

## Insights

# HKIAC UPDATES ON THE IMPLEMENTATION OF THE INTERIM MEASURES ARRANGEMENT BETWEEN HONG KONG AND THE PRC

Sep 15, 2020

## SUMMARY

HKIAC recently published information regarding the processing of applications under 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” signed between the Hong Kong Government and the PRC Supreme People’s Court.

## BACKGROUND

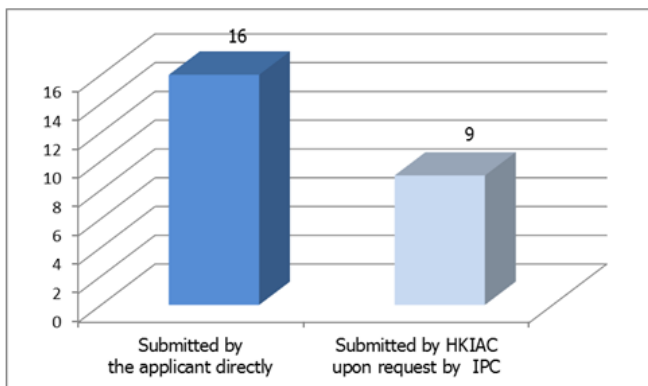
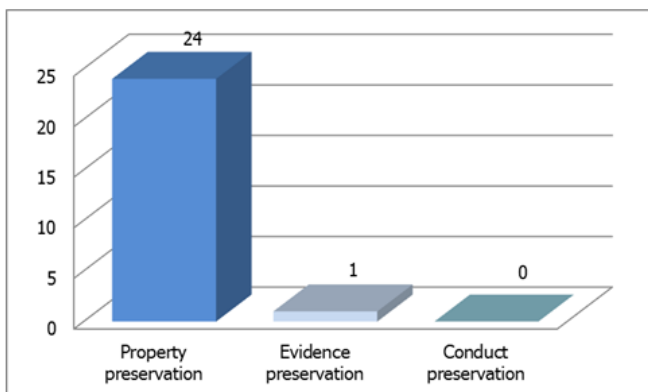
It has been almost a year since the ground-breaking “[Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region](#)” between the Hong Kong Government and the PRC Supreme People’s Court (the “**Arrangement**”) came into force on 1 October 2019.

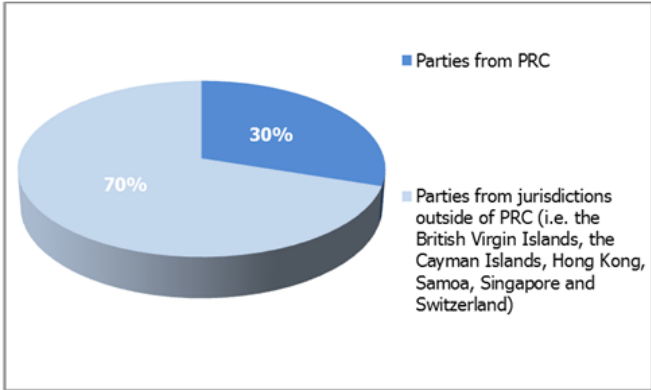
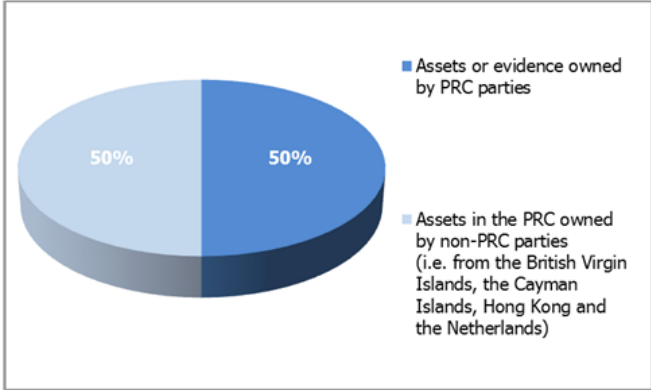
Under the Arrangement, any party to arbitral proceedings seated in Hong Kong and administered by a qualified arbitral institution may apply to an appropriate Intermediate People’s Court (the “**IPC**”) in Mainland China for interim measures in relation to the arbitral proceedings. Such application must be made in accordance with the relevant laws and regulations of Mainland China.

## STATISTICS RELEASED BY HKIAC

The Hong Kong International Arbitration Centre (“**HKIAC**”) is one of the six qualified arbitral institutions under the Arrangement. HKIAC provided an update in December 2019 on its practice and experience under the Arrangement. Please see our discussion in our previous blog post [“Implementation of the Interim Measures Arrangement between Hong Kong and the PRC in the first quarter – a look back at those who have crossed the long-awaited bridge across the moat”](#).

On 27 August 2020, the HKIAC released a further update of its works under the Arrangement. We summarise the key statistics as follows:

Statistics as of 27 August 2020										
1.	Total numbers of applications	<p>Since the Arrangement became effective on 1 October 2019, HKIAC has processed <b>25 applications</b> made to the Mainland courts for interim measures.</p> <p>All 25 applications were:</p> <ul style="list-style-type: none"><li>concerning an arbitration seated in Hong Kong;</li><li>concerning an arbitration under the HKIAC Administered Arbitration Rules;</li><li>made on an <i>ex parte</i> basis; and</li><li>in arbitrations that had been commenced.</li></ul>								
2.	Submission of applications to IPCs	<p>Pursuant to the Arrangement, the applicant must apply to the IPC directly before the commencement of the arbitration. If the arbitration case has been accepted by HKIAC, HKIAC will deal directly with the IPC.</p> <p>The number of applications taken out by the party directly and by HKIAC are as follows:</p>  <table><tr><th>Submission Method</th><th>Number of Applications</th></tr><tr><td>Submitted by the applicant directly</td><td>16</td></tr><tr><td>Submitted by HKIAC upon request by IPC</td><td>9</td></tr></table>	Submission Method	Number of Applications	Submitted by the applicant directly	16	Submitted by HKIAC upon request by IPC	9		
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3.	Issuance of letter of acceptance by HKIAC	<p>A letter from HKIAC certifying its acceptance of the arbitration case is required for all applications under the Arrangement:</p> <ul style="list-style-type: none"><li>For applications before commencement of arbitration: the letter of acceptance must be sent to the IPC within 30 days after the interim measure is taken by the IPC. Failing which, the IPCs shall discharge the interim measures;</li><li>For applications during arbitration: for the purpose of transferring such application by HKAC to the IPC, the HKIAC letter of acceptance must be provided to the IPC together with the application.</li></ul> <p>In all of the 25 applications, HKIAC issued a letter of acceptance typically <b>within 24 hours</b> from its receipt of the application, and did so <b>at no additional cost to the parties</b>.</p>								
4.	Types of interim measures applied for	<p>The Arrangement provides that, in the context of Mainland China, "interim measure" includes preservation of (a) property, (b) evidence and (c) conduct.</p> <p>HKIAC provided the number of applications for each type of interim measure as follows:</p>  <table><tr><th>Type of Interim Measure</th><th>Number of Applications</th></tr><tr><td>Property preservation</td><td>24</td></tr><tr><td>Evidence preservation</td><td>1</td></tr><tr><td>Conduct preservation</td><td>0</td></tr></table> <p>96% of the applications were for assets preservation. The total value of assets sought to be preserved was RMB 9.4 billion (equivalent to approximately USD 1.4 billion).</p>	Type of Interim Measure	Number of Applications	Property preservation	24	Evidence preservation	1	Conduct preservation	0
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5.	Decisions made by IPCs	<p>HKIAC is aware of <b>17 decisions</b> issued by the IPCs.</p> <p>All 17 decisions concerned property preservation. These applications were <b>all granted</b> by the respective IPCs upon <b>provision of security</b> by the applicant.</p> <p>The total value of assets preserved amounted to RMB 8.7 billion (equivalent to approximately USD 1.3 billion).</p>
6.	Jurisdictions of the applicants	 <p>■ Parties from PRC</p> <p>■ Parties from jurisdictions outside of PRC (i.e. the British Virgin Islands, the Cayman Islands, Hong Kong, Samoa, Singapore and Switzerland)</p>
7.	Ownership of assets/ evidence for which preservation is applied for	 <p>■ Assets or evidence owned by PRC parties</p> <p>■ Assets in the PRC owned by non-PRC parties (i.e. from the British Virgin Islands, the Cayman Islands, Hong Kong and the Netherlands)</p>
8.	Time required for a decision	In 15 decisions (out of the total 17 decisions issued by the IPCs), the average time taken by the IPC to issue a decision was <b>14 days</b> from its receipt of the complete application.
9.	IPCs involved	The applications were made to <b>15 different IPCs</b> , respectively in Beijing, Dalian, Hangzhou, Jinan, Lianyungang, Nanjing, Shanghai, Shenzhen, Xiamen, Yantai and Zhaoqing.

## GOING FORWARD

Statistics speak for themselves – not only has the Arrangement provided significant additional procedural weapons, it has been demonstrated that the Arrangement works in practice. It has been proven that the Arrangement secures the fruits of arbitral disputes through effective use and implementation of interim measures approved by the PRC courts.

So far, Hong Kong remains the first and only “foreign” jurisdiction in respect of which the PRC courts are empowered to grant interim measures in aid of arbitral proceedings. This confirms that Hong Kong maintains its status as an international arbitration hub, especially for PRC-related disputes.

From these statistics, HKIAC also demonstrates how an arbitral institution can facilitate the application process for interim measures before courts in PRC. By issuing the letter of acceptance

within a short timeframe, HKIAC greatly facilitates the ease and speed of application to PRC courts for interim measures. The needs of the parties are addressed and the requirements under the Arrangement and relevant Mainland legislations are satisfied without delay.

As the awareness of and confidence for the Arrangement gradually build, we anticipate that the utilisation rate of the Arrangement will further grow over time.

## RELATED CAPABILITIES

- International Arbitration

## MEET THE TEAM



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