these applications granted by the Mainland Courts will continue to make Hong Kong-seated arbitrations attractive to parties considering the possibility of seeking interim measures in Mainland China to protect their interests before and early on in the arbitral proceedings.

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^[1] The other qualified institutions are the China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center, the International Court of Arbitration of the International Chamber of Commerce – Asia Office, the Hong Kong Maritime Arbitration Group, South China International Arbitration Center (HK), and eBRAM International Online Dispute Resolution Centre.

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