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MARITIME ARBITRATION IN HONG KONG

Bill Amos is an independent arbitrator and vice president of the Hong Kong Maritime Arbitration Group (HKMAG), an independent association of Hong Kong arbitrators with expertise in all maritime matters, dedicated to the swift and cost-efficient resolution of disputes.

In the following article Mr Amos discusses Hong Kong's inherent flexibility in the granting of interim injunctions, an option unavailable in London. While certain conditions may apply, because of the incorporation of the UNCITRAL Model Law in the Hong Kong Arbitration Ordinance (Cap.609), an applicant may avoid delay and additional expense incurred due to the necessity of court proceedings.

The Tribunal's Power to Grant Injunctions - the difference between London and Hong Kong arbitration

At the outset of a dispute a party to arbitration may have an urgent need for an injunction. Common examples include the preservation of assets by way of a freezing or Mareva order, or an anti-suit injunction to restrain proceedings in a foreign court.

There is an interesting point of difference between London and Hong Kong arbitrations, and more generally between English law and the UNCITRAL Model Law. That difference arises in the case of interim, as opposed to final, injunctions.

In short, a Hong Kong tribunal has power to grant interim measures/injunctions but a London tribunal in an ad hoc arbitration does not, unless the parties have expressly agreed to confer such power.

The reason for the divergence is to be found in the relevant statutes.

Hong Kong

Hong Kong's Arbitration Ordinance (Cap.609) has as its centrepiece the UNCITRAL Model Law on International Commercial Arbitration. Article 17 of the Model Law provides:

"Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures."

An equivalent statement does not appear in the UK's Arbitration Act 1996, with the result that a London tribunal has no purely statutory power by which to grant interim relief such as freezing orders or anti-suit injunctions.



Hong Kong Maritime Arbitration Group 香港海事仲裁協會



Bill Amos, Independent Arbitrator and Vice President of HKMAG



The Hong Kong Arbitration Ordinance goes on to define “interim measures” as including, amongst other matters, orders which require a party to refrain from taking action that is likely to cause harm to the arbitral process itself (e.g. anti-suit injunctions), and orders which provide a means of preserving assets out of which a subsequent award may be satisfied (e.g. freezing/*Mareva* injunctions).

The Ordinance gives clear and familiar guidance to the tribunal on the conditions for granting interim measures. The tribunal must be satisfied that damages are unlikely to be an adequate remedy, that the balance of convenience is in favour of the grant, and that there is a reasonable possibility that the applicant will succeed on the merits of the claim (s. 36).

London

In the UK the parties are of course free to agree on the powers exercisable by the arbitral tribunal in relation to the proceedings. But unless the parties have agreed to confer on the tribunal the power to order on a provisional basis any relief which it would have power to grant in a final award (e.g. an injunction), the tribunal has no such power (section 39 of the Arbitration Act 1996).

As regards general powers exercisable by the tribunal, section 38(4) provides:

“The tribunal may give directions in relation to any property which is the subject of the proceedings or as to which any question arises in the proceedings, and which is owned by or is in the possession of a party to the proceedings... (a) for the inspection, photographing, preservation, custody or detention of the property...”

So, an asset preservation order would be available from the tribunal, but only if that asset was the subject of the arbitration proceedings and owned by or in the possession of a party.

In other situations where there is a risk of dissipation of assets, a party to ad hoc arbitration proceedings in London would need to apply to the High Court for a freezing order.

Conclusion

The UK’s Arbitration Act reflects an expectation that urgent applications for injunctions are to be left to the courts, at least as regards disputes referable to ad hoc arbitration. Given the availability of duty judges for urgent business, this approach can have advantages in terms of speed, and enforceability.

In contrast, an applicant for an interim injunction in Hong Kong may need to choose between the court and arbitral routes. As described above, Hong Kong tribunals have the power to grant interim measures even in ad hoc arbitrations. And, where the arbitration is administered by approved authorities such as HKIAC, ICC, CIETAC or HKMAG, the ability to obtain asset freezing orders from the court in Mainland China is a unique advantage.

In the case of interim measures and injunctions, Hong Kong arbitration gives its users a range of options which are in many respects unparalleled.

The above is a summary of Mr Amos’ article published in Hong Kong Lawyer.

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In our second article examining maritime arbitration in Hong Kong, Edward Liu, a Partner at the Chinese law firm Haiwen & Partners LLP, explores recent arbitration-related arrangements between Hong Kong and the Mainland that afford the parties unprecedented advantages.

Unlocking Maritime Dispute Resolution - the Unique Advantages of Hong Kong’s Mutual Arrangements with Mainland China

Maritime dealings are inherently international, often involving multiple parties across different jurisdictions. A critical question that arises is: What makes Hong Kong a compelling choice compared to other established maritime arbitration centres?

As the only common law jurisdiction within China, Hong Kong benefits uniquely from the “one country, two systems” principle. This framework has allowed Hong Kong to establish significant arbitration-related arrangements with the Mainland, enhancing its attractiveness as a seat for arbitration.



Notably, the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings—signed on April 2, 2019—positions Hong Kong as the first jurisdiction outside the Mainland where parties involved in arbitrations administered by designated institutions can seek interim measures from Mainland courts, and vice versa. The Hong Kong Maritime Arbitration Group, one of these designated institutions, specialises in maritime and commercial disputes, boasting a roster of experienced shipping practitioners among its arbitrators.

By the end of 2023, Hong Kong's arbitral institutions had processed 105 applications for interim measures from the Mainland courts. Remarkably, the first application made under this Arrangement was a property preservation request related to a maritime dispute, submitted to the Shanghai Maritime Court just a week after the Arrangement took effect.

In addition to the Interim Measures Arrangement, the Arrangement Concerning Mutual Enforcement of Arbitral Awards—signed in 1999—provides a streamlined mechanism for the reciprocal enforcement of arbitral awards between the Mainland and Hong Kong. A Supplemental Arrangement, finalised in 2020, further refines this framework to align more closely with international arbitration practices.

Furthermore, a significant development occurred in January 2024 with the introduction of a mutual legal arrangement regarding the recognition and enforcement of judgments in civil and commercial matters between the Mainland and Hong Kong. This means that a judgment issued in Hong Kong can be enforced in Mainland China, provided certain criteria are met, and vice versa. This mutual recognition enhances the credibility and efficiency of maritime dispute resolution in the region.

In summary, Hong Kong's unique legal landscape, bolstered by strategic arrangements with the Mainland, positions it as a premier destination for maritime dispute resolution. The combination of experienced practitioners, effective legal frameworks, and reciprocal enforcement mechanisms not only facilitates smoother arbitration processes but also instils confidence in international parties considering their options. As the maritime industry continues to evolve, Hong Kong's role as a leading legal hub is set to strengthen, making it an increasingly attractive choice for resolving maritime disputes.



Edward Liu, Partner of Haiwen & Partners LLP

INVESTING IN HONG KONG: A PREFERRED DESTINATION FOR SHIPPING COMPANIES

Hong Kong has long been a major centre for shipping and trade. Due to strong fundamentals, such as strategic geographical position, low tax regime, a Common Law regime, ease of doing business, and since 1997 the one country two systems principle of governance, Hong Kong is home to many renowned shipping companies.

Kenneth Koo is a third generation, Group Chairman and CEO, of the dynastic Hong Kong shipping company, TCC Group. He describes how Hong Kong's natural advantages and growing integration with Mainland China represent advantages for prospective shipping investors that are persistently being enhanced.

"Hong Kong's geographical position offers an extraordinary natural advantage that cannot be ignored. Hong Kong is less than five hours from major East Asian and Southeast Asian cities (and fellow maritime centres). The transport infrastructure to Mainland China via high speed rail ramps up efficient travel within Mainland China exponentially. This places Hong Kong in an enviable position as Mainland China represents global shipping in so many aspects including owning, building, repairing, chartering, and cargo.



“China’s talent pool is virtually inexhaustible. It’s wealth of maritime universities produce top calibre graduates who are recognized by shipping enterprises across the globe,” he adds.

“In this respect, the One Country Two Systems principle gives Hong Kong another unique advantage. Hiring from the Mainland is easy. We find that Chinese university graduates (whether maritime or main stream) are highly motivated to come and work in Hong Kong.

“Last but not least, Hong Kong still has that shipping and shipowning culture and vibe. A very mature one that is demonstrated by the many longstanding family-owned shipowners who will always call Hong Kong home,” he concludes.

Angad Banga, is Chairman of the Hong Kong Shipowners Association, and Chief Commercial Officer of the Caravel Group, parent company of Fleet Management.

Mr Banga shares Mr Koo’s thoughts on the vital importance of Hong Kong’s geographical location. But he maintains it is the innovatory abilities of both the public and private sector to capitalise on this natural advantage that has made the territory a premier locale for shipping investment.

“Hong Kong’s competitive edge in the shipping industry is built on three key strengths: integrated services, global connectivity, and effective public-private partnerships driving growth,” Mr Banga insists.

“Hong Kong serves as a vital hub for an ecosystem of services essential to the shipping industry. As a leading global centre for financial services, commerce, and logistics, the city has a rich maritime history, providing specialised services tailored to industry needs. Its strategic location positions Hong Kong uniquely to advance the development of the Greater Bay Area, focusing on high-value logistics services, sustainability, and related fields. As trade routes evolve, enhancing connectivity and leveraging expertise become increasingly crucial.”

Mr Banga points to the role of Government in maximising the effectiveness and attractiveness of Hong Kong’s existing maritime ecosystem.

“The Hong Kong government’s Action Plan on Maritime and Port Development Strategy, much of which was endorsed in the Government’s annual Policy Address announced in October, is designed to revitalize, diversify, and future-proof the industry.

“This plan highlights the city’s commitment to investing in and innovating with green technologies, while also upskilling the workforce through education and training initiatives. These strong fundamentals ensure Hong Kong remains a strategically vital maritime hub ripe for investment,” Mr Banga claims.

Lastly, Gautam Chellaram, Chairman of Hong Kong dry bulk specialist KC Maritime, points to Hong Kong’s strong trade links and political stability as key components in the territory’s lure as a base for business operations.

“Hong Kong has strong trade links with major economies around the world, allowing shipping companies to tap into lucrative opportunities and expand their global reach,” says Mr Chellaram. “With its stable political climate and commitment to free trade, Hong Kong offers a secure operating environment for shipping businesses amidst geopolitical uncertainties in the region.”



Kenneth Koo, Group Chairman and CEO of TCC Group



Angad Banga, Chairman of the Hong Kong Shipowners Association and Chief Commercial Officer of Caravel Group



Gautam Chellaram, Chairman of KC Maritime



The valuable insights raised by Mr Banga, Mr Koo, and Mr Chellaram, in favour of Hong Kong as an investment target would be argument enough for many overseas and Mainland shipping companies to speculate on the territory.

But potential investors considering a presence in Hong Kong should also note that in 2020 the Hong Kong Government rolled out tax concessions and exemptions for ship leasing business. This was followed in 2022 by half-rate tax concessions for marine insurance, ship management, ship agency and ship broking. These measures were well received by the high-value-added segments of shipping business.

The introduction of targeted tax concessions has proven to be an effective tool for the augmentation of the maritime ecosystem, thus the recent Policy Address contained a pledge that Government will actively promote the existing tax concessions while introducing new tax deduction arrangements for ship lessors.

Depending on the findings of an ongoing study, the government will also seek to enhance the preferential tax regimes for shipping companies in a way that is compliant with the OECD's BEPS 2.0 and explore ways that it can extend its assistance to physical commodity traders by similar means.

CYBER ATTACKS AMONG THE TOP THREE PERCEPTIONS OF RISK AMONG MARITIME LEADERS

According to the latest edition of the International Chamber of Shipping's (ICS) Maritime Barometer Report, cyber-attacks were among the top three risks identified by its members.

As maritime sectors increasingly adopt digital solutions, the probability and risk of disruptive cyber-attacks grows correspondingly. Respondents to the ICS concluded that cyber threats were a growing risk faced with decreasing confidence in maritime's ability to mitigate its effects.

The growth of cyber exposure cannot be impeded without the implementation and enforcement of robust standards. The Hong Kong shipping community along with its global counterparts should refer to the IACS Unified Requirements, which this year place requirements on newbuild vessels for cybersecure systems and integration.

Many responsible shipowners in Hong Kong and elsewhere have invested heavily in securing their networks. Still major international shipping lines and several important ports have fallen victim to hacking events. Meanwhile, the insurance industry has been actively looking into producing products that provides comprehensive cover to a company's entire ecosystem including but not limited to vessels.

Carlos Grijalva, the Cyber Lead at international insurance broker WTW Willis in Hong Kong says it is not a matter of if a cyber-attack will occur but when. He notes that both insurers and insured are going through a learning curve. Insurers are learning how to activate the demands of the policies and how to make the insurance tangible. Meanwhile the comprehensive cover that shipowners require, including physical damage to the ship is becoming increasingly available to shipowners in Hong Kong and the region as a whole. Where companies have built robust networks, the additional layer of risk management that the appropriate policy can provide, means both parties will benefit against this scourge.

