

**LEGISLATIVE COUNCIL BRIEF**  
**ARBITRATION (AMENDMENT) BILL 1999**

**INTRODUCTION**

At the meeting of the Executive Council on 15 June 1999, the Council ADVISED and the Chief Executive ORDERED that the Arbitration (Amendment) Bill 1999 should be introduced into the Legislative Council.

**BACKGROUND AND ARGUMENT**

*General Background*

2. Arbitration in this context refers to the voluntary submission by the parties of a commercial dispute for decision by a recognised and regular procedure. It offers an alternative method of adjudicating disputes that is usually more efficient and less costly than litigation. The existence of an efficient arrangement for enforcing in one jurisdiction arbitral awards made in another jurisdiction helps to ensure fair business dealings and makes it less likely that business people will renege on their contracts.

3. Before 1 July 1997, reciprocal enforcement of arbitral awards between the Mainland and Hong Kong was governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958 (“New York Convention”). Detailed arrangements for the enforcement of Convention awards (including awards made on the Mainland) are set out in Part IV of the Arbitration Ordinance (Cap. 341). The New York Convention continues to apply to the Hong Kong Special Administrative Region (HKSAR) as part of the People’s Republic of China (PRC) after the reunification. However, being an international agreement, the Convention is no longer applicable to the enforcement of arbitral awards between the Mainland and the HKSAR. In the absence of reciprocal arrangement between the two jurisdictions, we have been exploring with the Mainland authorities the establishment of a new arrangement.

*Proposal*

4. Article 95 of the Basic Law states that the HKSAR may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of China, and they may render assistance to each

other. Through correspondences and exchanges with the Hong Kong and Macau Affairs Office of the State Council (HKMAO), we have now reached consensus on re-establishing a reciprocal arrangement for the enforcement of arbitral awards between the Mainland and HKSAR. The new arrangement reflects the spirit of the New York Convention. A copy of the arrangement is at [Annex A](#).

### *Scope of Application*

5. Prior to the reunification, only Mainland awards made by the China International Economic and Trade Arbitration Commission (CIETAC) and the China Maritime Arbitration Commission (CMAC) were recognised for enforcement in Hong Kong. During our discussion with the Mainland authorities, they pointed out that although the Arbitration Law of the PRC stipulated that CIETAC and CMAC were set up by the China Chamber of International Commerce as bodies capable of making arbitral awards involving a foreign party, there were other relevant laws in the Mainland which stipulated that other arbitration centres could also make these awards. Our mechanism of recognising for enforcement only the awards made by CIETAC and CMAC before the reunification was only an administrative practice. The new arrangement post-reunification should therefore have regard to awards made by other Mainland arbitration centres because there was no provision in the Arbitration Ordinance that limited the scope of application of the New York Convention.

6. We understand that the local arbitration community is more concerned about other areas than the scope of application. Their concern is that any award enforceable in Hong Kong should be made in accordance with the procedural requirements of the New York Convention. We believe that this could be addressed by reflecting in detail the procedural requirements and grounds for refusal of enforcement of the New York Convention in both the arrangement and our local legislation.

7. Under the new arrangement, awards made on the Mainland in accordance with the Arbitration Law of the PRC by Mainland arbitration centres recognised by the State Council will be enforceable in HKSAR. We have sought from the Legislative Affairs Office of the State Council, through the HKMAO, the list of recognised Mainland arbitration centres. The list comprising 148 bodies is at [Annex B](#). The “list” approach does not apply to awards made by Hong Kong arbitral bodies: all awards made pursuant to our Arbitration Ordinance as reflected in the arrangement will be enforceable in the Mainland.

### **THE BILL**

8. We need to amend the Arbitration Ordinance to reflect the above arrangement. In addition, we have also taken the opportunity to include the

necessary adaptation amendments to ensure that the Ordinance is consistent with the Basic Law and Hong Kong's status as a Special Administrative Region of the People's Republic of China. The main provisions of the Bill are as follows –

- (a) to define Mainland awards which can be enforced in Hong Kong (Clause 3(c));
- (b) to provide detailed procedures to seek to enforce a Mainland award in Hong Kong and the conditions under which enforcement will be refused (Clause 5);
- (c) to adapt the Ordinance to bring it into conformity with the Basic Law and Hong Kong's status as a Special Administrative Region of the People's Republic of China (Clauses 3(a) and (b), 4, 6, 7, 8, 10, 11, 13 and 14); and
- (d) to extend the applicability of the Ordinance to State organs in Hong Kong (Clause 9).

A copy of the Bill is at [Annex C](#).

## **LEGISLATIVE TIMETABLE**

9. The legislative timetable is as follows -

Publication in the Gazette	25 June 1999
First Reading and commencement of Second Reading debate	7 July 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **BASIC LAW IMPLICATIONS**

10. The Department of Justice advises that the Bill is consistent with the Basic Law. The establishment of arrangement for the reciprocal enforcement of arbitral awards between the Mainland and the HKSAR is in line with Article 95 of the Basic Law.

## **HUMAN RIGHTS IMPLICATIONS**

11. The Department of Justice advises that the Bill has no human rights implications.

## **BINDING EFFECT**

12. The Arbitration Ordinance is one of the 17 ordinances which the Government has committed to review in terms of their applicability to State organs in Hong Kong. It is expressly binding on the Government, but silent on its applicability to the State organs in Hong Kong. Since it is possible for State organs in Hong Kong and their personnel to enter into commercial contracts which may include arbitration as a means to resolving disputes arising from those contracts, we will extend the applicability of the Arbitration Ordinance to these organs. Clause 9 of the Bill seeks to extend the applicability of the Ordinance.

## **FINANCIAL AND STAFFING IMPLICATIONS**

13. Under the new arrangement, the number of arbitration centres whose arbitral awards may be enforced in Hong Kong will substantially increase. This will likely increase the workload of both the Court of First Instance and the High Court Registry. However, it is not possible to assess with precision the resource implications at this stage. The Judiciary will absorb any additional resources required from within its global allocation.

## **PUBLIC CONSULTATION**

14. We briefed the LegCo Panel on Administration of Justice and Legal Services on 15 December 1998 and 15 June 1999 on the proposed arrangement. We understand that the local arbitration community's concern is that any arrangement should ensure that the awards that will be recognised for enforcement in Hong Kong should be made in accordance with the procedural requirements of the New York Convention. As they now stand, both the arrangement and the Bill include provisions that set out the procedural requirements of the New York Convention.

## **PUBLICITY**

15. A spokesman will be available to handle media enquiries.

## **ENQUIRIES**

16. For enquiries on the brief, please contact Ms Amy Wong, Assistant Secretary (Administration) at 2810 2783.

Administration Wing  
Chief Secretary for Administration's Office  
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