



香港國際仲裁中心
Hong Kong International
Arbitration Centre

香港 仲裁 100問

HONG KONG ARBITRATION
100 QUESTIONS & ANSWERS

莫石 博士

香港國際仲裁中心 榮譽主席

Dr Michael J Moser

*Honorary Chairman
Hong Kong International
Arbitration Centre*

鄭若驊 資深大律師、太平紳士

香港國際仲裁中心 副主席

Teresa YW Cheng SC JP

*Vice Chairman
Hong Kong International
Arbitration Centre*

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Background

基础知识

1. What is arbitration?

Arbitration is a consensual dispute resolution process where the parties agree to submit their disputes to be resolved by an arbitral tribunal, which award will be final and binding.

什么是仲裁？

仲裁是以当事人的约定为基础的争议解决方式—当事人同意将争议提交仲裁庭，由仲裁庭作终局和有约束力的裁决。

2. How is arbitration different from mediation?

A mediator's role is to attempt to bring the parties to a mutually accepted settlement. A party is not required to accept terms of settlement proposed in a mediation. A mediation settlement takes effect as an agreement, rather than as an immediately enforceable award.

仲裁和调解有何不同？

调解旨在促使当事人妥协。当事人没有义务接受调解员所建议的和解。仲裁裁决可以强制执行，和解协议不行，只是当事人间的协议。

3. How is arbitration different from expert determination?

Expert determination is commonly used to resolve disputes on a narrow technical issue (such as the value of a company or an asset). As in arbitration, the expert's finding is usually binding on the parties. An arbitrator's brief is broader: it is to resolve commercial disputes in accordance with law and commercial practice.

仲裁和专家决断有何不同？

专家决断常用于解决较窄的技术问题（如确定公司或财产的价值）。同仲裁一样，专家的认定通常对当事人有约束力。仲裁员的作用更宽泛，即依法律和商业实践解决商事争议。

4. How is arbitration different from litigation?

Arbitration proceedings are conducted in private, rather than in court, and are heard by an arbitrator rather than a judge. Arbitration procedure is generally less formal, and there are no restrictions on who may represent parties in an arbitration.

仲裁和诉讼有何不同？

仲裁私下进行，由仲裁员审理；诉讼在法院进行，由法官审理。仲裁一般较诉讼更随意，也不限制当事人可由谁代理。

5. What are the main advantages of arbitration?

Parties from different countries can choose to appoint a panel of neutral arbitrators, who may be experts in the relevant area, and to hold the arbitration in a neutral venue. Arbitration is conducted in private and is generally confidential. Arbitration procedure is flexible, which can lead to disputes being resolved more quickly and cheaply than in the courts. Arbitration awards can be enforced internationally more easily than court judgments.

仲裁的主要优点是什么？

来自不同国家的当事人，可以指定一个中立的、由相关领域的专家组成的仲裁庭，在一个中立的地点仲裁。仲裁私下进行，而且通常是保密的。仲裁程序灵活，较法院可更快更便宜地解决争议。在国际上，仲裁裁决较法院判决更易执行。

6. Why is arbitration commonly provided for in contracts involving mainland Chinese parties?

Arbitration is particularly appropriate for international disputes involving mainland Chinese parties, as the mainland courts generally will not recognise or enforce foreign or Hong Kong court judgments. It is commonly used in domestic disputes in Mainland China, and is therefore relatively familiar to Chinese parties.

为什么涉及中国内地当事人的合同常规定仲裁？

对涉及中国内地当事人的国际争议，仲裁尤其合适，因为内地法院一般不承认和执行外国或香港的法院判决。而且，因为中国内地争议常使用仲裁，中国当事人也比较熟悉仲裁。

7. What are the potential disadvantages of arbitration?

As arbitration is based on the consent of the parties, arbitrators generally have no power to make orders affecting non-parties to the arbitration agreement. In contrast to courts, they generally do not have power to compel witnesses to testify or produce documents, to require third parties to participate in arbitration proceedings, or to make awards requiring a third party to do (or to refrain from doing) something.

仲裁的潜在缺点是什么？

仲裁是基于当事人的约定，因此，对仲裁协议以外的人，仲裁员一般无能为力。与法院不同，仲裁员一般无权强迫证人作证或提交文件，或要求第三人参加仲裁，或裁决第三人得作（或不得作）某事。

8. What is “institutional” arbitration?

Institutional arbitration proceedings are administered by an arbitration institute, such as the Hong Kong International Arbitration Centre (“HKIAC”), the International Chamber of Commerce (“ICC”), the China International Economic and Trade Arbitration Commission (“CIETAC”) or the London Court of International Arbitration (“LCIA”). Typically, these are conducted under the arbitration rules devised by each institution.

什么是机构仲裁？

机构仲裁程序是由仲裁机构（如香港国际仲裁中心，国际商会，中国国际经济贸易仲裁委员会或伦敦国际仲裁院）管理的。通常，由某仲裁机构管理的仲裁都按其自己的仲裁规则进行。

9. What is “ad hoc” arbitration?

Ad hoc arbitrations are arranged solely between the arbitrators and the parties. They may adopt a ready-made set of arbitration rules (such as the UNCITRAL Rules of Arbitration) or, less frequently, may be conducted under rules drawn up by the parties.

什么是临时仲裁？

临时仲裁完全由仲裁员和当事人“管理”。可以选用现成的仲裁规则（如UNCITRAL规则），或由当事人自己设计规则，但后者不常见。

10. What are the advantages of institutional arbitration?

Institutional arbitration has the benefit of ensuring that the proceedings are administered in an orderly and regular manner. Arbitration institutes may also exercise a degree of “quality control” over arbitrators and their awards. Adopting an established set of arbitration rules has the obvious benefit of avoiding arbitrators constantly having to “reinvent the wheel” in applying appropriate procedures.

机构仲裁有什么优点？

机构仲裁的优点，在于仲裁程序的有序、常规管理。仲裁机构也能一定程度上控制仲裁员及其裁决的质量。显然，适用一套成型的仲裁规则，仲裁员就不用 在仲裁程序中老是从零开始。

11. What are the advantages of ad hoc arbitration?

Ad hoc arbitration may be cheaper insofar as no administration fees are payable to an arbitration institute. In principle, it may also provide the parties with flexibility to devise rules and procedures appropriate to their disputes. In practice, however, devising and agreeing to a set of ad hoc procedures will require substantial specialist input and detailed negotiation between the parties.

临时仲裁有什么优点？

因为不需要向仲裁机构支付管理费用，临时仲裁可能会更便宜。理论上，当事人可以根据争议情况，灵活设计更合适的规则和程序。但实践中，临时谈妥一套程序规则，需要大量的专业知识和精细的谈判。

12. Is arbitration cheaper than litigation?

The cost of arbitrating can depend greatly on the fees charged by the arbitration institute used (if any), how many arbitrators are appointed, and the fees charged by the arbitrators. Because of its flexibility and informality, arbitration can be conducted more cheaply than court proceedings. If the parties adopt a strongly adversarial approach, however, arbitration proceedings can be as expensive as litigation.

仲裁比诉讼便宜吗？

仲裁的费用，很大程度上取决于仲裁机构（如果有）的收费，及仲裁员的人数和收费。由于仲裁程序灵活随意，仲裁可以较法院更便宜。但是，如果当事人选择典型的对抗式，仲裁可能会象诉讼一样贵。

13. Is arbitration quicker than litigation?

Again, because of its procedural flexibility, it is generally possible to conduct arbitration proceedings more quickly than litigation. Restrictions on the parties' rights to appeal arbitration awards can shorten a dispute by months or years. Unlike courts, however, arbitrators generally do not have power to issue default or summary judgment in simple cases where there is no real issue to be determined, and are generally required to hold a hearing of the claim.

仲裁比诉讼更快吗？

同样，仲裁由于程序灵活，通常能较诉讼更快。裁决不能上诉，能使争议的最终解决缩短几个月或几年。但是，不象法院，即使在不存在真正争议的简单案件中，仲裁中也无法作出缺席或简易判决，通常还得开庭。

14. Do arbitrators' decisions create binding legal precedent?

As arbitration proceedings are private and confidential, the parties are generally prohibited from disclosing the outcome of an arbitration, except in limited circumstances. As a result, arbitration may not be ideal where a party hopes to set a precedent in one case that it can use against other parties in future.

仲裁员的决定是否构成具约束力的先例？

仲裁私下进行，是保密的，除个别情况下，当事人通常不得披露仲裁结果。因此，如果想通过一案设立先例，以便将来约束其他人，仲裁不是理想的选择。

15. Are arbitral awards subject to appeal?

Arbitration awards are usually final and not subject to review on the merits. In Hong Kong, parties may expressly agree in the arbitration agreement that award may be appealed in limited circumstances on the grounds that an arbitrator has made an error of law or has committed misconduct.

仲裁裁决能否上诉？

仲裁裁决通常是终局的，法院不能复核实体问题。在香港，当事人可在仲裁协议中明确约定可以在有限的情况下，因仲裁员适用法律有误或有其他不当行为上诉。

Arbitration in Hong Kong

在香港仲裁

16. Why arbitrate in Hong Kong?

Hong Kong is conveniently located on the doorstep to Mainland China and is easily accessible from all East Asia's major commercial centres. It has a strong, arbitration-friendly legal system, and a large pool of arbitrators, lawyers and other professionals. Arbitral awards made in Hong Kong are readily enforceable in all East Asian jurisdictions, including Mainland China.

为什么在香港仲裁？

香港位于中国大陆的门户，很方便，与东亚各主要商业中心的交通也很便利；法律体系坚实，支持仲裁；有很多仲裁员、律师和其他专业人士；香港作出的仲裁裁决在所有东亚国家（包括中国内地）很容易执行。

17. What is the role of the Hong Kong International Arbitration Centre?

The HKIAC is an independent body established to promote the use of arbitration in Hong Kong. It provides facilities and support services for arbitrations conducted in Hong Kong. Under the Arbitration Ordinance, the HKIAC is authorised to appoint arbitrators (and to determine the number of arbitrators) where the parties to a dispute are unable to agree.

香港国际仲裁中心起什么作用？

香港国际仲裁中心是一独立机构，旨在促进香港的仲裁。香港国际仲裁中心为在香港进行的仲裁提供设施和支援服务。根据《仲裁条例》，如果当事人不能协商一致，香港国际仲裁中心有权指定仲裁员（及决定仲裁员人数）。

18. Does the HKIAC have its own arbitration rules?

Parties to arbitrations heard at or administered by the HKIAC are free to choose the procedural rules for their arbitrations. The HKIAC has formulated several sets of rules for domestic arbitrations, “short form” proceedings, small claims, documents only proceedings and electronic transaction disputes, which the parties are free to adopt. In September 2008, the HKIAC issued the HKIAC Administered Arbitration Rules. These provide for a “light touch” administered arbitration modeled on the Swiss Rules and may be used in either domestic or international arbitrations.

香港国际仲裁中心有没有自己的仲裁规则？

在香港国际仲裁中心审理或由香港国际仲裁中心管理的仲裁中，当事人可自由选择程序规则。香港国际仲裁中心为本地仲裁、简易形式仲裁、小额索偿仲裁、书面仲裁和电子交易仲裁，制定了几套规则，当事人可自由选用。2008年9月，香港国际仲裁中心推出了《香港国际仲裁中心机构仲裁规则》。新规则参考瑞士规则，采纳了由机构“轻微”管理的模式。新规则在本地仲裁和国际仲裁中都可选用。

19. Does the HKIAC administer arbitration proceedings?

The HKIAC administers arbitration proceedings when requested to do so by the parties. In this role, it acts as a conduit for communications between the parties and the arbitrators and provides other administrative support as appropriate. Arbitrations may be held at the HKIAC even if administered by another arbitration institute, or if they are not institutionally administered.

香港国际仲裁中心是否管理仲裁案件？

如果当事人要求，香港国际仲裁中心可以管理仲裁案件。在管理仲裁案件时，香港国际仲裁中心协助仲裁员和当事人间的沟通，并提供其他适当的管理性支援。即便是由其他仲裁机构管理的仲裁，或是非由机构管理的仲裁，也可以在香港国际仲裁中心进行。

20. Must arbitrations conducted in Hong Kong be administered by the HKIAC?

No. The parties may choose to have their arbitration administered by any other arbitration institute, or they may choose not to have their dispute administered by an institute.

在香港仲裁，是不是必须由香港国际仲裁中心管理？

不是。当事人可以选择其他仲裁机构管理，或不选择机构管理。

21. Must arbitrations conducted in Hong Kong be held at the HKIAC?

No. Hearings may be held at any place convenient to the parties and the arbitrators.

在香港仲裁，是不是必须在香港国际仲裁中心进行？

不是。可在对当事人和仲裁员方便的任何地点审理。

22. Must arbitrations in Hong Kong be conducted under the HKIAC's arbitration rules?

No. The parties are free to select any set of arbitration rules.

在香港仲裁，是不是必须按香港国际仲裁中心的规则进行？

不是。当事人可以自由选择任何仲裁规则。

23. Must the parties retain Hong Kong legal counsel in a Hong Kong arbitration?

No. The parties are free to appoint locally-qualified or foreign legal advisors or non-legal representatives to represent them in an arbitration.

在香港仲裁，是不是必须聘请香港律师？

不是。当事人可以选择香港律师或境外律师，甚至是非律师代表。

24. Where can I find more information on arbitration in Hong Kong?

The HKIAC website, www.hkiac.org, contains information relating to the HKIAC's role and administrative services, the arbitration rules adopted or recommended by the HKIAC, its model arbitration agreements and the HKIAC's panel of arbitrators.

在哪儿能找到有关香港仲裁的更多信息？

香港国际仲裁中心网站 www.hkiac.org 载有大量信息，包括香港国际仲裁中心的作用和管理服务、香港国际仲裁中心制定或建议的仲裁规则、香港国际仲裁中心示范仲裁协议和香港国际仲裁中心仲裁员名册。

Procedural Laws and Rules

程序法和程序规则

25. What rules govern arbitration proceedings in Hong Kong?

Arbitrations conducted in Hong Kong are governed by the Arbitration Ordinance, which provides the basic legal framework. The detailed arbitration procedure is governed by the arbitration rules chosen by the parties (usually in their arbitration agreement). Where the Arbitration Ordinance and the chosen arbitration rules are silent, the arbitrator has a discretion to adopt appropriate procedures to ensure fair and efficient conduct of the arbitration.

在香港仲裁，适用什么程序法？

《仲裁条例》对于在香港进行的仲裁规定了基本的法律框架。具体仲裁程序，由当事人（通常在仲裁协议中）选择的仲裁规则管辖。《仲裁条例》和由当事人选择的仲裁规则没有规定的，仲裁员有权决定采用适当的程序，以保证仲裁能公正和有效率地进行。

26. What arbitration rules will be applied if none have been agreed to by the parties?

For international arbitrations conducted at the HKIAC, the HKIAC Administered Arbitration Rules or the UNCITRAL Arbitration Rules will typically be applied. For domestic arbitrations conducted at the HKIAC, the HKIAC Domestic Arbitration Rules will normally be used. If no rules have been agreed upon, the Arbitration Ordinance provides a procedural framework for the parties and the arbitrator to devise appropriate procedures for their dispute.

如果当事人没有约定，适用什么仲裁规则？

在香港国际仲裁中心进行的国际仲裁，通常适用《香港国际仲裁中心机构仲裁规则》或UNCITRAL仲裁规则。在香港国际仲裁中心进行的本地仲裁，通常适用《香港国际仲裁中心本地仲裁规则》。如果没有约定仲裁规则，《仲裁条例》为当事人和仲裁员设计恰当的仲裁程序，提供了框架。

27. Is there a difference in how international and domestic arbitrations are treated?

Hong Kong amended its Arbitration Ordinance in 2010. The new Arbitration Ordinance unifies a system that formally provided different procedures depending on whether the arbitration was considered “international” or “domestic.” With the new Arbitration Ordinance, there is no longer such a distinction and the UNCITRAL Model Law in effect applies to all arbitrations in Hong Kong.

是否区别对待国际仲裁和本地仲裁？

过去，《仲裁条例》区分国际仲裁和本地仲裁，并规定有不同程序。2010年，香港修订了《仲裁条例》。新的《仲裁条例》不再这样区分，香港的所有仲裁将统一适用《示范法》。

28. What are the key features in the new Arbitration Ordinance?

The structure of the Arbitration Ordinance mirrors that of the UNCITRAL Model Law, making the Ordinance more user-friendly. The legislation also incorporates detailed provisions drawn from the 2006 additions to the UNCITRAL Model Law regarding interim measures and preliminary orders. The new Arbitration Ordinance also provides for opt-in provisions on appeals of points of law, consolidation of arbitrations and challenging of an arbitral award.

新的《仲裁条例》有哪些主要特点？

新的《仲裁条例》采用了《示范法》的结构，更方便使用者。参考2006年对《示范法》的修订，加进了有关临时措施和初步裁令的详细规定。新的《仲裁条例》还包括一些可由当事人选用的规定，如有关就法律问题上诉、合并仲裁和质疑裁决的规定。

29. What is the UNCITRAL Model Law?

The Model Law was promulgated by the United Nations Commission on International Trade Law (UNCITRAL) in 1985, to provide states with a template for an effective and comprehensive arbitration regime with limited scope for local courts to intervene in the arbitral process. It has

been adopted (or adapted) in numerous jurisdictions around the world. In 1990, Hong Kong adopted the Model Law to apply to international arbitrations. In 2010, Hong Kong unified its dual-track regime for domestic and international arbitrations. In effect, the UNCITRAL Model Law now largely applies to all arbitrations in Hong Kong. The Model Law is reproduced at Schedule 1 of the Arbitration Ordinance.

什么是UNCITRAL《示范法》？

UNCITRAL《示范法》是由联合国国际贸易法委员会(UNCITRAL)制定的，旨在为建立有效和全面的、只受当地法院有限干预的仲裁制度，为各国提供一个范例。很多国家已原封不动地采用了《示范法》，或是在作部分修改后采用。1990年，香港采用了《示范法》，以适用于国际仲裁。2010年，香港统一了过去并行的国际仲裁和本地仲裁两套系统，UNCITRAL《示范法》现已适用于所有香港的仲裁。《仲裁条例》的附表1即是《示范法》。

30. What are the UNCITRAL Arbitration Rules?

The UNCITRAL Arbitration Rules were adopted by UNCITRAL in 1976, to provide a set of procedural rules appropriate for use in international commercial arbitrations generally. These Rules were subsequently amended in 2010.

什么是UNCITRAL仲裁规则？

UNCITRAL仲裁规则是UNCITRAL于1976年制定的，旨在提供一套适合国际商事仲裁的通用的程序规则。这套规则于2010年修订。

The Arbitration Agreement

仲裁协议

31. Is it necessary to have an arbitration agreement?

Yes. As arbitration is a consensual process, an arbitrator has no power to determine a dispute unless the parties have agreed to this and the requirements of the arbitration agreement have been complied with. The parties may agree to arbitrate before a dispute arises (most commonly by an arbitration clause in a contract), or after a dispute has arisen.

是否必须有仲裁协议？

是。仲裁是以约定为基础的争议解决方式，除非当事人有仲裁约定且约定的条件满足，否则仲裁员无权裁决争议。当事人可以在争议发生前（最常见的是在合同的仲裁条款中）或发生后，约定仲裁。

32. What effect does an arbitration agreement have?

An arbitration agreement provides the basis for an arbitrator's jurisdiction. An arbitrator will not entertain a request for arbitration in the absence of an arbitration agreement. The parties may also modify or supplement the applicable arbitration rules by express provision in the arbitration agreement.

仲裁协议有什么意义？

仲裁协议是仲裁员的管辖权的基础。没有仲裁协议，仲裁庭不会接受仲裁申请。当事人还可在仲裁协议中明示修改或补充选用的仲裁规则。

33. Can an arbitration agreement cover claims in tort, as well as contract?

Yes. An arbitration agreement is usually drafted to include claims arising “out of or in connection with” a particular contract. This wording is broad enough to cover tort claims (such as misrepresentation) that relate to the parties’ transaction, and generally enables related tort and contract claims to be determined together by the arbitral tribunal.

仲裁协议能否同时涵盖合同和侵权争议？

能。仲裁协议通常涵盖由某一特定合同“引起的或与之有关的”争议。这一定义范围很宽，足够涵盖与交易有关的侵权争议（如错误陈述），并使仲裁庭有权同时解决合同和侵权争议。

34. What happens if a party attempts to litigate a dispute which is covered by an arbitration agreement?

If a party commences court proceedings in a dispute which is covered by an arbitration agreement, the court should stay its proceedings and decline to hear the dispute.

如果有仲裁协议，但一方当事人向法院起诉，会怎样？

如果针对某一争议已有仲裁协议，但一方当事人向法院起诉，法院应搁置诉讼程序，不再审理争议。

35. What are the requirements of a valid arbitration agreement?

An arbitration agreement is an agreement by the parties to submit to arbitration disputes which have arisen or which may arise between them. It must be made in writing or evidenced in writing. It is not strictly necessary that the arbitration agreement be signed by the parties, although this is of course the conventional manner for the parties to formally indicate their consent.

有效的仲裁协议有哪些要求？

当事人同意将他们间已发生或可能发生的争议提交仲裁的协议，就是仲裁协议。仲裁协议必须是书面的或备有书面证据。仲裁协议不必由当事人签署，尽管当事人通常以签署正式表示同意。

36. What matters should be dealt with in an arbitration agreement?

The most important matters are the place of arbitration, the applicable arbitration rules, the number of arbitrators and how they are to be appointed, and the language in which the proceedings will be conducted.

仲裁协议应规定哪些事项？

最重要的是仲裁地、适用的仲裁规则、仲裁员人数及如何指定仲裁员和仲裁语言。

37. Is it necessary to use a prescribed form of arbitration agreement?

No. Like other arbitration institutes, the HKIAC has a number of recommended clauses for use in various situations. These recommended clauses can be relied on to confer effective jurisdiction on the arbitral tribunal. The recommended forms should not be departed from substantially without obtaining specialist advice.

是否必须使用示范仲裁协议？

不是。象其他仲裁机构一样，香港国际仲裁中心针对不同情况，建议了不同的仲裁条款。使用这类条款，能保证仲裁庭的管辖权。除非先听取专家意见，否则不宜实质性修改示范仲裁条款。

38. Should an arbitration agreement provide for one or three arbitrators?

There are several factors to be considered. A three-arbitrator tribunal will result in higher arbitration costs and may make it difficult to schedule hearings at short notice. A three-arbitrator panel is more appropriate for complex or technical disputes, and in cases where the parties are from jurisdictions with different legal systems or commercial customs.

仲裁协议是否应规定一名或三名仲裁员？

有几个因素要考虑。使用三名仲裁员，费用会更高，也不便很快确定开庭日期。对复杂或技术性的争议，或如果当事人来自不同的法律制度，有不同的商业习惯，三名仲裁员更合适。

39. What language should be chosen to conduct the arbitration proceedings?

In principle, the parties are free to agree to conduct the arbitration in any language they choose. In practice, the parties should consider the languages spoken by the parties, the languages that the agreements and the evidence will likely be in, and the extent to which the choice of language may affect the choice of arbitrators.

仲裁程序应使用何种语言？

原则上，当事人可自由选择仲裁语言。实践中，当事人应考虑自己的语言，合同或证据可能使用的语言，及仲裁语言对选择仲裁员的限制。

40. What happens if the parties agree to conduct the arbitration in two languages?

Often, the parties to a contract agree to conduct their arbitration in two languages. This requires every document to be presented in both languages and oral submissions and evidence to be interpreted at the hearing. The requirement to produce (and agree upon) such translations can add significantly to the cost of the proceedings.

如果当事人同意仲裁使用两种语言，怎么办？

当事人有时同意用两种语言仲裁。如果是这样，所有提交的文件必须有两种文本，开庭时口头陈述和证据必须翻译。翻译，外加各方要确定翻译是否准确，会使仲裁费用增加很多。

41. What happens if a contract containing an arbitration clause is found to be invalid?

If a contract containing an arbitration clause is found to be invalid, this does not invalidate arbitration proceedings commenced under the arbitration clause. An arbitration clause is considered to be a separate agreement from the larger contract in which it is contained.

包含仲裁协议的合同被认定无效，会怎样？

包含仲裁协议的合同被认定无效，并不导致依此仲裁协议开始的仲裁无效。仲裁协议被视为独立于包含仲裁协议的合同。

42. What is the significance of the place of the arbitration?

The place (or the “seat”) of the arbitration has two important legal consequences. First, it determines which jurisdiction’s arbitration laws apply to the proceedings and which courts may exercise supportive and supervisory powers over the arbitration. Second, it determines the place of the arbitration award for international enforcement purposes.

仲裁地有什么重要意义？

仲裁地产生两个重要后果。第一，决定应适用哪个国家的仲裁法，哪个国家的法院有权支持或监督仲裁。第二，跨国执行裁决时，决定裁决在何处作出。

43. Can hearings be held outside the place of the arbitration?

In international arbitrations conducted in Hong Kong, the tribunal may conduct hearings outside Hong Kong without affecting Hong Kong's status as the place of the arbitration.

开庭审理能否在仲裁地以外的地方进行？

在香港进行的国际仲裁，可以在香港之外开庭，而仲裁地仍是香港。

The Governing Law of The Dispute

争议的准据法

44. If a contract provides for arbitration in Hong Kong, must it also be governed by Hong Kong law?

No. The governing law of the contract need not follow the place of the arbitration.

如果合同规定在香港仲裁，是否合同也必须由香港法管辖？

不是。合同的准据法不必依仲裁地定。

45. Does the tribunal apply Hong Kong law or the governing law of the contract?

The tribunal will apply the governing law of the contract to determine the substantive issues in a contract claim. (Procedural issues are, however, governed by the Arbitration Ordinance and the applicable arbitration rules.) If the contract is governed by a foreign law and the tribunal has no expertise in that legal system, the parties will be required to call expert evidence to establish the applicable principles of the foreign law.

仲裁庭适用香港法还是合同的准据法？

在合同争议中，仲裁庭会适用合同的准据法决定实体问题。（程序问题由《仲裁条例》和适用的仲裁规则决定。）如果合同的准据法是外国法，而仲裁庭不熟悉，仲裁庭会要求当事人提供专家意见，以确定适用的外国法原则。

46. What if the contract does not state its governing law?

If the contract is silent as to its governing law, the tribunal will be required to determine what its governing law is (typically as a preliminary issue). This will be the law of the jurisdiction with which the contract has the closest connection. If the contract provides for arbitration in Hong Kong, this may be a factor in favour of the tribunal applying Hong Kong law as the governing law of the contract.

如果合同没有规定准据法，怎么办？

如果合同没有规定准据法，仲裁庭应决定适用什么法（通常是作为初步争点解决）。通常会是与合同有最密切联系的国家的法律。合同规定在香港仲裁，会是仲裁庭考虑适用香港法的一个因素。

47. How is the governing law determined for tort claims?

The tribunal will determine the governing law of a tort claim by applying Hong Kong choice of law rules. This may lead to tort claims being determined under a different law to the governing law of the contract.

侵权争议的准据法如何确定？

侵权争议的准据法，由仲裁庭通过香港法律冲突规则决定。因此，侵权争议的准据法可能会不同于合同的准据法。

Commencing an Arbitration

开始仲裁

48. How is an arbitration commenced?

Broadly, an arbitration is commenced when the claimant serves the respondent with a notice requesting (or requiring) that the dispute be referred to arbitration. The formal requirements of such a notice will depend on whether the arbitration is international or domestic, as well as the requirements under the applicable procedural rules.

仲裁如何开始？

一般而言，申请人将请求（或要求）将争议提交仲裁的通知送达被申请人，仲裁即告开始。此通知的形式要求，视是国际仲裁还是本地仲裁而不同，也取决于适用的程序规则的规定。

49. What is the time limit for commencing arbitration?

The limitation period for a dispute to be submitted to arbitration is the same as for court proceedings, and is determined by the Limitation Ordinance. The limitation period may be varied by agreement between the parties.

仲裁有没有时效限制？

仲裁受诉讼时效的限制，依《时效条例》确定。当事人可协议修改时效期间。

Appointing a Tribunal 组成仲裁庭

50. How is the number of arbitrators determined?

An arbitral tribunal will consist of either one or three arbitrators. The number of arbitrators is usually agreed in the arbitration clause, or may be agreed by the parties after a dispute has arisen.

仲裁员人数如何决定？

仲裁庭由一位或三位仲裁员组成。仲裁员人数通常由当事人在仲裁条款中约定，或在争议发生后约定。

51. What if the parties do not agree on the number of arbitrators?

The HKIAC will determine whether the arbitration should be heard by one or three arbitrators.

如果当事人没有约定仲裁员人数，怎么办？

将由香港国际仲裁中心决定是一名还是三名仲裁员。

52. How are the arbitrators appointed?

A single arbitrator is usually appointed by agreement, or by an independent third party. Where three arbitrators are used, it is customary for each party to appoint one arbitrator and for the chairman to be appointed either by agreement between the party-appointed arbitrators or by an independent third party. For arbitrations in Hong Kong, where the parties are unable to agree on the appointment of an arbitrator, either party may request the HKIAC to make the appointment.

仲裁员如何指定？

独任仲裁员通常由当事人协商指定，或由独立的第三方指定。如果是三名仲裁员，通常作法是当事人各自指定一名仲裁员，第三位首席仲裁员由当事人指定的仲裁员协商指定，或由独立的第三方指定。在香港进行的仲裁，如果当事人不能协商指定一名仲裁员，任何一方可请求香港国际仲裁中心指定。

53. Who can be appointed as arbitrator?

The parties may, in their arbitration agreement, provide certain criteria for arbitrators to be appointed (as to nationality, professional background etc). When the HKIAC is requested to make an appointment, it will appoint an arbitrator from its panel of arbitrators.

谁能被指定为仲裁员？

当事人可在仲裁协议中约定仲裁员的条件（如国籍和专业背景等）。如果请求香港国际仲裁中心指定仲裁员，香港国际仲裁中心会从其仲裁员名册中指定。

54. Are the arbitrators required to be independent of the parties?

Arbitrators are required to be independent, regardless of whether they are party-appointed or jointly appointed by both parties. An arbitrator or potential arbitrator must disclose any circumstances that may give rise to a reasonable doubt as to his or her neutrality or independence. An arbitrator should not communicate privately with any party regarding the substance of the dispute.

仲裁员必须独立于当事人吗？

不论是当事人各自指定的仲裁员，还是当事人共同指定的仲裁员，都必须是独立的。如果存在任何情况，可能对其中立性或独立性产生合理怀疑，仲裁员或仲裁员人选必须披露。仲裁员不得私下单独与任何一方当事人讨论争议实体。

55. Can either party challenge the appointment of an arbitrator?

An arbitrator may be challenged if justifiable doubts exist as to the arbitrator's neutrality or independence, or if the arbitrator does not possess the requisite qualifications. If a challenge to an arbitrator is not upheld by the tribunal and the arbitrator does not step aside voluntarily, an application for his removal may be made in court.

是否任何一方当事人都可要求仲裁员回避？

如果对仲裁员的中立性或独立性有合理的怀疑，或仲裁员不具备要求的资格，当事人可要求仲裁员回避。如果仲裁庭不同意此要求，仲裁员也不自行回避，可向法院申请撤换仲裁员。

56. What is the time limit for challenging an arbitrator?

A party who intends to challenge an arbitrator must provide the tribunal with a written statement of the grounds of its challenge within 15 days after becoming aware of the constitution of the tribunal or becoming aware that grounds for challenge exist.

要求仲裁员回避的时限是什么？

当事人必须在得知仲裁庭组成或得知据以要求回避的事由后15天内，向仲裁庭提交要求仲裁员回避的书面理由。

Arbitration Procedure

仲裁程序

57. What are the general duties of an arbitrator?

An arbitrator is required (i) to facilitate the fair and speedy resolution of disputes without unnecessary expense, (ii) to act fairly and impartially between the parties, (iii) to give the parties a reasonable opportunity to present their cases and (iv) to adopt procedures appropriate to the circumstances of the particular case to avoid unnecessary delay and expense.

仲裁员一般有什么义务？

仲裁员有义务(1)促使争议公正和迅速地解决，避免不必要的费用；(2)公平和公正地对待各方当事人；(3)给予各方当事人合理的机会陈述其案；及(4)根据争议的具体情况，采用适当的程序，以避免不必要的拖延和费用。

58. What happens after the tribunal has been appointed?

The tribunal's first step in the arbitration will usually be to convene a preliminary meeting of the parties, to make directions and establish a timetable for the conduct of the arbitration and to consider any other preliminary matters.

仲裁庭组成后有哪些程序？

仲裁庭组成后，第一件事是与当事人召开程序会议，发出指令，确定仲裁程序时间表，并考虑其他初步事项。

59. What happens if the respondent challenges the tribunal's jurisdiction?

A respondent may raise a challenge to the tribunal's jurisdiction on the grounds that the arbitration agreement is invalid or does not cover the claim made in the arbitration. The challenge must be raised no later than the respondent files its statement of defence. The tribunal will then determine whether or not it has jurisdiction, usually as a preliminary issue in the arbitration.

如果被申请人抗辩仲裁庭没有管辖权，怎么办？

被申请人可能会提出管辖权抗辩，主张仲裁协议无效或不涵盖仲裁中请求的事项。这类抗辩不得迟于仲裁答辩书提出。仲裁庭将决定其是否有管辖权，通常是作为初步争点解决。

60. Can the tribunal's ruling on jurisdiction be appealed?

If the tribunal determines that it has jurisdiction to hear a claim, any party may within 30 days of the ruling, appeal the decision to the Court of First Instance. No further appeal lies from the decision of the Court of First Instance. The arbitration may continue while the appeal is in progress.

仲裁员的管辖权决定能上诉吗？

如果仲裁庭认定其具有管辖权，任何一方可在仲裁庭作出认定后的30天内，向原讼法庭上诉。原讼法庭的决定不能再上诉。上诉期间，仲裁继续进行。

61. What ancillary powers does an arbitrator have?

An arbitrator has wide-ranging powers to regulate the arbitration procedure before the full hearing. These include powers to order the claimant to pay security for costs, to order the respondent to provide security for money in dispute, to order discovery of documents, to grant interim injunctions and to direct the manner in which evidence is to be given.

仲裁员有哪些辅助权力？

直到开庭前，仲裁庭有很多权力管理仲裁程序，包括要求申请人提供仲裁费用保证，要求被申请人提供争议款项保证，指令披露文件，裁令临时禁令，和决定提供证据的方式。

62. In what circumstances can the tribunal order the claimant to give security for costs?

The purpose of requiring a claimant to provide security for costs is to ensure that a defendant is not left out of pocket if the claimant is unsuccessful and is ordered to pay the respondent's costs. Security for costs may be appropriate if the respondent can show that the claimant's financial position is so weak that it may not be able to meet a costs order against it. Unlike in litigation, security for costs may

not be ordered simply on the ground that the claimant is resident outside Hong Kong. Security for costs is awarded less commonly in arbitration than in litigation.

在什么情况下，仲裁庭可以要求申请人提供仲裁费用保证？

如果仲裁庭裁决申请人败诉并应负担被申请人的仲裁费用，如果申请人不履行，被申请人的仲裁费用就得不到补偿。要求申请人提供仲裁费用保证，就是为了避免这类情况。如果被申请人能表明申请人财务状况差，可能无力负担被申请人的仲裁费用，就可要求申请人提供仲裁费用保证。不象诉讼，仲裁中不能仅仅因为申请人居于香港境外，就要求其提供仲裁费用保证。指令申请人提供费用保证，相比诉讼，在仲裁中更少见。

63. What powers can a court exercise in support of an arbitration?

The courts have overlapping powers to make certain pre-hearing orders that may be made by an arbitrator. These include ordering that an amount in dispute be secured and granting interim injunctions. A court may, however, decline to make such an order if the application would be more appropriately dealt with by the arbitral tribunal. A court may also make an order requiring a person to give evidence before an arbitral tribunal or to produce documents.

支持仲裁，法院有什么权力？

仲裁开庭前法院有权采取一些措施，包括裁令提供争议款项保证和裁令临时禁令。这类事项，也可由仲裁庭决定。但是，如果由仲裁庭处理更合适，法院则不宜处理。法院也可命令某人在仲裁庭面前作证或提供文件。

64. How do the parties formally set out their cases?

At the beginning of the arbitration process, the parties will set out their cases in writing, so that the issues in dispute can be identified. These written submissions are often referred to interchangeably as “pleadings” or “statements of case”. Whatever term is used, these submissions are usually less rigidly formal than court pleadings. Further requirements and deadlines for the exchange of documents are usually provided in the arbitration rules.

当事人如何正式提出其案？

仲裁程序开始时，当事人各自以书面形式提出其案，以确定有哪些争议事项。这些书面文件通常称作“诉辩状书”或“案件呈述”。无论称作什么，通常都不象法院诉辩状书那么严格、正式。进一步要求和交换文件的期限，仲裁规则通常有规定。

65. What pleadings are exchanged?

The claimant sets out its case in a statement of claim. The respondent then files a statement of defence to respond to the statement of claim and, if appropriate, a counterclaim if

it seeks relief against the claimant. The claimant may then file a reply (to respond to matters raised in the defence) and a defence to the counterclaim. A party may also seek to clarify the matters in dispute by requesting the other party to clarify or provide particulars of matters set out in its pleadings.

有哪些诉辩状书要交换？

申请人在申请书中列出其主张，被申请人针对申请书提出答辩书，或同时向申请人提出反诉。申请人可对被申请人的答辩提出答复书，或针对被申请人的反诉提出答辩。为澄清到底有什么争议事项，一方当事人可要求对方进一步澄清，或要求对方针对诉辩状书中提出的事项提供细节。

66. What happens if a respondent fails to serve a defence?

If the respondent fails to participate in the arbitration proceedings, the arbitrator is still required to hold a hearing (either orally or on the papers) to ensure that the claimant has proved its case. Unlike court proceedings, an arbitrator does not have power to enter a default judgment against a party who fails to plead its case.

被申请人不提出答辩，会怎样？

如果被申请人不参加仲裁，仲裁庭仍应审理争议（或是开庭或是书面审理），以审核申请人能否证明其案。不象诉讼，仲裁庭无权因一方未予答辩，即裁决其败诉。

67. Are the parties entitled to inspect each others' documents?

The process by which the parties to a dispute are required to disclose and allow inspection of their documents relevant to the matters in dispute is known as discovery. Discovery is a standard step in arbitration procedure in Hong Kong.

当事人是否有权互相检查彼此的文件？

当事人披露和允许对方检查其与争议有关的文件的程序，叫做文件披露。文件披露是香港仲裁程序的一个典型步骤。

68. What discovery is ordered?

Unlike court proceedings, there is no automatic right to wide-ranging discovery. The arbitrator will usually order discovery, although it is not mandatory. The scope of discovery will either be agreed between the parties or determined by the arbitrator. If so ordered, the parties will be required to disclose all relevant documents regardless of whether they assist or harm their own case.

仲裁庭会指令当事人披露哪些文件？

不象法院诉讼，在仲裁中，当事人并不当然有权要求宽泛的文件披露。仲裁庭通常会指令文件披露，尽管不是必须的。文件披露的范围，或者由当事人商定，或者由仲裁庭决定。仲裁庭有权指令当事人披露所有相关文件，无论对其有利还是不利。

69. Do the rules of privilege apply in arbitration?

Yes. The most important types of privilege are legal advice privilege, litigation privilege and “without prejudice” privilege. If a document is privileged, a party is not required to disclose it, even if it is relevant to the matters in dispute.

保密特权原则在仲裁中适用吗？

适用。最重要的几种保密特权是法律意见特权、诉讼特权和“无损权利”特权。如果一份文件受保密特权保护，尽管与争议有关，当事人有权拒绝披露。

70. What is legal advice privilege?

Legal professional privilege protects from disclosure communications between clients and their lawyers made for the purpose of giving or receiving legal advice. It may only be waived by the client.

什么是法律意见特权？

法律意见特权保护的是客户和律师间为提供和接收法律意见而发生的通讯。这类通讯可以不披露。这种特权只可由客户放弃。

71. What is litigation privilege?

Litigation privilege protects from disclosure documents prepared in preparation for, or in anticipation of, litigation proceedings. It applies equally to documents prepared in preparation for arbitration proceedings. Litigation privilege is broader than legal advice privilege insofar as it is not restricted to communications between a party and its lawyers. Litigation privilege may only be waived by the party for whom the document was produced.

什么是诉讼特权？

诉讼特权保护的是为准备诉讼，或预见到诉讼，而制备的文件。这类文件可不予披露。这一特权同样适用于为准备仲裁而制备的文件。诉讼特权不仅仅限于客户和律师间的通讯，因此，保护的较法律意见特权更广。诉讼特权只可由为其制备文件的当事人放弃。

72. What is “without prejudice” privilege?

“Without prejudice” privilege protects from disclosure communications made between the parties to a dispute (or their lawyers) in attempting to reach a settlement of the dispute. It applies whether or not the documents or discussions are formally stated to be without prejudice. “Without prejudice” privilege may only be waived on the agreement of both parties.

什么是“无损权利”特权？

“无损权利”特权保护的是当事人（或其律师）间为协商解决争议而发生的通讯。这类通讯可不予披露。不论当事人是否正式声明相关文件或讨论受“无损权利”特权保护，这一特权都适用。这一特权只有经当事各方同意才可放弃。

73. Do the rules of evidence apply in arbitration proceedings?

An arbitral tribunal is not bound by the strict rules of evidence that apply in court proceedings (except for the rules relating to privilege). The tribunal can decide what evidence to admit and then how that evidence should be weighed in reaching its findings of fact.

证据规则在仲裁中适用吗？

除保密特权规则外，仲裁庭不受法院诉讼中适用的严格的证据规则的约束。仲裁庭有权决定哪些证据可以接受及证据在认定事实中的证明力。

74. Can the tribunal investigate the facts on its own initiative?

A tribunal has power to act inquisitorially (on its own initiative) in ascertaining the facts. If it exercises this power, however, it is essential that the evidence it obtains should be disclosed to the parties to allow them an opportunity to make submissions on the evidence. If a tribunal fails to do, its award may be at risk of being set aside for failing to give the parties sufficient opportunity to present their cases.

仲裁庭能否主动调查事实？

在确定事实过程中，仲裁庭有权主动调查。如果这样作，很重要的一点是仲裁庭应向当事人披露其搜集的证据供其评论。如果不披露，仲裁裁决有可能因当事人没有足够的机会陈述其案而被撤销。

75. Are witnesses cross-examined?

Written witness statements are exchanged in advance of the hearing. These usually stand as the witness's evidence in chief. At the hearing, witnesses are usually cross-examined by the other party's advocate, who will attempt to highlight any inconsistencies or other shortcomings in the witness's evidence. The advocate for the party calling the witness may be permitted to re-examine the witness briefly to clarify any matters raised in cross-examination.

证人要接受盘问吗？

各方在开庭前交换证人的书面证词。这些书面证词通常构成证人的主问证据。开庭时，对方律师通常会盘问证人，以指出其证据中的矛盾之处或其他缺陷。传召证人的一方的律师一般有机会简短地再询问证人，以澄清盘问中提及的事项。

76. Are expert witnesses used in arbitration?

Expert witnesses may be used in arbitration in much the same way as in litigation. It is possible (though still rare) for an arbitrator to appoint an independent expert in place of the parties' respective expert witnesses.

仲裁中使用专家证人吗？

和诉讼完全一样，仲裁中可能会用专家证人。有可能（尽管还很少见）用仲裁庭指定的独立的专家，而不是当事人各自指定的专家。

77. Is an oral hearing always held?

No. The parties may agree, or the arbitrator may decide, to determine the arbitration on the documents and written submissions provided by the parties, without convening an oral hearing. In an international arbitration, the tribunal must hold an oral hearing if requested by either party.

是否必须开庭？

不是。当事人可商定不开庭，或由仲裁庭决定不开庭，而由仲裁庭根据当事人提交的书面文件和书面陈述裁决。在国际仲裁中，如任何一方要求开庭，仲裁庭必须开庭。

78. In what order do the parties present their cases?

There is no fixed sequence for the conduct of the hearing. The tribunal is only bound by the over-riding requirement to allow each party to present its case. However, it is conventional for the claimant to open its case and call its witnesses followed by the respondent. Closing submissions are often presented in writing.

当事人按什么程序陈述其案？

如何开庭，没有固定的程序。总的要求是仲裁庭要保证各方有机会陈述其案。但是，传统的作法是申请人首先作开场陈词并传召证人，然后是被申请人。结案陈词通常是书面的。

79. What case management techniques may the tribunal employ?

The tribunal may expedite the hearing by holding separate hearings for discrete issues, including preliminary issues such as jurisdiction or splitting the hearing into liability and quantum phases. It may order that submissions or witness evidence be given in writing, rather than orally, or it may impose strict time limits upon the parties' oral submissions. Finally, the tribunal may impose a cap on the parties' recoverable costs in the arbitration, thereby providing a deterrent against the parties incurring excessive costs.

仲裁庭可使用什么案件管理技巧？

仲裁庭可以针对独立的争议事项，包括管辖权这类初步的争议事项，分别审理，或将审理分成责任和赔偿金额两个阶段，以加快审理；可以指令只以书面形式提交陈述和证人证据，不用口头形式，或针对口头陈述规定严格的时间限制。最后，仲裁庭可以限定当事人可以追讨的仲裁费用的最高额，以限制当事人花费过多费用。

80. What is the purpose of splitting a hearing between liability and quantum phases?

The liability phase of an arbitration determines whether the respondent is liable to the claimant (typically, whether the respondent has breached the contract). The quantum phase is the assessment of the quantum of damages to be awarded against the respondent. In complex commercial disputes, the assessment of damages often requires the parties to lead detailed expert accounting evidence. By determining the question of liability before proceeding to consider the question of damages, the tribunal seeks to avoid the cost to the parties of obtaining such expert evidence in the event that the respondent is found not to be liable.

为什么分两个阶段分别审理责任和赔偿金额？

审理责任的阶段，决定的是被申请人是否应承担责任（通常是违约责任）。审理赔偿金额的阶段，决定的是被申请人承担赔偿责任的金额。在复杂的商业争议中，确定赔偿金额通常需要当事人提供详细的专业财务证据。如果最终被申请人不应承担责任，当事人准备专业证据产生的费用就浪费了。在考虑赔偿金额前先决定责任问题，就是为了避免这种情况。

81. Can an arbitrator in a dispute also act as mediator?

An arbitration agreement may provide for a mediator to be appointed to attempt to reach a settlement, failing which he may act as arbitrator. Alternatively, the parties may agree in writing after an arbitration has been commenced that the arbitrator may act as mediator. In each case, the mediator may later act as arbitrator, though he is required to disclose any confidential information that he may have obtained from either party.

仲裁员能否在同一案中担任调解员？

仲裁协议可以约定，先指定一名调解员调解争议，如果调解不成功，该调解员可转作仲裁员。此外，在仲裁开始后，当事人也可书面商定仲裁员转作调解员。不论哪种情况，调解员事后都可以作仲裁员，但其有义务披露可能从任何一方取得的任何秘密信息。

82. Can arbitrations be consolidated?

Parties may expressly opt to have the choice of applying for court order of consolidating arbitrations if there appears to be a common question of law or fact arising in both or all arbitrations, rights to relief claimed in those arbitral proceedings are in respect of or arise out of the same transaction or series of transactions, or any other reason that consolidation proceedings might be desirable.

仲裁能合并吗？

当事人可明确选择约定，如果在两个或所有仲裁中会出现共同的法律或事实问题，或在这些仲裁中所请求的救济涉及或源于同一或一系列交易，或出现其他利于合并仲裁的情况，可请求法院判令合并仲裁。

The Award

裁决

83. What remedies may an arbitral tribunal grant?

A tribunal has power to grant any remedy that may be granted by the Hong Kong courts, except to make any order that is binding on non-parties to the arbitration.

仲裁庭能裁决什么救济措施？

仲裁庭无权命令仲裁当事人以外的任何人。除此之外，仲裁庭有权裁决香港法院有权判给的任何救济措施。

84. What is the time limit for making an award?

There is no specified time limit. An arbitrator who fails to issue his award in a timely manner may be removed by the court.

作出裁决的时限是什么？

没有特定的时限。不能及时作出裁决的仲裁员，可能会被法院撤换。

85. Does the tribunal have the power to award interest?

The tribunal has power to award simple or compound interest on the principal sum at such rate as it considers appropriate up to the date of the award. Once made, simple interest accrues on the award at the same rates as are payable on Hong Kong court judgments.

仲裁庭有权裁决利息吗？

仲裁庭有权裁决至裁决日止的按其认为合适的利率计算的单利或复利。裁决一旦作出，将计单利，利率为香港法院判决计息利率。

86. What powers does the tribunal have with respect to costs?

The tribunal has power to direct which party is liable to pay the costs of the arbitration and on what basis. The usual order is that the losing party is required to pay the winning party's costs.

关于仲裁费用，仲裁庭有什么权力？

仲裁庭有权决定仲裁费用应由哪方负担，负担多少。通常的原则是，败诉方应负担胜诉方的费用。

87. What is included in the costs of the arbitration?

The costs of the arbitration include the costs incurred by the parties in the course of the arbitration (such as professional fees), the arbitrators' fees, fees paid to the arbitration institution and other costs of the hearing.

仲裁费用包括哪些？

仲裁费用包括当事人在仲裁中产生的费用（如支付给律师和其他专业人士的报酬），仲裁员的报酬，支付给仲裁机构的费用和审理中发生的其他费用。

88. How is the amount of costs payable determined?

Once an award to costs has been made, the parties may agree the sum to be paid to the party in whose favour the award was made. If no agreement is reached, the party whose costs are to be paid may submit its bill of costs to court for “taxation”. In the taxation process, the party's costs are assessed by a court official, and any costs that were not properly or reasonably incurred will be disallowed.

应付仲裁费用是如何计算的？

有关费用的裁决作出后，当事人可商定应向胜诉方支付的金额。如果不能商定，胜诉方可将其费用单据交法院“评定”。在“评定”程序中，胜诉方的费用由法院官员核算，不合理和不适当的费用会被剔除。

Enforcing and Challenging Awards

执行裁决和对裁决提出异议

89. How is an arbitration award enforced?

An arbitral award made in Hong Kong may be enforced in the same manner as a court judgment, once the court has given leave to enforce the award. The application for leave to enforce is made on paper without notice to the party against whom the enforcement is sought.

如何执行裁决？

在香港作出的仲裁裁决，经法院许可，可按执行法院判决的方式执行。申请执行许可用书面形式，无需通知被执行人。

90. What if the claim settles before an award is made?

Where the parties to an arbitration enter into a settlement agreement, the agreement may be enforced with permission of the court, in the same manner as an award.

裁决作出前当事人和解，怎么办？

当事人达成和解的，经法院许可，和解协议可按执行裁决的方式执行。

91. How may arbitration awards made in Hong Kong be challenged?

An award may be set aside on grounds relating to lack of jurisdiction, improper constitution of the tribunal or arbitral procedure not in accordance with the agreement of the parties. Any application to set aside an award may not be made after three months upon receipt of the award. Parties may also expressly opt to challenge awards on the grounds of irregularity and questions of law.

如何针对香港的仲裁裁决提出异议？

如果仲裁庭缺乏管辖权或仲裁庭组成不当或仲裁程序不符当事人约定，裁决可能被撤销。撤销裁决的请求得在收到裁决书后3个月内提出。当事人可明确选择约定可因不当和法律问题撤销裁决。

92. What is the New York Convention?

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York in 1958, provides the foundation for cross-border enforcement of arbitral awards. There are over 140 parties to the Convention, each of whom undertakes to recognise and enforce in their local courts arbitral awards made in other member states.

什么是《纽约公约》？

《纽约公约》全称为《联合国承认和执行外国仲裁裁决公约》，于1958年在纽约缔结，是跨国执行仲裁裁决的基础。共有140多个成员国，各自承诺在其当地法院承认和执行在其他成员国作出的裁决。

93. Does the New York Convention apply to Hong Kong?

Yes. The New York Convention was first applied to Hong Kong in 1977 by the government of the United Kingdom. Upon Hong Kong's return to Chinese sovereignty, the central government affirmed that the Convention would continue to apply to Hong Kong.

《纽约公约》适用于香港吗？

适用。《纽约公约》自1977年起因英国政府而适用于香港。香港回归后，中国政府已确认《纽约公约》继续适用于香港。

94. How are New York Convention awards enforced in Hong Kong?

Awards made in Convention states are enforced in the same manner as awards made in Hong Kong. They may be executed in the same manner as court judgments upon leave of the court.

公约裁决如何在香港执行？

在《纽约公约》成员国作出的裁决，按执行在香港作出的裁决的方式执行。也即经法院许可，可按执行法院判决的方式执行。

95. In what circumstances can leave to enforce a New York Convention award be refused?

Enforcement of a Convention award may be refused only on narrow grounds relating to lack of jurisdiction, improper constitution of the tribunal, serious procedural irregularity

or if enforcement of the award would be contrary to public policy. Enforcement may not be refused merely because of an error of fact or law.

在什么情况下会拒绝执行公约裁决？

只有在有限的情况下，才能拒绝执行公约裁决，即仲裁庭不具管辖权，仲裁庭组成不当，程序严重不当，或执行裁决会违背公共利益。不能仅仅因认定事实或适用法律中的错误而拒绝执行公约裁决。

96. Are arbitral awards made in Mainland China enforceable under the New York Convention?

China is a party to the New York Convention. However, the Convention only applies to the enforcement of awards made in a different state. Following Hong Kong's return to Chinese sovereignty, this requirement was no longer satisfied.

内地作出的裁决能否依据《纽约公约》执行？

中国是《纽约公约》成员国。但是，公约只适用于执行在不同国家作出的裁决。香港回归后，在香港和内地间公约不再适用。

97. How are mainland awards enforced in Hong Kong?

In 1999, the central and Hong Kong governments enacted laws to permit reciprocal enforcement of arbitral awards, on conditions similar to those provided in the New York Convention. Only arbitral awards made by recognised mainland arbitral institutions may be enforced in Hong Kong under these provisions, however.

香港如何执行内地的裁决？

1999年，中央政府和香港政府通过了相互执行仲裁裁决的《安排》。执行裁决的条件与《纽约公约》的规定类似。但是，据此《安排》，香港只执行认可的内地仲裁机构作出的裁决。

98. How are awards made in non-New York Convention jurisdictions enforced in Hong Kong?

Non-Convention awards may be enforced in Hong Kong with leave of the court under the Arbitration Ordinance.

在非《纽约公约》成员国作出的裁决如何在香港执行？

依《仲裁条例》，在非《纽约公约》成员国作出的裁决，经法院许可，可以在香港执行。

99. Have arbitration awards made in Hong Kong been enforced in Mainland China?

In Mainland China, Hong Kong awards are enforceable in accordance with the arrangement on reciprocal enforcement of arbitration awards. Due to the lack of a centralized registrar for statistics dealing with the enforcement of arbitral awards, no definite conclusions can be reached as to the extent to which enforcement actions have been brought to the Mainland Courts and how successful such actions have been. However, in a 2009 case (*Noble Resources Limited v. Zhoushan Zhonghai Food and Oil Industrial Limited*), in seeking approval from the Supreme People's Court of its denial of enforcement of a HKIAC award on

the basis of public policy, the Zhejiang Higher People's Court highlighted that "there has not been any precedent of denying enforcement of HKIAC awards in the Mainland." In this very case, the Supreme People's Court enforced the award finding in favour of the foreign party.

香港裁决在内地执行情况如何？

在内地，香港裁决可按相互执行仲裁裁决的《安排》执行。因为内地没有集中统计执行仲裁裁决的数据，内地法院受理了多少执行申请，申请的成功率如何，都难有确论。但在2009年的舟山中海粮油工业有限公司申请不予执行香港国际仲裁中心仲裁裁决一案中，浙江省高级人民法院在请求最高人民法院批准以公共利益为由不予执行裁决的请示中指出：“香港国际仲裁中心仲裁裁决在内地不予执行，目前国内尚无先例。”在该案中，最高人民法院最终执行了外方胜诉的裁决。

100. How are awards made in Hong Kong enforced in other states?

Awards made in Hong Kong are enforceable in principle in the courts of all states that are party to the New York Convention. In other states, Hong Kong awards may be enforceable, depending upon local law.

在香港作出的裁决如何在其他国家执行？

在香港作出的裁决，原则上能在任何《纽约公约》成员国的法院执行。在其他国家，视当地法律而定，可能可以执行。



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