

HKMAG & Interim Measures in the PRC

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Outline

- 1. Hong Kong arbitration
- 2. The Hong Kong Maritime Arbitration Group (“HKMAG”)
- 3. The 2019 Arrangement & HKMAG

1. Hong Kong arbitration

- Arbitration Ordinance (Cap.609) came into effect in June 2011
- Based on [UNCITRAL Model Law](#) supplemented by provisions similar to the UK Arbitration Act 1996.
- Unified and self-contained legislative framework which respects parties' autonomy, limits the court's powers of intervention to ensure cost-effective and efficient resolution of disputes by arbitration.
- Hong Kong is a party to the [New York Convention](#) on the Recognition and Enforcement of Foreign Arbitral Awards.
- Hong Kong has also entered into reciprocal arrangements with the Mainland and Macao.

2. HKMAG

- The HKMAG Terms (2017) and HKMAG Small Claims Procedure (2017) are substantially based on London Maritime Arbitrators Association (LMAA) precedents, with kind permission, with changes made to incorporate references to Hong Kong arbitration law.
- Hong Kong is included in the BIMCO 2020 Law and Arbitration Clause.
- The HKMAG Arbitration Clause is suggested for inclusion in all contracts and has been developed in both long and short versions. (www.hkmag.org.hk/resources).

3. Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR

- **When:** 1 October 2019
- **Which proceedings:** Arbitrations commenced before or after 1 October 2019
- **What it does:** allows parties to seek interim Court assistance in Mainland China in aid of Hong Kong seated arbitration, and vice versa
- **Must be “qualified arbitral institution”. For Hong Kong this means:**
 - Hong Kong International Arbitration Centre
 - [Hong Kong Maritime Arbitration Group](#)
 - South China International Arbitration Center (HK)
 - eBRAM International Online Dispute Resolution Centre
 - AALCO Hong Kong Regional Arbitration Centre
 - China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center
 - International Court of Arbitration of the International Chamber of Commerce - Asia Office

[See: https://www.info.gov.hk/gia/general/202303/31/P2023033100302.htm](https://www.info.gov.hk/gia/general/202303/31/P2023033100302.htm)

3. How Does the Arrangement Work in China

- Before award issued,
- may apply to Intermediate People's Court of
 - place of residence of opponent party or
 - place where property or evidence is situated
- for interim measures.
- Arrangement Article 1: *““Interim measure”... includes, in the case of the Mainland, **property preservation, evidence preservation and conduct preservation;** “*

3. Basic Steps

1. The Hong Kong Qualified arbitral institution issues a letter for purpose of Arrangement.
2. Arrangement Article 4: must provide People's Court with:
 - i. application for interim measure;
 - ii. arbitration agreement;
 - iii. documents of identity of applicant;
 - iv. (where arbitration already accepted by arbitral institution) request for arbitration with the relevant evidential materials and a **letter from the relevant arbitral institution certifying its acceptance of the relevant arbitration case**;
 - v. any other materials required by the People's Court of the Mainland
3. The People's Court may require counter-security where preservation is requested (e.g. insurance company bonds).



3. HKMAG and the Arrangement

- HKMAG is a “qualified arbitral institution” **if the parties chose administered arbitration** and will issue the letter referred to in previous slide.
- **How:** use long/short HKMAG Administered Arbitration Clause:

This Contract shall be governed by and construed in accordance with Hong Kong / English* law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in Hong Kong in accordance with the Arbitration Ordinance Cap. 609 or any statutory reenactment or modification thereof save to the extent necessary to give effect to the provisions of this clause. (*)Delete as appropriate. If no deletion is made, Hong Kong law shall apply.*

The arbitration shall be administered by the Hong Kong Maritime Arbitration Group and conducted in accordance with the HKMAG Terms current at the time when the arbitration proceedings are commenced, as modified by the HKMAG Procedures for the Administration of Arbitration under the HKMAG Terms. The reference shall be to three arbitrators.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator and, if necessary, for the President of the HKMAG to appoint the sole arbitrator if the parties cannot agree on the appointment.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such sum as the parties may agree) the arbitration shall be conducted in accordance with the HKMAG Small Claims Procedure current at the time when the arbitration proceedings are commenced.

OR SHORT FORM:

Arbitration in Hong Kong as per HKMAG Administered Arbitration Clause and English / Hong Kong() law to apply (*delete as appropriate)*

- **Procedures:** <https://www.hkmag.org.hk/s/HKMAG-Administrative-Procedure-web-v2.pdf>

3. Administered HKMAG is Light Touch

Under the Procedures for the Administration of Arbitration under the HKMAG Terms (“the Procedures”):

- All the Parties have to do is:
 1. keep HKMAG informed of the commencement of the arbitration and the appointment of their arbitrator(s) (see paragraphs 3 and 4 of the Procedures); and
 2. copy HKMAG in on all communications, notices, documents, orders, directions and awards (see paragraph 6 of the Procedures).
- HKMAG will only charge a modest registration fee of HKD 1,000.00 (see paragraph 8.1).
- HKMAG will **not** charge an administrative fee, save for a fee of HKD 5,000.00 in respect of holding of funds (see paragraph 8.3 and <https://www.hkmag.org.hk/s/HKMAG-Fees-v2.pdf>)
- HKMAG will not ask the Parties to pay a substantial amount of deposit for the Tribunal’s costs at the commencement of arbitration.
- Tribunal’s costs, including request for security, will be dealt with in the usual ways as per the HKMAG Terms.
- Any request for deposit for the Tribunal’s costs by HKMAG will be made only after consulting with the Tribunal.

3. IM issued under the Arrangement so Far

- According to the HKIAC as of 21 April 2023:

“5.1.1. Since the Arrangement entered into force on 1 October 2019, HKIAC has issued Letters of Acceptance in respect of 93 applications. 88 applications were made for the preservation of assets, two were for the preservation of evidence, and three were for the preservation of conduct.”

- *“5.1.3. HKIAC is aware of 67 decisions issued by Mainland Courts. Of these 67 decisions, 63 granted the applications for preservation of assets upon the applicant’s provision of security and four rejected such an application. The total value of assets preserved by the 63 decisions amounted to RMB 15.7 billion or approximately USD 2.3 billion.”*

Source: https://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/IMA-FAQs/20230421%20HKIAC%20-%20PRC-HK%20Interim%20Measure%20Arrangement%20FAQs_.pdf

- HKMAG has its first administered arbitration this year (2023) but has not received an application so far.

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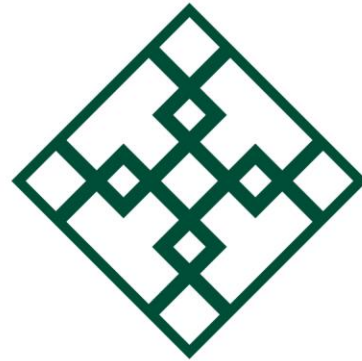
Arbitrator panels/ lists including:

HKMAG

ARIAS Asia

HKIAC

LMAA (supporting member)



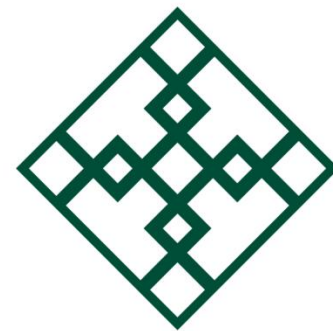
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