

For Information

**LegCo Panel on Administration of Justice and Legal Services**

**Purpose**

The purpose of this information note is to:

- (a) provide an up-date on the reciprocal enforcement of arbitral awards between Hong Kong and the Mainland;
- (b) outline the legislative framework in Hong Kong on the enforcement in Hong Kong of Macao arbitral awards and vice versa; and
- (c) discuss the need for an arrangement on mutual enforcement of arbitral awards between Hong Kong and Macao.

**Updates on the reciprocal enforcement of arbitral awards between Hong Kong and the Mainland**

2. During the scrutiny of the Arbitration Bill by the Bills Committee, Members have expressed concern about the enforceability of Hong Kong awards on the Mainland and asked for an update of the reciprocal enforcement of arbitral awards between Hong Kong and the Mainland including the number of applications made in both places, their enforceability as well as the reasons for the awards not being enforced. Information on the updates has been provided by the Administration to the Bills Committee on the Arbitration Bill. A summary of the information on the update has been reported in the paper for the House Committee meeting on 22 October 2010 (the “Paper”) reporting on the Bills Committee on the Arbitration Bill (see LC Paper No. CB(2)83/10-11) at paragraphs 98-100). (A copy of the extract of paragraphs 98-100 of the Paper is attached as Annex 1)

3. The Administration has obtained further up-dates on the reciprocal enforcement of arbitral awards between Hong Kong and the Mainland.

4. According to the information provided by the Judiciary, during the period from 2009 to September 2010, the High Court of Hong Kong has processed 9 applications to enforce Mainland awards in Hong Kong. All applications were granted. No application has been made to set aside the orders given for the enforcement of the awards.

5. As reported in paragraph 100 of the Paper, according to the information available to Supreme People's Court, during the period from 2000 to April 2008, 33 applications have been processed by the People's Courts in different provinces and municipalities in the Mainland for the recognition and enforcement of Hong Kong arbitral awards. 24 applications were allowed and 9 cases were refused. Inquiry has been made with the Supreme People's Court as to the reasons for the awards not being enforced. According to a reply from the Supreme People's Court dated 18 January 2011, certain part of the abovementioned statistics would require revision. Specifically, of the 9 cases where applications were reported to have been refused, none relate to applications for the recognition and enforcement of Hong Kong arbitral awards between Hong Kong and the Mainland.

6. Accordingly, as clarified by the said reply, during the period from 2000 to April 2008, 24 applications have been processed by the People's Courts in different provinces and municipalities in the Mainland for the recognition and enforcement of Hong Kong arbitral awards and all of the applications were granted.

### **Reciprocal Enforcement of Arbitral Awards between Hong Kong and Macao**

7. At present, there exists no arrangement between Hong Kong and Macao on mutual enforcement of arbitral awards.

### ***Enforcement of Macao Arbitral Awards in Hong Kong***

8. Arbitral awards made in Macao may be summarily enforced in Hong Kong under section 2GG of the *Arbitration Ordinance* (Cap. 341). Section 2GG(1) provides that an award given in arbitration proceedings by an arbitral tribunal is enforceable in the same way as a judgment, order or direction of the court that has the same effect, but only with the leave of the court. If leave is granted, the court may enter judgment in the terms of the award, order or direction. Section 2GG(2) states that notwithstanding

anything in the *Arbitration Ordinance*, this section applies to an award, order and direction made or given whether in or outside Hong Kong. It follows that an arbitral award from Macao could be enforced under section 2GG. It appears that, however, there have not been any decided cases on the enforcement of Macao awards in Hong Kong under section 2GG.

9. Similar provisions have been provided under Division 1 of Part 10 of the new Arbitration Ordinance passed on 10 November 2010. Section 84 of the new Arbitration Ordinance provides that an award, whether made in or outside Hong Kong, in arbitral proceedings by an arbitral tribunal is enforceable in the same manner as a judgment of the court that has the same effect, but only with the leave of the court. An arbitral award from Macao could be enforced under section 84 of the new Arbitration Ordinance as in the case of section 2GG. The new Arbitration Ordinance will come into operation on a day to be appointed by the Secretary for Justice. The Administration is consulting the stakeholders on the commencement date of the new Arbitration Ordinance.

10. Alternatively, a party may bring an action at common law to enforce a Macao arbitral award in a Hong Kong court. The applicant may, through proceedings by writ, apply to the court for a summary judgment on the terms of the arbitral award. In *Xiamen Xingjingdi Group Ltd. v Eton Properties Ltd.*<sup>1</sup>, the Court of First Instance held that the court's approach towards either means of enforcement, namely, enforcement by action and application for summary enforcement pursuant to section 2GG of the Arbitration Ordinance, should not be radically different. In either case, the court's role should be as "mechanistic as possible" and unless the award was plainly and obviously incapable of performance, the court should allow the application for its enforcement.

### ***Enforcement of Hong Kong Arbitral Awards in Macao***

#### **Decree Law 55/98M**

11. As far as the Administration understands, Hong Kong arbitral awards may be enforced in Macao under the Decree Law 55/98M of Macao. The Decree Law 55/98M governs international commercial arbitration (涉外商事仲裁). Under Article 1(4), an arbitration is considered "international" if:

- (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, places of business in different states or territories; or

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<sup>1</sup> [2008] 4 HKLRD 972 (at para. 47 and 63)

- (b) one of the following places is situated outside the state or territory in which the parties have their places of business:
  - (i) the place of arbitration as determined in, or pursuant to, the arbitration agreement;
  - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
- (c) the parties have expressly agreed the subject matter of the arbitration agreement relates to more than one state or territory.

12. Article 1(2) states that the term “commercial” covers matters arising from all relationships of a commercial nature, whether contractual or not. Article 1(2) sets out a non-exhaustive list of transactions which are regarded as “commercial” in nature and such include: supply of goods or services, distribution agreement, joint venture, construction and carriage of passengers by air or sea, etc.

13. If an arbitral award of Hong Kong is made in “international commercial” arbitration, according to Article 1 of the Decree Law 55/98M, it may be recognised and enforced under Articles 35 and 36 of the Decree Law.

### Code of Civil Procedure

14. The Administration further understands that if an arbitral award of Hong Kong is not an award of an international commercial arbitration for the purposes of Article 1(4) of the Decree Law 55/98M, it may still be possible to enforce in Macao pursuant to Chapter 14 of the Code of Civil Procedure of Macao (民事訴訟法典).

15. Any arbitral award made outside Macao may be recognised as binding and enforceable upon confirmation by a competent court of Macao under Article 1199 of the Code of Civil Procedure. Article 1200 stipulates the conditions upon which a foreign award must satisfy before it will be confirmed by the Macao court:

- (a) there is no doubt as to the authenticity and interpretation of the award;
- (b) the award is “final” (確定) according to the law of the place where it was rendered;
- (c) the jurisdiction of the tribunal which made the award has

not been acquired by fraud of law and the award does not involve matters which are in the exclusive jurisdiction of Macao courts;

- (d) there is no possibility of invoking *res judicata* by reason that the case has been submitted to the Macao courts, except if, before the case has been initiated in the Macao courts, it has been submitted to the court in which the award was made;
- (e) the party against whom the award is enforced has been given notice of the arbitral proceedings according to the law of the place where the award was made, the adversarial principle has been observed and the parties' rights have been equally respected;
- (f) the confirmation of the award would not be contrary to the public policy of Macao.

### ***Application of the New York Convention in Macao***

16. On 19 July 2005, the Central People's Government of the PRC declared that the New York Convention shall apply to Macao, subject to the reciprocity reservation made by the PRC upon her own accession to the Convention. However, the New York Convention does not apply to the recognition and enforcement of arbitral awards between Hong Kong and Macao as both are territories of the same Contracting State, i.e. the PRC.

### ***Enforcement of Arbitral Awards between the Mainland and Macao***

17. Before the conclusion of the “Arrangement on Mutual Recognition and Enforcement of Arbitral Awards Made in the Mainland and Macao SAR” (內地與澳門特別行政區相互認可和執行仲裁裁決的安排) in October 2007, recognition and enforcement of Mainland arbitral awards in Macao was subject to a mechanism similarly applicable to Hong Kong awards as discussed in the above paragraphs.

18. Under the Macao/Mainland Arrangement<sup>2</sup> (at Annex 2) which took effect since 1 January 2008, arbitral awards rendered in Macao and the Mainland are reciprocally enforceable. The content of the Arrangement is broadly similar to the arrangement on the same matter entered between the Mainland and Hong Kong in 1999 (at Annex 3) with the following

<sup>2</sup> The *Macao/Mainland Arrangement* is the third arrangement on mutual legal co-operation between Macao and the Mainland, with the first arrangement being entered into in 2001 on mutual service of judicial documents and facilitation of the taking of evidence; and the second signed in 2006 on reciprocal enforcement of court judgments in civil cases.

differences:

- (a) Under the Macao/Mainland Arrangement, a party seeking enforcement of an arbitral award may make applications to the courts of both places for enforcement but the court of the place where the award was made should first order execution, subsequent to which the court of the other place could order the enforcement of the liabilities outstanding from the execution ordered by the court of the place where the award was made.

Under the HK/Mainland Arrangement, an applicant is prohibited from filing applications to the courts of the Mainland and Hong Kong at the same time. However, if the result of enforcement of the award by the court of one place is proved insufficient to satisfy the liabilities, the applicant may then apply to the court of another place for enforcement of the outstanding liabilities.

- (b) Under the Macao/Mainland Arrangement, a Mainland court may refuse to recognize and enforce a Macao award if it is satisfied that its recognition and enforcement would violate the basic principles of Mainland law (內地法律的基本原則) or social public interest.

According to the HK/Mainland Arrangement, “Social public interest (社會公共利益)” of the Mainland is one of the grounds for refusal of enforcement but not violation of the “basic principles of the Mainland law”.

### ***Economic Development in Macao***

19. It is noted that the development of arbitration in Macao has received strong governmental support in recent years. The World Trade Center Macao Arbitration Center (formerly known as "World Trade Center Macao Voluntary Arbitration Center") was established in June 1998 and has been actively promoting the use of arbitration among the business entities of Macao. In September 2001, the Monetary Authority of Macao has set up an arbitration centre for resolving civil and commercial disputes not exceeding the amount of MOP 50,000 on matters relating to insurance and provident fund.

20. Macao has been witnessing double-digit growth in its GDP in

recent years and in 2008, Macao enjoyed a 21.6% increase in foreign direct investment while the majority of the foreign investors had usual place of residence in Hong Kong, followed by the United States and the Mainland<sup>3</sup>. It is expected that with growing economic activities in Macao in a wide range of areas, including construction, banking and finance as well as gaming and tourism, commercial disputes will increase in the long run and so will the need for arbitration services.

21. With increasing economic interflow between Hong Kong and Macao as well as the rest of PRD Region, the Administration considers that fostering mutual legal co-operation, particularly in reciprocal enforcement of arbitral awards, between Hong Kong and Macao will be welcome by the legal profession as well as the business sectors of both places. This will also enhance Hong Kong's role as a regional arbitration centre for commercial disputes.

### *Earlier Discussions on the Matter*

22. When the Arbitration (Amendment) Bill 1999 was introduced to the Legislative Council in 1999 for the purpose of giving effect to the *Arrangement on Reciprocal Enforcement of Arbitral Awards* entered into between the Supreme People's Court and DoJ in June 1999, the Bills Committee considered that arrangements for mutual enforcement of arbitral awards between Hong Kong and Macao "should be finalized as soon as possible"<sup>4</sup>.

23. In December 2002, the Administration provided an information note on the subject to the AJLS Panel, stating that the absence of such an arrangement should not prejudice the enforcement in Macao of awards made in Hong Kong and the Administration considered it unnecessary to have a separate arrangement for reciprocal enforcement of arbitral awards.

24. Noting the rapid economic developments in Macao and greater emphasis being placed by the business communities in resolving disputes through arbitration, the Administration revisited the need and advantages of entering into an arrangement with Macao on reciprocal enforcement of arbitral awards. We have come to the view that there are clear advantages to adopt this course. In sum, such an arrangement would be beneficial to Hong Kong as a whole by:

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<sup>3</sup> Information provided by the Statistics and Census Service (統計暨普查局) of the Macao SAR Government, available on its webpage: <http://www.dsec.gov.mo>

<sup>4</sup> Minutes of meeting on 9 November 1999 of the Bills Committee on the *Arbitration (Amendment) Bill 1999* (LC Paper No. CB(2)2016/99-00).

- (a) adding certainty to the enforceability of Macao arbitral awards in Hong Kong and vice versa;
- (b) establishing a simple mechanism in both jurisdictions on reciprocal enforcement of arbitral awards;
- (c) fostering legal co-operation between Hong Kong and Macao in civil and commercial matters; and
- (d) enhancing Hong Kong's role as a regional arbitration centre for commercial disputes.

25. The relevant parties including the Judiciary and relevant policy bureaux have been consulted on the proposal to enter into an arrangement with Macao on reciprocal enforcement of arbitral awards in the last quarter of 2010. They have indicated support for the proposal.

## **Conclusion**

26. It is proposed that an arrangement between Hong Kong and Macao on the enforcement of arbitral awards similar to the existing arrangement between Hong Kong and the Mainland should be established. When the arrangement is concluded, it would be implemented in Hong Kong by way of introducing amendments to the new Arbitration Ordinance.

Department of Justice  
February 2011



*Reciprocal enforcement of arbitral awards between Hong Kong and the Mainland*

98. Members have expressed concern about the enforceability of Hong Kong awards on the Mainland and asked for an update of the reciprocal enforcement of arbitral awards between Hong Kong and the Mainland including the number of applications made on both places, their enforceability as well as the reasons for the awards not being enforced.

99. The Administration has advised that the "Arrangement Concerning Mutual Enforcement of Arbitral Awards" ("the Arrangement") between Hong Kong and the Mainland was concluded in June 1999 and came into effect on 1 February 2000. The Supreme People's Court of the People's Republic of China ("SPC") issued a confirmation in October 2007 that awards made in "*ad hoc*" arbitral proceedings (i.e. proceedings not managed or overseen by an arbitration institution like HKIAC) in Hong Kong are enforceable in the Mainland. In December 2009, SPC has issued a notification confirming that arbitral awards made in Hong Kong, whether by the International Court of Arbitration of the International Chamber of Commerce or other foreign arbitration institutions, are enforceable in the Mainland in accordance with the provisions of the Arrangement.

100. The Administration has further advised that according to the information provided by the Judiciary, during the period from 2000 to 2009, the High Court of Hong Kong has processed 84 applications to enforce Mainland awards in Hong Kong. All applications were granted. There were 18 applications to set aside the orders given for the enforcement of the awards. The court allowed five applications to set aside the original orders. It is understood that the parties in a majority of such cases set aside the original orders by consent. The Administration has made enquiries with SPC on the figures relating to the enforcement of awards made in Hong Kong on the Mainland. SPC has explained that it does not keep such statistics as the applications are handled by lower courts on the Mainland. However, according to the information available to SPC, during the period from 2000 to April 2008, 33 applications have been processed by the People's Courts in different provinces and municipalities in the Mainland for the recognition and enforcement of Hong Kong arbitral awards. Twenty-four applications were allowed and nine cases were refused.

*Convention awards*

101. The Bills Committee notes that the Administration has taken the opportunity to update the list of parties to the New York Convention as specified in the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 341 sub. leg. A).

Automatic opt-in mechanism (Part 11, clauses 99 to 102 and Schedule 2)

102. An "opting-in" system is provided under Part 11 of the Bill to enable users of arbitration to continue to adopt domestic arbitration provisions based on the current Ordinance and as set out in Schedule 2 to the Bill. All the opt-in provisions under

(Chinese Only)

## 關於內地與澳門特別行政區 相互認可和執行仲裁裁決的安排

根據《中華人民共和國澳門特別行政區基本法》第九十三條的規定，經最高人民法院與澳門特別行政區協商，現就內地與澳門特別行政區相互認可和執行仲裁裁決的有關事宜達成如下安排：

**第一條**——內地人民法院認可和執行澳門特別行政區仲裁機構及仲裁員按照澳門特別行政區仲裁法規在澳門作出的民商事仲裁裁決，澳門特別行政區法院認可和執行內地仲裁機構依據《中華人民共和國仲裁法》在內地作出的民商事仲裁裁決，適用本安排。

本安排沒有規定的，適用認可和執行地的程序法律規定。

**第二條**——在內地或者澳門特別行政區作出的仲裁裁決，一方當事人不履行的，另一方當事人可以向被申請人住所地、經常居住地或者財產所在地的有關法院申請認可和執行。

內地有權受理認可和執行仲裁裁決申請的法院為中級人民法院。兩個或者兩個以上中級人民法院均有管轄權的，當事人應當選擇向其中一個中級人民法院提出申請。

澳門特別行政區有權受理認可仲裁裁決申請的法院為中級法院，有權執行的法院為初級法院。

**第三條**——被申請人的住所地、經常居住地或者財產所在地分別在內地和澳門特別行政區的，申請人可以向一地法院提出認可和執行申請，也可以分別向兩地法院提出申請。

當事人分別向兩地法院提出申請的，兩地法院都應當依法進行審查。予以認可的，採取查封、扣押或者凍結被執行人財產等執行措施。仲裁地法院應當先進

行執行清償；另一地法院在收到仲裁地法院關於經執行債權未獲清償情況的證明後，可以對申請人未獲清償的部分進行執行清償。兩地法院執行財產的總額，不得超過依據裁決和法律規定所確定的數額。

**第四條**——申請人向有關法院申請認可和執行仲裁裁決的，應當提交以下文件或者經公證的副本：

- （一）申請書；
- （二）申請人身份證明；
- （三）仲裁協議；
- （四）仲裁裁決書或者仲裁調解書。

上述文件沒有中文文本的，申請人應當提交經正式證明的中文譯本。

**第五條**——申請書應當包括下列內容：

- （一）申請人或者被申請人爲自然人的，應當載明其姓名及住所；爲法人或者其他組織的，應當載明其名稱及住所，以及其法定代表人或者主要負責人的姓名、職務和住所；申請人是外國籍法人或者其他組織的，應當提交相應的公證和認證材料；
- （二）請求認可和執行的仲裁裁決書或者仲裁調解書的案號或識別資料和生效日期；
- （三）申請認可和執行仲裁裁決的理由及具體請求，以及被申請人財產所在地、財產狀況及該仲裁裁決的執行情況。

**第六條**——申請人向有關法院申請認可和執行內地或者澳門特別行政區仲裁裁決的期限，依據認可和執行地的法律確定。

**第七條**——對申請認可和執行的仲裁裁決，被申請人提出證據證明有下列情形之一的，經審查核實，有關法院可以裁定不予認可：

（一）仲裁協議一方當事人依對其適用的法律在訂立仲裁協議時屬於無行為能力的；或者依當事人約定的準據法，或當事人沒有約定適用的準據法而依仲裁地法律，該仲裁協議無效的；

（二）被申請人未接到選任仲裁員或者進行仲裁程序的適當通知，或者因他故未能陳述意見的；

（三）裁決所處理的爭議不是提交仲裁的爭議，或者不在仲裁協議範圍之內；或者裁決載有超出當事人提交仲裁範圍的事項的決定，但裁決中超出提交仲裁範圍的事項的決定與提交仲裁事項的決定可以分開的，裁決中關於提交仲裁事項的決定部分可以予以認可；

（四）仲裁庭的組成或者仲裁程序違反了當事人的約定，或者在當事人沒有約定時與仲裁地的法律不符的；

（五）裁決對當事人尚無約束力，或者業經仲裁地的法院撤銷或者拒絕執行的。

有關法院認定，依執行地法律，爭議事項不能以仲裁解決的，不予認可和執行該裁決。

內地法院認定在內地認可和執行該仲裁裁決違反內地法律的基本原則或者社會公共利益，澳門特別行政區法院認定在澳門特別行政區認可和執行該仲裁裁決違反澳門特別行政區法律的基本原則或者公共秩序，不予認可和執行該裁決。

**第八條**——申請人依據本安排申請認可和執行仲裁裁決的，應當根據執行地法律的規定，交納訴訟費用。

**第九條**——一方當事人向一地法院申請執行仲裁裁決，另一方當事人向另一地法院申請撤銷該仲裁裁決，被執行人申請中止執行且提供充分擔保的，執行法院應當中止執行。

根據經認可的撤銷仲裁裁決的判決、裁定，執行法院應當終結執行情序；撤銷仲裁裁決申請被駁回的，執行法院應當恢復執行。

當事人申請中止執行的，應當向執行法院提供其他法院已經受理申請撤銷仲裁裁決案件的法律文書。

**第十條**——受理申請的法院應當盡快審查認可和執行的請求，並作出裁定。

**第十一條**——法院在受理認可和執行仲裁裁決申請之前或者之後，可以依當事人的申請，按照法院地法律規定，對被申請人的財產採取保全措施。

**第十二條**——由一方有權限公共機構（包括公證員）作成的文書正本或者經公證的文書副本及譯本，在適用本安排時，可以免除認證手續在對方使用。

**第十三條**——本安排實施前，當事人提出的認可和執行仲裁裁決的請求，不適用本安排。

自 1999 年 12 月 20 日至本安排實施前，澳門特別行政區仲裁機構及仲裁員作出的仲裁裁決，當事人向內地申請認可和執行的期限，自本安排實施之日起算。

**第十四條**——為執行本安排，最高人民法院和澳門特別行政區終審法院應當相互提供相關法律資料。

最高人民法院和澳門特別行政區終審法院每年相互通報執行本安排的情況。

**第十五條**——本安排在執行過程中遇有問題或者需要修改的，由最高人民法院和澳門特別行政區協商解決。

**第十六條**——本安排自 2008 年 1 月 1 日起實施。

本安排於 2007 年 10 月 30 日在北京簽署，一式兩份。

最高人民法院

澳門特別行政區

副院長

行政法務司司長

黃松有

陳麗敏

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**Arrangement Concerning Mutual Enforcement of Arbitral Awards  
Between the Mainland and the Hong Kong Special Administrative Region**

In accordance with the provision of Article 95 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and through mutual consultations between the Supreme People's Court and the Government of the Hong Kong Special Administrative Region (HKSAR), the Courts of the HKSAR agree to enforce the awards made pursuant to the Arbitration Law of the People's Republic of China by the arbitral authorities in the Mainland (the list to be supplied by the Legislative Affairs Office of the State Council through the Hong Kong and Macao Affairs Office of the State Council) and the People's Courts of the Mainland agree to enforce the awards made in the HKSAR pursuant to the Arbitration Ordinance of the HKSAR. The following arrangement is made in respect of mutual enforcement of arbitral awards by the Mainland and the HKSAR:

1. Where a party fails to comply with an arbitral award, whether made in the Mainland or in the HKSAR, the other party may apply to the relevant court in the place where the party against whom the application is filed is domiciled or in the place where the property of the said party is situated to enforce the award.

2. For the purpose of Article 1 above, "relevant court", in the case of the Mainland, means the Intermediate People's Court of the place where the party against whom the application is filed is domiciled or the place in which the property of the said party is situated and, in the case of the HKSAR, means the High Court of the HKSAR.

If the place where the party against whom the application is filed is domiciled or the place where the property of the said party is situated falls within the jurisdiction of different Intermediate People's Courts of the Mainland the applicant may apply to any one of the People's Courts to enforce the award. The applicant shall not file his application with two or more People's Courts.

If the place where the party against whom the application is filed is domiciled or the place where the property of the said party is situated is in the Mainland as well as in the HKSAR, the applicant shall not file applications with relevant courts of the two places at the same time. Only when the result of the

enforcement of the award by the court of one place is insufficient to satisfy the liabilities may the applicant apply to the court of another place for enforcement of the outstanding liabilities. The total amount recovered from enforcing the award in the courts of the two places one after the other shall in no case exceed the amount awarded.

3. The applicant shall submit the following documents in applying to the relevant court for enforcement of an award, made either in the Mainland or in the HKSAR:

- i) An application for enforcement;
- ii) The arbitral award;
- iii) The arbitration agreement.

4. An application for enforcement shall contain the following:

(1) Where the applicant is a natural person, his name and address; where the applicant is a legal entity or any other organisation, its name and address and the name of its legally authorised representative;

(2) Where the party against whom the application is filed is a natural person, his name and address; where the party against whom the application is filed is a legal entity or any other organisation, its name and address and the name of its legally authorized representative;

(3) Where the applicant is a legal entity or any other organisation, a copy of the enterprise registration record shall be submitted. Where the applicant is a foreign legal entity or any other foreign organisation, the corresponding notarisation and authentication material shall be submitted;

(4) The grounds for and the particulars of the application for enforcement; the place where the property of the party against whom the application is filed is situated and the status of the property.

Application for enforcement made in the Mainland shall be in the Chinese language. If the arbitral award or arbitration agreement is not in the Chinese language, the applicant shall submit a duly certified Chinese translation of it.

5. The time limit for an applicant to apply to the relevant court for enforcement of the arbitral award, whether made in the Mainland or in the HKSAR, shall be governed by the law on limitation period of the place of enforcement.

6. Upon receipt of an application for enforcement from an applicant, the relevant court shall handle the application and enforce the award according to the legal procedure of the place of enforcement.

7. The party against whom an application is filed may, after receiving notice of an arbitral award, whether made in the Mainland or in the HKSAR, adduce evidence to show any of the situations set out below. Upon such evidence being examined and any of the said situations being found proved, the relevant court may refuse to enforce the arbitral award:

(1) A party to the arbitration agreement was, under the law applicable to him, under some incapacity, or the 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 in which the arbitral award was made;

(2) 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;

(3) 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. However, if the award contains decisions on matters submitted to arbitration that can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration shall be enforced;

(4) The composition of the arbitral authority or the arbitral procedure was not in accordance with agreement of the parties or, failing such agreement, with the law of the place where the arbitration took place;

(5) 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 arbitration took place;

If the relevant court finds that under the law of the place of enforcement, the dispute is incapable of being settled by arbitration, then the court may refuse to enforce the award

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



8. The applicant, in applying to the relevant court to enforce an arbitral award, whether made in the Mainland or in the HKSAR, shall pay the enforcement fees prescribed by the court of enforcement.

9. Applications made after 1<sup>st</sup> July, 1997 for enforcement of arbitral awards, whether made in the Mainland or in the HKSAR, shall be enforced according to this Arrangement.

10. In respect of applications for enforcement made between 1st July, 1997 and the coming into force of this Arrangement, both parties agree that:

Where the applications for enforcement cannot, for some reasons, be made to the court of the Mainland or the court of the HKSAR between 1<sup>st</sup> July, 1997 and the coming into force of this Arrangement, then, in the case of the applicant being a legal entity or any other organization, the application for enforcement may be made within six months after this Arrangement comes into force and, in the case of the applicant being a natural person, the application for enforcement may be made within one year after this Arrangement comes into force.

Parties to cases which the court of the Mainland or the HKSAR had, between 1<sup>st</sup> July, 1997 and the coming into force of this Arrangement, refused to handle or to enforce the award, shall be allowed to make fresh application for enforcement.

11. Any problem arising in the course of implementing this Arrangement and any amendment to this Arrangement shall be resolved through consultations between the Supreme People's Court and the Government of the HKSAR.