

By post and by email at arbitration@doj.gov.hk

27 October 2026

Department of Justice
Secretary for Justice's Office
5/F, Main Wing, Justice Place
18 Lower Albert Road,
Central, Hong Kong

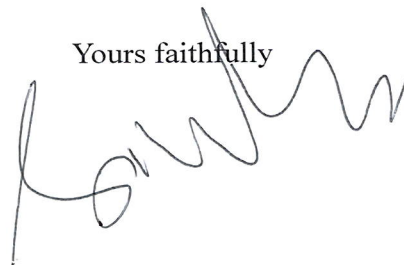
Dear Sir/ Madam

**Stakeholder Consultation
Key Provisions of the Draft Arbitration (Amendment) Bill 2027**

Thank you for inviting The Hong Kong Institution of Engineers (the Institution) to provide views on the Key Provisions of the Draft Arbitration (Amendment) Bill 2027.

Please be informed that the Institution is pleased to submit its views for your consideration, as set out in the enclosed document.

Yours faithfully



Sandy So (Ms)
Senior Executive Manager
External Affairs

Enclosure

Views from The Hong Kong Institution of Engineers on Key Provisions of the Draft Arbitration (Amendment) Bill 2027

The Hong Kong Institution of Engineers (HKIE) is pleased to present the following views on the key provisions of the Draft Arbitration (Amendment) Bill 2027. We support the Government's ongoing efforts to strengthen Hong Kong's arbitration legislative framework and enhance its position as an international legal and dispute resolution services centre.

2. The HKIE generally supports the Bill. Drawing on the perspective of the engineering profession, particularly in relation to construction dispute resolution, we respectfully propose the refinements set out below to enhance procedural clarity, safeguard fairness and confidentiality, and reduce unnecessary delays and costs. Our comments concern the operative provisions of draft **#397771 v10A**. The proposed English wording identifies the changes sought and is subject to consequential amendments and bilingual legislative drafting.

Clauses 3 and 5: Interpretation and electronic receipt

3. The HKIE supports the recognition of electronic awards and the clarification of electronic receipt arrangements. We suggest the following refinements:

(a) Scope of the definition of “question of law”

In clause 3(1), immediately before the dash in the proposed definition of “question of law”, insert:

“, for the purposes of sections 5, 6 and 7 of Schedule 2”

This refinement would confine the exclusions concerning evidence and factual inferences to appeals on questions of law, without affecting jurisdictional review or the grounds for setting aside an award.

(b) Electronic delivery and accessibility safeguards

In proposed section 2(6), add “in accordance with section 10” after “available to the parties to the arbitral proceedings”.

In proposed section 10(6), add:

“The presumption is also rebutted if the addressee shows that the written communication was not in fact accessible, and that this was not attributable to the addressee’s fault or deliberate avoidance of receipt.”

4. These refinements would connect electronic delivery with the receipt safeguards and protect a recipient who receives a notification but cannot access the award or attachment.

Clause 6: Disclosure and publication

5. The HKIE supports greater clarity on permitted disclosure and the publication of anonymised awards, subject to appropriate safeguards. We propose the following:

(a) Disclosure for construction adjudication

In proposed section 18(2)(a)(i), replace “or in other arbitral proceedings” with:

“or in other arbitral proceedings or adjudication proceedings under an enactment or pursuant to an agreement”

This amendment would expressly permit relevant arbitration material to be used to protect or pursue rights in statutory or contractual construction adjudication.

(b) Safeguards for publication of awards

Replace proposed section 18(3) with:

“(3) An arbitral institution or arbitral tribunal may publish an arbitral award, in full or as a summary, only if—

- (a) information reasonably likely to identify a party or the project concerned has been removed and confidential information of third parties is protected;*
- (b) each party has received the proposed text and has been allowed at least 14 days to object to publication; and*
- (c) no party has objected.”*

6. Removing names alone may not prevent a construction project and its parties from being identified. We therefore suggest that the provision expressly address identifying project information and third-party confidential information. Silence should operate as an absence of objection only after each party has received the proposed publication text and has had a reasonable opportunity to object.

Clause 8: Number of arbitrators under old deeds of mutual covenant

7. The HKIE supports addressing procedural deadlocks arising from non-participation in determining the number of arbitrators under old deeds of mutual covenant. We propose replacing proposed section 23(4)(b) with:

“(b) the parties have not agreed on the number of arbitrators within 30 days after a written proposal as to that number has been duly given to all parties, because one or more parties has failed to participate; and”

8. The present requirement for a “discussion” may exclude cases of complete non-response. A duly notified written proposal followed by non-participation should suffice to engage the proposed mechanism.

Clause 9: Counterclaims and jurisdictional rulings

9. The HKIE supports facilitating multi-contract arbitration and providing recourse against negative jurisdictional rulings. We suggest the following clarifications:

(a) Counterclaims and set-off under multiple arbitration agreements

After section 34(3), insert:

“(3A) The reference in subsection (3) to more than one arbitration

agreement does not dispense with any agreement, order or other legal basis required for disputes under those agreements to be determined in the same arbitral proceedings. Subsection (3) does not create or enlarge any substantive right of counter-claim or set-off.”

The plural references to arbitration agreements should not, by themselves, override separate dispute-resolution arrangements or create a substantive right to deduct claims arising on another project. This clarification would distinguish the tribunal’s jurisdiction from the underlying substantive entitlement to a counterclaim or set-off.

(b) Review of negative jurisdictional rulings

Replace proposed section 34(6) with:

“(6) Despite subsection (1), if an arbitral tribunal rules that it does not have jurisdiction to decide all or part of a dispute, whether as a preliminary question or otherwise, a party to the arbitral proceedings may, within 30 days after having received notice of that ruling, request the Court to decide the matter.”

Review should cover negative jurisdictional rulings at any stage, including those recorded in an award or termination order. The availability of review should not depend on whether the ruling is characterised as a preliminary question.

Clause 12: Summary disposal

10. The HKIE supports the proposed express power of summary disposal, accompanied by a clear procedural safeguard. We propose numbering the existing text of proposed section 70A as subsection (1) and adding:

“(2) Before making an award under subsection (1), the arbitral tribunal must give all parties a reasonable opportunity to make representations on the procedure to be adopted and on the application.”

Notice of an application alone does not expressly secure an opportunity to address the proposed procedure and the merits of the application. This safeguard would support the fair exercise of the new summary disposal power while preserving procedural flexibility.

Clause 14: Fraud or corruption challenges

11. The HKIE supports providing effective recourse against awards induced or affected by fraud or corruption. We suggest refining the proposed provisions to balance access to justice with finality.

(a) Time limit and judicial discretion to extend time

Replace proposed section 81(1C) and add subsection (1D) as follows:

“(1C) Articles 34(3) and (4) of the UNCITRAL Model Law, given effect to by subsection (1), apply to an application under subsection (1A) as they apply to an application under subsection (1).”

“(1D) The Court may extend the time under article 34(3) for an application under subsection (1A) if it considers it in the interests of justice to do so, having regard to when the alleged fraud or corruption was discovered or could reasonably have been discovered, the explanation for delay, any prejudice to the parties and all other relevant circumstances.”

The Bill as drafted disapplies the three-month time limit entirely for this route. Retaining that limit, together with an express judicial power to extend it, would accommodate concealed fraud while controlling delayed challenges. Article 34(4) should also remain available where it is appropriate to give the tribunal an opportunity to remove the ground for challenge.

(b) Consistent appeal arrangements

In existing section 81(4) and proposed section 81(5), replace:

“under article 34 of the UNCITRAL Model Law, given effect to by subsection (1)”

with:

“under this section”

The new subsection (1D) should also be included in the consequential amendment to section 81(2).

12. These changes would apply the same leave and renewed-leave regime to decisions concerning the separately created fraud or corruption ground and extensions of time. The present references to Article 34 and subsection (1) do not expressly cover those decisions.

Clause 26: Enforcement and existing orders

13. The HKIE supports measures to discourage unmeritorious challenges and facilitate timely enforcement. We nevertheless suggest preserving a short opportunity to seek a stay following service of an enforcement order obtained without notice, together with appropriate transitional protection.

(a) Initial opportunity to seek a stay

In clause 26(7), replace “Substitute a full stop” with an instruction to substitute:

“. Unless the Court otherwise orders, the settlement agreement, award, order, direction or emergency relief must not be enforced before the expiry of the period allowed for applying to set aside that order. Making such an application does not extend that prohibition unless the Court orders otherwise.”

This amendment would preserve a short opportunity to seek a stay after service, while allowing immediate enforcement where the Court directs. It would also remove the prolonged automatic stay during a challenge unless the Court orders otherwise.

(b) Urgent interim protection

In proposed rule 10(7A), replace “A debtor applying to set aside” with:

“A debtor who has applied, or intends to apply, to set aside”

This refinement would permit an application for urgent interim protection before the substantive challenge has been filed.

(c) Transitional protection for existing orders

Replace proposed rule 20 with:

“20. Rule 10(6), as in force immediately before the commencement of the Arbitration (Amendment) Ordinance 2027, continues to apply in relation to an order under rule 10(4) served before that commencement.”

This amendment would preserve the existing restriction on enforcement for orders served before commencement throughout the applicable challenge period, including any different period fixed by the Court for service outside the jurisdiction, and pending final disposal of an application made within that period. The proposed uniform 14-day transitional period may otherwise expire before the applicable challenge period. The replacement would also correct the reference to the amending Ordinance’s short title.

Conclusion

14. The HKIE believes that these targeted refinements would enhance the clarity and practical operation of the proposed amendments while maintaining an appropriate balance between efficiency, finality, confidentiality and procedural fairness. As a professional body representing engineers in Hong Kong, the HKIE is ready to provide further elaboration or assistance should the Department of Justice or the Working Group wish to explore these proposals in greater detail.