

August 2022

Follow @Paul_Hastings



HKIAC as First and Only outside Mainland China: Named by China International Commercial Court on One-Stop Platform for Diversified International Commercial Dispute Resolution

By [John Tso](#), [Sarah Zhu](#), [Shaun Wu](#), [Phoebe Yan](#) & Alex Chan

Starting from June 22, 2022, parties to international commercial arbitrations administered by the Hong Kong International Arbitration Centre ("**HKIAC**") can apply directly to the China International Commercial Court ("**CICC**") for (a) preservation and mandatory measures covering not only traditional evidence and asset preservation but also conduct preservation (i.e., injunctions) and/or (b) enforcement of arbitral awards in Mainland China.

On June 22, 2022, by a decision made by the Supreme People's Court of the People's Republic of China ("**SPC**"),¹ HKIAC became the first—and so far the only—arbitral institution outside Mainland China to be included on the "One-Stop" Platform for Diversified International Commercial Dispute Resolution (the "**Platform**") of CICC.

This means that parties to HKIAC arbitral proceedings of international commercial disputes over RMB 300 million (approximately USD 44.48 million and EUR 43.64 million) or with a "significant influence"² enjoy the rights to:

1. Before or after the commencement of arbitration, apply to CICC through HKIAC for preservation and mandatory measures (i.e., evidence, asset, and/or conduct preservation);³ and
2. Apply to CICC through HKIAC for enforcement of HKIAC arbitral awards.⁴

International commercial disputes are those in which:⁵

- At least one party is a foreign national, corporation, or organization;
- At least one party has his/her/its habitual residence outside Mainland China;
- The subject matter of the dispute is outside Mainland China; or
- The facts relating to the formation, change, or termination of the commercial relationship(s) concerned occurred outside Mainland China.

SPC established CICC on June 29, 2018, as a permanent adjudication organ to resolve international commercial disputes. While CICC was specifically designed to entertain disputes arising out of the Belt and Road Initiative, its governing provisions confer jurisdiction on CICC to hear all international commercial disputes. For that matter, SPC established the Platform to promote online dispute resolution and to connect various selected mediation and arbitral institutions via CICC to integrate litigation, mediation and arbitration, and thus create a “one-stop” international commercial dispute resolution platform.

In two previous client alerts,⁶ we discussed applications in Mainland China of preservation and mandatory measures in aid of Hong Kong arbitral proceedings, and the enforcement of Hong Kong arbitral awards in Mainland China, under (a) 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 2019 and (b) the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region 2020 (collectively, the “**Existing Arrangements**”). In particular, under the Existing Arrangements:

1. Parties to certain Hong Kong-seated institutional arbitrations can already apply for pre-award interim measures at the relevant Intermediate People’s Court in Mainland China;
2. Parties to Hong Kong-seated institutional and ad hoc arbitrations can already apply for post-award interim measures at the relevant Intermediate People’s Court in Mainland China; and
3. Winning parties may apply to enforce arbitral awards made in Hong Kong-seated institutional and ad hoc arbitrations at the relevant Intermediate People’s Court in Mainland China and at the Court of First Instance in Hong Kong.

Following the inclusion of HKIAC on the Platform, applicants from Hong Kong-seated HKIAC arbitrations⁷ of international commercial disputes over RMB 300 million or with a significant influence now have two choices: (a) make any applications for preservation and mandatory measures and/or enforcement of arbitral award under the Existing Arrangements (i.e., to the relevant Intermediate People’s Court), or (b) make such applications through HKIAC on the Platform to CICC.⁸

The Intermediate People’s Court may, due to its proximity to and familiarity with the local state of affairs, be better suited particularly in cases where the whereabouts of evidence, assets and/or conduct are concentrated in one particular city or district. But thanks to its reach, CICC is more appropriate when it comes to regional or state-wide respondents whose evidence, assets and/or conduct are scattered across provinces. Direct access to CICC, which is a body within SPC, is thus paramount. Its rulings that grant preservation and mandatory measures are binding on lower courts.⁹ Where an applicant wishes to apply for evidence, asset, and/or conduct preservation in places in Mainland China that fall within the jurisdiction of various intermediate people’s courts, the applicant may now direct all preservation requests straight to CICC, whose rulings then bind all lower courts including intermediate people’s courts. Hearings before CICC are conducted by a panel of at least three bilingual senior judges appointed by SPC and experienced in cross-border trade and commerce and international treaties and customs.¹⁰ The seniority and expertise of these judges contribute to the expeditious adjudication of preservation and enforcement requests in support of HKIAC arbitral proceedings.

The enlisting of HKIAC on the Platform alongside the Existing Arrangements is a significant development for prospective commercial parties. This is expected to gather further interest in HKIAC arbitrations for preservation and enforcement in Mainland China. Commercial parties should also

find Hong Kong as an arbitral seat as well as HKIAC even more attractive to resolve disputes arising out of international and cross-border transactions, especially those with a Mainland China element.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

Hong Kong

Shaun Wu
852.2867.9088
shaunwu@paulhastings.com

Sarah Zhu
852.2867.9018
sarahzhu@paulhastings.com

Shanghai

Phoebe Yan
86.21.6103.2939
phoebeyan@paulhastings.com

John Tso

852.2867.9022
john_tso@paulhastings.com

London

Alex Leitch
44.020.3023.5188
alexleitch@paulhastings.com

Washington, D.C.

Joseph R. Profaizer
1.202.551.1860
joeprofaier@paulhastings.com

-
- ¹ Notice of the General Office of the Supreme Peoples' Court on Inclusion of the Second Group of International Commercial Arbitration Institutions in the "One-Stop" Diversified International Commercial Dispute Resolution Mechanism, Faban [2022] No. 326 (June 22, 2022), available on <https://cicc.court.gov.cn/html/1/219/208/210/2215.html> ("**Notice**"). There are 11 other arbitral and mediation institutions included on the Platform. All of them are institutions inside Mainland China, namely the China International Economic and Trade Arbitration Commission, the Shanghai International Economic and Trade Arbitration Commission, the Shenzhen Court of International Arbitration, the Beijing Arbitration Commission, the China Maritime Arbitration Commission, the Mediation Center of China Council for the Promotion of International Trade, the Shanghai Commercial Mediation Center, the Guangzhou Arbitration Commission, the Shanghai Arbitration Commission, the Xiamen Arbitration Commission, and the Hainan International Arbitration Court.
 - ² While what constitutes a significant influence has not been conclusively defined in the relevant rules and provisions, the phrase generally calls for a nationwide impact.
 - ³ Provisions of the Supreme People's Court on Several Issues concerning the Establishment of International Commercial Courts (effective since 1 July 2018) ("**Provisions**"), section 14(1); Procedural Rules for the China International Commercial Court of the Supreme People's Court (For Trial Implementation) (effective since 5 December 2018) ("**Rules**"), article 34.
 - ⁴ Provisions, section 14(2); Rules, article 35.
 - ⁵ Provisions, section 3.
 - ⁶ Looking Back on the Supplemental Arrangement on Mainland-Hong Kong Mutual Enforcement of Arbitral Awards (April 19, 2022), available on <https://www.paulhastings.com/insights/client-alerts/looking-back-on-the-supplemental-arrangement-on-mainland-hong-kong-mutual>; Applications for Interim Measures in Mainland China: Advantages of Arbitrating in Hong Kong (August 16, 2021), available on https://www.paulhastings.com/insights/client-alerts/applications-for-interim-measures-in-mainland-china-advantages-of#_ednref26.
 - ⁷ It is noted that, by including HKIAC on the Platform, the Notice has not distinguished between Hong Kong-seated and HKIAC arbitrations seated in jurisdictions other than Hong Kong. Whether this means that HKIAC arbitrations seated in jurisdictions other than Hong Kong can benefit from the Platform, or not, is yet to be seen.
 - ⁸ To be clear, parties to Hong Kong-seated HKIAC arbitrations of international commercial disputes of or below RMB 300 million and without a significant influence so far has one choice only, and that is to go through the Existing Arrangements.
 - ⁹ Provisions, section 6.
 - ¹⁰ Provisions, sections 4 and 5.

Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2022 Paul Hastings LLP.