

Speech by Secretary for Justice

Following are the Opening Remarks by the Secretary for Justice, Ms Elsie Leung, at the "International Dispute Resolution" Conference today (October 20):

The Rt Hon the Lord Mayor, Sir James Hodge, distinguished speakers, ladies and gentlemen,

I am honoured to be invited to make some opening remarks at this timely and important conference.

Background

The development of the Pearl River Delta, China's accession to WTO, and the recently concluded Closer Economic Partnership Arrangement between Hong Kong and the Mainland, together offer unprecedented opportunities for international businessmen and investors. Inevitably, some business and investment deals will lead to disputes between the parties. It then becomes essential to find a just and efficient method of resolving those disputes.

Dispute resolution is a form of service that is subject to competition and market forces, just like other services. International businessmen have a choice of the method of dispute resolution, the country whose laws are to be applied, and the place - anywhere in the world - where the dispute resolution is to take place.

Two cities

Today's conference is largely a tale of two cities - London and Hong Kong - and what they can offer in this area. Both cities will proudly display the services on offer, and the advantages they have over other places. This is healthy competition in action!

Legal system on the Mainland

At this stage of the conference, perhaps it would be helpful if I say something about the legal situation in the Mainland, which forms the background to international contracts and disputes there.

In the past decade, great progress has been made towards the target of ruling the Mainland according to the law, and in progressing from "rule by law" to the "rule of law". To facilitate economic development, a series of important commercial laws and regulations have been introduced, including the Guarantee Law, the Law on Commercial Banks, the Company Law, the Arbitration Law, the Securities Law and the Contract Law.

To improve law enforcement and the management of judicial and legal personnel, the Judges Law, the Procurators Law and the Lawyers Law were introduced. These laws strengthen the regulation and supervision of legal personnel, by ensuring that they meet professional standards and by laying down rules and codes of practice.

Recently, an important step has been taken in improving the quality of judges, lawyers and procurators when a Uniform National Judicial Examination was established. More than 310,000 candidates sat the first such examination in March last year, and approximately 24,000 candidates were successful.

The legal profession in the Mainland is developing rapidly. But of the 110,000 Mainland lawyers, only about 5,000 possess a foreign language skill and are capable of handling international legal practice, and most of them are located in large coastal cities such as Beijing and Shanghai. It is not easy to find lawyers in middle and small-sized cities who are able to provide legal services on foreign-related business.

Foreign-related cases will pose new challenges for Mainland courts. China's accession to the WTO poses stricter requirements on China's judicial system. Despite the significant reforms that have been introduced in recent years, there is still much to be done to establish a fairer, more open and procedurally enhanced adjudication system to meet the WTO's requirements. Furthermore, it will be difficult, within a short period of time, to train sufficient judges with an international perspective, who are familiar with the WTO regulations and international business practices.

Ability to resolve disputes elsewhere

Given the situation in the Mainland, some foreign investors and businessmen may prefer to have their disputes resolved elsewhere. As a general rule, the parties to an international contract in the Mainland can agree that the contract is subject to the law of another jurisdiction, or that disputes arising under it are to be resolved in a

place outside the Mainland (including Hong Kong).

According to Article 145 of the General Principles of Civil Law and Article 126 of the Contract Law of China, the parties to foreign-related contracts may choose laws of other countries and regions (including Hong Kong law) as the law applicable to the settlement of contractual disputes, unless otherwise provided by law. The exceptions are contracts to be fulfilled in the territory of the PRC in respect of Chinese-foreign equity or contractual joint ventures, and Chinese-foreign co-operation in exploring and exploiting natural resources.

Under Article 244 of the Civil Procedure Law, parties to a dispute over a contract concluded with a foreign element, or over property rights and interests involving a foreign element may, through written agreement, choose the court of the jurisdiction which has practical connections with the contract to settle their disputes. The place where a contract is signed may be regarded as having a practical connection with the contract and disputes arising under it.

Article 15 of the Law on Chinese-foreign Equity Joint Ventures and Article 26 of the Law on Chinese-foreign Contractual Joint Ventures both deal with disputes arising between the parties to an equity joint venture that have not been settled through consultation. The Articles provide that the parties may agree to settle those disputes through arbitration by an arbitration agency of China or elsewhere. And so even disputes under international joint ventures can be arbitrated in Hong Kong.

Choosing other laws or venues

If a foreign investor or businessman wishes his contracts in the Mainland to be the subject of the law of another jurisdiction, there are obvious attractions in choosing a common law jurisdiction. The common law system is internationally recognised as a just, modern and highly developed legal system. Both London and Hong Kong are part of the common law world and so appear to be equally attractive in that respect. I am sure that you will all be aware that reunification has not affected the basis of the legal system in Hong Kong. Our Basic Law, which is the constitutional foundation for "one country, two systems", specifically provides for the continuity of the common law in this Special Administrative Region.

When choosing a city in which dispute resolution is to take place, businessmen are likely to consider:

- 1) the quality and independence of the courts, or arbitration centres, in the city;
- 2) the quality of the lawyers and other professionals who may assist in the process;
and
- 3) the extent to which the court judgment, or arbitral award, may be enforced in other places.

In my view, London and Hong Kong score high marks in all three areas. I am sure that, in the course of today's conference, distinguished speakers will explain why they believe this to be the case. For now, I simply wish to emphasise that Hong Kong's judiciary, International Arbitration Centre, and independent legal profession are widely acknowledged to be of an international standard.

Hong Kong's edge

So far, I have not sought to distinguish between London and Hong Kong as desirable venues for international dispute resolution. Perhaps I may now be permitted to identify some of the advantages that Hong Kong alone has to offer. They are, in a nutshell, language and location.

All lawyers in Hong Kong are trained and operate effectively in English, and the majority of them can also communicate effectively in Cantonese or Putonghua, or both. Both foreign and Mainland parties can, therefore, communicate directly with lawyers in Hong Kong. In addition, local lawyers know the Mainland well and have a good understanding of the operation of the Mainland market. Hong Kong's proximity to the Mainland means that Mainland parties do not have to travel far to attend hearings. The recently concluded Closer Economic Partnership Arrangement between Hong Kong and the Mainland further facilitates co-operation between Hong Kong and Mainland lawyers so that Hong Kong and foreign investors into the Mainland market will be better served by lawyers of both jurisdictions which in turn enhances the standard of service of lawyers in the two jurisdictions. With their experience and international perspective, Hong Kong lawyers are in a position to provide high quality professional services. I therefore consider that Hong Kong can offer extremely competitive services in respect of international dispute resolution.

Conclusion

Ladies and gentlemen, I hope these opening remarks have provided a useful backdrop to today's conference. I have no doubt that the distinguished speakers who are to follow me will provide a more thorough and illuminating account of the issues before us. May I wish you all a very productive and enjoyable conference. Thank you.

Ends/Monday, October 20, 2003