

## LEGISLATIVE COUNCIL BRIEF

### Arbitration (Amendment) Bill 2013

#### INTRODUCTION

At the meeting of the Executive Council on 19 March 2013, the Council ADVISED and the Acting Chief Executive ORDERED that the A Arbitration (Amendment) Bill 2013, at Annex A, should be introduced into the Legislative Council.

#### JUSTIFICATIONS

##### Implementation of the Arrangement with Macao

2. Until recently, there was no arrangement between Hong Kong and Macao on the reciprocal recognition and enforcement of arbitral awards. The conclusion of the Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards between the Hong Kong Special Administrative Region and the Macao Special Administrative Region in January 2013 (the Arrangement) is beneficial to Hong Kong in terms of enhancing our role as a regional arbitration centre as it facilitates the efficient enforcement of Macao arbitral awards in Hong Kong and *vice versa*. A copy of the English translation of the Arrangement prepared by the Department of Justice is at Annex B. B The Arrangement is in line with the principles of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention), which is the basis adopted in the similar arrangement made between Hong Kong and the Mainland in 1999.

3. In order to implement the Arrangement, it is necessary to amend the Ordinance so as to enable awards made in Macao to be enforced by Hong Kong courts.

## **Enhancing the arbitration regime in Hong Kong**

4. In addition, there have been some recent developments in the field of arbitration which warrant certain amendments to the Ordinance in order to enhance the arbitral regime in Hong Kong. In particular, the emergency arbitrator procedure has increasingly been adopted by arbitral institutions around the world. For example, the 2012 ICC Rules of Arbitration have included specific rules for the procedure. The procedure would enable parties to arbitration to obtain emergency relief from an emergency arbitrator before the arbitral tribunal is constituted and without having to apply to a court.

5. In this regard, the Hong Kong International Arbitration Centre is finalizing a set of amendments to its Arbitration Rules to include a procedure for the appointment of an “emergency arbitrator” to deal with applications for emergency relief before the constitution of an arbitral tribunal. To complement these developments, amendments to the Ordinance will be required to make it clear that any emergency relief granted by an emergency arbitrator is enforceable in accordance with the Ordinance.

6. Amendment to the Ordinance will also be required to make it clear that if the parties to arbitration have agreed that the costs of the arbitral proceedings are to be taxed by the court, the costs are to be taxed on a “party and party” basis under Order 62 Rule 28(2) of the Rules of the High Court (Cap. 4 sub. leg. A). Currently, section 75 of the Ordinance does not specify the basis on which the court can award the costs.

7. There are some new state parties to the New York Convention including Fiji, Liechtenstein, Sao Tome and Principe and Tajikistan. In order to comply with obligations under the New York Convention to recognize and enforce arbitral awards made in these jurisdictions, it is necessary to include these state parties in the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 609 sub. leg. A).

## **THE BILL**

8. The main provisions of the Bill are summarized below.

9. Clause 5 adds a new Part 3A (comprising sections 22A and 22B) to the Ordinance. The proposed section 22B(1) provides that any

emergency relief granted by an emergency arbitrator in or outside Hong Kong is enforceable in the same manner as an order or direction of the Court of First Instance of the High Court (the Court) that has the same effect, but only with the leave of the Court. Section 22B(2) provides further guidance as regards the types of emergency relief granted outside Hong Kong that may be enforced by the Court.

10. Clause 7 amends section 75 of the Ordinance to provide that if the parties to arbitration have agreed that the costs of the arbitral proceedings are to be taxed by the court, the costs are to be taxed on a “party and party” basis under rule 28(2) of Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A).

11. As the content of the Arrangement is similar to the existing arrangement between Hong Kong and the Mainland on mutual enforcement of arbitral awards concluded in 1999 (the Mainland/Hong Kong Arrangement), the proposed amendments regarding the implementation of the Arrangement are broadly similar to Division 3, Part 10 of the Ordinance under which the mechanism for enforcement of arbitral awards under the Mainland/Hong Kong Arrangement is set out.

12. Clause 18 adds a new Division 4 (comprising sections 98A to 98D) to Part 10 of the Ordinance to provide for the enforcement of Macao Awards -

- (a) Under the proposed section 98A, a Macao award is enforceable in Hong Kong either by action in the Court, or in the same manner as an arbitral award to which section 84 of the Ordinance applies with the leave of the Court.
- (b) Under the proposed section 98B, it is provided that if a Macao award is not fully satisfied by way of enforcement proceedings taken in Macao (or in any other place other than Hong Kong), that part of the award which is not satisfied in those proceedings is enforceable under the proposed new Division 4.
- (c) The proposed section 98C provides for the evidence required to be produced for the enforcement of Macao awards.
- (d) The proposed section 98D sets out the grounds of refusal of enforcement of Macao awards, which are in line with the principles under the New York Convention as set out in section 89 of the Ordinance.

13. Clause 20 contains amendments to the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 609 sub. leg. A) to update the list of the parties to the New York Convention by adding the following four parties, namely, Fiji, Liechtenstein, Sao Tome and Principe and Tajikistan.

## **LEGISLATIVE TIMETABLE**

14. The legislative timetable will be as follows –

Publication in the Gazette	28 March 2013
First Reading and commencement of Second Reading debate	24 April 2013
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

## **IMPLICATIONS OF THE PROPOSAL**

15. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, financial, productivity, environmental or sustainability implications.

16. It is not possible to estimate at this stage the additional workload on the Judiciary as a result of the implementation of the Bill. Additional financial and manpower resources should be provided by the Administration to the Judiciary should such a need arise in future. Where necessary, additional resources will be sought through the established resource allocation mechanism.

17. The Bill will not affect the current binding effect of the Ordinance.

## **PUBLIC CONSULTATION**

18. In March 2011, the legal profession, chambers of commerce, trade associations, arbitration bodies, other professional bodies and interested

parties were consulted on the proposal to conclude the Arrangement and the broad framework of the Arrangement. The consultees, including the legal professional bodies and the arbitration bodies, were supportive of the proposal.

19. In January 2013, a draft Bill was sent, for consultation, to the Law Society of Hong Kong, the Hong Kong Bar Association, the Hong Kong International Arbitration Centre, the International Chamber of Commerce, International Court of Arbitration (Asia Office), the Chinese International Economic and Trade Arbitration Commission (Hong Kong Arbitration Centre) and the Judiciary. They are generally supportive of the proposed Bill. Their comments and responses have been taken into account where appropriate.

20. The Legislative Council's Panel on Administration of Justice and Legal Services has been briefed on the above proposals at its meeting on 14 December 2012. Members of the Panel expressed support to the proposed amendments to the Ordinance.

## **PUBLICITY**

21. A press release is to be issued on 26 March 2013. A spokesman will be available to answer enquiries.

## **ENQUIRY**

22. Any enquiry on this brief can be addressed to Ms Alice Choy, Senior Government Counsel, Legal Policy Division, Department of Justice, at Tel. No. 2867 4727.

Department of Justice  
26 March 2013

**Arbitration (Amendment) Bill 2013**

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# A BILL

## To

Amend the Arbitration Ordinance to implement an arrangement between Hong Kong and Macao for the reciprocal recognition and enforcement of arbitral awards; to make miscellaneous amendments to that Ordinance and the Arbitration (Parties to New York Convention) Order; and to make consequential amendments.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

**1. Short title and commencement**

- (1) This Ordinance may be cited as the Arbitration (Amendment) Ordinance 2013.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

**Part 2****Amendments to Arbitration Ordinance****2. Arbitration Ordinance amended**

The Arbitration Ordinance (Cap. 609) is amended as set out in sections 3 to 18.

**3. Section 2 amended (interpretation)**

Section 2(1)—

**Add in alphabetical order**

“*Macao* (澳門) means the Macao Special Administrative Region;

*Macao award* (澳門裁決) means an arbitral award made in Macao in accordance with the arbitration law of Macao;”.

**4. Section 5 amended (arbitrations to which this Ordinance applies)**

Section 5(2), after “only”—

**Add**

“this Part.”.

**5. Part 3A added**

After Part 3—

**Add****“Part 3A****Enforcement of Emergency Relief****22A. Interpretation**

In this Part—

*emergency arbitrator* (緊急仲裁員) means an emergency arbitrator appointed under the arbitration rules (including the arbitration rules of a permanent arbitral institution) agreed to or adopted by the parties to deal with the parties’ applications for emergency relief before an arbitral tribunal is constituted.

**22B. Enforcement of emergency relief granted by emergency arbitrator**

- (1) Any emergency relief granted, whether in or outside Hong Kong, by an emergency arbitrator under the relevant arbitration rules is enforceable in the same manner as an order or direction of the Court that has the same effect, but only with the leave of the Court.
- (2) The Court may not grant leave to enforce any emergency relief granted outside Hong Kong unless the party seeking to enforce it can demonstrate that it consists only of one or more temporary measures (including an injunction) by which the emergency arbitrator orders a party to do one or more of the following—
  - (a) maintain or restore the status quo pending the determination of the dispute concerned;
  - (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;



- (c) provide a means of preserving assets out of which a subsequent award made by an arbitral tribunal may be satisfied;
  - (d) preserve evidence that may be relevant and material to resolving the dispute;
  - (e) give security in connection with anything to be done under paragraph (a), (b), (c) or (d);
  - (f) give security for the costs of the arbitration.
- (3) If leave is granted under subsection (1), the Court may enter judgment in terms of the emergency relief.
- (4) A decision of the Court to grant or refuse to grant leave under subsection (1) is not subject to appeal.”.

**6. Section 61 amended (enforcement of orders and directions of arbitral tribunal)**

Section 61(4), Chinese text—

**Repeal**

“根據第(1)款決定批予許可或拒絕”

**Substitute**

“決定根據第(1)款批予許可，或決定拒絕根據第(1)款”。

**7. Section 75 amended (taxation of costs of arbitral proceedings (other than fees and expenses of arbitral tribunal))**

Section 75(1)—

**Repeal**

everything after “the tribunal) are”

**Substitute**

“to be taxed by the court on the party and party basis in accordance with rule 28(2) of Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A).”.

**8. Section 84 amended (enforcement of arbitral awards)**

Section 84(3), Chinese text—

**Repeal**

“根據第(1)款決定批予或拒絕批予強制執行裁決的”

**Substitute**

“決定根據第(1)款批予強制執行裁決的許可，或決定拒絕根據第(1)款批予該”。

**9. Section 85 amended (evidence to be produced for enforcement of arbitral awards)**

(1) Section 85—

**Repeal**

“neither a Convention award nor a Mainland award”

**Substitute**

“not a Convention award, Mainland award or Macao award”.

(2) Section 85—

**Repeal paragraph (c)**

**Substitute**

“(c) if the award or agreement is not in either or both of the official languages, a translation of it in either official language certified by an official or sworn translator or by a diplomatic or consular agent.”.

**10. Section 86 amended (refusal of enforcement of arbitral awards)**

(1) Section 86(1), English text—

**Repeal paragraph (a)****Substitute**

“(a) that a party to the arbitration agreement was under some incapacity (under the law applicable to that party);”.

(2) Section 86—

**Repeal subsection (3)****Substitute**

“(3) If an award referred to in section 85 contains, apart from decisions on matters submitted to arbitration (*arbitral decisions*), decisions on matters not submitted to arbitration (*unrelated decisions*), the award may be enforced only in so far as it relates to the arbitral decisions that can be separated from the unrelated decisions.”.

(3) Section 86(4), English text—

**Repeal**

“the setting aside or suspension of”

**Substitute**

“setting aside or suspending”.

**11. Section 87 amended (enforcement of Convention awards)**

(1) Section 87(1)(b)—

**Repeal**

“arbitral award, and section 84 applies”

**Substitute**

“award to which section 84 applies, and that section applies to a Convention award”.

(2) Section 87—

**Repeal subsection (2)****Substitute**

“(2) A Convention award which is enforceable as mentioned in subsection (1) is to be treated as binding for all purposes on the parties, and may accordingly be relied on by any of them by way of defence, set off or otherwise in any legal proceedings in Hong Kong.”.

**12. Section 88 amended (evidence to be produced for enforcement of Convention awards)**

Section 88—

**Repeal paragraph (c)****Substitute**

“(c) if the award or agreement is not in either or both of the official languages, a translation of it in either official language certified by an official or sworn translator or by a diplomatic or consular agent.”.

**13. Section 89 amended (refusal of enforcement of Convention awards)**

(1) Section 89(1)—

**Repeal**

“in the cases”

**Substitute**

“as”.

(2) Section 89(2), English text—

**Repeal paragraph (a)****Substitute**

“(a) that a party to the arbitration agreement was under some incapacity (under the law applicable to that party);”.

(3) Section 89—

**Repeal subsection (4)**

**Substitute**

“(4) If a Convention award contains, apart from decisions on matters submitted to arbitration (*arbitral decisions*), decisions on matters not submitted to arbitration (*unrelated decisions*), the award may be enforced only in so far as it relates to the arbitral decisions that can be separated from the unrelated decisions.”.

(4) Section 89(5), English text—

**Repeal**

“the setting aside or suspension of”

**Substitute**

“setting aside or suspending”.

**14. Section 92 amended (enforcement of Mainland awards)**

(1) Section 92(1)(b)—

**Repeal**

“arbitral award, and section 84 applies”

**Substitute**

“award to which section 84 applies, and that section applies to a Mainland award”.

(2) Section 92—

**Repeal subsection (2)**

**Substitute**

“(2) A Mainland award which is enforceable as mentioned in subsection (1) is to be treated as binding for all purposes on the parties, and may accordingly be relied on by any of them by way of defence, set off or otherwise in any legal proceedings in Hong Kong.”.

**15. Section 93 amended (restrictions on enforcement of Mainland awards)**

Section 93—

**Repeal subsection (2)**

**Substitute**

“(2) If a Mainland award is not fully satisfied by way of enforcement proceedings taken in the Mainland, or in any other place other than Hong Kong, that part of the award which is not satisfied in those proceedings is enforceable under this Division.”.

**16. Section 94 amended (evidence to be produced for enforcement of Mainland awards)**

Section 94—

**Repeal paragraph (c)**

**Substitute**

“(c) if the award or agreement is not in either or both of the official languages, a translation of it in either official language certified by an official or sworn translator or by a diplomatic or consular agent.”.

**17. Section 95 amended (refusal of enforcement of Mainland awards)**

(1) Section 95(1)—

**Repeal**

“in the cases”

**Substitute**

“as”.

- (2) Section 95(2), English text—

**Repeal paragraph (a)**

**Substitute**

“(a) that a party to the arbitration agreement was under some incapacity (under the law applicable to that party);”.

- (3) Section 95—

**Repeal subsection (4)**

**Substitute**

“(4) If a Mainland award contains, apart from decisions on matters submitted to arbitration (*arbitral decisions*), decisions on matters not submitted to arbitration (*unrelated decisions*), the award may be enforced only in so far as it relates to the arbitral decisions that can be separated from the unrelated decisions.”.

**18. Part 10, Division 4 added**

Part 10, after Division 3—

**Add**

**“Division 4—Enforcement of Macao Awards**

**98A. Enforcement of Macao awards**

- (1) A Macao award is, subject to this Division, enforceable in Hong Kong either—
- (a) by action in the Court; or

- (b) in the same manner as an award to which section 84 applies, and that section applies to a Macao award accordingly as if a reference in that section to an award were a Macao award.

- (2) A Macao award which is enforceable as mentioned in subsection (1) is to be treated as binding for all purposes on the parties, and may accordingly be relied on by any of them by way of defence, set off or otherwise in any legal proceedings in Hong Kong.
- (3) A reference in this Division to enforcement of a Macao award is to be construed as including reliance on a Macao award.

**98B. Enforcement of Macao awards partially satisfied**

If a Macao award is not fully satisfied by way of enforcement proceedings taken in Macao, or in any other place other than Hong Kong, that part of the award which is not satisfied in those proceedings is enforceable under this Division.

**98C. Evidence to be produced for enforcement of Macao awards**

The party seeking to enforce a Macao award must produce—

- (a) the duly authenticated original award or a duly certified copy of it;
- (b) the original arbitration agreement or a duly certified copy of it; and
- (c) if the award or agreement is not in either or both of the official languages, a translation of it in either official language certified by an official or sworn translator or by a diplomatic or consular agent.

**98D. Refusal of enforcement of Macao awards**

- (1) Enforcement of a Macao award may not be refused except as mentioned in this section.
- (2) Enforcement of a Macao award may be refused if the person against whom it is invoked proves—
  - (a) that a party to the arbitration agreement was under some incapacity (under the law applicable to that party);
  - (b) that the arbitration agreement was not valid—
    - (i) under the law to which the parties subjected it; or
    - (ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of Macao;
  - (c) that the person—
    - (i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or
    - (ii) was otherwise unable to present the person's case;
  - (d) subject to subsection (4), that the award—
    - (i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or
    - (ii) contains decisions on matters beyond the scope of the submission to arbitration;
  - (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with—
    - (i) the agreement of the parties; or

- (ii) (if there was no agreement) the law of Macao; or
- (f) that the award—
  - (i) has not yet become binding on the parties; or
  - (ii) has been set aside or suspended by a competent authority of Macao or under the law of Macao.
- (3) Enforcement of a Macao award may also be refused if—
  - (a) the award is in respect of a matter which is not capable of settlement by arbitration under the law of Hong Kong; or
  - (b) it would be contrary to public policy to enforce the award.
- (4) If a Macao award contains, apart from decisions on matters submitted to arbitration (*arbitral decisions*), decisions on matters not submitted to arbitration (*unrelated decisions*), the award may be enforced only in so far as it relates to the arbitral decisions that can be separated from the unrelated decisions.
- (5) If an application for setting aside or suspending a Macao award has been made to a competent authority as mentioned in subsection (2)(f), the court before which enforcement of the award is sought—
  - (a) may, if it thinks fit, adjourn the proceedings for the enforcement of the award; and
  - (b) may, on the application of the party seeking to enforce the award, order the person against whom the enforcement is invoked to give security.
- (6) A decision or order of the court under subsection (5) is not subject to appeal.”

**Part 3****Amendment to Arbitration (Parties to New York Convention) Order**

- 19. Arbitration (Parties to New York Convention) Order amended**  
The Arbitration (Parties to New York Convention) Order (Cap. 609 sub. leg. A) is amended as set out in section 20.
- 20. Schedule amended**  
The Schedule—
- Add in alphabetical order**
- “Fiji  
Liechtenstein  
Sao Tome and Principe  
Tajikistan”.
- 

**Part 4****Consequential Amendments to Rules of the High Court**

- 21. Rules of the High Court amended**  
The Rules of the High Court (Cap. 4 sub. leg. A) are amended as set out in section 22.
- 22. Order 73, rule 10 amended (enforcement of settlement agreement, award, order or direction under Arbitration Ordinance)**
- (1) Order 73, rule 10, heading—
- Repeal**
- “or direction”
- Substitute**
- “, direction or emergency relief”.
- (2) Order 73, after rule 10(1)(b)—
- Add**
- “(ba) under section 22B(1) of the Arbitration Ordinance to enforce any emergency relief;”.
- (3) Order 73, rule 10(1)(d)—
- Repeal**
- everything after “84(1)”
- Substitute**
- “of the Arbitration Ordinance, or in accordance with section 84 of the Arbitration Ordinance as provided by section 87(1)(b), 92(1)(b) or 98A(1)(b) of that Ordinance, to enforce an arbitral award.”.

- (4) Order 73, rule 10(1)—  
**Repeal**  
 “judgment or order”  
**Substitute**  
 “judgment, order or direction”.
- (5) Order 73, after rule 10(3)(a)(ii)—  
**Add**  
 “(iiaa) if the application is under section 22B(1) of the Arbitration Ordinance, the arbitration agreement (or a copy of it) and the original instrument of grant of emergency relief (or a copy of it);”.
- (6) Order 73, rule 10(3)(a)(iii)—  
**Repeal**  
 “(iv) and (v)”  
**Substitute**  
 “(iv), (v) and (vi)”.
- (7) Order 73, rule 10(3)(a)(iv)—  
**Repeal**  
 “under section 87(1)(a) of the Arbitration Ordinance, or”.
- (8) Order 73, rule 10(3)(a)(v)—  
**Repeal**  
 “under section 92(1)(a) of the Arbitration Ordinance, or”.
- (9) Order 73, after rule 10(3)(a)(v)—  
**Add**  
 “(vi) if the application is in accordance with section 84 of the Arbitration Ordinance as provided by section 98A(1)(b)

- of that Ordinance, the documents required to be produced under section 98C of that Ordinance;”.
- (10) Order 73, rule 10(3)(b)—  
**Repeal**  
 “or direction”  
**Substitute**  
 “, direction or emergency relief”.
- (11) Order 73, rule 10(3)(c)—  
**Repeal**  
 “or direction”  
**Substitute**  
 “, direction or emergency relief”.
- (12) Order 73, rule 10(6)—  
**Repeal**  
 “or direction”  
**Substitute**  
 “, direction or emergency relief”.
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### Explanatory Memorandum

The main object of this Bill is to amend the Arbitration Ordinance (Cap. 609) (*principal Ordinance*) to implement the Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards Between the Hong Kong Special Administrative Region and the Macao Special Administrative Region concluded in January 2013.

2. The Bill also makes miscellaneous amendments to the principal Ordinance.
3. Clause 5 adds a new Part 3A to the principal Ordinance, which provides for the enforcement of emergency relief granted by an emergency arbitrator appointed by the parties to arbitration before an arbitral tribunal is constituted.
4. Clause 7 amends section 75 of the principal Ordinance to provide that if the parties to arbitration have agreed that the costs of the arbitral proceedings are to be taxed by the court, the costs are to be taxed on a “party and party” basis.
5. Clause 18 adds a new Division 4 to Part 10 of the principal Ordinance. The new Division provides for the requirements relating to the enforcement in Hong Kong of an arbitral award made in Macao.
6. Clause 20 adds to the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 609 sub. leg. A) 4 new parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.
7. Clause 22 makes consequential amendments to the Rules of the High Court (Cap. 4 sub. leg. A) as regards the enforcement of arbitral awards under those Rules.



**Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards  
Between the Hong Kong Special Administrative Region and  
the Macao Special Administrative Region  
[For reference only]**

In accordance with the provisions of Article 95 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and Article 93 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China and through mutual consultations between the Government of the Hong Kong Special Administrative Region (HKSAR) and the Government of the Macao Special Administrative Region (Macao SAR), the following Arrangement is made in respect of reciprocal recognition and enforcement of arbitral awards by the HKSAR and the Macao SAR.

**Article 1**

- (1) The courts of the HKSAR shall recognise and enforce arbitral awards made in the Macao SAR pursuant to the arbitration laws and regulations of the Macao SAR and the courts of the Macao SAR shall recognise and enforce arbitral awards made in the HKSAR pursuant to the Arbitration Ordinance of the HKSAR. This Arrangement shall apply to these awards.
- (2) Where circumstances are not prescribed in this Arrangement, the legal procedure of the place of recognition and enforcement shall apply.

**Article 2**

- (1) Where a party fails to comply with an arbitral award, whether made in the HKSAR or the Macao SAR, the other party may apply to the relevant court in 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 for recognition and enforcement of the award.
- (2) In the HKSAR, the Court of First Instance of the High Court has jurisdiction to entertain an application for recognition and enforcement of arbitral awards. In the Macao SAR, the Court of First Instance has jurisdiction to entertain applications for recognition while the Court of Second Instance has jurisdiction to enforce arbitral awards.

**Article 3**

If the result of the enforcement of an award in one place is insufficient to satisfy the liabilities, an applicant may 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.

#### **Article 4**

An applicant shall, in applying to the relevant court for recognition and enforcement of an arbitral award, submit the following documents or notarised copies of the same:

- (1) the application;
- (2) the arbitral award;
- (3) the arbitration agreement.

If the above documents are not in an official language of the place where recognition and enforcement of the award is sought, the applicant shall submit duly certified translations in one of the official languages.

The “official languages” referred to in this Article are Chinese and English in the case of the HKSAR, and Chinese and Portuguese in the case of the Macao SAR.

#### **Article 5**

An application shall contain the following:

- (1) Where the applicant or the party against whom an application is filed is a natural person, his name and address; where it is a legal entity or any other organisation, its name, address and the name, duties and address of its legal representative or principal responsible person, and that a copy of the enterprise registration record shall be submitted. Where the applicant is a legal entity or any other organisation established outside the HKSAR or the Macao SAR, the corresponding notarisation and authentication material shall be submitted;
- (2) The case number or other means of identification and the effective date of the arbitral award in respect of which the application for recognition and enforcement is filed;
- (3) The grounds for and the particulars of the application for recognition and enforcement of the arbitral award; and the place in which the property of the party against whom the application is filed is situated, the status of the property and, if applicable, the particulars of the part of the arbitral award that has not been enforced.

#### **Article 6**

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

#### **Article 7**

- (1) A party against whom an application for recognition and enforcement of an arbitral award is filed may 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 recognise and enforce the arbitral award:

- (i) A party to an arbitration agreement was, under the law applicable to him, under incapacity at the time of entering into the arbitration agreement; or the arbitration agreement was not valid under the law to which the parties subjected it, or, under the law of the place of arbitration if no applicable law was agreed on by the parties;
  - (ii) A party against whom an application is filed was not given proper notice of the appointment of the arbitrator or the conduct of the arbitral procedure or was otherwise unable to present his case;
  - (iii) The dispute dealt with in an award is not the dispute submitted to arbitration or not within the scope of the arbitration agreement; or the award contains decisions on matters beyond the scope of the submission to arbitration made by the parties. However, if the award contains decisions on matters beyond the scope of the submission to arbitration that can be separated from those on matters submitted to arbitration, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;
  - (iv) The constitution of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the place where the arbitration took place;
  - (v) 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.
- (2) If the relevant court finds that under the law of the place of recognition and enforcement, a dispute is incapable of being settled by arbitration, then the court may refuse to recognise and enforce the relevant award.
- (3) If the court of the HKSAR holds that the recognition and enforcement of an arbitral award in the HKSAR is contrary to the public policy of the HKSAR, or if the court of the Macao SAR holds that the recognition and enforcement of an arbitral award in the Macao SAR is contrary to the public order of the Macao SAR, the recognition and enforcement of the award may be refused.

#### **Article 8**

An applicant shall, in applying for recognition and enforcement of an arbitral award under this Arrangement, pay the relevant fees in accordance with the law of the place of recognition and enforcement.

#### **Article 9**

(1) Where a party applies to the court of one place to recognise and enforce an arbitral award and the other party applies to the court of another place to set aside such an arbitral award, the court before which enforcement of the award is sought shall suspend the enforcement if the person against whom the enforcement is invoked applies for suspension of the enforcement and provides sufficient security.

(2) The court before which enforcement of an award is sought shall terminate the enforcement proceedings when a judgment and determination to set aside the arbitral award is recognised, whereas it shall resume the proceedings when an application for setting aside the arbitral award is dismissed.

(3) A party applying for suspension of recognition and enforcement of an arbitral award shall provide the court before which enforcement of the award is sought with legal instruments relating to applications for setting aside arbitral awards entertained by other courts.

#### **Article 10**

The court entertaining an application shall examine and decide on the request for recognition and enforcement as soon as possible.

#### **Article 11**

This Arrangement shall not apply to any requests for recognition and enforcement of arbitral awards made by parties before this Arrangement comes into force.

#### **Article 12**

In the event of any problem arising in the course of implementing this Arrangement or a need for amendment of this Arrangement, it shall be resolved through consultations between the Government of the HKSAR and the Government of the Macao SAR.

#### **Article 13**

The Government of the HKSAR and the Government of the Macao SAR shall in writing notify each other of the completion of the internal procedures required to bring this Arrangement into force. This Arrangement shall come into force from the designated date agreed by both sides.

This Arrangement is signed in duplicate in the Macao SAR this 7th day of January 2013.

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Secretary for Justice  
Hong Kong Special Administrative Region

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Secretary for Administration and Justice  
Macao Special Administrative Region