

Ad Hoc Arbitral Awards made in Hong Kong and Arbitral Awards made in Hong Kong by ICC International Court of Arbitration are Enforceable in the Mainland

The Chinese Supreme People's Court ("SPC") issued a notification on 30 December 2009 (the "Notification") to Higher People's Courts in the Mainland confirming that *ad hoc* arbitral awards made in Hong Kong and arbitral awards made in Hong Kong by the International Court of Arbitration of the International Chamber of Commerce ("ICC") and other foreign arbitration institutions are enforceable in the Mainland in accordance with the Arrangement concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong SAR signed in 1999 (the "Arrangement").

The Enforcement of Ad Hoc Arbitral Awards made in Hong Kong

Prior to resumption of sovereignty over Hong Kong by China in 1997, arbitral awards made in Hong Kong were recognized and enforced in China under the New York Convention. Following the resumption of sovereignty, the Arrangement confirmed the general enforceability of Hong Kong arbitral awards in the Mainland and set out detailed procedures for applying for enforcement.

Arbitration proceedings in Hong Kong can be conducted by institutional arbitration and *ad hoc* arbitration. Parties who desire to resolve their disputes by way of arbitration are able to choose either by designating an institution such as Hong Kong International Arbitration Centre to administer it or by *ad hoc* arbitration which does not involve an arbitration institution or commission. However, Chinese law does not permit *ad hoc* arbitration. All arbitrations in the Mainland must be governed by the rules of an arbitration institution or commission.

Accordingly, there have been some doubts as to whether *ad hoc* arbitral awards made in Hong Kong would be enforceable in the Mainland. On 25 October 2007, by a Reply in response to a query from the Hong Kong's Secretary for Justice, the SPC confirmed that *ad hoc* arbitral awards which do not fall within Article 7 of the Arrangement (provisions on the circumstances under which an arbitral award may not be enforced) are enforceable in the Mainland.

The Enforcement of Arbitral Awards made in Hong Kong by ICC International Court of Arbitration

Following the SPC's Notification in response to the queries from certain People's Courts and the relevant parties concerned, the enforceability of arbitral awards made in Hong Kong by ICC international Court of Arbitration and other foreign arbitration institutions has now been confirmed. The courts may refuse to enforce those arbitral awards only if there are circumstances falling within Article 7 of the Arrangement.

The legal status and enforceability of arbitral awards made in the Mainland by international arbitration institutions such as the ICC International Court of Arbitration has also attracted much controversy.

In April 2009, the Ningbo Intermediate People's Court ("**Ningbo Court**") issued a decision representing the first reported case where an ICC award made in the Mainland has been recognized and enforced by the PRC courts. The legal reasoning used by the Ningbo Court was not clearly laid out. The question of the enforceability of awards issued by foreign arbitration institutions in the Mainland is still very much unsettled. Nonetheless, this case shed some light on the possibility of enforcement.

Effect of the Notification

The Notification provides a significant reference to the Chinese courts to determine whether to enforce *ad hoc* arbitral awards made in Hong Kong and arbitral awards made in Hong Kong by ICC International Court of Arbitration and other foreign arbitration institutions on the grounds set out in the Arrangement. This Notification will therefore allow parties who arbitrate in Hong Kong to confidently adopt an arbitral procedure most suitable to their transactions, without worrying that the resulting award might not be recognized or enforced in the Mainland. It will ensure Hong Kong as a prime venue for conducting foreign arbitrations where one party is based in the Mainland.

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