

Hong Kong tables amendments to arbitration law

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by Justin D'Agostino and Briana Young

On 28 March 2013, Hong Kong gazetted The Arbitration (Amendment) Bill 2013. The Bill proposes amendments to Hong Kong's Arbitration Ordinance (Cap. 609) to implement an arrangement for mutual enforcement of awards between Hong Kong and Macao, allow for enforcement of emergency arbitrator decisions in Hong Kong, and provide for court taxation of arbitration costs on a "party and party" basis.

The Bill will be introduced to Hong Kong's Legislative Council on 24 April, and it is hoped the amended legislation will come into force by the end of August 2013.

In January this year, Hong Kong and Macao signed the *Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards between the Hong Kong Special Administrative Region and the Macao Special Administrative Region*. The Arrangement aims to facilitate efficient enforcement of Hong Kong arbitral awards in Macao, and vice versa. It is not uncommon for a party holding a Hong Kong award in its favour to want to enforce against assets in Macao, so this is a welcome development, particularly viewed alongside a similar arrangement – already in force – between Hong Kong and mainland China.

In order to implement the Arrangement, it is necessary to amend the existing Arbitration Ordinance (Cap. 609), to enable Hong Kong courts to enforce arbitral awards made in Macao. Under the proposed amendments, a Macao award will be enforceable in Hong Kong either by action in the Court of First Instance, or in the same manner as a Hong Kong award (with leave of the court).

The Bill proposes a number of other amendments to the Ordinance, aimed at further supporting Hong Kong's arbitral regime.

These include provision for enforcing in Hong Kong an order, award or decision made by an emergency arbitrator, reflecting the trend among leading arbitral institutions, including ICC and SIAC, for including emergency arbitration procedures in their rules. Such procedures allow a party seeking urgent relief before the tribunal is constituted to appoint an emergency arbitrator, who will make a decision on an urgent basis. The Hong Kong International Arbitration Centre (HKIAC) is expected to introduce an emergency arbitration procedure in its revised Administered Arbitration Rules, due for release later this year. Although the amendment was initially prompted by the anticipated change to the HKIAC Rules, it will allow Hong Kong courts to enforce decisions of emergency arbitrators under

any arbitral rules agreed by the parties, whether they were made in or outside Hong Kong (subject to certain conditions).

The Bill also amends s.75 of the Arbitration Ordinance, which regulates taxation of the costs of an arbitration by a Hong Kong court. The Bill proposes that taxation should be on the “party and party” basis (on which the successful party is indemnified against the necessary expense to which he has been put in prosecuting or defending the action). Currently, s.75(1) of the Ordinance allows the court to order payment “on any basis on which the court can award costs in civil proceedings before the court”.

The amendments proposed by the Bill are welcome evidence of the Hong Kong government’s continuing support for the arbitration process in the city, which is one of the world’s leading seats for international arbitrations.