

Speech by Secretary for Justice at Asian Logistics and Maritime Conference (English only)

Following is a speech delivered by the Secretary for Justice, Mr Rimsky Yuen, SC, today (November 19) at the International Maritime Arbitration Seminar of the Asian Logistics and Maritime Conference:

Latest trends in maritime arbitration

Distinguished guests, ladies and gentlemen,

It is my great pleasure to welcome you to this International Maritime Arbitration Seminar co-organised by the Department of Justice, the Hong Kong International Arbitration Centre (HKIAC), the China Maritime Arbitration Commission (CMAC) and the Hong Kong Trade Development Council. For those who travelled from overseas jurisdictions and the Mainland, may I extend to you our warmest welcome and wish you an enjoyable stay in Hong Kong.

Hong Kong as an international maritime centre

Hong Kong has a long history of serving as a strategic trading port between the West and the East. Nowadays, Hong Kong has her own shipping register and is a strong base for ship owners who together own and manage about 9 per cent of the deadweight tonnage of the world's merchant fleet which amounted to over 90 million gross tonnage as of October this year.

The Hong Kong Shipping Register ranks the fourth in the world. As an international maritime centre, there is available a cluster of about 700 shipping-related companies operating in Hong Kong, providing a wide range of quality maritime services ranging from ship agencies and management, ship finance, ship broking and marine insurance to maritime law and arbitration services. According to the 2014

Xinhua-Baltic Exchange International Shipping Centre Development Index Report released this June, Hong Kong ranks as the third best shipping hub in the world. This undoubtedly demonstrates the recognition given to Hong Kong's comprehensive maritime services, business environment and port facilities.

With a shift of global economic balance from the West to the East, China has now become the key growth engine in the Asia-Pacific region. The global trade pattern and rapid economic growth in Mainland China have stimulated the demand and growth of the shipping business in the Mainland. The growth of the shipping business also leads to more demand for related legal and dispute resolution services. As an international maritime centre as well as a regional hub for international legal and dispute resolution services in the Asia-Pacific region, I have no doubt that Hong Kong can provide a wide range of legal and dispute resolution services to maritime service providers and users.

Let me highlight a few key features that underpin our steadfast policy of promoting Hong Kong as an international legal and dispute resolution services centre in the Asia-Pacific.

Neutrality and impartiality of Hong Kong's legal system

First of all, people who know Hong Kong would agree that the rule of law is the core value shared and treasured by the Hong Kong community. The concept of the rule of law helps to ensure a level playing field and promotes fair competition for all businesses. International investors can rest assured that their investments and business interests are protected by a well-established legal system with highly effective means of resolving disputes, including independent and impartial courts and a mature and user-friendly arbitration regime.

The rule of law, including the notion of judicial independence, is deeply entrenched in Hong Kong's constitutional regime. Article 85 of our Basic Law provides that the Hong Kong courts "shall exercise judicial power independently, free from any interference". Article 82 of our Basic Law further provides that the power of final adjudication shall be vested in our Court of Final Appeal. It is also important to note that Article 82 puts in place a unique arrangement which permits the invitation of judges from other common law jurisdictions to sit on the Court of Final Appeal.

Since the establishment of the Hong Kong SAR in July 1997, eminent judges and jurists from the United Kingdom, Australia and New Zealand have been invited to sit on our Court of Final Appeal. Final appeals of all types of cases (including cases raising fundamental constitutional issues, proceedings touching on important government policies as well as substantial and complex commercial cases) were and still are being heard by a panel of five judges, which invariably include one such overseas judge. At the moment, we are privileged to have a total of 12 such overseas judges sitting at our Court of Final Appeal from time to time. Familiar names include Sir Anthony Mason, Lord Neuberger, Lord Hoffmann, Lord Millett, Lord Collins, Lord Phillips and Lord Clarke.

I dare say that our Court of Final Appeal is internationally renowned. This is evidenced by, among others, the fact that their judgments have been frequently cited in other common law jurisdictions.

World-class legal and arbitration institutions

One of the keys to Hong Kong's success as an international legal and dispute resolution centre is the fact that we continuously strive to be as international as possible. By so doing, the end users of our legal and dispute resolution services are guaranteed quality choices when they have the

need to engage such services. In this regard, not only does Hong Kong support and facilitate ad hoc arbitration, there is also the presence of reputable local and international arbitration institutions which can offer their services as and when the needs arise.

Our home-grown Hong Kong International Arbitration Centre, which was established in 1985, is internationally recognised for its independence and efficient services. In 2013, the total number of disputes handled by HKIAC rose to 463 with parties from 32 jurisdictions. Of the total arbitration cases, 75 per cent were international. The HKIAC Maritime Arbitration Group, a division of the HKIAC comprising skilled arbitrators with expertise in maritime matters, reported that its members had been appointed on 157 occasions in 2013.

In 2008, the Paris-based International Chamber of Commerce opened its first overseas branch of the Secretariat of its International Court of Arbitration in Hong Kong. In 2012, the China International Economic and Trade Arbitration Commission (CIETAC) set up in Hong Kong its first and thus far the only arbitration centre outside the Mainland. Later today we will witness the inauguration of the China Maritime Arbitration Commission Hong Kong Arbitration Center, which, as in the case of CIETAC, is CMAC's first branch office outside the Mainland.

In addition, the Central People's Government has concluded the negotiation of a host country agreement with the internationally well-known Permanent Court of Arbitration to facilitate the conduct of dispute settlement proceedings in Hong Kong. The presence of these world-class arbitral institutions will certainly help Hong Kong scale new heights as a leading arbitration centre in the Asia-Pacific region.

I should perhaps also add that the Hong Kong SAR

Government has recently announced its decision to allocate part of the office space in the former Central Government Offices, together with the entire building currently occupied by the Court of Final Appeal, for selected law and dispute resolution-related organisations to set up their offices as well as to provide modern hearing facilities. With its accessibility, the area will become the legal hub at the heart of Hong Kong.

First-class legal and dispute resolution professionals

Apart from institutional advantages and a user-friendly legislative regime, we are privileged to have first-class local and overseas legal and dispute resolution professionals.

As of September this year, Hong Kong had over 10,000 practising lawyers (including barristers, solicitors and registered foreign lawyers). Many of them are bilingual in English and Chinese or even multilingual. In addition to 829 local law firms, there are 79 foreign law firms providing specialist advice on the law of their respective jurisdictions as well as 20 Mainland law firms providing advice on PRC law. These registered foreign lawyers come from over 30 jurisdictions, drawing together a wealth of experience and expertise and creating a sophisticated legal sector with cross-fertilisation of experience. Many internationally renowned law firms specialising in maritime law and practice have established their presence in Hong Kong. Needless to say, we also have a diverse pool of international dispute resolution practitioners of different nationalities who are qualified to offer professional services in their respective disciplines, including maritime law.

Network of enforcing arbitral awards

Enforcement network is naturally a key consideration in the choice of arbitration venue. In this regard, Hong Kong is an ideal choice. As the New York Convention is applicable

to Hong Kong, arbitral awards made in Hong Kong are enforceable in 150 Contracting States to the New York Convention. In addition, arbitral awards made in Hong Kong are enforceable in the Mainland and Macau pursuant to reciprocal arrangements made between Hong Kong and these two jurisdictions.

The arbitration legislation in Hong Kong

All these features that I just mentioned are reinforced by a user-friendly legislative framework. Our current Arbitration Ordinance (Cap. 609), which came into effect in June 2011, was based on the latest version (that is the 2006 version) of the UNCITRAL Model Law on International Commercial Arbitration which is well understood by the international arbitration community. Ad hoc arbitration, on top of institutional arbitration, is allowed under our arbitration regime. Arbitral tribunal and the court are empowered to make orders for interim measures of protection to support arbitrations. Indeed, Hong Kong is among the first few jurisdictions in Asia (if not the world) to strengthen the powers of the courts to make such orders, and enforce such orders made by a foreign court or arbitral tribunal, in relation to arbitral proceedings conducted outside Hong Kong.

We have been working closely with the arbitration community to ensure that our legislative regime is in line with the latest developments in the international arbitration scene. In July 2013, new provisions were introduced to the Arbitration Ordinance to facilitate the enforcement of emergency relief granted by emergency arbitrators, in or outside Hong Kong, before an arbitral tribunal is established. We will continue to take active steps to improve our arbitration legislation to ensure that it is clear, user-friendly and up to date.

Mediation

Arbitration aside, mediation has also become an integral part of the dispute resolution regime in Hong Kong. Traditionally, the Chinese and indeed the Asia community are known for their non-confrontational culture. They value harmony and are inclined to resolve disputes by negotiation.

Mediation is a flexible and more client-oriented dispute resolution process. Not only could it facilitate settlement at lower costs, it also helps to preserve precious business and personal relationships. It has been a long-term policy of the Hong Kong SAR Government to further promote mediation culture to the public. In January 2013, our Mediation Ordinance came into operation, which provides a basic legislative framework for the conduct of mediation in Hong Kong, with special emphasis on the protection of confidentiality and at the same time preserving the flexibility of the mediation process.

We fully appreciate that the quality of mediators is one of the important keys to maintaining users' confidence in mediation as a means of dispute settlement. The Hong Kong Mediation Accreditation Association Limited, an industry-led body established in August 2012, carries with it the important mission of establishing an accreditation system for our mediators with a view to ensuring their professionalism. It also handles matters concerning training standards and disciplinary issues.

I have no doubt that our pool of mediators would be in a position to offer their professional services to the maritime community.

Conclusion

Ladies and gentlemen, at the national level, the Central People's Government has indicated continuous support under the National 12th Five-Year Plan for Hong Kong to develop its maritime services and to enhance its status as an

international maritime centre. Coupled with the efforts on the part of the Hong Kong Government to reinforce Hong Kong as a regional centre for international legal and dispute resolution services in the Asia-Pacific region, Hong Kong will continue to capitalise on its geographical and institutional advantages and develop high value-added maritime services, including maritime legal and dispute resolution services, to better serve our users.

On this note, may I wish you all a fruitful conference and wish this seminar every success.

Thank you.

Ends/Wednesday, November 19, 2014