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Background

The Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region (the “**Existing Arrangement**”) was signed in June 1999 and came into effect in February 2000 (see our post of 29 May 2020).

On 27 November 2020, the Supreme People’s Court and the Hong Kong Department of Justice signed the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region (the “**Supplemental Arrangement**”), which modifies and supplements the Existing Arrangement and resolves a number of practical issues.

Key changes and/or clarifications to the Existing Arrangement

The Supplemental Arrangement has introduced four key changes and/or clarifications to the Existing Arrangement:

1. Article 1 of the Supplemental Arrangement provides that the Existing Arrangement shall be interpreted to cover the “recognition” stage in addition to the “enforcement” stage of an arbitral award. The Existing Arrangement does not expressly include the “recognition” stage in its text, which sometimes gives rise to debates in the Mainland courts about the necessity of recognition before enforcing arbitral awards issued in Hong Kong against the assets of relevant award debtors.
2. Article 2 of the Supplemental Arrangement clarifies the scope of the arbitral awards which may be mutually recognised and enforced in Mainland China and Hong Kong. On one hand, it removes the condition that the arbitral awards must be issued by certain recognised arbitral institutions in the Mainland, and hence all awards issued in Mainland China pursuant to the Arbitration Law of the People’s Republic of China can be enforced in Hong Kong. On the other hand, it specifies that all arbitral awards issued in Hong Kong (including both institutional and ad hoc awards) pursuant to the Arbitration Ordinance of Hong Kong can be enforced in the Mainland. This aligns with the usual approach in other New York Convention contracting states.
3. Article 3 of the Supplemental Arrangement provides that parties can now make simultaneous applications to both Hong Kong courts and the Mainland courts for enforcement of an arbitral award. In other words, it allows parallel enforcement. Previously, an award creditor faced the difficult situation where the enforcement proceedings in one jurisdiction have been longer than usual and the limitation period of the other jurisdiction continues to run and nearly expires. The limitation period issue can now be resolved with the permission of parallel enforcement under the Supplemental Arrangement.
4. Article 4 of the Supplemental Arrangement clarifies that a party may apply for interim measures before or after the

court's acceptance of an application to enforce an arbitral award. This effectively addresses the uncertainty arising from 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 (the “**Interim Measure Arrangement**”). The Interim Measure Arrangement provides that interim measures may be ordered before the issuance of an arbitral award. However, it does not provide for the availability of preservation measures after the issuance of an arbitral award. The changes provided under the Supplemental Arrangement therefore ensure that preservation measures may be applied for in all phases of an arbitration, facilitating the mutual enforcement of arbitral awards.

Articles 1 and 4 of the Supplemental Arrangement took effect on 27 November 2020, while Articles 2 and 3 of the Supplemental Arrangement will only take effect on a date to be announced by the Supreme People's Court and Hong Kong after the completion of relevant legislative procedures in Hong Kong.

Concluding remarks

Despite the fact that the Existing Arrangement has been effective in filling the lacunae created by reunification of Hong Kong with Mainland China, some practical issues have existed between Hong Kong and Mainland China in mutual enforcement of arbitral awards since 2000.

The Supplemental Arrangement not only clarifies some practical concerns that have existed over the years under the Existing Arrangement, but also facilitates mutual enforcement of arbitral awards between Hong Kong and Mainland China.

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