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## Navigating: Guide to Parties in Hongkong Arbitral Proceedings on Requesting Interim Measures at SFC

### I. Background

On January 7, 2025, Shanghai Financial court released the Guide to Parties in Hong Kong Arbitral Proceedings on Requesting Interim Measures at the Shanghai Financial Court under the Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and the Hong Kong Special Administrative Region (the "Guide") to provide clear and specific guidance for parties in Hongkong arbitration proceedings to apply for interim measures at the Shanghai Financial court.

The Guide will further safeguard smooth implementation of final arbitration awards in both regions, and provide efficient and convenient instructions for both Chinese and foreign parties since the Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and the Hong Kong Special Administrative Region released on October 1, 2019.

The Guide consists of 14 Questions and corresponding answers regarding details of applying for interim measures.

### II. Main content of the Guide

#### 1. Jurisdiction scope

The jurisdiction of the case shall suffice the requirements of territorial jurisdiction, grade jurisdiction and special jurisdiction. Parties shall check if the case suffices the following requirements:

- (1) Whether the respondent's domicile, the location of the asset, or the location of the evidence is situated in Shanghai;
- (2) Whether the dispute being arbitrated falls under the types of financial civil and commercial disputes specified by the Provisions of the Supreme People's Court on the Jurisdiction of the Shanghai Financial Court("SFC").

#### 2. Definitions

##### 2.1 Scope of interim measures

Parties can apply for interim measures under the following circumstances:

- Property preservation: To prevent the opposing party from relocating, transferring, or concealing assets and to ensure the successful enforcement of a final arbitral award.
- Conduct preservation: To protect interest from undue or further harm.
- Evidence preservation: To protect evidence that may be destroyed or become difficult to obtain later.

##### 2.2 Hongkong arbitral proceedings

The "Hong Kong arbitral proceedings" specified in the Arrangement shall meet two criteria:

- (1) Hong Kong is the seat of arbitration.
- (2) The arbitral institution or permanent office overseeing the case is on the list provided by the Government of Hong Kong to the Supreme People's Court (the SPC) and approved by the SPC.

#### 3. Procedure for application

##### 3.1 Application for interim measures

Parties to which the case met the abovementioned requirements may apply for Application for interim measures containing the following content:

- (1) Basic information of the parties.
- (2) Clear and specific request for relief, including the amount for property preservation or the particulars of the conduct applied to be preserved and the time period.
- (3) Facts, reasons, and relevant evidence supporting the request for relief.
- (4) Specific information on or specific clues to the assets or evidence to be preserved, or the elements and duration for the conduct preservation requested.
- (5) Information on the Mainland assets or certificate of creditworthiness to be used as security.
- (6) Whether an application under the Arrangement has already been filed with another court, relevant institution, or permanent office, and the status of that application.
- (7) Any other necessary information that should be provided.

### 3.2 Other materials

In addition to the Application for interim measures, the applicant shall also submit the following documents:

- (1) Arbitration agreement. It should be noted that the SFC only performs a formal examination of the arbitration agreement to determine the underlying legal relation between the parties and whether the case constitutes a Hong Kong arbitral proceeding.
- (2) Identity documents. An individual applicant should submit a photocopy of his or her identity card. A legal entity or an organization should submit a photocopy of its certificate of registration and the identity document of its legal representative or principal.
- (3) Power of attorney. This is required if the applicant has appointed an agent.
- (4) Arbitration request documents and related certifying documents. For an application for interim measures during an ongoing arbitration proceeding, the applicant should submit the arbitration request documents and related evidential documents that contain the key claims stated in that request and their supporting facts and arguments, as well as the document issued by the arbitral institution or permanent office certifying its acceptance of the arbitration case. For a pre-arbitration application for interim measure, the applicant should ensure that the SFC will receive the arbitration request documents and the relevant certifying documents issued by the arbitral institution or permanent office within 30 days after the interim measure is taken, or the interim measure will be lifted.
- (5) Confirmation of the address for service.
- (6) Any additional materials deemed necessary by the SFC based on the specifics of the case, such as documents evidencing the urgency of the matter.

### 3.3 Formalities

#### 1) Apostille for identity documents

Only identity documents issued outside the Chinese Mainland require certification; such certification should be performed in accordance with the Mainland laws. Furthermore, for applicants from Hague Apostille Convention countries, an apostille issued by their home countries is sufficient and further consular legalization is not needed.

#### 2) Translation

For those documents with no Chinese text available, an accurate Chinese translation shall be submitted.

## **4. Whether guarantee shall be provided for applying for interim measures**

Usually, guarantee shall be providing under the below different circumstances:

Pre-arbitration property preservation: full amount of the value of assets to be preserved;

- (1) Property preservation during an ongoing arbitration proceeding: No more than 30 percent of the value of assets to be preserved;
- (2) Conduct preservation: Equivalent to the amount of losses that may be incurred to the respondent due to the interim measure;
- (3) Evidence preservation: Determined by the SFC based on the interim measure's impact on the evidence holder, the value of assets to be preserved, and the amount in dispute in the arbitral proceeding.

In addition, acceptable forms of guarantee are:

- (1) The applicant or a third party can provide assets or cash as security. Choosing this option requires the applicant to issue a guarantee letter to the SFC, setting out the guarantor, the form of guarantee, the scope of the guarantee, the security and its value, and a commitment to fulfill the obligations under the guarantee, along with the supporting documents.
- (2) Specialized guarantee companies or other third parties can provide a credit guarantee. In this case, the required document is a surety letter setting out the surety party, the form and scope of the surety, and a commitment to fulfill the obligations under the surety, along with other relevant documents.
- (3) An insurer can provide guarantee with the interim measure liability insurance agreement it has executed with the applicant. In this case, the letter of interim measure liability insurance should be submitted, stating that in the event of an erroneous petition, the insurer will indemnify the respondent for the losses arising from the interim measures, along with other relevant documents.
- (4) Financial institutions established with the approval of financial regulators can provide guarantee in the form of an independent guarantee.

## **5. Timeframe for the SFC to make decisions**

The court will review applicant's application under different circumstances:

- (1) For Applications for interim measures during an ongoing arbitration proceeding, the court will make decisions within five days when relevant application materials are complete.
- (2) For Interim measures requiring security, the court will make decisions within five days from the date the guarantee is provided.
- (3) For Approval of the interim measure application, the court will enforce interim measures within five days of the approval.
- (4) For Pre-arbitration applications for interim measures in urgent cases, the court will make decisions within 48 hours when relevant application materials are complete, and if the interim measure application is approved, it will be enforced immediately.

Upon making a decision under the Arrangement, the court will notify the arbitral institution or permanent office, the applicant, and other parties involved in the arbitral proceedings of the decision.

## **6. Remedies for objections to a decision on interim measures**

If the respondent or the applicant is dissatisfied with the court's decision to impose interim measures or to dismiss the application, they may apply for review before the court within five days from the date of service of the decision. The court will review the decision within ten days of receiving the application. If the original decision is deemed correct, the application will be dismissed; otherwise, the original decision will be amended or vacated.

If the applicant requests an interim measure to be lifted, the court will make a decision within five days of receiving the request or, in urgent cases, within 48 hours. The review application and the request for lifting interim measures can be submitted directly to the court without going through the arbitration institution.

## **III. Conclusion**

The Guide specifies details for parties involved in Hongkong arbitral proceedings applying for interim measures in Shanghai Financial Court, setting a clear application scope of the appropriate cases. The Guide is informative and helpful for dispute of the civil and financial cases falls within the scope of SFC's jurisdiction where the respondent's domicile, location of the asset, or location of the evidence is situated in Shanghai.

Considering such arrangement of similar cases between Shanghai subject and Hongkong subject in future arbitral proceedings, when drafting arbitration clauses, parties shall pay attention to agree Hong Kong is the seat of arbitration and the arbitral institution or permanent office overseeing the case is on the list provided by the Government of Hong Kong to the Supreme People's Court and approved by the SPC.

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