

HERBERT SMITH FREEHILLS DUO APPOINTED TO HONG KONG COMMITTEE TO OVERSEE INTRODUCTION OF "SUCCESS FEES" FOR ARBITRATION

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News

Hong Kong partner [Kathryn Sanger](#) and professional support consultant [Briana Young](#) will see their work to introduce "success fees" for arbitration in the city through to completion with appointment to a new government oversight committee.

Originally appointed to co-chair a sub-committee of Hong Kong's Law Reform Commission in 2019, the pair guided consultation and recommendations that led to legislation about to come into force in the city.

Amendments to Hong Kong's Arbitration Ordinance enabling the new structures were [gazetted on 30 June](#), passing legislative review quickly and without substantive amendment.

The new three-year appointment is to an [advisory body](#) set up by Hong Kong's Department of Justice to monitor the operations of the new structures, known as outcome related fee structures for arbitration, or ORFS.

"Under these new arrangements, lawyers and clients can structure their arbitration fee arrangements so that lawyers share in the success of their clients – and the risk," explained Kathryn. "The new ORFS regime responds to increasing client demand, and should attract more clients to arbitrate in Hong Kong. It also puts Hong Kong back on the same playing field as its major competitors – London, New York, Mainland China and, as of early 2022, Singapore already allow similar fee arrangements."

Compared to other top arbitration seats, Hong Kong's new ORFS regime will be broader, permitting a full range of ORFS structures including conditional fee agreements, damages based agreements and hybrid damages-based agreements.

Briana noted that the regime will allow clients to keep legal fees off their balance sheets and deploy those funds elsewhere. It also means that clients with a strong case but insufficient funds to pay a lawyer's standard rates will now have greater access to justice.

"Outcome-related fees allow clients to pay lower fees - or even no fees during the arbitration," she said. "If the client succeeds, it will pay higher fees or a percentage of the damages awarded to the lawyer but there is no extra to pay if the client does not win."

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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