

第三环节： 选择香港作为解决争议地

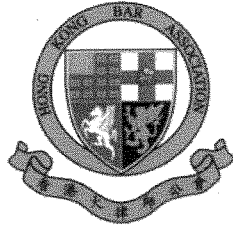
Session Three: Resolving Disputes in Hong Kong

讲题： 商讨及草拟解决争议条款

Topic: Negotiating and Drafting of Dispute Resolution Clauses

讲者： 高浩文资深大律师 香港大律师公会主席

Speaker: Mr Russell Coleman, SC Chairman, Hong Kong Bar Association



Negotiating and Drafting Arbitration Agreements

Russell Coleman SC
Hong Kong Bar Association

Definition

- An agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not (section 2(1) of the Arbitration Ordinance Cap 341 adopting Article 7(1) of the UNCITRAL Model Law)

Formal Requirements

- Must be in writing but not necessarily contained in a signed document
- Considered in writing if, for example, made by an exchange of written communications or although made otherwise than in writing, was recorded by one of the parties to the agreement

Institutional Administered

- Arbitration under one of the institutional rules (eg HKIAC, ICC, LCIA or AAA)
- Perceived costs (to tribunal only) and quality control
- Fee structure may be incompatible with case nature
- Need for study of institutional rules to identify whether need to contract out of certain provisions

Sample Clause - Institutional

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Administered Arbitration Rules of the Hong Kong International Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause. The place of arbitration shall be in Hong Kong at HKIAC.

Sample Clause - Ad Hoc

- Any dispute, controversy or claim arising out of or relating to this contract, or the breach termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force and as may be amended by the rest of this clause
- The appointing authority shall be Hong Kong International Arbitration Centre (HKIAC)
- The place of arbitration shall be in Hong Kong at HKIAC.
- There shall be only one (or three) arbitrator.

Choice of Arbitrators

- Which appointing body - industry specific?
- Qualifications of the arbitrators - usually difficult to predict nature of disputes
- Number of arbitrators (local or industry knowledge vs extra time and costs)
- Restrictions on background of arbitrators

Other Considerations

- Choice of language (potential costs in translation)
- Rights of appeal (sample clause - In relation to all matters referred to arbitration by this agreement, the right of appeal under section 23 of the Arbitration Ordinance Chapter 341 of the Laws of Hong Kong and the right to make an application under section 23A thereof are hereby excluded)
- Commencement of arbitration - whether timing is condition precedent

