

Consultation Paper on Proposal to Enter into An Arrangement with
Macao SAR on Mutual Enforcement of Arbitral Awards

COMMENTS FROM HONG KONG BAR ASSOCIATION

A. Background to Consultation

1. This Consultation Paper seeks views on the on the proposal to enter into an arrangement on mutual enforcement of arbitral awards between Hong Kong and Macao and on whether such an arrangement should be in lines with the Arrangement concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region in 1999 and the Arrangement concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Macao Special Administrative Region in 2007 (“the Arrangements with Mainland”), particularly on the scope of application, the procedure of application and the grounds for refusal of enforcement.
2. At present, enforcement in Hong Kong of a Macao arbitral award may be summarily enforced under section 2GG of the existing Arbitration Ordinance (Cap. 341). Under that section, an award made or given, whether in or outside Hong Kong, by an arbitral tribunal is enforceable in the same way as a judgment of the court, but only with the leave of the court. If leave is given, the court may enter a judgment in terms of the award.
3. The new Arbitration Ordinance, enacted by the Legislative Council in November 2010 and yet to come into force, retains, as the new section 84, the provisions under section 2GG of the existing Arbitration Ordinance (Cap.341). The grounds of refusal in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at

New York on 10 June 1958 (“the New York Convention”) are retained and utilized for Mainland awards and Convention awards. For Macao awards (and other awards which are not Mainland awards or Convention awards), grounds for refusal of enforcement modeled on those of the New York Convention are also newly introduced. For these awards, an extra ground to refuse enforcement for any other reason the court considers it just to do so is also added in section 86(2)(c) of the new Arbitration Ordinance.

4. At present, Hong Kong awards that are awards of international commercial arbitration under the Decree Law 55/98M of Macao may be enforced in Macao; alternatively, Hong Kong awards may be enforced where Chapter 14 of the Code of Civil Procedure of Macao is found satisfied. There exists no arrangement between Hong Kong and Macao on mutual enforcement of arbitral awards whether utilizing the New York Convention grounds or otherwise.
5. Generally, the HKBA welcomes and supports the proposed reform to the law of arbitration in Hong Kong and believes that this can further promote Hong Kong as a venue and practice for arbitration users, local and overseas. We include our comments below, aiming mainly at improving the use of the new Ordinance and for the better implementation of it.

B. Mutual Enforcement Arrangement

6. Given the increase in economic interflow between Hong Kong and Macao as well as the rest of PRD Region, the HKBA welcomes the entering into of an arrangement with Macao SAR on mutual enforcement of arbitral awards and believes that this is timely for doing so.

7. The HKBA supports bringing in enhanced certainty with a simple mechanism for the mutual enforcement of arbitral awards in Hong Kong and Macao, which will further build up Hong Kong's role as the regional arbitration centre for resolution of all disputes. The HKBA agrees that this will foster further legal co-operation between Hong Kong and Macao in civil and commercial matters.
8. For certainty, the HKBA considers that the proposed arrangement should be developed in the light of the current Arrangements with Mainland, particularly as regards the grounds for refusal of enforcement, levels of courts and evidence to be provided in the application.
9. On the scope of application, the HKBA notes that the application of the existing Arbitration Ordinance (and the new Arbitration Ordinance) is not limited to commercial arbitrations. As such, in line with the Arrangements with Mainland, the HKBA considers that this may be reflected in developing the proposed arrangement so that the scope of its application may cover all arbitrations.

C. Concluding Views

10. The HKBA welcomes the entering into of an arrangement on the mutual enforcement of arbitral awards between Hong Kong and Macao and believes that it should be developed modeling on those Arrangements with Mainland.

Hong Kong Bar Association
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