

**For discussion
on 23 April 2013**

LegCo Panel on Administration of Justice and Legal Services

Promotion of Hong Kong as a Regional Legal and Arbitration Services Centre

Introduction

This paper briefs Members of the Panel on the policy of the Administration to promote Hong Kong as a legal and arbitration services centre in the Asia Pacific region.

I. Initiatives in promoting Hong Kong as a regional centre for legal and arbitration services

2. One of the main policy objectives of the Department of Justice (DoJ) is to strengthen Hong Kong's status as a regional centre for legal and arbitration services. This policy is also affirmed in the 2013 Policy Address. Efforts will be made both within and outside Hong Kong to implement this policy.

3. Our key initiatives in pursuing this policy objective include:

- improving the regulatory framework for the provision of legal services in Hong Kong
- making Hong Kong an arbitration-friendly jurisdiction
 - enhancing the statutory framework for arbitration in Hong Kong
 - facilitating the establishment and growth of world class arbitration and law related organizations in Hong Kong
- promoting Hong Kong's legal and arbitration services in the Mainland and in other countries

4. To pursue these initiatives, DoJ works closely with the two legal professional bodies and the arbitration-related bodies including the Hong Kong International Arbitration Centre, the International Court of Arbitration of the International Chamber of Commerce (Asia Office), the China International Economic and Trade Arbitration Commission Hong Kong Arbitration Centre, the Chartered Institute of Arbitration (East Asia Branch) as well as the Hong Kong Institute of Arbitrators. DoJ has been liaising with the legal and arbitration professions to gauge their views and comments on possible ways to improve the provision of legal and arbitration services in Hong Kong, as well as the measures to promote Hong Kong as a regional centre for legal and arbitration services.

II. Measures taken and progress made

(1) Improving the regulatory framework for the provision of legal services in Hong Kong

5. DoJ has been working in collaboration with the two legal professional bodies to improve and modernize the regulatory framework for the provision of legal services in Hong Kong, with the aim of further enhancing Hong Kong's status as a regional centre for legal services.

Solicitor Advocates

6. The Legal Practitioners (Amendment) Ordinance 2010 ("HRA Ordinance") came into full operation on 22 June 2012. It allows solicitors who are able to meet the eligibility and other relevant requirements of the HRA Ordinance to apply to the Higher Rights Assessment Board ("Assessment Board") for rights of audience before the High Court and the Court of Final Appeal. The implementation of the HRA Ordinance is expected to benefit the public by allowing them a wider choice of able advocates to represent them in higher courts of Hong Kong.

7. In February 2013, the Assessment Board granted higher rights of audience to 15 applicants, of whom 13 were given the rights for civil proceedings and 2 were given the rights for criminal proceedings.

Limited Liability Partnerships

8. The Legal Practitioners (Amendment) Ordinance 2012 ("LLP Ordinance") was enacted in July 2012. DoJ has been working closely

with the Law Society in preparing the relevant implementing rules before the LLP Ordinance can come into operation.

9. The LLP Ordinance will enable law firms in Hong Kong to operate in the form of a limited liability partnership (“LLP”). It offers LLP as an alternative business model which has the main advantage of providing limited liability protection to innocent partners of an LLP firm so as to insulate their personal assets from claims incurred by default of other partners. It will further internationalize Hong Kong’s legal services by encouraging reputable foreign firms to set up offices in Hong Kong, and bolster our position as a legal service hub in the region.

Solicitor Corporations

10. The Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 enacted in June 1997 (the relevant part of which has yet to come into force) allows solicitors to incorporate their practice as solicitor corporations. The Statute Law (Miscellaneous Provisions) Ordinance 2012 enacted in July 2012 makes various amendments to bring the relevant provisions relating to solicitor corporations up-to-date.

11. Pending the finalization of the Solicitor Corporation Rules by the Law Society of Hong Kong, solicitors in Hong Kong would be given an additional choice of mode of practice. It will help to attract more legal talents, both local and overseas, to practise and provide world class legal services in Hong Kong for clients in the region.

(2) Enhancing the statutory framework for arbitration in Hong Kong

12. In consultation with the arbitration bodies, DoJ has been active in enhancing and updating the statutory framework for arbitration, since this would help to reinforce Hong Kong’s position as a leading arbitration centre in Asia Pacific.

New Arbitration Ordinance

13. Our arbitration legislation has undergone a major re-vamp. The Arbitration Ordinance (Cap 609) (“the Ordinance”) came into effect in June 2011. It unifies our previous domestic and international arbitration regimes on the basis of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law. It reinforces the advantages of arbitration, including respect for parties’

autonomy as well as savings in time and cost for parties opting to resolve their disputes by arbitration. At the same time, the Ordinance contains new initiatives which seek to enhance confidentiality of arbitration proceedings and related court hearings.

Arbitration (Amendment) Bill 2013

14. On 7 January 2013, DoJ concluded with the Macao SAR an Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards (“the Arrangement”). To implement the Arrangement, the Arbitration (Amendment) Bill 2013 will be introduced into the Legislative Council on 24 April 2013. The Ordinance will be amended so as to set out a specific statutory regime for the enforcement of arbitral awards made in Macao by Hong Kong courts.

15. There have been recent developments in the arbitration sector. In particular, rules and procedure concerning emergency arbitrator have increasingly been adopted by arbitral institutions around the world. The Bill will include amendments to make it clear that emergency relief granted by an emergency arbitrator is enforceable in accordance with the new provisions under the Ordinance. Other miscellaneous amendments will also be included in the Bill.

Enhancing the enforcement network for arbitral awards

16. Enforceability of arbitral awards is a highly relevant consideration when parties consider where to arbitrate. Although Hong Kong arbitral awards are already enforceable in over 140 jurisdictions under the New York Convention, DoJ will continue to seek to enlarge Hong Kong’s enforcement network.

17. In this regard, any previous doubts concerning the enforceability of Hong Kong arbitral awards in India has been removed when the Indian Government declared in March 2012 that the People’s Republic of China (including Hong Kong and Macao) is a reciprocating partner for the purposes of enforcement of arbitral awards under the New York Convention.

(3) Facilitating the establishment and growth of world class arbitration and law related organizations in Hong Kong

Hong Kong International Arbitration Centre

18. Established in the 1980's, the Hong Kong International Arbitration Centre ("the HKIAC") has earned international recognition and has been providing excellent support and services to the arbitration community as an independent and non-profit-making body. In October 2012, additional office space was made available by the Hong Kong Government to the HKIAC, doubling the size of its previous establishment. With the expanded and improved facilities, the HKIAC will be able to meet the increasing demand for suitable and neutral hearing venue for arbitration in Hong Kong.

ICCICA (Asia office)

19. The International Court of Arbitration of the International Chamber of Commerce (ICCICA) established a branch of its secretariat in Hong Kong in November 2008. This is the ICCICA's first ever branch of the Secretariat outside Paris. The Secretariat is serving the Asia Pacific region and is responsible for supervising ICC arbitrations in the region. This is a significant move by an international arbitration institution of high repute and bears testimony to the attraction of Hong Kong as a centre for international arbitration.

CIETAC Hong Kong Arbitration Centre

20. The China International Economic and Trade Arbitration Commission ("the CIETAC"), the largest arbitration institution in Asia in terms of the number of cases handled, has also established its first branch office outside the Mainland in Hong Kong in September 2012. The CIETAC Hong Kong Arbitration Centre commenced operation in December 2012.

21. The presence of the CIETAC Hong Kong Arbitration Centre is a vote of confidence in Hong Kong's leading position as a centre for arbitration in Asia Pacific. It will further reinforce Hong Kong's advantage in the conduct of Mainland-related arbitration cases.

Asia Pacific Regional Office of the Hague Conference

22. In December 2012, the Hague Conference on Private International Law, a leading global inter-governmental organization in the field of private international law, set up its Asia Pacific Regional Office in Hong Kong. The setting up of the Regional Office constitutes another vote of confidence in Hong Kong's position as a regional legal services centre.

23. The Regional Office serves to enhance legal cooperation among jurisdictions in the region through the use and promotion of the Hague Conventions. Through our participation and collaboration in the work of the Regional Office such as workshops and seminars in the region, it helps to boost the legal profile of Hong Kong. The Secretary for Justice also attended a conference marking the 120th anniversary of the Hague Conference and delivered a keynote speech to promote Hong Kong's position and the Regional Office.

Accommodation in CGO West Wing

24. In December 2012, the Hong Kong Government announced its decision to allocate part of the space in the West Wing of the former Central Government Office to house law-related non-government institutions (including arbitration and mediation institutions).

25. We are working out the arrangements for taking the decision forward. When the renovation is completed (tentatively scheduled for 2017), space and facilities will be available to provide a more favorable environment for the provision of legal and arbitration services by law-related NGOs in Hong Kong. The enhancement in facilities may also help to attract other reputable arbitration bodies and law-related organizations to set up offices in Hong Kong.

(4) Promoting Hong Kong's legal and arbitration services in the Mainland and in other countries

26. DoJ has been actively promoting the use of legal and arbitration services of Hong Kong by organizations and individuals in the Mainland and other jurisdictions. To that end, in collaboration with the professional and trade related bodies, DoJ has been exploring market liberalization measures in the Mainland under the Closer Economic Partnership Arrangement between the Mainland and Hong Kong ("CEPA") as well as other Mainland arrangements. We have also been organizing,

supporting, sponsoring or participating in visits, conferences, symposiums, forums, seminars, etc both in the Mainland and in other countries.

Promoting Hong Kong's legal and arbitration services in the Mainland

CEPA and other Mainland arrangements

27. In the past two to three years, good progress has been made in the co-operation between the legal professions of the Mainland and Hong Kong. The Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) Supplement VIII, signed in December 2011, had put forth new measures to foster closer co-operation between the legal professions of the Mainland and Hong Kong, and to explore ways of improving the mode of association of law firms of the two places. Under CEPA Supplement IX, signed in June 2012, Hong Kong law firms that have set up representative offices in the Mainland are allowed to operate in association with one to three Mainland law firms. The measures under CEPA have enhanced co-operation between Mainland and Hong Kong lawyers.

28. In the Outline of the National 12th Five-Year Plan, particular emphasis has been given to the need to deepen Hong Kong-Guangdong co-operation and implement the Framework Agreement on Hong Kong/Guangdong Co-operation. With the benefit of the platform provided by the Framework Agreement, we will actively seek to enhance co-operation with our counterparts in Guangdong and promote the implementation of the pilot measures in Qianhai, Shenzhen, for developing legal and arbitration services. In particular, under appropriate circumstances, enterprises operating in Qianhai shall be allowed to choose Hong Kong laws as the applicable law for their business contracts, and to encourage them to choose arbitration as a means of resolving commercial disputes¹.

2010 Legal services forum - Shanghai

29. Promotion in the form of seminars or forums is another key activity. DoJ joined hands with the Hong Kong Trade Development Council, the Law Society of Hong Kong, the Hong Kong Bar Association, HKIAC and ICCICA (Asia Office) to hold the first "Hong Kong Legal Services Forum" in Shanghai in July 2010. With the support of legal and

¹ See further DoJ's paper on "Role of the Hong Kong Legal Profession in the Development of Qianhai Area in Shenzhen", LC Paper No. CB(4)512/12-13(01), as discussed in the AJLS Panel meeting of 26 March 2013.

arbitration professionals from both Hong Kong and the Mainland, the forum was attended by well over 500 participants. This has led to strengthened co-operation and better network between the legal and arbitration professionals in both jurisdictions.

2012 Legal services forum - Guangzhou

30. In September 2012, the strength of our legal and arbitration services was again showcased in the second forum held in Guangzhou under the theme “Think Global, Think Hong Kong”. It was attended by about 700 participants from the legal and business sectors in the Mainland and legal and arbitration professionals of Hong Kong. The well-attended event served as a good platform where the legal and arbitration professionals of both places could share experience and build up network.

2013 Legal and arbitration services seminar – Xiamen

31. Further, DoJ and the Hong Kong Economic and Trade Office in Guangdong will jointly hold a seminar during the Fujian Xiamen Hong Kong Week 2013 in late April 2013. The seminar aims to introduce Hong Kong’s legal and arbitration services to Mainland enterprises to assist them in “going-out” and reaching the global market. Representatives from the Law Society of Hong Kong, the Hong Kong Bar Association, HKIAC, ICCICA (Asia Office) and CIETAC Hong Kong Arbitration Centre will speak at the seminar.

2014 Legal services forum

32. Following the success of the first and second Hong Kong Legal Services Forum held in 2010 and 2012, DoJ plans to organize the next Forum in 2014 in the Mainland to promote Hong Kong’s position as a regional centre for legal services and dispute resolution.

Promoting Hong Kong’s legal and arbitration services in other countries

33. Since 2009, visits have been made to prominent commercial centres in overseas countries (including Toronto, Kuala Lumpur, Seoul and Paris) to promote the competitive edges of Hong Kong in the provision of legal and arbitration services. In February 2013, DoJ also joined forces with the HKIAC and Hong Kong Bar Association to promote the use of arbitration services of Hong Kong in a road show in India, an emerging economic powerhouse in Asia.

34. Apart from India, DoJ is having on-going discussions with the relevant stakeholders on the ways to promote Hong Kong's legal and arbitration services in other new or emerging markets such as Vietnam and Myanmar. The Secretary for Justice has just visited Singapore and Hague in early April 2013 where he has highlighted DoJ's objectives to enhance Hong Kong's status as a regional hub for legal and dispute resolution services.

Dissemination of information

35. DoJ has continued to engage in disseminating information of the Hong Kong legal system through the Department's website. The website of DoJ has undergone a significant revamp in early 2013. It contains information relating to the Hong Kong legal profession and services provided. A new section on "Dispute Resolution" has been set up in the website with information of Hong Kong as a leading centre for dispute resolution in the Asia-Pacific region. Advantages of Hong Kong in the provision of arbitration services are featured in details in the section. Speeches and relevant information papers on the promotion of Hong Kong as a regional centre for legal and dispute resolution services have been regularly uploaded to the website.

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