

## 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

根據《中華人民共和國香港特別行政區基本法》第九十五條的規定，最高人民法院與香港特別行政區政府經協商，現就內地與香港特別行政區法院關於仲裁程序相互協助保全作出如下安排：

**第一條** 本安排所稱“保全”，在內地包括財產保全、證據保全、行為保全；在香港特別行政區包括強制令以及其他臨時措施，以在爭議得以裁決之前維持現狀或者恢復原狀、採取行動防止目前或者即將對仲裁程序發生的危害或者損害，或者不採取可能造成這種危害或者損害的行動、保全資產或者保全對解決爭議可能具有相關性和重要性的證據。

**第二條** 本安排所稱“香港仲裁程序”，應當以香港特別行政區為仲裁地，並且由以下機構或者常設辦事處管理：

（一）在香港特別行政區設立或者總部設於香港特別行政區，並以香港特別行政區為主要管理地的仲裁機構；

（二）中華人民共和國加入的政府間國際組織在香港特別行政區設立的爭議解決機構或者常設辦事處；

(三) 其他仲裁機構在香港特別行政區設立的爭議解決機構或者常設辦事處，且該爭議解決機構或者常設辦事處滿足香港特別行政區政府訂立的有關仲裁案件宗數以及標的金額等標準。

以上機構或者常設辦事處的名單由香港特別行政區政府向最高人民法院提供，並經雙方確認。

**第三條** 香港仲裁程序的當事人，在仲裁裁決作出前，可以參照《中華人民共和國民事訴訟法》《中華人民共和國仲裁法》以及相關司法解釋的規定，向被申請人住所地、財產所在地或者證據所在地的內地中級人民法院申請保全。被申請人住所地、財產所在地或者證據所在地在不同人民法院轄區的，應當選擇向其中一個人民法院提出申請，不得分別向兩個或者兩個以上人民法院提出申請。

當事人在有關機構或者常設辦事處受理仲裁申請後提出保全申請的，應當由該機構或者常設辦事處轉遞其申請。

在有關機構或者常設辦事處受理仲裁申請前提出保全申請，內地人民法院採取保全措施後三十日內未收到有關機構或者常設辦事處提交的已受理仲裁案件的證明函件的，內地人民法院應當解除保全。

**第四條** 向內地人民法院申請保全的，應當提交下列材料：

（一）保全申請書；

（二）仲裁協議；

（三）身份證明材料：申請人為自然人的，應當提交身份證件複印件；申請人為法人或者非法人組織的，應當提交註冊登記證書的複印件以及法定代表人或者負責人的身份證件複印件；

（四）在有關機構或者常設辦事處受理仲裁案件後申請保全的，應當提交包含主要仲裁請求和所根據的事實與理由的仲裁申請文件以及相關證據材料、該機構或者常設辦事處出具的已受理有關仲裁案件的證明函件；

（五）內地人民法院要求的其他材料。

身份證明材料係在內地以外形成的，應當依據內地相關法律規定辦理證明手續。

向內地人民法院提交的文件沒有中文文本的，應當提交準確的中文譯本。

**第五條** 保全申請書應當載明下列事項：

（一）當事人的基本情況：當事人為自然人的，包括姓名、住所、身份證件信息、通訊方式等；當事人為法人或者非法人組織的，包括法人或者非法人組織的名稱、住所以及

法定代表人或者主要負責人的姓名、職務、住所、身份證件信息、通訊方式等；

(二) 請求事項，包括申請保全財產的數額、申請行為保全的內容和期限等；

(三) 請求所依據的事實、理由和相關證據，包括關於情況緊急，如不立即保全將會使申請人合法權益受到難以彌補的損害或者將使仲裁裁決難以執行的說明等；

(四) 申請保全的財產、證據的明確信息或者具體線索；

(五) 用於提供擔保的內地財產信息或者資信證明；

(六) 是否已在其他法院、有關機構或者常設辦事處提出本安排所規定的申請和申請情況；

(七) 其他需要載明的事項。

**第六條** 內地仲裁機構管理的仲裁程序的當事人，在仲裁裁決作出前，可以依據香港特別行政區《仲裁條例》《高等法院條例》，向香港特別行政區高等法院申請保全。

**第七條** 向香港特別行政區法院申請保全的，應當依據香港特別行政區相關法律規定，提交申請、支持申請的誓章、附同的證物、論點綱要以及法庭命令的草擬本，並應當載明下列事項：

(一) 當事人的基本情況：當事人為自然人的，包括姓名、地址；當事人為法人或者非法人組織的，包括法人或者非法人組織的名稱、地址以及法定代表人或者主要負責人的姓名、職務、通訊方式等；

(二) 申請的事項和理由；

(三) 申請標的所在地以及情況；

(四) 被申請人就申請作出或者可能作出的回應以及說法；

(五) 可能會導致法庭不批准所尋求的保全，或者不在單方面申請的情況下批准該保全的事實；

(六) 申請人向香港特別行政區法院作出的承諾；

(七) 其他需要載明的事項。

**第八條** 被請求方法院應當盡快審查當事人的保全申請。內地人民法院可以要求申請人提供擔保等，香港特別行政區法院可以要求申請人作出承諾、就費用提供保證等。

經審查，當事人的保全申請符合被請求方法律規定的，被請求方法院應當作出保全裁定或者命令等。

**第九條** 當事人對被請求方法院的裁定或者命令等不服的，按被請求方相關法律規定處理。

**第十條** 當事人申請保全的，應當依據被請求方有關訴訟收費的法律和規定交納費用。

**第十一條** 本安排不減損內地和香港特別行政區的仲裁機構、仲裁庭、當事人依據對方法律享有的權利。

**第十二條** 本安排在執行過程中遇有問題或者需要修改的，由最高人民法院和香港特別行政區政府協商解決。

**第十三條** 本安排在最高人民法院發布司法解釋和香港特別行政區完成有關程序後，由雙方公布生效日期。

本安排於二零一九年四月二日在香港特別行政區簽署，一式兩份。

最高人民法院  
副院長

香港特別行政區政府  
律政司司長

(Courtesy English translation)

**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**

In accordance with the provisions of Article 95 of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, the Supreme People's Court and the Government of the Hong Kong Special Administrative Region (hereinafter referred to as "HKSAR"), after consultation, hereby make the following arrangement concerning mutual assistance in court-ordered interim measures in aid of arbitral proceedings by the courts of the Mainland and of the HKSAR:

**Article 1** "Interim measure" referred to in this Arrangement includes, in the case of the Mainland, property preservation, evidence preservation and conduct preservation; and, in the case of the HKSAR, injunction and other interim measure for the purpose of maintaining or restoring the status quo pending determination of the dispute; taking action that would prevent, or refraining from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral proceedings; preserving assets; or preserving evidence that may be relevant and material to the resolution of the dispute.

**Article 2** "Arbitral proceedings in Hong Kong" referred to in this Arrangement shall be seated in the HKSAR and be administered by the following institutions or permanent offices:

- (1) arbitral institutions established in the HKSAR or having their headquarters established in the HKSAR, and with their principal place of management located in the HKSAR;
- (2) dispute resolution institutions or permanent offices set up in the HKSAR by international intergovernmental organisations of which the People's Republic of China is a member; or

- (3) dispute resolution institutions or permanent offices set up in the HKSAR by other arbitral institutions and which satisfy the criteria prescribed by the HKSAR Government (such as the number of arbitration cases and the amount in dispute, etc.).

The list of such institutions or permanent offices referred to above is to be provided by the HKSAR Government to the Supreme People's Court and be subject to confirmation by both sides.

**Article 3** Before the arbitral award is made, a party to arbitral proceedings in Hong Kong may, by reference to the provisions of the *Civil Procedure Law of the People's Republic of China*, the *Arbitration Law of the People's Republic of China* and relevant judicial interpretations, make an application for interim measure to the Intermediate People's Court of the place of residence of the party against whom the application is made ("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.

Where an application for interim measure is made after the relevant institution or permanent office has accepted the arbitration case, the party's application shall be passed on by the said institution or permanent office.

Where a party makes an application for interim measure before the relevant institution or permanent office has accepted the arbitration case, but the people's court of the Mainland has not received a letter from the said institution or permanent office certifying its acceptance of the arbitration case within 30 days after the interim measure is taken, the people's court of the Mainland shall discharge the interim measure.

**Article 4** An applicant applying to a people's court of the Mainland for interim measure shall submit the following materials:

- (1) the application for interim measure;



- (2) the arbitration agreement;
- (3) documents of identity: where the applicant is a natural person, a copy of his/her identity card is to be submitted; 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) are to be submitted;
- (4) where a party makes an application for interim measure after the relevant institution or permanent office has accepted the arbitration case, the request for arbitration setting out the main claim of the arbitration and the facts and justifications on which the claim is based, together with the relevant evidential materials, as well as a letter from the relevant institution or permanent office certifying its acceptance of the relevant arbitration case;
- (5) any other materials required by the people's court of the Mainland.

Where a document of identity is issued outside the Mainland, such document of identity shall be certified in accordance with the provisions of the relevant laws of the Mainland.

Where a document submitted to a people's court of the Mainland is not in the Chinese language, the applicant shall submit an accurate Chinese translation.

**Article 5** The application for interim measure shall specify the following:

- (1) particulars of the parties: where the party is a natural person, his/her name, address, particulars of identity document(s), means of contact, etc.; 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), means of contact, etc. of its legal representative(s) or principal responsible person(s);

- (2) details of the application, including the amount applied to be preserved, the particulars of the conduct applied to be preserved and the time period, etc.;
- (3) the facts and justifications on which the application is based, together with the relevant evidence, including an explanation of the urgency of the circumstances so 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, etc.;
- (4) clear particulars of the property and evidence to be preserved or concrete threads which may lead to a train of inquiry;
- (5) information about the property in the Mainland to be used as security or certification of financial standing;
- (6) whether any application under this Arrangement has been made in any other court, relevant institution or permanent office, and the status of such application;
- (7) any other matters as may be required to be specified.

**Article 6** Before the arbitral award is made, a party to arbitral proceedings administered by a Mainland arbitral institution may, pursuant to the *Arbitration Ordinance* and the *High Court Ordinance*, apply to the High Court of the HKSAR for interim measure.

**Article 7** A party applying to the court of the HKSAR for interim measure shall submit the application, an affidavit supporting the application, exhibit(s) thereto, a skeleton argument and a draft court order in accordance with the requirements of the relevant laws of the HKSAR, and shall specify the following:

- (1) particulars of the parties: where the party is a natural person, his or her name and address; where the party is a legal person or an organisation which is not a legal person, its name and address as well as the name, position, means of contact, etc. of its legal representative or principal responsible person;
- (2) details of the request and justifications for the application;
- (3) the location and status of the subject matter of the application;
- (4) the answer asserted or likely to be asserted by the party against whom the application is made;
- (5) any facts which might lead the court not to grant the interim measure being sought or not to grant such interim measure *ex parte*;
- (6) the applicant's undertaking to the court of the HKSAR;
- (7) any other matters as may be required to be specified.

**Article 8** A requested court shall examine a party's application for interim measure expeditiously. A people's court of the Mainland may require the applicant to provide security, etc., while a court of the HKSAR may require the applicant to give an undertaking and provide security for costs, etc.

After examination and being satisfied that the party's application for interim measure is in accordance with the law of the requested place, the court of the requested place shall make a decision, order etc. for interim measure.

**Article 9** Where a party is aggrieved by a decision, order etc. of the requested court, the matter shall be dealt with in accordance with the provisions of the relevant laws of the requested place.

**Article 10** A party who makes an application for interim measure shall pay the fees in accordance with the laws and regulations on litigation fees of the requested place.

**Article 11** This Arrangement does not prejudice any rights enjoyed by the arbitral institutions, arbitral tribunals or parties of the Mainland and the HKSAR under the laws of the other place.

**Article 12** Any problem arising from the implementation of this Arrangement or any amendment to be made to this Arrangement shall be resolved through consultation between the Supreme People's Court and the HKSAR Government.

**Article 13** Following the promulgation of a judicial interpretation by the Supreme People's Court and the completion of the relevant procedures in the HKSAR, both sides shall announce a date on which this Arrangement shall come into effect.

This Arrangement is signed in duplicate in Hong Kong on this 2<sup>nd</sup> day of April 2019.