

# Soundings

## China and Hong Kong: mutual recognition of asset preservation orders in arbitration

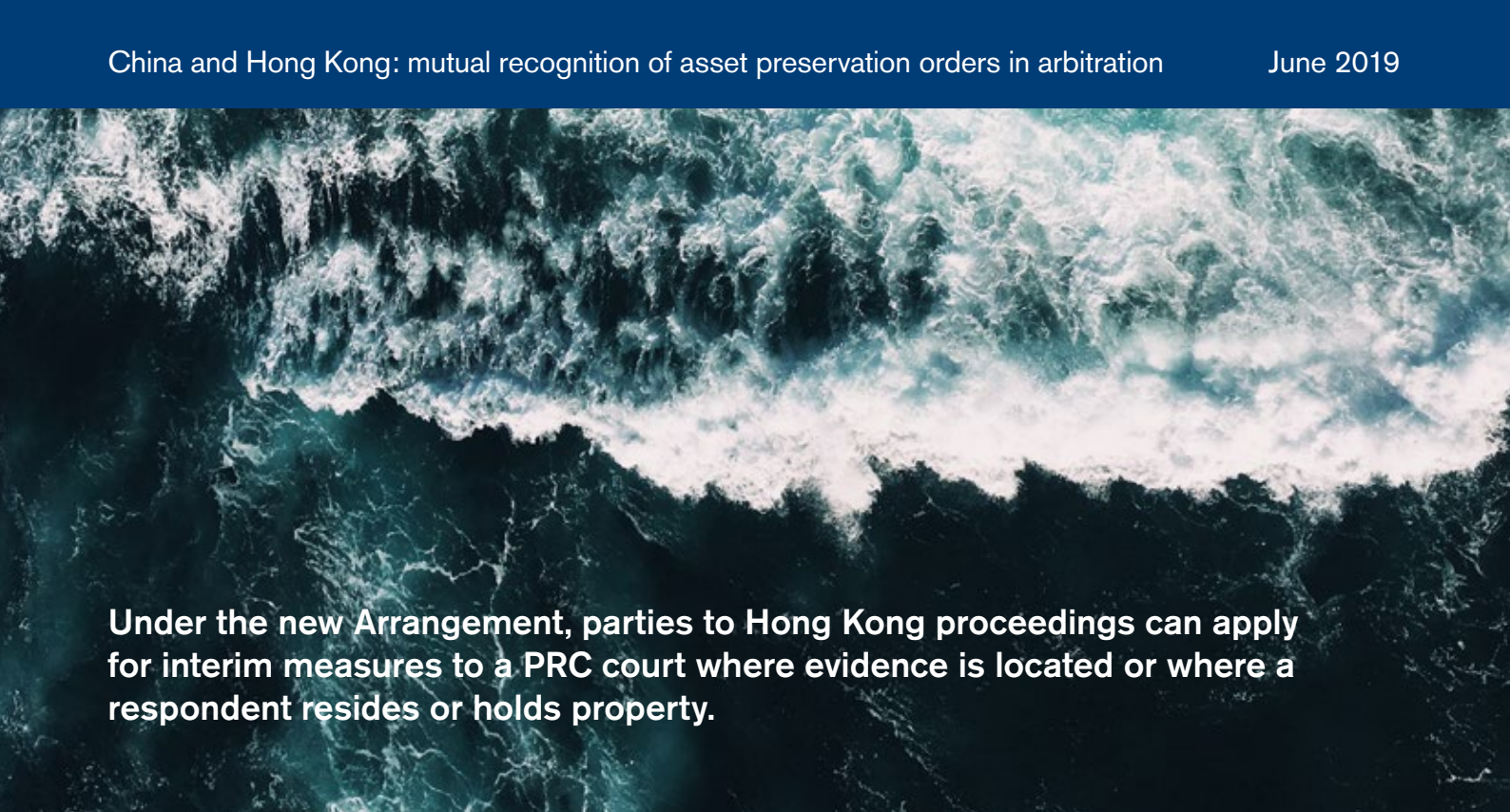
**Hong Kong and China have entered into a new mutual agreement whereby parties engaged in arbitration in one jurisdiction may take steps to preserve assets of their counterpart in the other jurisdiction by way of interim relief. This is likely to provide litigants with a useful additional method of securing assets in advance of an award.**

### **The Arrangement**

On 2nd April, 2019, the Hong Kong Government and the Supreme People's Court of China signed 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" ("Arrangement"). The effective date of the Arrangement is expected to be announced shortly.

Hong Kong and the People's Republic of China ("PRC") already have six legal assistance arrangements, including the enforcement of court judgements and awards. However,



## Under the new Arrangement, parties to Hong Kong proceedings can apply for interim measures to a PRC court where evidence is located or where a respondent resides or holds property.

this is the first time PRC courts are empowered to grant interim measures for the preservation of property or evidence for an arbitration in Hong Kong. Hong Kong is the only jurisdiction with this special facility.

The Arrangement also allows a party to arbitral proceedings in the PRC to apply to the Hong Kong courts for interim measures, though the impact of this is likely to be less significant.

### What are Interim Measures?

Until now, the only way to obtain interim relief from PRC courts was to commence arbitration or litigation in that jurisdiction. Under the new Arrangement, parties to Hong Kong proceedings can apply for interim measures to a PRC court where evidence is located or where a respondent resides or holds property.

Under the Arrangement, three forms of interim support will be available from the PRC courts:

- property preservation;
- evidence preservation; and
- conduct preservation.

The first two are similar to Mareva injunctions and Anton Piller orders under English law, with some important differences. Mareva injunctions restrain a respondent from disposing of, or dissipating, assets, whereas a property preservation order issued by the PRC courts applies directly to the asset itself. Anton Piller orders permit a

claimant to enter the respondent's premises to search for and seize documents as evidence, whereas the PRC courts use their own staff for this purpose. Conduct preservation restricts specific acts and is more relevant to intellectual property disputes than to maritime claims. In contrast to the English courts' rather draconian approach to property preservation orders, the PRC courts tend to take a more flexible approach.

Any application requires the approval of the Hong Kong tribunal and HKIAC will shortly publish guidelines for such requests.

Although the list of applicable Hong Kong arbitration institutions has not yet been published, the Arrangement is likely to cover HKIAC, ICCHK, CIETAC, but not 'ad hoc' arbitrations.

### A valuable tool

The new Arrangement does not change the practice for the enforcement of a final award or judgement in China (for which a 1999 mutual enforcement agreement exists). However, the new Arrangement provides a valuable ability to attach assets in the PRC in anticipation of a favourable award by a Hong Kong tribunal.

The Arrangement remains untested under PRC law and its implementation will be closely monitored.

**Members are welcome to contact the Managers directly for any further advice and guidance.**

### The UK Defence Club

Thomas Miller Defence Ltd, 90 Fenchurch Street, London, EC3M 4ST  
tel: +44 207 283 4646 fax: +44 207 204 2131  
email: [tmdefence@thomasmiller.com](mailto:tmdefence@thomasmiller.com) web: [ukdefence.com](http://ukdefence.com)