

**Consultation Paper on the Proposed Amendment
to the Arbitration Ordinance (Cap 609)**

COMMENTS FROM HONG KONG BAR ASSOCIATION

A. Background

1. Following the consultation in March 2011, the “Arrangement Concerning Reciprocal and Enforcement of Arbitral Awards” was entered into with the Macao SAR on 7 January 2013 (“the Arrangement”). The consultation paper from the Department of Justice seeks views on introducing legislative amendments to the Arbitration Ordinance (Cap 609) (“the Ordinance”) to implement an arrangement on reciprocal recognition and enforcement of arbitral awards with Macao; and to introduce some miscellaneous amendments relating to the Ordinance.
2. These miscellaneous amendments include provision regarding the enforceability of orders made by an “emergency arbitrator”, taxation of costs of arbitral proceedings and updating the Arbitration (Parties to New York Convention) Order (Cap 609A).
3. The Hong Kong Bar Association (“HKBA”) has been invited to comment.

B. General Views of HKBA

4. The HKBA welcomes and supports the introduction of the proposed amendments to the Ordinance.

C. Amendments to implement the Arrangement

5. The proposed amendments will include the addition of provisions to set out matters relating to the enforcement of Macao arbitral awards (“Macao awards”) under the Arrangement.
6. The HKBA sees that this framework resembles that for enforcing Mainland Awards under the Ordinance and, hence, provides uniformity and consistency to assist arbitration users.
7. In particular, the HKBA believes that the adoption of the grounds in the proposed section 98D also enhances the certainty for the enforcement of Macao awards, which is at present subject to the operation of section 86(2)(c).

D. Amendments regarding “Emergency Arbitrator”

8. The HKBA notes that the recently proposed amendments to the Hong Kong International Arbitration Centre (“HKIAC”) Administered Arbitration Rules provide for the appointment of an “emergency arbitrator” to deal with applications for urgent interim relief before the constitution of an arbitral tribunal.

9. Further, the HKBA observes that the uses of “emergency arbitrator” in institutional arbitrations are gaining popularity in international arbitrations, as seen, for example, from the practice and arbitration rules of International Chamber of Commerce (“ICC”), International Centre for Dispute Resolution (“ICDR”) of American Arbitration Association (“AAA”) and Singapore International Arbitration Centre (“SIAC”).
10. The HKBA sees also that similar provisions have been introduced in the Singapore International Arbitration Act in 2012.
11. In the proposed amendments, Part 6A is introduced to extend the provisions of enforceability of interim relief to cover those by an emergency arbitrator, whether made in or outside Hong Kong. The HKBA notes that there may still be uncertainty as to the enforceability of such awards outside of the jurisdiction but this may be a matter to be dealt with by courts in other jurisdictions on a case by case basis.
12. The HKBA believes that the proposed amendments to the Ordinance in this regard are timely and important to the development of international arbitration in Hong Kong.

E. Taxation of Costs of Arbitral Proceedings

13. The proposed amendments provides that if the parties to arbitration have agreed that the costs of the arbitral proceedings are to be taxed by the court, the costs shall be taxed by the court on a “party and party” basis under Order 62 Rule 28(2) of the Rules of the High Court (Cap 4A). The HKBA sees this amendment offer clarifications to the matter.

F. Amendment to the Arbitration (Parties to New York Convention) Order (Cap 609A)

14. The HKBA welcomes the update.

Hong Kong Bar Association
29th January 2013