

Client Alert

September 2019

Baker McKenzie FenXun
A Leading Chinese and
International Law Joint Platform

For further information, please contact:

[Hong Kong](#)

Paul Teo
Partner
+852 2846 2581
paul.teo@bakermckenzie.com

Gary Seib
Partner
+852 2846 2112
gary.seib@bakermckenzie.com

Philipp Hanusch
Special Counsel
+852 2846 1665
philipp.hanusch@bakermckenzie.com

[Beijing](#)

Haifeng Li
Partner, Beijing
+86 10 6535 3867
haifeng.li@bakermckenziefenxun.com

Landmark arrangement on interim relief protection in China for Hong Kong arbitrations to take effect on 1 October 2019

On 1 October 2019, the landmark arrangement between the Hong Kong Government and China's Supreme People's Court on interim measures in aid of arbitrations ("Arrangement") will enter into operation.¹ The Arrangement allows parties to Hong Kong seated arbitrations administered by HKIAC, CIETAC (Hong Kong), ICC (Asia Office) or certain other eligible arbitral bodies to obtain an interim measure from the Chinese Courts that will be enforceable in Mainland China.

The Arrangement has significant implications for the local and international business communities. As of 1 October 2019, Hong Kong will be the first and only arbitral seat in the world that can provide this important benefit to international parties who wish to resolve China-related disputes in Hong Kong within a well-established legal framework and according to international best practices while preserving their ability to obtain interim relief in Mainland China. Conversely, Hong Kong law already allows parties to arbitrations seated in China and elsewhere abroad to seek from the Hong Kong courts interim relief in aid of their arbitration.

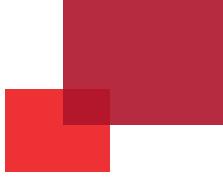
How it works

The Arrangement applies to arbitration proceedings provided that they are (i) seated in Hong Kong and (ii) administered by one of the following arbitral and dispute resolution institutions and permanent offices:

- Hong Kong International Arbitration Centre
- China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center
- International Court of Arbitration of the International Chamber of Commerce - Asia Office
- Hong Kong Maritime Arbitration Group
- South China International Arbitration Center (HK)
- eBRAM International Online Dispute Resolution Centre

The Arrangement also applies to arbitrations that were commenced before 23 September 2019.

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" was signed on 2 April 2019. See also our previous coverage of this major development on our moderated arbitration blog, [Global Arbitration News](#).



The Arrangement mentions three types of interim measures available in Mainland China, namely preservation of (i) property (e.g., freezing orders), (ii) evidence (e.g., not to destroy a document) and (iii) conduct (e.g., not to use a trademark). However, it remains to be seen whether in practice Chinese courts will grant measures preserving evidence and conduct as the PRC Arbitration Law appears to provide only for property preservation.

A party to a pending Hong Kong arbitration may file an application for an interim measure from a Chinese court with the arbitral institution administering the case. The institution will then forward the application to the court which will decide it pursuant to PRC law. A prospective claimant seeking an interim measure before commencement of an arbitration may file the application directly with the court. However, the court must discharge the measure if, within 30 days after it has been taken, the court has not received confirmation from the administering institution that it has accepted the case.

What this means for you

You are now able to choose Hong Kong-seated institutional arbitration without having to forego the ability to obtain interim relief protection from the Chinese courts.

To ensure that you are able to benefit from the Arrangement, please seek appropriate legal advice. Your arbitration clause should clearly and unequivocally:

- Designate Hong Kong as the seat (legal place) of arbitration.
- Specify that the arbitration shall be administered by one of the current five institutions or permanent offices that have been confirmed as qualified by the Hong Kong Government and the Supreme People's Court.

Your options for arbitrations seated in China remain unchanged as Hong Kong courts could already grant interim measures in aid of China (and other foreign) seated arbitrations before the Arrangement became effective.

Conclusion

The Arrangement reinforces and enhances Hong Kong's role and status as the preferred seat for China-related arbitrations. It is also an important contribution to the implementation of key policy initiatives such as the Greater Bay Area Initiative and the Belt and Road Initiative.

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 dispute management strategy or drafting and negotiating your dispute resolution clauses, please get in touch.

www.bakermckenziefenxun.com
www.bakermckenzie.com
www.fenxunlaw.com

Baker McKenzie FenXun (FTZ)
Joint Operation Office
Unit 1601, Jin Mao Tower
88 Century Avenue, Pudong
Shanghai 200121, PRC

Tel: +86 21 6105 8558
Fax: +86 21 5047 0020