

立法會 *Legislative Council*

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Bills Committee on Arbitration Bill

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper sets out the background of the Arbitration Bill and gives a brief account of the past discussions by the Panel on Administration of Justice and Legal Services (the Panel) on the proposed legislation to reform the law of arbitration in Hong Kong.

Background

Existing law

2. The existing Arbitration Ordinance (Cap. 341) provides separate regimes for the conduct of domestic and international arbitrations in Hong Kong. The regime for domestic arbitrations is largely based on the United Kingdom (UK) arbitration legislation, while the regime for international arbitrations is based on the UNCITRAL Model Law on International Commercial Arbitration (Model Law) adopted by the United Nations Commission on International Trade Law (UNCITRAL).

3. In comparison with the law for domestic arbitration, the Model Law limits opportunities for judicial intervention and supervision, while granting more autonomy to the parties and the arbitral tribunal. A comparison on the differences between the two arbitration regimes under the existing Ordinance as provided by the Department of Justice (DoJ) is in **Appendix I**.

Proposal for reform of arbitration law

4. The proposal to create a unitary system of arbitration law was first mooted by the Committee on Arbitration Law of the Hong Kong International Arbitration Centre (HKIAC) set up in 1992. In its report issued in 1996 (the 1996 report), the HKIAC Committee was of the view that, to keep pace with the needs of modern arbitration community domestically and internationally, the Arbitration Ordinance should be completely redrawn in order to apply the Model Law equally to both domestic and international arbitrations. However, as the unification of the two arbitral systems was a complex issue, the Committee recommended, as an interim measure, that limited improvements be made to the Ordinance to minimize the differences between

the two systems. The HKIAC Committee's recommendations were implemented by way of the Arbitration (Amendment) Ordinance 1996, which promoted greater party autonomy, vested primary authority in arbitral tribunals and limited the scope of court intervention during arbitral proceedings.

5. In 1998, the Hong Kong Institute of Arbitrators (HKI Arb) in co-operation with HKIAC established a Committee on Hong Kong Arbitration Law to follow up on the 1996 report. The HKI Arb Committee issued a report in 2003 recommending that the existing Ordinance should be redrawn and a unitary regime with the Model Law governing both domestic and international arbitrations should be created. At its meeting on 27 June 2005, the Panel was consulted on the recommendations of the HKI Arb Committee and the proposals of DoJ to take forward those recommendations. Having obtained the Panel's support, DoJ set up in September 2005 the Departmental Working Group (the Working Group), which was chaired by the Solicitor General and comprising representatives of the legal profession, arbitration experts and relevant government officials, to formulate legislative proposals to implement the recommendations in the report of the HKI Arb Committee.

Consultation Paper on Reform of the Law of Arbitration

6. On the basis of the legislative proposals prepared by the Working Group, DoJ published a Consultation Paper on Reform of the Law of Arbitration in Hong Kong and draft Arbitration Bill (Consultation Paper) on 31 December 2007 to seek views on reform of the law of arbitration in Hong Kong. The consultation period ended on 30 June 2008.

7. DoJ proposes in the Consultation Paper the creation of a unitary regime for all types of arbitration on the basis of the Model Law, thereby abolishing the distinction between domestic and international arbitrations under the existing Ordinance. The draft Bill adopts the structure of the Model Law as its framework. The purpose of the reform is to make the law of arbitration more user-friendly to arbitration users both in and outside Hong Kong. It will enable the Hong Kong business community and arbitration practitioners to operate an arbitration regime which accords with widely accepted international arbitration practices and development. The reform will also help promote Hong Kong as a regional centre for dispute resolution.

Discussions of the Panel on the Consultation Paper

Meeting on 28 January 2008

8. The Panel received a briefing from DoJ on the Consultation Paper at its meeting on 28 January 2008. The Panel noted that the Consultation Paper had been sent to arbitration institutes, representatives of the legal profession, academics, relevant government bureaux and departments, various public authorities and private organizations concerned to seek their views on the proposals for reform.

9. Regarding the concern previously expressed by the construction industry, which represented the largest users of domestic arbitrations in Hong Kong, that certain rights and protections of domestic users of arbitrations would be removed following the adoption of a unitary regime of arbitration, the Panel was advised that certain provisions under the current Ordinance that only applied to domestic arbitration had been retained as opt-in provisions under the draft Bill. These provisions related, inter alia, to determination of a dispute by a sole arbitrator in default of agreement, consolidation of arbitrations, determination of a preliminary point of law by the Court of First Instance, challenging an arbitral award on ground of serious irregularity and appeal against an arbitral award on point of law. Members noted that it was provided under Part 11 of the draft Bill that parties to an arbitration agreement could expressly provide in the arbitration agreement as to whether any of the opt-in provisions in Schedule 3¹ should apply.

10. The Panel was also advised that to address the concern raised by the construction industry where users of standard form contracts might continue to use the term "domestic arbitration" in such contracts either before or for sometime after the commencement of the new ordinance, it was provided under Part 11 of the draft Bill that, where an arbitration agreement entered into before, or at any time within a period of six years after, the commencement of the new ordinance, stipulated that an arbitration under that arbitration agreement should be a "domestic arbitration", all the opt-in provisions under Schedule 3¹ to the draft Bill should automatically apply to the arbitration agreement subject to any express agreement to the contrary between the parties.

11. Regarding the legal profession's concern that a right to appeal against arbitral awards was provided in domestic arbitration but not in international arbitration, the Administration explained that given that the global trend was to minimize court's interference in arbitral awards, an appeal mechanism was not provided in the Model Law. To address the concern, section 23 of the existing Ordinance concerning appeal against arbitral awards on question of law was retained as an opt-in provision in Schedule 3¹ to the draft Bill.

12. As the Consultation Paper had addressed the concerns raised by the Panel and other organizations during previous discussions, members expressed general support for it.

Meeting on 23 February 2009

13. At its meeting on 23 February 2009, the Panel was briefed on the responses received on the Consultation Paper and the progress of the Bill. The Panel noted that over 40 responses had been received during the six-month consultation period, with general support among the respondents for the proposed unitary regime of arbitration.

¹ Schedule 3 to the draft Bill now appears as Schedule 2 to the gazetted Bill.

The major issues raised by members are summarized in the ensuing paragraphs.

Whether court proceedings relating to arbitration should be heard in open court

14. Clause 16 of the draft Bill provided that court proceedings under the draft Bill should be heard in open court unless otherwise ordered. In this regard, the Panel was advised that the majority of the respondents to the Consultation Paper, including those from the legal and arbitration professions such as the Hong Kong Bar Association (the Bar Association) and the Hong Kong Institute of Arbitrators, took the view that as confidentiality was a key aspect of arbitrations, the presumption of confidentiality in arbitral proceedings should take precedence and suggested that Clause 16 of the draft Bill should be amended to provide that court proceedings relating to arbitration should be heard otherwise than in open court, unless on the application of any party or on the court's initiatives in any particular case, the court was satisfied that the proceedings ought to be heard in open court.

15. Some members were of the view that, having regard to the fundamental principle of openness of court proceedings and given the limited role of the court envisaged under the draft Bill, court proceedings involving arbitration, like other court proceedings, should generally be heard in open court, unless there were strong justification otherwise. It was pointed out that while arbitration was a private consensual method of dispute resolution, the court was a public institution for the administration of justice. When the court was asked to intervene to determine the question of whether an arbitral award should be set aside, the court was not merely resolving a private dispute but also adjudicating on issues involving legal principles. These members stressed that the fundamental principle of open justice should not be discarded lightly for the sake of attracting more arbitration business. The Administration advised that it would have regard to all the views received as well as the deliberations of the Working Group before making a policy decision on the issue.

16. Members may wish to note that clause 16 of the gazetted Bill provides that as a starting point, court proceedings under the Bill are to be heard otherwise than in open court, unless on the application of any party or on the court's initiatives in any particular case, the court is satisfied that the proceedings ought to be heard in open court.

Whether arbitral awards should be made available for public reference

17. Some members considered that with the increasing use of arbitration for resolution of disputes, it would be beneficial to have the guiding principles in important arbitral awards made available for reference of the arbitration profession and research purpose. Such information would provide valuable reference on procedural and substantive issues that arose during arbitration proceedings. The Administration was urged to explore, in consultation with the legal professional bodies and the arbitration organizations, whether the legal or guiding principles in arbitration decisions could be made available to the public in some form after having obliterated personal and sensitive data therein.

18. The Administration stressed that it was important to adhere to the international practice that arbitral awards should only be made public with the consent of the parties concerned, having regard to the private and confidential nature of arbitrations. The Chairman of the Bar Association advised that members' suggestion concerning publication of arbitral awards could be pursued. He pointed out that internationally reports of arbitral awards had been published which were essentially limited to the principles emanating from the cases of wider interest than merely to the parties themselves, without offending the principle of privacy and confidentiality inherent in arbitral awards. The publication of such reports was usually based on an arrangement between publishing houses and individual practitioners in the arbitration field.

Appointment of judges as arbitrators or umpires

19. Clause 32 of the draft Bill provided for the possible appointment of judges as arbitrators or umpires. An alternative proposal had been made in the Consultation Paper that judicial officers should not serve as arbitrators or umpires unless under two exceptions². The Panel was advised that most of the respondents in the consultation exercise were in favour of the alternative proposal. Some members shared the view that judges should as far as possible refrain from serving as arbitrators as it would impact on judicial resources.

20. Members may wish to note that clause 32 of and Schedule 2 to the draft Bill relating to appointment of judges as arbitrators or umpires have been omitted from the gazetted Bill.

Power of arbitrator to act as mediator

21. Some members expressed concern about clause 34³ of the draft Bill which empowered an arbitrator to act as a mediator upon consent of all parties in writing after the commencement of arbitral proceedings. They queried whether a person was able to perform effectively the two distinctive roles of arbitrator and mediator in the same case. It was pointed out that while an arbitrator was required to maintain his impartiality at all times, a mediator might communicate with the parties separately and solicit confidential information from a party for purposes of settlement during the mediation proceedings. Such initiatives might affect the perception of impartiality of the arbitration process if the mediation proceedings subsequently terminated without reaching a settlement and the arbitrator-turned-mediator resumed his role as an arbitrator. They considered that the Bill should not include any provision on arbitrator acting as mediator as the existence of such provision might give the public

² The first exception is that a judicial officer may accept appointment as a sole arbitrator only in relation to arbitral proceedings of which he or she has been acting as a sole arbitrator prior to his or her taking up appointment as a judicial officer. The second exception is when a judicial officer is required to act as a sole arbitrator in any particular arbitral proceedings for any constitutional reason.

³ Clause 34 of the draft Bill now appears as clause 33 of the gazetted Bill.

the perception that it was a desirable arrangement and legal intervention into any arbitral process should be kept to the minimum, unless there was a need to do so.

22. The Administration advised that allowing an arbitrator to serve also as a mediator in the same case was not something novel introduced by the draft Bill. The current Ordinance contained similar provisions empowering an arbitrator to act as a mediator, subject to the consent of all parties concerned. The Administration further advised that in the absence of any statutory provision in this regard, it would still be up to the parties concerned to decide whether their arbitrator should also act as the mediator, albeit there was no legislative backing for such an arrangement. The parties concerned could apply to the court for an order to treat any settlement arising out of the mediation process as an arbitration decision. The Panel also noted from the Chairman of the Bar Association that in practice, most arbitrators would unlikely agree to act as a mediator and then change back to an arbitrator again if the mediation failed, given that the processes of the two alternative dispute resolution methods were very different.

Enforcement of awards of arbitral tribunal

23. Clause 85(2) of the draft Bill specified that no leave should be granted by the court unless the party seeking to enforce an arbitral award made outside Hong Kong could demonstrate that the court in the place where the award was made would act reciprocally in respect of arbitral awards made in Hong Kong. The adding of the new requirement was to ensure that the enforcement of arbitral awards made outside Hong Kong were all granted on the principle of reciprocity. Under section 2GG of the current Arbitration Ordinance, the courts in Hong Kong can enforce an arbitral award without proof of reciprocity. The Panel was advised that the majority of the respondents to the Consultation Paper had expressed reservations about the introduction of the reciprocity requirement, and were in favour of retaining the existing arrangement under section 2GG of the current Ordinance which was considered to be more conducive to the objective of the reform in promoting Hong Kong as a regional centre for arbitration services.

24. Members may wish to note that Part 10 of the gazetted Bill retains the statutory scheme under section 2GG of the current Arbitration Ordinance for the enforcement of arbitral awards made, whether in or outside Hong Kong, in arbitral proceedings by an arbitral tribunal.

Relevant papers

25. A list of the relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix II**.

Differences between the two arbitration regimes under the Arbitration Ordinance

11. Annex I compares the domestic and international arbitration provisions of the Arbitration Ordinance. The significant differences between the two are as follows:

- (a) There is more scope for court intervention or assistance in domestic cases. Thus, the Court may, in domestic arbitrations but not in international arbitrations:
 - (i) order two or more related arbitrations to be consolidated or heard concurrently if they involve common issues (s 6B(1));
 - (ii) appoint an arbitrator in consolidated proceedings if all parties thereto cannot agree as to the choice of arbitrator (s 6B(2));
 - (iii) where a party fails to comply with an arbitrator's order, extend the arbitrator's powers to continue with the reference in default of appearance or of any other act by that party, for example, by enabling the arbitrator to dismiss a claim peremptorily, or make a default award without risking his removal or his award being set aside on the ground of misconduct (s 23C);
 - (iv) on the application of a party with the consent of either the arbitrator or the other parties, determine any question of law arising in the course of the reference, whether the question relates to the tribunal's jurisdiction or not (s 23A);
 - (v) determine an appeal on any question of law arising out of an award by confirming, varying or setting aside the award, or remitting the award to the reconsideration of the arbitrator (s 23(2)-(4));
 - (vi) order the arbitrator to state the reasons for his award in sufficient detail to enable the Court to consider any question of law arising out of the award (s 23(5)-(6));
 - (vii) where the dispute involves the question whether a party has been guilty of fraud, order that the agreement shall cease to have effect or give permission to revoke the authority of an arbitrator (s 26(2));

- (viii) where an arbitrator refuses to deliver his award except on payment of the fees demanded by him, and the parties believe that the fees are excessive, order that the arbitrator shall deliver the award to the applicant on payment into Court by the applicant of the fees, in which event the fees shall be assessed by the Court (s 21).
- (b) If the parties fail to agree as to the number of arbitrators, there will be only one arbitrator if it is a domestic case (s 8), but may be either one or three arbitrators as decided by the HK International Arbitration Centre if it is an international case (s 34C(5)).
- (c) The parties to a domestic arbitration have a “reasonable opportunity” to present their cases under section 2GA(1)(a), while the parties to an international arbitration have a “full opportunity” to do so under Article 18 of the Model Law.
- (d) The grounds on which an arbitrator may be removed are wider in domestic cases. Whereas the Court may remove an arbitrator in a domestic case if he has “misconducted himself or the proceedings” (s 25(1)), an arbitrator in an international case may be challenged only if circumstances exist that give rise to “justifiable doubts as to his impartiality or independence”, or if he does not possess qualifications agreed to by the parties. (Article 12)
- (e) Whereas section 25(2) sets out the grounds on which the Court may set aside an award in a domestic arbitration in general terms,⁶ the grounds of review applicable to an international arbitration as provided by Article 34 of the Model Law are narrow and exhaustive. The Court in an international arbitration case would not examine whether the arbitral tribunal has acted negligently or incompetently or has produced a badly reasoned award.

⁶ That is, the arbitrator has “misconducted himself or the proceedings”, or an arbitration or award has been “improperly procured”.

- (f) Section 13A provides that a judge, magistrate or public officer may accept appointment as a sole or joint arbitrator by virtue of a domestic arbitration agreement if certain conditions are met. There is no equivalent provision for international arbitration cases.

Source: Paper provided by the Administration on the Report of the Committee on Hong Kong Arbitration Law of the Hong Kong Institute of Arbitrators dated June 2005
(LC Paper No. CB(2)1792/04-05(01))

Comparison between the domestic and international arbitration provisions in the Arbitration Ordinance

(a) Major differences between the domestic and international arbitration provisions

Subject matter	Domestic arbitration regime	International arbitration regime
Death of a party	Arbitration agreement shall not be discharged by death of any party (s 4)	None
Bankruptcy	Provisions dealing with the situation when a party is adjudged bankrupt (s 5)	None
Number of arbitrators	In the absence of any agreement, the reference shall be to a single arbitrator. (s 8)	In default of agreement, the number of arbitrators is to be either one or three as decided by the HKIAC. (Art. 10(2) & s 34C(5))
Umpires	Subject to contrary agreement, a two-arbitrator tribunal may appoint an umpire (s 10)	None
Power of judges to take arbitration	A judge, magistrate or public officer may accept appointment as a sole or joint arbitrator, or as umpire (s 13A)	None
Consolidation of arbitrations	Court may order two or more related arbitrations to be consolidated (s 6B(1))	None
Appointment of arbitrator or umpire in consolidated proceedings	Court may appoint arbitrator or umpire in consolidated proceedings if parties thereto cannot agree as to the choice of arbitrator or umpire (s 6B(2))	None

Party appointment of sole arbitrator in two-arbitrator tribunal cases	Subject to contrary agreement, where the reference is to two arbitrators, one to be appointed by each party, but one of the parties fails to make an appointment, the other party may appoint the arbitrator appointed by him, as sole arbitrator in the reference. The Court may, however, set aside the appointment. (s 9 proviso)	None
Appointment of substitute arbitrator	Court may, on the application of a party, appoint a person to replace an arbitrator who has been removed by the Court under s 15(3) (failure to use all reasonable dispatch in proceeding with reference) or s 25(1) (misconduct), or whose authority has been revoked by permission of the Court under s 26 (question of fraud). (s 27)	Where the mandate of an arbitrator terminates under Art. 13 (doubts as to impartiality or independence) or Art. 14 (failure or impossibility to act), a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced. (Art. 15) Hence, where the original arbitrator is appointed by HKIAC under Art. 11(3) & (4), it will be HKIAC which appoints the replacement.
General responsibilities of tribunal	Tribunal required to act fairly and impartially as between the parties. (s 2GA(1)(a))	Arbitrator may be challenged if there are justifiable doubts as to his impartiality <i>or independence</i> . (Art. 12(2))
Opportunity to present case	Tribunal required to give the parties a <i>reasonable</i> opportunity to present their cases. (s 2GA(1)(a))	Each party shall be given a <i>full</i> opportunity of presenting his case. (Art. 18)

Interlocutory orders to deal with party defaults	Where a party fails to comply with an arbitrator's order, the arbitrator or other party may apply to the Court for an order extending the arbitrator's powers to continue with the reference in default of appearance or of any other act. (s 23C)	None
Interim (or partial) awards	Subject to contrary agreement, arbitrator has power to make partial awards (s 16)	None
Specific performance	Subject to contrary agreement, tribunal may order a party to perform a particular act (s 17)	None
Reference of interpleader issues to arbitration	Court may direct interpleader issues to be determined in accordance with arbitration agreement (s 7)	None
Determination of preliminary point of law by Court	A party may apply to the Court to determine any question of law arising in the course of the reference (s 23A)	The power is restricted to the determination of questions of the tribunal's jurisdiction only. (Art. 16(3))
Appeal on a point of law	A party may appeal to the Court on any question of law arising out of an award. On the determination of such an appeal, the Court may confirm, vary or set aside the award, or remit the award to the reconsideration of the arbitrator. (s 23(2) - (4))	None

Order that reasons for award be given	Court may order the arbitrator to state the reasons for his award in sufficient detail to enable the Court to consider any question of law (s 23(5) - (6))	Subject to contrary agreement, tribunal is required to give reasons for award. (Art. 31(2)) However, no judicial remedy is available if it fails to give reasons.
Power of Court to deal with questions of fraud	Court has power to give relief where the dispute involves the question whether a party has been guilty of fraud (s 26(2))	None
Removal of arbitrator for misconduct	Court may remove arbitrator if he has “misconducted himself or the proceedings”. (s 25(1))	An arbitrator may be challenged only if there are “justifiable doubts as to his impartiality or independence”, or if he does not possess qualifications agreed to by the parties. (Art. 12(2) & 13(3)) The concept of misconduct is arguably broader than failing to demonstrate impartiality or independence.
Setting aside of award	Court may set aside award if the arbitrator has “misconducted himself or the proceedings”, or an arbitration or award has been “improperly procured”. (s 25(2))	Court may set aside an award only on the following grounds: (a) incapacity of a party or invalidity of arbitration agreement; (b) failure to give proper notice or inability to present its case; (c) award made in excess of terms of reference; (d) composition of tribunal or arbitral procedure not in accordance with agreement; (e) subject matter of the dispute is not arbitrable; or (f) award is in conflict with public policy. (Art. 34(2))

Assessment of arbitrator's fees	If an arbitrator refuses to deliver his award except on payment of the demanded fees and the parties believe that the fees are excessive, either party may apply to the Court for an order that the arbitrator shall deliver the award to the applicant on payment into court by the applicant of the fees demanded. The fees will then be assessed by the Court. (s 21)	None
Place of arbitration	None	In default of agreement, the place of arbitration shall be determined by the tribunal having regard to the circumstances of the case, including the convenience of the parties. Subject to contrary agreement, the tribunal may meet at any place it considers appropriate. (Art. 20)
Language	None	In default of agreement, the tribunal shall determine the language to be used. The tribunal may order that any documentary evidence shall be accompanied by a translation. (Art. 22)
Hearings and written proceedings	None. Governed by arbitration agreement, agreed arbitration rules, or the common law.	Subject to contrary agreement, the tribunal shall decide whether to hold oral hearings or to conduct written proceedings. Parties shall also be given advance notice of any hearing or meeting of the tribunal, and all information

		supplied to the tribunal by one party shall be communicated to the other party. (Art.24)
Statements of claim and defence	None. Governed by arbitration agreement, agreed arbitration rules, or the common law.	Setting out the basic rules in respect of statements of claim and defence, subject to agreement of the parties. (Art. 23)
Experts appointed by arbitral tribunal	None. Governed by arbitration agreement, agreed arbitration rules, or the common law.	Subject to contrary agreement, tribunal may appoint an expert to report to it on specific issues, and may require a party to give the expert any relevant information. A party may request the expert to participate in a hearing and to be questioned by the parties. (Art. 26 & 24(3))
Rules applicable to substance of dispute	None. Governed by the arbitration agreement, agreed arbitration rules or the common law.	Tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable. Failing agreement, it shall apply the law determined by the conflict of law rules. (Art. 28)
Termination of proceedings otherwise than by final award	None. Governed by the arbitration agreement or agreed arbitration rules.	Tribunal shall terminate proceedings when the claimant withdraws his claim, the parties agree, or the tribunal finds that continuation of the proceedings has become unnecessary or impossible. (Art. 32)

Form and contents of award	None. Governed principally by the common law.	The award shall be made in writing and signed by the arbitrator(s), and shall state its date and the place of arbitration. (Art. 31(1) & (3))
Requirement to give reasons for award	No general requirement to give reasons, but Court may order that reasons be given in sufficient detail to enable it to consider any question of law. (s 23(5))	Subject to contrary agreement and unless the dispute is settled, the award shall state the reasons upon which it is based. (Art. 31(2))
Award <i>ex æquo et bono</i> or as <i>amiable compositeur</i>	None. Governed by the arbitration agreement or agreed arbitration rules.	The tribunal shall decide on the basis that it is “just and equitable” only if the parties have expressly authorised it to do so. (Art. 28(3))
Consent award and award on agreed terms	None. Governed by the arbitration agreement, agreed arbitration rules, or the common law.	If the parties settle the dispute, the tribunal shall terminate the proceedings. An award on agreed terms shall comply with Article 31 and shall have the status and effect as any other award on the merits of the case. (Art 30)
Interpretation of award by tribunal	None	If the parties agreed, a party may request the tribunal to give an interpretation of a specific point of the award. Any interpretation given by the tribunal shall form part of the award. (Art. 33(1))
Additional award	None; but Court may remit an award to the arbitrator for reconsideration under section 24.	Subject to contrary agreement, a party may request the tribunal to make an additional award as to claims presented in the proceedings but omitted from the award. (Art. 33(3))

Waiver of right to object to non-compliance with non-mandatory provisions	None	A party waives objection that certain non-mandatory provisions of the Model Law have not been complied with if he fails to raise objection. (Art. 4)
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(b) Provisions applicable to both domestic and international provisions

Arbitration Ordinance	Subject matter
s 2AA	Objective and principles of Ordinance
s 2AC, Art. 7(1)	Definition of arbitration agreement
s 2AC, Art. 7(1)	Agreement to be in writing
s 2A	Appointment of conciliator pursuant to arbitration agreement
s 2A	Power of conciliator to act as arbitrator
s 2B	Power of arbitrator to act as conciliator
s 2C	Enforcement of settlement agreement as award
s 2D	Proceedings to be heard otherwise than in open court
s 2E	Restrictions on reporting of proceedings heard otherwise than in open court
s 2F	Representation and preparation work
s 2G	Costs in respect of non-legally qualified person
s 2GA	General responsibilities of arbitral tribunal – e.g., act fairly and impartially; give the parties a reasonable opportunity to present their cases; avoid unnecessary delay and expense; and not bound by rules of evidence.
s 2GB(1)	General powers of the arbitral tribunal – e.g., require claimant to give security for the costs of the arbitration; require money in dispute to be secured; direct the discovery of documents; direct the inspection, preservation or sale of the relevant property; and grant interim injunctions or direct other interim measures to be taken.
s 2GB(5)	Power of tribunal to dismiss or stay a claim if the order to provide security for costs has not been complied with
s 2GB(6)	Power of tribunal to act inquisitorially
s 2GB(7)	Power of tribunal to examine witnesses on oath and direct the attendance of witnesses

s 2GC	Special powers of Court in relation to arbitration proceedings – e.g., direct an amount in dispute to be secured; direct the inspection, preservation or sale of the relevant property; grant an interim injunction or direct any other interim measures to be taken; and order a person to give evidence or produce documents.
s 2GD	Power of tribunal to extend time for commencing arbitration proceedings
s 2GE	Dismissal of claim for delay in prosecuting claim
s 2GF	Decision of arbitral tribunal
s 2GG	Enforcement of decisions of arbitral tribunal
s 2GH	Arbitral tribunal may award interest
s 2GI	Rate of interest on money awarded in arbitration proceedings
s 2GJ	Costs of arbitration proceedings
s 2GK	Joint and several liability of parties to pay tribunal’s fees
s 2GL	Arbitral tribunal may limit amount of recoverable costs
s 2GM	Immunity of arbitral tribunal
s 2GN	Immunity of appointing or administering authority
s 6(1), Art. 8	Stay of legal proceedings and reference of dispute to arbitration where the matter is the subject of an arbitration agreement
s 13B, Art. 16	Power of tribunal to rule on its own jurisdiction

(c) Areas in which the provisions of the two regimes are similar

Subject matter	Domestic arbitration regime	International arbitration regime
Power of HKIAC to appoint arbitrators in certain cases	s 12	Art. 11(3)-(4)
Equal treatment of parties	Tribunal required to act fairly and impartially (s 2GA(1)(a))	Parties shall be treated with equality. (Art. 18)
Removal of arbitrator (or termination of arbitrator’s mandate) for delay	Court may remove, on application of a party, an arbitrator who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award. (s 15(3))	A party may request the Court to decide on the termination of an arbitrator’s mandate where there is a controversy concerning his ability to perform his functions or to act without undue delay. (Art. 14(1))

Power to correct clerical errors	Subject to contrary agreement, arbitrator may correct, in an award, clerical mistake or error arising from accidental slip or omission. (s 19)	A party may request the tribunal to correct any computation, clerical or typographical errors in an award. (Art. 33(1)(a) & (2))
Power to remit award to arbitrator for reconsideration	Court may remit an award to the arbitrator for reconsideration. (s 24)	Court may remit an award to the tribunal for consideration instead of setting it aside. (Art. 34(4))

Note: See generally, Robert Morgan, *The Arbitration Ordinance of Hong Kong – A Commentary* (Butterworths, 1997), Tables 3 and 4.

Reform of the law of arbitration

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Panel on Administration of Justice and Legal Services	27 June 2005	<p>Paper provided by the Administration on the Report of the Committee on Hong Kong Arbitration Law of the Hong Kong Institute of Arbitrators [LC Paper No. CB(2)1792/04-05(01)]</p> <p>Submission from the Hong Kong Construction Association Ltd. on the recommendations in the Report of the Hong Kong Institute of Arbitrators [LC Paper No. CB(2)2049/04-05(01)] <i>(English version only)</i></p> <p>Letter dated 21 June 2005 from the Law Society of Hong Kong on reform of the law of arbitration [LC Paper No. CB(2)2049/04-05(02)] <i>(English version only)</i></p> <p>Minutes of meeting [LC Paper No. CB(2)2502/04-05]</p>
	28 May 2007	<p>Administration's paper on "Reform of the law of arbitration" [LC Paper No. CB(2)1941/06-07(01)]</p> <p>Minutes of meeting [LC Paper No. CB(2)2540/06-07]</p>
	28 January 2008	<p>Consultation Paper on Reform of the Law of Arbitration and Draft Arbitration Bill published by the Department of Justice on 31 December 2007 [LC Paper No. CB(2)813/07-08] <i>(English version only)</i></p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
		<p>Executive summary of the Consultation Paper [LC Paper No. CB(2)813/07-08(01)] <i>(Chinese version only)</i></p> <p>Corrigenda to the Consultation Paper on Reform of the Law of Arbitration and Draft Arbitration Bill provided by the Administration [LC Paper No. CB(2)916/07-08] <i>(English version only)</i></p> <p>Administration's paper on "Reform of the law of arbitration in Hong Kong" [LC Paper No. CB(2)929/07-08(08)]</p> <p>Minutes of meeting [LC Paper No. CB(2)1141/07-08]</p>
	23 February 2009	<p>Administration's paper on "Reform of the law of arbitration in Hong Kong" [LC Paper No. CB(2)899/08-09(06)]</p> <p>Background brief on "Reform of the law of arbitration" prepared by the Legislative Council Secretariat [LC Paper No. CB(2)899/08-09(07)]</p> <p>Minutes of meeting [LC Paper No. CB(2)1326/08-09]</p>