

Macau's New Arbitration Law

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INTRODUCTION

On 4 May 2020, Macau's New Arbitration Law comes into force.¹ This is a significant development for the Guangdong-Hong Kong-Macau Greater Bay Area. In recent years, there has been a drop in foreign direct investment in Macau. The strengthening of Macau's dispute resolution processes is part of an effort to reverse that trend. With increases in investment comes the increased risk of disputes. These reforms are intended to provide a sound framework for investors to be encouraged not only to invest in Macau, but also to opt for Macau-seated arbitration to resolve any disputes.

Macau's New Arbitration Law is based on the 2006 UNCITRAL Model Law on International Commercial Arbitration, and also includes provisions which mirror those appearing in the arbitration statutes in Hong Kong and Singapore. The new regime will apply to all arbitrations commenced after 4 May 2020, and to arbitrations already underway where the parties agree to its application. It also applies to both domestic and international arbitrations seated in Macau.² The key reforms are outlined below.

Recognition and Enforcement of Arbitral Awards

Macau's New Arbitration Law provides that a Macau arbitration award has the same executory effect as a judgment granted by the court of first instance in Macau. There are also arrangements for the reciprocal enforcement of arbitral awards between Macau and Mainland China, as well as between Hong Kong and Macau. The New Arbitration Law also sets out a process by which arbitral awards issued in other countries may be enforced. Since July 2005, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") has applied in Macau. This means that the courts in Macau will recognise and enforce arbitral awards subject to the applicability under the New York Convention of (i) the limited defences to enforcement

¹ Law no. 19/2019: <http://images.io.gov.mo/bo/i/2019/44/lei-19-2019.pdf>.

² Macau's New Arbitration Law replaces Decree-Law 29/96/M (which governed domestic arbitrations) and Decree-Law 55/98/M (which governed international arbitrations).

it contains, (ii) the reciprocity reservation (under which only arbitration awards from other signatory states must be enforced), and (iii) the commerciality reservation (under which only arbitration awards deemed to relate to commercial matters under PRC law may be enforced).

Limitations on Appeal Rights

One of the benefits of international arbitration is the limited right of appeal against an arbitral award, which avoids unnecessary delays and uncertainty in the enforcement process. Under Macau's old arbitration regime, parties could agree (prior to the start of arbitration proceedings) to the possibility of appealing the tribunal's award to the Intermediate Court of Macau. Macau's New Arbitration Law precludes this possibility, although it does permit parties to agree to the appointment of another arbitral tribunal to determine any challenge to the original tribunal's award. This challenge is not limited to the narrow defences to resist enforcement of an arbitral award under the New York Convention. However, the agreement permitting challenges must contain all relevant terms for the challenge process, in the absence of which the agreement will be null and void.

Recognition and Enforcement of Interim Measures

The New Arbitration Law expressly provides Macau-seated arbitral tribunals with the power to order interim measures. It also expressly recognizes the enforceability of interim measures ordered by arbitral tribunals, whether the tribunals are seated in or outside of Macau.

However, unlike Hong Kong, Macau does not yet have specific arrangements with Mainland China for assistance with enforcement of such interim measures. In October 2019, the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR came into force. This empowers Mainland Chinese courts to grant interim measures to support certain Hong Kong arbitrations. Several applications for interim measures under this arrangement have already been granted (see our previous updates on this arrangement [here](#) and [here](#)). It remains to be seen whether Macau will enter into a similar arrangement.

Emergency Arbitration

Emergency arbitration has become an increasingly popular option for parties requiring urgent interim relief during the period of tribunal formation. Depending on the size of the tribunal, there is normally a waiting period of one to three months between the commencement of arbitration proceedings and the constitution of the tribunal. Emergency arbitration enables parties to seek urgent relief from an emergency arbitrator during this waiting period as an alternative to seeking such relief from the

courts. Macau's New Arbitration Law expressly recognises both the right of parties to turn to emergency arbitration for urgent interim relief, and for the enforceability of emergency arbitrator decisions.

Court Assistance in the Taking of Evidence

Arbitral tribunals typically have the power to order the production of evidence by the parties to the arbitration. The tribunal cannot compel production, though it can sanction non-compliance, for example by drawing adverse inferences. In addition, evidence may be needed from a third party which is unwilling to cooperate. In either instance, a party may wish to request the local courts' assistance in compelling the production of evidence. Macau's New Arbitration Law sets out a formal procedure for obtaining the assistance of the Macanese courts in such circumstances.

Publication of Arbitral Awards

The new regime also attempts to increase the transparency of arbitral awards rendered in administrative disputes in Macau. These include disputes concerning (a) administrative agreements, (b) the liabilities of administrative authorities, public servants or service staff arising out of public administration activities, including compensation claims, or (c) any monetary rights or legally protected interests. Arbitral awards pertaining to any administrative disputes will now be published online on a platform set up by Macau's Justice Affairs Department. Macau's personal data protection law applies to any such publication. This should protect the identities of private sector parties and require the redaction of those identities prior to publication of awards.

Conclusion

As Macau's New Arbitration Law comes into force, other leading arbitration seats in the region will watch with keen interest to see if the reforms lead to an increase in Macau-seated arbitrations. Investors in the Greater Bay Area are likely to face proposals, and potentially pressure, to enter into Macau-seated arbitration agreements. The choice of the arbitral seat can have wide-ranging repercussions. These range from availability of access to local courts when the need arises, and the procedural restrictions and requirements faced by the arbitral tribunal, to the enforceability of the award. The introduction of a modern arbitration law which is based upon the Model Law will be a welcome development for international parties to arbitrations seated in Macau. In order to gain the full benefit of this development, Macau's judiciary must properly deploy its provisions to support the arbitral process. Experience from other jurisdictions teaches that a modern law reflecting international norms is a necessary but not sufficient condition for a jurisdiction to be a reliable seat. The attitude adopted by the Macanese courts, and the continued development of Macau's arbitral institutes, will thus be pivotal to ensuring the success of Macau's New Arbitration Law.

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