

Arbitration (Amendment) Bill 2013

("the Amendment Ordinance") (Ordinance No. 7 of 2013)

The Amendment Ordinance was passed on 10 July 2013 and published in the Gazette on 19 July 2013. A soft copy of the Ordinance is available at the following website : <http://gld.gov.hk/egazette>.

The Amendment Ordinance

2. Hong Kong and Macao concluded the Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards ("the Arrangement") in January 2013. There have also been some recent developments in the field of arbitration which warrant certain amendments to the Arbitration Ordinance ("the Ordinance") in order to enhance the arbitral regime in Hong Kong.

3. The purpose of the Amendment Ordinance is therefore to :

- (a) implement the Arrangement by introducing a statutory mechanism for the enforcement of arbitral awards made in Macao by Hong Kong courts;
- (b) introduce amendments to make it clear that any emergency relief made by an emergency arbitrator is enforceable under the Ordinance; and
- (c) introduce miscellaneous amendments to further enhance the arbitration regime of Hong Kong.

Main features of the Amendment Ordinance

(I) Provisions relating to "Emergency Arbitrators Procedure"

A new Part 3A

4. A new Part 3A (comprising sections 22A and 22B) is added to the Ordinance.

5. 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.

6. Section 22B(2) provides further guidance as regards the types of emergency relief granted outside Hong Kong that may be enforced by the Court.

(II) Amendment relating to the basis of taxation of the costs of the arbitral proceedings

7. Section 75 of the Ordinance is amended 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).

(III) Provisions to implement the Arrangement with Macao

8. A new Division 4 (comprising sections 98A to 98D) is added to Part 10 of the Ordinance to provide for the enforcement of Macao awards under the Arrangement.

9. 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 content of the new Division 4 is broadly similar to Division 3, Part 10 of the Ordinance by which a summary enforcement mechanism for arbitral awards under the Mainland/Hong Kong Arrangement is set out.

10. Under 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.

11. Under 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 new Division 4.

12. Section 98C provides for the evidence required to be produced for enforcement of Macao awards.

13. Section 98D sets out the grounds for refusal of enforcement of Macao awards, which are in line with the principles under the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("the New York Convention") as set out in section 89 of the Ordinance.

(IV) Amendments to the Schedule to the Arbitration (Parties to New York Convention) Order

14. As there are five new parties to the New York Convention, the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 609 sub. leg. A) is updated by adding the following five parties, namely, Fiji, Liechtenstein, Myanmar, Sao Tome and Principe and Tajikistan.

(V) Other amendments

15. To complement the new Division 4 on the enforcement of Macao awards, consequential amendments are made to rule 10 of Order 73 of the Rules of the High Court (Cap. 4 sub. leg. A). Some technical amendments are also made to the Ordinance to improve the language and readability of the relevant provisions.

Commencement

16. There will be a two-phased commencement for the Amendment Ordinance.

17. Provisions relating to the enforcement of Macao awards are to commence on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

18. The rest of the Amendment Ordinance shall come into operation on gazettal today (Ord. No. 7 of 2013).

Enquiries

19. Any enquiries on the Amendment Ordinance may be directed to Ms Alice Choy, Senior Government Council at Tel : 2867 4727 or E-mail : alicechoy@doj.gov.hk.

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