

# Arbitration centre waits on mainland enforcement ruling

By Joshua Fellman

THE Hong Kong International Arbitration Centre expects to attract more business because of a new law that allows it to appoint an arbitration panel when parties can not agree on one, a task previously given to the High Court.

But centre chairman Neil Kaplan admitted yesterday that the question of enforceability of Hong Kong arbitration rulings on the mainland after the handover had yet to be settled.

Arbitration is a form of private trial which avoids the cost and difficulties of a formal lawsuit.

The new rules, which have been passed by the Legislative Council and are set to go into effect soon, allow the centre to appoint arbitrators at a much lower cost, and through a much

simpler and faster means than going through the courts.

"In once recent case (under the old system), US\$30,000 was spent to recover US\$90,000," Mr Kaplan said, adding that the courts were being deliberately used to pick arbitrators in a bid to slow down proceedings.

In certain other small cases, especially those in the shipping industry, the party with the grievance would take no action at all, in fear of the cost of having to go to court to appoint arbitrators.

But while the new rules would increase the attractiveness of Hong Kong as a place to conduct arbitration, the uncertainty of the status of the territory relative to China could be damaging.

Hong Kong arbitration awards are enforceable in

China by means of the New York Convention on Recognition and Enforcement of Foreign Arbitral awards.

But after the handover, Hong Kong will be part of China, and the New York Convention will not apply.

The centre's secretary-general, Peter Caldwell, said: "While we do not feel

that this is a problem, some international observers have questioned this."

He had been assured by a judge of the Shenzhen People's Court, which handles most economic matters in China, that China's domestic arbitration law covered rulings made in Hong Kong, which

means courts there would enforce arbitration awards made here.

But while mainland authorities have made reassuring noises, there has been nothing put down in writing about enforceability, and Mr Kaplan does not expect action until after the handover.

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