

**Speech of Ms Teresa Cheng, SC  
Secretary for Justice**

**Hong Kong Arbitration Week**

**ADR in Asia Conference: Arbitrating for Settlement**

**Panel Session on “Practical considerations and implications  
of 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”**

**22 October 2019 (Tuesday)**

Distinguished Guests, Ladies and Gentlemen,

1. In the context of cross-border disputes, the availability of urgent interim measures such as evidence and property preservation measures is a crucial aspect of the rule of law as it provides parties with an avenue to have access to justice in a timely manner and to secure the fruits of dispute resolution.

2. One can also observe that the importance of interim measures in providing a party to arbitration with timely and urgent access to justice is well reflected in the actual arbitral practice that applications for interim measures often involve the appointment of emergency arbitrators.

3. Interim measures are of course not confined to injunctions. Hong Kong, which is an UNCITRAL Model Law jurisdiction, has adopted in section 35 of its Arbitration Ordinance the four types of interim measures enumerated in Article 17 of the 2006 version of the UNCITRAL Model Law on International Commercial Arbitration (Model Law), including ordering a party to (i) maintain or restore the status quo pending determination of the dispute; (ii) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself; (iii) provide a means of

preserving assets out of which a subsequent award may be satisfied; and (iv) preserve evidence that may be relevant and material to the resolution of the dispute.

4. Nevertheless, the features of interim measures in Articles 17 to 17J of the Model Law are not yet universally embraced by all jurisdictions, particularly those that have not adopted the Model Law. For instance, in Mainland China, the courts may grant three types of interim measures, property preservation, evidence preservation and conduct preservation, in aid of arbitral proceedings administered by Mainland arbitral institutions. On the other hand, it had long been the case that a party to an arbitration seated outside the Mainland can neither seek the Mainland courts to enforce an interim measure issued by the arbitral tribunal nor apply to the Mainland courts for any interim measure in aid of its arbitral proceedings.

5. That was the position until the major breakthrough under the arrangement concerning mutual assistance in court-ordered interim measures in aid of arbitral proceedings with the Mainland, making Hong Kong the first and only jurisdiction outside the Mainland where, as a seat of arbitration, parties to arbitral proceedings administered by eligible arbitral institutions would be able to apply to the Mainland courts for interim measures.

6. It is expected that this game-changing arrangement will benefit parties from all over the world, irrespective of their nationality, domicile or place of business and will be conducive to the effectiveness of dispute resolution in Hong Kong by opening up a new route for seeking interim measures from the Mainland courts, thereby ensuring access to justice and the pursuit of

rule of law through preventing a disputing party from deliberately destroying the evidence or dissipating the property.

7. On 2 April, 2019, the Supreme People’s Court of the People’s Republic of China and the Department of Justice of the Hong Kong Special Administrative Region (HKSAR) entered into the “Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR” (the Arrangement)<sup>1</sup>.
  
8. The Arrangement recognises the difference of the “two systems”, in the legal and arbitration context, between the Mainland and Hong Kong, whilst at the same time capitalising on the national policy of China as set out

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<sup>1</sup> The text of the Arrangement is available at:  
[https://www.doj.gov.hk/pdf/2019/arbitration\\_interim\\_e.pdf](https://www.doj.gov.hk/pdf/2019/arbitration_interim_e.pdf).  
The courtesy English translation of the Arrangement is available at:  
[https://www.doj.gov.hk/pdf/2019/arbitration\\_interim\\_e.pdf](https://www.doj.gov.hk/pdf/2019/arbitration_interim_e.pdf)

in its “Outline of the 13th Five-Year Plan for the National Economic and Social Development” (2016), which again recognised the unique role of the HKSAR and pledged support for the HKSAR to capitalise on its incomparable strengths and establish itself as the centre for international legal and dispute resolution services in the Asia-Pacific region. In other words, it is an arrangement that is premised upon the “one country, two systems” policy, with the legal basis for the Arrangement provided under Article 95 of the Basic Law.<sup>2</sup>

9. Bearing in mind the differences in the two systems, in particular that the Mainland does not recognise *ad hoc* arbitrations seated in the Mainland (save in certain circumstances in specific free trade zones) and that arbitral tribunals, in arbitrations seated in the Mainland,

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<sup>2</sup> Article 95 of the Basic Law states: “The HKSAR may, through consultation and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other.”

do not have the power to order interim measures, the Arrangement addresses these two phenomena. The features of the two systems remain unchanged whilst parties to arbitrations in Hong Kong have the right to apply for interim measures before the Mainland courts.

10. In short, parties to arbitral proceedings seated in the HKSAR and administered by one of the eligible arbitral institutions will enjoy the rights to apply for interim measures before the Mainland courts, whether before the commencement of the arbitration or during the arbitral process, and irrespective of the nationality or domicile of the parties involved.

11. The scope of interim measures to be granted includes the preservation of property, preservation of evidence and prohibitive or mandatory orders directed to the conduct of parties. The latter is of particular relevance to, say, IP-related disputes and is expected to be much

used pending the final disposal of the substantive disputes before the arbitral tribunal.

12. Similarly, the preservation of evidence is of much utility. I understand that today there will actually be a further elaboration on the evidence rules and practice that will be issued by the Supreme People's Court and how interim measures relating to the preservation of evidence will also be dealt with.

13. Needless to say, interim measures to prevent dissipation of assets is of fundamental importance to ensure that the successful party will not be deprived of the fruits of the contentious proceedings.

14. The proceedings before the Mainland courts will be conducted in accordance with Mainland laws, in particular the Arbitration Law of the People's Republic of China and the Civil Procedure Law of the People's



Republic of China. On 18 October, the Department of Justice and the Supreme People's Court jointly organised a training session on how the Arrangement is to be put into practice. It was oversubscribed and very well received. We intend to organise further similar trainings in Hong Kong for the benefit of the international arbitration community located here.

15. Another point that is worth pointing out is the procedure for filing the application. Article 3 (2) of the Arrangement provides, “*where an application for interim measure is made after the relevant institution or permanent office has accepted the arbitration case, the party's application shall be passed on by the said institution or permanent office.*” This transfer or filing procedure is made by reference to Article 272<sup>3</sup> of the Civil Procedure Law of the People's Republic of China.

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<sup>3</sup> Article 272 provides: “If a party applies for preservation, the arbitration institution of the People's Republic of China for foreign-related disputes shall submit the application to the intermediate people's court of the place where the domicile of the person against whom the application is made is located or where the property is located.” (<http://cicc.court.gov.cn/html/1/219/199/200/644.html>)

16. However, given the eligible arbitral institutions under the Arrangement are located in Hong Kong, and taking into account the urgency of interim measures applications, the Supreme People's Court have agreed to adopt a more flexible approach for applications made under arbitral proceedings in Hong Kong. Where the arbitration has commenced, a letter has to be first issued by the arbitral institution (to confirm acceptance of the case and to transfer the application) to the relevant Mainland courts for the application for interim measure. The parties to the arbitral proceedings in Hong Kong can submit the application together with the letter issued by the arbitral institution directly to the relevant court. The Mainland courts may then confirm and verify the information with the arbitral institutions through contact details provided by the Department of Justice<sup>4</sup>. This arrangement is unique to parties to

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<sup>4</sup> This has also been confirmed in the "Interpretation and Application of the Arrangement" (《理解與適用》) published by the Supreme People's Court on 26 September 2019. See Wei Xin of the

arbitral proceedings in Hong Kong and greatly facilitates the ease and speed by which such urgent interim measure applications can be filed and processed.

17. Pursuant to Article 2 (1) of the Arrangement, the HKSAR Government and the Supreme People's Court confirmed six eligible arbitral and dispute resolution institutions and permanent offices. They include the 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) and eBRAM International Online Dispute Resolution Centre.

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Supreme People's Court ([https://mp.weixin.qq.com/s/Pw0hBkK\\_iJ84dLw9F3UnOO](https://mp.weixin.qq.com/s/Pw0hBkK_iJ84dLw9F3UnOO)) and pages 3 and 4 of the People's Court Daily (人民法院報) published on 26 September 2019 ([http://rmfyb.chinacourt.org/paper/html/2019-09/26/content\\_160433.htm?div=-1](http://rmfyb.chinacourt.org/paper/html/2019-09/26/content_160433.htm?div=-1)).

18. We understand that the HKIAC has dealt with a few applications for interim measures since the coming into force of the Arrangement on 1 October, 2019. The first application under the Arrangement was an application filed by a party to an arbitration administered by the HKIAC and was granted by the Shanghai Maritime Court on 8 October, 2019, the first working day after the seven day National Day holiday in the Mainland. From the news report<sup>5</sup>, the arbitration was commenced when the respondent failed to pay the settlement sum. The settlement agreement provides for dispute to be resolved by arbitration administered by the HKIAC. After acceptance of the case, the applicant applied through HKIAC to the Shanghai Maritime Court to seize and freeze the respondent's bank

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<sup>5</sup> The press release issued by the Shanghai Maritime Court New Centre as follows: “2018 年 5 月，申請人香港某海運公司與被申請人上海某公司簽訂了一份航次租船合同，約定由申請人通過提供貨輪，將被申請人的一批煤炭從印度尼西亞運輸到上海。後因被申請人取消租約造成申請人損失，申請人根據合同約定提起臨時仲裁。在臨時仲裁期間，雙方達成《和解協議》，約定由被申請人支付 18 萬美元。然而，被申請人未按照約定支付款項，申請人根據《和解協議》中約定的仲裁條款於 2019 年 7 月 16 日向香港國際仲裁中心提起仲裁。”

[http://info.chineseshipping.com.cn/cninfo/TodayTopNews/201910/t20191009\\_1327365.shtml](http://info.chineseshipping.com.cn/cninfo/TodayTopNews/201910/t20191009_1327365.shtml)

accounts and assets located in the Mainland. The application was heard and granted on the same day.

19. This innovative Arrangement reached between the Mainland and Hong Kong under Article 95 of the Basic Law is prime evidence of the success of “one country two systems”. It is a game changer not just for Hong Kong but also for the international business community. With the Belt and Road Initiative and the Greater Bay Area potentials to be unleashed, choosing Hong Kong as the seat of arbitration will not only have the benefits with which we are all familiar, but it will also provide a fair disposal of the disputes through effective use and implementation of interim measures that may be granted by Mainland courts in aid of arbitral proceedings in Hong Kong.

20. Let me also mention another arrangement between the Mainland and Hong Kong reached on 18 January, 2019

relating to the reciprocal recognition and enforcement of judgments in civil and commercial matters. This arrangement is based on the Judgment Convention of the Hague Conference but it has the added benefit of allowing judgments of certain types of IP related contractual and tortious disputes to be recognised and enforced between the two jurisdictions. Indeed, the inaugural global conference of the Judgment Convention of the Hague Conference on Private International Law was held in Hong Kong on 9 September.

21. I must turn now to the situation in Hong Kong that may have caused concerns to you and your friends back home. Your presence in Hong Kong, we hope, will enable you to see that notwithstanding the disruptions, we strive for normality as best we could. The rule of law is the cornerstone of our society. Let me assure you that the freedoms and human rights that are enshrined

in our Bill of Rights Ordinance and guaranteed under the Basic Law are very much cherished and protected in Hong Kong. On the other hand, those who violate the laws will be brought to justice through our legal and judicial systems. In the meantime, the Government is determined to address the conflicts through communications with various sectors and our citizens, and to formulate policies and measures to address their concerns and some deep seated issues.

22. Apart from the international events that were held in the past few months, and the Hong Kong Arbitration Week now, there are a series of plans for the future. Next week there will be the investment mediation training jointly organised by the Department of Justice and ICSID, the week after will be the first Hong Kong Legal Week with three main events – the 3rd UNCITRAL Asia Pacific Judicial Summit 2019, the first Hong Kong Mediation Lecture and the

LAWASIA Annual Conference. The ICC Mediation Competition for students, leading onto the Paris competition, will be held in December. The Vis East Moot will be held in Hong Kong in March 2020. To start that, on 22 March, a Sunday, we have the 40th anniversary CISG conference jointly organised by the Department of Justice and UNCITRAL. Together with the opening up of the Legal Hub in 2020, the Department of Justice will also be launching a 10 year programme entitled “Vision 2030 for Rule of Law”.

23. Ladies and Gentlemen, we here in Hong Kong strive not just for normality but “normality squared” so as to weather this storm and come out better and stronger. We look forward to your continuous support from all over the world and I wish you a very enjoyable stay and fruitful discussions this week.