

Arbitration (Amendment) Bill 2015
Comments of the Hong Kong Bar Association

Preamble

1. Further to the comments of the Hong Kong Bar Association (“the HKBA”) dated 8 July 2014 on the Consultation Paper on the Arbitration (Amendment) Bill 2014 (“the Consultation Paper”), the HKBA is invited to comment further on the draft Arbitration (Amendment) Bill 2015 (“the Draft Bill”).

General Views

2. In gist, subject to the specific comments below, the HKBA welcomes the proposed amendments as set out in the Draft Bill, which enhances further the clarity to the interaction of the opt-in provisions of Schedule 2 of the Arbitration Ordinance (“the Ordinance”) in relation to the number of arbitrators.

Specific Comments

3. Regarding section 3 of the Draft Bill, there are different manners upon which section 1 of Schedule 2 becomes applicable, i.e. by opting in expressly or automatically under the Ordinance. In relation to section 1 of Schedule 2 of the Ordinance, section 5 of the Draft Bill proposes to replace “Despite section 23” with “Subject to any determination as to the number of arbitrators under section 23(1)”.
4. The HKBA is of the view that the word “determination” may be slightly confusing and suggests adding the words “by the parties” after the word “determination” so as to expressly differentiate the situation from that where the number of arbitrators being is decided under section 23(3) of the Draft Bill.
5. The HKBA sees that section 102 of the Draft Bill amends the automatic opting-in mechanism in relation to Schedule 2 of the Ordinance. In particular, section 1 of Schedule 2 of the Ordinance is taken out from section 102(1)(b)(ii) of the Draft Bill in relation to

applicability of the automatic opting-in situations and section 102(2) of the Draft Bill maintains the status of the express opting-in situations. The HKBA believes that this should help improving clarity further in this regard.

6. In the premises, subject to the above, the HKBA supports the proposed amendments in the Draft Bill.

Hong Kong Bar Association

31 October 2014