

Insights

MUTUAL ENFORCEMENT OF ARBITRAL AWARDS BETWEEN THE MAINLAND AND HONG KONG : THE ARBITRATION (AMENDMENT) BILL 2021

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On 24 February 2021, the Hong Kong Government introduced into the Legislative Council the Arbitration (Amendment) Bill 2021 (“**Bill**”), to implement the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region (the “**Supplemental Arrangement**”).

Background the Supplemental Arrangement

In our earlier blog dated 30 December 2020: [Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and Hong Kong](#), we discussed the amendments and clarifications introduced in the Supplemental Arrangement.

In summary, the four amendments / clarifications 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.
2. Article 2 removes the restriction 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.
3. Article 3 allows parties to apply for the enforcement of an arbitral award in Hong Kong and the Mainland at the same time.
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.

Clarifications and legislative amendments

As regards Article 1, the Legislative Council Brief of the Bill explains that it is not necessary to enact new legislation or amend existing legislation in Hong Kong to implement this amendment. This is because, under section 92(2) of the Arbitration Ordinance (“**AO**”), a Mainland award which is enforceable in Hong Kong is recognised for purposes other than the enforcement of the award,

including being relied on by the parties by way of defence, set off or otherwise in any Hong Kong legal proceedings. Therefore, the Supplemental Arrangement only makes it clear that the existing legislation provides for recognition of Mainland awards.

As regards Article 2, the Bill seeks to amend the definition of “Mainland award” and to repeal the definition of “recognized Mainland arbitral authority” in section 2 of the AO. The Bill also seeks to repeal section 97 of the AO, which provides for the publication of a list of recognized Mainland arbitral authorities. The effect is that, as long as an arbitral award is made in accordance with the Arbitration Law of the PRC, the award can be enforced under the AO.

As regards Article 3, the Bill seeks to repeal section 93 of the AO, which provides that “*[a] Mainland award is not... enforceable under this Division if an application has been made on the Mainland for enforcement of the award...*”. The effect is that concurrent applications can be made in Hong Kong and the Mainland for enforcement of a Mainland award.

As regards Article 4, the Legislative Council Brief of the Bill states that no legislative amendment is necessary. As a matter of practice, some Mainland courts have granted preservation measures against respondents’ assets before or after accepting an application for enforcement of a Hong Kong arbitral award. Article 4 only clarifies and confirms this prevailing practice.

Implementation date

In the Mainland, the Supplemental Arrangement already was implemented by way of a judicial interpretation as promulgated on 27 November 2020.

In Hong Kong, Articles 1 and 4 of the Supplemental Arrangement have been implemented within the existing legislative framework and have come into effect on 27 November 2020. Articles 2 and 3 of the Supplemental Arrangement will come into effect when the Bill has been enacted into an Ordinance.

It is expected that the Supplemental Arrangement and the proposed amendments in the Bill will facilitate further the mutual enforcement of arbitral awards between Hong Kong and the Mainland, and will enhance Hong Kong’s status as an international legal hub for legal and dispute resolution services.

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