

Hong Kong Arbitration *A User's Guide*



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Michael J. Moser

Teresa Y.W. Cheng, S.C., J.P.

2nd Edition



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

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序

仲裁，是解决争议的替代手段，似非却是，仲裁成不成功，标准之一，反到要看其能否经得起在法院的异议，无论是针对仲裁裁决的，还是针对仲裁员的。香港的法院，常要决定仲裁裁决的上诉许可、执行，仲裁员的撤换，或是因存在仲裁协议而搁置诉讼，因而有机会考察仲裁及其参与者。可喜的是，《仲裁条例》要求的“不干预”和“当事人自主”原则，在香港实践中适用得很合理。香港，已是最重要和最受尊重的仲裁中心之一。

裁判是非对错，法院舍我其谁，这早已成为历史。虽然在大多数地方有过冲突，仲裁已成为较独立的、真正的解决争议的替代手段，特别是解决商业争议。但是，有关仲裁的作法和程序，仲裁和法院的关系，常不易掌握。了解相关的法律、国际条约和案例，至关重要。

本书的两位作者，都是仲裁专家，久负盛名。由他们合作，撰写仲裁指南，再合适不过了。对仲裁的各个重要方面，本书都有介绍。尤为难得的是，本书简洁，又不失深度。参与仲裁的人士，包括仲裁员、律师、学生和法官，都会发现本书值得经常翻阅。

马道立

香港高等法院首席法官

2003年10月23日

FOREWORD

It is something of a paradox that one of the yardsticks by which the strength (or otherwise) of arbitration as an alternative means of dispute resolution is to be measured, are the challenges made in court to the arbitral process, whether against awards or against arbitrators themselves. In dealing with applications for leave to appeal against awards or for their enforcement, for the removal of arbitrators or for a stay of court proceedings by reason of the existence of an arbitration agreement, the courts in Hong Kong have been able to gauge the quality of arbitrations and those who practice in this area. It is encouraging to see that the “hands off” or “party autonomy” approach required by the Arbitration Ordinance is very much applied in practice here, and with good reason. Hong Kong is one of the foremost and most respected arbitration centres.

Long gone are the days when the courts regarded almost as sacrosanct their role as the dispensers of justice. Arbitration has, but not without a struggle in most jurisdictions, emerged as a real and largely independent alternative to the courts in the dispensation of justice, particularly for commercial disputes. Given this role, the practice and procedure surrounding arbitrations and their relationship with the courts is often not easy to grasp. The awareness of relevant statutes, international conventions and case law becomes crucial.

The authors, both eminent and authoritative in the field of arbitration, have combined to write this guide to arbitration by achieving the near impossible: to be succinct in summarising all important general aspects yet having depth. The teaming displayed in this work is of course impeccable. Those involved in arbitration — arbitrators themselves, lawyers, students and judges alike — will find this book a worthwhile companion.

Geoffrey Ma, Q.C., S.C.

Chief Judge of the High Court of the Hong Kong SAR

23 October 2003

前言

本书旨在概括介绍香港仲裁的法律和实践。主要是针对非专业人士，即商人、会计师和不熟悉仲裁（特别是香港仲裁）的律师。

对仲裁的简明介绍，建议读者参阅 *The Freshfields Guide to Arbitration and ADR* (2nd Revised Edition, Kluwer 1999)。更详尽的探讨，请参阅 Redfern 和 Hunter 合著的 *Law and Practice of International Commercial Arbitration* (Third Edition, Sweet & Maxwell, 1999)。想进一步了解香港仲裁的读者，参阅 Kaplan 和 Morgan 合著的 *International Handbook on Commercial Arbitration* (Supplement 29, Kluwer, 1999) 中的“香港”部分；Morgan 所著 *The Arbitration Ordinance of Hong Kong: A Commentary* (Butterworths, 1991)；Kaplan、Spruce 和 Cheng 合著的 *Hong Kong Arbitration: Cases and Materials* (Butterworths, 1991)；及 Kaplan、Spruce 和 Moser 合著的 *Hong Kong and China Arbitration: Cases and Materials* (Butterworths, 1999)，定会有收获。

在准备本书的过程中，很多人提供了帮助、建议和指导。首先感谢香港国际仲裁中心及其秘书长陶荣先生提供的无数帮助，包括提供本书第二章中的数据。Tom Snelling、Guy Nielsen、杨冠华和洪志健协助进行了本书的研究工作；Robert Morgan 对本书草稿提供了极有价值的建议；邓霭霞、Peter Bazos、Tom Clarke、刘京和傅宇协助最终整理完成本书文稿交付出版。对刘京和傅宇完成本书中文稿的工作，在此特别致谢。

感谢 Kluwer 出版社对出版本书一贯的支持和帮助。

莫石博士和郑若骅（资深大律师、太平绅士）

中国香港特别行政区

2008 年 7 月

PREFACE

This book is intended to provide a general introduction to the law and practice of arbitration in Hong Kong. It has been prepared mainly for non-specialists – that is, for business persons, accountants and lawyers with little experience of arbitration in general and arbitration in Hong Kong in particular.

For a concise introduction to the topic of arbitration generally, the reader is referred to *The Freshfields Guide to Arbitration and ADR* (2nd Revised Edition, Kluwer, 1999). For a more detailed treatment of the subject, see Redfern and Hunter, *Law and Practice of International Commercial Arbitration* (Third Edition, Sweet & Maxwell, 1999). Readers wishing to know more about arbitration in Hong Kong would do well to consult Kaplan and Morgan, ‘Hong Kong’ in *International Handbook on Commercial Arbitration* (Supplement 29, Kluwer, 1999), Morgan, *The Arbitration Ordinance of Hong Kong: A Commentary* (Butterworths, 1997), Kaplan, Spruce and Cheng, *Hong Kong Arbitration: Cases and Materials* (Butterworths, 1991) and Kaplan, Spruce and Moser, *Hong Kong and China Arbitration: Cases and Materials* (Butterworths, 1999).

In preparing this volume, we have benefited from the assistance, advice and counsel of a good number of individuals. First and foremost, we would like to express our thanks to the Hong Kong International Arbitration Centre (HKIAC) and to Mr Christopher To, who both helped in untold ways including providing us with the statistics found in Chapter 2. We would also like to thank Tom Snelling, Guy Nielsen, Friven Yeoh and Desmond Ang who helped with research; Robert Morgan, who provided extremely useful comments on the manuscript; and Dorothy Tang, Peter Bazos and Tom Clarke, Liu Jing and Fu Yu who assisted us in pulling the final text together for delivery to the publisher. We would like to extend our special thanks to Liu Jing and Fu Yu for their work on the Chinese translation.

We are grateful to Kluwer for their support and assistance in facilitating the project from inception.

Michael J. Moser and Teresa Y.W. Cheng S.C., J.P.

Hong Kong SAR, China

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