

## Arbitration (Outcome Related Fee Structures for Arbitration) Rules to be gazetted on Friday

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The Arbitration (Outcome Related Fee Structures for Arbitration) Rules will be gazetted this Friday (November 11) and introduced into the Legislative Council for negative vetting on November 16.

Following the passage of the Arbitration and Legal Practitioners Legislation (Outcome Related Fee Structures for Arbitration) (Amendment) Ordinance 2022 on June 22, 2022, the Rules will come into operation on the same day together with Divisions 3, 4 and 7 of Part 10B of the Arbitration Ordinance (Cap. 609) on December 16 this year, for the full implementation of the Outcome Related Fee Structures for Arbitration (ORFSA) regime in Hong Kong. The Rules were made by the Advisory Body on Outcome Related Fee Structures for Arbitration, in consultation with the Secretary for Justice and with the prior approval of the Chief Justice pursuant to section 98ZM of the Arbitration Ordinance.

A spokesperson for the Department of Justice said today (November 9), "The introduction of the ORFSA regime is necessary for Hong Kong to keep up with the latest practice in international arbitration, enhance access to justice and respond to the demands of arbitration parties for flexible fee arrangements. It will maintain Hong Kong's competitiveness and strengthen its position as a centre for international legal and dispute resolution services in the Asia-Pacific region and beyond, by creating a level-playing field with competing jurisdictions offering similar funding options for arbitration."

The Rules set out the detailed regulatory framework on ORFSA with the general and specific conditions required for the related agreements in order to ensure the validity and enforceability of such agreements.

Under the general conditions of the Rules, all three types of outcome-related fee structures agreements, namely conditional fee agreements (CFAs), damages-based agreements (DBAs) and hybrid damages-based agreements (Hybrid DBAs), must be in writing and signed by the lawyer and the client, state the matter to which the agreement relates, state that the lawyer has informed the client of the right to seek independent legal advice, and provide for a cooling-off period of not less than seven days.

Specific conditions for CFAs include the uplift element must not exceed 100 per cent of the benchmark fee and the agreement must state the circumstances that constitute a successful outcome of the matter. Specific conditions for DBAs and Hybrid DBAs include the payment to the lawyer when the client obtains a financial benefit in the matter (DBA payment) under such agreement must not exceed 50 per cent of the financial benefit and the agreement must state the financial benefit to which it relates. For Hybrid DBAs, additional specific conditions include that in case no financial benefit is obtained by the client, the client is not required to pay to the lawyer more than 50 per cent of the irrecoverable costs.

The Rules also provide for the maximum aggregate sum of the DBA payments where there are multiple DBAs or Hybrid DBAs, and information in relation to outcome-related fee structures agreements that the lawyer must provide to the client, as well as the termination of outcome-related fee structures agreements.

The Rules were prepared based on the recommendations in the Report on Outcome Related Fee Structures for Arbitration published by the Law Reform Commission of Hong Kong in December 2021 following a three-month public consultation.

Ends/Wednesday, November 9, 2022