The Impact, Opportunities and Challenges for the Hong Kong Legal Services and Arbitration Profession upon China’s Accession to the WTO

24 February 2001, Shenzhen

Stephen Kai-yi WONG, Deputy Solicitor General,
Hong Kong Special Administrative Region

Introduction

China was a founding member of the General Agreement on Tariffs and Trade (GATT) in 1947 but withdrew from the organisation in 1950. In 1984, China rejoined the GATT as an observer, and in 1986, China submitted a formal application for resumption of her status as a GATT contracting party.

2. A Working Party (WP) was established under the GATT in 1987 to examine China’s foreign trade regime and to develop a draft Protocol of Accession setting out the respective rights and obligations of China after its accession. The work of the WP was carried over when the GATT transformed into the World Trade Organisation (WTO) in 1995.

3. China’s 15-year bid to join the WTO has now entered the final stage. Except for Mexico, China has concluded negotiations with all the WTO members who have requested bilateral negotiations with her, including the United States (US) and the European Union (EU). Regarding the question of the transitional period of continuance of anti-dumping measures adopted by Mexico towards Chinese products upon the Mainland’s accession to the WTO, China and Mexico stuck to their own stand. However, the Mexican government has already expressed that once China has thoroughly concluded the multilateral negotiations and still a Sino-Mexican agreement has not been reached, Mexico will not stand in the way of China’s accession to the WTO.

4. To join the WTO, China also needs to complete the multilateral deliberation process conducted in Geneva, mainly to finalise a Working
Party Report on China’s Accession and a Protocol of Accession, as well as Schedules of Concessions and Commitments on Goods and Services, for the approval of the WTO General Council. Still no consensus has been reached on the major divergence left on the negotiation table in the 15th Meeting of the Working Party on China’s Accession held between 10 January and 17 January. The EU now suggests considering the most difficult core issues (namely, agriculture, trade in services, industrial policy, trading interests and technical trade barriers) together in a package so that all parties concerned can make compromises and concessions. However, China has made clear that if she is not given developing country treatment in agriculture, she will not consider the package agreement.

5. Movements to promote ‘free trade’ have existed for more than 150 years, and have traditionally focused on the removal of trade barriers in respect of goods. The first attempt to address, through multilateral negotiations, the elimination or reduction of trade barriers in services began only in 1986. The negotiations aimed to extend to trade in services rules and disciplines based on those which govern trade in goods, with a view to promoting trade in services on a competitive and non-discriminatory basis. Eventually, the negotiations were successful and the General Agreement on Trade in Services (GATS) was born.

6. In October 1994, the Hong Kong Government ratified the WTO Agreement and thus became a founding member of the WTO. Since the coming into effect of the WTO on 1 January 1995, Hong Kong as a member of WTO, has enjoyed the rights, and must observe the obligations, arising from the GATS. These rights and obligations are applicable to all professional services.

7. Basically, professional services do not exist before the reformation and the opening up of the country. Upon the reformation and opening up of the country to the outside world, economic and trading activities prosper, and other exchanges become more frequent. Activities between the Mainland and Hong Kong grow in number as well as intensity. There is a corresponding increase in the demand for professional services. Certainly, these professional services include arbitration and legal services. With China’s accession to the WTO, the demand for professional services
will surely grow, and at the same time the expectation of consumers towards professional services will be higher and their choices will vary.

8. In recent years, reformation of and amendments to the arbitration law, especially the enforcement of arbitral awards, have been made by the Mainland and Hong Kong. In today’s seminar, we exchange our experience and discuss in depth the reciprocal enforcement of arbitral awards made in the Mainland and the Hong Kong Special Administrative Region (HKSAR). The in-depth analysis and presentation on the topic in question by experienced academics and arbitrators of both places are most inspiring and rewarding. **Annexes 1 and 2** summarise the enforcement in the HKSAR of arbitral awards made outside Hong Kong and the enforcement in Macao Special Administrative Region (MSAR) of arbitral awards made in Hong Kong.

**The impact of China’s accession to the WTO**

**The impact on the Mainland’s economy**

9. A study conducted by the State Council Research Development Centre in 1998 estimated that the Mainland’s GDP in real terms will achieve a 13% increase by 2010, implying an additional annual growth of 1 percentage point. Its exports will be higher by 22% (averaging at 1.7 percentage points per annum) and its imports by 17% (averaging at 1.3 percentage points per annum).

10. Major financial houses in Hong Kong have also predicted that the Mainland’s accession to the WTO will bring substantial growth in the Mainland’s GDP, trade and foreign direct investment. It is estimated that the Mainland’s total trade will double to US$ 600 billion by 2005, along with an increase of US$50 billion in foreign direct investment in the Mainland by 2005.

**The impact on Hong Kong’s economy**

11. A recent analysis by HKSAR Government’s Government Economist has indicated that Hong Kong’s economy will benefit greatly from the business opportunities which China’s WTO membership will create.
It is estimated that by 2010 Hong Kong’s exports involving the Mainland will be raised by 15% (averaging at 1.3 percentage points per annum) and its GDP by 5.5% (averaging at 0.5 percentage point per annum).

**China’s accession to the WTO and the arbitration services**

12. China’s accession to the WTO will have an impact on the Mainland’s arbitration services in various aspects namely, the professional standard of arbitrators, the proceedings in the enforcement of arbitral awards and the associated legal services. This report focuses on the discussion of these issues.

**The impact on Hong Kong’s service industry upon China’s accession to the WTO**

13. Throughout China’s negotiation with the U.S. on the accession to the WTO, the biggest discrepancy lay in the access to the service industry market which includes telecommunication, banking and insurance. As regards the professional services, China at present tightly restricts the establishment of foreign law firms and accounting firms in the Mainland. Under the Sino-US bilateral WTO agreement, China has provided a broad range of commitments on several professional areas including legal, accountancy, taxation, management consultancy, architecture, engineering, urban planning, medical and dental, and computer and related services. China will permit foreign majority control except for practising Chinese law. Foreign law firms will be allowed to enter into contracts to maintain long-term entrustment relations with Chinese law firms for legal affairs. The geographic and quantitative limitations of establishing only one representative office in China by foreign law firms will be eliminated within one year after China’s accession to the WTO.

14. Similar concessions related to legal services were made in the Sino-EU bilateral agreement.

15. Given Hong Kong’s competitive edge in its service industry, we should benefit considerably from the Mainland’s liberalisation of its huge services market. Market liberalisation will bring about more business and trade opportunities. It is expected that with Hong Kong’s proximity to the
Mainland market, our knowledge and experience of the Mainland market gained through years of established business presence in the Mainland, our historical and cultural ties, our world-class financial and arbitration services and excellent infrastructure, Hong Kong will have even more opportunities to participate directly in the economic development of the Mainland as more sectors (including legal services) are opened to foreign participation.

16. The Mainland is currently drafting new regulations on foreign law firms, and their contents are yet to be finalized. Given the present situation of legal services in the Mainland, it is expected that the following approaches would be adopted towards liberalization:

(i) The rules governing the granting of licences could be more open, transparent, reasonable and objective so that foreign law firms would be in a better position to assess their position before making any plans to set up an office in the Mainland.

(ii) The number of licences to be granted should be increased but kept under control and assessed according to the needs of the particular city.

(iii) Rules governing the operation of these firms could be relaxed to allow the hiring of paralegals or consultants who are People’s Republic of China (PRC) lawyers. Under the present regulatory framework, foreign law firms, Hong Kong and non-Hong Kong firms alike, must abide by the restrictions in the Provisional Regulations on Establishing Offices Within the Territory of China by Foreign Law Firms (the Provisional Regulations) that no advice on PRC law can be given. It would greatly benefit the operation of these foreign law firms if they were allowed to hire locally qualified lawyers to act as consultants to the firms so that they can give legal advice on PRC law to the clients. If the restriction is lifted, it would inevitably result in the relaxation of the existing rules which prohibit the hiring of PRC lawyers (Art. 17 of the Provisional Regulations).

(iv) The regulation restricting a foreign law firm to set up only one
office should be relaxed to allow the establishment of more than one office in the cities of the Mainland so as to better facilitate the provision of legal services.

(v) Local law firms in the Mainland should be allowed to form associated firms/entities with foreign law firms to provide more comprehensive legal services for their clients.

Assistance rendered by the HKSAR Government

(i) Assistance given to the service industry as a whole

17. An inter-departmental group chaired by the Financial Secretary has been set up to liaise with relevant Central Government authorities and experts on matters related to China’s accession to the WTO. Its purpose is to keep track of the progress of, and the arrangements for, the opening up of the Mainland market. The group also maintains contact with local business and professional bodies so that they too can better understand the opening up process and more readily assess market trends, and prepare themselves for the challenges ahead.

18. The group is conducting in-depth studies in respect of the service sectors of trading, sales distribution, telecommunications, financial services, travel-related services, and transport services as well as professional services. Under the supervision of the inter-departmental group, relevant bureaux and departments have been consulting with various business organizations and professional bodies to gain a better understanding of the present situation of how Hong Kong businessmen/professionals run their business or practise in the Mainland, problems and difficulties the trade faces, and how they see the potential of the Mainland market.

19. The inter-departmental group has also been liaising with relevant Central Government authorities and local service industry, reflecting and updating the data on China’s accession to the WTO, as well as the progress of, and the arrangements for the opening up of the Mainland market. This will enable local service industry to assess the potential of the Mainland market and its implications on individual business sectors.
(ii) Assistance rendered by the Department of Justice to the Hong Kong legal sector

20. The Department of Justice held discussions with the Ministry of Justice in Beijing on the situation and difficulties of Hong Kong lawyers providing legal services in the Mainland and acquired an understanding of the Ministry of Justice's position on the provision of legal services in the Mainland by the Hong Kong legal sector.

21. In January 2000, the Legal Practitioners’ Liaison Committee chaired by the Secretary for Justice formed an ad hoc group to study the impact of China’s accession to the WTO on the legal services sector of Hong Kong. Members of the ad hoc group include representatives of the Bar Association, the Law Society and the Department of Justice. The group meets regularly to collect opinions from the sector and explore opportunities brought about by the opening up of the Mainland legal services market.

22. Apart from actively studying business opportunities of the legal services sector after China's accession to the WTO, the Department of Justice also devotes its efforts to the following two issues, which have far-reaching effects on the local legal sector —

(1) **Review of legal education**

As China is about to join the WTO, Hong Kong legal services providers should equip themselves for future challenges. In line with the development of legal services, Hong Kong is conducting a comprehensive review on legal education and training.

In November 1999, the Hong Kong Government set up a Steering Committee to oversee the above-mentioned review. Members of the Steering Committee include representatives of the Law Society, the Bar Association, the Law Faculty of the University of Hong Kong, the School of Law of the City University of Hong Kong, the Division of Law of the School of Professional And Continuing Education of the University of Hong Kong, the Judiciary, government departments and
representatives outside the sector. Two overseas consultants, namely, Professor Christopher Roper and Professor Paul Redmond were appointed to conduct a preliminary review. In September last year, the consultants issued a consultation paper detailing the issues to be studied. Public views on the consultation paper have been collected and the consultants will compile a final report and submit it to the Steering Committee for consideration. Upon the conclusion of the consultants’ work, an authoritative review group comprising four to five local and overseas specialists will be set up to study the consultants' report and make final proposals.

(2) **Amendments to the admission criteria of barristers**

Being a member of the WTO, Hong Kong must ensure that its local legislation comply with the general obligations of the GATS. Under current legislation, there is no recourse for foreign lawyers coming from non-Commonwealth jurisdictions to gain admission in Hong Kong. This is inconsistent with the general obligations of the GATS which require such criteria to be objective, reasonable, non-discriminatory and standards-based.

In June 2000, the Legal Practitioners (Amendment) Ordinance was passed. The present privileges conferred on barristers or advocates from England, Scotland, Northern Ireland and other Commonwealth countries have been removed. The Court may admit a person to be a barrister if he is considered to be a fit and proper person and has complied with the general admission requirements, including passing any required examinations. This amendment will enable the admission criteria of barristers to comply with the GATS requirement.

**Initial response from the Mainland authorities**

23. A delegation of the Law Society visited the Ministry of Justice in July 2000 and met with Mr Duan Zhengkun, the Vice-Minister of the
Ministry of Justice. The following new policies were announced after the meeting:

(i) In relation to the establishment of law offices by foreign law firms (including Hong Kong law firms) in the Mainland, the following restrictions will be lifted:

(a) the number of foreign law offices that may be established in the Mainland;

(b) the locality of foreign law offices; and

(c) the “one-firm, one-office” rule.

(ii) Hong Kong lawyers will be allowed to be employed by Mainland law firms to practise Hong Kong law and, upon receiving appropriate training, will be permitted to enter into partnership with their employer.

(iii) As from this year, Hong Kong residents will be eligible to sit for the PRC lawyers’ qualification examinations with a view to practising law in the Mainland after completing law courses recognised by the Mainland.

(iv) The All China Lawyers Association will create a new category of membership for Hong Kong lawyers.

24. The Bar Association also visited the Ministry of Justice in late July 2000. The Bar Association reported that Mr Duan Zhengkun, Vice-Minister of the Ministry of Justice, mentioned during their meeting that Hong Kong barristers will be allowed to sit the National Lawyers Examination in the Mainland. They may also register as “Hong Kong Law lawyers”. The Bar Association will be permitted to establish centralised chambers in the Mainland and barristers will be able to provide advice on Hong Kong law and litigation procedure. They will also be allowed to become notaries in the Mainland and to become members of the All China Lawyers’ Association.
25. All these developments would greatly benefit the Hong Kong legal profession and the legal systems in both places. The two legal systems will significantly benefit from these frequent exchanges.

**Details to be examined**

26. In view of the gradual opening of the legal services market in the PRC, the Legal Practitioners’ Liaison Committee sets up a special sub-committee to study the ways in which the policy relating to allowing Hong Kong lawyers to take the National Lawyers Examination might be implemented, and matters relating to legal practice after candidates had passed the examination.

27. The issues requiring study include the following :-

(i) **Examination System**

(a) If Hong Kong solicitors and barristers can take part in the National Lawyers Examination, their working experience ought to be recognised and therefore they should be exempted from taking part in the examination. If some of the candidates have already passed certain parts of the examination, they should also be exempted from repeating those part of the examination.

(b) It may be possible to allow persons practising Chinese law to be exempted from taking examination subjects unrelated to their field of practice. For instance, a commercial lawyer may be exempted from examination subjects unrelated to his field of practice such as criminal litigation.

(ii) **Trainee period**

Since some of the Hong Kong solicitors or barristers who pass the examination have ample practising experience, their trainee period ought to be shortened. For example, those solicitors or barristers who have practising experience of five years or more
should be allowed to shorten their trainee period in the PRC to six months.

(iii) Practising period

After PRC lawyers have completed their traineeship, they need to practise for over three years before they could set up a partnership law firm\(^1\). Since some of the Hong Kong solicitors or barristers who could practise Chinese law have ample practising experience, this three years’ practice requirement should be partly or wholly exempted.

Opportunities and Challenges

28. As the process for China to enter the WTO gathers momentum, the opening up of the Mainland legal services market to foreign parties and the complete blending with the international legal services market have become major trends\(^2\).

29. After China joins the WTO, there will be opportunities as well as challenges in the development of Hong Kong legal and arbitration services and, likewise, the Mainland lawyers and arbitrators.

30. China's joining of the WTO would indicate its blending with the global trade unification system and signify that an international trade system has come into effect in China, and that the influence of such a system will grow continuously. Practically speaking, the main manifestations will be as follows\(^3\):

   (i) China would have become a part of the tripartite international economic organisation, the three parties being the International

---

\(^{1}\) Measures on the Management of Partnership Law Firms, Article 10

\(^{2}\) “The Effects on the Legal Practice Sector Caused by Joining WTO and Ways to Deal with the Situation” by Jia Wuguang, Deputy Secretary, Department of Instruction for Lawyers and Notaries of the Ministry of Justice of the People's Republic of China, China Law, April 2000 issue, pages 5-6.

Monetary Fund (IMF), the World Bank and the WTO. Each of these parties will discharge its own duties and share the task of stabilizing and developing international economic trade. These three organizations have engaged in contact and dialogue and made arrangements for cooperation, including bestowing on one another the role of observer and providing relevant documents and data. All countries and regions, irrespective of the level of their development, will follow the process in total coordination and uniformity and move towards a global trade system in which the members undertake obligations, observe rules and regulations, and enjoy opportunities together.

(ii) China would have recognized or endorsed the comparatively comprehensive legal structure for international economic trade formulated by international trade organizations. Chinese lawyers are required to observe these laws and regulations in their provision of legal services for their clients.

(iii) China would have accepted the WTO's system for resolving trade disputes among countries and regions.

31. Generally speaking, joining the WTO is beneficial to our country's economic reform and progress. As a protector and defender of economic development, it is expected that the legal services sector will gain advantages and rare historical opportunities:

(i) After China joins the WTO, an entirely new environment of international practice will be created for the development of the Chinese legal services sector. The saying "to develop the economy, lawyers must be the first to move ahead" will be a necessary condition in the economic intercourse among market entities in international economic life.

(ii) After China joins the WTO, there will be a speeding up in the

---

4 As above, pages 67-70
implementation of the basic strategy of "ruling the country in accordance with the law and constructing socialist law to rule the country", and the spirit of "rule of law" will permeate all aspects of life in society and even international economic activities. As the extent to which lawyers participate in social and economic life deepens, the role that they play will be more important.

(iii) China's joining of the WTO will have a crucial bearing on its legislative, law enforcement and judicial systems, and certain irregular factors (such as "engaging in lawsuits" being negatively termed "engaging in relationships") affecting lawyers' practice of their profession will be continuously improved with the increasing perfection of the various structures established under the legal system

32. The above analysis has significant implications for the attitude to be adopted by the Hong Kong legal and arbitration services sectors after China joins the WTO. It is an indisputable fact that the Hong Kong legal and arbitration services sectors have attached great importance to the opportunities brought by the opening up of the Mainland's legal services market. With their years of experience, Hong Kong barristers, solicitors and arbitrators should be in a position to provide high quality professional services, especially in civil and commercial law (including intellectual property law). Even though the returns may be comparatively low, Hong Kong barristers and lawyers should also provide services in other areas such as administrative law, legislation and the construction of the legal system, the management and manner of practice of the legal services sector, and, in the context of the WTO, make conditions favourable for strengthening the modernization of the country's legal system, judicial system, and lawyers' professional system.

---

5 The Opportunities, Challenges and Ways to Deal with the Situation After China joins WTO by Jia Wuguang and He Min.
33. Apart from creating opportunities for Hong Kong's legal and arbitration sectors, China's joining of the WTO will also bring challenges to Hong Kong barristers, solicitors and arbitrators. Such challenges will primarily be caused by competition:

(i) **The changing role of the "intermediary" and the room for direct legal services to expand**

For many years, the Hong Kong legal services sector has been playing the role of "intermediary" in the Mainland and overseas legal services. As the Mainland carries out reform and opens up, this role will gradually fade out. After China joins the WTO, foreign law firms will extend their influence in the Mainland and provide direct legal services, and Hong Kong lawyers' role as "intermediaries" may cease to exist. It is imperative for the Hong Kong legal services sector to change this role, enhance its leading position in legal services and explore new areas of legal services.

(ii) **Professional quality will need to be improved**

Amid such fierce competition, the Hong Kong lawyers and arbitrators should continuously enhance its professional quality. This is not merely a "hardware" issue but is also a "software" one. The general impression is that multinational law firms are superior in quality to Hong Kong law firms and arbitrators. To break through such preconceptions, it is necessary for small law firms and individual arbitrators in Hong Kong to improve their international-standard professional services and to provide high quality legal services, but charging not more than foreign or multinational law firms and foreign arbitrators.

(iii) **The need to gain a profound understanding of the State, the situation of the country, and the laws of the country**

Hong Kong barristers, solicitors or arbitrators who wish to set up offices or practice in the Mainland should try to understand
the state, the situation of the country, and the country's laws. Even though some barristers and lawyers do not intend to sit for qualifying examinations in the Mainland, they will have to come into contact with Mainland lawyers (and clients) after they set up offices in the Mainland. In terms of communication, if Hong Kong legal professionals and arbitrators only focus on Hong Kong law and have yet to master Mainland law, this will be an obstacle in working with Mainland personnel to resolve problems. In addition, according to what the writer of this article has witnessed, foreign lawyers and arbitrators practising in the Mainland can fully master Mainland law and understand the State and the situation of the country. In fact, many practising lawyers and arbitrators in the Mainland have acquired a full understanding of Hong Kong's situation and laws.

(iv) Learn Chinese properly and speak Putonghua properly

Since Hong Kong education was generally based on English before the territory's reversion to Chinese rule and the existing legal education in Hong Kong is conducted primarily in English, and many barristers, solicitors and arbitrators underwent legal education or training in English-speaking countries, and even if there are more opportunities to use the Chinese language in court, their English standard is acceptable. If they wish to enter the Mainland legal and arbitration services market, sole reliance on English does not seem to be feasible. Speaking only the Cantonese dialect does not enable them to venture beyond Guangdong. The Hong Kong legal and arbitration sectors will have to make an effort to learn Chinese and speak Putonghua properly as language is still an important tool for accurate communication.

(v) Strengthen communication

The HKSAR Government and the legal and arbitration professional bodies should strengthen communication with the
Mainland to understand the changes in policies so that prompt arrangements can be made for China's accession to the WTO. By so doing, the Hong Kong legal and arbitration sectors will be able to sharpen the competition edge against foreign law firms and arbitrators. On the one hand, they should improve their own competitiveness. On the other hand, they should help the Mainland enhance its competitiveness against foreign law firms and arbitrators, which will result in a win-win situation for both Hong Kong and the Mainland.

(vi) Take the initiative

The Hong Kong legal and arbitration sectors should adopt a positive and proactive attitude to understand their clients' needs and the direction of business development to strive for opportunities and a superior position in entering the Mainland arbitration and legal services markets. In addition, lawyers and arbitrators should fully and profoundly assess the potentials of the Mainland legal and arbitration services market. In the process of assessment, they should consider which cities to be their bases so as to secure full strategic superiority.

(vii) Expressing opinions

Through the Hong Kong Law Society, the Hong Kong Bar Association and the Hong Kong Institute of Arbitrators, the Hong Kong lawyers and arbitrators can convey and reflect, to the Mainland authorities concerned, the difficulties or areas for improvement regarding the establishment of law firms and the provision of arbitration services in the Mainland. Hong Kong legal and arbitration sectors should establish channels for their members to express opinions so that they can share acquired knowledge and experience. This will generally benefit the Hong Kong legal and arbitration sectors as a whole and improve their competitiveness in the Mainland market.
Conclusion

34. Being a major economic system in the world, China’s accession to the WTO will significantly enhance the representativeness of the multilateral trading system. It will also help the WTO promote the liberation of the global trade. If China is able to play its proper role in the world economic system soon, all parties will benefit. The HKSAR supports China’s early accession to the WTO. Since the Mainland is Hong Kong’s main trading partner, we would have much to gain from its accession to the WTO. The further opening up of the Mainland market will also bring about more trading and business opportunities to Hong Kong businessmen.

35. China’s determination to establish a new legal order for foreign investors is beyond doubt. Legal and arbitration services will attain perfection under the market force. The large number of firms intending to invest in China is an indicator of momentum seen in the market force. As far as the legal practitioners and arbitrators are concerned, there will be lots of challenges ahead and the outlook will be bright. I am sure they are determined to take up the challenges. Apart from grabbing this good opportunity, local legal and arbitration sectors also contribute to the development of the rule of law and the construction of the legal systems of the Mainland and the HKSAR, enabling China and the SAR to comply with the international standards prescribed by the new economic order in areas of arbitration and legal services.
Annex I

Enforcement in HKSAR of Arbitral Awards made in Other Places

Arbitral awards made in (i) states or territories which are parties to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958* ("the Convention"), (ii) the Hong Kong Special Administrative Region and (iii) the Mainland are now mutually enforceable.

(A) Reciprocal Enforcement of Arbitral Awards under the Convention

- After reunification, the Convention continues to apply to the HKSAR - China is a state party to the Convention and has assumed responsibility for the performance of the HKSAR’s obligations under the Convention.

- As provided under the Arbitration Ordinance, an award made in pursuance of an arbitration agreement in a state or territory, other than the Mainland, which is a party to the Convention, continues to be enforceable in the HKSAR.

- At present, arbitral awards made in some 130 Convention jurisdictions are enforceable in the HKSAR, and vice versa.

(B) Reciprocal Enforcement of Arbitral Awards between the Mainland and the HKSAR

- Being an international treaty, the Convention is not applicable to the enforcement of arbitral awards between the Mainland and the HKSAR - it does not cover enforcement in one part of a sovereign state of awards made in another part of the same state.

- In June 1999, an arrangement was made with Mainland authorities to put in place a mechanism by which awards made in the Mainland and the HKSAR would be mutually enforceable in court.

- To give effect to this arrangement in the HKSAR, which reflects the spirit of the Convention, the Arbitration Ordinance was
amended in January 2000. The amendment Ordinance has come into operation since 1 February 2000.

- Mainland awards enforceable in the HKSAR are those made by recognised Mainland arbitral authorities, a list of which has been published by the Secretary for Justice in the Gazette. At present, there are over 100 such recognised authorities.

- To implement the arrangement on the Mainland, the Supreme People’s Court issued a Notice in January 2000, containing a judicial interpretation of the arrangement. The operative date of the arrangement dovetails with that in the HKSAR, namely, 1 February 2000.

(C) Enforcement of Arbitral Awards made in states or territories which are not parties to the Convention

- The Arbitration Ordinance was further amended on 14 June 2000 to enable awards made in those non-Convention states or territories (e.g. Albania, Brazil, Iraq, Newfoundland and Macao SAR) summarily enforceable in the HKSAR.
Enforcement of arbitral awards made by Hong Kong Special Administrative Region in Macau Special Administrative Region

The enforcement of Hong Kong arbitral awards in Macau is governed by Articles 1199-1205 of *Code of Civil Procedure* as well as Articles 35-36 of the *Decree-Law 55/98/M* (“the Decree-Law”).

Application for the recognition and enforcement of Hong Kong awards which are in the nature “external” and “commercial” awards shall be lodged to the courts of Macau in accordance with Articles 35-36 of the Decree-Law.


Article 1(4) of the Decree-Law specifies the conditions under which an arbitration is considered to be “external”. It provides, inter alia, that an arbitration is “external” if the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states or territories.

Article 1(2) of the Decree-Law defines the term “commercial” as covering matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include various kinds of transactions such as trade transactions, financing, leasing, banking, insurance, carriage of goods or passengers by air, sea, rail or road, etc.

Article 35 of the Decree-Law sets out the documents required when applying for the enforcement of an arbitral award-

(a) the duly authenticated original award or a duly certified copy thereof;

(b) the original arbitration agreement or a duly certified copy
thereof; and

(c) where the award or agreement is made in a language other than any of the official languages in Macau, a duly certified translation thereof in any one official language.

Such documentary proof is similar to that required for the enforcement of Mainland awards or Convention awards in Hong Kong.

Article 36 of the Decree-Law sets out the various grounds for refusing the enforcement of awards, which are substantially similar to the grounds provided under the New York Convention.

Where an award of Hong Kong is not external and commercial, the party relying on the award may apply to the courts of Macau under Articles 1199-1205 of the Code of Civil Procedure for its enforcement in Macau.

Article 1199 of the Code of Civil Procedure provides that an arbitral award made by arbitrators outside Macau in respect of private rights will be given effect in Macau after being examined and confirmed.

Article 1200 provides that an award will be recognised only if -

- there is no doubt as to the authenticity and comprehension of the document which sets out the award;

- the award has acquired the force of res judicata in the place where it was rendered;

- the jurisdiction of the arbitrators who made the award has not been caused with fraud of law and the award does not contain decisions on matters within the exclusive jurisdiction of the courts of Macau;

- there is no possibility of invoking the defence of pendency or res judicata by reason of lawsuit submitted to the courts of Macau, except where the lawsuit had been submitted to a court outside the jurisdiction of Macau prior to its initiation in a Macau court;
• the party against whom the award is invoked was given proper notice of arbitral proceedings under the law of the place of arbitration, and the adversary system and principle of equality between the parties have been duly respected;

• the award does not contain decisions whose recognition would be manifestly contrary to the public order of Macau.

In addition, Article 1202 sets out the grounds for refusing the enforcement of an award, which include, inter alia, the failure to satisfy any one of the criteria for recognition of an award as specified in Article 1200.