

## Report of the Committee on Arbitration 2023 (“SCArb” or the “Arbitration Committee”)

As arbitration (cross border, international and within Hong Kong) continues to be growing practice areas for many members, the 2023 work of the Arbitration Committee was focused on 5 main areas:

- (1) Meeting with arbitration institutions and stakeholders to discuss co-operation activities in education, capacity building and promotion of the Bar, its members and Hong Kong.
- (2) Developing an arbitration course for members with the Young Barristers’ Committee (“YBC”), to be offered in 2024.
- (3) Outcome Related Fee Structures for Arbitration (“ORFSA”) materials, seminars and roundtables following the implementation of ORFSA on 16 December 2023 by Part B of the *Arbitration Ordinance* (Cap 609) and the *Arbitration (Outcome Related Fee Structures for Arbitration) Rules* (the “ORFSA Rules”).<sup>1</sup>
- (4) Participating in the work of eBRAM International Online Dispute Resolution Centre. (“eBRAM”).
- (5) Reviewing applications to join the Bar’s Arbitration List.

### *Meetings with Arbitration Institutions and Stakeholders*

In 2024 discussions were held with various arbitration institutions including those based in Hong Kong and with a number of arbitration commissions in the Mainland about how the Bar may co-operate with them in education, training for members and capacity building, as well as in other matters of mutual interest. The 2024 programme for co-operation with arbitration institutions and stakeholders is expected to be finalized early in 2024.

### *Arbitration Course for Members in 2024*

The Arbitration Committee and the YBC agreed upon the areas to be covered in an arbitration programme for members focusing on arbitration practice and procedure, and issues relating to the development and management of an arbitration practice. It was decided to hold this course in 2024, bearing in mind the YBC’s work in late 2023 organizing and hosting its first conference.

### *ORFSA*

As reported in the Arbitration Committee’s 2022 Report, effective 16 December 2022 the ORFSA Regime came into effect following the amendment of the *Arbitration Ordinance* (Cap 609), the *Legal Practitioners Ordinance* (Cap 159)<sup>2</sup>, the *Hong Kong Solicitors’ Guide to Professional Conduct* by the Hong Kong Law Society, and the *Hong Kong Bar Association’s*

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<sup>1</sup> <https://www.info.gov.hk/gia/general/202211/09/P2022110900463p.htm>

<sup>2</sup> See the Arbitration and Legal Practitioners Legislation (Outcome Related Fee Structures for Arbitration) (Amendment) Ordinance 2022, Ord. No. 6 of 2022 [https://www.legco.gov.hk/yr2022/english/ord/2022ord006-e.pdf] which was passed on 22 June 2022 and which came into effect on 16 December 2022.

*Code of Conduct* by the Bar. A more detailed legislative framework and the particular safeguards forming part of the ORFS regime for arbitration are set out in the *ORFSA Rules* which also came into effect on 16 December 2022.

The Bar was represented by Kim Rooney on a 5 person Working Group on the ORFSA Checklist (“**ORFSA Working Group**”) under the Advisory Body on ORFSA (“**ORFSA AB**”) established on 1 June 2023. The other members of the Working Group included Benny Lo (DVC), Kath Sanger, Briana Young, and John Lee. On 8 November 2023 the the “*Guidance Note and Checklists for Outcome Related Fee Structures for Arbitration*”(the “**ORFSA Guidance Note and Checklists**”) ([https://www.doj.gov.hk/en/publications/pdf/orfsa\\_e.pdf](https://www.doj.gov.hk/en/publications/pdf/orfsa_e.pdf)) was launched by the Department of Justice (DoJ) on 8 November 2023 , which was prepared with assistance of the ORFSA Working Group.

On 29 November 2023, the Arbitration Committee organized an event entitled “*Guidance Note and Checklists for Outcome Related Fee Structures for Arbitration and Roundtable*” at the Bar Conference Room. The Bar Chairman Victor Dawes SC, moderated it, with opening remarks from Clifford Tavares. Principal Govt Counsel(Legal Enhancement and Development Office). Kath Sanger, a member of the ORFSA Advisory Body, among other roles, explained the ORFSA reforms; Venus Cheung Wing Sze, Deputy Principal Govt Counsel (Legal Enhancement and Development Office) explained why the Department of Justice had decided to prepare the ORFSA Guidance Note and Checklists. Kim Rooney discussed the relevance of these to barristers. This was followed by experience sharing by David Fong and a discussion on further work that may be done in 2024 to assist members to consider and use ORFSA including by practice and procedure workshops (including with lawyers with arbitration funding experience from the Mainland, England and Australia ) and development of templates. Helen Tang Hei Lam, Government Counsel also attended this event.

In 2023 the Bar was a supporting organization of the following events about arbitration funding, with a focus on ORFSA (recordings of a number of which are on-line):

23 February 2023: “*The “New Arbitration Funding Options in Hong Kong – Making your Best Informed Choice”*” organized by the Department of Justice. This introduced the ORFSA reforms and discussed other forms of arbitration funding.

28 June 2023: “*Issues, Opportunities and Rewards for Parties and Their Lawyers: The New Arbitration Funding Landscape in Hong Kong*” co-organized by ICC Hong Kong and the Department of Justice. This discussed legal expenses insurance, third party funding, and risk assessment, pricing and negotiation of ORFSA, among other topics.

November 2023: Hong Kong Legal Week, which included a session on 28 November 2023 entitled “*Experience Sharing of the Practice of Arbitration Funding in Major Arbitral Jurisdictions*”. This session reviewed the arbitration funding regimes in Hong Kong, mainland China, Singapore, Australia and England and issues which arise for users and practitioners including pricing, risk management, cross jurisdictional staffing of teams and potential regulatory issues arising.

## eBRAM

The Bar is a founding member of eBRAM. It has nominated a director, Kim Rooney, and alternate director, Norman Nip SC, to eBRAM's Board. Adrian Lai and Sabrina Ho also serve on eBRAM's Board, among others.

In 2023 a meeting between eBRAM and the Bar was organized at eBRAM's office by Martin Wong, Chair of the Bar's Technology Committee. This meeting was attended by various members of the Arbitration Committee and the Technology Committee. eBRAM's CEO, Emmanuelle Pui-Ki Ta, and ODR Director, Jacob Sin, gave presentations as to eBRAM's ODR platform and the services that eBRAM can provide to members.

## Membership and Thanks

The members of the Arbitration Committee in 2023 were: Kim Rooney (Chair), Norman Nip, S.C. (Vice Chair) Shiu Man David Fong (Vice Chair), Horace Y.L., Wong S.C., Jeremy J. Bartlett, S.C. Andrew Y.S Mak, Charles K.C. Chan, Chun Wai Ling, Colin J. Wright, Thomas W.M Lee, Catrina D.W. Lam, Helen H.L. Au, Calvin Y.C. Cheuk, Adrian Y.H. Lai, Ken C. To, Sabrina S.Y. Ho, Julian A. Cohen, Deanna Law, Hugh T.T. Kam, Benny Lo, (Des Voeux chambers), Athena Hiu Hung Wong, Hoi Kit Alex Fan, Val P.Y. Chow, Hoi Man Jacqueline Law, Hui Yin Michael Lok, Keith Tam, Adela Mao Mao, Ka Kin Lau, Chun Hei Ryan Chan, Angel H.Y. Wong, Ho Chai Francis Chung, Yuan He, Leon Junye Guo, Wing Winky So, Ching Him Ho, Matthew H.B. Suen, and Jason P.H. Wong.

May I thank the Arbitration Committee members for their contribution to the work of the Arbitration Committee in so many ways in 2023. I also thank the YBC and the Mainland Affairs Committee for their kind collaboration on various activities and the Bar's Chairman, Victor Dawes SC, Bar EXCO members and the Bar Council members for their support. Thank you too to Bonnie Chiu, Amy Lee, Ava Wong, Karen Koo, Melody Lau and Dora Chan of the HKBA Secretariat for their kind assistance in 2023.

Finally, may I send Seasons Greetings to all members and the Bar Secretariat and wish all a happy, healthy and prosperous 2023.

Kim M Rooney  
Chair  
Standing Committee on Arbitration

18 December 2023