

Recognition and enforcement of Mainland Arbitration Awards in Hong Kong

DENTONS

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Background

Before 1997, arbitral awards were recognised and enforced between Hong Kong and Mainland China by way of a mutual arrangement under The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “**New York Convention**”). The New York Convention no longer applied after 1997 as Hong Kong and Mainland China were no longer “separate parties” to the convention. Consequently, the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR (the “**Arrangement for Mutual Enforcement of Arbitral Awards**”) was signed in June 1999 and came into effect in February 2000. In Hong Kong, the implementation of the Arrangement for Mutual Enforcement of Arbitral Awards is detailed in the Arbitration Ordinance (Cap. 609) (the “**Arbitration Ordinance**”).

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The application for recognition and enforcement of Mainland arbitral awards may be made on an *ex parte* basis with an affidavit in support. For *ex parte* applications, the applicant must make full and frank disclosure of all relevant information in support of the application. The court may direct that the application be made *inter partes* if it considers it appropriate for the other side to be heard. If the application is contested, then the court will list the matter to be heard with a date to be fixed¹.

Where leave of court is granted to enforce a Mainland arbitral award and no application has been filed to set aside the order, a judgment can be entered in accordance with the terms of the arbitral award, which can be enforced in the same manner as any other Hong Kong judgment. Nonetheless, the Hong Kong courts are empowered to refuse the enforcement of a Mainland arbitral award on the grounds listed in Section 95 of the Arbitration Ordinance. For example, the courts may refuse to enforce an award if a party to the arbitration agreement was under some incapacity or if the arbitration agreement was invalid. The courts may also refuse to enforce an award if it would be contrary to public policy to do so, or if the person was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings.

For example, in the case *楼外楼房地产咨询有限公司对何志兰*², the dispute was referred to arbitration in China before the Guangzhou Arbitration Commission (the “**GZAC**”) pursuant to the arbitration clause in the agreement. The GZAC posted the initial notice of arbitration to a Hong Kong address registered by the respondent and the respondent had acknowledged her receipt of the notice by signing. Nonetheless, it turned out such Hong Kong address was not her usual place of residence and she failed to receive the subsequent notice of hearing posted by the GZAC to the same

address. The notice of hearing was returned to the GZAC. Under the GZAC Arbitration Rules, the arbitral tribunal held that the notice of hearing was deemed duly served on the respondent as the first notice of arbitration was successfully received by her at the same address. The arbitral tribunal heard the case *ex parte* and issued two awards against the respondent. When the claimant sought enforcement of the award in the Hong Kong High Court, the respondent raised objection by relying on Section 95(2) of the Arbitration Ordinance, which states that enforcement of a Mainland award may be refused if the person against whom it is invoked can prove that he or she was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings, or was otherwise unable to present his or her case.

Eventually, the court was of the view that the applicant failed to prove that the deemed-as-duly-served notice of hearing can be regarded as a proper notice of the arbitration proceedings. Therefore, the Hong Kong High Court refused to enforce the award on the basis that the respondent was not given proper notice of the arbitral proceeding.

As the world's largest law firm, we have unparalleled presence and capabilities across all major jurisdictions in the world. Our Hong Kong team has a wealth of experience in a wide variety of litigation, mediation and arbitration matters, and the capability to provide world-class legal services. If you are looking to enforce a Mainland judgment or award in Hong Kong, apply for interim measures in aid of arbitral proceedings or looking for support in formulating your dispute management strategy generally, please get in touch with us.

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1. Order 73, Rule 10 of The Rules of the High Court, as amended by Section 13 of Schedule 4 of the Arbitration Ordinance ↔
 2. [2015] HKCFI 664; HCMP 3202/2013 ↔

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