

# ICC Note on Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in Aid of ICC Arbitrations Seated in Hong Kong and Administered by the Secretariat Asia Office

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1 December 2019

## I. Introductory

1. On 2 April 2019, the Government of the Hong Kong Special Administrative Region (“HKSAR”) and the Supreme People’s Court of the People’s Republic of China (“SPC”) signed an Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in support of Arbitral Proceedings by the Courts of the Mainland (“People’s Courts”) and of the HKSAR, which came into effect on 1 October 2019 (“Arrangement”). The Arrangement is implemented in the Mainland by the SPC Judicial Interpretation (FA SHI (2019) No.14), which was issued on 26 September 2019 and came into effect on 1 October 2019. On 26 September 2019, the SPC also published a commentary on the understanding and application of the SPC Interpretation (“**最高人民法院关于内地与香港特别行政区法院就仲裁程序相互协助保全的安排**”的理解与适用”) on pages 3 and 4 of its official newspaper, People’s Court Daily<sup>1</sup> (“SPC Commentary”).
2. The Arrangement in traditional and simplified Chinese and an unofficial English translation are available on the website of the Hong Kong Department of Justice.<sup>2</sup>
3. An unofficial English translation of the SPC Commentary is available on the ICC website.

### Applications to the People’s Courts of Mainland China (“People’s Courts”)

4. This Note provides guidance on the making of an application for interim relief to the People’s Courts in support of arbitral proceedings (“Application”) seated in Hong Kong and administered under the Rules of Arbitration

of the International Chamber of Commerce (“Rules”) by the International Court of Arbitration of the International Chamber of Commerce, Asia Office in Hong Kong (“Secretariat Asia Office”), a qualified institution under the Arrangement<sup>3</sup> (“ICC arbitrations”).

### Applications to the Hong Kong Courts

5. Under the Arrangement, parties to arbitral proceedings seated in Mainland China and administered by a Mainland arbitral institution may apply to the Hong Kong Courts for interim measures in relation to said arbitral proceedings and in accordance with the relevant laws and regulations of the HKSAR.<sup>4</sup> As Article 45 of the Hong Kong Arbitration Ordinance (Cap. 609) allows parties to any arbitral proceedings, regardless of the place of arbitration, to apply to the Hong Kong Courts for interim measures, the Arrangement simply confirms the existing mechanism in respect of Mainland-seated arbitrations. This Note does not address such applications.

## II. Conditions of Application

### A. Time and subject-matter conditions under the Arrangement generally

6. The Arrangement applies to arbitral proceedings commenced after 1 October 2019 and to those commenced prior to that date but not yet completed as of 1 October 2019.<sup>5</sup>
7. Applications can be made either before or after the arbitration commences.

1 [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)

2 [https://www.doj.gov.hk/pdf/2019/arbitration\\_interim\\_c.pdf](https://www.doj.gov.hk/pdf/2019/arbitration_interim_c.pdf) (for traditional Chinese)  
[https://www.doj.gov.hk/pdf/2019/arbitration\\_interim\\_sc.pdf](https://www.doj.gov.hk/pdf/2019/arbitration_interim_sc.pdf) (for simplified Chinese)  
[https://www.doj.gov.hk/pdf/2019/arbitration\\_interim\\_e.pdf](https://www.doj.gov.hk/pdf/2019/arbitration_interim_e.pdf) (unofficial English translation)

3 SPC Commentary, paragraph II(ii), sub-paragraph 3. See also the List of qualified institutions and permanent offices published by the Hong Kong Department of Justice: [https://www.doj.gov.hk/pdf/2019/list\\_of\\_institutions\\_e.pdf](https://www.doj.gov.hk/pdf/2019/list_of_institutions_e.pdf)

4 Arrangement, Article 6

5 SPC Commentary, paragraph II(viii)

8. The Arrangement regulates Applications in respect of commercial arbitrations. Investment arbitrations (arbitrations between investors and host countries under investment treaties) are excluded from the scope of the Arrangement.<sup>6</sup>
9. The Arrangement does not diminish any rights enjoyed by the arbitral institutions, arbitral tribunals or parties of the Mainland and the HKSAR under the laws of the other jurisdiction.<sup>7</sup>
10. For Applications to the People's Courts, "interim measures" include:
  - (i) property preservation,
  - (ii) evidence preservation, and
  - (iii) conduct preservation (or 行为保全 in Chinese, i.e., forms of injunctive relief and orders to compel).

## B. ICC arbitrations eligible under the Arrangement

11. Any party to arbitral proceedings (i) with a place of arbitration in Hong Kong under the Rules and (ii) administered by the Secretariat Asia Office<sup>8</sup> may apply to a competent People's Court for interim measures in relation to said arbitral proceedings, in accordance with the relevant laws and regulations of Mainland China<sup>9</sup> ("Applicant").
12. The provisions of the Arrangement are applicable to:
  - (i) Any party during the course of the arbitral proceedings in pending ICC arbitrations administered by the Secretariat Asia Office, with a place (seat) of arbitration in Hong Kong, before a final award is made; and
  - (ii) Any party wishing to file a Request for Arbitration under the Rules, where the place (seat) of arbitration is Hong Kong by agreement of the parties, prior to filing such Request for Arbitration.
13. Any party wishing to commence an ICC arbitration shall submit a Request for Arbitration that must comply with the requirements of Article 4(3) of the Rules, accompanied by the filing fee required under Article 4(4) of the Rules ("Claimant"). Failure to comply with either of the requirements set out in Articles 4(3) and 4(4) of the Rules within a time limit to be fixed by the Secretariat of the International

Court of Arbitration of the International Chamber of Commerce ("Secretariat"), may result in the closing of the file, without prejudice to the Claimant's right to submit the same claims at a later date in another Request for Arbitration.

14. A Request for Arbitration may be submitted to the Secretariat at any of its offices indicated on the [ICC website](#).
15. Regardless of where the Request for Arbitration is filed, the Secretary General will, upon his acknowledgment of receipt of the Request for Arbitration, assign an ICC arbitration to be administered by the Secretariat Asia Office, where the parties have agreed on Hong Kong as the place (seat) of arbitration in the arbitration agreement(s).
16. Similarly, ICC arbitrations, where the ICC International Court of Arbitration fixes Hong Kong as the place (seat) of arbitration or where the parties subsequently agree to Hong Kong as the place (seat) of arbitration will also be administered by the Secretariat Asia Office.

## III. Procedure to apply before a People's Court

### A. General

17. The procedure to apply for interim measures before a People's Court differs, depending on whether:
  - (i) it is made in pending ICC cases (see Section B below), or
  - (ii) a Request for Arbitration is yet to be filed (see Section C below).
18. The Applicant shall identify the competent People's Court to which its Application should be submitted. Applications for interim measures are to be submitted to the Intermediate People's Court of the place of residence of the respondent or the place where the property or evidence is situated. If the place of residence of the respondent or the place where the property or evidence is situated fall within the jurisdiction of different People's Courts, the Applicant shall make an application to any one of those People's Courts but shall not make separate Applications to two or more People's Courts.

<sup>6</sup> SPC Commentary, paragraph II(ii), sub-paragraph 4

<sup>7</sup> Arrangement, Article 11 and SPC Commentary, paragraph II(ix), sub-paragraph 3

<sup>8</sup> Arrangement, Article 2(1)

<sup>9</sup> Arrangement, Article 3

19. At the time of publication of this Note, the filing fee for each Application before a People's Court is capped at RMB 5 000 and shall be paid directly to the competent People's Court.
20. Templates in Chinese prepared by the SPC for the purposes of seeking interim measures before the People's Courts (including the certificates<sup>10</sup> to be issued by the qualified arbitral institutions) under the Arrangement are available on the ICC website.

## B. Applications in pending ICC arbitrations

21. Any Party in a pending ICC arbitration wishing to make an Application shall inform the Secretariat Asia Office (see contact details in Section F below) as soon as possible and preferably before submitting its Application.
22. For Applications in pending ICC arbitrations, the Applicant must submit the following documents by email to the Secretariat Asia Office:
  - (i) A copy of the Application it intends to submit to the competent People's Court, supporting materials (as listed in Section E below) and any other document(s) that may be specifically requested by the Secretariat Asia Office. These documents must all be written in simplified Chinese as referred to in paragraph 31; and
  - (ii) A request (in either Chinese or English) that the Secretariat Asia Office issue a letter confirming acceptance of the arbitration case and transfer the Application to the competent People's Court specified in the Application ("Acceptance and Transfer Letter").
23. Upon satisfactory verification that the pending ICC arbitration is eligible under the Arrangement (see Section II above), the Secretariat Asia Office will issue the Acceptance and Transfer Letter.
24. Pursuant to the Arrangement, the Application shall be passed on by the Secretariat Asia Office to the competent People's Court specified in the Application.<sup>11</sup> However, in practice, it is highly recommended that the Applicant submit the Application together with the Acceptance and Transfer Letter issued by the Secretariat Asia Office directly to the competent People's Court specified in the Application.<sup>12</sup>

<sup>10</sup> See below paragraphs 22(ii), 28 and 29

<sup>11</sup> Arrangement, Article 3 paragraph 2

<sup>12</sup> SPC Commentary, Article II(v)1

## C. Applications before filing a Request for Arbitration

25. Any party wishing to make an Application prior to filing a Request for Arbitration, shall inform the Secretariat Asia Office (see contact details in Section F below) as soon as possible and preferably before submitting its Application to the competent People's Court in accordance with the procedure set out below.
26. Where an Applicant requires interim relief before it has filed its Request for Arbitration, it shall submit the Application (together with all supporting documents listed in Section E below) directly to the competent People's Court. The People's Court may proceed to grant the interim measure.
27. No later than 20 days from the date on which the People's Court grants the interim measure, the Applicant shall file a Request for Arbitration (including all elements and materials set out in Articles 4(3)<sup>13</sup> and 4(4)<sup>14</sup> of the Rules) with the Secretariat at any of its offices and make immediate payment of the filing fee by wire transfer to the ICC.
28. After acknowledging receipt of the Request for Arbitration, the Secretary General will assign the arbitration eligible under the Arrangement (see Section II above) to the Secretariat Asia Office. The Applicant shall request the Secretariat Asia Office to issue a letter certifying that the Request for Arbitration has been accepted ("Acceptance Letter").
29. The Secretariat Asia Office will issue the Acceptance Letter, upon receipt of the appropriate filing fee, and any other relevant information or documents as required under Articles 4(3) and 4(4) of the Rules. Failing receipt, the Secretariat Asia Office will not issue the Acceptance Letter and may close the file.<sup>15</sup>
30. Upon receipt of such Acceptance Letter, the Applicant shall file the Acceptance Letter, together with a copy of the Request for Arbitration and any relevant documents, with the competent People's Court no later than

<sup>13</sup> The Request for Arbitration shall contain the information referred to in Article 4(3) of the Rules, including inter alia any relevant agreements and in particular the arbitration agreement(s).

<sup>14</sup> Together with the Request for Arbitration, the claimant shall submit the number of copies of the Request for Arbitration required by Article 3(1) of the Rules, and make payment of the filing fee required by Appendix III. In the event that the claimant fails to comply with either of these requirements, the Secretariat may fix a time limit within which the claimant must comply, failing which the file shall be closed without prejudice to the Claimant's right to submit the same claims at a later date in another Request for Arbitration.

<sup>15</sup> Article 4(4) of the Rules

30 days after the People's Court has ordered the interim measure. If the Acceptance Letter is not filed within this time, the People's Court will discharge the interim measure.

#### D. Language

31. Applications to the competent People's Court must be submitted in simplified Chinese. Where a document submitted to a People's Court is not in simplified Chinese, the Applicant shall submit a certified translation in simplified Chinese.

#### E - Required documents and information

32. Applications to the competent People's Court shall contain the following:

##### (i) Required information<sup>16</sup>

The Applicant is required to ensure that the Application contains the correct information. This includes:

- (a) particulars of the parties: where the party is a natural person, his/her name, address, particulars of identity document(s), contact details; where the party is a legal person or an organisation which is not a legal person, its name, address as well as the name, position, address, particulars of identity document(s), contact details of its legal representative(s) or principal responsible person(s);
- (b) details of the interim relief sought, including (as applicable) any amount to be preserved, particulars of the conduct to be preserved and the time period;
- (c) the facts and legal arguments on which the Application is based, together with the relevant evidence, including an explanation of the urgency of the circumstances such that if interim measure is not taken immediately, the legitimate rights and interests of the Applicant may suffer irreparable damage, or the enforcement of the arbitral award may become difficult;
- (d) clear particulars of the property and evidence to be preserved or concrete information which may lead to a train of inquiry;
- (e) information about the property in the Mainland to be used as security or certification of financial standing;
- (f) details of any application under the Arrangement that has been made in any other court, relevant institution or permanent office, and the status of such application; and

- (g) any other matters as may be required to be specified.

##### (ii) Required documents<sup>17</sup>

- (a) the Application;
- (b) a copy of the Contract(s) containing the arbitration agreement(s);
- (c) documents of identity: where the Applicant is a natural person, a copy of his/her identity card; where the Applicant is a legal person or an organisation which is not a legal person, copies of its certificate of incorporation or registration and the identity card(s) of its legal representative(s) or responsible person(s). Where a document of identity is issued outside of the Mainland, Hong Kong or Macau, certifications in accordance with the provisions of the relevant laws of the Mainland shall be provided, including simplified Chinese translations;
- (d) where the Application is made in a pending ICC arbitration, the Request for Arbitration (including all elements and materials set out in Articles 4(3) and 4(4) of the Rules), as well as the Acceptance and Transfer Letter; and
- (e) any other materials<sup>18</sup> that may be required by the People's Court.

#### F - Contact details

33. All Applications, any relating communications and any queries pertaining to the present Note shall be addressed to the Secretariat Asia Office:

(i) By email: [ica8@iccwbo.org](mailto:ica8@iccwbo.org); or

(ii) By post:

International Court of Arbitration of the  
International Chamber of Commerce -  
Asia Office  
12/F, Suite 2, Fairmont House  
8 Cotton Tree Drive  
Central, Hong Kong.

34. Queries may also be addressed by phone at +852 3607 5600 / 5601 during business hours.

#### G - No additional fee

35. No additional fee will be charged for the provision of the services required of the Secretariat Asia Office under the Arrangement.

<sup>16</sup> Arrangement, Article 5

<sup>17</sup> Arrangement, Article 4

<sup>18</sup> Including powers of attorney