



**Asia-Pacific
Economic Cooperation**

2016/SOM1/EC/WKSP1/008

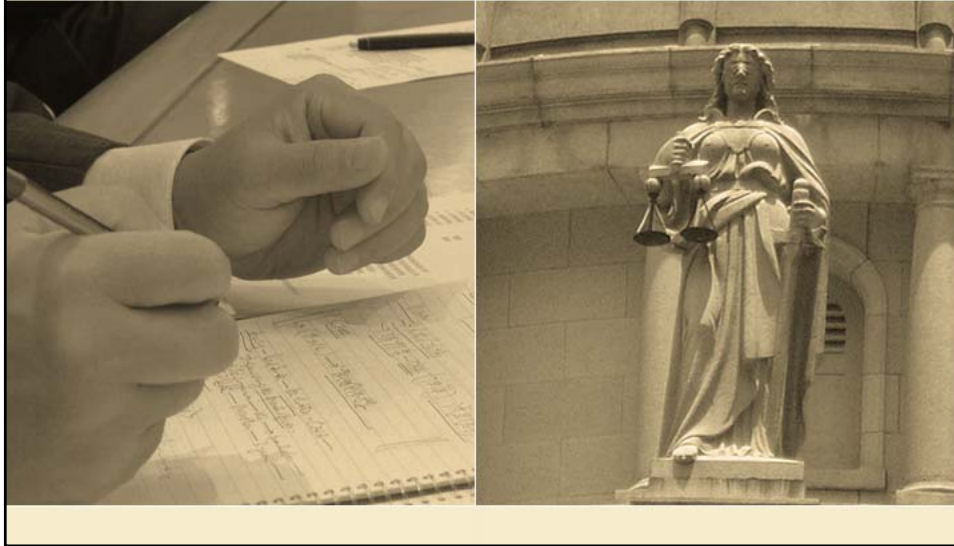
Session 7

Practical Tips on Commencement of Arbitration

Submitted by: Hong Kong, China



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



APEC Economic Committee Workshop on Dispute resolution –the key to efficient settlement of business disputes Lima, Peru

PRACTICAL TIPS ON COMMENCEMENT OF ARBITRATION

Speaker : Ms. Sylvia Siu Wing Yee, J.P.

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**Organized by: Department of Justice of Hong Kong, China
in collaboration with the UNCITRAL Secretariat**



INTRODUCTION

Commencement of arbitration
very important

begins well ----- ends well

begins badly ----- may not proceed



When to commence?

when a dispute arose between the parties



How to commence?

Depends if: Ad Hoc Arbitration; or
Institutional Arbitration



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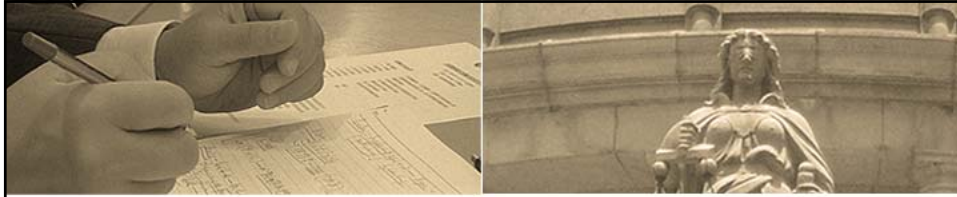
ARBITRATION CLAUSE

VITAL to examine the arbitration clause

- Jurisdiction of Tribunal
- Ad Hoc Arbitration or Institutional Arbitration?
- Where & When to commence arbitration?
 - Any time limit to commence arbitration?
- Which procedural law to follow?
- Any condition precedent ?
- Number of Arbitrators?
- Any qualification for arbitrators?



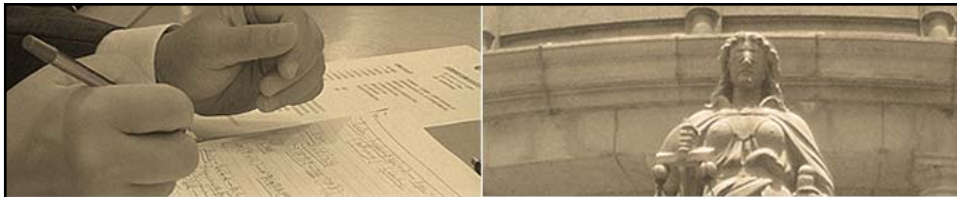
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Example of Ad Hoc Arbitration Clause

“All disputes arising out of or in connection with this Agreement shall be settled by arbitration in Hong Kong”;

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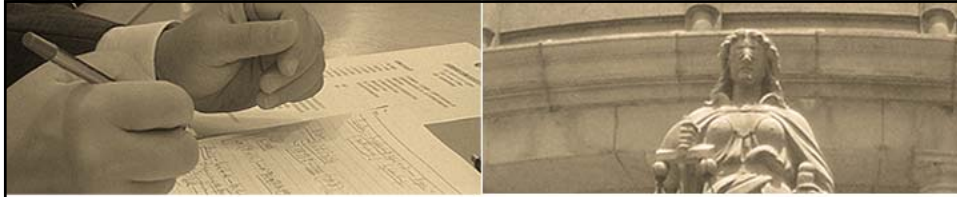


Example of Ad Hoc Arbitration Clause

“All disputes arising out of or in connection with this Agreement shall be settled by arbitration in accordance with UNCITRAL Arbitration Rules in Hong Kong”;

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Example of Ad Hoc Arbitration Clause

“All disputes arising out of or in connection with this Agreement shall be settled by arbitration in Hong Kong. The number of arbitrator shall be one and the language of arbitration shall be English.”

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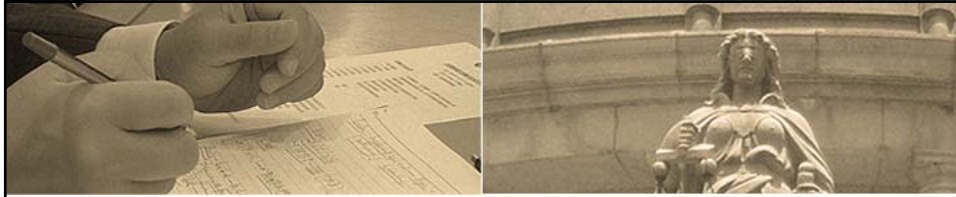


Example of Institutional Arbitration Clause

“All disputes arising out of or in connection with this contract ... shall be referred to and finally resolved by arbitration under the Hong Kong International Arbitration Center (HKIAC) Administered Arbitration Rules then in force”.

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Example of Institutional Arbitration Clause

“All disputes arising out of or in connection with this contract ... shall be referable for final determination by arbitration under the Rules of the International Chambers of Commerce (ICC). The venue for arbitration shall be Hong Kong and the language of the proceedings shall be English”.

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Example of Institutional Arbitration Clause

“Any dispute arising from or in connection with this Contract shall be submitted to CIETAC for arbitration which shall be conducted in accordance with CIETAC’s arbitration rules in effect at the time of applying for arbitration.”

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SCOPE OF TRIBUNAL'S JURISDICTION

Whether drafted Widely (arising out
of and in connection with)
or
Narrowly (specific disputes)

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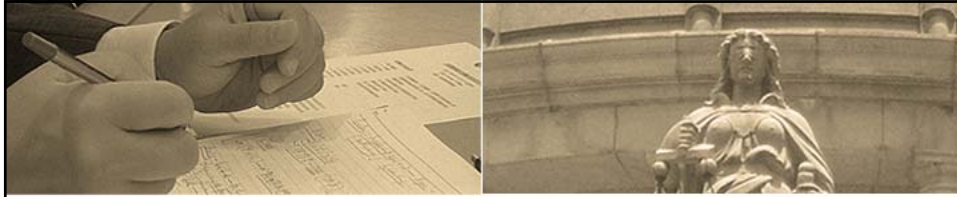


**Example of Arbitration Rules commonly used
for Ad Hoc Arbitration**

UNCITRAL Arbitration Rules, 2010

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Example of Institutional Arbitration Rule

HKIAC Administered Arbitration Rules, 2013

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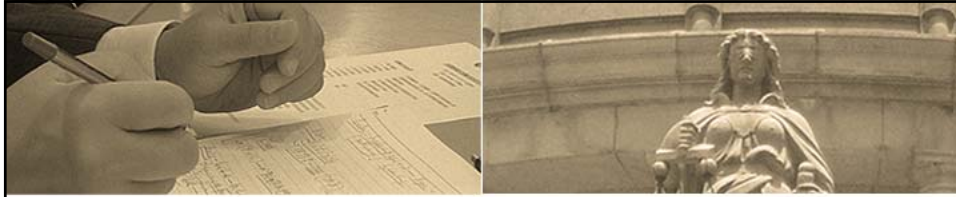
Example of Institutional Arbitration Rule

ICC Rules of Arbitration, 1998

Article 4(1) “A party requesting for arbitration shall submit its request for arbitration to the secretariat, which shall notify the claimant and respondent of the receipt of the request and the date of such receipt.”

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Procedural Law Governing an Arbitration

- Hong Kong Arbitration applies to all arbitrations if takes place in Hong Kong
- Other procedural laws :
- China's Arbitration Law (No Ad Hoc Arbitration);
- UK Arbitration Act (Not UNCITRAL Model Law based)

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Ad Hoc Arbitration

HONG KONG ARBITRATION ORDINANCE
(Procedural law governing Hong Kong Arbitrations)

PROVIDES:

- Arbitration clause **MUST** be in writing
- Limitation Ordinance applies – contract 6 years
- Whether there is a dispute?
- Whether dispute(s) arbitrable?

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NOTICE OF ARBITRATION

If Ad Hoc Arbitration
No Particular Formality for the Notice

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NOTICE OF ARBITRATION-Ad Hoc

A written Notice by a party to arbitration requesting the other to resolve : -

- a) disputes arising out of contract; &
- b) appoint own arbitrator (if Tribunal of 3) or nominate an arbitrator (if sole arbitrator) for agreement of the other party

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NOTICE OF INSTITUTIONAL ARBITRATION

Arbitration Rules of the Arbitration Institutions (such as ICC, HKIAC, CIETIC) :

- (1)Formality;
- (2)Example-ICC requirements

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INSTITUTIONAL ARBITRATION

LIGHT TOUCH or **HEAVY TOUCH** ADMINISTRATION



Arbitrators must be on the institution's panel?

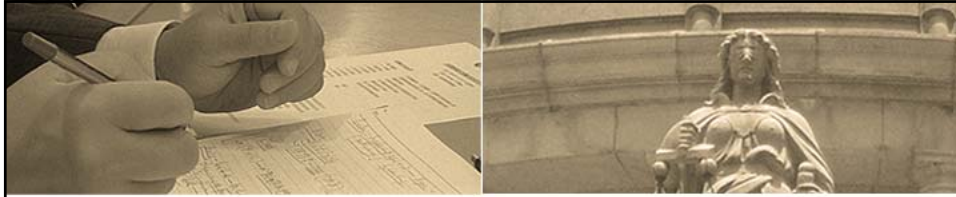
Nominated or Appointed?

Role of the Secretariat;

Tribunal of one or three arbitrators

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FORMATION OF ARBITRATION TRIBUNAL

Importance of :

- (1) Impartial, Fair & Independent Tribunal to be formed;
- (2) Institutional requirement as to
 - (i) qualification of arbitrators (CIETAC);
 - (ii) procedure for appointment of Presiding Arbitrator (e.g. ICC)

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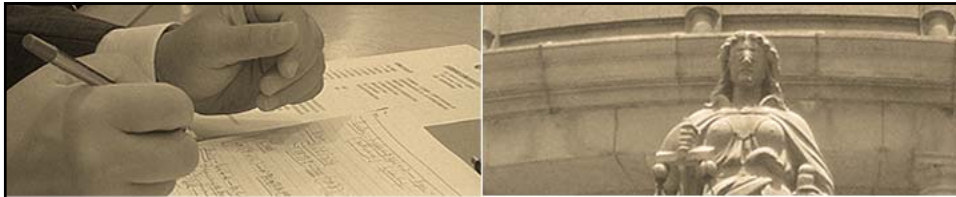


HONG KONG ARBITRATIONS

- (1) Party autonomy respected
- (2) If number of arbitrators or procedure for nomination or appointment not agreed, HKIAC to decide
- (3) If no procedural rules agreed, Tribunal to decide on procedure appropriate to a particular arbitration

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IF COMMENCED WELL

After Tribunal is constituted,
Tribunal will call a PRELIMINARY MEETING
to work out timetable
leading to arbitral hearing
including timing of service of pleadings

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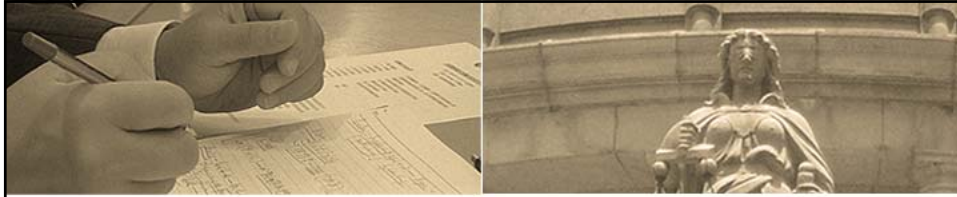


CONCLUSION

HOPE THESE TIPS WILL HELP YOU
TO COMMENCE AN ARBITRAL
PROCESS WELL AND SAVES TIME
& COSTS TO YOU

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**PRACTICAL TIPS ON COMMENCEMENT
OF ARBITRATION**

THANK YOU

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