

**2022 Hong Kong Maritime Week**

**Mock Arbitrations on Maritime Disputes**

**25 November 2022 (Friday), 13:45 – 17:00**

**Opening Remarks of Mr Clifford Tavares, PGC(LEAD)1  
(Sharing the opening session of 14:00 – 14:20 with and after  
Mr. Brad Wang of CIETAC & CMAC)**

Brad, Distinguished Guests, Ladies and Gentlemen,

*Introductory Remarks*

1. It gives me great pleasure to welcome you all to this session of Mock Arbitrations on Maritime Disputes in the Hong Kong Maritime Week 2022.

2. I was also given the honour to speak here last year. I'd like to express my sincere thanks to the the co-organisers, CIETAC Hong Kong Arbitration Center, CMAC Hong Kong Arbitration Center, Hong Kong Maritime Arbitration Group, Hong Kong Maritime Law Association, Institute of Chartered Shipbrokers Hong Kong Branch and Chartered Institute of Arbitrators East Asia Branch for holding this meaningful event once again.

3. This is meaningful because this exercise helps promote the use of arbitration for maritime disputes by live demonstration of how it is

done. As a session for just two and a half hours, this mock hearing is carefully designed to cover both the procedural and substantive aspects of an arbitration, with seasoned practitioners as well as young and bright advocates participating. The Hong Kong Government attaches great importance to nurturing young legal and shipping talents. Today's mock proceeding greatly contributes to capacity building and training for practitioners and students in maritime arbitration.

### *Hong Kong and Maritime Trade*

4. Maritime trade has always been one of the strengths of Hong Kong, being the gateway to Mainland China. According to Xinhua-Baltic International Shipping Centre Development Index Report 2022, Hong Kong has been ranked fourth as an international shipping centre for the third consecutive year. In the latest edition of the United Nations Conference on Trade and Development (UNCTAD) Review of Maritime Transport<sup>1</sup>, Hong Kong is ranked among the top in many areas, for example, in the aspect of a ship-owning economy, flags of registration by tonnage, liner shipping connectivity index and so on.

### *Hong Kong's Strengths and Maritime Arbitration*

5. With such comprehensive and scale of trading activities,

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<sup>1</sup> Review of Maritime Transport 2021 published by UNCTAD (<https://unctad.org/webflyer/review-maritime-transport-2021>)

conflicts and disagreements will inevitably arise. As the Secretary for Justice has said at a legal forum under the Hong Kong Maritime Week this Monday, Hong Kong possesses the credentials to offer full-fledged and quality arbitration services to the maritime industry. Indeed, our arbitration services have proven to be effective means in resolving cross-border and often complex and technical maritime disputes. In gist, Hong Kong has strong policy support at both the national level and the local level.

6. At the national level, the National 14<sup>th</sup> Five-Year Plan and the GBA Development Plan set out clearly the Central People's Government's full support for Hong Kong to develop and enhance its status as an international transportation and maritime centre. Hong Kong is also a renowned international centre for legal and dispute resolution services, being one of the "eight centres" highlighted in the National 14<sup>th</sup> Five-Year Plan.

7. One of the pillars of Hong Kong's success is our common law system, which is preserved by the fundamental principle of "One Country, Two Systems". President Xi Jinping had delivered an important speech at the celebration of the 25<sup>th</sup> Anniversary of the Establishment of HKSAR on 1<sup>st</sup> July this year. In his speech, President Xi expressly confirmed that the principle of "One Country, Two Systems" must be adhered to in the long run, and the Central People's Government fully supports Hong Kong to maintain the

common law system. This dispels any previous doubt about the future of Hong Kong and paves the way to our long-term stability. In maritime contracts, English law is often adopted as the substantive law. As Hong Kong will continue to practise common law which is based on English law, Hong Kong law indeed can be a good option for maritime contracts. Our lawyers with common law background will continue to provide professional and pragmatic services to clients in the maritime world.

8. At the local level, the HKSAR Government also gives dedicated support on many fronts. Among various aspects, I highlighted in my speech last year the importance of talents as well as the necessity of a forward-looking mindset in developing and enhancing the status of Hong Kong as an international maritime and dispute resolution centre. These values still hold true, and perhaps it would be a good opportunity for me to highlight some of the important developments showcasing our continuous efforts in improving arbitration services in Hong Kong.

#### *ORFSA, Other Arbitration Developments and Events*

9. Arbitral awards made in Hong Kong are generally upheld by local courts and enforceable in many other jurisdictions under the New York Convention. We also enjoy the benefits of various arrangements on mutual legal assistance in civil and commercial

matters signed between the Mainland and Hong Kong. Of groundbreaking importance to arbitration is the availability for interim measures in aid of arbitral proceedings for protection of property, evidence and conduct preservation. Parties to arbitral proceedings seated in Hong Kong and administered by designated arbitral institutions<sup>2</sup> may now seek assistance from the relevant courts in the Mainland to obtain interim measures such as injunctions or freezing of assets. This has become a popular and effective tool for arbitration users to secure their fruits of success across the border. Another important arrangement (as updated in 2020) is on the mutual enforcement of arbitral awards between the Mainland and Hong Kong, under which the arrangement has been refined to bring it more in line with the prevailing practice of international arbitration.

10. Another recent encouraging development is the introduction of outcome related fee structures for arbitration (“ORFSA”) in Hong Kong. ORFSA, in simple terms, would allow lawyers and clients to agree on fee arrangements flexibly based on the outcome of the arbitration case. The Arbitration and Legal Practitioners Legislation (Outcome Related Fee Structures for Arbitration) (Amendment) Ordinance 2022 was enacted on 22 June this year. The subsidiary legislation, which sets out the more detailed regulatory framework

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<sup>2</sup> Today’s co-organisers CIETAC Hong Kong Arbitration Center and the Hong Kong Maritime Arbitration Group are two of them. The others are Hong Kong International Arbitration Centre, International Court of Arbitration of the International Chamber of Commerce – Asia Office, South China International Arbitration Center (HK) and eBRAM International Online Dispute Resolution Centre. See [https://www.doj.gov.hk/en/mainland\\_and\\_macao/pdf/list\\_of\\_institutions\\_e.pdf](https://www.doj.gov.hk/en/mainland_and_macao/pdf/list_of_institutions_e.pdf).

and particular safeguards on ORFSA, was introduced into the Legislative Council earlier this month and would hopefully commence operation by the end of the year after the negative vetting procedure. The full implementation of the ORFSA regime will allow Hong Kong to keep up with the latest practice in international arbitration, by creating a level-playing field with competing jurisdictions offering similar funding options for arbitration. I am sure this move will be welcomed by maritime clients and practitioners.

11. We have also reviewed the Pilot Scheme on Facilitation for Persons Participating in Arbitral Proceedings in Hong Kong (“Scheme”) which was launched in June 2020. Under the Scheme, foreign nationals may visit Hong Kong visa-free and participate in arbitral proceedings in Hong Kong without the need to obtain an employment visa. Now we are proposing to expand the Scheme to facilitate persons from other places including Mainland China to participate in arbitral proceedings in Hong Kong. We aim to announce the details in the near future. Coupled with the gradual relaxation in Covid-19 measures, we are confident that the attractiveness of Hong Kong to be chosen as an arbitral seat will be further enhanced.

12. On the other hand, the Government sees that Hong Kong needs home-grown maritime lawyers to provide maritime legal services, and will launch a Maritime Services Traineeship Scheme next year to provide traineeship for young people who aspire to develop a career

in maritime law.

13. Looking forward, and following the successful completion of the Hong Kong Legal Week 2022 just a couple of weeks ago, more promotional events will be held to further promote arbitration in Hong Kong. Just to name a couple. In May 2024, the biennial ICCA Congress, which is commonly known as the largest regular international arbitration conference in the world, will be hosted in Hong Kong. The successful bidding of this event is a vote of confidence in Hong Kong's thriving position as a legal and dispute resolution hub.

14. There is also the Vis East Moot Competition scheduled for March next year. This competition is the sister competition to the Willem C. Vis International Commercial Arbitration Moot in Vienna, but with an Asian context. It is now an annual event hosted in Hong Kong, with the aim of promoting the use of arbitration in international commercial disputes, and to nurture talents including new generations of lawyers and arbitrators. For advocacy and moot lovers, this is an event not to be missed.

15. At the same time, we are also planning to reach out proactively to other jurisdictions starting from 2023. For example, through the Government's Professionals Participation Subsidy Programmes, we will be jointly organising an event in Tokyo, Japan with the Hong

Kong Economic and Trade Offices. We will in particular highlight our maritime arbitration and online dispute resolution services. We will also be leading local delegations comprising legal professionals to visit ASEAN member states, other Southeast Asia, the Middle East and African countries, as well as other common law jurisdictions, to promote our legal and dispute resolution services.

16. I hope to see you all again very soon in the upcoming events. On this note, may I wish today's mock session every success. Thank you very much.