

Speech by DSJ at GBA Lawyers Workshop HK Station: Effective Negotiation on Dispute Resolution Clause held during 11th China Arbitration Week (English only) (with photo)

Following is the speech by the Deputy Secretary for Justice, Mr Cheung Kwok-kwan, at the [GBA Lawyers Workshop HK Station: Effective Negotiation on Dispute Resolution Clause](#) held during the 11th China Arbitration Week today (September 2):

Distinguished guests, ladies and gentlemen,

Good morning. It gives me great pleasure to join you all on the very first day of the China Arbitration Week 2023. I would like to thank our co-organiser, CIETAC Hong Kong, for their staunch support in promoting Hong Kong's arbitration service and for holding a Hong Kong Special Event during the Week every year. This year's event is a meaningful and enlightening one, specially crafted in the format of a workshop on "Effective Negotiation on Dispute Resolution Clause" to provide practical insights to navigate through the relevant negotiation process.

As you would appreciate, a well-drafted dispute resolution clause is important as it provides parties with certainty as to the procedures and rules to resolve disputes arising out of their contracts. One of the key issues that needs to be considered when drafting the clauses is the choice of the dispute resolution forum.

Hong Kong has been a top choice for resolving disputes, and ranks as the third most preferred seat for arbitration worldwide in the 2021 International Arbitration Survey. Under "one country, two systems", Hong Kong has the distinctive advantages of enjoying staunch support from the Central People's Government and being closely connected to the global market. Recent national development plans such as the 14th Five-Year Plan and the Outline Development Plan for the Greater Bay Area explicitly support Hong Kong to establish itself as the centre for international legal and dispute resolution services in the Asia-Pacific region.

Hong Kong as prime seat of arbitration

One of the pillars of Hong Kong's success is our robust and solid legal infrastructure. Hong Kong has a long history of practising the common law system, and is the only common law jurisdiction in China. In respect of arbitration, our

regulatory framework is based on the UNCITRAL Model Law, with which the international business community is familiar.

Our arbitration legal framework has been keeping abreast with international development. Since 2013, emergency arbitration is expressly recognised by legislation in Hong Kong to enable parties to arbitration to obtain urgent relief before an arbitral tribunal is constituted, and such relief is enforceable by the courts. In 2017, we clarified that disputes over intellectual property rights are arbitrable in Hong Kong, and it is not contrary to the public policy to enforce related awards. Recently, we have opened up more funding options for arbitration users to meet different financial needs thereby enhancing access to justice.

Following the successful implementation of the third party funding of arbitration regime in 2019, outcome-related fee structures for arbitration have been introduced last year for parties and their lawyers to agree on the most suitable fee arrangements in conducting arbitration proceedings. The scope of both arbitration funding regimes are considerably wide, covering arbitration proceedings, related mediation and court proceedings as well as proceedings before an emergency arbitrator. We are hopeful that the flexibility offered in our arbitration funding regimes would attract more parties to use Hong Kong's dispute resolution services and to choose Hong Kong as a seat of arbitration.

The courts in Hong Kong have all along been supportive of the use of arbitration. As remarked by the English Commercial Court in *Shagang South-Asia (Hong Kong) Trading Co. Ltd v Daewoo Logistics*, "Whilst Hong Kong is no doubt geographically convenient, it is also a well-known and respected arbitration forum with a reputation for neutrality, not least because of its supervising courts." 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 pro-arbitration approach is reinforced in a recent Court of Final Appeal's judgment in *C v D* involving a dispute as to the fulfilment of the pre-arbitration condition in a multi-tiered dispute resolution clause. It was held that there is a presumption that non-compliance with pre-conditions to arbitration is a matter of admissibility, rather than jurisdiction. It does not negate the parties' consent to the arbitral tribunal's authority, and remains a matter for the arbitral tribunal as opposed to the court. The minimal court intervention would offer greater assurance and certainty to commercial parties seeking to arbitrate in Hong Kong. It is also worth

mentioning that the use of multi-tiered dispute resolution mechanisms is welcomed in Hong Kong. Med-arb process is expressly permitted in our arbitration law and there are also certain safeguards imposed to protect the parties to a dispute.

Under "one country, two systems", the various arrangements on mutual legal assistance in civil and commercial matters signed with the Mainland enable Hong Kong to be a legal gateway into the Mainland, making Hong Kong the ideal choice for resolving Mainland-related disputes. In particular, the Interim Measures Arrangement signed in 2019 is conceived as a game-changer. It allows parties to arbitration proceedings seated in Hong Kong and administered by designated arbitral institutions to apply to the Mainland courts for interim measures, including the preservation of property, evidence and conduct. Seating the arbitration in Hong Kong and choosing the right arbitral institutions would be crucial in making use of the Interim Measures Arrangement. At present, there are seven designated arbitral and dispute resolution institutions, including CIETAC Hong Kong. We are glad to know that the Interim Measures Arrangement has been widely used with more than 97 applications made to the Mainland court since its inception, thereby providing better protection and greater convenience to arbitration users in Hong Kong.

In terms of soft infrastructure, Hong Kong is home to a strong pool of arbitration experts, and we also encourage professionals from all over the world to come to Hong Kong for arbitration. In March this year, we have refined a Pilot Scheme which provides immigration convenience for eligible non-Hong Kong residents, including residents of the Mainland, Macao and Taiwan, to participate in arbitral proceedings in Hong Kong on a short-term basis without the need to obtain an employment visa. We believe that this measure would provide arbitration users with more flexibility in appointing their arbitrators and other related professionals, strengthening Hong Kong's competitiveness as an arbitration hub.

Development of alternative dispute resolution in GBA

The Greater Bay Area (GBA) development, as one of the major national strategies, has opened up abundant opportunities for the legal and dispute resolution sector. In response to the growing demand for mediation services in the GBA, a GBA Mediation Platform has been established by the Guangdong, Macao and Hong Kong legal departments. With concerted efforts, the GBA Mediator Accreditation Standards, the GBA Mediator Code of Conduct Best Practice and the GBA Cross-Boundary Disputes Mediation Model Rules have been promulgated. These standards

and rules seek to foster the professionalism of the GBA mediation services and to enhance the confidence of mediation users in the GBA.

Looking forward, the three places will continue to explore other collaborations such as the establishment of a list of GBA mediators and a list of GBA arbitrators, leveraging Hong Kong's experience and competitive edges in dispute resolution to contribute to the high-quality development of the GBA.

Concluding remarks

Ladies and gentlemen, a well-crafted dispute resolution clause, in particular the right choice of dispute resolution forum, is important to facilitating the efficient and effective conduct of proceedings. No matter which form of dispute resolution you are looking for, be it arbitration, mediation or any combined form, Hong Kong possesses distinct advantages and continues to flourish as the prime forum for dispute resolution. Today, we are very honoured to have invited renowned practitioners to join the mock negotiation sessions and provide some practical guidance on negotiating and drafting dispute resolution clauses.

On this note, may I wish you all a workshop of insightful and fruitful exchanges. Thank you very much.

Ends/Saturday, September 2, 2023