

Speech by SJ at seminar on “Hong Kong - Mainland China Interim Measures Arrangement: Latest Practice and Development” (English only)

Following is the speech by the Secretary for Justice, Mr Paul Lam, SC, at seminar on “Hong Kong - Mainland China Interim Measures Arrangement: Latest Practice and Development” today (June 30):

Mr. Fessas (Alexander Fessas, Secretary General of ICC International Court of Arbitration), distinguished guests, ladies and gentlemen,

Good morning. It gives me great pleasure to welcome you all to the Justice Place for today’s seminar on the Interim Measures Arrangement.

I would like to begin with a note of thanks to our co-organiser, ICC International Court of Arbitration, for their staunch support in the promotion of Hong Kong arbitration services over the years. This week has indeed been a fruitful one. I was just told that this is the 6th ICC’s arbitration events and is not the last one in the week. I hope you all will have learnt more about Hong Kong’s legal and dispute resolution services and the unique opportunities provided.

National support for Hong Kong’s arbitration development

Under the “one country, two systems”, Hong Kong is the only common law jurisdiction in China. We have the distinctive advantages of enjoying strong support of the Mainland and at the same time being closely connected to the world. The National 14th Five-Year Plan and the Guangdong-Hong Kong-Macao Greater Bay Area Outline Development Plan, being the national blueprint for economic development, expressly support Hong Kong for becoming the centre for international legal and dispute resolution services in the Asia-Pacific region.

In recent years, the close economic cooperation ties between Hong Kong and the Mainland have created a strong need for efficient cross-border dispute resolution services. To bridge the gap between the “two systems” and to provide greater protection for cross-border activities, Hong Kong has been actively developing legal mechanisms for mutual assistance with the Mainland. So far, we have concluded altogether nine reciprocal arrangements on civil and commercial matters, and three of them are directly related to arbitration.

Interim Measures Arrangement

Notably, the Interim Measures Arrangement, being the core topic of today’s seminar, has been considered to be an important breakthrough in the development of arbitration in Hong Kong and also the Mainland.

The availability of urgent interim measures is vital to cross-border dispute resolution as it provides parties with the timely access to justice and to secure the fruits of the pending proceedings. Hong Kong, as a jurisdiction adopting the UNCITRAL Model Law, has long allowed the provision of the interim measures from the courts or arbitral tribunal. However, in contrast, the legal framework in the Mainland did not generally permit the Mainland courts or tribunals to grant similar reliefs in support of foreign-seated arbitration. It remained to be the case until the groundbreaking introduction of the Interim Measures Arrangement between Hong Kong SAR and the Mainland in 2019.

As a “game-changer”, the way I would describe, the Interim Measures Arrangement allows parties to arbitration seated in Hong Kong and administered by designated arbitral institutions to apply to the Mainland courts for interim measures, whether before the

commencement of the arbitration or during the arbitration proceedings. Such measures include the preservation of property, evidence and conduct. Every application would be carefully considered by the Mainland courts in accordance with the applicable provisions under the Civil Procedure Law and the Arbitration Law of the PRC. The Interim Measure Arrangement has now provided an effective means to prevent a respondent from deliberately destroying evidence or dissipating assets in the Mainland, so that the legitimate interest of claimant could be well protected.

Parties from all over the world may benefit from the new route for seeking interim reliefs from the Mainland courts, irrespective of their nationality, domicile or place of business, so long as Hong Kong is chosen as the seat of arbitration and the arbitration is administered by designated or qualified institutions. It is worth noting that Hong Kong is the first and, so far, the only common law jurisdiction outside the Mainland enjoying convenience and privilege of this kind. I believe this remains to be the case in near future

The Belt and Road Initiative has opened up vast opportunities for investment between the Mainland and the rest of the world. The choice of dispute resolution is one of the key considerations when entering into commercial contracts. The Interim Measures Arrangement provides greater legitimacy and efficiency to the international arbitration process, and further enhances the neutrality and attractiveness of Hong Kong as the seat of arbitration to resolve cross-border disputes involving Mainland-related elements. This is certainly an added advantage of using Hong Kong's arbitration services on top of our long-standing strengths in dispute resolution.

Let's look at some relevant statistics. We are very glad to know that the Interim Measures Arrangement has been well received and widely in use since its inception. As at 31 April 2023, Hong Kong arbitral institutions have made more than 93 applications to the Mainland courts. The majority of applications, being 88 of them, involved the preservation

of assets; 2 were made for preservation of evidence and 3 were for the preservation of conduct. So far, the Mainland courts have granted 63 court orders to preserve assets of a total worth of RMB15.7 billion. The number of applications and amount involved have shown that the Interim Measures Arrangement have been duly recognised and have indeed benefitted arbitration users of the two places.

To date, only a very small number of applications have been rejected. We know from one case that the application for property preservation was unsuccessful because the arbitration concerned is an *ad hoc* arbitration and thus cannot take advantage from the Interim Measures Arrangement. Therefore, if parties foresee the need of seeking enforcement or interim relief from the Mainland courts, the rule of thumb is to seat an arbitration in Hong Kong and then find a qualified arbitral institution to administer the proceedings, such as ICC Court.

Most would agree that arbitral institutions play a very important role in supporting the functioning of the arbitration process. With the Interim Measures Arrangement, I believe more reputable arbitral institutions would be keen on establishing presence in Hong Kong to offer diversified services to our users. At present, the Hong Kong SAR Government and the Supreme People's Court have confirmed 7 eligible arbitral and dispute resolution institutions, where parties to arbitration administered under their auspices can take advantage of the Interim Measures Arrangement

ICCICA Asia Office, with a good track record of administering international arbitration cases, has been designated as a qualified institution since four years ago. Shortly after the implementation of the Interim Measures Arrangement in October 2019, ICC has helpfully published a Note to provide guidance to its users on making relevant applications for interim reliefs before the Mainland courts. I know that the panel speakers will enlighten you more on the use and practice of the ICC Note, which in turn would facilitate a proper

understanding and preparation for the arbitral process.

Other reciprocal arrangements in arbitration

Putting aside the success of the Interim Measures Arrangement, Hong Kong and Mainland are committed to strengthening the co-operation in arbitration. For example, in 2020, we have signed a supplemental arrangement to refine the enforcement mechanism provided for under the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR back in 1999. Particularly, parties are now permitted to make simultaneous applications to the courts of the two jurisdictions to seek timely remedies on an award. The two arrangements together with the Interim Measures Arrangement provide, in my view, unparalleled convenience to arbitration users throughout the entire arbitral process, responding to the practical needs of the parties.

Today, we are very honoured to have invited renowned practitioners from Hong Kong and the Mainland as well as ICC representatives to share their views on the latest development of the Interim Measures Arrangement. I wish you all an insightful and fruitful seminar today, and to those delegates and friends who are from elsewhere, a very pleasant stay in Hong Kong. Thank you very much.