THE LAW SOCIETY OF HONG KONG 香港律師會

Comments by The Law Society of Hong Kong on the Consultation Paper "Reform of the Law of Arbitration in Hong Kong and draft Arbitration Bill"

The Law Society supports the legislative objectives in the Consultation Paper, namely "streamlining" the law on arbitration by creating a unitary regime.

The Law Society has adopted the numbering in the Consultation Paper and has the following comments on the proposals:

2.21 Under Clause 14(4), where a court sets aside an award, the court may further order that the period between the commencement of the arbitration and the date of the order of the court shall be excluded in the computation of the limitation period in respect of the matter submitted to arbitration. We propose that an order of the court under Clause 14(4) shall not be subject to any further appeal in order not to cause undue delay to the commencement of new arbitral proceedings over the same subject matter in dispute. Views are sought on this proposal.

Law Society: There should be no right of appeal.

2.26 Where an interpleader issue is covered by an arbitration agreement, a court before which an action is brought may refuse to refer the parties to arbitration under Clause 15(1) on grounds such as those specified in Article 8(1) of the Model Law as incorporated under Clause 20(1), namely, where it finds that an arbitration agreement is null and void, inoperative or incapable of being performed. We consider that a direction of the court under Clause 15(1) should be subject to appeal with leave of the court as an order to grant or refuse mandatory stay of legal proceedings would bring about serious consequence on the parties. By providing for the possibility of appeal against a direction of the court made under Clause 15(1), the procedures for application for stay of legal proceedings under Clause 15 will be consistent with those proposed under Clause 20. Views are sought as to whether or not a direction under Clause 15(1) should be subject to appeal with leave.

Law Society:

(a) There should be a right of appeal.

(b) Draft Bill: We suggest Clause 15.1 be moved and renumbered as Clause 21 otherwise as drafted the bill is difficult to follow.

3.13 We consider that an appeal procedure should be provided as a decision of the court on whether to refer the parties to arbitration and to order a stay of legal proceedings is a matter of serious consequence to the parties and the grounds upon which a grant or refusal may be made may involve complex legal arguments. We further suggest that leave of the court should be required for such appeal. Views are sought as to whether or not a decision of the court under Clause 20(1) and (2) should be subject to appeal with leave.

Law Society: There should be a right of appeal with leave.

3.14 On the other hand, we propose that an order of the court made under Clause 20(6) relating to the staying of admiralty proceedings subject to the condition of giving security and the retention of property arrested in those proceedings as security should not be subject to any appeal. Such an order of the court apparently involves a relatively minor procedural matter. It may however affect a party's ability to proceed with the matter in dispute if a party is not able to provide security. Views are sought on this proposal.

Law Society: There should be a right of appeal with leave.

4.22 Clause 31(8) provides that where the arbitrators fail to observe the procedure for their replacement by an umpire, a party may seek the assistance of the Court of First Instance who may order their replacement by the umpire as the arbitral tribunal. Under Clause 31(11), leave is required for any appeal against the decision of the Court. Views are sought as to whether a decision of the Court of First Instance under Clause 31(11) to grant or refuse leave for appeal should be subject to appeal.

Law Society: There should be a right of appeal with leave.

Paragraphs 4.25 to 4.27
4.25 An alternative proposal made is that the draft Bill should no longer include any provision for the appointment of judicial officers as arbitrators subject to two exceptions. The reasons are twofold. Firstly, there is already a very large body of arbitrators available in Hong Kong and overseas, many of whom are retired judges. Secondly, the Model Law is based on the concept of minimal court intervention and whilst this in itself is not court intervention, it does nevertheless introduce a possible perception of such in foreign users or potential users of arbitration.

4.26 The first exception referred to in paragraph 4.25 above is that a judge, District Judge or magistrate may accept appointment as a sole arbitrator only in relation to arbitral proceedings of which he or she has been acting as a sole arbitrator prior to his or her taking up respectively the post of a judge, District Judge or magistrate. The second exception is that a judge, District Judge or magistrate is required to act as a sole arbitrator in any particular arbitral proceedings for any constitutional reason,

4.27 Views are sought on the proposal and its exceptions set out in paragraphs 4.25 and 4.26 above.

Law Society: We favour the alternative proposal in paragraph 4.25 that our arbitration law should no longer include any provision for the appointment of judicial officers as arbitrators, for the reasons given therein.

We do not consider the case is made out for there to be any exception. Allowing judges to be appointed as arbitrators and then creating a whole raft of rules in Schedule 2 goes against the spirit of streamlining. If an arbitrator is interested in a life on the bench then the appropriate course would be to finish the arbitration(s) at hand robustly, and then he may join the bench.

4.28 The *Report* recommends the retention of section 2A of the current Ordinance which relates to the appointment of a conciliator. As "mediation" is defined under Clause 2(1) of the draft Bill to include "conciliation", we consider it appropriate to replace the term "conciliator" with "mediator" in the draft Bill. In this connection, views are sought as to whether "mediator" should be defined in the draft Bill.

Law Society:
We suggest "Mediator" should be defined to include conciliator.

Paragraphs 6.14 to 6.16
6.14 Clause 46(4)(a) and (5) to (7) reproduces the proposed amendments to be introduced into the current Ordinance as section 2GC(1A) to (1D) of the current Ordinance by Clause 11 of the Civil Justice (Miscellaneous Amendments) Bill 2007 ("CJMA Bill"). Under this clause, the Court of First Instance may grant an interim measure in relation to arbitral proceedings outside Hong Kong only if those proceedings are capable of giving rise to an arbitral award (whether interim or final) which may be enforced in Hong Kong under the new Ordinance or any other Ordinance.

6.15 An alternative proposal has been made that where arbitral proceedings take place outside Hong Kong, the Court of First Instance may only make an order to grant interim measure in relation to such proceedings if two conditions are satisfied -

(1) that a court in the corresponding place of arbitration will act reciprocally to grant a similar order in aid of arbitral proceedings in Hong Kong; and

(2) that the order to be made by the Court of First Instance belongs to a type of orders that may be made in Hong Kong in relation to arbitral proceedings conducted in Hong Kong.

6.16 We take the view that it may be difficult to adduce evidence to prove reciprocity particularly in urgent applications under the alternative proposal. We prefer to adopt the proposed provisions to be added as section 2GC(1A) to (1D) of the current Ordinance as introduced by the CJMA Bill. However, we recommend that the second condition referred to in paragraph 6.15 above be added as one of the requirements to be satisfied for the grant of an interim measure by the Court of First Instance in relation to arbitral proceedings outside Hong Kong. This is now provided for in Clause 46(4)(b) of the draft Bill. Views are invited on the proposals described in paragraphs 6.14 to 6.16.

Law Society: We recommend Clause 46 be adopted without further amendment.

6.17 We propose that a decision of the Court of First Instance to grant or refuse to grant an interim measure shall be subject to appeal with leave of the court. We take the view that such a decision of the Court would be a matter of great significance to the parties. Views are sought on this proposal.

Law Society: Agreed. In order to prevent delay an appeal should be subject to leave and this application should take place at the same time as the application for interim measures.

7.21 We propose that a decision of the Court of first Instance under Clause 59(7) on whether to extend time for the commencement of relevant proceedings shall be subject to appeal with leave of the Court as such a decision of the Court is likely to affect the substantive rights of the parties in pursuing their claim. Views are sought on this proposal.

Law Society: This proposal involves a substantive right which could involve limitation matters therefore there should be an appeal as of right, otherwise a party may be time-barred.

7.25 Clause 60(5) stipulates that the power of an arbitral tribunal to dismiss a claim or to prohibit a party from commencing further arbitral proceedings in respect of a claim for unreasonable delay in pursuing the claim is exercisable by he Court of First Instance if no arbitral tribunal which is capable of exercising that power exists at the relevant time. We consider that an appeal procedure where leave of the court is required should be provided in respect of a decision of the Court of First Instance made under Clause 60(5) as such a decision is likely to affect the substantive rights of the parties. Views are sought on the above proposal.

Law Society: There should be a right of appeal with leave.

7.32 However, we do not agree with the proposal made in the *Report* that where an arbitral proceeding takes place outside Hong Kong, leave should only be granted for the enforcement of any orders or directions including interim measures made by such arbitral tribunal in a foreign jurisdiction if a court in the corresponding place of arbitration will act reciprocally in respect of such orders or directions made in arbitral proceedings conducted in Hong Kong. We take the view that any such orders or directions are likely to be procedural and interlocutory in nature and that problems with conflicting expert opinions as to the existence of reciprocity may arise in practical situations. Views are sought on the above proposal.

Law Society: We agree the provisions for the enforcement of arbitral orders and directions set out in draft Clauses 46 and 62 be accepted without further amendment.

8.6 We take the view that a procedure for appeal against a decision of the court under Clause 67(2) to grant or refuse leave to enforce a settlement agreement should be provided with leave of the court being required as such a decision is likely to affect the substantive rights of the parties and disputes may arise as to whether a settlement agreement is in existence. Views are sought as to whether such a decision should be subject to appeal with leave.

Law Society: There should be a right of appeal with leave.

8.19 Clause 75(3) and (4) provides that an arbitral tribunal may direct that costs (including the fees and expenses of the tribunal) be paid forthwith or within a specified period by a party who makes or opposes a request to the tribunal for any order or direction, including an interim measure, which is found by the tribunal to be without merit. Views are sought on the above proposal.

Law Society: The tribunal seems to be given the power to award costs based on the merit of the application or the opposition to the application. This may lead to further disputes, particularly as the Tribunal is assessing its own fees on an interlocutory matter, basing its decision on the merit of the application or opposition.

8.20 Clause 75(5) is adapted from section 2GJ(1)(b) of the current Ordinance. This provision states that unless the parties have agreed that the costs of the arbitral proceedings are to be taxed by the court, the arbitral tribunal shall assess the amount of costs of the arbitral proceedings (other than the fees and expenses of the arbitral tribunal) to be so paid. As recommended in the *Report*, the terms "assess" and "assessment" are used in place of "tax" and "taxation" respectively and in relation to an award on the costs made by an arbitral tribunal.

(a) Agreed, but the basis of assessment needs clarification/definition. Clause 75(7) of the draft bill indicates the arbitral tribunal shall only allow such costs which are "reasonable in all the circumstances"; there is no definition of reasonable. "Reasonable" could mean "solicitor and own client costs" being all costs approved by the client unless unreasonable incurred or on the Indemnity basis "all costs are allowed except those unreasonably incurred or an unreasonable amount". The draft Bill also refers to "assessment" which is a practice being adopted by Taxing Masters in standard litigation proceedings.

(b) We submit any assessment of costs should be on a solicitor/own client or indemnity basis. The Bill *should not* import the concept of taxation procedures into the new regime given the Civil Justice Reforms and changes to RHC O62.

(c) We note there is a potential conflict of interest as the Tribunal itself has a right to appear at the taxation which we consider unacceptable. The Tribunal's role is to award costs and there should be no appeal, and no right to tax as this would be in line with the aim of the reforms, i.e. to provide finality.

(d) We suggest the Tribunal:

(i) award costs by adopting the practice in the Courts of "Gross Sum Assessments" where Taxing Masters apply a broad brush approach.
(ii) consider introducing "paper applications";
(iii) award costs at the end of every interlocutory application.

Paragraphs 8.24 and 8.25

8.24 We take the view that section 2GJ(6) of the current Ordinance which provides for the application of section 70 of the Legal Practitioners Ordinance (Cap 159) to arbitral proceedings under the current Ordinance should not be retained for the following reasons:

(a) to our knowledge, the provision has never been invoked in any arbitral proceedings;
(b) the provision appears to favour solicitors practising in Hong Kong as such protection has not been accorded to solicitors and other lawyers from overseas jurisdictions;
(c) no similar provision is found in the arbitration laws of other jurisdictions.

Law Society: We do not agree with the proposal to remove the solicitor's lien as this is an existing right which favours solicitors. We make the counter argument that this right should be considered by the other jurisdictions.

8.26 In accordance with the recommendation in the *Report*, Clause 76(1) is adapted from section 2GJ(1)(c) and (2) of the current Ordinance. It is to be noted that under the present statutory position, an arbitral tribunal may, subject to any contrary provision of the arbitration agreement, direct that costs between the parties be paid on the basis of an award of costs in civil proceedings before the court. Any costs awarded by the tribunal are taxable by the court unless the award otherwise directs. Clause 76(1), however, only permits and in fact obliges an arbitral tribunal to make directions in an award for the taxation of the costs of arbitral proceedings (other than the fees and expenses of the arbitral tribunal) by the court and the basis on which the costs are to be paid, where the parties have agreed that the costs are to be taxable by the court.

Law Society: Agreed subject to definition of the standard to be adopted and no taxation process in the interest of finality.

Paragraphs 8.27 and 8.28

8.27 As recommended in the *Report*, Clause 76(2) empowers an arbitral tribunal to make an additional award of costs to reflect the result of the taxation of costs by the court.

8.28 Clause 76(3) provides that any taxation by the court of the costs of arbitral proceedings made pursuant to Clause 76(1) shall not be subject to any appeal. As taxation of costs by the court is procedural in nature, we consider that an appeal procedure is not required.

Law Society: Agreed, but would be unnecessary if the provision for taxation is removed and there are provisions for assessment of costs.

8.29 As recommended in the *Report*, Clause 77 re-enacts section 2G of the current Ordinance. The effect of this provision is that it may be directed that costs in respect of work done in any arbitral proceedings by a person who is not qualified to act as a solicitor are recoverable.

Law Society: Agreed.

8.30 As recommended in *Report*, Clause 78 provides for the application by a party to the Court of First Instance for determination of an arbitral tribunal's fees and expenses where the arbitral tribunal refuses to deliver an award to the parties except upon full payment of the fees and expenses of the tribunal. This provision sets out the orders that may be made by the Court. It further provides for the procedure for such application under which an arbitrator is entitled to appear and be heard on any determination. The arbitral tribunal is required to amend its award on fees and expenses of the tribunal to reflect the result of the determination.

Law Society: Agreed. But it makes the tribunal a party to the taxation and a conflict situation arises when the matter is referred back to the Arbitrator for an award of costs.

8.31 We take the view that a determination by the Court of First Instance under this provision shall not be subject to any appeal for the reason that there should be finality in

the arbitral process and that the determination of an arbitral tribunal's fees and expenses needs to be dealt with speedily. This has been so provided in Clause 78(10).

Law Society: Agreed save as stated above.

8.32 As recommended in the *Report*, Clause 79 is adapted from section 2GK of the current Arbitral Ordinance. It stipulates that the parties to the arbitral proceedings are jointly and severally liable to pay to the arbitral tribunal such reasonable fees and expenses of the tribunal as are appropriate in the circumstances.

Law Society: Agree but could lead to unfairness if winning defaults or in liquidation.

8.37 It is provided under section 2GI of the current Ordinance that interest "is payable on the amount of an award from the date of the award". It may be arguable that an arbitral tribunal may award interest on costs pursuant to this provision. However, even if the view taken above is correct, another issue that may arise is the difficulty in deciding the correct commencement date for the payment of such interest. The commencement date may either be – (a) the date on which the costs award is made by the arbitral tribunal; or (b) the date on which the amount of the costs payable is fixed by the arbitral tribunal if the assessment is done by the tribunal itself; or (c) the date on which the court gives a determination on the taxation of costs.

Law Society: Noted but we believe *incipitur* rule should apply (encourages speed).

8.40 Another issue that may arise is in cases where the costs of the arbitral proceedings are taxed by the court, it is not clear whether payment of the interest on costs should start from the date of the original costs award made by the arbitral tribunal or whether it should be payable from the date on which the certificate of taxation is issued by the court. In other words, there is a potential difference on the commencement date for payment of interest on costs depending on whether it is the arbitral tribunal or the court that is carrying out the actual assessment or taxation.

Law Society: Taxation provisions should be removed in the interests of finality. If taxation is retained interest must be from the date of the award not the date of taxation.

Paragraphs 8.43 to 8.45

8.43 The options proposed relating to the power of an arbitral tribunal to order payment of interest on award of costs in arbitral proceedings are:

(1) maintaining the status quo under the current Ordinance;
(2) adopting legislative provision similar to section 49(4) of the UK Arbitration Act;
(3) enacting new provisions in the draft Bill that would clear all the ambiguities under the current Ordinance.

Law Society:

1. No
2. No, it should be from the date of an award
3. Agreed

8.44 We recommend that a new provision, now Clause 80(1)(c) should be added under the draft Bill to empower an arbitral tribunal to award interest on costs awarded by the tribunal in arbitral proceedings.

Law Society: There should be finality - gross sum assessment, including tribunal fees, no taxation, interest (at variable rates) on award from date of award by tribunal or contractual interest on cost from the date of award (at rate chosen by tribunal)

8.45 Views are sought on the proposal in paragraphs 8.43 and 8.44

Law Society: The tribunal should have the power to award interest pursuant to the provisions in the Bill subject to the following caveat:

> **"that Clause 80(1) of the draft Bill should be amended to reflect Islamic law provisions on interest by adding: "*unless otherwise agreed by the parties expressly or by implication by Islamic contracts, an arbitral tribunal made …*".**

9.3 Views are sought on whether the decision of the Court of First Instance to set aside an arbitral award should be subject to appeal with leave.

Law Society: There should be a right of appeal with leave. The grounds are such as prima facie to take the issue out of the scope of arbitration.

10.8 Views are sought on whether a decision of the court to grant or refuse leave to enforce an arbitral award made outside Hong Kong, which is neither a Convention award nor a Mainland award, should be subject to appeal with leave.

Law Society: There should be a right of appeal but we disagree with the requirement for leave.

10.12 Views are sought on whether a decision of the court to grant or refuse leave to enforce a Convention award should be subject to appeal with leave.

Law Society: There should be a right of appeal but we disagree with the requirement for leave.

10.18 Views are sought on whether a decision of the court to grant or refuse leave to enforce a Mainland award should be subject to appeal with leave.

Law Society: There should be a right of appeal but we disagree with the requirement for leave.

Paragraph 11.10 and Schedule 3

11.10 Clauses 100 to 103 establish an "opting-in" system in respect of the provisions in Schedule 3 which are now (with the exception of section 4 to Schedule 3) applicable to domestic arbitration under the current Ordinance. Comments are invited on the "opting-in" system.

Schedule 3 Section 2

4. Section 2(1), (2)(b) and (3) of this Schedule is adapted from section 6B of the current Ordinance. Section 2(1) retains the power of the Court of First Instance to make an order for arbitral proceedings to be consolidated on such terms as it thinks just, or to be

heard at the same time, or to be heard one immediately after another, or for any of those arbitral proceedings to be stayed until after the determination of any other of them under the circumstances specified in section 2(1)(a) to (c) of this Schedule. Such orders may only be made by the Court upon application by a party to the arbitral proceedings.

Law Society: Only in special circumstances should the Court entertain an application.

5. Where the Court orders arbitral proceedings to be consolidated, section 2(2)(a) of this Schedule empowers the Court to make consequential directions as to the payment of costs in the arbitral proceedings. The arbitral tribunal is given the power to make orders as to the costs of the consolidated arbitral proceedings under section 2(4) of this Schedule.

Law Society: This should be in the absence of agreement in contract and arbitration clause.

7. Section 2(5) deals with the power of the arbitral tribunal to make costs orders in relation to those arbitral proceedings that are heard by it at the same time or one immediately after another. There are two alternative proposals on which views are sought:

(a) The recommendation in the *Report* is that the arbitral tribunal should only have the power to make order as to costs in each arbitration and should not have the power to order a party to any of those arbitral proceedings that are heard at the same time or one immediately after another to pay the costs of a party to any other of those proceedings.

(b) The alternative proposal, as set out in the draft Bill, is that where the arbitral tribunal is the same tribunal hearing all of those proceedings that have been ordered to be heard at the same time or one immediately after another, the tribunal should be empowered to make orders as to costs in respect of different parties to all those arbitral proceedings heard by it.

Law Society: If there is a need to deal with arbitration agreements stipulating domestic arbitration entered into prior to the commencement of the Ordinance, a simple provision to the effect that the existing law should continue to apply to such arbitration should suffice.

We can then remove the entire Schedule 3, keep section 2 (consolidation of arbitrations), section 5 (appeal against arbitral award on question of law) and section 6 (application for leave to appeal against arbitral award on question of law) as opt-out, rather than opt-in, provisions. The Government should show its resolve through legislation to remove the domestic regime. Leaving room for parties to try to opt-in to the old domestic regime sends a confusing message.

On the issue of whether a tribunal should be given the power to order costs relating to arbitral proceedings that are heard by it at the same time or one immediately after the other, we are in favour of the recommendation in the Report that a tribunal should not be given such power for the reasons given.

8. Arguments, however, have been put forward against the alternative proposal under paragraph 7(b) above:

(a) It would be difficult to make costs orders on the basis of different evidence that may have been adduced in arbitral proceedings that are conducted separately even if they are heard by the same arbitral tribunal.

(b) It would be difficult for an arbitral tribunal which is not constituted by legal practitioners or where the arbitrators are less experienced to make an appropriate decision on orders for costs against different parties involved in separate arbitral proceedings.

(c) It would cause great hardship to a party in a relatively weaker financial position such as a subcontractor if he is required to pay the costs of other parties to other arbitral proceedings in which he is not involved.

Law Society: We do not agree. If the tribunal can deal with complex issues, it should be able to assess costs. It is in a better position to do so and may even determine costs on a gross sum assessment.

9. Another issue upon which views are sought is whether the Court of First Instance should be given the power to appoint the same arbitrator to hear arbitral proceedings that have been ordered by the Court to b heard at the same time or one immediately after another.

Law Society: We fail to see how consolidation would work unless the different proceedings are heard by the same person, and are therefore in favour of the court being given such power.

Schedule 5

2. Order 73 of the Rules of the High Court (Cap 4 sub. Leg. A) is amended by sections 10 to 16 of this Schedule. According to Clause 108, this revised Order will apply in making an application, request or appeal under the new Ordinance to the Court of First Instance.

Comments on the amendments made to this Order are invited.

Law Society:

Order 73	Comments
New rule 1	No comment.
New rule 2	No comment.
New rule 3	No comment.
New rule 4	1. Propose to include Order 29, rule 6 (Recovery of personal property subject to lien, etc.). 2. In the Draft Bill, this new rule applies to arbitral proceedings outside Hong Kong. Whether this rule should be applied to arbitral proceedings in Hong Kong as well.

Order 73	Comments
New rule 5	**1. The commencement date for reckoning the appeal time limit for various applications is proposed to run *"after the award is delivered"*, vis-à-vis *"after the award has been made and published to the parties"* in the current rule 5. Whilst this change could overcome the problem created in *Kwan Lee Construction Co. Ltd. v. Elevator Parts Engineering Co. Ltd.* [1997] 1 HKC 97 (in which it was held, an award is *"made and published"* when the arbitrator gives notice to the parties that it is ready upon payment of the arbitrator's fees). It appears that the adoption of the words *"after the award is delivered"* may also create problems as an arbitral award may not be delivered to the parties on the same day in every instance. We suggest amending the draft to "made available to the parties"**
New rule 6	**No comment.**
New rule 7	**No comment.**
Repealed rules 8 to 9	**No comment.**
Amended rule 10	**No comment.**
Amended rule 10A	**No comment.**
Repealed rules 11 to 18	**1. The existing payment into court provisions are to be abolished. It is submitted under the principle held in *Hong Kong & Shanghai Hotels Ltd. v. Choy Bing Wing* [1998] 4 HKC 555, an arbitrator exercising his discretion on costs judicially should not make reference to an offer made by way of a letter where that offer could have been, but was not, backed by a payment in.** **2. As the law remains unsettled as to whether a *Calderbank* offer should be taken into account when considering costs, it is suggested the payment-in provisions be retained.**
New rule 19	**No comment.**

3. A proposal is made under Section 37 of this Schedule to add the "President of the Hong Kong Construction Association" to the list of persons and organizations set out in Rule 3(2) of the Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap 341 sub. Leg. B). A person or organization referred to in Rule 3(2) will be invited by the Council of HKIAC to nominate one person each to be a member of the Appointment Advisory Board established by the Council of HKIAC.
Views are sought on the above proposal.

Law Society:
Comments on the proposed inclusion of the "President of the Hong Kong Construction Association" to the list of persons and organizations set out in rule 3(2) of the Arbitration (Appointment of Arbitrators and Umpires) Rule are as follows:

1.1 The function of the Appointment Advisory Board (which will not be affected by the proposed amendments in the Draft Bill) is set out in rule 5 of the Arbitration (Appointment of Arbitrators and Umpires) Rules:

"Before making a final decision on the appointment of an arbitrator or umpire or on the number of arbitrators that are appropriate for any particular dispute, HKIAC shall consult with at least 3 available

members of the Appointment Advisory Board and shall consider their advice but is not bound by it."

1.2 The members of the Hong Kong Construction Association ("the Association") are solely main contractors in the Hong Kong construction industry. Whilst main contractors are the main user of arbitration, the Association may have inherent interest/inclination in nomination of arbitrator.

1.3 Therefore, it is not recommended the President of the Association should be included in the Appointment Advisory Board.

The Law Society of Hong Kong
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