

Insights

SUPPLEMENTAL ARRANGEMENT CONCERNING MUTUAL ENFORCEMENT OF ARBITRAL AWARDS BETWEEN THE MAINLAND AND HONG KONG

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On 27 November 2020, the Department of Justice of Hong Kong and the Supreme People's Court of China signed the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region (the **Supplemental Arrangement**).

The Supplemental Agreement amends and clarifies the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR (the **Existing Arrangement**) which was signed back in 1999.

The main amendments / clarifications under the Supplemental Arrangement are as follows:

1. Article 1 clarifies that the procedures under the Existing Arrangement cover the "recognition", in addition to the "enforcement", of arbitral awards made in Hong Kong or the Mainland. The Existing Arrangement did not refer expressly to the "recognition" of arbitral awards, leading to ambiguity as to whether an arbitral award needs to be "recognised" before it could be enforced under the Existing Arrangement. The Supplemental Arrangement has removed this ambiguity.
2. Article 2 removes the restriction in the Existing Arrangement that a Mainland award has to be issued by one of the (listed) recognised arbitral authorities prescribed by the Legislative Affairs Office of the State Council. Therefore, as long as a Mainland arbitral award is made pursuant to the PRC Arbitration Law, it can be recognised and enforced in Hong Kong.
3. Article 3 allows parties to apply for the enforcement of an arbitral award in Hong Kong and the Mainland at the same time, which was not allowed under the Existing Arrangement. This amendment allows timely enforcements against award debtors who have assets in both jurisdictions, and avoids an enforcement application from being time barred in one jurisdiction when the enforcement application in another jurisdiction has taken too long.
4. Article 4 provides that a party may apply for preservation measures before or after the court's acceptance of an application to enforce an arbitral award. Previously, preservation measures only

could be ordered before the issuance of an arbitral award. This amendment ensures that preservation measures can be applied for in every stage of an arbitration.

Article 1 and 4 took effect on 27 November 2020. Articles 2 and 3 will take effect on a date to be announced after the completion of the relevant legislative procedures in Hong Kong.

It is expected that the Supplemental Arrangement will facilitate further the mutual enforcement of arbitral awards between Hong Kong and the Mainland and enhance and further confirm Hong Kong's position as the preferred seat of arbitration in cross-border disputes involving assets on the Mainland or involving parties with assets on the Mainland.

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