Chinese Court-Ordered Interim Measures Will Soon Be Available in Hong Kong Arbitrations, Further Enhancing Hong Kong For China-Related Disputes

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On April 2, 2019, Hong Kong and Mainland China signed a first-of-its-kind agreement permitting parties in Hong Kong-seated arbitrations to obtain interim measures in Chinese courts. 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”) establishes Hong Kong as the first—and only—seat outside of Mainland China to offer such a forceful tool against Chinese parties.

This new development means that parties who arbitrate claims in Hong Kong are able to immediately obtain temporary injunctive relief within Mainland China pending the outcome of their dispute. In the past, interim measures have not been available in Chinese courts for arbitral proceedings outside of China. Hong Kong is now the exception. This means that parties suing Chinese parties in Hong Kong arbitration may seek an order from a Chinese court to (i) prevent evidence from being lost or destroyed; (ii) prevent assets from being dissipated or transferred; and (iii) compel the Chinese party to or prohibit the Chinese party from taking an action.

To obtain such court-ordered relief, the applicant must demonstrate that urgent circumstances exist and that without the measures the applicant could suffer irreparable damage or the enforcement of the arbitral award may become difficult. What is more, according to the Arrangement, the application for interim measures may be lodged with the Chinese court even before the party initiates arbitration (which must be done within 30 days), providing an additional tactical advantage.

Although the Arrangement is reciprocal in nature—it calls for Hong Kong courts to similarly order interim relief for arbitrations seated in Mainland China—Hong Kong legislation already authorizes Hong Kong courts to order interim relief for arbitrations seated outside Hong Kong.

The new Arrangement, which goes into effect at a date to be agreed later, covers only administered arbitrations by institutions either founded in Hong Kong or having permanent offices in Hong Kong. Ad hoc arbitrations and arbitrations administered by institutions without a Hong Kong presence will not have access to Chinese court-ordered interim relief. A complete list of qualifying institutions will be
released at a later time.

Until now, to have access to interim measures in Mainland China, parties could not arbitrate outside of China, giving up the prospects of a neutral jurisdiction. With the new Arrangement, however, parties can resolve their disputes in Hong Kong, a neutral and premier arbitration destination, now with the added force of Chinese court-ordered interim measures, making Hong Kong unparalleled as a jurisdiction for China-related arbitrations.

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