Guidance Note
on the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland ("Mainland courts") and of the Hong Kong Special Administrative Region ("Arrangement")

This Guidance Note sets out the requirements for arbitration and dispute resolution institutions to qualify under Article 2(1) of the Arrangement, the required supporting documents for applying for designation, the application process and the validity period of designation.

Eligibility requirements under the Arrangement

2. According to the Arrangement, parties to arbitral proceedings seated in Hong Kong and administered by qualified institutions or permanent offices would be able to apply to the relevant Mainland courts for interim measures. Articles 2(1) of the Arrangement stipulates the requirements for qualified institutions or permanent offices:-

"(1) arbitral institutions established in the HKSAR or having their headquarters established in the HKSAR, and with their principal place of management located in the HKSAR;

(2) dispute resolution institutions or permanent offices set up in the HKSAR by international intergovernmental organisations of which the People's Republic of China is a member; or

(3) dispute resolution institutions or permanent offices set up in the HKSAR by other arbitral institutions and which satisfy the criteria prescribed by the HKSAR Government (such as the number of arbitration cases and the amount in dispute, etc.). "

Criteria prescribed under Article 2(1)(3)

3. The criteria currently prescribed by the HKSAR Government under Article 2(1)(3) of the Arrangement are as follows:-

"(a) the dispute resolution institution or permanent office has been established in Hong Kong for 5 years or more, during which period it has continuously been operating the business of administering arbitration cases; and

(b) in the past 3 years, the dispute resolution institution or permanent office has been administering not fewer than 3 arbitration cases seated in Hong Kong, at least 1 of which involves a party who is not a permanent resident or legal person of the Hong Kong Special Administrative Region; and

(c) in the past 3 years, the total amount in dispute in arbitration cases seated in Hong Kong and administered by the dispute resolution institution or permanent office was not less than HK$12 million."

4. The above prescribed criteria under Article 2(1)(3) of the Arrangement may be revised and published from time to time in future.

Submission of supporting documents

5. Applicants should provide supporting documents to the Department of Justice ("**DoJ**") to demonstrate their satisfaction of the eligibility requirements under Article 2(1) of the Arrangement. Supporting documents required for submission shall include but not limited to:-

(i) A copy of the registration document under the old Companies Ordinance (Cap. 32) or the new Companies Ordinance (Cap. 622) or the Societies Ordinance (Cap. 151) or any other documentary proof of the establishment of the applicant;
(ii) The latest annual return filed with the Companies Registry, and any updates since the latest return (including changes of board of directors, registered address, place of business, etc.);

(iii) In relation to Article 2(1)(1) of the Arrangement, information showing the location of the principal place of management of the applicant as follows:-

- The governing structure of the applicant showing who make the major decisions of the applicant and where (in Hong Kong and/ or elsewhere) such decisions are made;
- The composition of the applicant's governing/ decision-making body(ies) and the ordinary residence of the member of such body(ies); and
- Whether these decisions are subject to the supervision/ approval of other person(s)/ body(ies) and if so, whom and where located, etc.

6. The supporting documents should be signed/ submitted by the Secretary General/ Head of permanent office/ Chairman of the Board of Directors or on authority of the Board of Directors.

7. The DoJ reserves the right to require an applicant to provide additional information or documents to support its application.

8. The DoJ will only consider an application if all information required for the application, as well as additional information or documents requested by the DoJ (if any) have been duly submitted.

Application periods and processing time of applications

9. The DoJ will, once every three years, regularly invite applications for designation under Article 2(1) of the Arrangement, with each application period lasting for around one month; the exact commencement date and duration of the application period will be subject to the announcement on the DoJ's website.

10. The application assessment process will generally take around 4 months from the expiry of an application period, subject to the actual circumstances.

Validity period of designation

11. The designation for qualified institutions or permanent offices will be valid for a period of 3 years from the date of designation.

12. Existing qualified institutions or permanent offices wishing to continue to be designated upon the expiry of their current designation shall submit an application for designation during the application period specified in paragraph 9 above and in accordance with paragraph 5 above prior to the expiry of their current designation. In view of the time generally required for the assessment process, existing qualified institutions or permanent offices should submit their applications for designation in good time to ensure the continuity of their designation under Article 2(1) of the Arrangement.

13. Upon being designated, each designated institution or permanent office shall provide the DoJ with a point of contact for sharing with the Mainland courts to facilitate necessary communication between the designated institution or permanent office and the Mainland courts regarding the processing of applications for interim measures under the Arrangement. Designated institutions or permanent offices have a continuous obligation to inform the DoJ in writing of any change to such point of contact as soon as practicable, and in any event no later than 7 days after such change.

14. Designated institutions or permanent offices have a continuous obligation to inform the DoJ in writing, as soon as practicable and in any event no later than 7 days after such change, of any change in the circumstances stated in their applications and in any other information or documents submitted in support of their applications, where such change may affect whether they continue to be eligible to qualify as institutions or permanent offices referred to in Article 2(1) of the Arrangement.

15. The DoJ reserves the right to revoke a designation at any time under any of the following circumstances:-

(i) revocation of the designation is necessary for the protection of the public interest;
(ii) the designated institution or permanent office has ceased to fulfil the

eligibility requirements under Article 2(1) of the Arrangement during the period of designation; or

(iii) any other circumstance arises that renders the continuation of the designation no longer suitable or appropriate.

16. If the DoJ exercises its right to revoke a designation pursuant to paragraph 15 above, it shall issue a notification of revocation ("**Revocation Notification**") to the institution or permanent office concerned. If the institution or permanent office concerned objects to the revocation of its designation, it may submit written representations to the DoJ within 7 working days from the date of the Revocation Notification ("**Specified Period**"). The DoJ shall consider such representations and inform the institution or permanent office of its decision ("**Decision**") as soon as practicable. The DoJ may consult the Supreme People's Court as appropriate. The Decision shall be final.

17. Save in any emergency situation which, in the reasonable opinion of the DoJ, necessitates immediate revocation with effect from the date of the Revocation Notification, the revocation of designation under a Revocation Notification shall take effect:

(i) upon the expiry of the Specified Period; or

(ii) where the institution or permanent office concerned submits written representations within the Specified Period, and the DoJ subsequently maintains its decision to revoke the designation in its Decision, immediately on the date of such Decision.

18. Within 7 working days from when the revocation of designation under a Revocation Notification takes effect in accordance with paragraph 17 above, the institution or permanent office concerned shall notify all arbitrators and parties involved in the arbitration cases administered by it of such revocation.

19. Without prejudice to the rights and discretion of the Mainland courts, any revocation of designation of an institution or permanent office shall not:

(i) invalidate an application for interim measures already made to a Mainland court in respect of arbitral proceedings administered by that institution or permanent office before such revocation; or

(ii) affect a decision, order etc. on interim measure already made by a Mainland court in respect of arbitral proceedings administered by that institution or permanent office before such revocation.

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