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New Arbitration Ordinance in Hong Kong—1st June 2011

Hong Kong has introduced a new Arbitration Ordinance which became effective on 1st June 2011. This development brings some significant changes and features in the way arbitration is to be conducted in Hong Kong. Its aim is to promote Hong Kong as a strong regional center for dispute resolution.

Unitary Regime. The most significant change is the abolition of the distinction between domestic and international arbitration regimes. The new Ordinance establishes a unitary regime of arbitration based on the UNCITRAL Model Law. It is intended that the new Ordinance will be self-contained (although it may be possible for parties to opt in or out of the Model Law application).

Confidentiality. The new Ordinance provides that the disclosure of information relating to any arbitral proceedings or awards is to be prohibited. There is a default provision available so that although proceedings can be heard in private, the Tribunal has a discretion to order proceedings to be heard in open court.

Interim Measures. It also expressly gives arbitral tribunals the power to grant interim measures including injunction relief. Additionally, the Tribunals are now empowered to order the provision of security for costs and direct the discovery of documents or the delivery of interrogatories.

Med-arb. The new Ordinance is expected to assist a “hybrid” style of dispute resolution. It now allows an arbitrator to act also as

a mediator after the arbitration has commenced provided that the parties consent in writing. In the event that settlement is not reached during the mediation process, the mediator can then resume acting as an arbitrator. The parties should be made aware that if confidential information is obtained by an arbitrator in his role as mediator, in the event the mediation fails, the arbitrator should disclose as much of the information as the arbitrator considers is material before resuming the arbitration.

Costs. The new regime provides the legal costs of arbitration proceedings should be reviewed and assessed by the Tribunal itself. The Court's role to assess costs is now only available if the parties agree.

Role of Hong Kong International Arbitration Centre (HKIAC). The statutory functions such as the appointment of arbitrators, upon the failure of the parties to do so, which usually is vested with the Courts, have been transferred to the HKIAC.

Summary. The new Ordinance gives more powers to the Tribunal rather than the Courts and should be more user-friendly as the UNCITRAL Model Law is now extended to all arbitrations in Hong Kong. It is hoped this will enhance the perception of Hong Kong as a friendly Model Law jurisdiction and be more attractive for both local and international parties.

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