

Hong Kong Maritime Week 2023
Mock Arbitrations on Maritime Disputes
24 November 2023 (Friday), 14:00

Opening Remarks of Mr Clifford Tavares, PGC(LEAD)

Brad, Distinguished Guests, Ladies and Gentlemen,

Introductory remarks

1. Good afternoon. It is my great pleasure to welcome you all to this session of Mock Arbitrations on Maritime Disputes in the Hong Kong Maritime Week 2023.

2. I was also given the honour to speak here in the past two years. I would like to express my sincere gratitude to 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 organising this meaningful event again this year.

3. The Hong Kong Government strongly supports the nurturing of young legal and shipping talents. Today's mock arbitrations

will significantly contribute to capacity building for practitioners and students in maritime arbitration. With a live demonstration covering both procedural and substantive aspects of an arbitration (jurisdictional and merits issues), this mock exercise showcases typical procedures adopted in maritime arbitrations and allows participants to familiarise themselves with the common practices adopted in resolving maritime related disputes by arbitration.

Hong Kong's unique strengths and international status

4. As one of the world's busiest and most efficient ports, Hong Kong is geographically well positioned to offer unparalleled services to the global maritime industry, with its proximity to the Mainland market and its strategic location at the heart of the Asia-Pacific region. According to Xinhua-Baltic International Shipping Centre Development Index Report 2023, Hong Kong has consistently ranked fourth as an international shipping centre in recent years. In the latest edition of the United Nations Conference on Trade and Development (UNCTAD) Review of Maritime Transport, Hong Kong also ranks among the top in many areas. For example, it is the world's fourth largest flag state of registration in terms of dead weight tons, as well as the fifth largest ship owning territory.

5. Hong Kong prides itself for possessing the credentials to offer full-fledged arbitration services to the maritime industry. First of all, under the principle of “one country, two systems”, Hong Kong is the only common law jurisdiction within China. We have experienced lawyers and arbitration practitioners who are conversant with international law, common law, civil law and the country’s legal system, providing professional and pragmatic services to clients in the maritime world.
6. Secondly, Hong Kong’s arbitration system is among the most sophisticated and user-friendly in the world. Our Arbitration Ordinance is based on the United Nations Commission on International Trade Law Model Law and is constantly updated to stay abreast of international developments.
7. Thirdly, Hong Kong courts have been supportive of the use of arbitration. The Judiciary in Hong Kong respects parties’ autonomy in their choice of dispute resolution mechanism and only intervenes in limited circumstances to ensure the propriety of the process. The Hong Kong courts’ pro-arbitration approach is reinforced in a recent Court of Final Appeal’s judgment in *C v D*. It clarifies the limits of judicial intervention in the arbitral process and provides certainty that compliance with pre-arbitration conditions in multi-tiered dispute resolution clauses is a question of admissibility instead of jurisdiction unless

otherwise agreed between the parties.

Policy support – national and local level

8. Apart from all these distinctive advantages, Hong Kong is blessed with strong policy support both at the national level and the local level. At the national level, the National 14th Five-Year Plan and the Greater Bay Area Outline Development Plan clearly demonstrated the Central People's Government's full support for Hong Kong to enhance its status as an international transportation and maritime centre.

9. At the local level, the Hong Kong Government also provides dedicated support on many fronts. As stated in the Chief Executive's Policy Address 2023, the Hong Kong Government will continue to develop the city into a leading international maritime centre, and facilitate maritime collaboration within the Greater Bay Area. In particular, it will capitalise on Hong Kong's international position in maritime arbitration by enhancing co-operation with various international maritime organisations. These include strengthening the operation of the Baltic and International Maritime Council (BIMCO) and the International Chamber of Shipping (ICS) in Hong Kong, as well as strengthening our role as a gateway for international maritime enterprises and organisations to enter the Mainland market.

10. At this juncture, I wish to take the opportunity to highlight some important developments reflecting our ongoing efforts in improving the arbitration services in Hong Kong.

Recent arbitration developments in Hong Kong

11. Apart from being recognised internationally, arbitral awards made in Hong Kong also enjoy the benefits of various arrangements on mutual legal assistance in civil and commercial matters signed between the Mainland and Hong Kong. In respect of arbitration, the Interim Measures Arrangement was signed in 2019. It is a groundbreaking arrangement permitting parties to arbitration seated in Hong Kong and administered by designated arbitral institutions to apply to the relevant Mainland courts for interim measures in relation to the preservation of property, evidence and conduct. Hong Kong is the first, and until now, the only common law jurisdiction outside the Mainland where such application is possible.
12. This year is the fourth anniversary of the Interim Measures Arrangement. Since its implementation in October 2019, the Interim Measures Arrangement has been widely used by the arbitration community. As at 31 October this year, it is reported that 102 preservation applications were made to the Mainland

courts. So far, the Mainland courts have issued 71 decisions involving around RMB15.8 billion worth of assets.

13. Hong Kong and the Mainland are committed to strengthening co-operation in arbitration. Apart from the Interim Measures Arrangement, we have signed a Supplemental Arrangement in 2020 to refine the cross-boundary enforcement mechanism. Particularly, parties are now permitted to make simultaneous applications to the courts of the two jurisdictions to seek timely remedies on an award. The reciprocal arrangements provide great convenience to arbitration users throughout the entire arbitral process and respond to the practical needs of the parties.
14. Another important development is the introduction of Outcome Related Fee Structures for Arbitration (“ORFSA”) in Hong Kong. In gist, ORFSA allows lawyers and clients to agree on fee arrangements flexibly based on the outcome of the arbitration. With ORFSA, arbitration users and their lawyers can enjoy greater flexibility in devising fee arrangements and funding modes to suit their financial and business needs. Sophisticated commercial parties can also benefit by sharing risk with their lawyers and having better cash flow management. ORFSA allows Hong Kong to remain competitive and in line with the latest practice in international arbitration. As of 31 October this year, there were 4 arbitration cases in Hong Kong in which

ORFSA has been disclosed, and we are expecting to see more with the promotion and training done in the past year, including the FAQs and the Guidance Note and Checklists on ORFSA that we have published.

15. Furthermore, to ensure that Hong Kong has a strong and diversified pool of legal and dispute resolution talents, we have reviewed the Pilot Scheme on Facilitation for Persons Participating in Arbitral Proceedings in Hong Kong (“Scheme”) launched in June 2020. Under the Scheme, arbitrators, experts and factual witnesses, counsel and parties to the arbitration are allowed to participate in arbitral proceedings in Hong Kong as visitors without the need to obtain an employment visa. Since 1 March this year, the Scheme has been expanded to cover all visitors, including those from visa-requiring and visa-free countries as well as the Mainland, Macao and Taiwan. Apart from providing convenience for professionals to participate in arbitration seated in Hong Kong, parties to arbitral proceedings in Hong Kong will now benefit from a wider range of choice of arbitrators and related professionals. As of 31 October this year, 15 letters of proof have been issued for eligible persons to visit Hong Kong under the Scheme.

16. With a view to nurturing more home-grown maritime lawyers and enhancing Hong Kong’s high value-added maritime services,

the Hong Kong Government launched a Maritime Services Traineeship Scheme – Legal in September this year. It aims at incentivising law firms and barristers with maritime business to provide traineeship for those who aspire to develop a career in maritime law. Under the Policy Address 2023, one of the Department of Justice’s major initiatives is to establish the Hong Kong International Legal Talents Training Academy to regularly organise practical training courses, seminars, international exchange programmes, etc to promote exchanges among talents in regions along the Belt & Road.

Upcoming arbitration events

17. Looking forward, and following the successful completion of the Hong Kong Legal Week 2023 two weeks ago, there will be more promotional events to further promote arbitration in Hong Kong. Just to name a couple of them. In May 2024, the biennial ICCA Congress, which is widely recognised as the largest regular international arbitration conference in the world, will be hosted in Hong Kong. The successful bidding of this event signifies a vote of confidence in Hong Kong’s leading position as a legal and dispute resolution hub. At the same time, we will continue to reach out proactively to other jurisdictions to promote Hong Kong’s legal and dispute resolution services, including leading local delegations comprising legal professionals to visit ASEAN

member states as well as other Southeast Asian and Middle East countries.

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