

SPC Notice Clarifying Enforcement of Hong Kong Arbitral Award in Mainland China

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The China Supreme Peoples' Court (SPC) on Jan.5th, 2010 published a Notice regarding the Enforcement of Hong Kong Arbitral Award in Mainland China (Notice). This Notice clarifies one pending question as to whether or not ad hoc arbitral awards rendered in Hong Kong or arbitral awards rendered by the International Court of Arbitration of the International Chamber of Commerce (ICC) and other foreign arbitration institutions in Hong Kong are considered as Hong Kong arbitral awards under the Arrangement concerning Mutual Enforcement of Arbitral Award between the Mainland China and the HKSAR effective on Jan.24th, 2000 (The Arrangement).

The Notice, as a positive development, confirms that these two types of arbitral awards, i.e. ad hoc arbitral award rendered in Hong Kong and the arbitral award rendered in Hong Kong by ICC or other foreign arbitration institutions are Hong Kong awards and can be enforced in Mainland China according to the Arrangement. This means that local people's courts will have jurisdiction to review these Hong Kong arbitral awards and can also set aside or refuse to enforce such arbitral awards if the courts find relevant legal grounds to do so pursuant to the Arrangement.

This is different from foreign arbitral awards which are subject to two earlier regulations, i.e. SPC 1995 Notice and SPC 1998 Provisions, which provide that the Chinese foreign-related arbitration awards or foreign arbitral awards cannot be set aside and the recognition and enforcement thereof cannot be refused by local courts without firstly reporting to and reviewing by the Supreme People's Court.