

Welcome Remarks of Dr. James Ding
Commissioner of Inclusive Dispute Avoidance and Resolution Office

Mock Arbitrations 2020
20 November 2020, Friday

Dr Hu Li, Vice Chairman of CMAC, Mr Arthur Bowring, President of Hong Kong Maritime Arbitration Group, Distinguished Guests, Ladies and Gentlemen.

Introduction

2. First of all, I would like to express my appreciation to the China Maritime Arbitration Commission (CMAC), the Hong Kong Maritime Arbitration Group (HKMAG), the Hong Kong Maritime Law Association (HKMLA), the Hong Kong Institute of Arbitrators (HKI Arb) and the Chartered Institute of Arbitrators (CI Arb) East Asia Branch for the opportunity to speak this afternoon.
3. The Mock Arbitrations used to be held during the Hong Kong Maritime Week (HKMW) in previous years. However, owing to the Covid-19 situation, the HKMW was cancelled this year. Despite the cancellation of HKMW, I am glad that we are still going ahead with the 2020 edition of the Mock Arbitrations, not only physically, but also via the internet.
4. In fact, the COVID-19 pandemic has not only presented challenges and uncertainties to Hong Kong, but also to any other part of the world. We

must make the best use of our capabilities and expertise, including in the field of maritime dispute resolution, to tackle the uncertainties and challenges. We remain committed to consolidating and enhancing Hong Kong's position as an international maritime centre.

Overview of Hong Kong's recent developments of maritime arbitration

5. In the field of maritime arbitration, I would like to share a piece of encouraging news that most of you may already be aware of. The Baltic & International Maritime Council (BIMCO) has recently included Hong Kong as one of the four arbitration options under the BIMCO Law & Arbitration Clause.
6. BIMCO is the world's largest direct-membership organisation for shipowners, charterers, shipbrokers and agents and a leading organisation responsible for developing standard contracts for the shipping industry. The decision by BIMCO is a vote of confidence and recognition of Hong Kong as an efficient and effective venue for the resolution of maritime disputes. This outcome is a result of the joint efforts in promoting maritime arbitration by HKMAG, Hong Kong Shipowners Association, our practitioners and various government departments over the years.
7. The new BIMCO Law & Arbitration Clause 2020 incorporates the specific provisions of each venue for user's selection and also includes new and useful provisions relating to the serving of notices. Amongst other things, the Hong Kong version of this BIMCO clause states that the seat of arbitration shall be Hong Kong and the arbitration shall be

conducted in accordance with the HKMAG Terms. This is also a significant development for HKMAG, which was established in 2000 and became an independent institution in October 2019, formed by a group of maritime professionals of diverse background, expertise and industry experience with the aim of promoting the use of maritime arbitration and mediation in Hong Kong.

8. We hope that this latest development will help attract more maritime arbitrations to be conducted in Hong Kong, enhancing its status as an international legal hub for legal, deal-making and dispute resolution services.
9. Apart from the above international developments, I would also like to share with you some developments in this region.
10. Under the principle of “One Country, Two Systems”, the Mainland and Hong Kong are different legal jurisdictions, arbitral awards rendered in the Mainland or Hong Kong are mutually enforceable pursuant to the *Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and Hong Kong*. At the moment, we are in the process of reviewing the Arrangement to explore ways to further facilitate enforcement of arbitral awards between the two places, for example, clarifying the scope of the Arrangement, covering recognition of awards, pre- and post- award preservation measures, allowing simultaneous enforcement under the Arrangement, and bring it more in line with the “seat of arbitration” approach.

11. In addition, the *Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Court of the Mainland and of the HKSAR* came into effect on 1 October 2019. Hong Kong became the first and only jurisdiction outside the Mainland where the mainland courts can grant interim measures in aid of an arbitration seated in Hong Kong and administered by an eligible institution. The first application under the Arrangement was an application filed by a party to an arbitration administered by an eligible arbitral institution in Hong Kong. The application was heard and granted on the same day by the Shanghai Maritime Court on 8 October 2019. The Arrangement has been well-received by the arbitration community which generally considers that it will help enhance the attractiveness of Hong Kong as a seat of arbitration for Mainland-related disputes.
12. Further, the Department of Justice has been pursuing various initiatives in the Guangdong-Hong Kong-Macao Greater Bay Area to seek further liberalisation, allowing the parties in the Greater Bay Area to choose Hong Kong law as applicable law and Hong Kong as the seat of arbitration in their contracts, even in the absence of foreign-related elements. Such measures will provide more options to the parties and help promote legal and dispute resolution services of Hong Kong. While some progress has been made in relation to the initiative on applicable law in Qianhai¹, we will continue to liaise with the Mainland authorities to

¹ See the Regulation on the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone (《深圳經濟特區前海深港現代服務業合作區條例》), available at http://qh.sz.gov.cn/sygnan/xxgk/xxgkml/zcfg/szsfq/content/post_8054840.html

pursue such initiatives in the Greater Bay Area.

Arbitration during COVID-19

13. Now turning to the cases today, both disputes in the mock arbitrations are related to COVID-19. The mock arbitrations will also be conducted online in light of the Covid-19 pandemic. Indeed, Covid-19 has provided important stimulus to the development of online dispute resolution (ODR) in this region and internationally.
14. During the pandemic, earlier in April this year, “Hong Kong China” opted into the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business to Business Disputes (APEC ODR Framework), which is an optional framework developed and endorsed by the APEC Economic Committee to help businesses, especially micro, small and medium-sized enterprises (MSMEs) to resolve cross-border disputes through an effective and efficient online platform, comprising negotiation, mediation and arbitration.
15. In line with the APEC ODR Framework and in anticipation of an upsurge of disputes arising from or relating to COVID-19, the Government introduced the “COVID-19 ODR Scheme” (“the Scheme”) to provide the general public and businesses, particularly MSMEs, speedy and cost-effective means to resolve low value disputes² through negotiation, mediation and arbitration.³

² For disputes involving claims below HKD500,000. See press release of HKSAR Government on 29 June 2020, at <https://www.info.gov.hk/gia/general/202006/29/P2020062900651.htm>

³ See an article published at APEC’s website on 7 May 2020, at https://www.apec.org/Press/Blogs/2020/0506_COVID

16. The Scheme, operated independently by eBRAM Centre, aims to provide speedy and cost-effective means to resolve such disputes, especially for those involving MSMEs that may be adversely affected or hard hit by the pandemic. The process to be adopted is a multi-tiered dispute resolution mechanism where the parties will first attempt to negotiate their disputes in 3 days, followed by mediation in 3 days, and if that does not result in settlement, arbitration is conducted in 7 days for a final and binding award. The Scheme covers: (1) disputes arising out of or in relation to the COVID-19 outbreak directly or indirectly; (2) either one of the parties is a Hong Kong resident/company; and (3) the claim amount is below HK\$500,000. Under the Scheme, each party to the dispute is only required to pay HK\$200 for the registration fee; the mediators and arbitrators' fees will be paid by the Government.⁴
17. Not only can the Scheme prevent entrenched views on conflicts, relieve the court's caseload in civil claims accumulated and help foster harmony in society, it also brings the benefit of job creation and job advancement for the legal and dispute resolution sector, enabling them to learn how to handle cases online and under social distancing measures.⁵

Concluding remarks

18. To conclude, let me reiterate that the adverse economic impact of

⁴ See press release of HKSAR Government on 29 June 2020, at <https://www.info.gov.hk/gia/general/202006/29/P2020062900651.htm>

⁵ See speaking note of SJ on her briefing on the Chief Executive's 2019 Policy Address, at <https://www.legco.gov.hk/yr19-20/english/panels/ajls/papers/ajls20200427cb4-513-3-e.pdf>

COVID-19 pandemic on global businesses will undoubtedly lead to a rise in the need for resolution of cross-border disputes, and online dispute resolution will likely become more and more common.

19. In order to equip the profession with the ability to make good use of modern technology and handling online dispute resolution, capacity building and training is very important. Earlier this year in Hong Kong, we have seen that the Virtual Vis East Moot and ICC Mediation Competition were all conducted completely online with the support of eBRAM Centre, which contributed to capacity building and training for the students and professionals in different parts of the world. The feedback from the participants are overwhelmingly positive.
20. Similarly, this year's Mock Arbitrations will also be held virtually for the first time. I believe that this event will further contribute to our capacity building efforts, which will benefit Hong Kong and beyond.
21. Lastly, I wish this event every success and I look forward to seeing the event again in the Hong Kong Maritime Week next year. Thank you very much.