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Part 3 – Standard Clauses "Boilerplate" agreement: Hong Kong

by John McLellan, Weiken Yau, Tiffany Pong and Angel Chan, Haldanes

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Hong Kong - specific information concerning the key legal and commercial issues to be considered when drafting standard "boilerplate clauses" for cross-border agreements.

This Q&A provides country-specific commentary on Checklist, Boilerplate clauses: Cross-border.

See also Part 1 – Standard Clauses "Boilerplate" agreement: Hong Kong and Part 2 – Standard Clauses "Boilerplate" agreement: Hong Kong for more country-specific commentary.

Force majeure

1. Does force majeure have an established meaning in your jurisdiction? If so, what is it? Is it acceptable to define force majeure as being any circumstances beyond a party's reasonable control? (See Standard clause, Force majeure: Cross-border: clause 1.1.)

Yes, force majeure has an established meaning in Hong Kong. It normally refers to a specified event or events beyond the parties' control, upon which one or both parties would be entitled to:

- Cancel the agreement.
- Be excused from performance of the agreement, in whole or in part.
- Suspend performance of the agreement.
- Claim an extension of time for performance of the agreement.

It is acceptable to define force majeure as being any circumstances beyond a party's reasonable control. Following this "catch-all" phrase, it is common to give examples of the events of force majeure in the agreement as in Standard clause, Force majeure: Cross-border: clause 1.1.

In the context of the 2019 novel coronavirus disease (COVID-19) outbreak, terms like "epidemic", "pandemic" or "acts of god" referred to in a force majeure clause would appear to be broad enough to cover the COVID-19 pandemic. The restrictions and policies imposed by different countries would also appear to fall within "any law or any action taken by a government or public authority" referred to in a force majeure clause. As such, it would appear that Standard clause, Force majeure: Cross-border: clause 1.1 is sufficient to cover the COVID-19 situation. That said, whilst the pandemic and the measures imposed by the government might be beyond "a party's reasonable control" (hence a force majeure event), under the long form of Standard clause, Force majeure: Cross-border: clause 1.1, the party affected by the force majeure event shall use all "reasonable" endeavours to mitigate the effect of the force majeure event on the performance of its obligations.

2. In your jurisdiction, can the agreement between the parties provide that the force majeure event will (a) release and/or (b) suspend a party from its obligations?

Yes, the agreement can provide for both of these consequences.

3. Is it a legal requirement to notify the other party of any non-performance due to a force majeure or similar event in your jurisdiction? If so, is written notice required and are there any other formal requirements or time limits within which notification must take place?

No, there is no legal requirement to notify the other party of any non-performance due to force majeure. However, parties often include such notification requirements in the force majeure clause. The wording of Standard clause, Force majeure: Cross-border: clause 1.4(a) is acceptable.

4. In your jurisdiction, is a duty to seek to mitigate loss implied onto parties seeking to rely on a force majeure clause?

No, the duty to mitigate would not be automatically implied onto the parties seeking to rely on a force majeure clause. Whether the parties have a duty to mitigate their loss in the circumstances of a force majeure event depends on the construction of the force majeure clause. The parties should expressly provide for the duty to mitigate loss if this is their intention. They can limit this duty by reasonableness as set out in Standard clause, Force majeure: Cross-border: clause 1.4(b).

Assignment and other dealings

5. Does the law in your jurisdiction recognise the concept of a personal contract (that is, a contract where the identity of the counterparty is a critical element in addition to simply meeting its contractual obligations)? Can a personal contract be assigned?

Yes, the concept of a personal contract is recognised in Hong Kong.

The benefit of a personal contract is only assignable in cases where the party who is owed the obligation to perform contractual duties would not be affected by a change of counterparty. This is determined on an objective basis, the nature of the contract and of the subject matter of the rights assigned are among the matters that will be taken into account.

6. In your jurisdiction can a party assign its obligations under a contract (also referred to as the burden) or only its rights (the benefit)?

Although contracts often refer to "assigning a contract" or "assigning obligations", from a legal perspective, the burden of a contract could never be assigned without the consent of the other party. In this case, that consent necessarily results in a novation.

7. In your jurisdiction, does the law restrict assignments in consumer contracts and contracts relating to land? Are there any other types of contracts where assignment is restricted?

The law does not prohibit assignments in consumer contracts and contracts relating to land. However, the assignment provisions in consumer contracts would be subject to the scrutiny of the Unconscionable Contracts Ordinance (Cap. 458).

Assignments of certain contracts are restricted by legislation. For instance, a registered contract of apprenticeship cannot be assigned from one employer to another employer except with the approval of the Director of Apprenticeship (*section 24, Apprenticeship Ordinance (Cap. 47)*).

Assignments in personal contracts are restricted (see Question 5).

8. In your jurisdiction, will clearly drafted express non-assignment provisions be effective? Can they be circumvented?

Yes. If an agreement expressly provides that the rights under the agreement will not be assigned, a purported assignment will be invalid as against the original parties to the agreement but may still be effective between the assignor and assignee.

If an agreement only contains straightforward non-assignment provisions such as those in Standard clause, Assignment and other dealings: Cross-border, the prohibition would generally be limited to the assignment or transfer of the contract itself, and could be circumvented by transferring ownership or control of the contracting party.

In order to close the loophole, some contracts would expand the non-assignment provisions by adding a prohibition against change of control, such as: "any change in control of party X resulting from a merger, consolidation, stock transfer or asset sale shall be deemed to be an assignment or transfer for the purpose of this agreement that requires party Y's prior written consent".

9. Does national law provide that assignment needs consent from another party in order to be effective? If so, which other party (ies)?

Yes, in some instances. For example, a registered contract of apprenticeship cannot be assigned from one employer to another employer except with the approval of the Director of Apprenticeship (see Question 7) and a co-owner of a registered trade mark may not assign its share in the registered trade mark without the consent of each other co-owner (*section 28, Trade Marks Ordinance (Cap. 559)*).

Confidentiality

10. Does the Standard clause, Confidentiality: Cross-border provide the disclosing party with adequate protection in your jurisdiction?

Standard clause, Confidentiality: Cross-border may provide the disclosing party with basic protection for straightforward agreements. However, with respect to more complicated agreements, parties should also consider the following matters:

- Parties may want to define the meaning of "confidential information" in more detail and provide for exceptions where the confidentiality clause would not apply. For instance, "confidential information" may be expressly defined to include know-how, software, designs, business connections and so on, whether or not labelled as "confidential" and whether contained or recorded in written, pictorial or data form, and may even include the existence of the agreement. The definition may also exclude information that is in the possession of the receiving party before the disclosure by the disclosing party and information that is publicly available through no fault of the receiving party or its agents or employees.
- The clause may provide for disclosure that is permissible for particular purposes and to certain classes of people, such as the parties' officers, employees, agents and contractors. It may also provide that a party should give notice to the other party before such disclosure.
- The clause may also provide that each party undertakes to procure that its officers, employees, agents and contractors are made aware of and agree in writing to observe the confidentiality obligations of the agreement.
- The clause may stipulate that, on termination of the agreement, each party will return or destroy all copies of confidential information of the other party, and may even require the parties to certify the disposal of the confidential information.
- Parties should consider if it is necessary to include an obligation for one party to inform the other party if it becomes aware that any confidential information might be possessed by any third party.

11. In your jurisdiction, is there a standardised or statutory definition of "confidential" in the context of confidential information?

No. There is no standardised or statutory definition of "confidential". Parties are free to define the term.

The courts would likely give effect to an express definition of "confidential" in an agreement and the usual principles of construction would apply. This means that the relevant clauses would be interpreted objectively against the available factual background and, if there is any ambiguity, principles such as the *contra proferentem* rule may apply (that is, interpreting the meaning of the provision against the interests of the drafting party).

Announcements

12. Is it common practice to include Standard clause, Announcements: Cross-border in contracts in your jurisdiction?

It depends. Whilst the wording of confidentiality clauses is usually wide enough to cover public announcements, when it comes to contracts concerning sensitive matters, especially contracts within the media and entertainment industry, it is not uncommon to include Standard clause, Announcements: Cross-border as a stand-alone clause in contracts in Hong Kong.

Entire agreement

13. Is it common practice to include a clause such as Standard clause, Entire agreement: Cross-border in contracts in your jurisdiction to prevent parties to an agreement raising claims that pre-contractual negotiations constitute additional terms of the agreement?

Yes. The wording of Standard clause, Entire agreement: Cross-border is common and acceptable, except that clauses excluding or limiting liability for misrepresentation (such as Standard clause, Entire agreement: Cross-border: clause 1.2) would be subject to the reasonableness test (*section 4, Misrepresentation Ordinance (Cap. 284)*) (see Question 17).

14. Is the concept of misrepresentation recognised in your jurisdiction (Standard clause, Entire agreement: Cross-border: clause 1.2)? Is reliance a required element for a misrepresentation claim? Are there any other requirements?

Yes. The concept of misrepresentation is recognised in Hong Kong. Reliance, which is more commonly referred to as inducement in a misrepresentation claim, is a required element of such a claim.

In general, the two elements of a misrepresentation claim are the false statement of fact and the inducement to contract.

The enforceability of Standard clause, Entire agreement: Cross-border: clause 1.2, which purports to exclude liability for misrepresentation, is subject to the reasonableness test (*section 4, Misrepresentation Ordinance (Cap. 284)*) (see Question 17).

15. Is a non-reliance statement recognised and usually included in an entire agreement clause in your jurisdiction?

Yes. A non-reliance statement is recognised and is often included in an entire agreement clause in Hong Kong.

Having said that, it is worth noting that in mis-selling claims, the Court of Appeal had held that the non-reliance clauses contained in a bank's account opening documents were in breach of the Unconscionable Contracts Ordinance (Cap. 458) and the Control of Exemption Clauses Ordinance (Cap.71) (Chang Pui Yin v Bank of Singapore Ltd *[2017] 4 HKLRD 458*). In this case, the customers were an elderly couple lacking in investment knowledge. They placed their full trust, confidence and reliance on the relationship manager of the defendant bank, who deliberately changed the couple's risk profiles to high risk, knowing that the couple's investment object was that of medium risk investors. As a result, substantial losses were incurred in the couple's accounts and the defendant bank sought to rely on the non-reliance clauses contained in the account opening documents. The Court of Appeal recognised each determination is fact sensitive and the courts shall consider all the relevant facts and circumstances in determining whether a non-reliance clause is unconscionable and unreasonable. Therefore, this case would seem to be an outlier and does not impact on the validity and enforceability of non-reliance statements in Hong Kong.

16. Are remedies specifically available for innocent and negligent misrepresentation under your laws?

Yes. Rescission is available in equity for innocent and negligent misrepresentation. However, for misrepresentation other than fraudulent misrepresentation, the court may award damages in lieu of rescission, if it is of the opinion that it would be equitable to do so, having regard to:

- The nature of the misrepresentation.
- The loss that would be caused by the misrepresentation if the contract were upheld.
- The loss that rescission would cause to the other party.

(*Section 3(2), Misrepresentation Ordinance (Cap. 284).*)

In theory, the representee could also sue for negligence after a negligent misrepresentation. However, it is more advantageous, in terms of the burden of proof and the measure of damages, for the representee to claim damages under section 3(1) of the Misrepresentation Ordinance. This is because the representor is liable for damages even if the misrepresentation was not made fraudulently, unless it can prove that it genuinely believed, and had reasonable grounds to believe, that the statement was true up to the time the contract was made (*section 3(1), Misrepresentation Ordinance*).

17. Is the concept of fraudulent misstatement or fraudulent misrepresentation recognised in your jurisdiction? Can adding an exclusion for claims of fraudulent misstatement cause the entire Standard clause, Entire agreement: Cross-border to be invalid?

Yes. The concept of fraudulent misrepresentation is recognised in Hong Kong.

Clauses excluding or limiting liability for misrepresentation are of no effect unless they are fair and reasonable having regard to the circumstances, which were, or ought reasonably to have been, known or in the contemplation of the parties when the contract was made (*section 4, Misrepresentation Ordinance*). It is unlikely that an exclusion for claims of fraudulent misrepresentation would be considered reasonable. Whether such an exclusion would cause the entire Standard clause, Entire agreement: Cross-border to be invalid would depend on whether it could be severed from the agreement.

No partnership or agency

18. In your jurisdiction, is the risk of an unwanted partnership or agency relationship recognised when parties enter into a commercial agreement? If so, is this Standard clause, No partnership or agency: Cross-border an effective and acceptable way to address that risk and exclude any implied authority for one party to an agreement to bind the other?

The risk of an unwanted partnership or agency relationship is recognised when parties enter into a

commercial agreement. Standard clause, No partnership or agency: Cross-border is an effective and acceptable way to address that risk and exclude any implied authority for one party to an agreement to bind the other.

19. Does your jurisdiction recognise fiduciary duties being owed in partnership and agency relationships?

In a partnership relationship, the parties owe each other fiduciary duties. Partners must act honestly and for the benefit of the partnership as a whole. Each partner is regarded as a trustee and the other partners are regarded as beneficiaries under a trust. The fiduciary duties include:

- To act in good faith when dealing with other partners.
- To make full disclosure of relevant facts when dealing with other partners.
- Not to make secret profits and duty to account for personal profits.
- Not to compete with the partnership firm.
- Not to take business opportunities that arise during the course of the partnership even after a partner leaves the partnership.

An agent owes a number of fiduciary duties to the principal, including (but not limited to):

- To avoid any conflict between their interests and those of the principal's.
- Not to take bribes or secret commissions.
- To account.

Such duties can be modified by contract between the agent and the principal.

20. In your jurisdiction, can authority to bind the other party(ies) in a joint venture be implied?

Joint ventures are not recognised as legal entities but are simply commercial arrangements created by contract. Although there has been no case law before a Hong Kong court on the issue, it is unlikely that authority to bind other party(ies) in a joint venture can be implied.

21. Is it common for companies incorporated in your jurisdiction to elect to be treated as partnerships for tax purposes?

In Hong Kong, profit derived from carrying on a trade, profession or business in Hong Kong is subject to profits tax, that is, corporate tax. There is no capital gains tax, withholding tax on dividends or interest and no sales tax or VAT. Generally, partnerships are taxed at the rate of 15% on their assessable profits. In comparison, limited liability companies are taxed at the rate of 16.5% on their assessable profits. Starting from the financial year 2018/19, the tax for the first HKD2 million of assessable profits earned by partnerships or companies will be taxed at half of their respective original rates (the original rates will apply to assessable profits exceeding HKD2 million).

Despite the difference in tax rates, when choosing between a limited liability company and a partnership, various other factors will be considered and the difference in tax rate is usually not decisive.

Third-party rights

22. In your jurisdiction, can a third party acquire any rights in a contract? How can a third party acquire such rights?

The doctrine of privity of contract applies in Hong Kong. Under this common law doctrine, a person cannot acquire or enforce rights under a contract to which they are not a party, that is, only parties to a contract can enforce rights under the contract. However, if the contract in question is entered into on or after the commencement of the Contracts (Rights of Third Parties) Ordinance (Cap. 623) on 1 January 2016, a third party may have the right to enforce the contractual terms, subject to the following requirements:

- The third party must be expressly identified in the contract either by name, as a member of a class, or as answering a particular description.
- Either the contract expressly provides that the third party may enforce a term of contract, or the contract contains a term that purports to confer a benefit on the third party, unless on a proper construction of the contract the term is not intended to be enforceable by the third party.
- The contract must not be of one of the following types:
  - a bill of exchange, promissory note or any other negotiable instrument;
  - deed of mutual covenant;
  - covenant relating to land;
  - contract for the carriage of goods by sea or by air under the Bills of Lading and Analogous Shipping Documents Ordinance (Cap. 440) and the Carriage by Air Ordinance (Cap. 500);

- letter of credit;
- the company's articles, having effect as a contract under seal under section 86 of the Companies Ordinance (Cap. 622); or
- a contract of employment where the relevant term is to be used against an employee.

The parties can expressly provide for the right of a third party in their contract, but they do not have to do so. A third party has the right to enforce the contract as long as all the requirements set out above are satisfied.

However, the parties can expressly exclude or restrict the right of any third party (*section 4(4), Contracts (Rights of Third Parties) Ordinance (Cap. 623)*).

23. In your jurisdiction, can a person who is not a party to a contract have a right to enforce the terms of that contract? If so, can this only be done in accordance with the other contract terms?

See Question 22.

24. In your jurisdiction, can the rights of the third party be automatically:

- Subject to an arbitration clause?
- Subject to defences that the contracting parties might have used against each other, or against the third party if it had been a party to the contract?

The right of a third party to enforce a term of a contract is not automatically subject to an arbitration clause. A third party can only submit disputes to arbitration if all of the following conditions are satisfied:

- The contract term is enforceable by the third party.
- The term provides that the dispute between the third party and the promisor is to be submitted to arbitration.
- The term constitutes an arbitration agreement.

(*Section 12, Contracts (Rights of Third Parties) Ordinance (Cap. 623).*)

The right of a third party to enforce a term of a contract is subject to the defences that the contracting parties might have used against each other or against the third party if it had been a party to the contract (*section 8, Contracts (Rights of Third Parties) Ordinance (Cap. 623)*). However, the contracting parties can expressly provide in the contract that certain defences, set-off or counterclaims are not available to the promisor in an action brought by a third party.

25. In your jurisdiction, if a contract creates an enforceable third party right, is that third party's consent required to vary or amend the contract so as to affect any third party right? Can such consent be expressly excluded in the contract terms?

Except with the third party's consent, parties to a contract cannot by agreement vary it so that the third party's right under a term is altered or extinguished if:

- The contract is enforceable by a third party.
- The third party has assented to the term and the promisor has received notice of the assent, or the third party has relied on the term and the promisor is aware of the reliance or can reasonably be expected to have foreseen that the third party would rely on the term.

(*Sections 6(1) and 6(2), Contracts (Rights of Third Parties) Ordinance (Cap. 623).*)

However, contracting parties can override the above by way of an express term in the contract, provided the third party is aware of that express term or reasonable steps have been taken by one or more parties to the contract to make the third party aware of the express term (*sections 6(3) and 6(4), Contracts (Rights of Third Parties) Ordinance (Cap. 623).*).

26. Under legislation in your jurisdiction, can contract terms impose obligations on a third party?

The general rule is that a third party cannot be subject to a burden deriving from a contract to which they are not a party. However:

- A third party has an obligation not to interfere with other parties' contracts. It is a tort to interfere (intentionally or recklessly) with a contract between two parties, either by persuading a party to breach its contract or by preventing a party from performing its contract.
- A third party to a contract of the sale of land has an obligation to act consistently with the restrictive covenants on the land. As a result, a third party that acquires land affected by a contract (or deed) between two other parties is bound by the terms of that contract to the extent that they affect the land.
- A third party bailor may be bound by the clauses in a contract between a bailee and sub-bailee if the terms of the sub-bailment are consented to by the bailor.

Multi-tiered dispute resolution

27. Does the law in your jurisdiction recognise an agreement to negotiate or an agreement to settle disputes amicably (Standard clause, Multi-tiered dispute resolution: Cross-border: clause 1.1)?

Yes, Hong Kong law recognises an agreement to negotiate or an agreement to settle disputes amicably.

28. In your jurisdiction, must the obligation to mediate be expressed as a condition precedent to litigation or arbitration to be enforceable (as set out in Standard clause, Multi-tiered dispute resolution: Cross-border: clause 1.4)?

No, it is not necessary to express the obligation to mediate as a condition precedent to litigation or arbitration to be enforceable.

Mediation

29. Is CEDR a recognised mediation body in your jurisdiction as referred to in Standard clause, Mediation: Cross-border: clause 1.1? Please specify any other national or international mediation organisations in your jurisdiction.

CEDR Asia Pacific is based in Hong Kong and serves as a recognised mediation body. Other national and international mediation organisations include, but are not limited to:

- Hong Kong International Arbitration Centre.
- Hong Kong Institute of Mediation.
- Hong Kong Mediation Centre.
- Hong Kong Mediation Council.
- Hong Kong Mediation Accreditation Association Limited.
- Joint Mediation Helpline Office.
- Hong Kong Efficient Legal Professional Mediation Centre.
- CCPIT-HKMC Joint Mediation Centre.
- Building Management Mediation Co-ordinator's Office.
- Family Mediation Co-ordinator's Office.
- Hong Kong Family Welfare Society.

Arbitration

30. In your jurisdiction, does an arbitration have to be conducted within a legal framework? If so, please outline what this is.

Legal framework

Arbitration conducted in Hong Kong (whether or not the arbitration agreement is entered into in Hong Kong) is governed by the following legislation:

- Arbitration Ordinance (Cap. 609).
- Arbitration (Parties To New York Convention) Order (Cap. 609A).
- Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules (Cap. 609C).
- UNCITRAL Model Law on International Commercial Arbitration promulgated by the United Nations Commission on International Trade Law and adopted in Hong Kong.

The Arbitration Ordinance (Cap. 609) unifies the legislative regimes for domestic and international arbitrations on the basis of the UNCITRAL Model Law.

When conducting arbitration, an arbitration tribunal applies the governing law of the contract to determine the substantive issues in a contract claim. If the contract is silent as to governing law, the arbitration tribunal must determine what law governs that contract.

Powers conferred on arbitrators

Arbitrations are conducted in accordance with the terms of the parties' arbitration agreements. As arbitration is a consensual process, an arbitrator has no power to determine a dispute unless the parties involved have agreed to this and the requirements of the arbitration agreement have been complied with.

An arbitration tribunal has the power to grant any remedy that may be granted by the Hong Kong courts, except to make any order that is binding on those who are not parties to the arbitration (*sections 70 and 73, Arbitration Ordinance*). Where a sum of money is involved, the arbitral tribunal also has power to award simple or compound interest on the principal sum at the rate it considers appropriate up to the date of the award (*section 79, Arbitration Ordinance*). In addition, the arbitral tribunal has power to decide which party is liable to pay the costs of the arbitration and on what basis (*section 74, Arbitration Ordinance*).

Arbitration awards made by the panel of arbitrators are final and binding on the parties involved; the parties can only challenge such awards in very exceptional circumstances (for example, lack of jurisdiction, improper constitution of the tribunal or arbitral procedure not in accordance with the agreement of the parties) (*sections 25 and 73, Arbitration Ordinance*). An arbitration award has a status similar to a court judgment and is enforceable in a similar manner with the leave of the court (*section 84, Arbitration Ordinance*).

Arbitration awards made in Hong Kong (a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958) are enforceable through the courts of the members to the convention, which include most of the world's trading nations.

Duties conferred on arbitrators

Arbitrators have a duty to facilitate the fair and speedy resolution of disputes without unnecessary delay and expense to the parties.

Arbitrators must also treat the parties equally, and be independent and impartial (*section 46, Arbitration Ordinance*). They must disclose to the parties any circumstances likely to give rise to justifiable doubts as to their impartiality or independence without delay.

31. Which arbitration centres are most commonly used for domestic disputes in your jurisdiction? Can this arbitration body deal with international disputes?

The most commonly used arbitration centres in Hong Kong include:

- The Hong Kong International Arbitration Centre, which is a home-grown arbitration body of Hong Kong.
- The International Court of Arbitration of the International Chamber of Commerce, which is based in Paris but has a Secretariat in Hong Kong.
- The China International Economic and Trade Arbitration Commission, which is based in mainland China but has an office in Hong Kong called the CIETAC Hong Kong Arbitration Centre.
- The Permanent Court of Arbitration (PCA), which was established by the Convention for the Pacific Settlement of International Disputes.

All of these arbitration centres deal with local as well as international disputes.

32. When dealing with international disputes do the rules of your arbitration body provide for confidentiality by the parties?

Yes. No party can publish, disclose or communicate any information relating to arbitral proceedings and awards (*Arbitration Ordinance; 2013 Administered Arbitration Rules of the Hong Kong International Arbitration Centre; Article 6, Rules of Arbitration of the International Chamber of Commerce; Article 38, Arbitration Rules of the China International Economic and Trade Arbitration Commission*).

The level of confidentiality in PCA proceedings can be prescribed by the rules governing the arbitration or can be subsequently agreed between the parties and the tribunal. These rules usually determine which documents are made public, as well as the timing of such disclosures.

Confidentiality extends to documentary and oral evidence given in the arbitration, as well as to the arbitration award itself.

The Arbitration Ordinance also provides that, as a starting point, court proceedings relating to arbitration are not to be heard in open court. Such proceedings are only heard in open court if any party so applying can satisfy the court that there is good reason for doing this.

33. Do the rules of your arbitration body provide for a sole arbitrator or a panel of arbitrators to be appointed (Standard clause, Arbitration: Cross-border)?

The parties can choose the number of arbitrators in their agreement. Generally, they can choose to appoint either a sole arbitrator or a panel of three arbitrators, except for arbitrations before the PCA, where the parties can choose an arbitral tribunal of one, three or five arbitrators.

If the parties fail to agree on the number of arbitrators, a sole arbitrator will be appointed (*Schedule 2, section 1, Arbitration Ordinance*).