

Mediation Conference 2020

Panel 1: United Nations Mediation Convention



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UN Mediation Convention – some preliminary observations

- Applicable to mediations conducted anywhere
- A party from a non-contracting State can still apply for enforcement
- No concept of “seat of mediation”, not operated on the basis of reciprocity
- Art 8(1)(a)’s reservation – excluding investment mediation involving investor-state disputes

Applicability to Hong Kong SAR?

- China signed the UN Mediation Convention on **7 August 2019**
- Relevant considerations for its possible application to the Hong Kong SAR:
 - Possible need for amendment(s) to the Mediation Ordinance (Cap. 620)
 - Possible need for amendment(s) to the Hong Kong Mediation Code
 - Possible need to review enforcement of mediated settlement agreements not covered by the Convention

CEPA Investment Agreement

- The Investment Agreement under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement between the Mainland and Hong Kong SAR (“CEPA”) was concluded on **28 June 2017**
- A Mediation Mechanism for Investment Disputes (“Mediation Mechanism”) was provided under the CEPA Investment Agreement

Mediation mechanism under CEPA Investment Agreement

- Using mediation to settle disputes arising from an alleged breach of the substantive obligations of the CEPA Investment Agreement by one side causing loss to an investor of the other side
- Both sides had each designated their own mediation institutions and mediators (4 mediation institutions in total)
- Mediation rules for adoption by designated mediation institutions and mediators of the Hong Kong SAR drafted by the DoJ was announced on **14 December 2018**
- An excellent illustration of making good use of mediation to resolve investment disputes

CEPA Investment Mediation Rules

- A basic framework
 - Ample room for customization by parties
- Cooperation between parties and mediators in good faith
- Requires active participation
 - To advance the mediation expeditiously and efficiently
- Default 3 mediators forming a mediation commission
 - Greater sense of control over the process by parties
- Code of conduct for mediators
- Ensure mediators' independence and impartiality

Capacity building for mediators

- To provide international investment law and investment dispute resolution skills training, with a view to building up a team of investment mediators in Asia to handle international investment disputes.
- To this end, the DoJ, together with International Centre for Settlement of Investment Disputes (“ICSID”) and Asia Academy of International Law :
 - Organised two investment law & investor-state mediator training courses respectively in Late Oct 2018 (being the first investor-State mediator training offered in Asia) and Late Oct-Early Nov 2019
 - Enthusiastic responses: about 100 participants in total from various jurisdictions, including legal and dispute resolution practitioners, academics and government officials

Opportunities in the GBA

- Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area (“GBA”):
 - Supports Hong Kong to establish itself as the centre for international legal and dispute resolution services in the Asia-Pacific region
- GBA can be a good testing ground for the enforcement of cross-border commercial mediated settlement agreements
 - Similar reciprocal arrangements for mutual enforcement of arbitral awards and judgments in civil and commercial matters between the Mainland and Hong Kong modelled on the relevant international instruments were already in place

GBA Legal Departments Joint Conference

- To capitalise the opportunities set out in the Outline Development Plan for the GBA
- To strengthen the legal exchanges and collaborations between Guangdong, Hong Kong and Macao
- 1st Joint Conference hosted by Hong Kong was held on 12 Sep 2019, the Three Legal Departments agreed to, *inter alia*:
 - Promote mediation in the GBA, and to further work out the details (e.g. formulating the best practices and guiding principles related to mediation and mediators in the GBA and exploring establishing a mechanism for the reciprocal enforcement of mediated settlement agreements)



2 - 6 NOVEMBER 2020

LEGAL WEEK HONG KONG



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THANK YOU!

