

Speech by DSJ at opening of Generations in Arbitration Conference under Hong Kong Legal Week 2022 (English only) (with photo/video)

Following is the welcoming remarks by the Deputy Secretary for Justice, Mr Cheung Kwok-kwan, at Generations in Arbitration Conference under Hong Kong Legal Week 2022 today (November 8):

Distinguished guests, ladies and gentlemen,

Good afternoon. It gives me great pleasure to welcome you all to the second day of Hong Kong Legal Week 2022.

The National 14th Five-Year Plan, a key national development strategy, supports the development of the "eight centres" in Hong Kong, including to enhance its status as the international finance, transportation and trade centre, and centre for international legal and dispute resolution services in the Asia-Pacific region. As echoed in the Policy Address this year, the HKSAR (Hong Kong Special Administrative Region) Government will continue to leverage on the advantages of our common law system to consolidate our strengths as an international legal services platform for deal making and dispute resolution, and to enhance the efficiency and competitiveness of the legal sector.

The Conference today will discuss the latest developments in arbitration and the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) in Hong Kong and how these new developments could further enhance Hong Kong's attractiveness as an ideal place for dispute resolution in the region and beyond.

Latest developments in arbitration

Under the "one country, two systems", Hong Kong is the only common law jurisdiction in China. In the past 25 years since the return of Hong Kong to the motherland, Hong Kong and the Mainland have entered into nine arrangements on mutual legal assistance in civil and commercial matters, amongst which, three of the arrangements are arbitration-related, establishing effective mechanisms to facilitate reciprocal recognition and mutual enforcement of arbitral awards, and interim measures for protection of property, evidence and conduct preservation.

Hong Kong possesses intrinsic strengths in dispute resolution with a pool of knowledgeable and experienced dispute resolution talents specialising in areas such as commerce and finance, shipping, construction and international investment law. We also have a sound and robust legal system, solid foundation of the rule of law, and our Judiciary adopts a pro-arbitration approach in upholding the wide discretion of arbitrators and the neutrality and flexibility of the arbitral process.

While our longstanding qualities earn us the laurels as the third most preferred seat for arbitration last year, as well as the top five preferred arbitral seats globally since 2015, it is only by our continued efforts in exploring innovative developments that could keep us competitive in the international arena of dispute resolution.

(i) Third party funding

Over the years, the Arbitration Ordinance (Cap. 609) has been refined from time to time to reflect the latest international arbitration developments, and to provide an up-to-date and accommodating legislative framework for arbitrations in Hong Kong. In 2017, amendments were made to the Arbitration Ordinance to clarify that third party funding of arbitration and mediation is not prohibited by the common law doctrines of maintenance and champerty, and provides for related safeguards. The Code of Practice for Third Party Funding of Arbitration, which sets out the practices and standards required of the third party funders, was issued in December 2018 before the relevant provisions in the Arbitration Ordinance came into operation in February 2019.

Over the past three years, we have observed a significant growing trend in the use of third party funding in arbitration. The surge in the use of the regime by the arbitration sector has proven it to be a success, especially because it clarifies the legal position to facilitate arbitration parties lacking financial resources to pursue their claims with additional means, hence improving access to justice.

(ii) Outcome related fee structures for arbitration

This year, the Government is pursuing another major breakthrough to further widen the spectrum for arbitration funding options. Earlier in June, legislative amendments were made to the Arbitration Ordinance providing that certain agreements using outcome related fee structures for arbitration, or ORFSA in short,

are not prohibited by the common law doctrines of maintenance, champerty and barratry. ORFSA allows for greater autonomy for clients and lawyers to devise fee arrangements that suit their financial and business needs, assists parties in managing risks inherent in the arbitration process, and unlocks the funding options that lawyers could offer to their clients.

Yesterday (November 7), members of the panel on legal matters (Panel on Administration of Justice and Legal Services) of the Legislative Council were briefed on the ORFSA subsidiary legislation. The panel supported the papers. The subsidiary legislation will be introduced into the Legislative Council for negative vetting and is hopeful that the ORFSA regime will be fully implemented in Hong Kong in December this year, thereby benefiting the arbitration users and legal sector, and enhancing Hong Kong's competitiveness by offering new funding options for Hong Kong's arbitration services.

Lawtech

On the topic of dispute resolution, it would be incomplete without mentioning the development of online dispute resolution (ODR) in Hong Kong. As supported by the Chief Executive in his Policy Address this year, to enhance the efficiency and competitiveness of the legal sector, the Government is committed to promoting the wider use of lawtech. The DoJ (Department of Justice) will also strive to establish an online mediation platform in the GBA (Guangdong-Hong Kong-Macao Greater Bay Area) next year to provide Hong Kong and Mainland residents with a time and cost-effective online option for resolving cross-border disputes.

With the support of the DoJ, Hong Kong's homegrown service provider of ODR and related services, eBRAM International Online Dispute Resolution Centre (eBRAM), has officially launched its online arbitration and online mediation platforms just two weeks ago (on October 24). eBRAM plans to introduce an online deal-making platform towards the end of the year. These new platforms would not only enhance Hong Kong's lawtech development capacity by offering flexible, secure, reliable and affordable one-stop-shop online services, but also further strengthen Hong Kong's position as an international hub for legal, deal making and dispute resolution services.

Application of the CISG

Another notable development in the legal field is the full implementation of the CISG in Hong Kong with effect from December 1 this year. The relevant ordinance was passed by the Legislative Council in September last year and it will also come into operation on the same date to implement the Convention locally.

The CISG has been described as "the most successful substantive uniform commercial law treaty". Currently, there are 95 Contracting States to the CISG from different legal traditions and at various levels of economic development, representing over two-thirds of the global economy. It is also remarkable to note that nearly half of the countries participating in the Belt and Road Initiative and more than half of Hong Kong's top 20 principal trading partners are also CISG Contracting States.

According to the statistics published by the United Nations Conference on Trade and Development, global trade reached a record high in 2021. As compared with the fourth quarter of 2019, East Asia has recorded the respective growth of 26 per cent in imports and 35 per cent in exports in the fourth quarter of 2021. Further, statistics published by the World Trade Organization show that Hong Kong ranked sixth in 2021 for the exports of world merchandise trade, and was the third largest exporter after the Mainland and Japan in the region.

Applying the CISG to Hong Kong could facilitate deal making and reduce transaction costs as it allows for a uniform sales law to govern the bulk of Hong Kong businesses' international sales transactions, enabling businesses to trade with their overseas counterparts on a fair and level playing field by using a sales law which is familiar to both.

With increasing international trades, commercial disputes are unavoidable. Implementing the CISG in Hong Kong also creates new opportunities for Hong Kong's legal and dispute resolution professionals, to advise on and handle CISG-related disputes as legal advisers, advocates and arbitrators, thereby widening the scope of their legal services, enhancing their competitiveness and reinforcing Hong Kong's position as a leading centre for international legal and dispute resolution services in terms of both arbitration and litigation. With the development of more cases on international trade law, the courts, legal practitioners, arbitrators in Hong Kong could also contribute to the global development of international commercial and trade law.

The application and implementation of the CISG marks an important milestone for

the development of international sale of goods law in Hong Kong. We are confident that Hong Kong and its overseas trading partners, including those along the Belt and Road Initiative, will benefit from this new development.

Conclusion

As remarked by President Xi in the important speech delivered on July 1 this year, Hong Kong's close connection with the world market and strong support from the motherland remain its distinctive advantages. The latest developments in the legal sector have created abundant opportunities for our aspiring legal professionals, locally and internationally. It is one of our Department's key policy initiatives this year to continue to promote the strengths of and opportunities for Hong Kong's legal and dispute resolution services on all fronts.

Last but not least, I would like to express my thanks to the Moot Alumni Association and Withersworldwide for putting together this wonderful programme, and to our speakers for sharing their views highlighting Hong Kong's latest developments in arbitration and in CISG. May I wish you all a fruitful discussion this afternoon. Thank you very much.

Ends/Tuesday, November 8, 2022