

# IBA ARBITRATION COMMITTEE

## Subcommittee on Recognition and Enforcement of Arbitral Awards

### COUNTRY/JURISDICTION REPORT ON LOCAL REQUIREMENTS FOR THE EXTENSION OF AN ARBITRATION CLAUSE TO, AND ENFORCEMENT OF AN ARBITRAL AWARD AGAINST, A NON-SIGNATORY

DECEMBER 2020

*In completing this survey, we ask the respondents to consider the question of non-signatories in a broad manner. That is, please consider situations where (i) a party applies to a court to compel arbitration against a non-signatory, (ii) the arbitral tribunal extended the arbitration clause to a non-signatory, and the non-signatory, or another party to the arbitration, seeks to resist enforcement, or to set aside the award, on the basis that the arbitration clause should not have been extended to the non-signatory, and (iii) where the award creditor attempts to enforce the award against a non-signatory that was not a party to the arbitral proceedings and the award.*

Hong Kong Special Administrative Region of the People's Republic of China (Any reference to a "country for which the report is being prepared" shall mean reference to a "jurisdiction" for which report is being prepared)		
Olga Boltenko, Wong Zi Wei, Echo Cao Fangda Partners, Hong Kong		
I. General	(Yes/No /NA)	Comments, if any.
I.1	Must international arbitration agreements be in writing under the law of the jurisdiction for which you are reporting?	Yes However, see our response to I.2 below: section 19 of the Arbitration Ordinance (Cap. 609) ("HKAO") provides that "An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means."
I.2	Please describe the basic requirements for a valid international arbitration agreement in the jurisdiction for which you are reporting and cite the relevant legislative, regulatory, or jurisprudential basis for these requirements. [Please provide your response in the comments column and limit it to one paragraph.]	NA Hong Kong approaches the formality requirements flexibly. Section 19 of the HKAO adopts Option I of Article 7 of the UNCITRAL Model Law ("Model Law"), essentially removes all requirements of form to the arbitration agreement. It provides that an arbitration agreement must be in writing, whether in the form of a clause in a contract or a separate agreement. However, "writing" is broadly construed, and agreements can be "recorded in any form", whether it has been concluded orally, by conduct or by other means. The requirement that an arbitration agreement be in writing is met by an electronic

			communication if the information contained therein is accessible so as to be useable for subsequent reference.
I.3	<b>In the jurisdiction for which you are reporting, do courts/arbitral tribunals generally decide the issue of the scope rationae personae of the arbitration clause (or, in other words, the issue of who are the parties to the arbitration agreement, including the issue of extending the arbitration agreement to a non-signatory) on the basis of a specific applicable law or on the sole basis of a factual analysis of the case without reference to an applicable law?</b>		In Hong Kong, the issue is decided on the basis of a factual analysis with reference to an applicable law.
I.3a	<p>If courts/arbitral tribunals generally decide the issue on the basis of a specific applicable law, what law do they apply to decide the issue?</p> <p>[For example, the applicable law could be:</p> <ul style="list-style-type: none"> <li>• The law of the seat of arbitration.</li> <li>• The governing law of the contract.</li> <li>• The law of the place where the award might ultimately be sought to be enforced.</li> <li>• Transnational norms/international law.</li> <li>• The law reached at through a conflict of laws analysis.] <p>[Please provide your response in the comments column, provide any citation to relevant legislation or jurisprudence, and limit your response to one paragraph.]</p> </li></ul>		<p>Hong Kong courts typically apply the standard common law test to determine the law applicable to an arbitration agreement. The Court/tribunal first looks into whether there is an express choice of governing law by the parties; they will then look into whether there is an implied choice by the parties, and then, in the absence of an express or implied choice, the courts will look at the system of law with which the arbitration agreement has the closest and the most real connection. In other words, where there is no express or implied law governing the arbitration agreement, the court/tribunal determines the law governing the arbitration agreement by considering the law which has the closest and most real connection with the arbitration agreement. The candidates for this law (i.e., the law governing the arbitration agreement) are usually the law of the underlying contract, or the law of the seat. Hong Kong courts will take under advisement the landmark case law on the choice of law point, such as <i>Sulamérica Cia Nacional De Seguros S.A. and others v Enesa Engenharia S.A</i> [2012] EWCA Civ 638 (English Court of Appeal decisions are usually persuasive before the Hong Kong courts), as applied in <a href="#">in <i>Cheung Shing Hong Ltd v China Ping An Insurance (Hong Kong) Co Ltd</i> [2020] HKCFI 2269</a> (at §23-24).</p>
I.3b	<p>Does the legislation of your jurisdiction contain any directive in this respect?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	No	
I.4	<b>Is the question of whether parties agree to arbitrate ultimately decided by arbitrators as opposed to courts in the jurisdiction for which you are reporting? Please cite the relevant</b>	No	Courts generally respect a tribunal's ruling on its own jurisdiction. Section 34 of the HKAO (which incorporates Article 16 of the Model Law) provides that the arbitral tribunal may rule on its own jurisdiction, including any

	<p><b>legislative, regulatory, or jurisprudential basis for your answer.</b>  <b>[Please provide your response in the comments column and limit it to one paragraph.]</b></p>		<p>objections with respect to the existence or validity of the arbitration agreement. Under section 34(1) of the HKAO, a party may raise a plea that the arbitral tribunal does not have jurisdiction, and the tribunal may rule on such plea either as a preliminary question or in an award on the merits. If the tribunal rules as a preliminary question that it has jurisdiction, any party may request the court to decide whether the tribunal has jurisdiction, and such decision shall not be subject to any appeal. The Hong Kong Court therefore has ultimate decision on whether the parties have agreed to arbitrate, but subject to the arbitrators first deciding that issue. For example, in <a href="#">T v A [2018] 3 HKLRD 730</a> (at §19 – 22) the Hong Kong Court affirmed that “<i>in deciding whether an arbitral tribunal has jurisdiction, ... the court determines the matter afresh and is not in any way bound by the tribunal’s decision</i>”, notwithstanding that the tribunal in that case had found that it did have jurisdiction (at §14).</p>
I.5	<p><b>Is there anything in the <u>legislation</u> of the jurisdiction for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?</b>  <b>[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of relevant legal theories, jurisprudence, and examples.]</b></p>	Yes	

I.5a	<p>If your answer to question <a href="#">I.5</a> is yes, please cite and describe the applicable rules contained in any relevant legislation or regulations. [Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>Section 12 of the Contracts (Rights of Third Parties) Ordinance (Cap.623) (“<b>Third Parties Rights Ordinance</b>”) provides that for contracts entered into from 1 January 2016, a third party may be treated as a party to the arbitration agreement for the purpose of the HKAO in appropriate circumstances, if the contract expressly provides that the third party may do so, or the term purports to confer a benefit on the third party (see for example, <a href="#">Dickson Valora Group (Holdings) Co Ltd v Fan Ji Qian [2019] 2 HKLRD 173</a> at §31) .</p>
I.6	<p><b>Is there anything in the jurisprudence of the jurisdiction for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?</b> [Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of the relevant legal theories, jurisprudence, and examples.]</p>	Yes	
I.6a	<p>If your answer to question <a href="#">I.6</a> is yes, please cite and describe the applicable tests or rules applied by the courts of the jurisdiction for which you are reporting. [Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>In <a href="#">Dickson Valora Group (Holdings) Co Ltd v Fan Ji Qian [2019] 2 HKLRD 173</a>, a non-signatory trying to enforce a contract was held to be bound by the arbitration clause because a third party’s conscience can be “<i>bound by the conditions integral to the rights they have acquired, which [the third party] therefore be restrained by equity from asserting those rights in a manner inconsistent with those conditions</i>”. The court found that “<i>there exist various devices at common law which are sometimes employed to temper the structures of the doctrine of privity</i>”, including trust, assignment and agency principles. The court held that “<i>the basis for the court’s intervention is the same in the case of a claimant who has become entitled to enforce an obligation but is not a party to a contract of any kind with the defendant, as in the case of a claimant who is an original party to an arbitration agreement</i>”. The Third Parties Rights Ordinance does not apply to the relevant agreements in that case since those agreements were executed before the ordinance came into operation.</p>

II. Specific Legal Theories Concerning Non-Signatories		(Yes/No /NA)	Additional comments, if any.
II.1	<b>Can the assignment or assumption of a contract containing an international arbitration agreement commit the non-signatory assignee to international arbitration in the jurisdiction for which you are reporting? Or is the legislation and jurisprudence in the jurisdiction for which you are reporting silent on the issue?</b>	Yes	The legislation and jurisprudence in Hong Kong are generally silent on this issue, save that where a non-signatory assignee is trying to enforce a contract, they would have to do so under the arbitration clause (as described in relation to <a href="#">Dickson Valora Group (Holdings) Co Ltd v Fan Ji Qian</a> above).
II.1.a	If your answer to question <a href="#">II.1</a> is yes, please: <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> [Please provide your response in the comments column and limit it to one paragraph.]		In <a href="#">Dickson Valora Group (Holdings) Co Ltd v Fan Ji Qian</a> [2019] 2 HKLRD 173, the Hong Kong Court analysed various common law doctrines which may be deployed to temper the doctrine of privity, including: 1) a trust for the benefit of the third party, 2) an assignment of the benefit by the promisee to the third party, and 3) treating the promisee as an agent for the third party. The Court ultimately held that an assignee is seeking to enforce a contract is “bound by the conditions integral to the rights they have acquired, which [the third party] therefore be restrained by equity from asserting those rights in a manner inconsistent with those conditions [ie the arbitration clause]”.
II.1.b	If your answer to question <a href="#">II.1</a> is no, please: <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul>	NA	
II.2	<b>Can incorporation by reference (i.e., where a contract incorporates an arbitration clause contained in a separate document) commit a non-signatory party to international arbitration in the jurisdiction for which you are reporting? Or is the legislation and jurisprudence in the jurisdiction for which you are reporting silent on the issue?</b>	Yes	
II.2.a	If your answer to question <a href="#">II.2</a> is yes, please: <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> [Please provide your response in the comments column and limit it to one paragraph.]		Terms can be incorporated into a contract by reference, including arbitration clauses. For example, in <i>Astel-Peiniger Joint Venture v Argos Engineering and Heavy Industries Co Ltd</i> [1994] 3 HKC 328, at 338C-D Neil Kaplan J applied certain English authorities where the Court was interpreting the contract to determine whether the parties had intended to incorporate an arbitration clause in a main contract, into other sub-contracts. This decision was more recently applied in <a href="#">Re Sit</a>

			<a href="#">Kwong Lam (Debtor) HCB 6051/2018</a> , where the Court was deciding whether an arbitration clause was validly incorporated into a contract (which may have been grounds to oppose or stay a bankruptcy petition pending arbitration).
II.2.b	<p>If your answer to question <a href="#">II.2</a> is no, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
II.3	<p><b>Can an arbitration clause commit a non-signatory third-party beneficiary of a contract to international arbitration in the jurisdiction in which you are reporting? Or is the legislation and jurisprudence in the jurisdiction for which you are reporting silent on the issue?</b></p>	Yes	
II.3.a	<p>If your answer to question <a href="#">II.3</a> is yes, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		An assignee seeking to enforce an arbitration clause takes those assigned rights subject to the arbitration clause: please refer to our responses to I.6a and II.1.a and the jurisprudence cited at those paragraphs.
II.3.b	<p>If your answer to question <a href="#">II.3</a> is no, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
II.4	<p><b>Can a theory of agency (i.e., where an agreement containing an arbitration clause has been entered into by a person who expressly or impliedly did so as a representative of a non-signatory) commit a non-signatory party to international arbitration in the jurisdiction for which you are reporting? Or is the legislation and jurisprudence in the jurisdiction for which you are reporting silent on the issue?</b></p>	Yes	
II.4.a	<p>If your answer to question <a href="#">II.4</a> is yes, please:</p>		While there is no clear jurisprudence or legislation on this issue, Hong Kong case law

	<ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>have suggested (in obiter) that a technique to “<i>treat the promise as having acted as an agent for the third party or for both himself and the third party in receiving the promise (though this is not strictly an exception since it renders the third party a party to the contract)</i>”: <a href="#">Dickson Valora Group (Holdings) Co Ltd v Fan Ji Qian</a> [2019] 2 HKLRD 173 at §32.</p>
II.4.b	<p>If your answer to question <a href="#">II.4</a> is no, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
II.5	<p><b>Can a theory of estoppel, good faith, or abuse of right (i.e., where a party benefitting from, and acting in accordance with, a contract containing an arbitration clause is estopped from claiming that it is not bound by certain provisions of the contract) commit a non-signatory party to international arbitration in the jurisdiction for which you are reporting? Or is the legislation and jurisprudence in the jurisdiction for which you are reporting silent on the issue?</b></p>	NA	The legislation and jurisprudence in Hong Kong is silent on this issue.
II.5.a	<p>If your answer to question <a href="#">II.5</a> is yes, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
II.5.b	<p>If your answer to question <a href="#">II.5</a> is no, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	

II.6	<p><b>Can “implied consent” (i.e., where a party’s active participation in the negotiation, execution, performance and/or termination of a contract containing an arbitration clause provides evidence for its intent to consent to arbitration) commit a non-signatory party to international arbitration in the jurisdiction for which you are reporting? Or is the legislation and jurisprudence in the jurisdiction for which you are reporting silent on the issue?</b></p>	NA	<p>The legislation and jurisprudence in Hong Kong is silent on this issue. However, it is possible for an arbitration agreement to be accepted by conduct (under the usual common law principles of offer and acceptance, see for example <a href="#">The Incorporated Owners of Tak Tai Building v Leung Yau Building Ltd, unreported, HCCT 24/2004</a> at §34-37 where the parties’ conduct at a meeting can give rise to an <i>ad hoc</i> agreement to arbitrate), in which case the party to the arbitration agreement cannot be said to be a non-party. In this regard, under section 19 of the Arbitration Ordinance (incorporating Article 7 of the Model Law), does not require that the arbitration agreement in writing be signed (“<i>an arbitration agreement is in writing if the agreement is in a document, whether or not the document is signed by the parties to the agreement</i>”).</p>
II.6.a	<p>If your answer to question <a href="#">II.6</a> is yes, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	See II.6 above.
II.6.b	<p>If your answer to question <a href="#">II.6</a> is no, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
II.7	<p><b>Can piercing the corporate veil or the alter ego doctrine (i.e., where, typically due to misuse or abuse of rights or fraud, the separate legal form of a non-signatory that uses its dominating authority over a signatory is disregarded so that both are treated as a single entity) commit a non-signatory party to international arbitration in the jurisdiction for which you are reporting? Or is the legislation and jurisprudence in the jurisdiction for which you are reporting silent on the issue?</b></p>	N/A	<p>The “group of companies doctrine”, being largely the product of civil law jurisprudence, or similar alter ego doctrines has not so far been accepted or even tested by Hong Kong courts, and it is unclear whether the scope of the arbitration agreement may be extended to a non-signatory in that way (see for example, the commentary in Anselmo Reyes, <i>The Practice of International Commercial Arbitration : A Handbook for Hong Kong Arbitrators</i>, at §13.1.1).</p>
II.7.a	<p>If your answer to question <a href="#">II.7</a> is yes, please:</p>	NA	



	<ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		
II.7.b	<p>If your answer to question <u>II.7</u> is no, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
II.8	<p><b>In the jurisdiction for which you are reporting, are there any other legal theories that can be used to commit a non-signatory to international arbitration?</b></p>	NA	
II.8.a	<p>If your answer to question <u>II.8</u> is yes, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your jurisdiction’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	NA	
<b>III.</b>	<b>Enforcement of an Arbitral Award against a Non-Signatory</b>	<b>(Yes/No /NA)</b>	<b>Additional comments, if any.</b>
III.1	<p><b>Have there been court cases in the jurisdiction for which you are reporting where a party has objected to the enforcement of an award, on the basis that the arbitral tribunal extended the arbitration clause to one or more non-signatories?</b></p>	No	<p>In <a href="#"><i>Astro Nusantara International BV v PT Ayunda Prima Mitra (2018) 21 HKCFAR 118</i></a>, the respondents (Astro) applied to join certain additional parties in the arbitral proceedings, and awards were granted in favour of Astro. When Astro sought to enforce the awards in Singapore and Hong Kong, the supervisory Singapore Court found that the arbitral tribunal did not have the jurisdiction to join the additional parties to the arbitration, and refused enforcement against the additional parties. In granting an extension of time to resist enforcement before the Hong Kong courts, the Court of Final Appeal, exercised its discretion to grant an extension of time, and in doing so balanced delay against the “<i>fundamentally important absence of a valid arbitration agreement [between the applicant</i></p>

			<p><i>and the third parties] so that those parties were wrongly joined and the Tribunal's awards were made in their favour without jurisdiction. Thus if an extension of time is granted, the [defence of the arbitration agreement not being valid] against enforcement will clearly be available" (at §86-88).</i></p> <p>In <a href="#"><i>Hong Kong Golden Source Ltd v New Elegant Investment Ltd</i> [2014] HKEC 1658</a>, the Court – in obiter – commented that a non-party can invoke the court's jurisdiction to set an arbitral award, and it will depend on the facts and circumstances of each case (at §45).</p>
III.1.a	If your answer to III.1 is <u>yes</u> , please explain which provision(s) of the New York Convention, or any other bilateral or multilateral convention on the enforcement of arbitral awards, was (were) relied upon as the basis for the application/objection. [Please provide your response in the comments column and limit it to one paragraph.]	NA	
III.1.b	If your answer to III.1 is <u>yes</u> , please explain whether set-aside/enforcement was finally granted or refused, and the court's reasons for reaching this result. [Please provide your response in the comments column and limit it to one paragraph.]	NA	
III.2	<b>Have there been court cases in the jurisdiction for which you are reporting in which the enforcement of an award was requested against a non-signatory third party (a company/individual/state that was a non-signatory to the arbitration agreement and not a party to the arbitral proceedings/award)?</b> [Please provide your response in the comments column and limit it to one paragraph.]	No	There have not been court cases in Hong Kong where the enforcement of an award was requested against a non-signatory third party. The general principle is that an arbitral award cannot be enforced against non-parties.
III.2a	If the answer to III.2 is <u>yes</u> , please explain on what legal basis the enforcement was requested. [Please provide your response in the comments column and limit it to one paragraph.]	NA	
III.2b	If the answer to III.2 is <u>yes</u> , please explain whether the enforcement was finally granted/refused and the court's reasons for reaching this result. [Please provide your response in the comments column and limit it to one paragraph.]	NA	
<b>IV.</b>	<b>Miscellanea</b>	<b>(Yes/No /NA)</b>	<b>Additional comments, if any.</b>
IV.1	<b>Is there anything else that a party considering the issue of the extension of an arbitration clause to a non-signatory should take into account with</b>	No	The general principle is that an arbitral tribunal does not have the power to bind a non-signatory to an arbitration agreement against their will, because the jurisdiction of the tribunal comes from the agreement of the

	<p><b>respect to the jurisdiction for which you are reporting?</b>  <b>[Please provide your response in the comments column and limit it to one paragraph.]</b></p>		<p>signatory parties. Even though some jurisdictions try to extend the tribunal's jurisdiction to non-parties under the "group of companies doctrine", as discussed in our response to II.7, whether such doctrine is applicable in Hong Kong still remains unclear.</p> <p>As to the application of the Third Parties Rights Ordinance, while a third party may apply to join an arbitration to enforce the benefits conferred to it under section 12 of the Third Parties Rights Ordinance, the arbitral tribunal may not be able to compel the third party to arbitrate, if the third party does not wish to enforce its benefits and refused to be joined. The reason is that section 12 of the Third Parties Rights Ordinance only allows the third party to be treated as a party to the arbitration agreement when it seeks to enforce the arbitration agreement under section 4 of the ordinance (see for example, Anselmo Reyes, <i>The Practice of International Commercial Arbitration : A Handbook for Hong Kong Arbitrators</i>, at §13.1.1)</p>
IV.2	<p><b>Is there anything else that a party considering trying to enforce a foreign arbitral award against a non-signatory should take into account with respect to the jurisdiction for which you are reporting?</b>  <b>[Please provide your response in the comments column and limit it to one paragraph.]</b></p>	Yes	<p>An unsuccessful application to set aside or resist an award is usually penalized with costs on an indemnity basis: <a href="#"><i>Guo Shun Kai v Wing Shing Chemical Co Ltd</i> HCCT 35/2012</a> (22 January 2014), at §59.</p>

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