

#Hashtag Hong Kong

Following is the article by the Secretary for Justice, Mr Paul Lam, SC, broadcast on Radio Television Hong Kong "#Hashtag Hong Kong" today (July 20):

Good morning. Earlier this month, on a trip to Italy, I had the pleasure of meeting a fascinating gentlemen by the name of Marco. I was very touched, and most impressed by his excellent Putonghua, and although we'd only just met, we were able to engage in some very candid exchanges on topics of common interest and concern. Actually, it really was a pity that, due to insufficient time, we weren't able to delve deeper into some of the subjects we discussed.

One topic he showed particular interest in was The International Organization for Mediation or 'IOMed'. As you may know, 33 countries, including China, signed the Convention on the Establishment of the International Organization for Mediation in Hong Kong on 30 May. Like any other international treaty, signatory states must still formally ratify the Convention according to their respective domestic laws. For example, China approved the decision to ratify the Convention at the end of June during the session of the Standing Committee of the National People's Congress. The Convention will enter into force on the 30th day following the deposit of the third instrument of ratification, and we hope that day will come soon. Moreover, we hope to see that more countries will join as member states in the future, and actively support this historic, and the first intergovernmental international organization, dedicated to resolving international disputes by mediation.

The IOMed will function as an independent international organisation. The Governing Council, which will be composed of representatives appointed by the member states, will serve as the highest decision-making body. On the other hand, the day-to-day operations will be conducted by a Secretariat under the leadership of a Secretary-General to be appointed by the Governing Council. The Governing Council and the Secretariat have not yet been formed at the moment. The existing IOMed Preparatory Office, which enjoys privileges and immunities of an international organization, will undergo transition to become the Secretariat in due course.

The Hong Kong Special Administrative Region Government is about to complete the project to convert the Old Wan Chai Police Station into the headquarters of the IOMed. Upon completion, it will be handed over to the IOMed Preparatory Office to carry out other necessary preparatory work for the formal operation of the IOMed. The HKSAR Government will be responsible for the upkeep and maintenance of the IOMed headquarters, but will not be directly involved in its daily operations.

The IOMed's establishment in Hong Kong will undoubtedly elevate our city's status as a preeminent hub for international legal services and dispute resolution, and assist in strengthening our global soft power. We will also actively seek the support of our country and the IOMed to enable more professionals from Hong Kong's legal sector and mediation services to participate in its work.

Marco expressed an interest serving as a mediator of the IOMed. According to the Convention, the IOMed will maintain two panels of mediators. The first is the Panel of State-to-State Mediators, who will handle disputes between states. The second is the General Panel of Mediators, who will handle disputes between a state and a national of another state, or international commercial disputes between private parties.

Each member state has the right to designate a specific number of its nationals to both panels. Additionally, the Council has the right to appoint a certain number of individuals, irrespective of their nationalities, to both panels. In other words, even nationals of non-member states may have the opportunity to become IOMed mediators.

The Convention requires that the mediators shall possess high moral character and recognized competence in specialized fields such as law, commerce, industry or finance, and who may be relied upon to conduct mediation. Panel of State-to-State Mediators must additionally possess known competency in questions of international law, diplomacy, international relations or international political and economic affairs, and with extensive political skill and judgment.

So, it all depends on whether the member state or the Governing Council is satisfied that the particular individual in question fulfils the above -mentioned qualifications, and agrees to designate him or her as a mediator. I notice some recent rumors suggesting that completing some mediator training courses offered by certain institutions would qualify someone to serve as an IOMed mediator. I must tell you... those rumors are incorrect.

In fact, even in Hong Kong, there is no legal requirement stipulating specific qualifications one must hold to serve as a mediator. Generally speaking, anyone can act as a mediator if the parties to a dispute agree. However, specific mediation schemes may impose particular qualification requirements. For instance, the Family Court-annexed Mediation Scheme (FCMAS) of the Hong Kong Judiciary requires mediators to be Accredited Family Mediators recognised by the Hong Kong Mediation Accreditation Association Limited (HKMAAL).

So, returning to my first European visit, apart from the pleasure of meeting my new friend Marco, I was very glad to have the chance to meet the legal and business communities in the Netherlands, France, and Italy. As I emphasized to him, under the long lasting principle of "one country, two systems," Hong Kong's highly internationalised, efficient, and credible common law system makes it an unparalleled gateway for friends around the world to seize business and investment opportunities in China and the Asia-Pacific Region. As the Minister of Foreign Affairs, Mr Wang Yi, said at the Signing Ceremony of the Convention on the Establishment of the IOMed, Hong Kong, backed by the motherland and connected to the world, offers a favourable business environment with strong rule of law, which combines the advantages of both the common law and civil law systems. While Hong Kong practices the common law system, legal practitioners here are also familiar with the civil law system, given that Mainland China's legal system is fundamentally civil law-based.

During our discussions, we agreed that while differences exist between the common law and the civil law systems, the differences are in fact not as big as one may think. In fact, the prevailing trend is one of cross-fertilization, where both systems increasingly incorporate elements from each other, particularly in the area of international civil and commercial law. Very Often, for the sake of practical convenience and to facilitate cooperation, identical or substantially similar international standards will be adopted.

I fully understand that, as compared to common law jurisdictions with which we have deep and long history of exchanges and cooperation, civil law countries like the Netherlands, France, and Italy may be relatively less familiar with Hong Kong's legal system and services. However, I am very confident that we can establish excellent communications and closer ties with civil law countries and provide suitable legal services for

friends from those countries. Indeed, one key focus of my future work plan is precisely to strengthen exchanges with civil law jurisdictions, and enhance their understanding of Hong Kong's legal system and services.

Finally, I look forward to meeting Marco, and all of my new friends again soon. And, thank you for this opportunity to tell you about this exciting and meaningful new path... towards the establishment of the International Organization for Mediation in Hong Kong. In that spirit, I would like to share a song with you, it is an old but very meaningful Cantonese song. It is a theme song back in the 80s for a TV series about the Silk Road. The English translation of the name of the song is “people travelling together on the long journey”. I hope you will enjoy it. Thank you for listening!