

**Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards
Between the Hong Kong Special Administrative Region and
the Macao Special Administrative Region
[For reference only]**

In accordance with the provisions of Article 95 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and Article 93 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China and through mutual consultations between the Government of the Hong Kong Special Administrative Region (HKSAR) and the Government of the Macao Special Administrative Region (Macao SAR), the following Arrangement is made in respect of reciprocal recognition and enforcement of arbitral awards by the HKSAR and the Macao SAR.

Article 1

- (1) The courts of the HKSAR shall recognise and enforce arbitral awards made in the Macao SAR pursuant to the arbitration laws and regulations of the Macao SAR and the courts of the Macao SAR shall recognise and enforce arbitral awards made in the HKSAR pursuant to the Arbitration Ordinance of the HKSAR. This Arrangement shall apply to these awards.
- (2) Where circumstances are not prescribed in this Arrangement, the legal procedure of the place of recognition and enforcement shall apply.

Article 2

- (1) Where a party fails to comply with an arbitral award, whether made in the HKSAR or the Macao SAR, the other party may apply to the relevant court in the place where the party against whom the application is filed is domiciled or the place in which the property of the said party is situated for recognition and enforcement of the award.
- (2) In the HKSAR, the Court of First Instance of the High Court has jurisdiction to entertain an application for recognition and enforcement of arbitral awards. In the Macao SAR, the Court of First Instance has jurisdiction to entertain applications for recognition while the Court of Second Instance has jurisdiction to enforce arbitral awards.

Article 3

If the result of the enforcement of an award in one place is insufficient to satisfy the liabilities, an applicant may apply to the court of another place for enforcement of the outstanding liabilities. The total amount recovered from enforcing the award in the courts of the two places one after the other shall in no case exceed the amount awarded.

Article 4

An applicant shall, in applying to the relevant court for recognition and enforcement of an arbitral award, submit the following documents or notarised copies of the same:

- (1) the application;
- (2) the arbitral award;
- (3) the arbitration agreement.

If the above documents are not in an official language of the place where recognition and enforcement of the award is sought, the applicant shall submit duly certified translations in one of the official languages.

The “official languages” referred to in this Article are Chinese and English in the case of the HKSAR, and Chinese and Portuguese in the case of the Macao SAR.

Article 5

An application shall contain the following:

- (1) Where the applicant or the party against whom an application is filed is a natural person, his name and address; where it is a legal entity or any other organisation, its name, address and the name, duties and address of its legal representative or principal responsible person, and that a copy of the enterprise registration record shall be submitted. Where the applicant is a legal entity or any other organisation established outside the HKSAR or the Macao SAR, the corresponding notarisation and authentication material shall be submitted;
- (2) The case number or other means of identification and the effective date of the arbitral award in respect of which the application for recognition and enforcement is filed;
- (3) The grounds for and the particulars of the application for recognition and enforcement of the arbitral award; and the place in which the property of the party against whom the application is filed is situated, the status of the property and, if applicable, the particulars of the part of the arbitral award that has not been enforced.

Article 6

The time limit for an applicant to apply to the relevant court for recognition and enforcement of an arbitral award, whether made in the HKSAR or the Macao SAR, shall be governed by the law on limitation period of the place of recognition and enforcement.

Article 7

- (1) A party against whom an application for recognition and enforcement of an arbitral award is filed may adduce evidence to show any of the situations set out below. Upon such evidence being examined and any of the said situations being found proved, the relevant court may refuse to recognise and enforce the arbitral award:

- (i) A party to an arbitration agreement was, under the law applicable to him, under incapacity at the time of entering into the arbitration agreement; or the arbitration agreement was not valid under the law to which the parties subjected it, or, under the law of the place of arbitration if no applicable law was agreed on by the parties;
 - (ii) A party against whom an application is filed was not given proper notice of the appointment of the arbitrator or the conduct of the arbitral procedure or was otherwise unable to present his case;
 - (iii) The dispute dealt with in an award is not the dispute submitted to arbitration or not within the scope of the arbitration agreement; or the award contains decisions on matters beyond the scope of the submission to arbitration made by the parties. However, if the award contains decisions on matters beyond the scope of the submission to arbitration that can be separated from those on matters submitted to arbitration, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;
 - (iv) The constitution of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the place where the arbitration took place;
 - (v) The award has not yet become binding on the parties, or has been set aside or suspended by the court or in accordance with the law of the place where the arbitration took place.
- (2) If the relevant court finds that under the law of the place of recognition and enforcement, a dispute is incapable of being settled by arbitration, then the court may refuse to recognise and enforce the relevant award.
- (3) If the court of the HKSAR holds that the recognition and enforcement of an arbitral award in the HKSAR is contrary to the public policy of the HKSAR, or if the court of the Macao SAR holds that the recognition and enforcement of an arbitral award in the Macao SAR is contrary to the public order of the Macao SAR, the recognition and enforcement of the award may be refused.

Article 8

An applicant shall, in applying for recognition and enforcement of an arbitral award under this Arrangement, pay the relevant fees in accordance with the law of the place of recognition and enforcement.

Article 9

(1) Where a party applies to the court of one place to recognise and enforce an arbitral award and the other party applies to the court of another place to set aside such an arbitral award, the court before which enforcement of the award is sought shall suspend the enforcement if the person against whom the enforcement is invoked applies for suspension of the enforcement and provides sufficient security.

(2) The court before which enforcement of an award is sought shall terminate the enforcement proceedings when a judgment and determination to set aside the arbitral award is recognised, whereas it shall resume the proceedings when an application for setting aside the arbitral award is dismissed.

(3) A party applying for suspension of recognition and enforcement of an arbitral award shall provide the court before which enforcement of the award is sought with legal instruments relating to applications for setting aside arbitral awards entertained by other courts.

Article 10

The court entertaining an application shall examine and decide on the request for recognition and enforcement as soon as possible.

Article 11

This Arrangement shall not apply to any requests for recognition and enforcement of arbitral awards made by parties before this Arrangement comes into force.

Article 12

In the event of any problem arising in the course of implementing this Arrangement or a need for amendment of this Arrangement, it shall be resolved through consultations between the Government of the HKSAR and the Government of the Macao SAR.

Article 13

The Government of the HKSAR and the Government of the Macao SAR shall in writing notify each other of the completion of the internal procedures required to bring this Arrangement into force. This Arrangement shall come into force from the designated date agreed by both sides.

This Arrangement is signed in duplicate in the Macao SAR this 7th day of January 2013.

Secretary for Justice
Hong Kong Special Administrative Region

Secretary for Administration and Justice
Macao Special Administrative Region