

Speech by Acting SJ at Closing of ICC Hong Kong International Commercial Arbitration Training (PIDA 1) (English only) (with photo)

Following is the speech by the Acting Secretary for Justice, Dr Cheung Kwok-kwan, at the Closing of ICC Hong Kong International Commercial Arbitration Training (PIDA 1) today (October 25):

Distinguished guests, ladies and gentlemen,

It gives me great pleasure to speak at the closing ceremony of the International Commercial Arbitration Training today. This training, jointly organised by the International Chamber of Commerce (ICC) - Hong Kong and the Department of Justice, provides a great opportunity for arbitration practitioners from afar and nearby to share their experience in international arbitration.

Edges in international arbitration

As the only common law jurisdiction in China, Hong Kong is at the forefront of international arbitration services. The numbers speak for themselves.

In the 2025 International Arbitration Survey published by Queen Mary University of London, Hong Kong is ranked the second most preferred seat of arbitration globally, and is the most preferred arbitration seat in the Asia-Pacific region.

Last year, over 76 per cent of all arbitrations submitted to the Hong Kong International Arbitration Centre were international in nature, with a total amount in dispute of HK\$106 billion and participating parties from 53 jurisdictions worldwide.

There are good reasons for our popularity. Hong Kong's arbitration legal framework is underpinned by our unique bilingual common law system. Our Arbitration Ordinance (Cap. 609) is based on the UNCITRAL Model Law on International Commercial Arbitration, which is familiar to practitioners from both civil law and common law jurisdictions. I also wish to highlight some of our unparalleled advantages from a practical perspective.

Practical strengths of Hong Kong's arbitration framework

As soon as parties consider pursuing the avenue of arbitration, financial resources become a key consideration. Our arbitration framework offers a wide range of funding options. Since June 2017, our Arbitration Ordinance specifies that third party funding in arbitration and ancillary court proceedings are permitted in Hong Kong.

Besides, since the implementation of the Outcome Related Fee Structures for Arbitration (ORFSA) regime in Hong Kong in December 2022, arbitration parties and their lawyers are allowed to agree on the fee arrangements based on the outcome in the

arbitration matter. In particular, the unique Hybrid Damages-Based Agreement under the ORFSA regime enables lawyers to receive fees during the course of the matter in addition to a payment in the event the client obtains a financial benefit in the matter. These various arbitration funding options help enhance access to justice.

During the course of the arbitration and before the handing down of arbitral awards, interim measures may be required to prevent dissipation of assets and preserve status quo.

In this regard, a groundbreaking Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR was signed in April 2019. Under this Arrangement, Hong Kong has become the first and currently the only common law jurisdiction outside the Chinese Mainland where, as a seat of arbitration, parties to arbitral proceedings administered by the designated arbitral institutions can apply to the Mainland courts for interim measures, including property preservation, evidence preservation and conduct preservation, before the arbitral award is made. The Asia Office of the ICC International Court of Arbitration is one of the designated institutions under the Arrangement. As at September 30 this year, 177 applications were made to 48 Mainland courts, and the total value of assets preserved amounted to nearly RMB 27.9 billion.

While getting a favorable award is crucial, enforceability of the award is the ultimate measurement of success.

Arbitral awards made in Hong Kong are enforceable in over 170 Contracting Parties to the New York Convention and are generally upheld by local courts. The pro-arbitration position of the Hong Kong Judiciary is well documented in court judgments. Judicial independence, including the power of final adjudication, is also guaranteed by the Basic Law of Hong Kong.

Moreover, by virtue of the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR signed in 1999, arbitral awards made in both the Chinese Mainland and Hong Kong can be effectively enforced in the two places. To further refine the Arrangement, a Supplemental Arrangement was signed in 2020, under which parties to Hong Kong arbitral awards can apply to the Mainland court for preservation measures prior to the enforcement of the arbitral award in the Chinese Mainland. The award creditor can also make simultaneous applications to both the courts of the Chinese Mainland and Hong Kong for enforcement of the award, effectively preventing the debtor from dissipating assets to avoid enforcement action.

Attractiveness to arbitration talents

The unique features of Hong Kong's arbitration framework not only make Hong Kong a preferred seat of arbitration, but also an attractive place for practitioners to pursue their career.

Hong Kong offers an inclusive and open environment for nurturing and welcoming talents. Arbitration parties are free to appoint arbitrators with no restriction on nationality and can use lawyers from their own jurisdiction. Furthermore, with effect from March this year, the HKSAR Government has regularised a facilitation scheme to allow eligible individuals such as arbitrators, expert and factual witnesses, parties in and counsel in the arbitration, etc. to participate in arbitral proceedings in Hong Kong as visitors without the need to obtain an employment visa.

As a gateway to the Chinese Mainland, we also offer unique support for international arbitration talents looking for opportunities in the Guangdong-Hong Kong-Macao Greater Bay Area (GBA). Following the publication of the Working Guidelines on the Panel of GBA Arbitrators in July this year, we target to establish a panel of GBA arbitrators with Guangdong and Macao by end of this year and set up a platform for GBA commercial mediation and arbitration by next year to lower enterprises' costs of cross-boundary dispute resolution.

We will continue to support capacity building in the legal and dispute resolution arena. Following this successful training in arbitration, we will again collaborate with ICC Hong Kong in organising the 2025 ICC International Commercial Mediation Competition next month. I call on your ongoing support in fostering the continued growth of Hong Kong's talent pool and consolidating Hong Kong's role as the world-class international legal and dispute resolution services centre.

Once again, congratulations to ICC Hong Kong and all the participants for your valuable contribution in making this training a rewarding and insightful event. Thank you.