

LEGISLATIVE COUNCIL BRIEF

Arbitration Ordinance
(Chapter 609)

ARBITRATION (PARTIES TO NEW YORK CONVENTION) (AMENDMENT) ORDER 2020

INTRODUCTION

At the meeting of the Executive Council on 12 May 2020, the Council **ADVISED** and the Chief Executive **ORDERED** that the Arbitration (Parties to New York Convention) (Amendment) Order 2020 (“Amendment Order”), at **Annex**, should be made pursuant to section 90(1) of the Arbitration Ordinance (“Ordinance”) to amend the Arbitration (Parties to New York Convention) Order (“Order”) so that the newly joined parties to the New York Convention will be included in its Schedule, update the name of a party to the New York Convention and make a textual amendment to the Chinese text of the Schedule to the Order.

JUSTIFICATIONS

2. Five States, namely (in alphabetical order), Cabo Verde (佛得角), Maldives (馬爾代夫), Papua New Guinea (巴布亞新幾內亞), Seychelles (塞舌爾) and Sudan (蘇丹), have acceded to the New York Convention since the Order was last updated in 2017. Further, on 14 February 2019, “The former Yugoslav Republic of Macedonia” (前南斯拉夫馬其頓共和國) has changed its country name to “North Macedonia” (北馬其頓).

3. It is also proposed that, in the Chinese version of the entry “Australia (including all the external territories for the international relations of which Australia is responsible other than Papua New Guinea)”, which currently reads “澳大利亞(包括澳大利亞須負責其國際關係的所有外在領土，巴布亞新幾內亞除外)”，“畿” should be repealed and substituted with “幾” for consistency with the Chinese version of the newly added entry of Papua New Guinea.

4. The Amendment Order is made pursuant to section 90(1) of the Ordinance, which provides that the Chief Executive in Council may by order published in the Gazette declare that any State or territory that (a) is a party to the New York Convention; and (b) is specified in the order, is a party to that Convention. Section 90(2) of the Ordinance provides that an order made by Chief Executive in Council under section 90(1), “while in force, is conclusive evidence that the State or territory specified in it is a party to the New York Convention.”

5. That said, section 90(3) of the Ordinance provides that sections 90(1) and 90(2) “do not affect any other method of proving that a State or territory is a party to the New York Convention.” In other words, a foreign arbitral award made in a contracting party to the New York Convention may still be enforced in Hong Kong even if the State or territory concerned is not listed in the Schedule to the Order.

6. Notwithstanding section 90(3) of the Ordinance (see paragraph 5 above), an updated list of parties under the Schedule to the Order would facilitate the courts of Hong Kong in identifying a State or territory which is a contracting party to the New York Convention for the purposes of recognition and enforcement of arbitral awards made in such a contracting party (instead of having to rely on the relevant evidence submitted by the applicant seeking to enforce the award which may cause delay and incur unnecessary costs). It is therefore necessary to update the Schedule to the Order to reflect the changes to the list of parties to the New York Convention in a timely manner.

THE AMENDMENT ORDER

7. The Amendment Order seeks to (a) amend the Schedule to the Order to include the new contracting parties to the New York Convention; (b) update the name of a party to the New York Convention; and (c) make a textual amendment to the Chinese text of the Schedule to the Order, as stated in paragraphs 2 and 3 above.

LEGISLATIVE TIMETABLE

8. The legislative timetable is as follows:

Gazette of the Amendment Order	22 May 2020
Tabling at the Legislative Council for negative vetting	27 May 2020
Commencement date of the Amendment Order	24 July 2020

IMPLICATION OF THE PROPOSAL

9. The Amendment Order does not have any economic, financial, environmental, sustainability, civil service, gender, productivity or family implications. The Amendment Order is in conformity with the Basic Law, including provisions concerning human rights. It will not affect the current binding effect of the Ordinance.

CONSULTATION

10. Consultation is not conducted as the Amendment Order is related to an update of the list of the contracting parties to the New York Convention only.

ENQUIRIES

11. Enquiries relating to this brief can be directed to Mr Tin-yan LEE, Senior Assistant Solicitor General (Arbitration), at 3902 8596.

Department of Justice
20 May 2020

**Arbitration (Parties to New York Convention)
(Amendment) Order 2020**

(Made by the Chief Executive in Council under section 90 of the
Arbitration Ordinance (Cap. 609))

1. Commencement

This Order comes into operation on 24 July 2020.

2. 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 3.

3. Schedule amended

(1) The Schedule—

(a) Repeal

“The former Yugoslav Republic of Macedonia”;

(b) Add in alphabetical order

“North Macedonia”.

(2) The Schedule, Chinese text, entry relating to 澳大利亞—

Repeal

“畿”

Substitute

“幾”.

(3) The Schedule—

Add in alphabetical order

“Cabo Verde

Maldives

Papua New Guinea

Seychelles

Sudan”.

Clerk to the Executive Council

COUNCIL CHAMBER

2020

Explanatory Note

This Order amends the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 609 sub. leg. A) (*principal Order*) to incorporate 5 additional States which have acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958 (*New York Convention*) since the principal Order was last amended in 2017.

2. Under section 90(2) of the Arbitration Ordinance (Cap. 609), the principal Order, while in force, is conclusive evidence that those States are parties to the New York Convention.
3. This Order also—
 - (a) updates the name of a party to the New York Convention; and
 - (b) makes a textual amendment to the Chinese text of the Schedule to the principal Order.