

# Arbitration of Intellectual Property Disputes



## What is Arbitration?

Arbitration is a consensual process for resolving disputes by an independent arbitrator/panel of arbitrators selected by the parties to the dispute. The decision of the arbitrator(s) (arbitral award) is binding on the parties.

## The Arbitration Ordinance

The Arbitration Ordinance (Cap. 609) provides a legal framework for the conduct of arbitration in Hong Kong. To facilitate the arbitration of intellectual property (IP) disputes, the Arbitration (Amendment) Ordinance 2017 introduces a new Part 11A to the Arbitration Ordinance to clarify that:

- ❖ All IP disputes (whether within or outside Hong Kong) can be arbitrated
- ❖ IP arbitral awards can be enforced in Hong Kong

## Commencement of the Amendments relating to IP arbitration

- ❖ New Part 11A of the Arbitration Ordinance comes into effect on 1 January 2018\*(Effective Date) and applies to arbitral proceedings commencing on or after the Effective Date, and related proceedings
- ❖ Parties may agree to apply Part 11A to arbitral proceedings which commenced before the Effective Date, and their related proceedings

## Further information about arbitration may be obtained from

- (1) [www.doj.gov.hk/en/legal\\_dispute/arbitration.html#iparb](http://www.doj.gov.hk/en/legal_dispute/arbitration.html#iparb)
- (2) [www.ipd.gov.hk/eng/IP\\_Arbitration.htm](http://www.ipd.gov.hk/eng/IP_Arbitration.htm)

\* Except amendments relating to arbitration of short-term patents (new section 103J) which come into effect on 19 December 2019 when section 123 of the Patents (Amendment) Ordinance 2016 comes into effect on the same date.

## Benefits of Resolving IP Disputes by Arbitration under the Arbitration Ordinance (as amended)

Autonomy	<p>Parties can agree on:</p> <ul style="list-style-type: none"> <li>❖ which disputes to be referred to arbitration</li> <li>❖ the remedies and reliefs which the arbitral tribunal may award</li> <li>❖ the procedures of the arbitral proceedings, which may expedite the resolution of their dispute</li> </ul>
Single forum	Parties can resolve in a single forum their IP disputes in multiple jurisdictions instead of starting legal proceedings in each jurisdiction separately, saving time and costs
Expertise	Parties can choose an arbitrator or arbitrators with expertise in the subject
Confidentiality	Arbitral proceedings and arbitral awards are confidential unless the parties otherwise agree, and subject to statutory exceptions
Binding effect	In general, arbitral awards are final and binding on the parties only and do not affect the rights of third parties
Enforcement	Parties can make use of the award enforcement mechanism under the New York Convention and Hong Kong SAR's respective arrangements with Mainland China and the Macao SAR

**Parties should seek legal advice on their dispute resolution options and the drafting of contracts and arbitration clauses/agreements.**

# 知識產權 爭議的 仲裁

## 什麼是仲裁？

仲裁是以當事人同意為基礎的爭議解決辦法，由爭議各方委任的一位或多位獨立仲裁員解決爭議。仲裁員作出的裁決（仲裁裁決）對仲裁各方具有法律約束力。

## 《仲裁條例》

《仲裁條例》(第609章)為在香港進行的仲裁提供了法律框架。為促進知識產權爭議的仲裁，《2017年仲裁(修訂)條例》在《仲裁條例》加入第11A部，以澄清：

- ❖ 不論在香港境內或境外發生的任何知識產權爭議均可透過仲裁解決。
- ❖ 知識產權仲裁裁決可在香港強制執行。

## 有關知識產權爭議仲裁的修訂之生效日期

- ❖ 新增的《仲裁條例》第11A部已於2018年1月1日(生效日期)開始生效\*，並適用於在生效日期或以後展開的仲裁，及其相關程序。
- ❖ 仲裁各方亦可同意將第11A部適用於生效日期前展開的仲裁及其相關程序。

如欲了解仲裁服務進一步資料，可瀏覽以下網站

- (1) [www.doj.gov.hk/tc/legal\\_dispute/arbitration.html#iparb](http://www.doj.gov.hk/tc/legal_dispute/arbitration.html#iparb)
- (2) [www.ipd.gov.hk/chi/IP\\_Arbitration.htm](http://www.ipd.gov.hk/chi/IP_Arbitration.htm)

\*有關短期專利仲裁的修訂(新訂第103J條)除外。該條於《2016年專利(修訂)條例》第123條生效當日(即2019年12月19日)起生效。

## 在經修訂的《仲裁條例》的框架下解決知識產權爭議的好處

自主權	仲裁各方可同意： <ul style="list-style-type: none"><li>❖ 將哪些爭議付諸仲裁。</li><li>❖ 仲裁庭可判給的補救和濟助。</li><li>❖ 進行仲裁時所適用的程序，以加快解決爭議。</li></ul>
單一平台	仲裁各方可在同一平台解決涉及多個司法管轄區的知識產權爭議，而毋須於各地分別提出訴訟，從而節省時間及金錢。
專業知識	仲裁各方可委任相關範疇的專家擔任仲裁員。
保密	除非仲裁各方另有協定，或屬法定例外情況，否則仲裁程序及仲裁裁決應予保密。
約束力	仲裁裁決一般只對仲裁各方屬最終裁決並具約束力，而不影響第三者的權利。
強制執行	仲裁各方可利用《紐約公約》下執行仲裁裁決的機制，及香港分別與中國內地和澳門特區簽訂的相互執行仲裁裁決的安排。

當事人應就爭議解決的不同辦法及有關合同與仲裁條款/協議的草擬尋求法律意見。