

**For information on
15 June 1999**

**Panel on Administration of Justice and Legal Services of
The Legislative Council**

**Reciprocal Enforcement of Arbitral Awards
Between the Mainland the Hong Kong Special Administrative Region**

Introduction

We have reached consensus with the Mainland authorities on the arrangement for the reciprocal enforcement of arbitral awards between the Mainland and the Hong Kong Special Administrative Region (HKSAR). This paper informs Members of the details of the arrangement.

Background

2. At the Panel meeting held in December last year, we informed Members that we were exploring with the Mainland authorities to re-establish an arrangement for the reciprocal enforcement of arbitral awards between the Mainland and HKSAR, which has lapsed since 1 July 1997. We have now reached a consensus with the Mainland on this subject. Salient features of the arrangement are at Annex A. The new arrangement generally reflects the practice prior to the reunification and the principles and spirit of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”).

Scope of Application

3. 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 People’s Republic of China 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 which limited the scope of application of the New York Convention.

4. 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 draft arrangement and the implementation legislation.

5. Under the new arrangement, Mainland awards made 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 Hong Kong and Macau Affairs Office, the list of recognised Mainland arbitration centres. The list comprising 145 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 agreed arrangement will be enforced by the Mainland authorities.

Financial and Staffing Implications

6. Under the new arrangement, the number of arbitration centres whose arbitral awards may be enforced in Hong Kong will be substantially increased. 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.

Way Forward

7. We will sign a Memorandum of Understanding on the above arrangement with the Mainland shortly. We will need to amend the Arbitration Ordinance before the arrangement can become effective in HKSAR. We hope to introduce the Arbitration (Amendment) Bill into the Legislative Council as soon as possible.

Administration Wing
Chief Secretary for Administration's Office
June 1999

**Reciprocal Enforcement of Arbitral Awards between
The Mainland and the Hong Kong Special Administrative Region**

Salient Features

1. The Court of the Hong Kong Special Administrative Region (HKSAR) agrees to enforce the awards made pursuant to the Arbitration Law of the People's Republic of China by the Mainland arbitral authorities (list to be supplied by the Legislative Affairs Office of the State Council via the Hong Kong and Macau Affairs Office). The People's Courts in the Mainland agree to enforce the awards made in HKSAR pursuant to the Arbitration Ordinance of HKSAR.
2. If a party fails to perform an arbitral award made in the Mainland or HKSAR, the other party may apply to the relevant courts in the place where the domicile of the party against whom the application is filed is located, or where the property of the said party is located, for enforcement. The relevant courts are, for the Mainland, the Intermediate People's Court of the place where the domicile of the party against whom the application is filed is located or where the property of the said party is located and, for HKSAR, the High Court of HKSAR.
3. If the places where the domiciles of the party against whom the application is filed or where the properties of the said party are located are in the Mainland as well as in HKSAR, the applicant cannot apply to the relevant courts of the two places at the same time. Only when enforcement of an award by the court of one place is insufficient to recover the debts may the applicant apply to the court of another place for enforcement of the outstanding part. The total amount of arbitral awards enforced by the courts of the two places one after the other cannot exceed the amount awarded.
4. Applicants seeking to enforce an award made in the Mainland or in HKSAR will need to submit the following documents -
 - (a) application for enforcement;

- (b) arbitral award
- (c) arbitration agreement.

Application for enforcement must be written in Chinese. If the arbitral award or arbitration agreement is not written in Chinese, the applicant must submit a translation of it.

5. The time limit for the applicant to apply to the relevant court for enforcement of the arbitral award made by the Mainland or HKSAR will be in accordance with the provisions relating to time limit specified in the law of the place of enforcement.
6. Having received the application from the applicant, the relevant court will handle and enforce it according to the legal procedures of the place of enforcement.
7. The relevant court may rule against enforcement if the applicant, after receiving the notice about the arbitral award made by the Mainland or HKSAR, furnishes proof, which is examined and verified, that -
 - (a) a party to the arbitration agreement was (under the law applicable to him) under some incapacity, or the said arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the place where the arbitral award was made;
 - (b) the party against whom the application is filed was not given proper notice of the appointment of the arbitrator or was otherwise unable to present his case;
 - (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or the award contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration will be enforced;
 - (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with agreement of the parties or, failing such agreement, was not in accordance with the law of the place where the arbitration took place;

- (e) the award has not yet become binding on the parties, or has been set aside or suspended by the court or in accordance with the law of the place where the award was made;

If the relevant court finds that under the law of the place of enforcement, the dispute cannot be settled by arbitration, then the court may refuse to enforce the award.

The enforcement of the award may be refused if the court in the Mainland holds that the enforcement of the arbitral award therein would be contrary to the public interests of the Mainland, or the court of HKSAR rules that enforcement of the arbitral award therein would be contrary to the public policy of HKSAR.

- 8. Application for enforcement of arbitral award made by the Mainland or HKSAR made after 1 July 1997 shall be enforced according to this Arrangement.

In case the application for enforcement fails to be made to the court in the Mainland or the court of HKSAR between 1 July 1997 and the effective date of this Arrangement for some reasons, the applicant who is a legal person or some other organisation may apply within six months after this Arrangement has become effective and the applicant who is a natural person may apply within one year after this Arrangement has become effective.

For cases which the court of HKSAR or the Mainland between 1 July 1997 and the effective date of this Arrangement, has refused to accept or to enforce the arbitral award, the parties of the cases will be allowed to make fresh application.