

Legislative amendments for implementation of outcome related fee structures for arbitration

The Government will introduce legislative amendments to the Arbitration Ordinance (Cap. 609) and the Legal Practitioners Ordinance (Cap. 159), in order to provide that certain agreements using outcome related fee structures for arbitration (ORFSA) are not prohibited by the common law doctrines of maintenance, champerty and barratry, to provide for the validity and enforceability of such agreements and to provide for measures and safeguards in relation to such agreements. The proposed ORFSA regime will only be applicable to arbitration and related court proceedings.

A spokesman for the Department of Justice (DoJ) today (March 23) said, "ORFSA allows that conditional fee agreements, damages-based agreements or hybrid damages-based agreements may be made between a lawyer and the client. At present, these are not applicable in Hong Kong but similar arrangements are permitted in other major arbitral seats. Hence, the introduction of ORFSA in Hong Kong can actively respond to the expectations of arbitration parties for flexible fee arrangements, enhance access to justice and enable Hong Kong's arbitration services to advance with the times. This will help attract more parties to choose Hong Kong as a seat of arbitration as well as use the legal services in Hong Kong."

In the context of arbitration, clients are normally commercial entities or business people who are familiar with negotiating commercial terms and related pricing for those services. They are generally free to seat their arbitrations anywhere in the world and have significant demand for flexible fee arrangements. Implementing ORFSA is in the best interest of Hong Kong, reinforcing the city's status as one of the world's leading arbitral seats.

The proposed legislative amendments were formulated on the basis of the recommendations made in the Report on Outcome Related Fee Structures for Arbitration published by the Law Reform Commission of Hong Kong last December following a three-month public consultation. The proposed amendments in relation to ORFSA do not apply to personal injuries claims. The Advisory Committee on Promotion of Arbitration expressed its support to the recommendations. The DoJ, having given careful and thorough considerations, decided to adopt the recommendations and took forward the legislative amendments.

The Arbitration and Legal Practitioners Legislation (Outcome Related Fee Structures for Arbitration) (Amendment) Bill 2022 will be gazetted this Friday (March 25) and introduced into the Legislative Council on March 30.