

**Speech by Mr Wesley Wong, SC, JP  
Solicitor General of the Hong Kong SAR  
at the Chartered Institute of Arbitrators  
Asia Pacific Diploma Course in International Commercial Arbitration  
Gala Dinner on 27 October 2017 (Friday)**

Good evening Mr (Neil) Kaplan, QC [Past President], Mr (Anthony) Houghton, SC [Member of the Board of Trustees], Ms (Caroline) Kenny, QC [President of Australia Branch], Mr Chou (Sean Yu) [Chairman of the Singapore Branch], Mrs (Mary) Thomson [Chairlady of the East Asia Branch], Mr (Francis) Xavier, SC [Course Director and Immediate Past Chairman of the Singapore Branch], Mr (Richard) Leung [Course Director and Immediate Past Chairman of the East Asia Branch],<sup>1</sup> Distinguished Guests, Ladies and Gentlemen,

I am deeply honoured to have been invited to join you at the Gala Dinner of the Chartered Institute of Arbitrators Diploma Course in International Commercial Arbitration. The occasion gives me the distinct pleasure of meeting not just experienced as well as up-and-coming arbitrators from Hong Kong, but also those from jurisdictions across no less than four continents.

## **The Diploma Course**

2. I don't think I am expected to say too much about why the Diploma Course is an excellent programme for those, whatever their background may be, who wish to grasp the essence of international commercial arbitration to do so within a manageably short period of time because I will only be preaching to the converted. Nor do I think I need to tell you how the intensity of the programme and its interactive format help participants to gain the necessary confidence when appearing as advocate or acting as arbitrator in proceedings administered by various major arbitral institutions. I suppose being an arbitrator is the very antithesis of being arbitrary.

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<sup>1</sup> The titles of the VIPs are those of the Chartered Institute of Arbitrators.

3. I am, therefore, tempted to point out, even if it may not be true, that that the Gala Dinner is fixed on the eve of the Chung Yeung Festival is more than just a matter of coincidence. Any unpleasant thought that you will have to work hard tomorrow even though it's a public holiday may, to some extent, be diluted by the fact that the rest of the Hong Kong workforce which does not normally have to work on Saturdays will just have to come to terms with the fact that the annual public holiday falls on a Saturday this year. On top of that, I think there is in fact a deeper meaning to this.

4. Traditionally, the Chung Yeung Festival which falls on the ninth day of the ninth moon according to the lunar calendar is celebrated each year, as folklore has it, for the narrow escape from disaster by heeding the advice of a Taoist priest to go up a high mountain. For aspiring arbitrators tonight, this will assume a new meaning to you as it will signify also that you toil to new heights and, for that, you must congratulate yourselves.

5. I understand that it has been 12 years since the Diploma Course was last held in Hong Kong. Given the demand for international dispute resolution services in this region, the Department of Justice welcomes its return to Hong Kong more often, so that practitioners from Hong Kong and the neighbouring economies can keep up with the latest practice of international arbitration through their interaction with experts in this region.

6. In this regard, I am glad to learn that a joint venture agreement was signed between the Australia, East Asia and Singapore Branches of the Chartered Institute to run the Diploma Course annually on rotation in Singapore, Hong Kong and Australia from 2016 to 2018 and I hope that further arrangements can be made for this to become established practice.

7. As you will agree, the key to promoting international commercial arbitration as the number one choice in resolving cross-border disputes lies with the harmonisation of the legal arbitration regimes in a world of diversity. Whilst Australia, Hong Kong and Singapore are all common law jurisdictions, the legal system in each of the jurisdictions has developed in their own ways, even if for good reasons in the light of different cultural and historical backgrounds. There is however one common value that has brought us together: all three jurisdictions have developed sophisticated arbitration regimes and have been pioneers in adopting the

UNCITRAL Model Law on International Commercial Arbitration (“Model Law”) in the late 1980s and early 1990s.

8. Today, the Model Law serves as the basis for the harmonisation of national laws governing arbitral proceedings in 76 states around the world, comprising 107 jurisdictions from both the civil and common law traditions. It therefore hardly comes as any surprise that the branches of these three places come together to offer this well-designed course which allows participants to get accredited through a system of membership which operates worldwide (with CI Arb members found in some 130 countries). This is even though Hong Kong, Singapore and a number of Australian cities are, in their own right, famous for their good food and this put them in good stead as ideal places to hold the Diploma Course in any case.

### **The Chartered Institute**

9. On a more serious note, I don’t think it is any exaggeration to say that the Chartered Institute of Arbitrators is part and parcel of the history of a determined global attempt which has led to the success of raising “the status of arbitration to the dignity of a distinct and recognise position as one of the learned professions”. That, after all, was the stated aim when the Institute of Arbitrators was initially founded on 1 March 1915. We know, of course, today, with the grant of a Royal Charter in 1979, the Chartered Institute’s main objective is to promote and facilitate the determination of disputes by arbitration and alternative means of dispute resolution, other than resolution by the courts.

10. For over forty years, the East Asia Branch which is based in Hong Kong has been an integral part of the dispute resolution ecosystem here, not least by being a major provider of education and professional training courses in various disciplines of dispute resolution in this international city and its neighbouring jurisdictions.

11. In fact the East Asia Branch has the largest number of members of any branch in the world. A look at the members’ directory will show that, on 23 October 2017, among the total number of 15,223 members of the Chartered Institute around the world, 1,993 were East Asia Branch members, with 1,606 of them based in Hong Kong. Together with the 432 members of

the Australia Branch and 445 members of the Singapore Branch, close to as many as one-fifth (18.85%) of the members of the Chartered Institute belong to one of these three branches, bearing in mind that there are currently 38 branches altogether.

12. Prominent arbitrators and members associated with Hong Kong have not only added credence to the elaborate system of incremental accreditation by having served, like Mr Neil Kaplan QC, Ms Teresa Cheng SC and the late Mr Colin Wall, as presidents of the Chartered Institute, they also played a vital role in the organisation's global development. None of them actually need any introduction. In fact, I would run the risk of missing out on their many contributions to the arbitration community both in Hong Kong and elsewhere if I attempt to list all the key positions that they have ever held. Suffice it for me to say that the international network admirably enjoyed by many of the Hong Kong-based arbitrators who are associated in one way or another with the Chartered Institute has made them some of the best ambassadors in marketing Hong Kong's legal and dispute resolution services to the world.

13. The East Asia Branch of the Chartered Institute is also an important partner with the Department of Justice in the various promotional visits we make to Mainland China and the emerging economies across continents. To forge an even closer relationship between us, just last Friday (20 October 2017), the Secretary for Justice, Mr Rimsky Yuen, SC, signed a Memorandum of Understanding ("MoU") with the President of the Chartered Institute of Arbitrators, Professor Dr Nayla Comair-Obeid, during her visit to take part in the Hong Kong Arbitration Week. The objective of the MoU is to encourage and facilitate a positive environment within which the two sides can work collaboratively in the promotion of arbitration and other forms of dispute resolution through, among others, the provision of education and training approved by the Chartered Institute.

### **Development of the Arbitration Regime in Hong Kong**

14. As a matter of fact, the promotion of private dispute resolution has been one of the Government's top policy objectives, as can be seen in all annual Policy Addresses since 2013 in two successive terms of government, including that promulgated by the incumbent Chief Executive Mrs Carrie Lam two weeks ago (11 October 2017).

15. For the last two years, one of the key issues highlighted in the Policy Addresses is the role played by Hong Kong in relation to the Belt and Road Initiative, a significant development strategy announced by Chinese President Xi with the intention of promoting economic co-operation along the routes spanning over countries in Asia, Europe, Africa and Oceania. In this regard, Hong Kong has a particular focus on serving as an ideal neutral venue for the resolution of commercial and investment disputes involving parties from Mainland China as well as other jurisdictions along the Belt and Road routes. 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 having both the English and Chinese languages as the official languages. Our legislation is written in both English and Chinese and the texts in both languages are equally authentic.

16. In order to keep up with the latest development of international arbitration practice, the Department of Justice has been constantly updating our legislation. Our re-enacted Arbitration Ordinance (Cap. 609), which came into effect in 2011, removed the distinction between the international and domestic regimes under the former arbitration law. It was based on the 2006 amended version of the UNCITRAL Model Law with 36 out of its 47 articles having been incorporated in the same order verbatim. As members of the faculty may have already discussed in detail how the relevant statutory provisions operate in conducting arbitral proceedings, I shall not go further into this area.

17. Instead, I would like to give you a brief account on the recent legislative reform undertaken by the Department of Justice in enhancing our arbitration regime. In June this year, two amendment bills were passed by the Legislative Council.

18. The first amendment bill seeks to make clear that disputes over intellectual property (“IP”) rights are capable of resolution by arbitration, and it would not be contrary to public policy to enforce an award solely because the award involves a dispute over IP rights. The amendment will take effect on 1 January next year.

19. The other amendment bill has amended the Arbitration Ordinance and the Mediation Ordinance (Cap. 620) to clarify that third party funding for arbitration and mediation is not prohibited by the common law doctrines of maintenance and champerty. To ensure that safeguards are in place for the protection of the funded parties in arbitration and mediation, an authorized body to be established will, in accordance with the requisite statutory requirements, consult members of the public before issuing a code of practice. Third party funders are expected to comply with the Code of Practice in anticipation of the coming into operation of the relevant provisions. An advisory body will also be formed to monitor and review the operation of those provisions.

## **Legal Hub**

20. As part of the effort to provide a more favourable environment for the provision of legal and arbitration services by law-related organisations (“LROs”) in Hong Kong, including arbitral institutions (whether home-grown or those having a presence here in one form or another), the Hong Kong SAR Government will allocate the former French Mission Building (which used to house our Court of Final Appeal since its establishment on 1 July 1997 up to September 2015) and part of the office space in the West Wing of what is now called Justice Place (formerly the Government Headquarters) to accommodate these institutions. Together with the Department of Justice offices which occupy an area more affectionately known locally as “the Government Hill”, they will form a Legal Hub in the Core Business District of Hong Kong. That the area is also just a stone’s throw away from Lan Kwan Fong, I am sure, is a mere coincidence.

21. Through the “Committee on Provision of Space in the Legal Hub”, which is chaired by the Secretary for Justice himself and comprises members from the legal, business and other relevant sectors, as well as representatives from the Department of Justice and other government departments, a mechanism for providing space to LROs at the Legal Hub was established. To cut a long story short, space has been allocated to 17 LROs, many of which are from the arbitration community. We do look forward to the Chartered Institute of Arbitrators (East Asia Branch) becoming literally our neighbour sometime by 2019 when the renovation work will be complete.

## **Concluding Remarks**

22. Whilst there are two more days to go, I don't think this should spoil an evening of fine wine and good company. For those of you who are from other jurisdictions, including the seasoned arbitrators who are sacrificing their time to come to Hong Kong and help achieve the noble aim of nurturing the next generation of practitioners, I hope that you can find some time to enjoy what this dynamic city can offer.

23. As for all participants in the Diploma Course, I hope you will, having benefited from the engaging process and passed muster with the assessors, find yourself not just a qualified "ar-bit-rator" but also a trusted practitioner who is able to perform in a way which is "a-bit-safer", whilst being "a-bit-braver" and, to those extents, also "a-bit-greater".

24. Thank you.