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## A better way to settle commercial disputes p-67

Settling a commercial dispute by arbitration is often preferred to taking civil proceedings in court.

In fact, it is now written into many contracts that if there is a disagreement, it should be settled by arbitration.

It is hoped future contracts specify that arbitration should be heard in Hongkong.

Domestic disputes, particularly over building contracts, are already settled by arbitration in Hongkong.

Arbitration is preferred because the proceedings are confidential, and are often quicker and cheaper than going to court.

Some international disputes have also been dealt with here, but because of their confidential nature, it is not known how many.

The sort of domestic dispute which might be solved by arbitration could be between an owner and a building contractor, where the owner says a building is unsatisfactory or not built within the time contracted for.

An international dispute could involve a joint venture company where the parties agree on what each will contribute. This

could result in one party claiming that the contribution of the other has been unsatisfactory.

In a domestic dispute there is one arbitrator, but in an international case, each party in the dispute nominates an arbitrator and then those two decide on a third.

Normally, each party chooses someone from their own country, and the third arbitrator would be from a third country.

If they can't agree on the third member of the panel, the arbitration centre will appoint one.

This choice of a panel member is seen as another advantage over court proceedings.

"For a US company to sue in China, or vice versa, may not be satisfactory to the plaintiff. But to have a dispute resolved by arbitration where there is one American, one Chinese and one other, all of whom are experts in the area involved, is a more acceptable way of solving a dispute than going to court," said Mr Bob Greig, a lawyer specialising in arbitration.

Arbitrators often are specialists — lawyers, engineers, architects or shipping experts, who make arbitrating their profession.

The arbitration centre could also be used for settling political disputes between two governments, although it is not expected to happen often.

Hongkong is determined to make a success of the centre and stay at the forefront of international arbitration.

So, when draft model laws governing arbitration were published by a United Nations sub-committee in June suggesting there could be one system adopted by member countries, a Law Reform Commission sub-committee was set up to consider the idea.

The United Nations Commission on International Trade Law did this because different countries have different approaches.

If member countries adopt them it will mean more uniformity between the different systems.

The sub-committee will be deciding whether we should adopt them, either wholesale or in part.

The first step is to distinguish the differences between our existing law and the model law — it is understood they are mostly technical.

Secretary to the sub-committee, senior Crown counsel Mr George Rosenburg, said the Law Reform Commission had developed some expertise in this area because it was the first subject the commission ever reported on and many of the same people are on the new sub-committee.

"This committee has been established very quickly after the United Nations committee's report to consider whether we should adopt it so if it does become widely accepted, Hongkong will be in the vanguard.

"One problem at the moment is that arbitration lawyers from one country may be reluctant to go to arbitration in another country because they may not be sure of procedures.

"For instance there are wider rights of appeal under English and Hongkong laws than in Europe," said Mr Rosenburg.

The sub-committee is chaired by Mr F.K. Hu and members include the secretary-general of the arbitration centre, and president of the Law Society, Mr Brian Tisdall, Mr Neil Kaplan, QC, Mr Bob Greig and Mr Charles Stevens.