

Speech by SJ at the luncheon of the HK International Arbitration Centre (English only)

The following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the 25th Anniversary Conference of the Hong Kong International Arbitration Centre today (November 18).

Thank you Michael.

Good afternoon, Distinguished Guests, Ladies and Gentlemen,

It's good to see many good friends here. I have to say that as the Secretary for Justice, I have to give quite a lot of speeches on arbitration and mediation. I have been doing so for many years. But today I think it is truly special and different because I feel that I come here more as a friend to congratulate you, Michael, and all of you at the Hong Kong International Arbitration Centre on this happy occasion of your 25th anniversary.

And of course I am not alone. The presence of such a distinguished audience here, comprising arbitration, legal and business professionals and leaders and many more, from both Hong Kong and overseas, is a testimony to your success and hard work in the past quarter of a century. You have helped nurture Hong Kong into a truly regional dispute resolution centre. You have put Hong Kong's name prominently on the map of the arbitration world. We have every reason to be proud of you and every reason to say Thank You to you.

The importance of arbitration services to Hong Kong

With such a galaxy of arbitration experts here, I am in no position to talk about the benefits of arbitration. But I'm sure you're familiar with things like (i) country neutrality; (ii) flexibility of procedures; (iii) enforceability of arbitral awards under the New York Convention; (iv) confidentiality; (v) ability of parties to select the arbitrators; (vi) speed; and (vii) relative cost-effectiveness and so on.

What I can add is that for an international commercial and financial centre such as Hong Kong, and with Mainland China rapidly stretching her economic prowess into the global arena, these benefits of arbitration have long been recognised and affirmed. In his policy address of 2007, the Chief Executive clearly

stated it was Hong Kong SAR's policy objective to develop Hong Kong as a centre for dispute resolution in the Asia-Pacific region. And this continues to be the case. The Government is committed to the development of arbitration. And in this direction, we are very much indebted to the pioneers and veterans, many of whom are present here this afternoon.

25 years ago, in 1985, a group of leading business and professional people had the foresight of setting up Hong Kong's own arbitration body, the Hong Kong International Arbitration Centre (HKIAC), in order to build Hong Kong into an arbitration leader in the region. Thanks to the dedication of those founders and many more joining them over the years, the HKIAC has achieved its goal. Today, the HKIAC has undoubtedly attained the status as one of the top international arbitration centres in the Asia Pacific region.

And your contribution to Hong Kong goes beyond the provision of world-class ADR facilities. By helping both domestic and international businesses to resolve differences by more client-oriented, speedy and reliable arbitration and mediation, the HKIAC has also strengthened Hong Kong's credentials as one of the global financial centres.

For the existence of a sound legal system serviced by readily available, effective and diverse dispute resolution facilities is indispensable to any international financial centre. It gives international investors the much needed assurance that any commercial dispute can be efficiently and fairly dealt with, both in and out of the court system. It gives them incentive to move their money and establishment here.

The recently released Global Financial Centres Index (GFCI) confirmed that Hong Kong's status as a global financial centre is on par with London and New York. Hong Kong now occupies the third place in global financial market and is within 10 points of New York and London on a scale of 1,000 in the GFCI.

The development of arbitration brings further economic benefits to Hong Kong. International arbitration invariably brings overseas parties to Hong Kong, which will benefit not just the legal and ADR professionals, but also other service industries. It also saves valuable judicial resources and therefore understandably the settlement of disputes by ADR is a key emphasis in the Civil Justice Reform in Hong Kong.

In 2008, it was estimated that the percentage of legal services to GDP at current factor cost was 0.7 percent and the value added was over HK\$1 billion. Arbitration services would have accounted for a fair portion of that figure. And this has not yet taken into consideration the GDP from other service sectors (e.g. the hospitality industry and other professional services) as a result of arbitrations being held in Hong Kong.

Under the "One Country, Two Systems" principle, the position of Hong Kong as an international dispute resolution centre takes on greater significance.

The phenomenal economic development in the Mainland in recent years has generated substantial demand for more sophisticated and effective business disputes resolution mechanisms. Many commercial disputes involving Hong Kong investment and joint ventures are already resolved by arbitration. With increasing economic cooperation between Hong Kong and the Pearl River Delta region, the demand for arbitration services will continue to increase. Further, with the signing of the Economic Cooperation Framework Agreement between the Mainland and Taiwan, there is good potential for setting up a Greater China arbitration services platform with Hong Kong assuming an important role.

At present many of the mega trans-national commercial arbitration cases involving Mainland parties, such as maritime arbitrations, are conducted in London or New York because of the historical concentration of arbitration expertise in those places. Given Hong Kong's strengths in legal services including the availability of international expertise, we are well positioned to offer a more proximate and handy service for such cases. There are ample opportunities for us to establish a stronghold and to entrench our position as an international arbitration base in the Asia Pacific region, the arbitration hub for Greater China, in addition to an internationally recognised financial centre.

Promotion of arbitration services

Last month, the findings of the 2010 International Arbitration Survey: Choices in International Arbitration was published and presented in the International Bar Association Conference held in Vancouver. The survey was conducted by the School of International Arbitration at Queen Mary, University of London. Over 130 general

counsel and heads of legal departments around the world participated in the survey. 62% of the respondents said that formal legal infrastructure was the most decisive factor in choosing a place of arbitration. The survey reveals that neutrality and impartiality, the track record of enforcing agreements to arbitrate and arbitral awards (also known as "arbitration-friendliness") of a place of arbitration and whether the country concerned is a signatory to the New York Convention are the aspects of formal legal infrastructure that most influence the choice of place of arbitration.

The survey results underscore the efforts we have been making to further enhance Hong Kong's advantage in arbitration, and in many ways confirm that we are moving on the right track.

An enhanced arbitral environment will help further develop our arbitration services. We already have a mature legal system, an independent Judiciary, as well as a deep pool of experienced professionals (including lawyers, accountants, engineers, architects and surveyors and many more). Arbitration awards made in Hong Kong are enforceable through the courts of most of the world's trading economies by virtue of the New York Convention as well as our arrangement with the Mainland on reciprocal enforcement of arbitral awards since 1999.

In connection with updating our legal framework in favour of arbitration, a major milestone was reached last week on November 10 with the enactment of the new Arbitration Ordinance.

The HKIAC has in fact made a significant contribution in this regard. For this legal reform originated from the Report published in 2003 by the Hong Kong Institute of Arbitrators in cooperation with the HKIAC.

Since 2005, the Department of Justice and a dedicated group of arbitration professionals, including many who are involved in the work of the HKIAC, and some of them are also present here this afternoon, have worked together diligently to reform and rewrite the Arbitration Ordinance.

The new Ordinance unifies the domestic and international arbitration regimes on the basis of the UNCITRAL Model Law. The opportunity has been taken to include in the new Ordinance a number of recent initiatives proposed by the UNCITRAL which, for example,

would empower the Hong Kong court to recognise and enforce interim measures ordered by an arbitration tribunal sitting outside Hong Kong. This would facilitate arbitration proceedings even where they are held outside Hong Kong. With the enactment of the new Ordinance, our arbitration law becomes clearer, more certain, and more easily accessible to arbitration users and practitioners from across the world.

I would like to highlight some important features of the new Ordinance here.

Protection of confidentiality

A major feature of the new Arbitration Ordinance is the provisions on the protection of confidentiality in arbitration proceedings as well as court hearing related to those proceedings. In the 2010 International Arbitration Survey I've mentioned earlier, 62% of the respondents said confidentiality is "very important" to them in international arbitration. However, half of the participants in the survey wrongly thought that arbitration is confidential even when there is no confidentiality clause in the arbitration agreement or the chosen rules. 12% did not know whether arbitration is confidential in those circumstances.

To enhance confidentiality for international arbitration, the new Ordinance provides that as a starting point, court proceedings relating to arbitration are not to be heard in open court. Such proceedings will be heard in open court only if any party so applying can satisfy the court that for good reasons the proceedings ought to be heard in open court.

To offer further protection for confidentiality, the new Ordinance also provides that unless otherwise agreed by the parties, no party may publish, disclose or communicate any information relating to arbitral proceedings and awards. It is important to adhere to the international practice that arbitral awards should only be made public with the consent of the parties concerned, having regard to the private and confidential nature of arbitration. This provision seeks to strike the right balance in safeguarding the confidentiality in arbitration and the need to disclose information relating to arbitral proceedings and awards under exceptional circumstances such as for the parties to protect or pursue their legal rights or for them to enforce or challenge an arbitral award in legal proceedings.

Provisions for a fair and speedy method of resolution of dispute by arbitration with minimal court intervention

Achieving fair and speedy resolution of disputes and avoiding unnecessary costs are the objectives of the new Ordinance. Under the new legal regime, the court may intervene only in those circumstances as expressly provided for in the Ordinance.

Appeals to the court on interlocutory matters inevitably slow down the arbitration process and add to expenses. In this connection, the guiding principle adopted by the Ordinance is that in general minor procedural proceedings in the court should not be subject to appeal. These include, for example, and in line with the Model Law provisions, the appointment of arbitrators, the procedure to challenge an arbitrator, and the decision terminating the mandate of the arbitrator. Only proceedings which determine substantive rights or might do so may be subject to appeal.

Co-operation with the Mainland

Hong Kong's strength and advantage lie in our being the most international city within China run on a separate common law system. We shall continue to do our best to make the most of our unique and strategic position.

Our initiative to become the regional dispute resolution centre receives support from the Central People's Government. The Department of Justice has been in discussion with the relevant Mainland authorities including the Supreme People's Court and the Ministry of Justice in Beijing on how we can further enhance our co-operation with the Mainland on the development of arbitration. For example, and in response to a request from the HKIAC, we have secured confirmation from the Supreme People's Court in 2007 that the 1999 Arrangement on reciprocal enforcement of arbitral awards applies equally to awards that are made in ad hoc arbitrations held in Hong Kong.

Earlier this month, I was on official visits to Shenzhen and Guangzhou to follow up on the Framework Agreement on Hong Kong and Guangdong Co-operation which was signed earlier in April this year. I visited arbitration institutions in Shenzhen and Guangdong to explore ways to further enhance exchanges and co-operation. I believe there is much interest and potential especially under the policy of "First to implement, First

to try" in support of conducting pilot measures in Guangdong.

And shortly before that, on October 25, I signed a Co-operation Arrangement with the Vice Chairman of the China Council for the Promotion of International Trade (CCPIT), which is the overseeing body of the China International Economic and Trade Arbitration Commission (CIETAC). One of the aims of the Arrangement is to strengthen the co-operation between the arbitration and mediation bodies based in Hong Kong such as the HKIAC and their counterparts in the Mainland such as CIETAC.

This arrangement is yet another confirmation of the role of Hong Kong in providing legal services for and fostering legal cooperation with the Mainland as she continues to march into the global economy.

Conclusion

Ladies and Gentlemen, as HKIAC celebrates its 25th Anniversary, and we reflect on the struggle and the success in the past, it is also time to lift up our eyes to the new horizon ahead. Opportunities abound but challenges are also plentiful. It is a time to consolidate, to prepare, to rethink, and to work together to help HKIAC and Hong Kong to scale new heights as a leader in international arbitration. In this regard, as Secretary for Justice, I would do whatever I can to support, and to realise our common goals.

Finally, may I wish you a very successful conference. Thank you very much.

Ends/Thursday, November 18, 2010