



**Asia-Pacific
Economic Cooperation**

2016/SOM1/EC/WKSP1/003

Session 2

**The Adoption and Application of the UNCITRAL
Model Law on International Commercial Arbitration
in Hong Kong, China**

Submitted by: Hong Kong, China



**Workshop on Dispute Resolution
Lima, Peru
26 February 2016**

**APEC Workshop on International
Commercial Arbitration-
legislative perspective**
26 February 2016
Lima, Peru

The Adoption and Application of the
UNCITRAL Model Law on
Commercial Arbitration in
Hong Kong, China

Mr. Peter H H Wong
Deputy Solicitor General
Legal Policy Division
Department of Justice
Hong Kong, China

Introduction

- As a leading centre for international legal and dispute resolution services in the Asia-pacific region, Hong Kong has adopted a number of UNCITRAL instruments, including the Model Law on International Commercial Arbitration (adopted in 1985 and amended in 2006 by UNCITRAL) (“**Model Law**”) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (“**New York Convention**”) (with over 150 contracting parties).
- Such instruments have facilitated the development and growth of international commercial arbitration in Hong Kong.

New York Convention – Background for its application to Hong Kong

- The New York Convention has been applied to Hong Kong since 1977.
- Upon resumption of sovereignty over Hong Kong on 1 July 1997, the Chinese Government extended the territorial application of the Convention to Hong Kong.
- Arbitral awards made in Hong Kong can therefore be enforced in all parties to the New York Convention.

3

New York Convention – Model for regional arrangements

- The New York Convention is complemented by an arrangement between Hong Kong and Mainland China (signed in 1999) and an arrangement between Hong Kong and Macao, China (signed in 2013) for reciprocal enforcement of arbitral awards.
- These arrangements reflect the spirit of the New York Convention by establishing a regime for the mutual enforcement of arbitral awards.

4

UNCITRAL Model Law on International Commercial Arbitration - History of its application to Hong Kong (1)

- The old Arbitration Ordinance (Cap 341) was first enacted in 1963.
- Law Reform Commission of Hong Kong recommended in 1987 that the Model Law should replace existing Hong Kong law on international arbitration.
- The recommendation was implemented and the Model Law was applied with minor modifications to international arbitration in Hong Kong since April 1990 (while domestic arbitration was left intact).

5

Model Law - History of its application to Hong Kong (2)

- In January 1992, a committee of the Hong Kong International Arbitration Centre was established to consider possible changes to the law.
- In the Report in April 1996, the Committee was of the view that the Model Law was also suitable for application to domestic arbitrations, but given the complexity involved in completely revamping the legislation, only recommended limited improvements to be made to the old Ordinance to minimize the differences between the two systems as an interim measure.
- The recommendations were implemented by way of the Arbitration (Amendment) Ordinance 1996. It promoted greater party autonomy with respect to the arbitral process and limited the scope of court intervention during arbitral proceedings.

6

Model Law - History of its application to Hong Kong (3)

- In 1998, the Committee on Hong Kong Arbitration Law was established to follow up on the report in 1996.
- The Committee issued a report in 2003 recommending that the then Arbitration Ordinance, which created two different regimes for domestic and international arbitration, be redrafted and a unitary regime with the Model Law governing both domestic and international arbitrations be created.
- The Department of Justice set up in September 2005 the Departmental Working Group to implement the Report of the Committee on Hong Kong Arbitration Law.

7

Model Law - History of its application to Hong Kong (4)

- A Consultation Paper on the Reform of the Law of Arbitration in Hong Kong with a draft Arbitration Bill was published on 31 December 2007 for a 6-month consultation.
- The purpose of the reform was to make the law on arbitration more user-friendly, enable the Hong Kong business community and arbitration practitioners to operate an arbitration regime which accorded with widely accepted international arbitration practices and development, and promote Hong Kong as a regional arbitration centre so that more business parties would opt for Hong Kong as the place to conduct arbitral proceedings.

8

Model Law - History of its application to Hong Kong (5)

- The Arbitration Bill, which adopted the structure of the Model Law (as amended in 2006 by UNCITRAL) as its framework, was introduced into the Legislative Council in June 2009. The new Arbitration Ordinance (Cap. 609) was enacted on 10 November 2010 and came into effect on 1 June 2011.

9

Model Law – Some key features adopted in the new Arbitration Ordinance (1)

- With the enactment of the new Arbitration Ordinance (Cap. 609) (“the **new Ordinance**”), Hong Kong now adopts a unitary regime of arbitration on the basis of the Model Law for all types of arbitration, thereby abolishing the distinction between domestic and international arbitrations.
- The new Ordinance gives legal effect to those provisions of the Model Law that are to apply in Hong Kong. Those provisions, with such modifications or supplements where necessary, are arranged in the same order as the Model Law.

10

Model Law – Some key features adopted in the new Arbitration Ordinance (2)

- The new Ordinance makes our arbitration law clearer, more certain, and more easily accessible to arbitration users and practitioners from around the world. It is self-contained so that it is easier for users to find all the relevant provisions in one place.
- The new Ordinance reinforces the advantages of arbitration, including respect for parties' autonomy as well as saving in time and costs for parties opting to resolve their disputes by arbitration.

11

Model Law – Some key features adopted in the new Arbitration Ordinance (3)

- Achieving a fair and speedy resolution of disputes and avoiding unnecessary costs are also the objectives of the new Ordinance.
- Under the new Ordinance, the court may intervene only in circumstances as expressly provided for in the Ordinance. In general, minor procedural proceedings in the court should not be subject to appeal. These include, for example, and in line with the Model Law, the appointment of arbitrators, the procedure to challenge an arbitrator, and the decision terminating the mandate of an arbitrator. Only proceedings which determine substantive rights or might do so may be subject to appeal.

12

Model Law – Some key features adopted in the new Arbitration Ordinance (4)

- Article 19 of the Model Law that provides for procedural autonomy by granting the parties maximum freedom in the choice of their procedural rule has also been fully incorporated.
- In practice, parties may agree to adopt a pre-existing set of arbitral rules, such as the UNCITRAL Arbitration Rules, the HKIAC Administered Arbitration Rules, the ICC Arbitration Rules or the CIETAC Arbitration Rules, which rules will determine many aspects of procedures.

13

Model Law – Some key features adopted in the new Arbitration Ordinance (5)

- Other recent initiatives of the Model Law such as Article 17B and Article 17C relating to interim measures and preliminary orders that may be ordered by an arbitral tribunal as well as Article 7 of the Model Law on electronic communications have also been incorporated to take into account the modern development in communication.

14

Model Law – Some key features adopted in the new Arbitration Ordinance (6)

- A major feature of the new Ordinance is the provisions on the protection of confidentiality in arbitral proceedings as well as court hearing related to those proceedings.
- To enhance confidentiality for international arbitration, the new Ordinance provides that as a starting point, court proceedings relating to arbitration are not to be heard in open court. Such proceedings will be heard in open court only if any party so applying can satisfy the court that for good reasons the proceedings ought to be heard in open court.

15

Model Law – Some key features adopted in the new Arbitration Ordinance (7)

- The new Ordinance also provides that unless otherwise agreed by the parties or under any exceptions as provided for in the Ordinance, no party may publish, disclose or communicate any information relating to arbitral proceedings and awards.
- The new Ordinance adheres to the international practice that arbitral awards should only be made public with the consent of the parties concerned, having regard to the private and confidential nature of arbitration. It strikes a proper balance between safeguarding the confidentiality in arbitration and the need for parties in the arbitral proceedings to protect or pursue their legal rights or for them to enforce or challenge an arbitral award.

16

Conclusion

- The adoption and implementation of the Model Law have enabled our arbitration legislation to keep up with widely-accepted international arbitration practices and development.
- The enactment of the new Arbitration Ordinance (Cap. 609), together with the enforceability of Hong Kong arbitral awards worldwide under the New York Convention have enabled us to provide world-class arbitration services to both local and international business parties choosing Hong Kong as the seat of arbitration, thereby enabling us to emerge as a leading international arbitration centre in the region.

17

Thank you!

**Legal Policy Division
Department of Justice
Hong Kong
26 February 2016**

18