Addleshaw Goddard International Arbitration Symposium
4 February 2021

Session on "The benefits of Hong Kong as a seat of arbitration"

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Thank you for inviting me to this Symposium. In this session, I would like to share with you some key features about Hong Kong as the seat of arbitration.

First of all, the arbitration laws in Hong Kong are up-to-date and in compliance with international norms. Hong Kong adopts the latest UNCITRAL Model Law and makes no distinction between domestic and international arbitration, ensuring a regime that meets international standards.

On 1 June 2011, a new Arbitration Ordinance (Cap.609) came into effect. The new Arbitration Ordinance is largely based on the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law (UNCITRAL Model Law), which is well understood by practitioners from both civil law and common law jurisdictions and familiar to the international business community. Continuous reviews of the Arbitration Ordinance are being undertaken to keep Hong Kong's arbitration law competitive and in line with the latest international arbitration practice.

In Hong Kong, there is no restriction in place on the choice of the arbitrators who adjudicate the dispute. Parties are free to appoint arbitrators of their own choice, allowing total party autonomy without restriction on nationality. Parties are also able to use lawyers from their own jurisdiction if they so wish, irrespective of the applicable law to be argued before the tribunal.

In other words, in Hong Kong-seated arbitrations, the parties concerned may choose representatives, consultants and attorneys, regardless of their qualification or nationality. For example, there are over 700 foreign arbitrators (ie non-Hong Kong) arbitrators listed in the Hong Kong International Arbitration Centre (HKIAC) which shows the international nature of the arbitration services available in Hong Kong.

Besides, for arbitrations seated in Hong Kong, interim relief can be granted by tribunals or the courts not just in Hong Kong but also in other jurisdictions, such as the UK and the mainland of China. Under "One country, Two systems", Hong Kong enjoys a unique position. Parties to arbitral proceedings which are seated in Hong Kong and administered by designated arbitral institutions (HKIAC, ICC, eBRAM, CIETAC, HKMAG, SCIAC) are able to seek assistance from the relevant People's Courts in the mainland of China, to obtain interim measures such as injunctions or freezing of assets. Hong Kong is the only jurisdiction outside the mainland where, as a seat of arbitration, parties to arbitral proceedings administered by its arbitral institutions are able to apply to courts in the mainland of China for interim measures.

The *Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region* ("Arrangement") was signed between the DoJ and the Supreme People's Court on 2 April 2019 and came into effect on 1 October 2019. With the commencement of the Arrangement, Hong Kong became the first jurisdiction outside the Mainland where, as a seat of arbitration, parties to arbitral proceedings administered by designated arbitral institutions would be able to apply to the Mainland courts for interim measures.

This is indeed a game-changing measure which ensures that the arbitral proceedings can be carried out effectively. It also marks the strength of Hong Kong under "One Country, Two Systems" and enhances Hong Kong's competitiveness in international arbitration services, further strengthening Hong Kong's status as a leading centre for international legal and dispute resolution services in the Asia-Pacific Region. As at 31 January 2021, 37 applications had been made under the Arrangement. The total value of assets sought to be preserved across all applications amounted to RMB 12.5 billion. All these applications had been handled by the HKIAC. Court orders in respect of RMB 9.7 billion worth of assets had been granted.

Arbitrations in Hong Kong are conducted truly as an alternative dispute resolution process for commercial parties, independent from the court system. Arbitrators have all the necessary power under the arbitration laws of Hong Kong to manage and adjudicate the disputes before them. The government also does not interfere with the operation of arbitral institutions in administering their arbitrations.

Hong Kong is indeed a neutral and effective seat. The Hong Kong Arbitration

Ordinance is based on the *2006 UNCITRAL Model Law*. Arbitral tribunals determine the outcome of arbitrations and arbitrators are appointed by the parties or by the institutions. There is a specialist list of judges in the Hong Kong Court of First Instance dealing with arbitration matters. Hong Kong courts have a long record of neutral decision-making that is strongly supportive of the arbitration process. It is also worthwhile to mention that the Court of Final Appeal, the highest court in Hong Kong, is comprised of the Chief Justice, 7 Hong Kong permanent and non-permanent judges ("NPJs"), and 15 overseas NPJs. The overseas NPJs are among the most eminent judges of other common law jurisdictions. Including former chief justices from other common law jurisdictions.

In Hong Kong, the track record of the quality and enforceability of arbitral awards is also very good. Awards made in Hong Kong have generally been upheld by local courts and enforced in other jurisdictions, including the mainland of China, which ensures finality and enforceability of awards. Hong Kong courts have adopted a pro-arbitration approach in their judgments with a group of arbitration specialist Judges in the High Court responsible for dealing with arbitration-related cases.

It has been made clear in Hong Kong that third party funding in arbitration is permissible. Relevant legal provisions on the third party funding of arbitration regime came into operation on 1 February 2019. A Code of Practice for Third Party Funding of Arbitration was issued on 7 December 2018, which sets out the practices and standards with which third party funders are ordinarily expected to comply in carrying on activities in connection with third party funding of arbitration. The legal regime of third party funding of arbitration creates greater certainty that third party funding of arbitration in Hong Kong is not prohibited by the common law doctrines of maintenance and champerty. At the same time, the Code of Practice provides safeguards for funded parties. These add to the attractiveness of Hong Kong as an international arbitration centre.

Lastly, I would mention that there is no issue on arbitrability of IP disputes in Hong Kong. The laws in Hong Kong make clear that IP disputes may be resolved by arbitration and will not be a ground for setting aside or refusing enforcement. In fact, HKIAC maintains a Panel of Arbitrators for Intellectual Property Disputes. As of 4 February 2021, there are a total of 53 arbitrators on the Panel. This demonstrates that we have a pool of expert arbitrators readily available for resolving intellectual property disputes.

I hope that I have highlighted some of the main features for arbitrations seated in Hong Kong. Thank you very much.