Update on Arbitral Awards
仲裁裁決法規更新

Legal updates to Supplemental Arrangement provide more clarification and extend the scope of mutual recognition and enforcement in both the Mainland and Hong Kong

《補充安排》的法規更新提供更大的確定性，並擴大內地與香港相互認可和執行仲裁裁決的範圍

The increase in cross-border business as a result of the Greater Bay Area initiative is providing further demand for arbitration as a way of resolving commercial disputes. Recent updates to the relevant legislation extend the scope of arbitral awards in both Hong Kong and the Mainland and provide some more clarification.

The scope and procedures in relation to the mutual enforcement of arbitral awards between the Mainland China and the HKSAR are governed by the "Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland China and the HKSAR." This was signed as early as 1999, and has been effective since 1 February 2000. Throughout the past two decades, the Arrangement has proved to be successful.

On 27 November 2020, the Vice-president of the Supreme People's Court and the Secretary for Justice of the HKSAR signed a Supplemental Arrangement. This was made to further improve the operation of the Arrangement, after taking into account 20 years of implementation experience and feedback from the arbitration sector.

The Supplemental Arrangement introduces four key changes to the Arrangement:

- It clarifies that the procedures for enforcing arbitral awards of the Mainland China or the HKSAR prescribed in the Arrangement shall include the procedures for "recognition." In other words, pursuant to the Supplemental Arrangement, arbitral awards will be both recognised and enforced in Mainland China and the HKSAR.
- The relevant Court of Mainland China or the HKSAR may impose preservation measures before or after the Court's acceptance of an application to enforce an arbitral award. This particular change is likely made to fill a gap under the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland China and of the HKSAR, which took effect on

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1 October 2019. Under the Interim Measures Arrangement, a party to arbitral proceedings in Hong Kong can apply for interim measures from the Mainland Courts any time before the arbitral award is made for the purpose of protecting the enforcement of the arbitral award. However, the Interim Measures Arrangement is not applicable to the stage of enforcement of the arbitral award (i.e. after the arbitral award is published). The Supplemental Arrangement therefore clarifies that a party may apply for preservation measures at all stages in the arbitration proceedings.

■ It clarifies that the Arrangement shall apply to arbitral awards made under the Arbitration Ordinance of the HKSAR as enforced by the People's Courts of Mainland China, and arbitral awards made under the Arbitration Law of Mainland China as enforced by the Courts of the HKSAR. With this amendment, more arbitral awards will fall under the application of the Arrangement (including ad hoc arbitrations which are not covered by the Interim Measures Arrangement). This is also to align with the prevalent international approach of "seat of arbitration" under the New York Convention.

■ It provides that if the party against whom the application is filed is domiciled in both Mainland China and the HKSAR, or has property in both jurisdictions that may be subject to enforcement, the applicant may file applications for enforcement with the Courts of the two jurisdictions simultaneously, provided that the total amount recovered by the applicant will not exceed the amount awarded. The removal of the restriction on making simultaneous enforcement applications in the Mainland China and Hong Kong is an important breakthrough as the amendment will minimize the risk of an award debtor hiding or transferring his properties to one jurisdiction when an enforcement application was made against him or her in another jurisdiction.

The amendments (1) and (2) above took effect in the HKSAR on 27 November 2020, whereas amendments (3) and (4) will take effect after the HKSAR has made the necessary amendments to the relevant provisions in the Arbitration Ordinance. On the other hand, the Supplemental Arrangement has already been implemented in the Mainland China by way of a judicial interpretation as promulgated on 27 November 2020.

Without doubt, the Supplemental Arrangement will facilitate the smooth operation of the Arrangement and will be conducive to the development of Hong Kong as the dispute resolution centre of the Greater Bay Area.

大灣區倡議帶動跨境業務增長，市場對調解商業糾紛的仲裁服務需求亦隨之增加。最近，相關法規經過更新後，擴大了香港與內地仲裁裁決的範圍，並進一步澄清若干議題。

有關內地與香港特別行政區相互執行仲裁裁決的範圍和程序是由早於 1999 年簽訂、於 2000 年 2 月 1 日生效的《關於內地與香港特別行政區相互執行仲裁裁決的安排》（下稱《安排》）所管轄。過去 20 年，《安排》被充分證實行之有效。

2020 年 11 月 27 日，最高人民法院副院長與香港特區律政司司長簽署了《補充安排》。這是在考慮仲裁業界 20 年來的執行經驗和反饋後，為了改善《安排》的運作而作出的《補充安排》。

《補充安排》為《安排》帶來了四項重要變更：

■ 《補充安排》澄清了《安排》所指執行內地或香港特區仲裁裁決的程序須涵蓋「認可」的程序。換言之，根據《補充安排》，仲裁裁決將在內地及香港特區予以「認可」和「執行」。

■ 內地或香港特區的相關法院可於法院受理執行仲裁裁決申請之前或之後採取保全措施。這一特別變更很可能是為了填補於 2019 年 10 月 1 日生效的《關於內地與香港特別行政區法院就仲裁程序相互協助保全的安排》的不足而作出。在《臨時措施安排》下，為確保仲裁裁決可予執行，香港特區仲裁程序中的一方可在仲裁裁決頒布之前的任何時間向內地法院申請臨時措施。然而，《臨時措施安排》並不適用於仲裁裁決的執行階段（即仲裁裁決公布之後）。就此，《補充安排》澄清了當事方可在仲裁程序的任何階段申請保全措施。

■ 《補充安排》澄清了《安排》須適用於由內地人民法院執行、按香港特區《仲裁條例》作出的仲裁裁決，以及由香港特區法院執行、按中華人民共和國仲裁法作出的仲裁裁決。這項變更令《安排》適用於更多的仲裁裁決（包括不適用於《臨時措施安排》的臨時仲裁），亦與國際普遍採用的《紐約公約》下「仲裁地」的定義方式保持一致。

■ 倘被申請人在內地和香港特區均有住所，又或在內地和香港特區皆有可供執行的財產，則《補充安排》允許申索人同時向內地和香港特區的法院申請執行仲裁裁決，前提是申請人不得索回超過其仲裁裁決頒令的金額。免除向兩地法院同時申請執行仲裁裁決的限制是一項重大突破，因為這將大大減低裁決債務人在一個司法管轄區對其進行執行申請時，他／她在另一個司法管轄區藏匿或轉移其財產的風險。

在香港，上述（1）及（2）項變更已於 2020 年 11 月 27 日生效，而上述（3）及（4）項變更將於完成《仲裁條例》內相關條文的所需修訂後生效。另一方面，在內地，《補充安排》已通過於 2020 年 11 月 27 日頒布的司法解釋實施。

無疑，《補充安排》將有助《安排》的順利運作，並促進香港發展成為大灣區的爭議解決中心。