

REGULATIONS FOR THE POSTGRADUATE DIPLOMA IN INTERNATIONAL ARBITRATION AND DISPUTE SETTLEMENT (PDipArb)

(See also General Regulations)

Admission requirements

LL75 To be eligible for admission to the courses leading to the Postgraduate Diploma in International Arbitration and Dispute Settlement, a candidate shall

- (a) comply with the General Regulations; and
- (b)
 - (i) hold the degree of Bachelor of Laws with honours from this University; or
 - (ii) hold a degree in law from another university or comparable institution accepted for this purpose; or
 - (iii) have been admitted to the professional practice of law in Hong Kong or in a territory or country other than Hong Kong; or
 - (iv) have obtained either the Common Professional Examination of England and Wales or the Common Professional Examination Certificate of this University provided that in either case the candidate has also obtained a second class honours degree of this University or from another university or comparable institution accepted for this purpose; or
 - (v) hold another degree in a discipline other than law or qualification of comparable standard from this University or from another university or comparable institution accepted for this purpose.

A candidate for admission under Regulation (b)(ii), (b)(iii), (b)(iv) or (b)(v) above shall produce evidence of sufficient academic attainment and shall satisfy the examiners in a qualifying examination if such an examination is required. A candidate who fails to meet the requirements of (b)(iv) above by reason only of the fact that his or her degree is not of at least second class honours standard may, nevertheless, be admitted provided that the Faculty Higher Degrees Committee is satisfied that by reason of his or her background, experience and professional qualifications, if any, the candidate is fit to follow the courses.

Qualifying examination

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- (a) A qualifying examination may be set to test the candidate's formal academic ability or his ability to follow the course of study prescribed. It shall consist of one or more written papers or their equivalent.
 - (b) A candidate who is required to satisfy the examiners in a qualifying examination shall not be permitted to register until he has satisfied the examiners in the examination.
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Award of the postgraduate diploma

LL77 To be eligible for the award of the Postgraduate Diploma in International Arbitration and Dispute Settlement, a candidate shall

- (a) comply with the General Regulations; and
- (b) complete the curriculum and satisfy the examiners in accordance with the regulations set out below.

Curriculum

LL78 The curriculum shall comprise approximately 150 hours of prescribed work normally extending over one academic year of part-time study. To complete the curriculum a candidate shall

- (a) follow the equivalent of four credit units of courses of instruction (including the compulsory course) or follow the equivalent of three credit units of courses of instruction (including the compulsory course) and present a satisfactory one-unit dissertation on an approved topic;
- (b) satisfactorily complete all prescribed written and other work;
- (c) satisfy the examiners in each course of instruction by either assessed written work carried out during the course or a written examination at the end of the teaching programme or both; and
- (d) satisfy the examiners in an oral examination if such an examination is required.

LL79 A 2-unit course is one which is taught over a period of two semesters and a 1-unit course is one which is taught over a period of one semester. A 1-unit intensive course is one which is taught over a period of approximately one month.

Dissertation

LL80 (a) A candidate who elects to submit a dissertation under Regulation LL[] shall submit the title six weeks after the commencement of the first semester for approval and present the dissertation not later than August 31 following the written examinations.

LL81 (b) In exceptional circumstances a candidate may apply to the Faculty Board for an extension of the period within which the dissertation must be presented.

LL82 (c) The candidate shall submit a statement that the dissertation represents his or her own work undertaken after registration as a candidate for the degree.

LL83 (d) The examiners may require an oral examination on the subject of the dissertation.

Failure to satisfy the examiners

LL84 A candidate who has failed to satisfy the examiners in up to half of the courses of instruction may be permitted

- (a) to attend a supplementary examination; or
- (b) to repeat the course or courses of failure in the following academic year and to re-take the prescribed examination or examinations; or
- (c) to re-take the prescribed examination or examinations in the following academic year without repeating the course or courses of failure; or
- (d) to undertake the study of an alternative course or courses in the following academic year and to take the prescribed examination or examinations.

LL85 A candidate who has failed to present a satisfactory dissertation may be permitted, subject to his performance in other examinations, to revise the dissertation for resubmission within a specified period as determined by the Board of Examiners.

LL86 A candidate who is not permitted to present himself for re-examination in any papers in which he or she has failed to satisfy the examiners or to revise and resubmit the dissertation shall be recommended for discontinuation of studies under General Regulation G12.

Absence from an examination

LL87 A candidate who is unable through illness or other acceptable reasons to attend for examination may apply for permission to attend for examination at some other time, subject to the approval of the Board of Examiners.

Examination results

LL88 At the conclusion of the examination a pass list shall be published. A candidate who has shown exceptional merit at the whole examination may be awarded a mark of distinction and this mark shall be recorded in the candidate's postgraduate diploma.

SYLLABUS FOR THE POSTGRADUATE DIPLOMA

OBJECTIVES

The Postgraduate Diploma in International Arbitration and Dispute Settlement is offered by the Faculty of Law to correspond to the pronounced aim and direction of the Hong Kong Special Administrative Region Government in developing Hong Kong as a regional and international centre for arbitration and dispute settlement.

LENGTH OF CURRICULUM

The Postgraduate Diploma normally extends over one academic year of part-time study.

COURSE OF STUDY

Each candidate is required to follow instruction through the medium of lecture courses, seminars and small group tuition, wherever appropriate.

STRUCTURE

A candidate shall follow the equivalent of 4 credit units of courses, selected from the list of courses provided in this syllabus. A dissertation is regarded as equivalent to a 1-unit course. The selection of courses by each candidate shall be subject to approval by the Head of the Department of Law. In any one academic year not all courses listed in the syllabus will be available.

Candidates may be permitted to choose not more than one credit unit from any of the courses available under the LL.M. programme. Candidates may also apply to substitute for a listed course a course offered by another Department in the University. Such application shall be approved by the Head of Department who has to be satisfied that the course from the other Department is of equivalent standard to that of those listed in this syllabus and/or the LL.M. syllabus. Permission shall not be granted to substitute any other course for the compulsory course in the programme.

DISSERTATION

This shall comprise a paper not exceeding 10,000 words (exclusive of tables of cases and statutes, notes, appendices and bibliographies) on a topic approved by the Faculty Higher Degrees Committee. The dissertation must provide evidence of original work or a capacity for critical analysis. For the purpose of LL[] the dissertation will be regarded as equivalent to a minimum of 37 hours of prescribed work.

COURSEWORK

The Board of Examiners shall decide what proportion of the final assessment for each course shall be determined by written work carried out during the course. Each candidate will be informed at the beginning of the course of the relative proportions of the final assessment to be derived from coursework and from written examinations which will be held at the end of the teaching programme.

COURSES

Compulsory one-unit course

. Hong Kong Arbitration Law (LLAW6138)

One-unit courses

- . Arbitration law workshop (LLAW6023)
- . Alternative dispute resolution (LLAW6135)
- . Dispute resolution in the People's Republic of China (LLAW6029)
- . Dispute settlement in the WTO : Practice and Procedure (LLAW6136)
- . International commercial arbitration (LLAW6099)
- . Current issues in international arbitration and dispute settlement (LLAW6137)

*In any one academic year only some of the courses listed will be available.

COURSE DESCRIPTIONS

LLAW6023 Arbitration law workshop

The arbitration law workshop is intended to introduce students to the practice of arbitration. The workshop adopts a different approach than traditional arbitration courses which tend to focus in the abstract upon institutional rules. The workshop emphasizes a problem solving approach to learning about arbitration instead. The change is accomplished by running the workshop around a single model case study. The case study is entitled the *Sanctuary House Case*. It has been developed by Mark Cato, an experienced arbitrator and author. The case study unfolds in story form from the introduction of individuals through interlocutories to hearing and award to illustrate all the principal elements of arbitration law, practice and procedure in both a readable and entertaining way. In this manner the workshop highlights arbitration problems and teaches about practical solutions. The workshop's objective is thus to close the gap between the theory of arbitration and knowledge of the rules with actual management of an arbitration case in practice.

LLAW6029 Dispute resolution in the People's Republic of China

This course examines the major features of commercial dispute resolution in the People's Republic of China. Chinese approaches to disputes and dispute settlement, including cultural and political influences, will be considered at the outset. The four principal Chinese institutions for commercial dispute resolution - amicable negotiations, conciliation, arbitration and litigation - will be the focus of the course, with an emphasis on commercial arbitration. Administrative channels for resolving disputes will also be discussed.

Both PRC foreign-related and domestic commercial arbitration will be treated at length. Arbitration before the China International Economic and Trade Arbitration Commission (CIETAC) will be a prominent feature of this part of the course, including an examination of the jurisdiction, procedures and practices of CIETAC. The emergence of reorganized domestic arbitration commissions will be discussed, including arbitral procedures and practices. Issues of enforcement of both Chinese and foreign arbitral awards in the PRC will also be covered.

Other topics include : institutional conciliation before the Beijing Conciliation Centre and in the People's Courts; joint conciliation; enforceability of conciliation agreements; foreign-related litigation in the People's Courts, including court organization, jurisdiction and venue, service of process, preservation measures, pre-trial and trial procedures, appellate procedures and enforcement of judgements; and bilateral judicial assistance agreements. A reading knowledge of simplified Chinese characters would be desirable.

LLAW6099 International commercial arbitration

In the world's globalizing economy, there has been a dramatic increase in the size and complexity of international commercial transactions. This course will examine the legal problems and other risks (including financial, monetary, political and cultural) associated with the resolution of disputes arising out of such international commercial transactions. The main focus of the course will be on the use of international commercial arbitration to resolve disputes in a globalizing economy. The course will consider the following topics : the sources of international arbitration law (domestic and international), ad hoc and institutional arbitration, model arbitration laws and arbitration rules, arbitration laws of the HKSAR, the PRC and other Asia-Pacific states, and issues relating to the international arbitral process and procedure, such as arbitrability of disputes, arbitration and submission agreements, powers of arbitrators, the applicable law, the form of the arbitration hearing, interim and final remedies, arbitral awards (including challenges and appeal), and the recognition and enforcement of arbitral awards.

LLAW6135 Alternative dispute resolution

This course will examine the traditional methods of dispute resolution such as judicial adjudication, and consider alternative dispute resolution from both a Hong Kong and an Asia perspective.

This course is composed of two main parts:

- (a) an introduction to traditional methods of dispute resolution and a critique of their advantages and disadvantages; and
- (b) an examination of alternative dispute resolution methods, which will cover the following:
 - (i) the origin and development of the alternative dispute resolution movement, and
 - (ii) an in-depth study of the following methods: confidential private listening; negotiation, mediation and conciliation; arbitration; good offices/ombudsman; mini-trials/summary jury trials; private courts and dispute resolution centres.

These methods of alternative dispute resolution will be examined by considering their present and potential application in Hong Kong and other parts of Asia, in such areas as: administrative complaints, commercial and construction disputes (both domestic and international), labour relations, landlord and tenant disputes and matrimonial disputes. Students will also engage in role playing exercises in simulated negotiation, mediation and arbitration with video taped assessment.

LLAW6136 Dispute settlement in the WTO : Practice and Procedure

This course is a specialized seminar on issues that arise in the context of WTO law and its dispute settlement processes. It will unfold along three themes : the foundations of WTO law; the law and policy of dispute settlement in the WTO; and, practice and procedure before WTO dispute settlement and arbitral Panels and Appellate Body (AB). The first theme will review the sources of WTO law, its relationship with, and status within, the legal systems of WTO members. This includes an analysis of the standards of WTO review applicable to national measures applied by its Members within their own domestic legal systems, and the effects of WTO dispute settlement mechanisms on certain fundamental dimensions of national sovereignty.

The second theme will consider the provisions that establish and govern the processes and institutions for the settlement of disputes in the WTO. The principles that govern WTO dispute settlement will be explored, and the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) will be examined in some detail. Equally, particular attention will be given to specialized rules that are applicable to the settlement of disputes arising from the operation of a number of WTO Multilateral Agreements on Trade in Goods (MTAs), the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), and the Plurilateral Trade Agreements.

The third theme will address issues concerning the scope of the jurisdiction of the WTO Panels and AB, practice and procedure related to claims and defenses, stages of pleadings involved before the Panels and AB, evidentiary requirements, adoption and implementation of the decisions (“reports”) of the Panels and AB, as well as available remedies for breach of WTO obligations, and in particular, for failure to implement a Panel or AB decision.

LLAW6137 Current issues in international arbitration and dispute settlement

This course will focus on selected issues of current interest in international arbitration and dispute settlement. The topics offered will vary from year to year. The course is likely to be offered by permanent staff of the Faculty, Visiting Professors and Practitioners.

LLAW6138 Hong Kong arbitration law

This course will provide a comprehensive introduction to the law and practice of arbitration in Hong Kong. The dual systems of law applicable to domestic and international arbitrations conducted in the SAR, the philosophies underlying curial intervention in the arbitral process and arbitration’s relationship with ADR will be considered in detail. The course will also focus on the recognition and enforcement of arbitral awards made overseas and in Mainland China.