

Speech by Mr Wesley Wong, SC, JP
Solicitor General of the Hong Kong SAR
At the Ceremony for Launch of NSIAC
General Rules for Arbitration & Proceedings Guidelines on
the Three Models for Arbitration Hearing 2017
Cum
Procedural Demonstration – Hong Kong Arbitration Model
Hong Kong General Chamber of Commerce
on 13 October 2017 (Friday)

Good afternoon Mr Li (Feixiao) [Vice Chairman of China Guangzhou Arbitration Commission], Ms Jiang (Lan) [Secretary-General of China Nansha International Arbitration Centre], Ms (Sylvia) Siu [President of Hong Kong Institute of Arbitrators], Mr (Samuel) Wong [Immediate Past President of Hong Kong Institute of Arbitrators], and Mr (Gary) Soo [Co-founder of the Hong Kong Legal Training Institute], Distinguished Guests, Ladies and Gentlemen,

Whilst it is incumbent upon me to extend, on behalf of the Government of the Hong Kong Special Administrative Region (“**Hong Kong SAR**”) the warmest welcome to all of you, it is also with great pleasure that I am able to join you for this eventful day.

2. I must first thank the China Nansha International Arbitration Centre (“**NSIAC**”) and the Hong Kong Institute of Arbitrators (“**HKIArb**”) for organising this Ceremony for the Launch of NSIAC General Rules for Arbitration (“**General Rules**”) and Proceedings Guidelines on the Three Models for Arbitration Hearing (“**Proceedings Guidelines**”) 2017 cum Procedural Demonstration – Hong Kong Arbitration Model. I don’t think I’ll be forgiven if I do not seize this valuable opportunity to address such a distinguished group of arbitrators, legal professionals and users of arbitration services.

3. Please allow me to first register the fact that the Department of Justice (“**DoJ**”) is in full support of this Ceremony and is pleased to participate in this event as one of the Supporting Organisations.

Features of New Versions of General Rules and Proceedings Guidelines

4. While distinguished speakers will discuss in detail the new amendments to be introduced later this afternoon, I would like to highlight some of the innovative features of the General Rules and Proceedings Guidelines in the context of recent developments in arbitration. First, the General Rules and Proceedings Guidelines reflect NSIAC's great respect for party autonomy. Parties may choose UNCITRAL or any of the other identified arbitration rules which are commonly used in Guangzhou, Hong Kong and Macao. This is in addition to the free choice on arbitrator(s), arbitration languages and seat of arbitration parties have been enjoying for some time.

5. The 2017 versions of the General Rules and the Proceedings Guidelines will also incorporate and support the use of *ad hoc* arbitration at the Nansha New Zone of the Guangzhou Pilot Free Trade Zone. This innovative step is taking full advantage of the *Opinion on Providing Judicial Safeguard for the Construction of Pilot Free Trade Zones*¹ (the “**Opinion**”) issued by the Supreme People's Court on 30 December 2016. The Opinion has opened up new options for resolution of disputes arising between enterprises registered in the Pilot Free Trade Zones in the Mainland.

6. Among others, paragraph 1 of Article 9 of last December's Opinion makes it clear that arbitration agreements entered into between two wholly foreign owned enterprises registered within the Pilot Free Trade Zones to submit their commercial disputes to arbitration seated outside Mainland China should not be held invalid merely on the ground that the disputes are not foreign-related. Paragraph 3 of that same article further elaborates on the validity of an arbitration agreement between Pilot-Free-Trade-Zone registered enterprises designating a specific place within Mainland China for the conduct of arbitration by specific arbitrator(s) in accordance with specific arbitration rules.

¹ 《最高人民法院關於為自由貿易試驗區建設提供司法保障的意見》法發〔2016〕34號, accessible at <http://www.court.gov.cn/fabu-xiangqing-34502.html>.

7. The liberalisation of the use of *ad hoc* arbitration in the manner now permitted is of significant impact in conveniencing those who wish to resolve their disputes by way of a method which may best suit them.

8. *Ad hoc* arbitration provides greater flexibility for the parties in that they have the liberty to select and even design the rules and procedures to be applied to the conduct of their case, without necessarily being bound by the rules or procedures of any particular arbitral institution and even after the dispute has arisen. As no administration fees are chargeable by any arbitral institution, *ad hoc* arbitration may also be more cost-effective than institutional arbitration especially with respect to small claims.

9. The way in which the new NSIAC General Rules and Proceedings Guidelines respond to the Opinion sets out to bring the arbitration regime in the Nansha New Zone in closer alignment with the international practices. Hong Kong welcomes this initiative and looks forward to greater co-operation with NSIAC in the use of *ad hoc* arbitration.

10. I also read with interest that the 2017 amendments seek to better cater for cases including those arising from the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Greater Bay Area (the “**Bay Area**”) Development Plan.

11. In this connection, let’s stocktake how Hong Kong’s legal and dispute resolution sectors would benefit from and at the same time contribute to the unfolding of the Belt and Road Initiative and the Bay Area Development Plan.

The Belt and Road Initiative and the Bay Area Development Plan

12. It is easy to see how a powerful motor for China’s economy the Belt and Road Initiative is. Hong Kong’s participation in the Initiative receives the blessing of the Central People’s Government.

13. In March 2016, the Central People’s Government released the “Outline of the 13th Five-Year Plan for the National Economic and Social

Development of the People's Republic of China"² (the "13-5 Plan"). The dedicated chapter on the Hong Kong and Macao SARs³ expressly supports Hong Kong in establishing itself as a centre for international legal and dispute resolution services in the Asia-Pacific region.

14. The extensive international legal support which Chinese enterprises need when they "go global" (走出去) has to be answered. The unfamiliar business and regulatory environment which they may encounter in foreign jurisdictions demands for reliable but affordable legal support on local laws, procedural requirements and business practices to mitigate legal risks and resolve disputes as and when they do arise.

15. On 1 July 2017, the National Development and Reform Commission, the People's Government of Guangdong Province and the Hong Kong and Macao SAR Governments signed the Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Bay Area⁴ ("**Framework Agreement**").

16. The Framework Agreement reinforces Hong Kong's unique positioning to establish itself as an international legal and dispute resolution services hub, as having been clearly defined in the 13-5 Plan.

The Hong Kong Dimension

17. Given the over 60 countries along the Belt and Road routes, the differences in the legal systems of these countries definitely make arbitration one of the best options for resolving cross-border commercial disputes. It is however likely that parties from these countries may not readily accept Chinese law as the governing law of their contracts with their Mainland Chinese counterparts or, for that matter, the Mainland courts to resolve such disputes which may arise. Similarly, parties from Mainland China may also be reluctant in accepting a law foreign to them as the governing law and a foreign court for dispute resolution.

² 《中華人民共和國國民經濟和社會發展第十三個五年規劃綱要》.

³ 《港澳專章》.

⁴ 《深化粵港澳合作 推進大灣區建設框架協議》.

18. Under the principle of “One Country, Two Systems”, Hong Kong is the only jurisdiction in China that adopts the common law system. Hong Kong also stands out further with the added advantage of accessibility in both the English and Chinese languages and for being truly a place where the east meets the west. For these reasons, I recommend Hong Kong law as a worthy choice of the governing law for transactional lawyers and their clients.

19. Opportunities abound, talents from both the Mainland and Hong Kong must put our heads together to make innovative ideas work. The adoption of the NSIAC General Rules and Proceedings Guidelines may do exactly this.

20. Based on the latest 2006 version of the UNCITRAL Model Law on International Commercial Arbitration, our arbitration law, as revamped by the Arbitration Ordinance (Cap. 609), is certain and readily accessible to users and practitioners around the world in English and Chinese, both texts being equally authentic. It permits the free choice of arbitrators, legal representatives and experts, regardless of whether they are from one jurisdiction or another. This opens the pool of dispute resolution service providers with multi-lingual skills and diversified background and experience to suit the parties’ needs.

21. The DoJ, on its part, has been unrelenting in keeping Hong Kong’s arbitration legislation abreast of changing circumstances and needs. As recently as this June, the Legislative Council of the Hong Kong SAR passed two amendment bills to the Arbitration and Mediation Ordinances promoted by the Secretary for Justice.

22. The first amendment bill seeks to make clear that disputes over intellectual property rights are capable of resolution by arbitration. The amendment will take effect on 1 January next year.

23. The other amendment bill seeks to clarify that third party funding of mediation and, importantly, arbitration and related court proceedings is permitted under Hong Kong law. It also provides for, despite on a “light touch” approach, the related measures and safeguards to facilitate and protect the parties.

24. At the same time, Hong Kong courts consistently adopt an arbitration-friendly stance by recognising applicable arbitration clauses and enforcing valid arbitral awards. These factors have operated favourably to win international recognition as evidenced by the results of the 2015 International Arbitration Survey released by the Queen Mary University of London, singling Hong Kong out as the most preferred seat outside Europe.

25. Thanks to the New NSIAC General Rules and Proceedings Guidelines, full leverage of the noticeable benefits of applying Hong Kong law and choosing Hong Kong as the seat of arbitration is made possible via the introduction of the Hong Kong International Arbitration Model. Pursuant to the Guidelines tailor-made for the Hong Kong model, parties adopting the model would be free not only to apply the Hong Kong Arbitration Ordinance and choose Hong Kong as the seat of arbitration, but also conduct the arbitration hearing in Hong Kong if the parties so prefer.

Concluding Remarks

26. On this note, it remains for me to thank the organisers again for putting everything together here in Hong Kong. May I also thank, in advance, the distinguished speakers for sharing their valuable insights and expertise with the rest of us and the role-players at the procedural demonstration of the Hong Kong Arbitration Model which surely will be the highlight of this afternoon's proceedings.

27. I am sure we are all looking forward to the success which the launch of the NSIAC General Rules and Proceedings Guidelines 2017 will bring to practitioners and end users alike. Thank you.