



THE HONG KONG INSTITUTE OF
SURVEYORS

香港測量師學會

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By email & post

Mr Byron Leung
Assistant Solicitor General (General Legal Policy)
General Legal Policy Unit 2, Legal Policy Division
Department of Justice
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Dear Mr Leung

Consultation paper on the Arbitration (Amendment) Bill 2016

Thank you for your letter dated 14 December 2015 inviting The Hong Kong Institute of Surveyors (HKIS) to offer its comment on the captioned consultation paper. On behalf of the HKIS, I have much pleasure in submitting our views as below:-

1. Currently, the Arbitration Ordinance does not have a specific provision addressing the arbitrability of disputes involving intellectual property rights ("IPRs"). It appears that there is no authoritative judgment in Hong Kong concerning arbitrability of IPRs either.
2. Article 34 of the UNCITRAL Model law adopted in section 81(1) of the Arbitration Ordinance states, inter alia, that an arbitral award may be set aside if the court finds that the subject matter of the dispute is not capable of resolution by arbitration under the law of Hong Kong or the award is in conflict with the public policy of Hong Kong.
3. The Bill is to clarify that disputes relating to IPRs are capable of resolution by arbitration and it would not be contrary to public policy to enforce the ensuing award solely because the award is in respect of a dispute or matter which relates to IPRs.
4. The proposed amendments would promote Hong Kong as an intellectual property trading hub and an international intellectual property arbitration and mediation centre.

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5. In short, the Bill shall:-
 - (i) Clarify the ambiguity in relation to the “arbitrability of intellectual property disputes” in a case where Hong Kong has been chosen as the seat of arbitration, or Hong Kong law has been chosen as the governing law of the arbitration;
 - (ii) Make Hong Kong more appealing than other jurisdictions for conducting arbitration involving intellectual property (“IP”) disputes; and
 - (iii) Demonstrate to the international community that Hong Kong is committed to developing itself as an international centre for alternative dispute resolution involving IP matters as well as an IP trading hub in the region.
6. It is advisable to note that the effect of an arbitral award in respect of a dispute or matter relating to an IPR should only bind the actual parties who participate in the arbitral proceedings and not beyond.
7. The amendments would not apply to an arbitration that has commenced prior to the commencement of the Amendment Ordinance.

Thank you very much for your attention. Should you require any further information, please contact the HKIS Secretariat on 2526 3679.

Yours sincerely

A handwritten signature in black ink, which appears to read 'C K Lau', is positioned above the typed name.

Sr C K Lau
President
The Hong Kong Institute of Surveyors