

LEGAL ALERT

MACAU'S NEW ARBITRATION LAW – A NEW CHAPTER FOR ARBITRATION IN MACAU?

DISPUTE RESOLUTION

On 5 November 2019, the Macau Official Gazette published Law no. 19/2019, the New Arbitration Law of the Macau SAR (New Arbitration Law), which will be coming into force on 4 May 2020. The full text of the new statute can be found [here](#).

The New Arbitration Law replaces the current regime set out over 20 years ago and introduces important amendments to the arbitration legal framework of Macau. The key changes in the New Arbitration Law include:

I. One single ordinance for both domestic and international arbitrations (Chapter I, Articles 2 and 3)

Under the previous regime, domestic arbitration and international arbitration were regulated in two different ordinances: Decree-Law no. 29/96/M, of June 11, and Decree-Law no. 55/98/M, of 23 November. These two ordinances have been repealed by the New Arbitration Law, which now applies to both domestic arbitration and international arbitration.

The New Arbitration Law seeks to regulate domestic arbitration and international arbitration in a single ordinance. However, unlike the previous regime, it does not provide any definition of “international arbitration” or “external commercial arbitration”. In addition, the new law does not distinguish between the regime applicable to domestic arbitration and the regime applicable to international arbitration.

While the option of regulating domestic and international arbitration in an almost uniform manner is a trend observed in most modern arbitration laws, notably those based on the UNCITRAL

Model Law, most of these laws contain provisions that are applicable exclusively to domestic arbitration and/or international arbitration by reference to a definition of “international arbitration”. This approach has not been adopted in the New Arbitration Law.

II. Expanded scope of what constitutes an arbitration agreement in writing (Chapter II, Article 11)

The New Arbitration Law continues to require the arbitration agreement to be set out in writing. In accordance with the current UNCITRAL Model Law, the new regime broadens the definition of what constitutes an arbitration agreement in writing to include: (i) any document signed by the parties; (ii) exchange of letter, fax, email or other means of telecommunication evidenced in writing; (iii) electronic, magnetic, optical or other means offering the same guarantees of reliability, intelligibility and preservation as physical documents; and (iv) exchange of statement of claim and statement of defense, in which the existence of such agreement is alleged by one party and not denied by the other.

III. Enhanced protection in emergency situations (Chapter III and V)

The new law contains important provisions for reliefs in emergency situation, including the adoption of a specific set of rules on “emergency arbitrations”, and the introduction of a separate chapter dedicated to the issuance of interim measures and preliminary orders, in line with the solutions provided in the UNCITRAL Model Law.

Regarding interim measures issued by arbitral tribunal seated outside Macau, the new law provides that the regime is to be the same as the recognition and enforcement of an award rendered by arbitral tribunal seated outside Macau.

IV. Procedure for requesting judicial court’s assistance in taking of evidence (Chapter VI, Article 61)

While under the previous regime both the parties and arbitral tribunal could seek assistance from judicial courts in the taking of evidence, it did not contain any provisions regarding the procedures for such purpose. The New Arbitration Law now clearly provides that the party must file an application to the arbitral tribunal, indicating the facts justifying such request, and the factual issues to be covered by the evidence, as well as identifying the documents to be presented and/or

the persons to be examined. The evidence is then collected by the judicial court, and later sent to the arbitral tribunal. The procedure of taking of evidence is deemed to have an urgent nature.

V. Possibility of challenging the arbitral award before another arbitral tribunal (Chapter VI, Article 67)

One of the major criticisms of Macau's previous arbitration regime was that it allowed parties to stipulate an appeal mechanism to judicial courts, which in many ways defeated the purpose of arbitration proceedings, as arbitral awards would be subject to judicial review. Under the New Arbitration Law, an arbitral award is, in principle, unappealable, unless otherwise agreed by the parties. In this situation, the parties must agree on the possibility of appeal to another arbitral tribunal before the arbitral award is rendered. Such agreement must regulate the terms of the appeal, otherwise it will be deemed void.

VI. Arbitration in administrative disputes (Chapter X)

Just like the previous regime, the New Arbitration Law also provides for arbitration in administrative disputes arising from *(i)* administrative contracts; *(ii)* liability of Public Administration for damages resulting from acts of public management; and *(iii)* subjective rights or legally protected interests.

The New Arbitration Law introduces two specific features of arbitration of administrative disputes: first, the arbitral tribunal shall decide on administrative disputes solely in accordance with Macau substantive law; second, the arbitral awards shall be published.

Conclusion – a new chapter for arbitration in Macau?

As mentioned by the Macau Legislative Assembly, Law no. 19/2019 is the first step of a series of significant improvements to place Macau as a preferred Lusophone arbitration seat in accordance with international best practices, especially considering its strategic location, growing economy, and the availability of qualified bilingual professionals to shorten the gap between Mainland China and Lusophone countries. Meanwhile, according to the Macau Secretary for Public Administration and Justice Affairs, the Government is currently studying the possibility of combining Macau's five arbitration centers into a highly specialized international institution, as well as opening doors to foreign practitioners.

The New Arbitration Law provides a new tool for the development of arbitration in Macau. The software may be ready, but the hardware – arbitral institutions and legal expertise – will be determinant in the success of Macau becoming a preferred, efficient and effective seat of arbitration.

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