

Resolve2Win

“Legal Services of Hong Kong, Opportunities for All”

Hong Kong: An International Dispute Resolution Centre

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What is Arbitration?

- Alternative dispute resolution process to litigation
- Disputing parties must agree to take their dispute to arbitration
- General arbitration procedure:

- Arbitration agreement made
- Arbitration application submitted by Applicant
- Arbitral tribunal set up
- Procedure: exchange of written submission, discovery of documents, hearing
- Arbitral award given by the arbitrator(s)
- Enforcement of arbitral award

Highlights of Hong Kong Arbitration Services

1. Comprehensive and up-to-date legislative framework
2. Pro-arbitration approach of the court
3. Other supporting/facilitative measures

(1) Comprehensive and Up-to-date Legislative Framework

- Arbitration seated in Hong Kong governed by the [Arbitration Ordinance \(Chapter 609 of the Laws of Hong Kong\)](#)
 - ✓ Based on the **Model Law** on International Commercial Arbitration of the United Nations Commission on International Trade Law (**UNCITRAL**)
 - ✓ Unifying the dual regimes for domestic and international arbitration
- Amendment exercise of the Arbitration Ordinance in 2017
 - ✓ Clarified that disputes **over intellectual property rights (“IPRs”)** may be resolved by arbitration and it is not contrary to the public policy of Hong Kong to enforce arbitral awards involving IPRs

(1) Comprehensive and Up-to-date Legislative Framework (cont'd)

- Outcome Related Fee Structures for Arbitration (ORFSA) – 16 Dec 2022
 - ✓ Allows **three types of arrangements** for clients and their lawyers to agree on the fee arrangements based on the outcome in the matter
 - ✓ [Arbitration and Legal Practitioners Legislation \(Outcome Related Fee Structures for Arbitration\) \(Amendment\) Ordinance 2022](#)
 - ✓ [Arbitration \(Outcome Related Fee Structures for Arbitration\) Rules](#)
- Third Party Funding of Arbitration – 1 Feb 2019
 - ✓ Clarifies that third party funding in arbitration proceedings and related proceedings are **permitted in Hong Kong**
 - ✓ [Arbitration and Mediation Legislation \(Third Party Funding\) \(Amendment\) Ordinance 2017](#)
 - ✓ [Code of Practice for Third Party Funding of Arbitration](#) (issued on 7 Dec 2018)

(2) Pro-arbitration Approach of the Court

Well documented in court judgments and reflected in the legislation:

- ▶ In **Chimbusco International Petroleum (Singapore) Pte Ltd v Fully Best Trading Ltd** [2016] 1 HKLRD 582, Hon Mimmie Chan J states that,
*“11. The modern trend of the courts is to **uphold arbitration agreements, to facilitate arbitrations**, and (save in circumstances necessary to safeguard due process and as allowed under the international Conventions) **not to intervene in an arbitration**, which is the parties’ free choice as to the method of dispute resolution, and the substantive law and forum to govern and oversee the arbitration.”*
- ▶ **Section 12 of the Arbitration Ordinance** (which adopts Article 5 of UNCITRAL Model Law on “Extent of court intervention”) states that,
*“In matters governed by this Law, **no court shall intervene except where so provided in this Law.**”*

(3) Other Supporting/Facilitative Measures

- Arbitral awards made in Hong Kong are **enforceable** in contracting states of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (**New York Convention**)
- Mutual enforcement of arbitral awards with **Mainland China** and **Macao** under reciprocal enforcement arrangements:
 - Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region
 - Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region
 - Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards between the Hong Kong Special Administrative Region and the Macao Special Administrative Region

(3) Other Supporting/Facilitative Measures (cont'd)

- ▶ Interim Measures Arrangement signed with Mainland – 1 Oct 2019
 - ▶ **First jurisdiction outside Mainland** where parties to arbitral proceedings administered by designated arbitral institutions can apply to Mainland courts for interim measures
- ▶ Pilot Scheme on Facilitation for Persons Participating in Arbitral Proceedings in Hong Kong
 - ▶ **Cover all visitors** (including nationals that require Visa/entry permit) to participate in arbitration in Hong Kong without the need to apply for employment visa

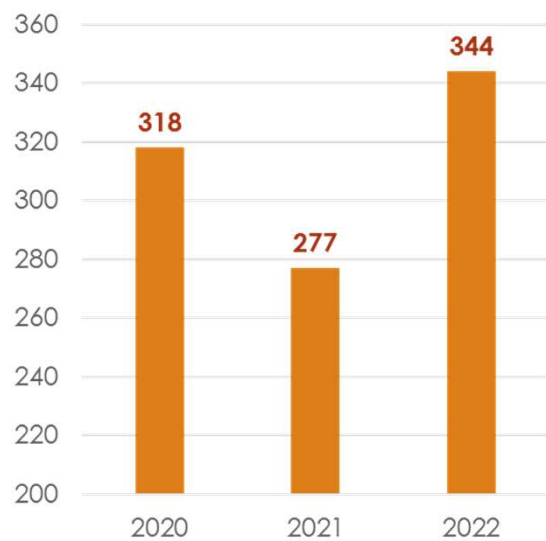
International Recognition

- ▶ Since 2015, Hong Kong ranked among the **top 5 preferred seats** for arbitration globally according to the International Arbitration Surveys conducted by Queen Mary University of London
- ▶ 2021 Survey: Hong Kong ranked the **3rd most popular** seat for arbitration (chosen by **50%** of respondents worldwide)

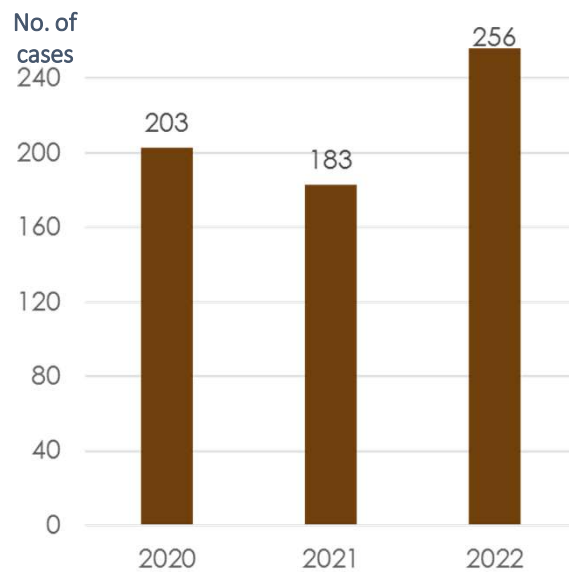
Arbitration Caseload of the Hong Kong International Arbitration Centre (HKIAC)

2022 arbitration statistics

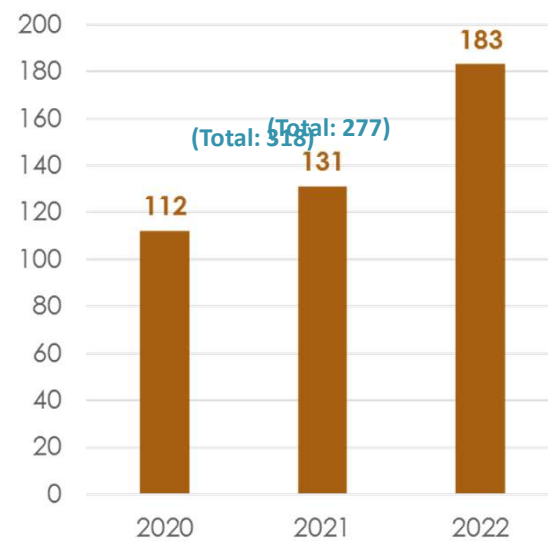
Total HKIAC arbitration cases



Total arbitration cases administered by HKIAC



HKIAC arbitration cases commenced with multiple parties or multiple contracts



HKIAC's 2022 Arbitration Case Statistics



159

arbitrator appointments

made by HKIAC

and HKIAC confirmed 125 arbitrators
(party/co-arbitrator designations)



83.1%

international cases

5.8% new arbitration cases involved no Asian parties
93.4% of administered arbitrations were international



US\$ 5.5 billion

Total amount in dispute
(HK\$ 43.1 billion)



seat of arbitration

Hong Kong most commonly chosen
seat of arbitration

Other seats: England & Wales or not
specified



**most commonly chosen
governing law**

1. Hong Kong law
2. English law
3. Jersey law
16 different governing laws chosen



language

87.1% cases conducted in English
11.3% were in Chinese
1.6% were in English & Chinese

What is Mediation?

- Alternative dispute resolution process in which a trained and **impartial third person**, the mediator, helps the parties in dispute to **reach an amicable settlement**
- **Features:** Impartiality, confidentiality, flexibility, party autonomy
- Many types of disputes suitable for mediation:
 - ✓ Family, tort (including personal injuries), business-related, construction, landlord/tenant, work place, neighbourhood, consumer, peer (school)
 - ✓ International: investor-State investment, cross-boundary

Highlights of Hong Kong Mediation Services

1. Legal framework conducive to facilitating the conduct of mediation
2. Pro-mediation judiciary
3. Large pool of accredited mediators

(1) Legislative Framework

➤ Mediation Ordinance (Cap. 620) – enacted in 2013

- ✓ Provides a regulatory framework for the conduct of mediation in Hong Kong without hampering the flexibility of the mediation process
- ✓ To promote, encourage and facilitate the resolution of disputes by mediation, and to protect the confidential nature of mediation communications

➤ Apology Ordinance (Cap. 631) – enacted in 2017

- ✓ To promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution
- ✓ First jurisdiction in Asia to enact a standalone apology legislation
- ✓ First jurisdiction amongst 56 common law jurisdictions to protect statements of fact in an apology legislation

(2) Support of the Judiciary

➤ Practice Direction 31

- Sets out the procedure to be followed by the parties to engage in mediation after commencement of a court action

➤ Integrated Mediation Offices

- Assist parties to understand the nature of mediation and seek mediation
- Answer enquiries and provide information on court-related mediation

(2) Support of the Judiciary (Cont'd)

➡ Various mediation schemes, for example:

➡ Pilot Scheme for Case Settlement Conference in Civil Cases in the District Court

- To introduce the idea of **assisted settlement** into the case management process to further promote the use of alternative dispute resolution in civil litigation and to instill among litigants as well as their legal representatives a culture of exploring settlement
- Further upgrades since January 2023, including the introduction of a scheme of **Mediator Assisted Case Settlement Conference (MCSC)** and a mechanism of **party-driven CSC/MCSC**

(3) Hong Kong Mediation Accreditation Association Limited (“HKMAAL”)

- ▶ Premier mediation accreditation body in Hong Kong
 - ✓ Set standards for accredited mediators, supervisors, assessors, trainers, coaches and other professionals involved in mediation in Hong Kong, and to accredit them on satisfying the requisite standards
 - ✓ Set standards for relevant mediation training courses in Hong Kong, and to approve them on satisfying the requisite standards
 - ✓ Promote a culture of best practice and professionalism in mediation in Hong Kong
- ▶ As of 14 March 2023, HKMAAL has 1,745 General Mediators, 245 Family Mediators, and 54 Family Mediation Supervisors.

Mediation Statistics

► Settlement Rate of Mediated Cases

Year	District Court	Court of First Instance
2017	58%	61%
2018	60%	65%
2019	52%	63%
2020	53%	61%
2021	66%	54%

Source: Judiciary

Mediation Statistics (cont.)

➔ Cost of Mediation (2021)

Average Cost of Mediation	District Court (US\$)	Court of First Instance (US\$)
Full Agreement	\$2,090 per case / \$500 per hour	\$2,880 per case / \$615 per hour
Partial Agreement	\$3,200 per case / \$550 per hour	\$2,000 per case / \$450 per hour
No Agreement	\$1,680 per case / \$490 per hour	\$2,410 per case / \$615 per hour

Source: Judiciary

Mediation Statistics (Cont'd)

► Duration of Mediation (2021)

Average Time Spent	District Court	Court of First Instance
Full Agreement	4 hours	5 hours
Partial Agreement	6 hours	5 hours
No Agreement	3 hours	4 hours

Source: Judiciary

Online Dispute Resolution (ODR)

- Growth in global trade generating more **cross-boundary disputes**
- Cross-boundary litigation is not an ideal option given the differences in legal system, lengthy court proceedings, and related legal and travelling costs
- ODR helps resolve disputes through the **use of electronic communications** and other information and communications technology (usually involving expedited models of mediation and arbitration), promoting access to justice in a **time-efficient** and **cost-effective** manner
- COVID expedited the demand and use of ODR in various jurisdictions
- The HKSAR Government supports the development of ODR platforms by our home-grown institution **eBRAM International Online Dispute Resolution Centre**

Hong Kong Legal Hub

- Officially opened on **2 November 2020**
- Located at the heart of Hong Kong's **Central Business District**, brings together **global expertise** in the legal and dispute resolution community
- Accommodates offices of a number of reputable local, regional and international **law-related organisations and dispute resolution bodies**
 - International Organization for Mediation Preparatory Office (16 February 2023)
 - AALCO Hong Kong Regional Arbitration Centre (25 May 2022)



Hong Kong Legal Hub



DOJ Project Office for
Collaboration with
UNCITRAL



Thank you!