Global Arbitration Review

The Guide to M&A Arbitration

Editor
Amy C Kläsener

Third Edition

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Publisher's Note

Global Arbitration Review is delighted to publish *The Guide to M&A Arbitration*.

For those unfamiliar with GAR, we are the online home for international arbitration specialists, telling them all they need to know about everything that matters. Most know us for our daily news and analysis service. But we also provide more in-depth content: books and reviews; conferences; and handy workflow tools, to name just a few. Visit us at www.globalarbitrationreview.com to find out more

Being at the centre of the international arbitration community, we regularly become aware of fertile ground for new books. We are therefore delighted to be publishing the third edition of this guide on mergers and acquisitions within the world of arbitration. It is a practical know-how text in two parts. Part I identifies the most salient issues in M&A arbitration, while Part II surveys substantive principles from select regional perspectives.

We are flattered to have worked with so many leading firms and individuals to produce *The Guide to M&A Arbitration*. If you find it useful, you may also like the other books in the GAR Guides series. They cover energy, construction, mining, challenging and enforcing awards and (soon) IP, in the same practical way. We also have books in the series on advocacy in international arbitration and the assessment of damages, and a citation manual (*Universal Citation in International Arbitration*). Our thanks to the Editor, Amy C Kläsener, for her vision and energy in pursuing this project and to our colleagues in production for achieving such a polished work.

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Survey of Substantive Laws

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Hong Kong

Paul Starr[1]

Frequency of M&A disputes

Hong Kong is a hub for large-scale private and public M&A transactions. In 2019, there were 1,372 announced M&A deals worth US$98.63 billion in Hong Kong.[2]

Hong Kong is a leading arbitration venue and has been ranked as the fourth most preferred venue globally.[3] Features that make Hong Kong a popular arbitration venue include the following.

- Hong Kong has a modern arbitration law based on the UNCITRAL Model Law and has a strong, independent judiciary that is supportive of arbitration. Hong Kong's global ranking for judicial independence and efficiency of the legal framework was within the top percentile in 2019.[4]
- Arbitration awards made in Hong Kong are enforceable in 165 countries and territories, as Hong Kong is a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).
- There is a large pool of world-class arbitrators, barristers and solicitors in Hong Kong, who are qualified to assist parties in resolving arbitral disputes of all sizes.
- There are unique remedies for parties doing business with mainland Chinese entities.

1 Paul Starr is a partner at King & Wood Mallesons. The author gives special thanks to Suraj Sajnani and Tiffany Siu.

2 'Global M&A Market Review, Legal Rankings 2019', Bloomberg Finance LP.

3 '2018 International Arbitration Survey: The Evolution of International Arbitration', Queen Mary University of London and White & Case.

4 '2019 Global Competitiveness Report', World Economic Forum.

Arbitration in Hong Kong is governed by Hong Kong's Arbitration Ordinance (Chapter 609). The three major arbitration bodies operating in Hong Kong are the Hong Kong International Arbitration Centre (HKIAC), the International Court of Arbitration of the International Chamber of Commerce (ICC)[5] and the China International Economic and Trade Arbitration Commission (CIETAC) Hong Kong Arbitration Centre.[6]

There are no publicly available figures on the number of M&A arbitrations in Hong Kong. However, the following statistics, when considered in conjunction with the number of Hong Kong M&A deal counts as reported in 2019, provide some guidance on the frequency of M&A arbitrations in Hong Kong.

- In 2019, a total of 503 cases were submitted to HKIAC. Of those, 308 were arbitrations, 12 were mediations and 182 were domain name disputes. This compares with 521 cases in 2018 and 532 cases in 2017.[7]
- Of the 308 HKIAC arbitrations in 2019, 17 per cent were corporate disputes, which are likely to include M&A disputes.[8]

Form of dispute resolution

M&A contracts typically specify arbitration or litigation as the means for resolving disputes. The dispute resolution mechanism chosen will ultimately depend on the parties' preferences upon consideration of factors such as accessibility and efficiency of the dispute resolution process, the adjudicatory procedures and legal system of the jurisdiction chosen, publicity issues should the dispute be submitted to court and enforceability of awards and judgments.[9]

There are no publicly available statistics to show how frequently the above dispute resolution mechanisms are chosen by companies in handling M&A disputes in Hong Kong. Nevertheless, a global survey conducted in 2018 shows that arbitration is the most popular mechanism to resolve cross-border commercial disputes.[10] According to the survey, out of 1,000 participants (consisting of arbitrators, in-house counsel, private practitioners and experts):

- 97 per cent expressed that international arbitration is their preferred method of resolving cross-border disputes, either on a stand-alone basis (48 per cent) or in conjunction with alternative dispute resolution (49 per cent);
- 4 per cent expressed that litigation is their preferred method, either on a stand-alone basis (1 per cent) or in conjunction with alternative dispute resolution (3 per cent);

5 In 2019, 14 arbitration cases were submitted to the ICC in Hong Kong ('ICC Dispute Resolution 2019 Statistics').

6 CIETAC has not published recent statistics on the number of cases submitted to CIETAC in Hong Kong.

7 HKIAC Statistics, available at www.hkiac.org.

8 ibid.

9 Susan Singleton, *Joint Ventures and Shareholders' Agreements*, Bloomsbury Professional 2013, at paras. 23.14 to 23.35.

10 '2018 International Arbitration Survey: The Evolution of International Arbitration', Queen Mary University of London and White & Case.

- 99 per cent expressed an interest in recommending international arbitration as a means to resolving cross-border disputes in the future; and
- 64 per cent considered enforceability of awards to be the most valuable characteristic of international arbitration.

Based on these results, arbitration is therefore likely to be the preferred means for parties to resolve cross-border M&A disputes. Benefits of electing arbitration as opposed to litigation include high cross-jurisdictional enforceability of awards, neutrality of venue of arbitration, flexibility in procedural rules that could be tailored to suit the parties' commercial needs and confidentiality.

Grounds for M&A arbitrations

Below are examples of M&A issues that are likely to give rise to disputes in Hong Kong. There is no publicly available information on the frequency of each kind of dispute. As such, the issues are identified based on market experience.

Price adjustment

Due to the time lag between the target company initially being valued and the closing date, buyers in an M&A deal often require the purchase price to be adjusted after the closing date.[11] These post-closing adjustments are intended to reflect the acceptable value of the target company at the time of closing, based on factors such as profit or losses of the target company at the time of closing, future prospects of the target company and fluctuation of economic conditions between pre-closing and post-closing. Disputes can arise when parties disagree on the price adjustment mechanism used, or have different interpretations of the accounting principles used for price adjustment.

Earn-out

The amount payable for the target business will sometimes depend on an earn-out provision. Under such provision, a portion of the purchase price will be fixed while the remaining portion is conditional upon the target company achieving certain financial or operational milestones at the post-closing phase. Simply put, the more successful the company is, the higher the earn-out will be. Parties may disagree on, for example, (1) the calculation rules and accounting methods applied to satisfy the earn-out requirements; (2) the calculation of the earn-out amount (which often includes financial and non-financial factors); and (3) the validity of and access to information (for example, annual returns) provided by the target company that reflects its financial performance.

Pre-contractual failure to disclose or fraud

A dispute may arise if the seller has committed fraud during the transaction, or knowingly misled or hid information that, if disclosed to the buyer, would have had a significant impact on the price or even prevented the transaction. This is dealt with in more detail below.

11 '2018 Mergers and Acquisitions Guidance Note', Hong Kong Institute of Chartered Secretaries, available at www.hkics.org.hk.

Misrepresentations and breaches of warranties

Parties to an M&A transaction often include negotiated representations and warranties regarding the target business's financial and operational performance. This is to reduce the risks of the buyer being exposed to 'skeletons in the closet' regarding the target company's financials after the transaction closes. Depending on the nature or quality of the target business projected by the representations, the purchase price of the target company varies. Disputes can arise at the post-closing phase if the statements made by the seller turn out to be incorrect.

Other pre-closing disputes

Due to the lengthy process of M&A transactions, parties may enter into pre-closing agreements, such as non-disclosure agreements, letters of intent, memorandum of understanding and exclusivity agreements. Disputes may arise in the event of breaches of those agreements.

Fraud and failure to disclose

Fraud

In Hong Kong, a party to an M&A transaction may commit fraud if the following elements exist:

- a party makes a representation of fact by words or conduct;
- the representation is made with knowledge that it is or may be false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true;
- the representation is made with the intention that it should be acted on by another party, in a manner that results in damage to that party; and
- the other party acts on the false statement and suffers damage by so doing.[12]

A victim of fraud may commence court proceedings to recover damages suffered as a result of the fraud. Fraud may also be a criminal offence under the Theft Ordinance (Chapter 210).

Failure to disclose

In general, the seller in an M&A transaction is under no duty to disabuse the buyer in pre-contractual negotiations of an error concerning the target, its assets or shares.[13] Accordingly, cases involving failure to disclose in an M&A context are rare in Hong Kong.

In *Aktieselskabet Dansk Skibsfinansiering v. Brothers*,[14] the Hong Kong Court of Final Appeal held that a failure to provide information is not in itself a misrepresentation. Mere silence or inaction, however morally reprehensible it may be, neither constitutes nor is

12 *Haifa International Finance Co Ltd v. Concord Strategic Investments Ltd* [2009] 4 HKLRD 29 at [15].

13 *Smith v. Hughes* (1871) LR 6 QB 597, affirmed in the House of Lords by Lord Atkin in *Bell v. Lever Bros* [1932] AC 161. In *Bank of Credit and Commerce International SA v. Munawar Ali & Ors* [2001] 1 All ER 961, Lord Hoffman commented: '[T]here is obviously room in the dealings of the market for legitimately taking advantage of the known ignorance of the other party.'

14 (2000) 3 HKCFAR 70; [2000] 1 HKLRD 568.

equivalent to misrepresentation. Accordingly, the seller in an M&A deal is not required to disclose all information regarding the target company or business, as it is the buyer's responsibility to conduct full due diligence of the target company prior to purchase.

However, it would be wrong to suppose that a party to negotiations can always refrain from pointing out errors or otherwise engage in artful silence. A seller may be liable for misrepresentation when silence constitutes falsity or when material qualifications of an absolute statement are being omitted. In particular, as follows.

- Active misrepresentation by a half-truth: the seller in a pre-contractual statement misleadingly discloses only part of the true position: 'the true import of what was said or written is distorted by what is left unsaid, so that even if the representation is literally true in every particular it is nevertheless misleading'.[15]
- Active misrepresentation by misleading conduct: deliberate steps taken by the seller to conceal from the buyer the true state of affairs can constitute misrepresentation by conduct.[16]
- Falsification known to representor before contract formed: the buyer may rescind a sale and purchase agreement (SPA) if the seller has made an initially accurate statement but, before the contract's formation, the seller discovers a change of situation rendering that statement to be no longer true, but dishonestly fails to disclose this change to the buyer.[17]
- Mistake as to terms of deal, other party acquiescing: if the seller knows that the buyer is mistaken regarding the terms of the proposed transaction, the contract cannot be upheld by the seller.[18] In such a case, the contract is void (or the buyer might also have the right to insist that the contract proceed on the buyer's supposed version).[19] This scenario could result in the unwinding of an M&A transaction or a rectification of the SPA.

15 *Atlantic Estates plc v. Ezekiel* [1991] 2 EGLR 202, per Mustill LJ (cited in *Safehaven Investments Ltd v. Springbok Ltd* (1996) 71 P & CR 59 (Ch), at 66, by Jonathan Sumption QC sitting as a deputy High Court judge). Another judicial definition is as follows: '[a half-truth involves] some active misstatement of fact, or, at all events, such a partial and fragmentary statement of fact, [such] that the withholding of that which is not stated makes that which is stated absolutely false': *Peek v. Gurney* (1873) LR 6 HL 377, 403, per Lord Cairns (cited in *Safehaven* (1996) 71 P & CR 59 (Ch)).

16 *Gordon v. Selico* (1986) 1 EGLR 71, 18 HLR 219.

17 *Windsor and District Housing Association v. Hewitt* [2011] ECA Civ 735.

18 *Hartog v. Colin & Shields* [1939] 3 All ER 566.

19 For a not dissimilar case, see *ING Bank NV v. Ros Roca SA* [2011] EWCA Civ 353, where estoppel by convention was used to prevent a payor resiling from an implicit consensus concerning the level of the investment bank's additional fee.

Burden of proof

It is usually incumbent upon a claimant in an arbitration to prove what it contends.[20] In respect of a particular allegation, the burden lies upon the party for whom the substantiation of that particular allegation is an essential part of its case. Formulations of the incidence of the legal burden of proof are sometimes made on the basis that it rests on the party asserting the affirmative of an issue.[21]

Article 22.1 of the HKIAC Administered Arbitration Rules 2018 (the HKIAC Rules) states that 'each party shall have the burden of proving the facts relied on to support its claim or defence'. The standard of proof in civil cases in Hong Kong is the balance of probabilities.

Remedies

An arbitral tribunal in Hong Kong may, in deciding a dispute, award any remedy or relief that could have been ordered by the court if the dispute had been the subject of civil proceedings in the court.[22] Therefore, all remedies available under Hong Kong law are generally available to a successful claimant in an M&A arbitration in Hong Kong. This includes damages, specific performance, rescission, injunctions, restitution and declarations.

If a party to an M&A deal breaches a contract, this may give rise to a right to damages (see 'Measure of damages'). In addition, where a party commits a serious breach by defective performance or by repudiating its obligations under the contract, the innocent party will have the right to rescind the contract. The innocent party may seek a declaration in an arbitration that it is no longer bound by the contract.[23]

A party may also make a claim for specific performance, requiring a respondent to do what it agreed by contract to do. For example, the arbitral award may order the respondent to take certain action, such as proceeding with the transfer of shares as agreed in the contract.[24] However, the arbitral tribunal may refuse to award specific performance if damages would afford a sufficient remedy.

Where a party makes a false representation with the object and result of inducing another party to enter into a contract or binding transaction, the other party may bring an action for damages or rescind the contract.[25]

Measure of damages

Under Hong Kong law, the main aim of damages is to place the successful claimant in the position it would have been in if the contract had been properly performed.[26] The claimant must prove that the damages were suffered as a result of the breach. The breach must have

20 See, for example, *Dickinson v. Minister of Pensions* [1952] 2 All ER 1031 at 1033.

21 See, for example, *Robins v. National Trust Co Ltd* [1927] AC 515 at 520; *Huyton-with-Roby UDC v. Hunter* [1955] 2 All ER 398; *Talbot v. Von Beris* [1911] 1 KB 854 at 863.

22 Arbitration Ordinance (Chapter 609), Section 70(1).

23 *Société Maritime et Commerciale v. Venus Steam Shipping Co Ltd* (1904) 9 Com Cas 289.

24 *Duncuft v. Albrecht* (1841) 12 Sim 189.

25 Misrepresentation Ordinance (Chapter 284), Sections 2 and 3.

26 *Shum Yip – UTC (HK) Co Ltd v. Master Co* [2000] 2 HKLRD 809.

been the cause or the dominant cause of the losses.[27] The claimant will only be entitled to damages for losses that a reasonable person ought to have foreseen would arise from the breach,[28] or losses that are sufficiently likely to flow naturally from the breach.[29]

The claimant must prove the amount of damages to which it is entitled. The arbitral tribunal will consider all relevant evidence when assessing the claimant's loss. In an M&A dispute, this may include expert evidence from accountants, valuers and other financial experts. To ascertain the value of a target, the arbitral body may consider the accounts and book value of the business before and after the breach.[30]

Special procedural issues

Form of arbitration agreement

Under Hong Kong law, an arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes that have arisen or that may arise between them in respect of a defined legal relationship. It may be in the form of an arbitration clause in a contract or in a separate agreement. An arbitration agreement must be in writing.[31] HKIAC publishes model arbitration clauses for insertion into contracts.[32]

Court support for arbitration

The Hong Kong High Court provides strong support of arbitration in accordance with the Arbitration Ordinance. The court must not interfere in an arbitration except as expressly provided for in the Arbitration Ordinance.[33] If a court action is commenced in a matter that is the subject of an arbitration agreement, the court must refer the case to arbitration if requested by a party (subject to certain exceptions).[34]

The court performs various functions in relation to arbitrations, including as follows.

- Enforcement of emergency relief granted by an arbitrator.[35]
- Deciding on challenges to the appointment of an arbitrator upon the parties' requests under limited circumstances.[36]
- Granting interim measures such as asset and evidence preservation.[37]
- Enforcement of arbitral awards.[38]

27 *Monarch Steamship Co Ltd v. Karlshamns Oljefabriker AB* [1949] AC 196.

28 *Hadley v. Baxendale* (1854) 9 Ex 341.

29 *Richly Bright International Ltd v. De Monsa Investments* [2015] 3 HKC 583, (2015) 18 HKCFAR 232.

30 *Franklyn Melford Proud v. Apollonia Schmoll Janssens* [1964] 4 HKLR 863.

31 Arbitration Ordinance (Chapter 609), Section 19.

32 See www.hkiac.org/arbitration/model-clauses.

33 Arbitration Ordinance (Chapter 609), Section 12.

34 Arbitration Ordinance (Chapter 609), Section 20(1).

35 Arbitration Ordinance (Chapter 609), Section 22B.

36 Arbitration Ordinance (Chapter 609), Sections 25 and 26.

37 Arbitration Ordinance (Chapter 609), Section 45.

38 Arbitration Ordinance (Chapter 609), Sections 61 and 84 to 98D.

Joinder and consolidation

As M&A transactions often concern multiparty or multi-contract situations (particularly in cross-border deals), questions often arise as to whether third parties can be joined to the arbitration proceeding and whether multiple arbitral proceedings will be required for claims raised by different parties or under different contracts, in respect of the same M&A transaction.

The HKIAC Rules allow for the joinder of additional parties, consolidation of arbitrations and the commencement of a single arbitration under multiple contracts.

- Joinder of additional parties: Article 27 of the HKIAC Rules states that the arbitral tribunal may allow an additional party to be joined to the arbitration, provided that all parties consent and the additional party is bound by an arbitration agreement under the HKIAC Rules, including any arbitration under Article 28 or 29.
- Consolidation of arbitrations: Article 28 of the HKIAC Rules allows HKIAC to consolidate arbitrations, provided that all parties consent, and either all claims are made under the same arbitration or there are commons questions of law or fact, or the claim arises out of the same transaction or series of transactions.
- Single arbitration under multiple contracts: Article 29 of the HKIAC Rules allows a single arbitration to be brought in connection with multiple contracts, provided that there are common questions of law or fact, the claim arises out of the same transaction or series of transactions and the arbitration agreements are compatible. For example, in a situation where party A and party B have entered into an arbitration agreement, and party B and party C have entered into a separate arbitration agreement, a single arbitration may be brought involving all three parties under both agreements.

The ICC Arbitration Rules 2017 and CIETAC Arbitration Rules 2015 also allow for joinder of additional parties and consolidation of arbitrations.[39]

By incorporating the above rules into an arbitration agreement, parties can choose to resolve M&A disputes that share common questions of law or fact that arise from the same transaction or series of related transactions in a more efficient manner.

Schedule 2(2) of the Arbitration Ordinance also allows for the consolidation of two or more arbitral proceedings. However, Schedule 2 of the Arbitration Ordinance only applies if the arbitration agreement expressly states that it applies or if the arbitration agreement was entered into prior to 31 May 2017 and provides that the arbitration is a domestic arbitration.[40]

Setting aside arbitration awards

The Arbitration Ordinance provides for limited grounds on which an arbitration award may be set aside by the court.[41] These are largely the same as the New York Convention grounds for resisting enforcement, and include the following:

- a party was not given proper notice of the appointment of an arbitrator or the arbitral proceedings;

39 ICC Rules, Articles 7 to 10; CIETAC Rules, Articles 14, 18 and 19.

40 Arbitration Ordinance (Chapter 609), Sections 99 and 100.

41 Arbitration Ordinance (Chapter 609), Section 81.

- the award deals with a dispute not contemplated by or not falling within the terms of the submission of arbitration, or contains decisions on matters beyond the submission to arbitration; and
- the composition of the arbitral tribunal was not in accordance with the arbitration agreement.

In addition, there are limited rights to appeal an arbitral award to the court in some circumstances. The appeal may challenge the award on grounds of serious irregularity or on a question of law.[42] However, an appeal is only permitted if the parties have agreed that the appeal provisions should apply or the arbitration agreement was made prior to 31 May 2017 and provides that the arbitration is a domestic arbitration.[43]

Interim measures in Hong Kong and mainland China

The Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and Hong Kong (the Interim Measures Arrangement) came into effect on 1 October 2019. As a result of the Interim Measures Arrangement, Hong Kong is the only arbitration seat outside mainland China to have a direct mechanism whereby parties can apply to mainland China courts for interim measures including asset, evidence and conduct preservation orders. This provides security for parties partaking in M&A deals with mainland Chinese entities, no matter where in the world.

To apply for interim measures in the Intermediate People's Courts in mainland China, the arbitration must be seated in Hong Kong and administered by certain eligible institutions or permanent offices that qualify under the Interim Measures Arrangement, such as HKIAC, CIETAC, ICC – Asia Office, the Hong Kong Maritime Arbitration Group, the South China International Arbitration Center (Hong Kong) and the eBRAM International Online Dispute Resolution Centre. Articles 4 and 5 of the Interim Measures Arrangement set out the documents and information required to make an application to the courts of mainland China. Parties to mainland-seated arbitrations can also apply under the Interim Measures Arrangement to the Hong Kong court for relief.

Within just under a year of the Interim Measures Arrangement being implemented, HKIAC processed 25 applications to the courts of mainland China for interim measures, with a total value of US$1.4 billion. Of the applications, 24 were for asset preservation and one was for evidence preservation. There have been at least 17 successful applications for the preservation of assets, with a total value of US$1.3 billion.[44]

Enforcement of arbitral awards

China is a party to the New York Convention and has extended the Convention's application to Hong Kong. By choosing Hong Kong as the arbitration venue, parties can enjoy the benefit of arbitral awards being enforceable in more than 160 jurisdictions under the

42 Arbitration Ordinance (Chapter 609), Schedule 2(4)-(5).

43 Arbitration Ordinance (Chapter 609), Sections 99 and 100.

44 Hong Kong-Mainland China Arrangement on Interim Measures: HKIAC Update, 27 August 2020, available at www.hkiac.org/news/hk-prc-interim-measures-arrangement-hkiac-update.

New York Convention. Parties to M&A transactions (particularly for deals that involve Hong Kong and mainland Chinese targets or acquisitions) can also enjoy the exclusive benefit of the reciprocal recognition and enforcement of arbitral awards in Hong Kong and mainland China.

Given the close commercial ties between Hong Kong and mainland China, it is anticipated that there will continue to be cross-border M&A deals that involve Hong Kong acquisitions of mainland Chinese targets (and vice versa). Acquisitions by foreign companies that involve Hong Kong or mainland Chinese targets are also anticipated.

The mutual enforcement of Hong Kong and mainland China arbitral awards is enabled by the Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and Hong Kong (the Arrangement). The Arrangement provides that 'where a party fails to comply with an arbitral award, whether made in Mainland or in [Hong Kong], the other party may apply to the relevant court in the place where the party against whom the application is filed is domiciled or in the place where the property of the said party is situated to enforce the award'.[45] Hong Kong's Arbitration Ordinance permits the Hong Kong court to enforce arbitral awards made in mainland China pursuant to the Arbitration Law of the People's Republic of China.[46] The People's Courts of mainland China can enforce arbitral awards made in Hong Kong pursuant to the Arbitration Ordinance.

To enforce a Hong Kong award in mainland China, an applicant must submit a written application for enforcement, the arbitral award and the arbitration agreement.[47] Among other requirements, the applicant must also ensure that the arbitral award and the arbitration agreement are duly certified and translated into Chinese, for the application to be admissible in mainland China.[48]

Article 7 of the Arrangement stipulates the circumstances under which the mainland China and Hong Kong courts could refuse enforcement of an arbitral award. These grounds of refusal mainly relate to issues of arbitrability and public policy. They are similarly reflected in Section 95 of the Arbitration Ordinance, which mirrors the grounds of refusal to enforce a convention award under the New York Convention.

45 Article 1 of the Arrangement.

46 Arbitration Ordinance (Chapter 609), Sections 92 to 98.

47 Article 3 of the Arrangement.

48 Article 4 of the Arrangement.

Appendix 1

The Contributing Authors

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Paul Starr is a partner at King & Wood Mallesons. He heads the dispute resolution team and infrastructure team in Hong Kong and is the worldwide co-head of arbitration. He has 35 years of arbitration experience around the world. He is an accredited arbitrator/mediator with HKIAC and AIAC and an accredited arbitrator with CIETAC, SHIAC and SCIA. *Global Arbitration Review* cites a client's praise for Paul as: 'Simply the best lawyer for dispute resolution in construction and industrials in the East Asia and Pacific region. From the outset he goes straight to the heart of the matter, developing strong, clear lines of argument and identifying and neutralising points of weakness early in the process. He is able to inform and guide preparation of supporting technical and financial analyses and he is excellent in marshalling the required high-quality technical resources, both in-house in the client and from external sources.'

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M&A disputes can be unique in their hostility and complexity. *The Guide to M&A Arbitration* – published by Global Arbitration Review – is a practical guide on what merger parties should think about when it comes to disputes. It pools the wisdom of specialists on how to prevent these disputes arising and how best to resolve them when it is too late. The guide is structured in two sections. Part I consists of eight chapters on planning and procedural issues, covering everything from drafting clauses to how to structure contracts to minimise the potential for disputes. Part II offers a geographical survey of important differences in national laws that may affect the outcome of a dispute. It is written by 38 specialists from a variety of backgrounds and takes a practical approach throughout.

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