



A Real Construction Arbitration Case with Interplays from Mainland Courts

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Tim Yimin LIU, FCI Arb, is a partner with Global Law Office. Tim advises clients on complex corporate and commercial matters. On dispute resolution, Tim represents clients in litigations and arbitrations/mediation, both China seated and cross-border, in various capacities such as legal counsel advocating for client's interest, or neutral professional assessing a case before formal proceedings, or as arbitrator, mediator or expert as appointed by the parties or nominated by the institutions. Tim is a commercial mediator appointed by Shenzhen Qianhai People's Court.

Admissions and Bars

- The People's Republic of China
- Washington D.C., the USA
- New York State, the USA
- Astana International Financial Centre Court, the Republic of Kazakhstan, Lawyer, Full Right of Audience
- Dubai International Financial Centre Court, UAE, Legal Practitioner, Full Right of Audience
- Singapore International Commercial Court, Foreign Registered Lawyer, Full Registration

Panel Admission as arbitrator and mediator

- BVI International Arbitration Centre
- Maldives International Arbitration Centre
- Prime Dispute, U.K.
- Saudi Center for Commercial Arbitration, Saudi Arabia
- Shanghai Arbitration Commission, China

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01

A Real Construction Arbitration Case 案例引入

Claimant: a Construction Contractor

Respondent: Developer (Client)

application for property preservation

raise objections for exceeding the value
of the subject at dispute

back to SHAC and make arbitral awards

apply to rectify arbitral awards for
mistake in calculation

apply to set aside arbitral awards
or refuse enforcement



SHAC

02

The Property Preservation in Arbitral Proceedings

仲裁财产的保全

Legal Basis: urgency, legitimate rights, irreparable loss
Art. 104.1 PRC Civil Procedure Law

(2021)京01财保107号

Application to be made directly to competent courts by claimants

仲裁申请人直接向法院申请财产保全

(2021)沪0104财保5号

Application to be made to competent courts by the arbitration commission

仲裁委将保全申请书提交至法院

Which court? | 管辖法院的确定

The **primary court** in the place where the respondent is domiciled or the property for which preservation is applied

被申请人住所地或被申请保全的财产所在地的基层人民法院

*Provisions of the Supreme People's Court
on Issues Concerning the Enforcement by
People's Courts (for Trial Implementation)
(Amended in 2020) Article 9*

《最高人民法院关于人民法院执行工作若干
问题的规定（试行）（2020修正）》第九条

Intermediate Court in Beijing

Notice of the Higher People's Court
of Beijing Municipality on the
Decision that Arbitration
Enforcement Cases Shall be
Uniformly within the Jurisdiction of
Intermediate People's Courts

《北京市高级人民法院关于
仲裁执行案件统一由中
级人民法院管辖的通知》



“... within the
jurisdiction of **the
Intermediate People's
Court** at the
residence place of the
debtor or the place of
the property to be
enforced”

由被执行人住所地或者
被执行的财产所在地的
中级人民法院管辖

Referred by Arbitration Commission | 仲裁委的转递

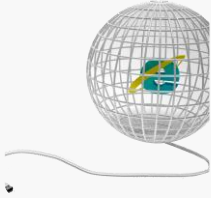
Article 28.2: Where a party applies for the adoption of property preservation measures, **the arbitration commission** shall submit the application to the People's Court in accordance with the relevant provisions of the Code of Civil Procedure of the People's Republic of China.

第28条第2款：当事人申请财产保全的，**仲裁委员会**应当将当事人的申请依照民事诉讼法的有关规定提交人民法院。

PRC Arbitration Law (Amendment 2017)

《中华人民共和国仲裁法（2017修正）》

Remedies if Disagreeing with the Court Order on Preservation



PRC Civil Procedure Law 2021



Article 111: “A litigant who disagrees with the ruling on preservation may **apply for review once**. **Enforcement of the ruling shall NOT be suspended** during the review period.”

Provisions of the Supreme people’s court on Several Issues concerning Cases of Property Preservation Handled by People’s Courts (Amended in 2020)

Article 25: “... , it may apply to the people’s court which makes the ruling for **reconsideration** once **within five days** from service of the order ... the court shall decide on such review petition **within 10 days**.”



*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 SAR*

《关于内地与香港特别
行政区法院就仲裁程序
相互协助保全的安排》



HKIAC Statistics

Since 1 October 2019

- **80** applications made to **26** different mainland courts
- **52** decisions issued by mainland courts went to HKIAC:
 - of which, **49** granted and **4** rejected.
 - The total value of assets so preserved amounted to **RMB 13.3 billion** (approx. USD 2.1 billion)

In 2021

- **25** applications submitted to **15** different mainland courts
- Total value of assets so preserved amounted to **RMB 1.5 billion** (approx. USD233.6 million)
- Average time to issue a decision: **17.7** days

“Arbitral Proceedings in Hong Kong” | “香港仲裁程序”



- ✓ seated in the HKSAR 仲裁地在香港
- ✓ be administered by listed agencies or permanent offices
仲裁程序由有关机构或者常设办事处管理
- ✓ commercial arbitration between equal parties
平等主体间的商事仲裁

“Arbitral Proceedings in Mainland” | “内地仲裁程序”



arbitration proceedings administered by an arbitration agency in the Mainland



内地仲裁机构管理的仲裁程序

Mainland VS. HK in the application for Interim Measures

	to Apply for Interim Measures to a People's Court of the Mainland	to Apply for Interim Measures to a Court of HK
Types	preservation on property, evidence, and conducts	injunctions and other interim measures
Competent courts	the intermediate court of the Mainland at the place where the respondent is domiciled or the place where property or evidence is situated	the High Court of the HK
Proceedings	application for preservation before and after the commencement of arbitration	
Examination	the applicant needs to provide security/bond, etc.	the applicant needs to make an undertaking or to provide security for the fee, etc.

03

The Enforcement of Arbitral Awards

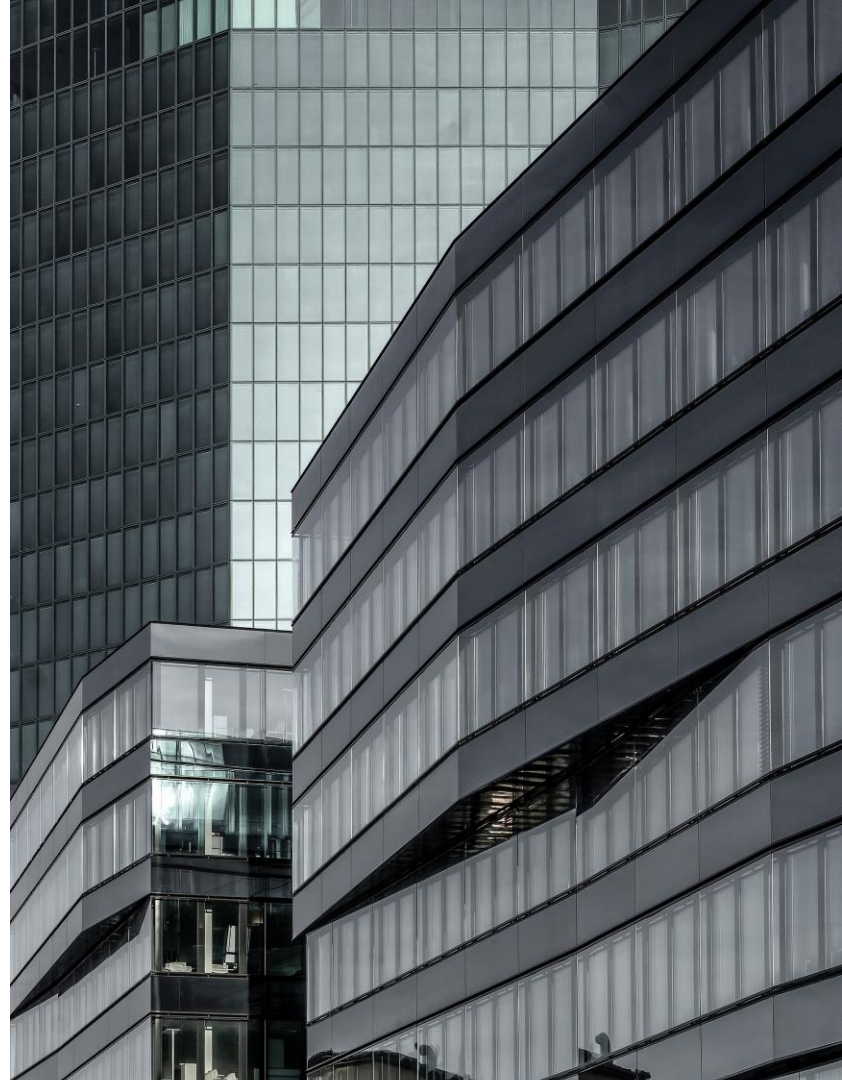
仲裁裁决的执行

Which court?

管辖法院的确定

“...the intermediate people's court at the place of **residence of the party** against whom the award is being enforced or at the **location of the property** against whom the award is being enforced”

被执行人住所地或被执行人财产所在地的中级人民法院



”the court ordered property preservation shall refer the case to the court in charge of award enforcement...”

《关于审理民商事仲裁司法审查案件若干问题的意见》（苏高法审委〔2010〕11号）第四十九条规定：“采取财产保全措施的人民法院与执行仲裁裁决的人民法院不一致的，采取保全措施的人民法院应当根据执行仲裁裁决的人民法院的请求，在五日内移送保全卷宗。”

**the intermediate court
enforcing an
arbitration award**
中级法院执行仲裁裁决



**the primary court
issues and enforces the
property preservation order**
基层法院采取保全措施

Grounds for refusing enforcement

	Domestic Awards	Domestic Awards w/ Foreign Elements	International Awards
Common Grounds	(1) the arbitration matter beyond the scope of the arbitration agreement		
	(2) the composition of the arbitral tribunal or the arbitration procedures is/are in violation of statutory procedures		
	(3) against the public interest		
	(4) no arbitration clause or arbitration agreement		
		(5) the respondent has not received a notice (from arbitrators or notice on arbitration procedure), or the respondent is not given a chance to be heard	
Different Grounds	(5) the evidence is fabricated or concealed (6) the arbitrators have committed bribery or favoritism or perverted the law		(6) the parties to arbitration agreement are not in the capacity of entering arbitral agmt (7) the subject matter of the dispute is not arbitrable (8) arbitration award has not become binding on the parties, been set aside, or suspended

Objection to Enforcement V. Setting Aside

	application for refusing enforcement	application for setting aside
Time limit for application	within 15 days from the date when the notice of enforcement is served	within six months of its receipt of the application award document
Competent Court	the intermediate people's court at the place of residence of the debtor or at the location of the property	the intermediate people's court at the place where the arbitration commission is located
Court Fees	Free of charge	RMB 400

Mutually exclusive

(when one application is dismissed for whatever reason, the other application can not be raised)

Q&A

THANK YOU!

谢谢



Tim 刘一民律师

上海 静安



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