

## Macau's new arbitration law - a new chapter for arbitration in Macau?

15 November 2019 -

On 5 November 2019, the Macau Official Gazette announced the publication of Law no. 19/2019, the new arbitration law of the Macau SAR ("New Arbitration Law"). This legislation will come into force on 4 May 2020. The full text of the legislation can be found [here](#).

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

### **1. 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.<sup>[1]</sup> These two ordinances have been repealed by the New Arbitration Law, which now applies to both domestic arbitration and international arbitration.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".<sup>[2]</sup> 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 adopted 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.

### **2. Expanded scope of what constitutes an arbitration agreement in writing (Chapter II, Article**

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The New Arbitration Law continues to require the arbitration agreement to be 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, e-mail 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.

### **3. Enhanced protections in emergency situations (Chapter III and V)**

The new law contains important provisions for relief in emergency situations, including the adoption of a specific set of rules on “emergency arbitrations” and the adoption 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 an arbitral tribunal seated outside Macau, the new law provides that the regime is the same as the recognition and enforcement of an award rendered by an arbitral tribunal seated outside Macau.

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

While under the previous regime both the parties and the arbitral tribunal may seek assistance from judicial courts in the taking of evidence, it does 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.

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

One of the major criticisms of Macau previous arbitration regime is that it allows parties to stipulate an appeal mechanism to judicial courts, which defeats the purpose of arbitration proceedings as arbitral awards were 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 should be void.

## **6. 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 the 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 Sonia Chan, the 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 – is determinant in the success of Macau being a preferred, efficient and effective seat of arbitration.

***Disclaimer:*** The information contained herein is for informational purposes only and is not intended to constitute legal advice. As legal advice must be tailored to the specific circumstances of each case, nothing provided herein should be used as a substitute for advice of a qualified lawyer in Macau.

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[1] Decree-Law no. 29/96/M was further amended by Decree Law no. 19/98/M, of May 11, and Decree Law no. 110/99/M, of December 13.

[2] See Article 1(4) of Decree-Law no. 55/98/M, of November 23.