

Speech by SJ at HKMAG's Webinar on Environmental Regulations and Requirements: The Potential for Maritime Disputes (English only)

Following is the opening remarks by the Secretary for Justice, Mr Paul Lam, SC, at the Hong Kong Maritime Arbitration Group (HKMAG)'s Webinar on Environmental Regulations and Requirements: The Potential for Maritime Disputes today (November 23):

President of the Hong Kong Maritime Arbitration Group Mr Bowring (Mr Arthur Bowring), distinguished guests, ladies and gentlemen,

It gives me great pleasure to speak at today's webinar organised by the Hong Kong Maritime Arbitration Group.

Protection of the environment has always been a concern for us all. Global warming has urged countries around the world to join hands and take immediate actions to combat this problem. As a result of concerted efforts, the Paris Agreement was signed in December 2015, which sets out a global framework to avoid dangerous climate change. It marks the beginning of a shift towards a net-zero emissions world.

The maritime sector also contributes to the global fight against climate change. On the international level, in April 2018, the International Maritime Organization (IMO) set targets of reducing annual greenhouse gas emissions from international shipping by at least 50 per cent by 2050, compared with their level in 2008, and working towards phasing out greenhouse gas emissions from shipping entirely within this century. In order to achieve the above targets, the IMO has adopted amendments to Annex VI of the International Convention for the Prevention of Pollution from Ships in June 2021. The amendments have brought about new regulations on Energy Efficiency Existing Ship Index and Carbon Intensity Indicator which have since come into force on November 1 this year. Regionally, in July 2021, the European Commission adopted the Fit for 55 package which consists of proposals aiming to accelerate efforts to decarbonise shipping.

The maritime finance and chartering sectors are also committed in making shipping greener by creating the Poseidon Principles and Sea Cargo Charter. These principles provide a framework for financial institutions and charterers to assess whether their activities are consistent with the targets set by IMO in its greenhouse

gas strategy. These new regulations and requirements are no doubt necessary in addressing climate change and can enhance the well-being and sustainable development of our society. Nonetheless, they may bring conflicting challenges to the maritime sector. The performance of both existing and future contracts is likely to be affected and disputes will inevitably arise. For example, there may be disputes over who should bear the cost of compliance with these new regulations and what type of modifications to the vessel are required to meet the new regulations.

If any such maritime disputes arise, to resolve it by arbitration would be an obvious and effective option. In this respect, Hong Kong is well placed to resolve these maritime disputes for numerous reasons. In the 14th Five-Year Plan, the Central People's Government supports Hong Kong to develop into an international transportation centre and a centre for international legal and dispute resolution services in the Asia-Pacific region. Furthermore, the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area also explicitly supports Hong Kong's development of high-end maritime services, including dispute resolution services.

In recent years, Hong Kong has entered into several important reciprocal arrangements with the Mainland. In April 2019, Hong Kong signed an interim measures arrangement with the Mainland. Under this arrangement, parties to arbitral proceedings seated in Hong Kong and administered by one of the qualified arbitral institutions would be able to apply to the Mainland courts for interim measures. Hong Kong is the first and only jurisdiction in the world outside of the Mainland where this is possible. Shipping companies contracting with Mainland Chinese parties will thus have an incentive to choose Hong Kong as an arbitral seat as they can now obtain interim measures from the Chinese courts in aid of their Hong Kong maritime arbitrations. This arrangement certainly increases Hong Kong's overall attractiveness as a seat of arbitration.

We also have an up-to-date legislative framework for conducting arbitration. Recently in June 2022, the Hong Kong Arbitration Ordinance has been amended to permit certain agreements using outcome related fee structures for arbitration (ORFSA). Subsidiary legislation has also been introduced into the Legislative Council to set out the more detailed regulatory framework and particular safeguards in respect of ORFSA. These new amendments can provide arbitration parties with more flexible fee arrangements, thereby strengthening Hong Kong's competitiveness as a leading international arbitration centre.

Let's not forget that Hong Kong has reputable and specialised maritime arbitral institutions such as HKMAG. HKMAG, which was originally formed as a division of the Hong Kong International Arbitration Centre in 2000, became an independent organisation in 2019 which provides specialised arbitration services in maritime disputes. It has its own set of procedural rules specially designed for maritime disputes, namely the HKMAG Terms (2021). HKMAG also maintains a list of arbitrators who are experienced shipping lawyers and commercial men from which parties can select to hear their disputes.

Under the BIMCO Law and Arbitration Clause 2020, Hong Kong has now been added as the fourth named arbitration venue in the standard contractual forms of BIMCO (Baltic and International Maritime Council), alongside London, New York and Singapore. The addition of Hong Kong to BIMCO's standard arbitration clause is a vote of confidence and recognition of Hong Kong as a leading venue for resolving maritime disputes.

Ladies and gentlemen, with these unique strengths, I am confident that Hong Kong's dispute resolution experts will be able to assist the parties in resolving any maritime disputes arising from the new environmental regulations and requirements. On this note, I wish you fruitful exchanges and discussions in the panel to come. Thank you very much.

Ends/Wednesday, November 23, 2022