

Enhancing Hong Kong's position as the leading international arbitration centre in Asia-Pacific

Hong Kong Trade Development
Council

Report

November 2016

IMPORTANT NOTICE

In preparing this Report, our primary sources include some publicly available market data and information provided by the Hong Kong Trade Development Council. We do not accept responsibility for such information. Details of our principal information sources are set out in this Report and we have satisfied ourselves, so far as possible, that the information presented in this Report is consistent with other information which was made available to us in the course of our work in accordance with the terms of our Engagement Letter. We have not, however, sought to establish the reliability of the sources by reference to other evidence. The research and field work underlying this Report was completed in October 2015. In consultation with the Hong Kong Trade Development Council, the conclusions and recommendations were updated to February 2016, and a limited set of revisions were made in August 2016 and November 2016.

This engagement is not an assurance engagement conducted in accordance with any generally accepted assurance standards and consequently no assurance opinion is expressed.

This Report is addressed to the Hong Kong Trade Development Council and no other person or entity should rely on the Report. This Report contains our empirical research data (survey and consultations) and is the propriety work product of KPMG. KPMG will accordingly accept no responsibility or liability in respect of it to persons other than the addressee of the Report.

By reading this Report, the reader accepts and agrees to the following terms:

- The reader understands that the work performed by KPMG was in accordance with the terms of Conditions of the Services Agreement between the Hong Kong Trade Development Council and KPMG, and that our work was performed exclusively for the sole benefit and use of the Hong Kong Trade Development Council.
- The reader acknowledges that this Report was prepared at the direction of the Hong Kong Trade Development Council and reflects the specific requirements of the Hong Kong Trade Development Council. The Report should thus not be regarded as suitable for use by any person or persons other than the Hong Kong Trade Development Council.
- Other than to an addressee of this Report, KPMG (including each and all of its partners, directors, employees and agents, as the case may be, together with any other body or entity controlled, owned or associated with us and each and all of its partners, directors, employees and agents):
 - i. owes the reader no duty (whether in contract or in tort or under statute or otherwise) with respect to or in connection with the report or any part thereof; and
 - ii. will have no liability to the reader for any loss or damage suffered or costs incurred by the reader or any other person arising out of or in connection with the provision to the reader of the Report or any part thereof, however the loss or damage is caused, including, but not limited to, as a result of negligence but not as a result of the fraud or dishonesty of KPMG.

NOMENCLATURE AND ABBREVIATIONS

2006 Model Law	Original Model Law as amended by UNCITRAL on 7 July 2006
2015 QMU Survey	2015 International Arbitration Survey: Improvements and Innovations in International Arbitration conducted by QMU
AAA	American Arbitration Association
ADR	Alternative dispute resolution
ADNDRC	Asian Domain Name Dispute Resolution Centre
ADR Moot	International ADR Mooting Competition
AIIB	Asian Infrastructure Investment Bank
Arbitration Ordinance	Arbitration Ordinance (Cap. 609)
Basic Law	The Basic Law of Hong Kong
BJ	Beijing
BIT	Bilateral investment treaty
CAS	Certificate of Advanced Studies
CEF	Continuing Education Fund from the Hong Kong Government
CEPA	Mainland and Hong Kong Closer Economic Partnership Arrangement
Central Government	The Central People's Government of the People's Republic of China
China	People's Republic of China
CIArb	Chartered Institute of Arbitrators
CIArb Survey	CIArb Cost of International Arbitration Survey 2011
CIETAC	China International Economic and Trade Arbitration Commission
CIETAC Hong Kong	China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center
CityU	The City University of Hong Kong
CMAC	China Maritime Arbitration Commission
CMAC Hong Kong	China Maritime Arbitration Commission Hong Kong Arbitration Center
CMAC Rules	CMAC Arbitration Rules 2015
CUHK	The Chinese University of Hong Kong
DoJ	Department of Justice, The Government of the Hong Kong Special Administrative Region
F&B	Food and beverage

FDI	Foreign direct investment
FIE	Foreign investment enterprise
FTE	Full-time equivalent
GDP	Gross Domestic Product
GVA	Gross Value Added
Hague Convention	Convention on Choice of Court Agreements (2005)
HKIAC	Hong Kong International Arbitration Centre
HKI Arb	The Hong Kong Institute of Arbitrators
Hong Kong Government/ Government	The Government of the Hong Kong Special Administrative Region
HKMAG	Hong Kong Maritime Arbitrators Group
HKTDC	Hong Kong Trade Development Council
HKU	The University of Hong Kong
HKU SPACE	School of Professional and Continuing Education of the University of Hong Kong
Hong Kong	Hong Kong Special Administrative Region of the People's Republic of China
IAMA	Institute of Arbitrators & Mediators Australia
ICC	International Chamber of Commerce's International Court of Arbitration
ICCA	International Council for Commercial Arbitration
ICC Asia	The Secretariat of the International Court of Arbitration of the International Chamber of Commerce - Asia Office
ICDR	International Centre for Dispute Resolution
ICSID	International Centre for Settlement of Investment Disputes
IP	Intellectual property
IPR	Intellectual property rights
KL	Kuala Lumpur
Korea	Republic of Korea
LLM	Masters of Laws
LLM ArbDR	Masters of Laws in Arbitration and Dispute Resolution
LMAA	The London Maritime Arbitrators Association
LROs	Law-related organisations
Macao	Macao Special Administrative Region of the People's Republic of China
Mainland China/	The People's Republic of China, excluding the Hong Kong Special

PRC	Administrative Region, Macao Special Administrative Region and Taiwan
MIArb	Malaysian Institute of Arbitrators
MICE	Meetings, incentives, conferences and exhibitions
Model Law	UNCITRAL Model Law on International Commercial Arbitration
New York Convention	The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)
NPCSC	Standing Committee of the National People's Congress
Original Model Law	Model Law as adopted by UNCITRAL on 21 June 1985
PCA	Permanent Court of Arbitration
PRC Arbitration Law	Arbitration Law of People's Republic of China
QMU	Queen Mary University of London, UK
Relevant Period	January 2012 to December 2014
SIAC	Singapore International Arbitration Centre
SEL	Seoul
SG	Singapore
Toronto Study	Arbitration in Toronto: An Economic Study prepared by Charles River Associates (2012)
TPP	Trans-Pacific Partnership
UK	United Kingdom
UNCITRAL	The United Nations Commission on International Trade Law
USA	United States of America
UNCITRAL Rules	UNCITRAL Arbitration Rules as revised in 2010 (with new article 1, paragraph 4, as adopted in 2013)
VA	Value added
Vis East Moot	Willem C. Vis (East) International Commercial Arbitration Moot
WFOE	Wholly foreign-owned enterprise

EXECUTIVE SUMMARY

Arbitration is a method of dispute resolution, used as an alternative to litigation in the courts of a country or jurisdiction, whereby the parties voluntarily agree to refer their disputes to a private arbitral tribunal (involving one or more neutral third parties) for adjudication and the outcome of which is binding and enforceable between them. Over the past decades, Hong Kong has developed as one of the leading centres for international arbitration in the world due to an open market approach supported by pro-arbitration policies, and it now comprises a significant part of Hong Kong's legal sector economy.

However, Hong Kong is facing mounting competition throughout the broader Asia-Pacific region as a venue for international arbitration. Other cities in the region are emerging rapidly, with Singapore, Seoul, Kuala Lumpur, and Beijing all taking steps to actively promote their respective centres as venues for arbitration.

It is in this context that KPMG was commissioned by the Hong Kong Trade Development Council (and supported by the Department of Justice, The Government of the Hong Kong Special Administrative Region) to assess the role played by the arbitration sector in Hong Kong's legal sector and the economy generally, and to assess its competitiveness within a broader international and regional context. Ultimately, KPMG was instructed to consider the extent to which the arbitration sector could be expected to develop over time in Hong Kong, and what could be done to encourage and support this development.

In preparing this Report, we undertook an extensive survey and numerous consultations with members of Hong Kong's arbitration community. Specifically, our empirical research included:

- A survey of 223 users and service providers was conducted between 6 May 2015 and 29 September 2015 to determine their current Hong Kong arbitration activity and preferences;
- Consultations were held with 113 stakeholders, both in Hong Kong and internationally, to gain the views of users and providers about the perceived strengths and weaknesses of Hong Kong's arbitration sector; and
- Two round-table focus groups on education and training were held in Hong Kong comprising legal sector stakeholders, whereby the key findings of our survey in this area were discussed in confidence and the legitimacy of these findings considered and commented by practitioners.

As a result of these activities, this Report concludes that Hong Kong is a leading centre for international arbitration, with more international commercial arbitration cases heard in the city than in its regional peers. Further, this international arbitration activity brought with it significant economic activity to Hong Kong. In 2014, the total Gross Value Added of arbitrations (both direct and induced contribution) in Hong Kong was approximately HK\$ 1.964 billion, which contributed to 13% of the legal sector's GDP, or around 0.09% of Hong Kong's total GDP. This economic activity also supported over 2,600 FTE jobs in Hong Kong and contributed over HK\$ 170 million to the Hong Kong Government in 2014 fiscal receipts.

Significantly, this Report identified Hong Kong's competitiveness in arbitration arose from the following factors:

- Arbitral awards made in Hong Kong are widely enforceable;
- Its political stability and the high quality of Hong Kong's political and legal environment;
- Hong Kong's highly arbitration friendly government and courts;
- Presence of reputable arbitration bodies such as HKIAC, ICC Asia, CIETAC Hong Kong, and CMAC Hong Kong;
- Geographically convenient and accessible;

- Excellent quality and accessible arbitration facilities;
- Extensive pool of professionals;
- Its position as an international financial centre;
- Its economically free market;
- High English and Chinese language proficiency and use;
- The high profile Vis East Moot competition held annually in Hong Kong; and
- The abundance, quality and flexibility of arbitration education and training-related events in Hong Kong.

The growth enjoyed by Hong Kong in the number of international arbitration cases has been slowing in recent years, notwithstanding the competitive advantages it possesses. This is due to intensified competition in the regional arbitration market as other centres improve their arbitration offerings and the development of other dispute resolution methods, giving users more choice than ever before in terms of both where and how they resolve their disputes. These developments pose threats to Hong Kong's position and require positive action to be taken to continually improve Hong Kong's competitiveness and to adapt to new opportunities in a changing landscape. In that regard, this Report also identified four key areas of opportunities for Hong Kong to further develop its arbitration sector, namely:

- Growth in demand for dispute resolution services in Asia;
- Regulatory changes in other markets;
- Increasing China related opportunities; and
- The Trans-Pacific Partnership.

The growing regional competition and changing trends in dispute resolution require the Hong Kong Government to take more pro-active steps to support market participants if Hong Kong is to maintain its leading position and market share. Therefore, we recommend that the following actions be taken:

- Create a single peak body or council to lead and co-ordinate efforts to promote Hong Kong as a leading dispute resolution hub;
- Maintain and further promote Hong Kong's institutions and openness;
- Promote Hong Kong's neutrality as a seat of arbitration;
- Enhance Hong Kong's position as a financial and business centre;
- Establish voluntary associations to encourage specialisation and self-promotion;
- Give a permanent home to the Vis East Moot;
- Create "pupillage" opportunities for aspiring arbitrators;
- Explore and expand schemes that provide for arbitration of consumer disputes;
- Promote Hong Kong through the institutions;
- Establish more arbitration facilities and encourage other international institutions to set up in Hong Kong;
- Promote to overseas market intermediaries;
- Promote Hong Kong arbitration in "non-traditional" markets;
- Leverage opportunities from Mainland China's outbound investments;
- Leverage Hong Kong's pre-eminence in education and training;

- Provide clarity for IP disputes;
- Implement a mutual recognition and enforcement mechanism with Taiwan; and
- Explore preferential access to Mainland China market for Hong Kong's arbitral institutions.

By taking these recommended steps, Hong Kong will be better equipped to further enhance its leading position and exploit the opportunities that will arise from the changes in commercial disputes resolution which we have identified in this Report.

CONTENTS

Important notice	2
Nomenclature and abbreviations	3
Executive summary	6
CONTENTS	9
1 INTRODUCTION	11
1.1 Scope of the Report	11
2 APPROACH AND METHODOLOGY	12
2.1 Empirical research undertaken	12
3 DEVELOPMENT OF ARBITRATION IN HONG KONG	14
3.1 The first Arbitration Ordinance (Cap. 341)	14
3.2 The Arbitration Ordinance (Cap. 609)	15
4 EDUCATION & TRAINING	17
4.1 University courses	17
4.2 Training for aspiring arbitrators	18
4.3 Future areas for development	19
5 ARBITRATION SURVEY	20
5.1 Survey responses	20
5.2 Results and analysis	20
6 ECONOMIC CONTRIBUTION OF ARBITRATION TO HONG KONG	34
6.1 Overview of the arbitration sector	34
6.2 Projected future economic benefits of the arbitration sector	39
6.3 Arbitration events	39
6.4 Education & training	45
6.5 Summary of current economic benefits	46

6.6	Potential further benefits	46
7	THE COMPETITIVENESS OF HONG KONG AS A SEAT OF ARBITRATION	49
7.1	Hong Kong’s competitiveness as a seat of arbitration	49
7.2	Hong Kong’s opportunities	59
7.3	Hong Kong’s challenges	62
8	CONCLUSION AND RECOMMENDATIONS	66
8.1	Create a single peak body or council to lead and co-ordinate efforts to promote Hong Kong as a leading dispute resolution hub	66
8.2	Promote Hong Kong’s institutions and openness	66
8.3	Promote Hong Kong’s neutrality as a seat of arbitration	67
8.4	Enhance Hong Kong’s position as a financial and business centre	67
8.5	Establish voluntary associations to encourage specialisation and self-promotion	67
8.6	Give a permanent home to the Vis East Moot	68
8.7	Create “pupillage” opportunities for aspiring arbitrators	68
8.8	Explore and expand schemes that provide for arbitration of consumer disputes	68
8.9	Promoting Hong Kong through the institutions	69
8.10	Establishing more arbitration facilities and encouraging other international institutions to set up in Hong Kong	69
8.11	Promote to overseas market intermediaries	69
8.12	Promote Hong Kong arbitration in “non-traditional” markets	70
8.13	Leverage opportunities from Mainland China’s outbound investments	70
8.14	Leverage Hong Kong’s pre-eminence in education and training	70
8.15	Provide clarity for IP disputes	71
8.16	Implement a mutual recognition and enforcement mechanism with Taiwan	71
8.17	Explore preferential access to Mainland China market for Hong Kong’s arbitral institutions	71
8.18	Relative cost-effectiveness analysis of recommendations	73

1 INTRODUCTION

Over the past three decades, Hong Kong has achieved the status as the leading arbitration centre in the Asia-Pacific Region. This arises from Hong Kong's open market approach and its role as one of Asia's leading international business centres. The factors that have led to its success as a trade and financial centre also underpin its growth as a centre for arbitration namely, its strategic geographical location, a solid rule of law tradition and a robust common law legal system along with its extensive pool of expertise and its accessibility and connectivity to the major world cities. These factors combined with pro-arbitration policies have resulted in Hong Kong having a highly established arbitration resolution community, which now comprises a significant part of its legal sector economy.

However, Hong Kong is facing increased competition throughout the broader Asia-Pacific region as a leading centre for international arbitration. Other jurisdictions are emerging rapidly, with cities such as Singapore, Seoul, Kuala Lumpur, and Beijing actively growing and marketing their international arbitration services.

1.1 Scope of the Report

Against this background, KPMG was commissioned by the Hong Kong Trade Development Council (with the support of the Department for Justice) to assess the role played by arbitration in Hong Kong's legal and dispute resolution sector and the economy generally, and to assess its competitiveness within a broader international and regional context. The objective of this study is to:

- (1) review the current arbitration sector in Hong Kong and practices;
- (2) conduct an economic impact assessment to quantify the societal economic value of the sector;
- (3) assess Hong Kong's profile and competitiveness as a centre for international arbitration through literature reviews, surveys, interviews and roundtables with relevant stakeholders;
- (4) compare Hong Kong's strengths and weaknesses in international arbitration services with its key competitors and, in doing so, identify opportunities and threats to Hong Kong; and
- (5) make recommendations on enhancing Hong Kong as the leading regional centre for international arbitration.

It is important to note that while arbitration is just one of a variety of dispute resolution mechanisms used as an alternative to or in addition to court litigation, the focus of this study is firmly on arbitration and other forms of dispute resolution have not been considered in detail.

2 APPROACH AND METHODOLOGY

To meet its objectives, this study draws on a series of primary and secondary data sources to provide a robust basis of evidence to substantiate its findings. It is based upon in-depth research conducted on the arbitration market in Hong Kong, supplemented by expertise drawn from KPMG's international network of member firms in key arbitration markets that provide reference points to support an assessment of the relative competitiveness of Hong Kong as an international and regional seat of arbitration, and the most effective means through which the prominence of Hong Kong could be improved.

2.1 Empirical research undertaken

This study is informed by a wide number of information sources and consultations with members of the arbitration community, including service providers, owners, facilitators and promoters of arbitration services. An open participatory framework with stakeholders was employed to understand the key issues impacting the arbitration market from the diverse and different range of perspectives. This formed part of a broad consultation exercise which included:

- An extensive survey was conducted between 6 May 2015 and 29 September 2015 to determine the role currently played by the arbitration sector in Hong Kong and the extent to which this role could change over time, in terms of size and the value of arbitrations conducted in Hong Kong. A total of 223 responses were received from 67 users and 156 service providers. The respondents also covered both local and overseas users and service providers with almost two thirds (63%) of respondents having their principal place of business or practice in Hong Kong and just over a third (37%) of them were based overseas. The respondents also came from a wide range of industries and professional disciplines with over a quarter (26%) of respondents from the infrastructure, construction and engineering industry, 18% working in corporate and commercial, 16% were from the finance / banking / insurance industry and 13% from maritime / logistics;
- A total of 113 consultations were conducted with stakeholders both in Hong Kong and internationally to gain the views of users and providers about the perceived strengths and weaknesses of Hong Kong's arbitration sector. Two thirds of the interviewees (66%) normally reside in Hong Kong and the remainder normally reside overseas. Of 113 individuals interviewed, 23% of the interviewees were users of arbitration (which includes in-house counsel and corporate representatives); 35% were service providers (which includes arbitrators, counsel, lawyers, and experts) and the remainder came from arbitration institutions, government bodies, chambers of commerce;
- A comparative analysis of strengths, weaknesses, opportunities and challenges was conducted on Hong Kong's arbitration sector, relative to its regional peers Singapore, Seoul, Kuala Lumpur and Beijing. This was conducted through KPMG's global network of arbitration and dispute resolution professionals and drew on secondary information sources and the views of KPMG's different professionals. It also drew upon the results of our consultation exercise with stakeholders in these international seats of arbitration, to provide an objective assessment of the relative strengths and attractiveness of Hong Kong as an arbitration seat regionally and globally;
- Two round-table focus groups on education and training comprising legal sector stakeholders were conducted in Hong Kong, whereby the key findings of our survey in this area were discussed in confidence and the legitimacy of these findings considered and commented by stakeholders.

This high degree of engagement with stakeholders provides a solid empirical basis for this Report and its conclusions. By way of comparison, other recent international studies, which have had similar objectives, have presented their findings based on survey and consultation sample sizes which are consistent with those used in this study. In this context, the evidence based upon which this study was conducted can be regarded as comparatively robust.

To quantify the economic impact of arbitration services in Hong Kong, we identified the stakeholders within the arbitration sector, namely users and service providers in Hong Kong. We asked them to define the typical cost of arbitrations, monetary value of their business activities and translated these into economic and fiscal benefits, both to Hong Kong, and to the Government respectively, using the conventional economic methodology¹. In doing so, we did not focus only on those businesses and individuals in the legal sector, but also those businesses and individuals in the supporting sectors. General expenditure related to arbitration hearings accrue directly to the location of arbitration hearing. Legal counsel and arbitrators travel to the location and spend on hotel accommodation and a range of goods and services. This study captures the full extent of economic and fiscal impact of arbitration and presents them in the conventional terms of jobs, taxes paid, and ultimately the contribution made to Hong Kong's GDP.

¹ The conventional economic methodology is the approach applied to quantify the economic impact of arbitration activities on Hong Kong's economy in terms of three conventional economic measures, namely GVA, job creation and tax receipts to the Hong Kong Government.

3 DEVELOPMENT OF ARBITRATION IN HONG KONG

3.1 The first Arbitration Ordinance (Cap. 341)

The development of arbitration in Hong Kong can be traced back to colonial times, when the Arbitration Ordinance (Cap. 341) was first enacted in 1963. The Arbitration Ordinance (Cap. 341) mirrored the provisions in the English Arbitration Act 1950 and provided a unitary arbitration law regime applicable to both domestic and international arbitrations². At that time, there were not many arbitration activities in Hong Kong.

The popularity of arbitration in Hong Kong started to grow in 1976, when the East Asia Branch of the Chartered Institute of Arbitrators (United Kingdom) was established in Hong Kong. One year earlier, in 1975, the Arbitration Ordinance (Cap. 341) was amended to give effect in Hong Kong law to the New York Convention to facilitate the enforcement of foreign arbitral awards in Hong Kong. The amendments came into effect in January 1977, following a notification made by the UK to the United Nations to extend the application of the New York Convention to Hong Kong. With these initial important steps, arbitration in Hong Kong has been developing steadily.

In 1982, a Steering Committee was set up to look into setting up an arbitration centre in Hong Kong. As a result of the findings from that committee, the HKIAC was established in 1985. In the early days, the HKIAC did not administer cases, but just provided services for *ad hoc* arbitrations. After HKIAC's establishment, *ad hoc* arbitration took its roots in Hong Kong, and was mainly focused on the construction and maritime sectors³. From these early years, HKIAC became one of the leading regional arbitration centres in the region⁴, as it was one of the first to be established in Asia and was supported by an active local market.

In 1987, the Law Reform Commission of Hong Kong published the Report on the Adoption of the UNCITRAL Model Law of Arbitration⁵, recommending that the Original UNCITRAL Model Law should replace the statutory provisions governing international arbitration, while preserving the existing law relating to domestic arbitration regime. Following that report, Hong Kong adopted the Original UNCITRAL Model Law in 1990 for international arbitrations, resulting in separate regimes for domestic and international arbitrations⁶. The 1997 amendment of the Arbitration Ordinance (Cap. 341) also resulted in HKIAC becoming the default body who decides the number and appointment of arbitrators⁷.

In his 2007-2008 Policy Address, the Chief Executive Donald Tsang emphasised the Hong Kong Government's endeavour to develop Hong Kong into an arbitration centre in the Asia-Pacific region⁸. At the same time the DoJ commenced the Study on Reforming the Law of Arbitration, and subsequently published a Consultation Paper on Reform of the Law of Arbitration in Hong Kong and draft Arbitration Bill⁹ to consider further modernising the legislative regime. In September 2008, HKIAC started

² DoJ, Consultation Paper: Reform of the Law of Arbitration in Hong Kong and Draft Arbitration Bill, <http://www.doj.gov.hk/eng/public/pdf/2007/arbitration.pdf>, (accessed 1 August 2016).

³ V. Chong (Ed.), 'The Father of Hong Kong Arbitration', Hong Kong Lawyer, December 2012, p. 16.

⁴ K.Verghese, 'Arbitration in Asia: The next generation?', <http://www.legalbusinessonline.com/reports/arbitration-asia-next-generation>, (accessed 1 August 2016).

⁵ Law Reform Commission of Hong Kong Law, *The Adoption of the UNCITRAL Model Law of Arbitration*, 1987, www.hkreform.gov.hk/en/docs/runcitral-e.doc, (accessed 1 August 2016)

⁶ DoJ, 'Consultation Paper: Reform of the Law of Arbitration in Hong Kong and Draft Arbitration Bill', 2007, <http://www.doj.gov.hk/eng/public/pdf/2007/arbitration.pdf>, (accessed 1 August 2016), para. 3.

⁷ s. 34C(3) of the Arbitration Ordinance (Cap 341) (Repealed 17 of 2010 s. 109).

⁸ The Chief Executive of Hong Kong SAR, 'The 2007-2008 Policy Address', <http://www.policyaddress.gov.hk/07-08/eng/docs/policy.pdf>, (accessed 1 August 2016).

⁹ DoJ, Consultation Paper: Reform of the Law of Arbitration in Hong Kong and Draft Arbitration Bill, <http://www.doj.gov.hk/eng/public/pdf/2007/arbitration.pdf>, (accessed 1 August 2016).

administering cases with its introduction of the HKIAC Administered Arbitration Rules 2008¹⁰. However, these were comparatively 'light touch' and different to the more 'hands on' approach adopted under the ICC arbitration rules. Later in November that year, the ICC opened ICC Asia in Hong Kong, being the first branch of the ICC Court Secretariat's Office outside Paris. The branch has a case management team which administers cases in the region under ICC Rules. In the same year, the HKIAC signed a cooperation agreement with CIETAC to enhance the sharing of information, case management techniques and arbitration knowledge between the two institutions¹¹.

3.2 The Arbitration Ordinance (Cap. 609)

A new Arbitration Bill was introduced into the LegCo on 26 June 2009 and was passed on 10 November 2010. The Arbitration Ordinance (Cap. 609) came into operation on 1 June 2011 and was a complete revamp of Hong Kong's arbitration legislation. The new Ordinance created a single unified regime for arbitrations in Hong Kong (removing the distinction between domestic and international arbitrations which existed in the Arbitration Ordinance (Cap. 341)¹² and also gave effect to the 2006 amendments to the Model Law.

In 2012, HKIAC expanded its offices in order to cater the increasing demand for arbitration hearing facilities¹³. Originally occupying half a floor at Exchange Square II, the institution has since doubled its total floor space to about 1,270 square meters¹⁴. In the same year, CIETAC Hong Kong Arbitration Center was established, being the first such arbitration centre outside Mainland China¹⁵.

In his 2013 Policy Address, Chief Executive C. Y. Leung emphasised the importance of enhancing Hong Kong's position as a legal services hub in the Asia-Pacific region and strengthening Hong Kong's role as an international legal services centre¹⁶. In the same year, the HKIAC further updated and modernised its 2008 Administered Arbitration Rules, which implemented new features such as the introduction of emergency relief provisions¹⁷, the introduction of an hourly fee cap¹⁸, and a new power of the arbitral tribunal to order for security for costs¹⁹. The new Rules also raised the maximum claim amount for expedited procedure²⁰. The new rules maintained the HKIAC "light touch" approach to administering cases. Later that year, HKIAC also opened an office in Seoul, Korea at the Seoul International Dispute Resolution Centre, to further promote its dispute resolution services²¹. In 2014, CMAC established its Hong Kong Arbitration Center as its first arbitration centre outside the Mainland China. Then, in December that year, the DoJ also announced its intention to establish a "legal hub" once it takes possession of the West Wing of the Central Government Office building and former French Mission Building in Central²². Upon completion of the necessary renovations to those buildings, the DoJ will

¹⁰ Mayer Brown JSM, "Hong Kong Cements its Place in International Arbitration – Recent Developments in Hong Kong" 10 August 2009, <https://www.mayerbrown.com/pt/publications/detailprint.aspx?publication=443> (accessed 1 August 2016).

¹¹ White & Case LLP, 'Cooperation agreement signed between CIETAC and HKIAC', <http://www.lexology.com/library/detail.aspx?g=ccf0e7bf-f4bf-4424-a883-3855c595f9c3>, (accessed 1 August 2016).

¹² Subject to certain opt-in and transitional provisions in Schedule 2 of the Arbitration Ordinance.

¹³ 'HKIAC shares insights from mediation and arbitration', *cjjobs.com*, 2013, <http://www.cpjobs.com/hk/article/hkiac-shares-insights-mediation-and-arbitration>, (accessed 1 August 2016).

¹⁴ Hong Kong Economic & Trade Office New York, 'International arbitration center expands facilities', <http://www.hketony.gov.hk/ny/e-newsletter/11may/ArbCenter.htm>, (accessed 1 August 2016).

¹⁵ M. Ostrove, C. Salomon, B. Shifman (ed.), *Choice of Venue in International Arbitration*, Oxford University Press, 2014, p. 194.

¹⁶ The Chief Executive of the Hong Kong SAR, 'The 2013 Policy Address', <http://www.policyaddress.gov.hk/2013/eng/>, (accessed 1 August 2016).

¹⁷ Article 23(1) and Schedule 4 of HKIAC Administered Arbitration Rules 2013.

¹⁸ Article 9.3 of HKIAC Administered Arbitration Rules 2013.

¹⁹ Article 24 of HKIAC Administered Arbitration Rules 2013.

²⁰ See Article 41.1 of HKIAC Administered Arbitration Rules 2013 and Article 38.1 of HKIAC Administered Arbitration Rules 2008.

²¹ See HKIAC, "The HKIAC celebrates the opening of its first overseas office in Korea at the Inauguration of the Seoul International Dispute Resolution Centre (Seoul IDRC)", 2013, <http://www.hkiac.net/news/hkiac-celebrates-opening-its-first-overseas-office-korea-inauguration-seoul-international> (accessed 1 August 2016).

²² DoJ, Hong Kong Government, "Application for space in former CGO and French Mission Building", 19 December 2014, <http://www.info.gov.hk/gia/general/201412/19/P201412190798.htm>, (accessed 1 August 2016).

provide space for use by LROs with a view to creating a favourable environment to attract more international legal, arbitration and mediation institutions to set up in Hong Kong. This will enhance the competitiveness of Hong Kong as a centre for international legal and dispute resolution services in the Asia-Pacific region²³.

In his 2015 policy address, the Chief Executive reiterated the importance of dispute resolution services, including arbitration, to Hong Kong and pledged to continue the Hong Kong Government's commitment to actively further advance development in the area of dispute resolution²⁴. A number of significant developments in the local arbitration landscape then followed. In January 2015, the Central Government and the Hong Kong Government signed the Host Country Agreement and the related Memorandum of Administrative Arrangements respectively with the PCA on the conduct of PCA-administered arbitration in Hong Kong, including state-investor arbitration. In March 2015, the Working Group on Intellectual Property Trading (which was established by the Hong Kong Government) published its report, recommending, among other things, the study of the need for legislative amendments to clarify the arbitrability of IP disputes. This resulted in a consultation paper issued by the Working Group on Arbitrability of IP Rights chaired by the Solicitor General in December 2015²⁵. In May 2015, the 19th International Congress of Maritime Arbitrators was held in Hong Kong with the support of the DoJ, and in November 2015, HKIAC became the first international arbitration institution to open a representative office in mainland China by establishing a representative office in the Shanghai Free Trade Zone²⁶.

As a result of the Hong Kong Government's pro-active approach over the past decades to developing the arbitration sector, Hong Kong is a leading international arbitration venue in Asia, particularly for Mainland China-related disputes.

²³ In particular, the DoJ believes that placing LROs under one roof could create operational synergies for these organisations. For instance, by allowing shared use of any common facilities for training, conferencing activities and as venues for mediation or arbitration. See Legislative Council Panel on Administration of Justice and Legal Services, "LC Paper No. CB(4)1099/15-16(01)", July 2014 at Page 2, <http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20160425cb4-1099-1-e.pdf>, (accessed 1 August 2016).

²⁴ The Chief Executive of the Hong Kong SAR, 'The 2015 Policy Address', <http://www.policyaddress.gov.hk/2015/eng/p48.html>, (accessed 1 August 2016).

²⁵ Legislative Council Panel on Administration of Justice and Legal Services LC Paper No. CB(4)485/15-16(05), <http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20160125cb4-485-5-e.pdf>.

²⁶ HKIAC, "HKIAC Achieves Breakthrough by Launching Office in Mainland China", 2015, <http://www.hkiac.net/news/hkiac-achieves-breakthrough-launching-office-mainland-china>, (accessed 1 August 2016).

4 EDUCATION & TRAINING

One of the specific aspects we consider in the study is the education and training of arbitrators in Hong Kong. The starting point is that, under Hong Kong law, there are no formal qualification or training requirements that a person must have in order to be appointed as an arbitrator. Therefore, it is an arbitrator's experience and personal qualities, such as his or her reputation, which are seen as key to their success as arbitrators. However, in reality, formal courses, training and recognition by professional associations play an important role in individual career development in arbitration, sustaining the local supply of arbitration service providers, and promoting the use of arbitration as a form of dispute resolution.

4.1 University courses

In general, Hong Kong has excellent educational opportunities for people who are interested in arbitration or who aspire to become arbitrators. Hong Kong's tertiary educational institutions provide a wide variety of degree programs and elective courses that are related to arbitration. These arbitration-related courses are well recognised, as many of them are specialised postgraduate degree/ diploma programs that are accredited by CIArb, HKIArb or both²⁷.

We set out the degree programs currently offered by the universities in Hong Kong in Table 1 below.

Table 1: Arbitration-related courses offered by major education institutions in Hong Kong

Education institution	Degree/ diploma programs	Accredited by
CityU	Master of Laws or Postgraduate Diploma in Arbitration and Dispute Resolution	CIArb (Membership or Fellowship level) HKIArb (Associateship or Fellowship level)
HKU	Master of Laws in Arbitration and Dispute Resolution	CIArb (Membership or Fellowship level) HKIArb (Associateship or Fellowship level)
HKU SPACE	Postgraduate Diploma in Arbitration/ Arbitration and Mediation	CIArb (Membership level)
PolyU	Master of Science or Postgraduate Diploma in Construction Law and Dispute Resolution	HKIArb (Associateship level)

Around the world, there are various degrees and courses specialising in arbitration at the tertiary level, notably the LLM in Comparative and International Dispute Resolution offered by QMU in the UK²⁸, the Geneva LLM in International Dispute Settlement offered by the Geneva Law School and Graduate Institute of International and Development Studies²⁹ and the LLM in Dispute Resolution and Master of Dispute Resolution program offered by Pepperdine University in the USA³⁰. Outside of Hong Kong, other programs in Asia and Australia recognised by CIArb for admission are the Graduate Certificate in International Arbitration offered by the National University of Singapore, the Professional Certificate in

²⁷ In addition to these courses provided by the universities, both HKIArb and CIArb provide their own training courses in arbitration, as do other private providers, such as the Chartered Management Academy.

²⁸ QMU, 'Comparative and International Dispute Resolution', <http://www.law.qmul.ac.uk/postgraduate/courses/items/138020.html> (accessed 1 August 2016).

²⁹ Geneva Law School and Graduate Institute of International and Development Studies, 'Geneva LLM in International Dispute Settlement', <http://www.mids.ch> (accessed 26 February 2018).

³⁰ Pepperdine School of Law, 'Master of Laws (LLM) in Dispute Resolution', <https://law.pepperdine.edu/degrees-programs/master-of-laws-dispute-resolution/> (accessed 4 February 2016).

International Commercial Arbitration & Mediation provided by the Chartered Management Academy (which is offered in both Hong Kong and Singapore), the Professional Certificate in Arbitration offered by University of Adelaide, and the Professional Training in Arbitration Law and Practice offered by the Asia Pacific Institute for Dispute Management³¹.

Arbitration education programs and courses in Hong Kong also offer high flexibility in terms of mode of study. Many of these programs and courses offer both part-time and full-time streams. In comparison, this may not be the case for many courses in other Asia-Pacific countries. Further, it is noted that online or distance learning is generally uncommon in Asia-Pacific, with only University of Adelaide and QMU offering such options.

The cost of arbitration education in Hong Kong is also generally lower than in many other countries in the Asia Pacific region and the UK. Compared to similar overseas programs, the tuition fees for arbitration-related master and post-graduate certificate programs in Hong Kong are quite competitive. A master in dispute resolution or arbitration in Hong Kong costs between HK\$93,000 and HK\$144,000, while a similar program elsewhere may cost between HK\$144,000 and HK\$180,000. For post-graduate diploma or certificate courses, Hong Kong's programs cost approximately HK\$50,000 to HK\$65,000, while the tuition fees of overseas programs range from approximately HK\$9,400 (for short courses) to HK\$100,000. In addition, most Hong Kong residents are eligible to apply for a maximum lifetime reimbursement of HK\$10,000 from the Continuing Education Fund to subsidise their pursuit in continuing education and training courses. Many arbitration-related courses offered by HKU, HKU SPACE and CityU are reimbursable under this scheme³².

4.2 Training for aspiring arbitrators

In addition to these formal courses, arbitration institutions, professional institutes, universities, and other private and public bodies also often organise conferences, workshops, seminars and other events in Hong Kong to provide continued professional education and networking opportunities. However, a key shortcoming identified in our consultations is not a lack of formal training courses, which are plentiful in Hong Kong, but rather it is the lack of opportunities to obtain practical experience and develop a professional career or reputation as an arbitrator. This is a global problem and is not unique to Hong Kong.

A consistent theme in our consultations is that up and coming arbitrators will only be appointed if they are known to the institutes with appointing authority or the parties and counsel acting for parties. Reputation and status within the profession is considered very important in choosing an arbitrator, which is why many retired judges get appointed as arbitrators. From our consultations and roundtables, we noted that there are a limited number of opportunities for aspiring arbitrators to get the appointments necessary to build their experience (and with that their reputation and status). This problem is a "chicken and egg" problem as they are less likely to be appointed unless they have experience in critical aspects such as running an arbitration and writing awards, or built up a track record of cases. However, the lack of appointments for aspiring arbitrators means it is difficult for them to obtain the necessary experience or track record in the first place.

Interviewees therefore suggested that aspiring arbitrators should start their practice as counsel or solicitors in arbitrations with a view to establishing a reputation (and, more importantly, trust). Interviewees suggested this would then result in parties and their advisers approaching them to act as

³¹ For the list of Recognised Course Providers of CI Arb, see: http://www.ciarb.org/docs/default-source/ciarbdocuments/trainingdevelopment/rcp_list.pdf?sfvrsn=6, (accessed 1 August 2016).

³² Based on the search result on the Continuing Education Fund website: http://www.wfsfaa.gov.hk/cef/en/preparation/course_search_result.php?area=&institution_name=&institution_code=&course_name=Arbitration&course_code=&course_fee=, (accessed 1 August 2016).

arbitrators, once they became known for their work as counsel or solicitors in arbitration cases.

The other key shortcoming identified is a lack of opportunities for aspiring arbitrators to view first-hand how arbitrators work in handling arbitration proceedings, unless they have themselves acted as counsel or solicitors. Given the confidentiality around the arbitration proceedings this is not surprising. In order to overcome this problem, the ICC runs an internship program which provides interns with first-hand experience in seeing the arbitration process, including assisting the Court with its duties. In June 2014, the HKIAC established a Tribunal Secretary Service³³ that is available to both HKIAC administered arbitrations and also to ad hoc arbitrations, where HKIAC provides members of their Secretariat to perform the function of a tribunal secretary and ad hoc arbitrations concerning either commercial or investor-state disputes.

4.3 Future areas for development

The variety, quality and flexibility of the courses in Hong Kong is excellent compared to other cities in Asia and around the world. This abundance of formal arbitration courses and arbitration education and training-related events in Hong Kong has benefited Hong Kong's arbitration sector by increasing knowledge of arbitration and improving the degree of specialisation among practitioners. They also, indirectly, familiarise overseas students with Hong Kong arbitration. Nevertheless, formal education and training courses alone do not appear to be sufficient to allow students to develop a career in arbitration. This is because parties and the institutions, when appointing arbitrators, seek candidates with actual arbitration experience and prefer candidates with personal qualities such as those with a good reputation. Therefore, a focus is required on creating meaningful opportunities for candidates to develop their experience and establish their reputation in the market.

³³ K. Tan, 'Immediate Press Release - HKIAC Offers Tribunal Secretary Service', *HKIAC* (6 June 2014), <http://220.241.190.1/en/news/462/>, (accessed 1 August 2016).

5 ARBITRATION SURVEY

5.1 Survey responses

During the consultation period, we conducted a market survey to collect empirical data on the experiences stakeholders had with arbitration, the costs of arbitration and their preferences in choosing a seat of arbitration in the Asia-Pacific Region. Through this exercise, we collected quantitative data and views from a wide range of stakeholders, including users of arbitration, lawyers, arbitrators, arbitration counsel, academics, journalists and expert witnesses. This formed the key source of empirical data for this Report. In this chapter, we provide an overview of the key results and findings from the arbitration survey.

5.2 Results and analysis

5.2.1 Demographics and profile of survey respondent

We received a total of 223 responses between 6 May 2015 and 29 September 2015. Respondents were asked to self-identify as either a user of arbitration or a service provider. Of the total number of respondents, 67 identified themselves as users and 156 as service providers. Of those identifying as users, 64% of them have previously been involved in disputes resulting in arbitrations, while the rest did not have direct involvement in the dispute stage. Of the service providers, 85% indicated that they had experience in arbitration disputes.

Respondents to the survey were also asked to indicate their primary place of business or practice. Approximately 63% of total respondents responded that they have their principal place of business or practice in Hong Kong, while 37% of them were based overseas. Of those overseas, around 5% were from Mainland China, 3% were from Singapore, 7% were from the UK and Western Europe, 6% were from North America and around 3% were from Australia and New Zealand.

Figure 1: Composition of survey respondents

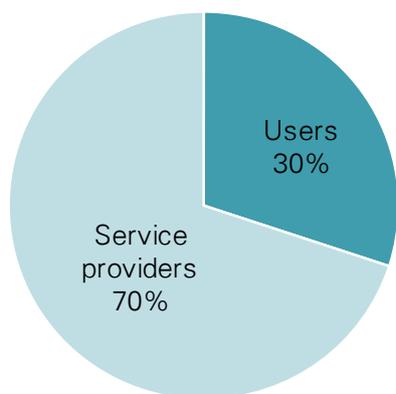
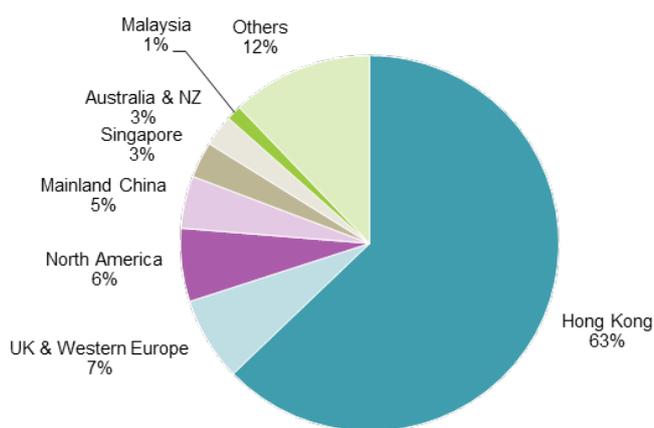


Figure 2: Distribution of the principal place of practice or business of respondents



Service providers were also further asked about their particular role in the arbitration process, and they were allowed to select more than one answer in this question. For instance, a service provider who has acted as an arbitrator in one case may work as a party representative in another. For this reason, the categorisations in Table 2 below are not mutually exclusive. Overall, 76 service provider respondents

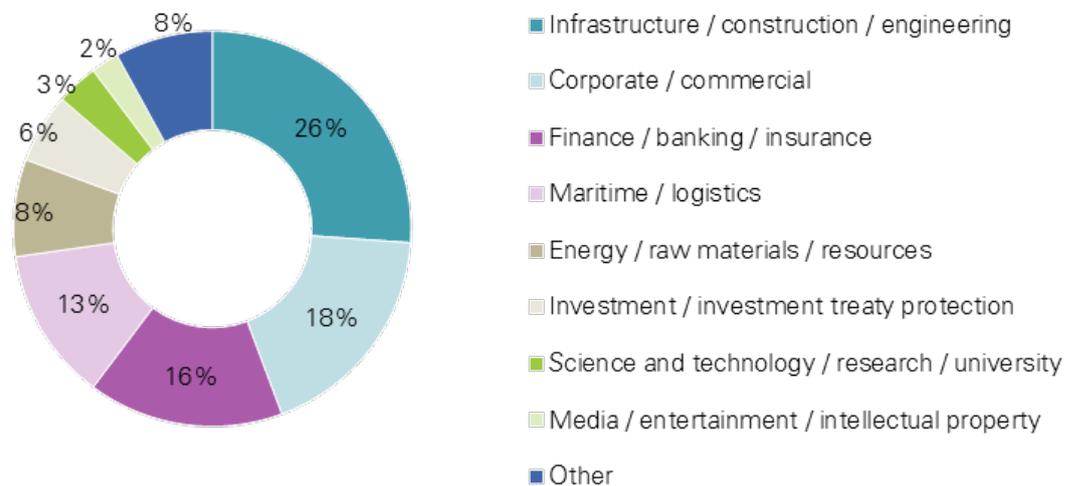
indicated that they have worked as an arbitrator and 104 worked as a party representative in arbitration proceedings, such as barrister, solicitor, attorney, or counsel. Whereas, 56 service providers responded that they acted as an advisor in respect of the negotiation of agreements and/or in transactional work.

Table 2: Role(s) as a service provider

Role(s) as a service provider	No. of responses
An arbitrator	76
A legal practitioner who is a party representative in arbitration proceedings, such as a barrister, counsel, advocate, instructing solicitor or lawyer	104
A legal practitioner who is an adviser in respect of the negotiation of agreements and/or in transactional work	56
An expert witness	14
Other (e.g. translators, electronic discovery providers)	6

Users were also asked to give details of their industry. Over a quarter (26%) of users were in the infrastructure / construction / engineering sector, 18% in corporate / commercial, 16% from finance / banking / insurance industry, 13% from maritime / logistics sector and less than 10% from energy / raw materials / resources sector. These results may reflect the popularity and usage of arbitration in those sectors compared to other sectors, such as the science and technology and media and entertainment which accounted for a much smaller percentage of user respondents.

Figure 3: Industry sector of user’s involvement



5.2.2 Experience with arbitration

A key focus of the survey was the respondent’s experience with arbitration. Our survey shows that approximately 72% of the arbitration cases which had a Hong Kong connection^{2F34} are international in nature, whilst 28% are domestic cases. The result is consistent with the statistics of HKIAC^{3F35}, which shows that 75% of the total cases handled by HKIAC in 2014 were international and 25% were domestic.

From our survey, institutional cases accounted for 56% of the total number of Hong Kong-related arbitrations^{4F36}, while only 44% were ad hoc cases. Interestingly, this finding contrasts with the 2014 statistics of HKIAC, which shows that 44% of total cases handled by HKIAC were institutional, whilst 56% were ad hoc. However, this is likely due to the fact that our survey also captured non-Hong Kong seated arbitrations that were heard in Hong Kong or otherwise had a connection to Hong Kong.

Figure 4: Breakdown of total Hong Kong-related arbitrations

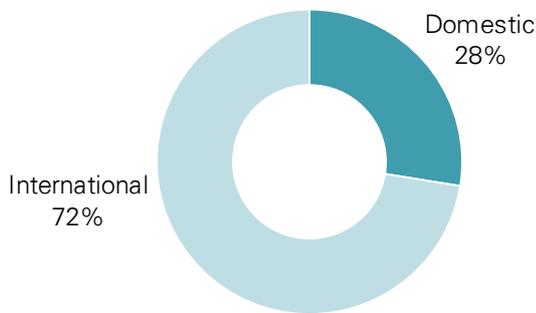
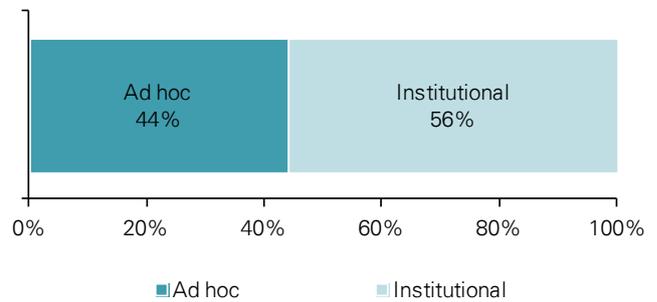
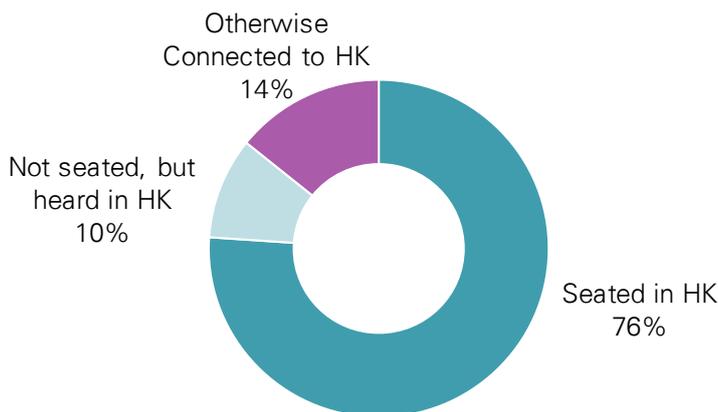


Figure 5: Breakdown of arbitrations by types



Of the total number of Hong Kong-related arbitrations captured in the survey, 76% of the cases were seated in Hong Kong, whereas 10% were not seated, but heard in Hong Kong, whilst 14% of reported cases were otherwise connected to Hong Kong.

Figure 6: Composition of total Hong Kong-related arbitrations



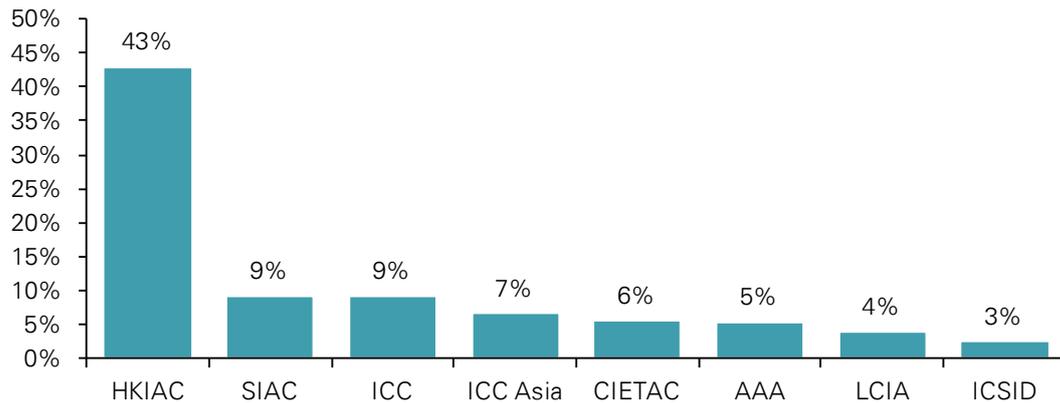
³⁴ An arbitration has a Hong Kong connection if it is seated in Hong Kong, not seated but heard in Hong Kong, or cases where secretarial support or services were provided from the Hong Kong office of an arbitral institution with a presence in Hong Kong (e.g. ICC, CIETAC and CMAC).

³⁵ Based on 2014 HKIAC statistics, available at: <http://www.hkiac.org/about-us/statistics> (accessed 1 August 2016).

³⁶ Hong Kong-related arbitration means cases that are seated in Hong Kong, not seated but heard in Hong Kong, or cases where secretarial support or services were provided from the Hong Kong office of an arbitral institution with a presence in Hong Kong (e.g. ICC, CIETAC and CMAC).

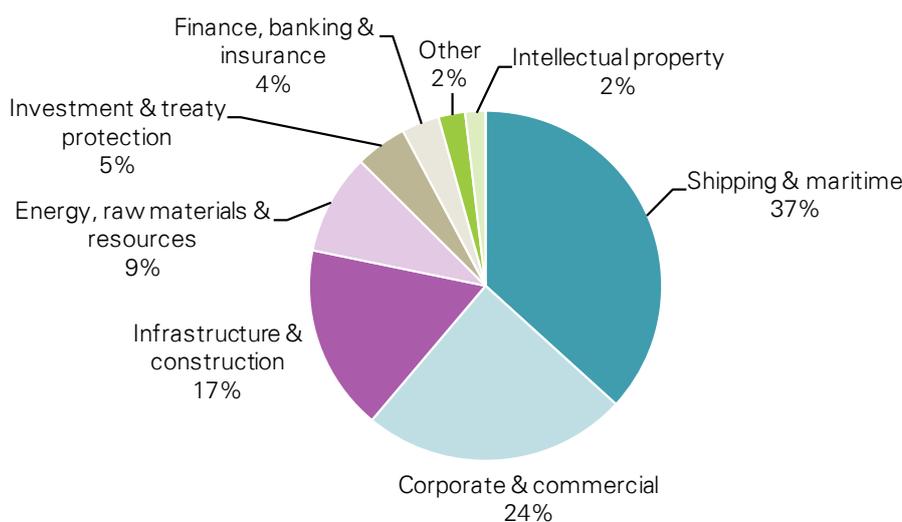
Of the total number of institutional cases reported by respondents, the HKIAC handled a majority of the institutional cases (43%), whereas other arbitration institutions each handled relatively small numbers of institutional cases. Of the 57% of total institutional cases handled by other institutions, SIAC and the ICC were the next most popular with both of them handling about 9% each. This was followed by CIETAC (6%) and ICC Asia (7%), which for the purpose of this survey was treated separately from the other ICC arbitrations handled by the ICC secretariat in Paris and New York (9%). Not unexpectedly, we anticipate that one of the main reasons for the large market share of the HKIAC is that over 40% of our survey respondents had their predominant place of business in Hong Kong.

Figure 7: Breakdown of top 8 institutional arbitrations by institutions³⁷



Of the total number of cases that respondents were involved in between January 2012 to December 2014, 37% were shipping and maritime in nature, 24% were corporate and commercial in nature and 17% were related to infrastructure and construction cases. For the remainder of cases, 9% were energy and raw materials related, 5% were treaty protection, 4% were finance, banking and insurance and 2% were IP cases. Our finding is generally consistent with the statistics of HKIAC in 2013 and 2014, which shows that on average 38% of total cases handled by HKIAC were in shipping and maritime, 24% were in commercial and corporate, and 19% were in the construction sector.

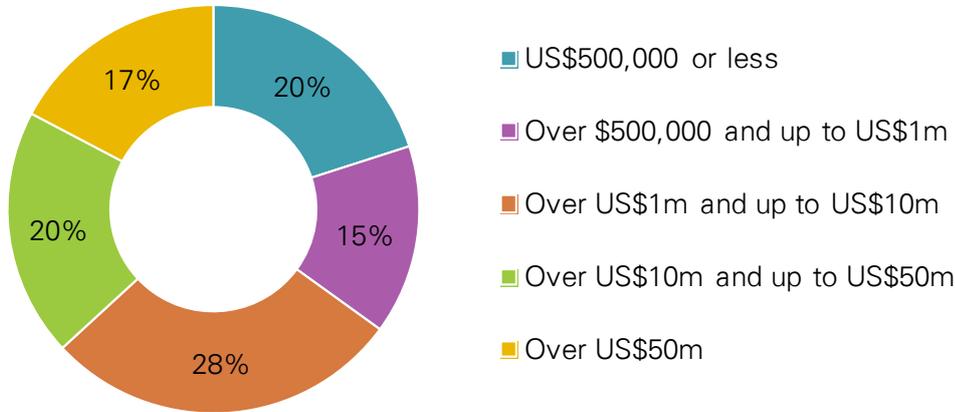
Figure 8: Breakdown of arbitrations by types of industry or subject matter of dispute



³⁷ The percentage breakdown in this figure is calculated based on the total number of institutional arbitrations which the respondents used in the Relevant Period.

Insofar as the quantum in dispute is concerned, 80% of the reported cases involved an amount in dispute in excess of US\$500,000. Indeed cases with an amount in dispute of over US\$50 million accounted for 17% of total number of reported cases. On average, the amount of dispute per case was US\$16 million.

Figure 9: Quantum in dispute



The average duration of reported arbitration cases from the survey was 21 months. This was close to the average of 17 to 20 months reported in the CIArb Survey. Over 70% of the total reported arbitration cases were over 1 year in duration. Of that, 43% took between 1 and 2 years from the commencement of the arbitration to the conclusion.

The survey also asked respondents to indicate the number of arbitration cases in which no hearing was conducted. Of the total number of reported arbitration cases, 59% of them involved a hearing while in 41% of the cases the arbitral tribunal did not order any hearing.

Figure 10: Arbitration duration

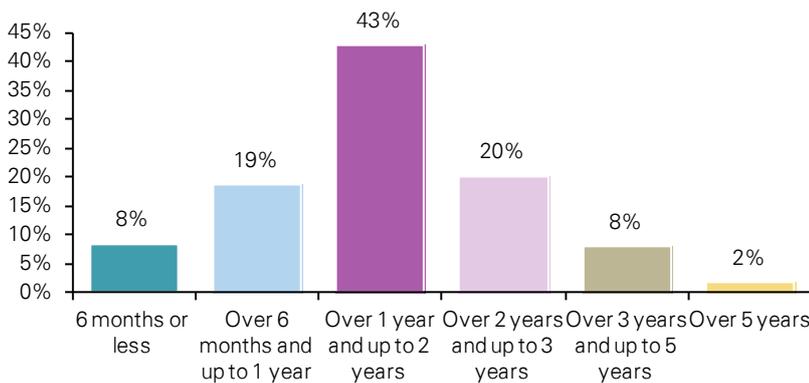
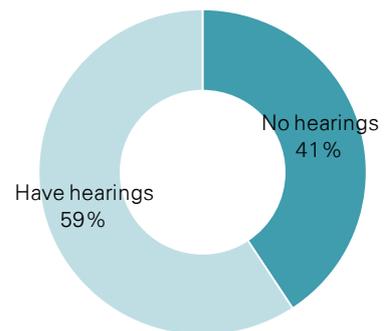
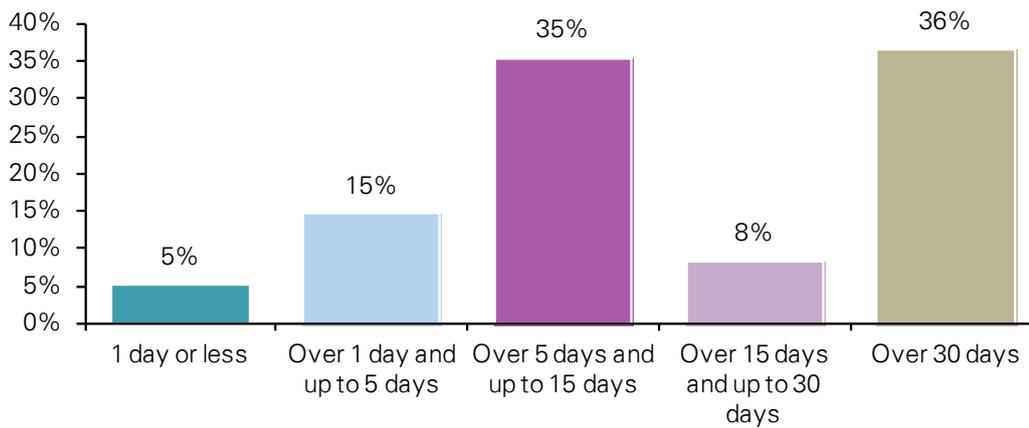


Figure 11: Breakdown of arbitrations with a hearing and without a hearing



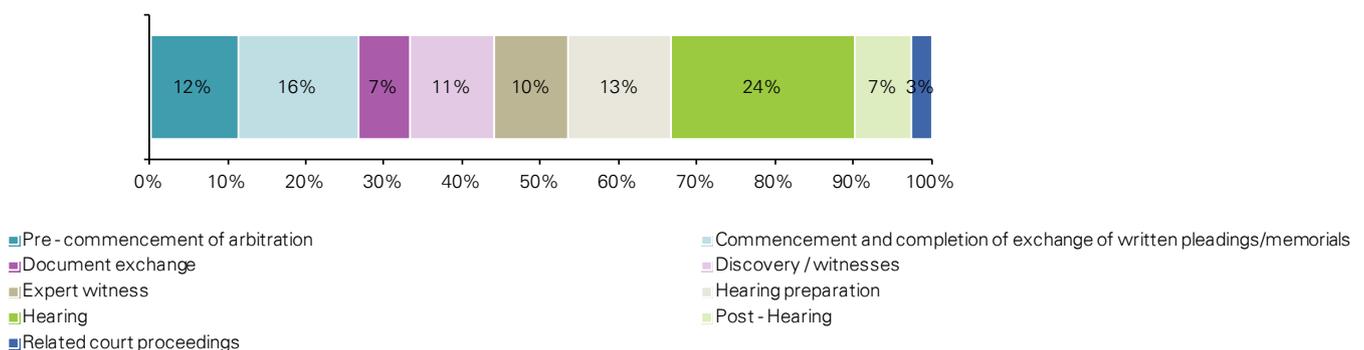
For arbitration cases where there were hearings, the survey found that in 80% of those cases, the combined number of hearings days was 5 or more days. Breaking that number down, 35% of the cases had total hearing days between 5 and 15 days, which is a similar percentage to the percentage of cases with total hearing days over 30 days (at about 36%). Overall, the survey found that the average number of hearing days for an arbitration was 17 days. When compared to the arbitrations captured by the Toronto Study, the average number of hearing days in Hong Kong was greater than that in the Toronto Study. Only 5.3% of the total arbitrations in the Toronto Study have aggregate hearing days of 30 or more.

Figure 12: Length of hearings



Respondents were asked to give an estimated breakdown of how costs are incurred in different stages of the proceedings. From our survey results, we found that the cost incurred during the hearing-related activities accounts for the highest percentage (over 40% of total arbitration cost), followed by commencement and completion of exchange of written pleadings/memorials (16%), hearing preparation (13%) and the cost of related court proceedings (3%).

Figure 13: Estimated percentage of total costs or fees at different arbitration stages



Our survey results show that over 70% of total cases cost over US\$100,000, and around 30% of the total cases cost between over US\$100,000 and up to US\$500,000. Once averaged across the number of cases, this equates to an average cost per arbitration of US\$1.2 million. In comparison to our finding in the CI Arb Survey, Hong Kong-related arbitrations appear to cost significantly less than those held in the UK and Europe. As reported in CI Arb Survey, the average costs of a party to an arbitration were around US\$2.1 million, which is 75% higher than the average costs for Hong Kong-related arbitration cases from our survey.

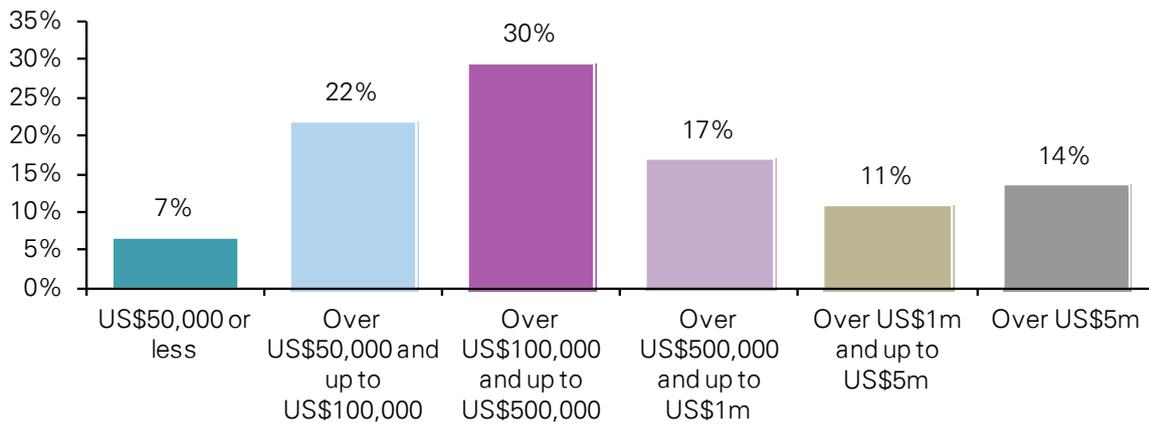
According to the Toronto Study, the result shows that per arbitration costs is around US\$1.6 million³⁸ in 2014, which includes all expenditure relating to the arbitration, including direct legal fees, arbitrator fees, arbitrator expenses, arbitral institution expenses, expert witness expenses, external document management expenses, reporting services, translation services and other miscellaneous expenses, such as meals, travel and accommodations. This indicates that the average cost of each arbitration in Hong

³⁸ This number was derived by adjusting the average arbitration cost per case with inflation and 2014 Purchasing Power Parity in Canada. The average arbitration cost was extracted from the Toronto study.

Kong (US\$1.7 million³⁹) is 6% higher than that in the Toronto Study (US\$1.6 million⁴⁰).

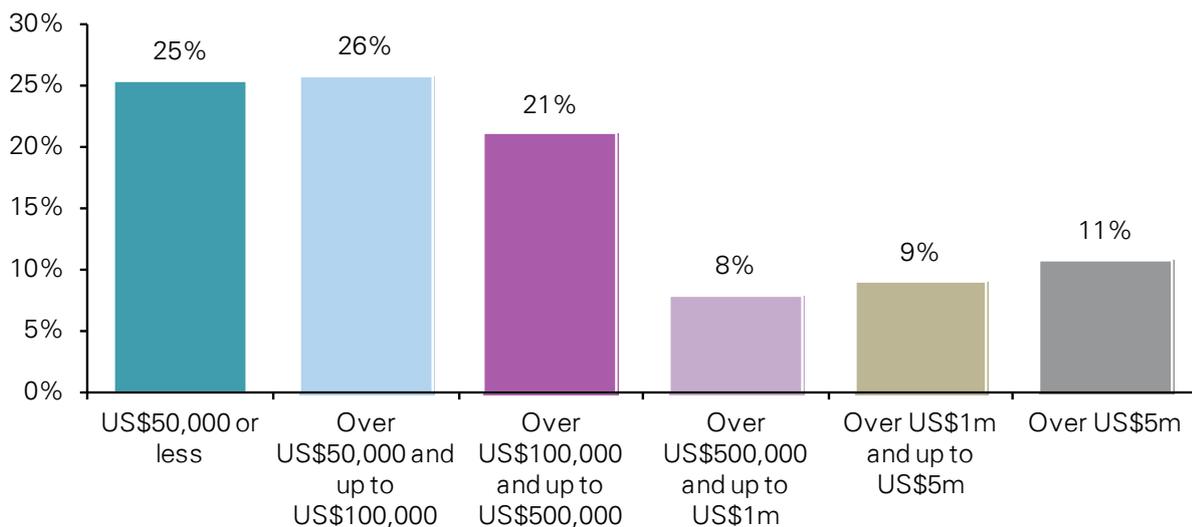
Therefore, it appears that Hong Kong is not the most expensive place for arbitrations in Asia, with its arbitration costs being more competitive than those in Singapore, Europe and the UK. This finding is consistent with that in a study published in *Global Arbitration Review*⁴¹, which shows that the sum of arbitrators’ fees and administration fees for institutional arbitrations in Hong Kong is lower than in Singapore in general.

Figure 14: Total costs per arbitration case



As noted above, the average total cost per case is approximately US\$1.2 million, with professional fees charged by service providers accounting for around US\$1 million of that, and the balance of US\$232,000 going to other costs and disbursements. Comparing the total fees charged by service providers against disbursements and other costs incurred in the arbitration, it is clear that the fees charged by service providers comprise the bulk of the costs of the arbitration. In 72% of the total cases, service providers charged US\$500,000 in professional fees or less. Disbursements and other costs were US\$500,000 or lower in 85% of all cases.

Figure 15: Total fees charged by service providers in arbitration cases

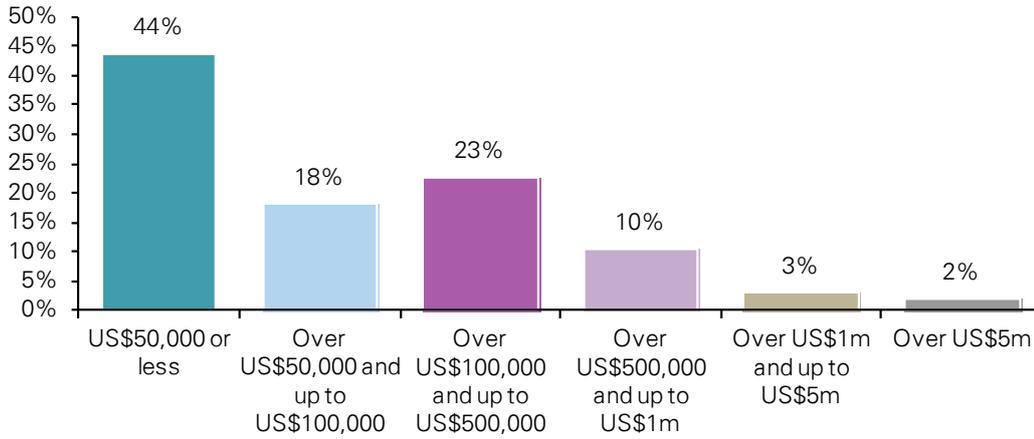


³⁹ The cost of per arbitration in Hong Kong was adjusted with 2014 Purchasing Power Parity in Canada.

⁴⁰ The cost of per arbitration in Canada was adjusted with 2014 Purchasing Power Parity in Canada.

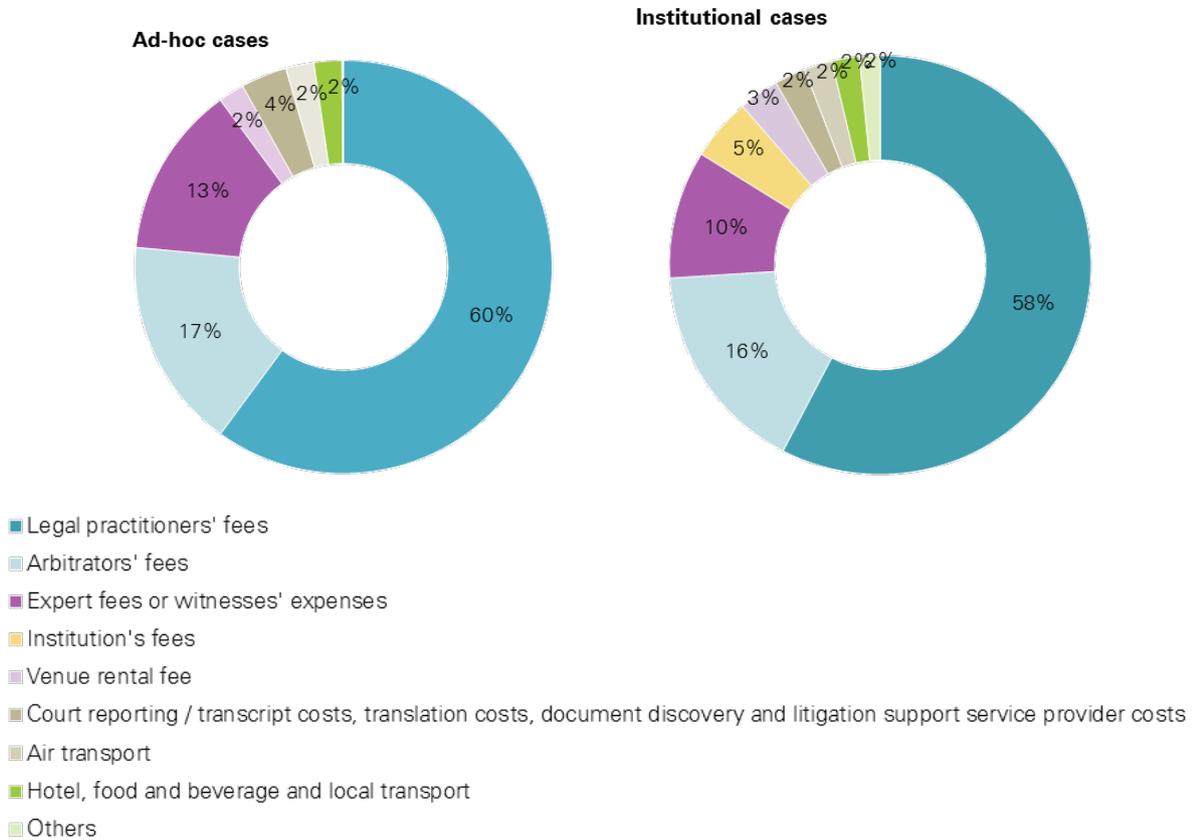
⁴¹ L. Flannery and B. Gareil, 'Arbitration Costs Compared: the Sequel', *Global Arbitration Review*, vol. 8, no. 1, 2013.

Figure 16: Disbursements and other costs incurred in arbitration cases



The breakdown of costs in respect of ad hoc and institutional cases were also explored in the survey. Significantly, the results show that around 58% to 60% of total costs in both ad hoc and institutional cases were attributed to legal practitioners’ fees, whilst between 16% and 17% of the total arbitration cost were attributed to arbitrators’ fees. Other costs included fees for experts and witnesses, venue rental, court reporting/ transcript costs, translating costs, document discovery and litigation support service provider costs, air transport, hotel, F&B and local transport, but these were all single digits as a percentage of the total cost. For institutional cases, the institution’s fees were reported as being about 5% of the total cost of the case.

Figure 17: Breakdown of spending for ad-hoc and institutional cases



The survey also shows that, on average, each arbitration case had the involvement of approximately 25 professionals from commencement to conclusion. According to the survey results, the average number of individuals involved as arbitrators is 2.1. Since the number of arbitrators must be an odd number, and in most jurisdictions the number of arbitrators appointed in an arbitration case is either one or three, it can be inferred that single arbitrator and three arbitrator tribunals are almost equally common. Respondents also reported that an arbitration case involves an average of two barristers, counsel or advocates, four legal practitioners working as instructing solicitors and three expert witnesses.

Of the average 25 professionals involved in an arbitration case, at least 35% of them were reported to be from outside of Hong Kong. This percentage is high, given that most of the survey respondents were based in Hong Kong. By role, 76% of instructing solicitors and other legal practitioners and 60% of barristers, counsel and advocates were from Hong Kong. It was found that 60% of witnesses were reported to be from outside Hong Kong. This is not surprising given that most arbitrations captured by our survey were international rather than domestic in nature.

Table 3: Average number of individuals involved in an arbitration case by role

Individuals involved in arbitration (by role)	Average number of individuals involved in arbitration	Percentage who normally reside outside Hong Kong
Parties to dispute (including plaintiffs and respondents)	6.7	39%
Arbitrators	2.1	40%
Barristers/ counsel / advocates	2.5	41%
Instructing solicitors / other legal practitioners	3.6	23%
Expert Witnesses	2.6	38%
Other witnesses	5.0	40%
Other	2.6	43%
Total	25.0	38%

5.2.3 Preference of choosing arbitration seats

The survey also asked respondents about the qualitative factors in choosing a seat of arbitration. As with the published literature in this field⁴², the enforceability of awards under the New York Convention was ranked as the most important factor affecting the preference of choosing arbitration seats by both users and service providers, followed by “perceived independence of the judiciary in that seat”, “perceived neutrality of the seat” and “perceived arbitration friendliness of that seat’s laws and courts”.

Table 4 on below illustrates the ranking of importance of such qualitative factors.

⁴² S. Greenberg, C. Kee, J.R. Weeramantry, *International Commercial Arbitration - An Asia-Pacific Perspective*, New York, Cambridge University Press, 2011; Berwin Leighton Paisner, *International Arbitration Report on Choice of Venue for International Arbitration*, London, United Kingdom; QMU, *2013 International Arbitration Survey: Corporate Choices in International Arbitration: Industry Perspectives*.

Table 4: The importance of the following factors for choosing arbitration seats

	Ranking
Enforceability of award under the New York Convention	1
Perceived independence of the judiciary in that seat	2
Perceived neutrality of that seat to the parties	3
Perceived "arbitration friendliness" of that seat's laws and courts	4
The governing law of the contract	5
Availability of quality arbitrators, legal practitioners and experts in that seat	6
Availability of arbitrators, legal practitioners and experts fluent in English.	7
Stance of the other party(ies) to the contract	8
Reputation, or familiarity with the rules, of a particular institution based in that seat	9
Geographical convenience of that seat to the parties	10
Availability of interim relief in that seat	11
Ease of entry and convenience for arbitrating there (visa, tax implications for non-local service providers, etc.)	12
Good local transport and infrastructure in that seat (e.g. information technology and communication)	13
Whether the seat has laws based on the UNCITRAL Model Law on International Commercial Arbitration	14
Quality and availability of physical hearing facilities in that seat	15
Good choice of hotels and ancillary services compared to other seats (e.g. sightseeing, shopping, catering)	16

Respondents were also asked to compare Hong Kong to four other key Asian seats on 10 important criteria related to the choice of seat, as shown in Table 5 below.

On each criterion, respondents were asked to mark each city on a scale of 1 to 5, with 1 representing the top performing city for that criterion and 5 representing the lowest performing city among the 5 seats. Using the ranking as a score, we then averaged them for each city and criterion in the tables below. Therefore, the closer the score is to 1, the better the city scored on a given criterion.

Table 5: Asian cities ranking in respect of 10 arbitration criteria (counting all respondents, that is those based in Hong Kong and outside Hong Kong)

Factors	BJ	HK	KL	SEL	SG
Perceived neutrality and independence as a seat of arbitration	4.5	1.5	3.8	3.5	1.6
Perceived "arbitration friendliness"	4.2	1.5	3.7	3.8	1.5
Attractiveness to Mainland Chinese clients as a seat	1.5	1.7	4.3	4.4	2.9
Availability of quality arbitrators, legal practitioners and expert witnesses	3.9	1.3	3.9	3.9	1.7
Ease of entry and convenience to get into that country and arbitrate there (e.g. visa, tax implications)	4.4	1.3	3.6	3.6	1.8
Quality and availability of physical hearing facilities in that seat	3.9	1.6	3.8	3.9	1.5
Reputation of, and/or experiences with, its local arbitral institutions	3.9	1.4	3.7	3.9	1.6
Standards of local transport and infrastructure (e.g. IT, communications, etc.) in that seat	4.1	1.3	4.0	3.5	1.7
Choice of hotels and ancillary services (e.g. sightseeing, shopping, catering)	3.5	1.3	4.1	3.6	1.9
Promotion of that city as a seat of arbitration	3.8	1.8	3.6	4.0	1.4

Note: Scale 1 to 5 represents "Best" to "Worst".

From Table 5, which is based on the responses of all respondents to the survey, we can see that Hong Kong and Singapore were, by some distance, the two leading seats in Asia for 9 out of the 10 criteria. This aligns with our consultation findings that the two predominant seats in Asia are Hong Kong and Singapore. On a side by side analysis of these two seats, respondents rated Hong Kong higher than Singapore for 7 of the 10 criteria, but Singapore led Hong Kong in 2 others, and both seats were tied on 1 criterion. However, as a large constituency of the respondents to the survey was predominantly based in Hong Kong, we sought to determine if the results would be significantly different if we separately examined the responses from those respondents based outside of Hong Kong. The results are shown in Table 6 below.

Table 6: Asian cities ranking in respect of 10 arbitration criteria (only counting respondents based outside Hong Kong)

	BJ	HK	KL	SEL	SG
Perceived neutrality and independence as a seat of arbitration	4.9	2.0	3.5	3.5	1.3
Perceived “arbitration friendliness”	4.4	2.0	3.2	3.4	1.1
Attractiveness to Mainland Chinese clients as a seat	1.5	1.9	4.1	4.3	2.9
Availability of quality arbitrators, legal practitioners and expert witnesses	4.5	1.6	3.8	3.5	1.4
Ease of entry and convenience to get into that country and arbitrate there (e.g. visa, tax implications)	4.5	1.5	3.4	3.4	1.6
Quality and availability of physical hearing facilities in that seat	4.3	1.7	3.3	3.5	1.2
Reputation of, and/or experiences with, its local arbitral institutions	4.2	1.6	3.1	3.5	1.4
Standards of local transport and infrastructure (e.g. IT, communications, etc.) in that seat	4.1	1.6	3.4	3.1	1.2
Choice of hotels and ancillary services (e.g. sightseeing, shopping, catering)	3.8	1.3	3.4	3.3	1.6
Promotion of that city as a seat of arbitration	3.6	1.7	2.8	3.4	1.3

Note: Scale 1 to 5 represents “Best” to “Worst”.

When comparing the results in Table 5 to those in Table 6, the leading city changed from Hong Kong leading (or being tied with another city) to Singapore being the best ranked in respect of the following criteria: (1) perceived neutrality and independence as a seat of arbitration; (2) perceived “arbitration friendliness”; (3) availability of quality arbitrators, legal practitioners and expert witnesses; (4) reputation of, and/or experiences with, its local arbitral institutions; and (5) standards of local transport and infrastructure (e.g. IT, communications, etc.) in that seat.

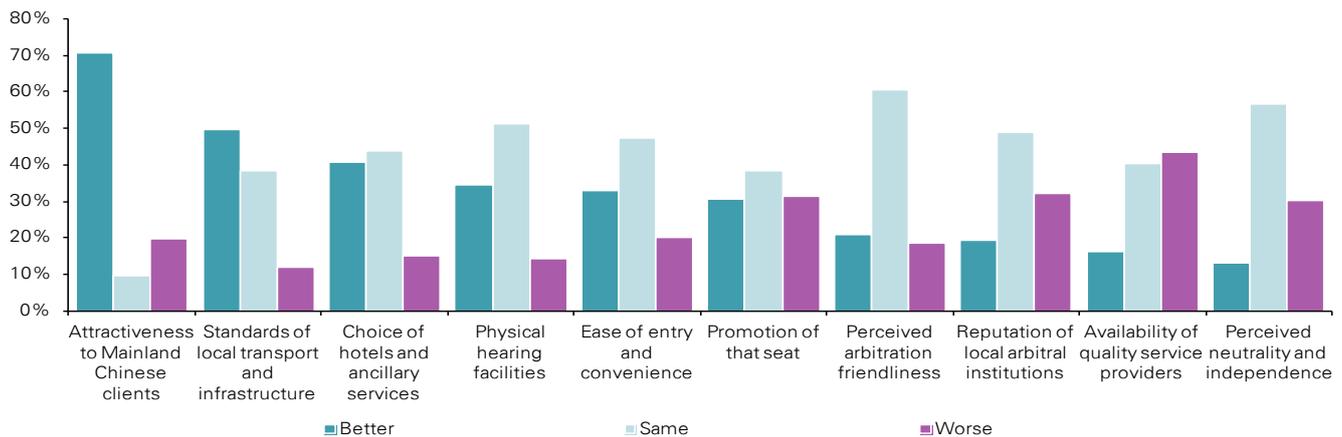
On a further analysis of these two seats based on answers from respondents outside of Hong Kong, Singapore was rated higher than Hong Kong for 7 of the 10 criteria, but Hong Kong led Singapore in the remaining 3. Hong Kong was rated higher than Singapore in attractiveness to Mainland Chinese clients, ease of entry and convenience to get into that country and arbitrate there and choice of hotels and ancillary services (e.g. sightseeing, shopping, and catering). Singapore was also rated ahead of Hong Kong for quality and availability of physical hearing facilities in that seat and promotion of that city as a seat of arbitration.

Respondents to the survey were also asked to compare Hong Kong’s performance against that of London – the leading seat of arbitration in the world – on the same 10 criteria. Our results show that the respondents saw Hong Kong as performing better than London on 7 of the 10 criteria, namely: (1)

attractiveness to Mainland Chinese clients; (2) standards of local transport and infrastructure; (3) choice of hotels and ancillary services; (4) physical hearing facilities; (5) ease of entry and convenience; (6) promotion of that seat; and (7) perceived arbitration friendliness.

On the other hand, respondents considered London was better than Hong Kong in terms of the reputation of: (1) local arbitral institutions; (2) the availability of quality service providers; and (3) perceived neutrality and independence as a seat of arbitration. While London was ahead of Hong Kong on a smaller number of criteria, the three factors it led on are three very crucial factors in the choice of seat for users.

Figure 18: Hong Kong compared against London



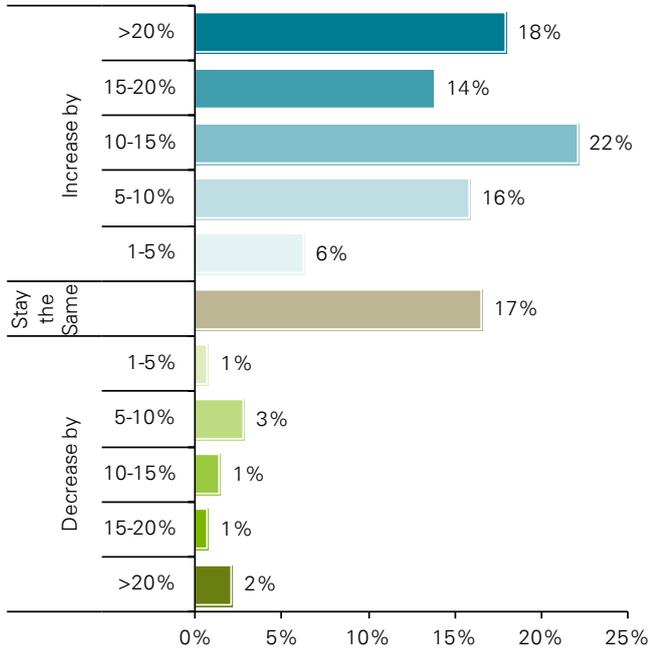
5.2.4 Views on the development trend of arbitration in Hong Kong and Asia

The survey also asked respondents to estimate the growth of arbitration in Hong Kong and Asia. Of the total number of respondents who answered the relevant question, 70% estimated that the number of arbitrations in Hong Kong will increase by 5% or more in the coming five years reflecting a generally positive view for the city’s growth. Of the 70% who held this view, about 24% of these respondents estimated between 10% and 15% growth in Hong Kong arbitration cases over the next 5 years, whereas 18% of them thought the number of arbitrations would grow in excess of 20%. However, a significant number of respondents (17%) thought the number of cases in Hong Kong would stay at the same level as today.

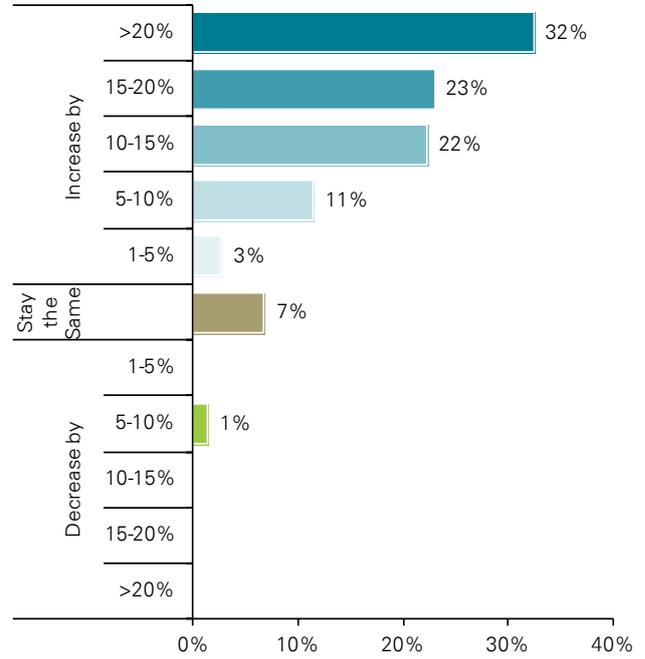
Interestingly, the respondents’ expectations for the increase in the number of arbitrations in Asia as a whole was higher than their expectations in respect of the increase in the number of cases in Hong Kong. Of the total respondents, 88% expected that the number of arbitrations will increase by 5% or more in the coming five years in Asia. Of the 88% who held this view, 22% of these respondents expected arbitration supported in Asia would grow by between 10% and 15% over the next 5 years, whereas 32% of them thought the number of arbitrations will grow in excess of 20%. Only 7% of respondents thought it would stay at the same level as today.

Figure 19: Expectations on the change of the number of arbitrations in Hong Kong and in Asia in the coming five years

Hong Kong



Asia



6 ECONOMIC CONTRIBUTION OF ARBITRATION TO HONG KONG

The starting point in assessing the current economic contribution of the arbitration sector in Hong Kong is to determine the total number of arbitration cases conducted in Hong Kong. While statistical information on the number of institutional arbitrations conducted in Hong Kong is available, there are no official statistics on the number of ad hoc arbitrations held in Hong Kong. We therefore adopted an indirect approach to extrapolate the total number of arbitrations. As detailed in Table 7 below, we first calculated the ratio of HKIAC's administered arbitrations to the total number of Hong Kong-related arbitrations (which were captured in our survey). This ratio represents the HKIAC's market share of all Hong Kong-related arbitration cases. Thereafter, we took that market share ratio and applied it to the reported number of cases handled by the HKIAC in order to extrapolate the total number of Hong Kong-related arbitration cases. Mathematically, this was done by dividing the total number of HKIAC-administered cases in 2014 by the ratio worked out in the second row Table 7 below. Using this approach, we derived the total number of arbitration cases in Hong Kong for 2014, which is 312.

Table 7: Extrapolating the total number of cases in Hong Kong

Step	Indicators	Data	Calculation	Source
1	Total institutional arbitration cases in HKIAC in 2014	110 cases	(a)	HKIAC Annual Report
2	HKIAC administered arbitration cases in 2012-2014	393 cases	(b)	KPMG's 2015 Hong Kong Arbitration Survey
	Total number of Hong Kong-related cases in 2012-2014	1,114 cases	(c)	KPMG's 2015 Hong Kong Arbitration Survey
	% of HKIAC administered cases in the Hong Kong arbitration market	35.3%	(d)=(b)÷(c)	Output of Step 2
3	Total number of arbitrations in Hong Kong	312 cases	(e)=(a)÷(d)	Output of Step 1 to Step 3

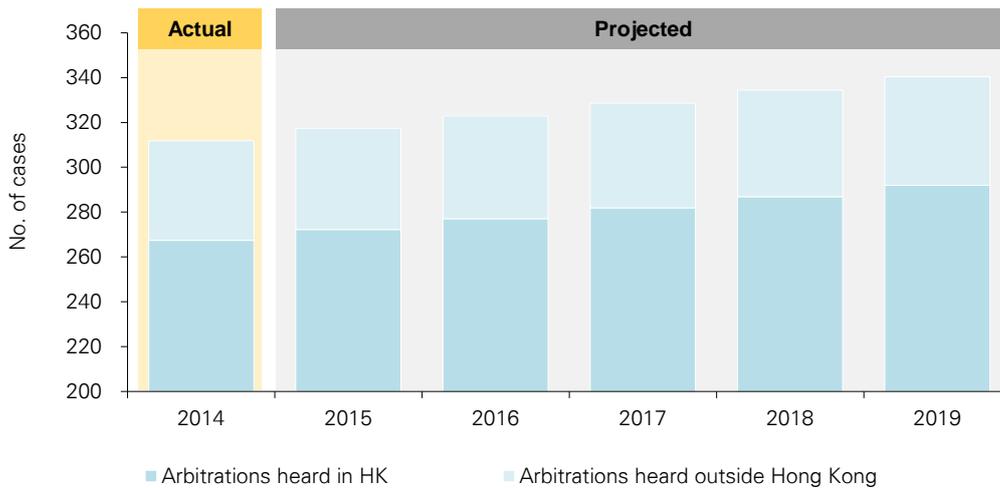
Source: KPMG analysis

6.1 Overview of the arbitration sector

According to our survey results, there was an estimated total of 312 Hong Kong related arbitrations in 2014, of which 72% were international cases and 28% were domestic cases. International arbitrations involve international parties and are more likely to appoint international arbitrators, supporting greater economic activity in supporting sectors, such as F&B, retail and accommodation. Looking forward over the coming five years, respondents to our survey expected the number of arbitrations to grow at an average of 1.8% per annum. On this basis, the number of arbitrations supported in Hong Kong is projected to increase to 340 cases in 2019. Economically, the total GVA could increase in 2019 to HK\$ 2,070 million under a baseline case up to a projected HK\$2,830 million in the most optimistic scenario, as outlined in the sensitivity analysis presented in paragraph 7.6 below.

Arbitrations heard in Hong Kong are cases where parties of the arbitrations, legal professionals and other supporting staff come to Hong Kong for hearings if they are based outside Hong Kong, which induced spending in other sectors mentioned above. Our survey results show that around 86% of total Hong Kong-related arbitrations are heard in Hong Kong and about 14% are heard outside of Hong Kong. This forms an important assumption in appraising the potential economic contribution of the arbitration sector in Hong Kong.

Figure 20: The number of arbitration cases in Hong Kong - actual (2014) and projected (2015 - 2019)



Source: KPMG's 2015 Hong Kong Arbitration Survey; KPMG Analysis

As is conventional practice, we assessed the projected economic impact of the arbitration sector from four mutually inclusive perspectives:

- Direct impact: these being the expenditure, jobs and tax receipts created by businesses operating directly in the arbitration sector;
- Indirect impact: arising from the expenditure of arbitration-related firms on goods and services through the supply chain;
- Induced impact: generated from the spending of incomes earned in jobs directly and indirectly supported by the arbitration sectors; and
- Wider economic impact: these being the catalytic impact in attracting investment and tourism to Hong Kong, as a result of increased confidence and improved perceptions of Hong Kong as a destination created by the local arbitration sector and its activities.

6.1.1 Direct benefits of arbitration

The direct benefits of arbitration activity include:

- Direct expenditure – Based on our survey findings, the total direct expenditure on arbitrations supported in Hong Kong amounted to HK\$2 billion in 2014, of which 82% was spent on legal related services, 12% on professional services and 6% on air transport, F&B and other business trip related activities. Each arbitration generated on average around HK\$6.5 million⁴³ of expenditure in 2014. The top three industry sectors that bring the highest proportions of the total direct spending are corporate and commercial, shipping and maritime, and infrastructure and construction;
- Direct Gross Value Added (GVA) – Arbitrations supported by Hong Kong directly generate HK\$1.2 billion GVA, with 87% falling into the legal sector, 10% from professional sector and 3% from other supporting services. Of the total GVA (HK\$1.2 billion), HK\$1 billion comes from arbitrations heard in Hong Kong and around HK\$200 million from arbitrations heard outside Hong Kong. Each arbitration case supported by Hong Kong contributes HK\$4 million in GVA to Hong Kong's economy; and

⁴³ The expenditure generated by each arbitration is derived by dividing total expenditure in arbitration by the number of cases.

- Employment – We projected that arbitration activities directly supported over 1,600 FTEs in Hong Kong in 2014, with 81% of total FTEs in legal related service sector, 12% from the professional sector and 7% from air transport, F&B and other business trip related sectors. Of the total number of FTEs created, disputes in corporate and commercial contribute around 500 FTEs at the highest percentage (32%), followed by shipping and maritime (320 FTEs, 23%), infrastructure and construction (270 FTEs, 19%) and energy, raw materials and resources (210 FTEs, 15%); and
- Fiscal contribution – The direct fiscal contribution to Government from arbitrations supported in Hong Kong was over HK\$110 million in 2014, with salary tax of around HK\$20 million and profit tax of HK\$90 million. By sector, legal related activities generated around HK\$100 million in tax, around HK\$9 million from professional service and around HK\$2 million from other supporting sectors.

Table 8: Direct impact of arbitrations supported by Hong Kong in 2014 (2015 prices)

Sectors	Direct spending (HK\$ million)	GVA (HK\$ million)	Jobs supported (FTEs)	Fiscal contribution (HK\$ million)
Legal service	1,650	1,080	1,340	100.0
Professional services	240	120	200	9.0
Air transport	40	10	10	1.0
Hotel, F&B and local transport	40	10	75	0.4
Retail	30	10	15	0.3
Other	20	10	10	0.1
Total direct impact	2,020	1,240	1,650	111.0
Direct impact per case ⁴⁴	6.5	4.0	5.0	0.4

Source: KPMG's 2015 Hong Kong Arbitration Survey; KPMG Analysis

Note: The figures in the above table may not add up to the total due to rounding.

Table 9: Direct economic impact by types of arbitrations in 2014 (2015 prices)

Types of arbitrations	Direct spending (HK\$ million)	GVA (HK\$ million)	Jobs supported (FTEs)	Fiscal contribution (HK\$ million)
Heard in Hong Kong	1,740	1,060	1,430	95.0
Heard outside Hong Kong	290	180	230	16.0
Total direct impact	2,020	1,240	1,650	111.0

Source: KPMG's 2015 Hong Kong Arbitration Survey; KPMG Analysis

Note: The figures in the above table may not add up to the total due to rounding

6.1.2 Indirect & induced impact

The indirect and induced impact of arbitration activity include:

- Indirect & induced GVA – Indirect & induced GVA accounts for the value added indirectly generated from the spending from the employees in the arbitration and other related sectors. Arbitrations indirectly add around HK\$720 million GVA to Hong Kong's GDP. About HK\$580 million is paid as salaries for employees and profits for firms providing goods and services in the legal sector, about HK\$100 million to the professional services sector and HK\$ 40 million to other

⁴⁴ Direct impact per case is derived by dividing total direct impact by the total number of cases in Hong Kong.

supporting sectors, such as air transport, F&B, and the retail sectors;

- Employment – Indirect & induced employment are those FTE jobs created from the activities generating indirect & induced GVA. Hong Kong-related arbitrations indirectly generated about 990 FTEs in 2014, 73% of which are in the legal sector, 16% are in the professional services sector and 11% are in other supporting sectors. Arbitrations heard in Hong Kong generated 860 FTEs while those heard outside Hong Kong only generate 80 full-time positions; and
- Fiscal contribution – Indirect & induced fiscal contribution is the tax paid by employees and by firms providing services supporting activities indirectly induced by the arbitration sector. The arbitrations generated over HK\$60 million tax receipts to Government in 2014, 86% of which are from arbitrations heard in Hong Kong.

Table 10: Indirect & induced impact of arbitrations supported by Hong Kong in 2014 (2015 prices)

Sectors	GVA (HK\$ million)	Jobs supported (FTEs)	Fiscal contribution (HK\$ million)
Legal service	583	723	54.3
Professional services	99	157	7.3
Air transport	16	13	1.1
Hotel, F&B and local transport	6	36	0.2
Retail	18	53	0.3
Other	2	3	0.1
Total indirect & induced impact	724	985	63.0
Indirect & induced impact per case	2	3	0.2

Source: KPMG's 2015 Hong Kong Arbitration Survey; KPMG Analysis

Table 11: Indirect & induced economic impact by types of arbitration in 2014 (2015 prices)

Types of arbitrations	GVA (HK\$ million)	Jobs supported (FTEs)	Fiscal contribution (HK\$ million)
Heard in Hong Kong	624	856	54.0
Heard outside Hong Kong	100	129	9.0
Total	724	985	63.0

Source: KPMG's 2015 Hong Kong Arbitration Survey; KPMG Analysis

6.1.3 Wider impact of the arbitration sector

In addition to the quantified economic benefits above, other wider benefits could also arise. As the arbitration sector in Hong Kong grows, the positive effects of clustering economic activity (agglomeration effects) will provide an efficiency gain for firms operating within the arbitration sector, resulting from their close proximity to each other. The wider benefits could fall into three distinct categories:

- Knowledge spillovers – firms with an arbitration practice interact with, and learn from, other firms within the market. This facilitates efficient sharing of knowledge within the dispute resolution market;
- Access to labour – the arbitration service cluster attracts skilled labour, thus increasing the quality of a firm's workforce and reducing their search costs; and
- Input effects – the presence of the arbitration service cluster attracts service providers to set up operations in Hong Kong. This gives users access to a greater range of specialised legal inputs, which are important drivers of arbitration activities.

We noted that a study by Rosenthal and Strange (2004)⁴⁵ reviewed the range of literature which attempted to quantify the benefits arising from a ‘business cluster’ and found that doubling the size of a ‘business cluster’ typically leads to an increase in productivity of 3-8%. This range, however, does not fully capture the breadth of estimates, or specific drivers of an intensified arbitration sector which may alter the magnitude of this relationship.

Wider catalytic effects could also arise from the role played by Hong Kong as a regional (and global) arbitration hub, in raising the profile of Hong Kong as a place to visit and to do business. In this Report, we however adopted a conservative approach to assessment, and have not quantified the value of these wider effects. Instead we have recognised their importance in quantitative terms. This is consistent with economic evaluation practice in Hong Kong.

6.1.4 Summary of current economic impact

This section summarises the total contribution of the arbitration sector in Hong Kong in 2014. In total, the GVA of arbitrations in Hong Kong in 2014 contributed to 13%⁴⁶ of the legal sector’s GVA, or around 0.09% of Hong Kong’s total GDP, as follows:

- Total GVA – the total GVA of arbitrations supported by Hong Kong was around HK\$2.0 billion, which is the sum of direct and induced GVA. Of the total GVA, 85% are generated from activities in the legal sector, 11% from the professional sector and the remainder (4%) are from other supporting sectors. Arbitrations in corporate and commercial, shipping and maritime and industrial and construction sectors together contribute HK\$1.4 billion, which accounts for over 70% of total GVA generated.

Compared to arbitrations heard outside of Hong Kong, arbitrations heard in Hong Kong generate more economic impact for Hong Kong’s economy than those heard outside of Hong Kong. This is not only mainly driven by a higher number of arbitrations heard in Hong Kong than that of arbitrations outside of Hong Kong, but also by the spending from overseas individuals involved in the arbitrations, who otherwise would not have visited Hong Kong. This extra direct spending in turn supports an economic contribution in terms of GVA, employment and fiscal receipts to the Government, as follows:

- Employment – In total, arbitrations supported over 2,600 FTEs in Hong Kong, with 2,060 FTEs in the legal sector, over 360 FTEs in the professional sector and the remaining (around 200 FTEs) in other supporting sectors, such as F&B, transport and events. Arbitrations in the corporate and commercial sector and shipping and maritime sector are projected to support 1,400 FTEs; and
- Fiscal contribution – We projected that, based on our survey findings, arbitrations contributed over HK\$ 170 million to Hong Kong Government in 2014 in the form of fiscal receipts.

Table 12: Total impact of arbitrations supported by Hong Kong in 2014 (2015 prices)

	GVA (HK\$ million)	Jobs supported (FTEs)	Fiscal contribution (HK\$ million)
Direct impact	1,240	1,650	111.0
Indirect & induced impact	724	990	63.0
Total impact	1,964	2,640	174.0

Source: KPMG’s 2015 Hong Kong Arbitration Survey; KPMG Analysis

⁴⁵ S. S. Rosenthal and W.C. Strange, ‘Evidence on the Nature and Sources of Agglomeration Economies’, *Handbook of Regional and Urban Economics*, 2004.

⁴⁶ This percentage is derived by dividing GVA of the arbitration activities by the value added of legal activities in Hong Kong in 2014. The value added of legal activities in 2014 is derived by adjusting the inflation in 2013. The value added of legal activities in Hong Kong in 2013 which is HK\$ 13,965 million, which is available in *Key Statistics on Business Performance and Operating Characteristics of the Information and Communications, Financing and Insurance, Professional and Business Services Sectors*, as published on official website of Hong Kong Census and Statistics Department.

6.2 Projected future economic benefits of the arbitration sector

In summary, our survey found that over 75% of total respondents expected the number of arbitrations in Hong Kong to increase. The survey results project that the number of arbitrations in Hong Kong could grow at an average of 1.8% per annum over the five years following 2014. On this basis, we projected that direct spending on arbitrations could grow to HK\$ 2.2 billion in 2019 from HK\$ 2.0 billion in 2014.

This in turn could support a range of wider economic activities throughout the Hong Kong economy. Taking these wider impact into account, the table below sets out the current and projected benefits (based on our survey findings) of the sector over time.

Table 13: Projection⁴⁷ of economic contribution arising from arbitrations supported in Hong Kong

Indicators (HK\$ million)	2014	2015*	2016*	2017*	2018*	2019*
Direct spending	2,030	2,130	2,250	2,370	2,480	2,600
Direct GVA	1,240	1,310	1,380	1,450	1,520	1,600
Indirect GVA	724	760	800	850	890	930
Total GVA	1,964	2,070	2,180	2,300	2,410	2,530
Jobs supported (FTEs)	2,640	2,690	2,740	2,800	2,860	2,910
Fiscal contribution	174	184	193	204	214	224

Source: KPMG's 2015 Hong Kong Arbitration Survey; KPMG Analysis

Note 1: The columns marked with "*" represents projected figures.

Note 2: The figures in the above table may not add up to the total due to rounding.

6.3 Arbitration events

6.3.1 Overview of arbitration events

Each year, various organisations and professional associations organise events and seminars to promote arbitration-related services in Hong Kong. MICE events are effective means to promote trade and services. As a result, stakeholders in the arbitration sector have been organising annual MICE events to promote their services and presence in the Hong Kong. Looking forward, these organisations help promote Hong Kong's image as the regional arbitration hub.

In this section, we explore the potential economic benefits that could arise as a result of arbitration events.

6.3.2 Arbitration events held in Hong Kong

To estimate the annual benefits arising from arbitration events and seminars, we have considered the arbitration-related events organised by various organisations in 2014. The number of attendants (including delegates and organisers) of all events organised by each organisation are shown in Table 14.

⁴⁷ The projection is driven by the expected growth of the total number of arbitrations between 2015 and 2019 at a constant rate of 1.8% per annum, based on our survey results.

Table 14: Breakdown of event attendance by different organisations in 2014

	Attendance in 2014 (delegates & organisers)
Hong Kong International Arbitration Centre (HKIAC) events	1,116
The International Chamber of Commerce (ICC) events	120
China International Economic and Trade Arbitration Commission events	(unattainable)
The Hong Kong Trade Development Council events	125
Asialaw Profiles (Asialaw) events	833
CCH Wolters Kluwer events	120
Chartered Institute of Arbitrators – East Asia events	(unattainable)

Source: KPMG analysis based on obtainable data in 2014 - through desktop research and discussion with arbitral organisations and other stakeholders

6.3.3 Spending on arbitration events

To assess the economic contribution of arbitration events in Hong Kong, all relevant spending arising from the events are considered. These include:

- Registration fees;
- Venue rental and event organisation cost; and
- Visitor personal expenditure (outside events), i.e. on hotels and catering, and travel.

(a) Registration fees

These are the fees being paid by event delegates. Registration fees vary according to individual events. We have worked closely with arbitral institutions and organisations to determine the total registration income arising from arbitration events in 2014 (i.e. attendees' spending on event registration). The estimated total registration income arising from arbitration events is shown in Table 15 below.

Table 15: Projected registration income from arbitration events in 2014

	Arbitration events	Registration income from local events (HK\$ million)
1	HKIAC events	1.8 ⁽¹⁾
2	ICC events	0.0 ⁽²⁾
3	CIETAC events	(unattainable)
4	The Hong Kong Trade Development Council events	0.2 ⁽³⁾
5	Asialaw Profiles (Asialaw) events	1.5 ⁽³⁾
6	CCH Wolters Kluwer events	0.3 ⁽³⁾
7	Chartered Institute of Arbitrators – East Asia events	0.2 ⁽⁴⁾
	Total	4.0

Sources:

(1) Latest HKIAC Annual Report. Registration fees was estimated by applying the local event ratio to Conference and seminar income (49% local event ratio - according to the proportion of Hong Kong events organised by HKIAC in 2014).

(2) Total registration fees of ICC events was provided by ICC Hong Kong. However, the number was less than HK\$100,000 and as a result it is shown in the table, due to rounding shows, as zero

(3) Estimated by multiplying the number of fee-paying delegates by registration fee per person

(4) Based on management information of CI Arb – East Asia

Note: The figures in the above table may not add up to the total due to rounding

(b) Venue rental and event organisation cost

These are the costs paid by event organisers to host the above arbitration events. We have worked with arbitral institutions and organisations to determine the approximate amount spent by event organisers. The estimated cost of venue rental and event organisation is shown in Table 16 below.

Table 16: Projected cost of venue rental and event organisation, 2014

	HK\$ million	Spending on venue, event organisation
1	HKIAC events	1.2 ⁽¹⁾
2	ICC events	0.0 ⁽²⁾
3	CIETAC events	<i>Not included (unattainable)</i>
4	The Hong Kong Trade Development Council events	0.1 ⁽³⁾
5	Asialaw Profiles (Asialaw) events	0.7 ⁽³⁾
6	CCH Wolters Kluwer events	0.1 ⁽³⁾
7	Chartered Institute of Arbitrators – East Asia	0.5 ⁽⁴⁾
	Total	2.6

Sources:

(1) Latest HKIAC Annual Report. Spending on event organisation was estimated by applying the local event ratio to Conference and seminar expenses (49% local event ratio - according to the proportion of Hong Kong events organised by HKIAC in 2014)

(2) Total estimated spending for ICC events was less than HK\$100,000, and as a result it is shown in the table, due to rounding shows, as zero

(3) Cost of venue estimated by the number of delegates and the venue cost per person

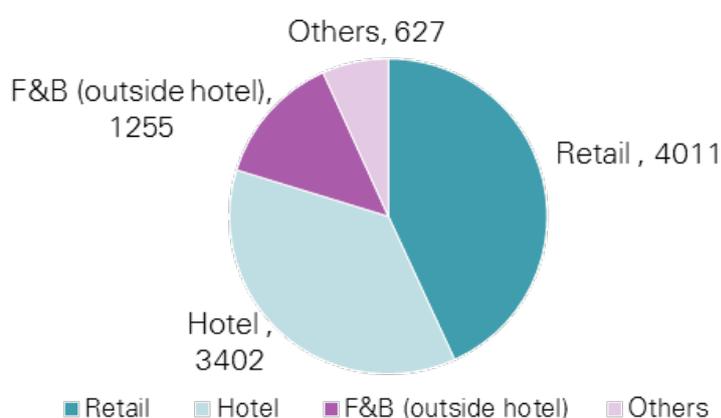
(4) Based on management information of CI Arb – East Asia

Note: The figures in the above table may not add up to the total due to rounding

(c) Induced visitor spending

Arbitration events attract international visitors (such as counsel, arbitrators, event delegates and organisers from outside of Hong Kong), bringing benefits to the local economy arising from spending on accommodation, transportation, F&B, and other visitor expenditures. The overall magnitude of spending is dependent upon visitors' length of stay in Hong Kong. The average length of stay in Hong Kong is 3.2 nights⁴⁸ for international business visitors according to the Hong Kong Tourism Board. The average spending of business visitors (excluding international transportation) is shown in Figure 25 below.

Figure 21: Average spending of international business visitors 2014 (Total: HK\$9,295)



Source: Hong Kong Tourism Board; KPMG Analysis

⁴⁸ Hong Kong Tourism Board, 'Yearly Statistical Review - Length of Stay for International Business Visitor', 2015.

6.3.4 Key findings – current economic impact from arbitration events

The projected economic contribution arising from arbitration related MICE events is presented in the conventional terms of value added, employment and fiscal benefits.

These estimated benefits are considered progressively: firstly, the 'direct' benefits arising from the events themselves are considered; and subsequently, the indirect and induced benefits are considered.

(a) Direct impact

Direct value added arising from arbitration events falls into two categories:

- Participants (spending on event registration and personal expenses outside events); and
- Businesses including exhibitors and event organisers (spending on venues, event organisation).

The direct value added is estimated to be HK\$ 6.2 million per annum in 2014. Value added generated from visitor spending on event registration is estimated to equal to 39% of total direct value added, followed by visitor personal expenditure (29%), exhibitors spending on event organisation (25%) and international transportation (7%).

Table 17: Direct economic impact by spending on events in 2014 (2015 prices)

Types of spending	Direct spending (HK\$ million)	GVA (HK\$ million)	Jobs supported (FTEs)	Fiscal contribution (HK\$ million)
Registration income	3.8	2.4	4	0.1
Events venue/organisation	2.5	1.6	3	0.1
International transportation	1.4	0.4	0	0.1
Retail (personal expense)	2.1	0.3	1	0.0
Hotel (personal expense)	1.8	1.1	2	0.1
F&B outside hotel (personal expense)	0.6	0.2	1	0.0
Others (personal expense)	0.3	0.1	0	0.0
Total direct impact	12.7	6.2	12	0.5

Source: KPMG Analysis

Note: The figures in the above table may not add up to total due to rounding

(b) Indirect and induced impact

Indirect and induced value added is generated throughout the supply chain when arbitration-related businesses, serving exhibitors, event organisers and visitors, purchase goods and services.

Based on the direct value added calculated above, the indirect and induced value added is estimated to be HK\$ 14.7 million in 2014.

Table 18: Indirect and induced economic impact by spending on events in 2014 (2015 prices)

Types of spending	GVA (HK\$ million)	Jobs supported (FTEs)	Fiscal contribution (HK\$ million)
Registration income	2.6	4	0.2
Events venue/organisation	1.7	3	0.1
International transportation	1.7	3	0.1
Retail (personal expense)	7.7	13	0.5
Hotel (personal expense)	0.3	1	0.0
F&B outside hotel (personal expense)	0.6	1	0.0
Others (personal expense)	0.1	0	0.0
Total indirect & induced impact	14.7	25	0.9

Source: KPMG Analysis

(c) Total impact

On the basis of the aggregation of the total GVA (as presented in Table 17 and Table 18 above), total value added contributed by arbitration events in Hong Kong is estimated to have been HK\$ 20.9 million in 2014. Of the total value added, 51% (HK\$ 11 million) was generated from business visitor spending (retail, accommodation, F&B and others) and the remainder (HK\$ 9.9 million) from spending on event organisation, international transportation and event registration.

Table 19: Total economic impact by spending on events in 2014 (2015 prices)

	GVA (HK\$ million)	Jobs supported (FTEs)	Fiscal contribution (HK\$ million)
Total impact	20.9	37	1.4

Source: KPMG Analysis

(d) Employment contribution

In total, arbitration events in 2014 supported 37 FTEs in Hong Kong, with approximately 13 FTEs in event or exhibition sector, 14 FTEs in visitor retail section and the remainder (7 FTEs) from other supporting sectors.

Table 20: Total jobs supported by arbitration events and promotion in 2014

	GVA (HK\$ million)	Jobs supported (FTEs)
Direct value added	6.2	12
Indirect and induced value added	14.7	25
Total impact	20.9	37

Source: KPMG Analysis

Note: The figures in the above table may not add up to equal to the total due to rounding.

(e) Fiscal contribution

Arbitrations events contributed more than HK\$ 1.35 million of fiscal benefits to Hong Kong Government in 2014.

Table 21: Total fiscal benefits generated from arbitration events in 2014 (2015 prices)

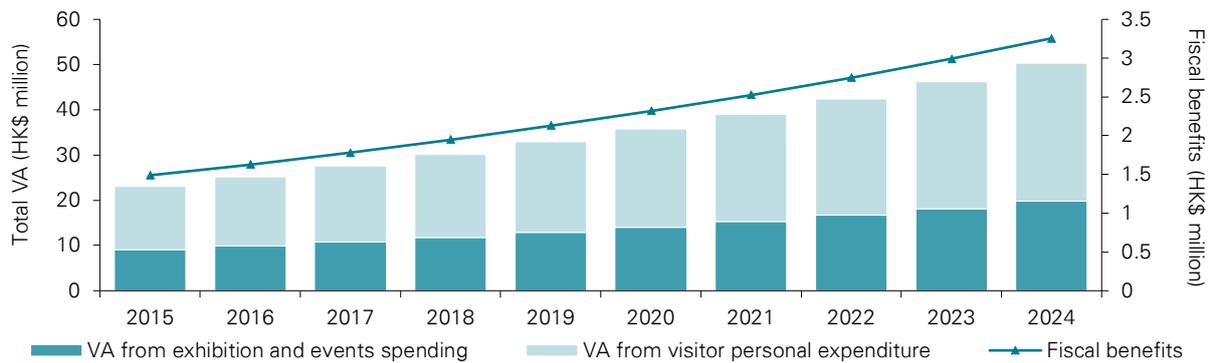
Type of tax	Fiscal contribution (HK\$ million)
Profits tax	1.21
Salary tax	0.10
Airport tax	0.04
Total tax	1.35

Source: KPMG Analysis

(f) Projected economic impact in the coming 10 years

Assuming a similar portion of arbitration events are organised in Hong Kong every year, the total benefits in the next ten years can be projected using an assumed 5.7% visitor growth rate⁴⁹ and could grow to HK\$ 50million of value added in the next ten years.

Figure 22: Projected benefits arising from arbitration meetings and events (Nominal price, undiscounted, 2015-2024)



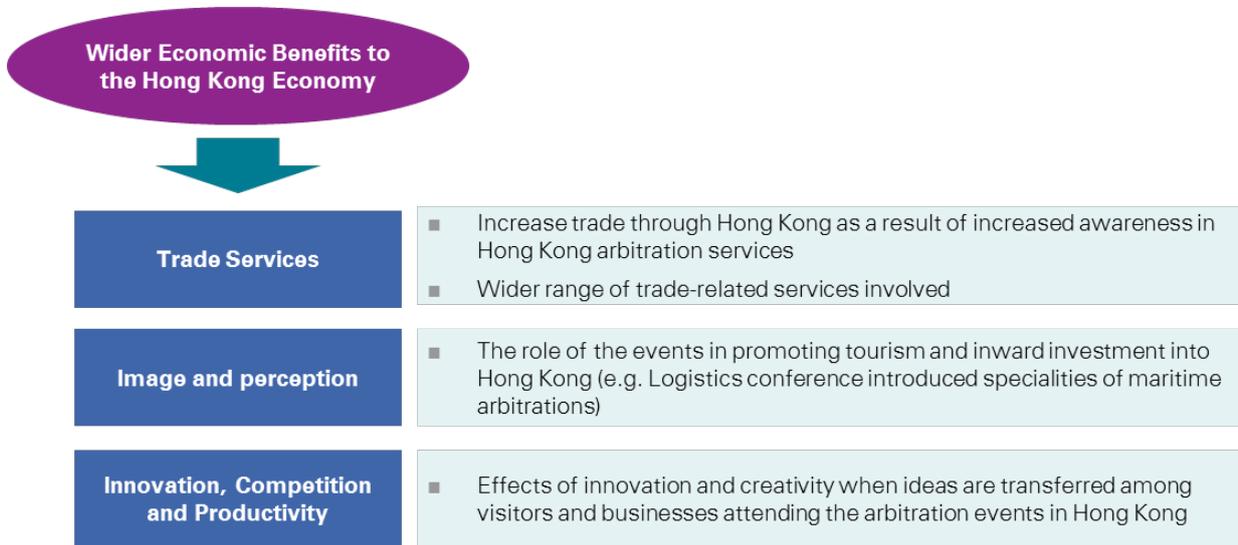
Source: KPMG Analysis

⁴⁹ Commerce and Economic Development Bureau, *Assessment Report on Hong Kong's Capacity to Receive Tourists*, 2014. The 5.7% growth rate was derived using actual visitor numbers in 2014 and projected visitor numbers for 2023.

(g) Potential wider impact

In addition to the benefits generated by arbitration promotion (above), these MICE events could also raise the profile of Hong Kong, not only as a seat of arbitration, but also as a wider business location. These 'wider' benefits could include those highlighted in Figure 23 below, but in line with conventional practice in Hong Kong, these have not been quantified in this assessment.

Figure 23: Wider economic benefits arising from arbitration events



Source: KPMG Analysis

6.4 Education & training

6.4.1 Current economic contribution

In Hong Kong, many higher education institutions and arbitration organisations have been providing formal arbitration training. The courses offered by these education institutions are important to the arbitration industry as they provide opportunities to learn about and acquire skills as arbitrator service providers. These professional arbitrators or service providers then provide the local manpower for proper functioning of the arbitration sector in Hong Kong.

Measuring the economic impact of arbitration institutions is however an involved process, because universities and educational institutions 'produce' the supply of labour that supports the arbitration sector in Hong Kong. Hence, the economic value of skills and education is already 'internalised' in our assessment of the economic value generated by the arbitration sector as a whole.

6.5 Summary of current economic benefits

We quantified the economic benefits arising from arbitration disputes and the promotion of arbitration through MICE events. We projected that the arbitration sector contributed around HK\$2 billion to Hong Kong's GDP, and contributed to 13% of the total GDP of the legal sector in 2014.

A summary of the current economic benefits of arbitration service cluster is presented as below.

Table 22: Total impact of arbitrations supported by Hong Kong in 2014 (2015 prices)

Sectors	GVA (HK\$ million)	Jobs supported (FTEs)	Fiscal contribution (HK\$ million)
Legal	1,660 ^(a)	2,060	154.8
Professional	220	360	16.0
Air transport	30	30	2.3
Hotel, F&B and local transport	20	120	0.8
Retail	30	80	1.1
Conferences & events	10	10	0.5
Other	10	10	0.2
Total	1,990	2,670	175.7

Source: 2015 KPMG Arbitration Survey; Census and Statistics Department; KPMG Analysis

6.6 Potential further benefits

Hong Kong could further enhance the development of its arbitration sector through a series of recommendations that we have outlined in Chapter 8 of this Report. These recommendations could bring positive economic benefits to Hong Kong. For example, if the number of arbitration cases doubles, the contribution of arbitration sector could potentially reach 20% of legal sector's GVA (assuming the average GVA per case remains unchanged), which will lead to benefits that exceed the productivity gain of 3 to 8% in a 'business cluster', as suggested by Rosenthal & Strange (2004) and Graham (2007). Ultimately however, the actual growth of Hong Kong's arbitration sector will depend on how these recommendations are implemented as well as future changes in the regional arbitration community.

6.6.1 Sensitivity analysis⁵⁰

In order to consider the potential economic value that could arise from an expanded arbitration sector, we conducted three sensitivity tests to examine what would happen if the arbitration sector in Hong Kong grows at different rates under different scenarios.

- Baseline case – Expected growth rate in Hong Kong considers the change in the total economic contribution generated should the number of arbitrations follow the current trend of the development of the Hong Kong arbitration sector as projected by our survey at 1.8% per year. This rate of growth assumes no change to the existing arbitration policy.
- Sensitivity test 1 - Expected growth rate in Asia considers the change in economic contribution generated by the arbitration sector if the number of arbitration cases in Hong Kong follows an expected (and higher) growth rate of 2.7% per annum for the coming 5 years (being the expected rate of growth in Asia arbitrations).

⁵⁰ The result from the sensitivity analysis can only serve as a reference as what would the economic contribution of arbitration be should the arbitration sector grow at different rates. The cases under analysis are all hypothetical and for illustrative purpose only.

- Sensitivity test 2 – Singapore average growth rate (from 2009 to 2014) considers how the economic value increases if the number of arbitration grows at an average rate of 3.5% per year, being the rate of growth in Singapore from 2009 to 2014.
- Sensitivity test 3 – Singapore average growth rate (from 2008 to 2014) consider the economic contribution of the arbitration sector if the number of arbitrations in Hong Kong follows the same trend as that in Singapore in 2008 to 2014, at 8.3%⁵¹ per annum.

Table 23: Potential growth rates in the volume of arbitrations achieving in Hong Kong

Growth of arbitrations	CAGR*	Source
Baseline case - Expected growth in Hong Kong	1.8%	2015 KPMG Arbitration Survey
Test 1 – Expected growth rate in Asia	2.7%	2015 KPMG Arbitration Survey
Test 2 – Singapore growth rate (2009 – 2014)	3.5%	SIAC website
Test 3 – Singapore growth rate (2008 – 2014)	8.3%	SIAC website

Source: HKIAC website, SIAC website, 2015 Arbitration Survey
 *Note: CAGR denotes Compound Annual Growth Rate

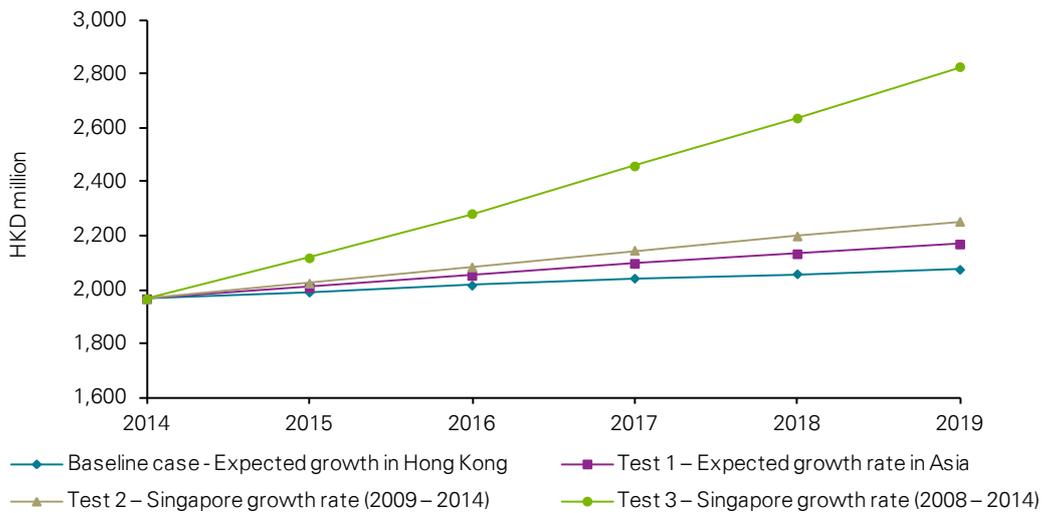
6.6.2 Potential future economic contribution of the arbitration sector

Based on different scenarios listed in Table 23, we projected the potential economic contribution of the arbitration sector using projected changes in the number of Hong Kong-related arbitrations in next 5 years. Our projected results are as follows:

- Total GVA could increase to HK\$ 2,070 million under baseline case in 2019. If the number of arbitrations grows at 2.7%, the total GVA generated from the arbitration sector is projected to reach HK\$2,170 million in 2019, 5% higher than that in 2014.
- If the development of the arbitration sector in Hong Kong were to follow the trend of growth in Singapore (2009 – 2014) the total GVA could reach a projected HK\$2,250 million in 2019, assuming a growth rate of 3.5% per annum.
- In contrast, if the number of arbitrations were to grow at a higher rate (over 8%), the economic value brought by the arbitration sector in 2019 could reach a projected HK\$2,830 million.

⁵¹ The growth rate of 8% per annum takes into account the dramatic increase in the number of arbitrations in Singapore after the financial crisis.

Figure 24: Total GVA generated by arbitrations in Hong Kong (Nominal prices)



Source: HKIAC website, KPMG's 2015 Hong Kong Arbitration Survey, KPMG analysis

Using these scenarios, we projected the incremental benefits from the three scenarios, as presented in Table 24. The results illustrate that in the next 5 years the arbitration sector is projected to generate an additional HK\$2,140 million to Hong Kong's economy, assuming the number of arbitrations grows at the expected growth rate in Asia compared to the prevailing baseline case.

If the number of arbitrations grows at 3.5% (in line with Singapore's average growth rate from 2009 to 2014), the economic value generated by the arbitration sector could reach HK\$2,250 million in 2019. Alternatively, the arbitration sector in Hong Kong could generate HK\$2,830 million in 2019, if the number of arbitrations grows at 8.3% annually from 2015 to 2019.

Table 24: Potential incremental benefits associated with recommendations against baseline case

Sensitivity tests	GVA in 2019 (HK\$ million, 2015 prices)	Incremental NPV* of total GVA in 2015 - 2019 (HK\$ million, 2015 prices) against the baseline case
Baseline	2,070	-
Test 1 - Expected growth rate in Asia	2,170	280
Test 2 - Singapore growth rate (2009 - 2014)	2,250	520
Test 3 - Singapore growth rate (2008 - 2014)	2,830	2,140

Source: HKIAC website, SIAC website, KPMG's 2015 Hong Kong Arbitration Survey; KPMG analysis

*Note: A discount rate at 4% is applied when calculating the NPV

These potential benefits might be achieved if Hong Kong implements policies that would enhance Hong Kong's competitiveness as a leading arbitration centre.

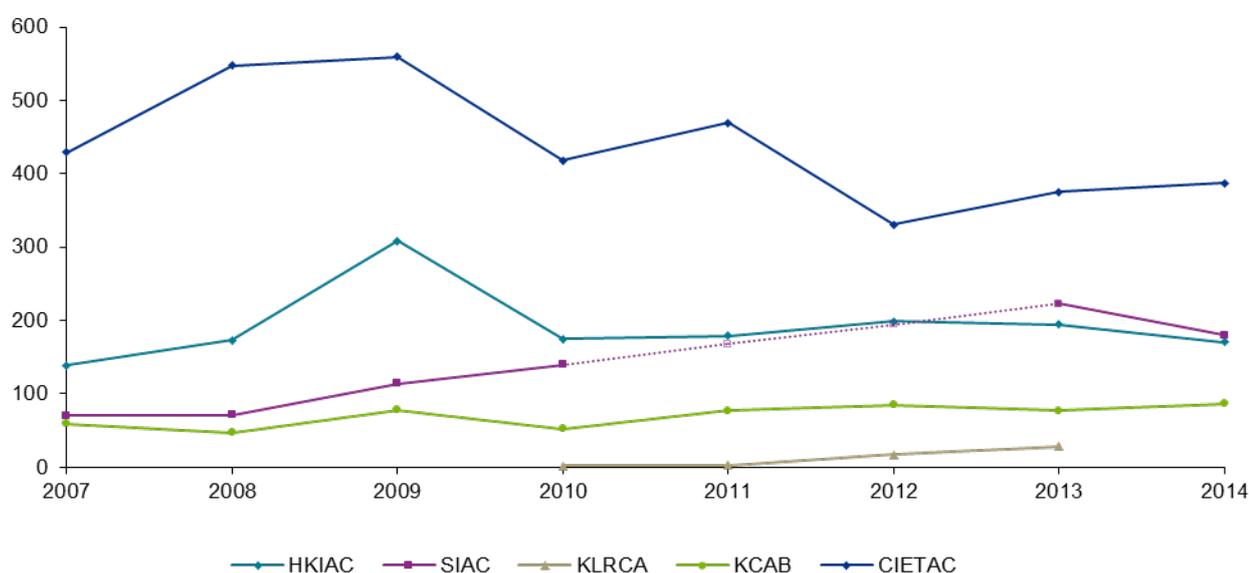
Arguably, it may not be feasible for Hong Kong to achieve an aggressive growth rate given the maturity of the market. The growth rate observed in Singapore was a result of many factors, and its arbitration market is fundamentally different to Hong Kong. Given that Hong Kong's arbitration market is a more established and comparatively more mature one, it may not be practical to replicate Singapore's recent growth rates.

7 THE COMPETITIVENESS OF HONG KONG AS A SEAT OF ARBITRATION

Drawing on the results of our empirical research, surveys and consultations with stakeholders conducted in the course of this study, we have evaluated Hong Kong’s performance and competitiveness as a centre for international arbitration and identified its competitiveness, opportunities and challenges.

An overall measure of Hong Kong’s performance as a centre of international arbitration is the number of international commercial arbitration cases heard or handled in the city. On this measure, Hong Kong has been and continues to be a leading centre of international arbitration in the region. However, the growth in the caseload of HKIAC appears to have flattened, while other seats have continued on an upward trend in the more recent years.

Figure 25: International cases handled by institutions⁵²



7.1 Hong Kong’s competitiveness as a seat of arbitration

In our survey, we asked survey respondents to comment on the factors which influence their choice of seat of arbitration. In summary, “enforceability of the award under the New York Convention” was ranked as the most important factor, followed by “perceived independence of the judiciary in that seat”, “perceived neutrality of the seat” and “perceived ‘arbitration friendliness’ of that seat’s laws and courts”. Hong Kong was ranked the highest as the best city compared to the other four Asian cities in three of the above four factors. This helps explain Hong Kong’s status as a leading seat of arbitration in Asia.

Based on literature review, stakeholder consultations and our survey, we found that Hong Kong as a centre of international arbitration has many strengths, these include:

7.1.1 Hong Kong awards widely enforceable

Prior to its handover in 1997, the New York Convention applied to Hong Kong by virtue of the UK having extended its application to Hong Kong in 1977. Following the resumption of sovereignty over Hong Kong on 1 July 1997, the Central Government extended the territorial application of the New York

⁵² For the years 2011 and 2012, a breakdown of total cases handled by SIAC into domestic and international cases is not available.

Convention to Hong Kong subject only to the reciprocity reservation⁵³ originally made by China upon accession to the Convention. Therefore, arbitral awards made in Hong Kong can be enforced in more than 150 states worldwide under the New York Convention, and vice versa.

In 2012, Hong Kong's status as an international arbitration centre was bolstered by the expansion of the Official Gazette in India to include China. Under the Indian Arbitration and Conciliation Act 1996, the government must gazette a country before arbitral awards rendered in that country before the New York Convention applies to that country⁵⁴. Through the gazetting of China, arbitration awards rendered in Mainland China and Hong Kong will now be recognised and enforced by Indian courts.

Non-Convention reciprocal enforcement

While the New York Convention covers the recognition of awards and enforcement between states, it does not apply to the recognition and enforcement of awards between Mainland China, Hong Kong, Macao or Taiwan as these are all places within a single state. Therefore, given Hong Kong's unique status as a separate legal jurisdiction within China, a special arrangement under Article 95 of the Basic Law has been entered into to ensure the reciprocal enforcement of arbitral awards between the courts of Mainland China and those in Hong Kong⁵⁵. Under this arrangement, if a party fails to comply with an arbitral award, whether made in the Mainland China or in Hong Kong, the other party may apply to specified courts (located either in the place where the party against whom the application is filed is domiciled or in the place where the property of the said party is situated) to enforce the award.

The Arbitration Ordinance therefore makes specific provision for the summary enforcement in Hong Kong of arbitral awards made by "a recognised Mainland arbitral authority in accordance with the PRC Arbitration Law"⁵⁶. Likewise, arbitral awards made in Hong Kong are enforceable in Mainland China pursuant to the Arrangement of the Supreme People's Court for the Mutual Enforcement of Arbitral Awards in the Mainland and Hong Kong⁵⁷. Both types of arbitral awards are subject to certain limitations on enforcement – but these are grounds that essentially mirror the grounds for refusal in the New York Convention⁵⁸. However, a party may not seek enforcement of the award against assets in Mainland China and in Hong Kong concurrently, unless and until the result of enforcement proceedings in one place proves insufficient to fully satisfy the award.

On 7 January 2013, a similar arrangement was also entered into between Hong Kong and Macao⁵⁹.

As no reciprocal arrangement has been made between Taiwan and Hong Kong, the enforcement of Taiwan awards in Hong Kong will fall under Sections 84 to 85 of the Arbitration Ordinance. These are the same provisions that would apply to enforcement of awards made in non-Convention states. Under these sections, an award made or given by an arbitral tribunal (which is not an award that the New York Convention applies to, and is not an award that the reciprocal arrangements with the Mainland China or

⁵³ See the Law Reform Commission of Hong Kong's Report on *Third Party Funding for Arbitration*, October 2016, http://www.hkreform.gov.hk/en/docs/rtpf_e.pdf, (accessed 31 October 2016), Footnote 16, at p 40.

⁵⁴ Section 44(b) of the Arbitration and Conciliation Act No. 26 of 1996.

⁵⁵ *Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and the Hong Kong Special Administrative Region* (effective 1 February 2000), available at: <http://www.doj.gov.hk/eng/topical/pdf/mainlandmutual2e.pdf> (accessed 1 August 2016).

⁵⁶ See Arbitration Ordinance Part 10 Division 3. Section 97 of the Arbitration Ordinance requires the Secretary for Justice to publish, by notice in the Government Gazette, the list of recognised Mainland China arbitral authorities supplied from time to time by those authorities.

⁵⁷ The Supreme People's Court has clarified that the Mainland – Hong Kong arrangement applies to *ad hoc* arbitral awards made in Hong Kong and also to arbitral awards made in Hong Kong under the rules of the International Chamber of Commerce (ICC) or another foreign arbitral institution: Supreme People's Court of the PRC: *Notice of Relevant Issues on the Enforcement of Hong Kong Arbitral Awards in the Mainland*, Fa [2009] 415 (On 30 December 2009).

⁵⁸ Article 7 of the Mainland-Hong Kong Arrangement provides for refusal of enforcement on seven grounds which correspond to the seven grounds for refusal set out in Articles V(1)(a) to (e) and V(2)(a) to (b) of the New York Convention. Though in relation to the last ground for refusal, while Article V(2)(b) of the New York Convention recognises refusal where enforcement is contrary to the public policy, the Mainland-Hong Kong Arrangement provides for refusal if the Mainland China court holds that enforcement would be contrary to "the public interests of Mainland China."

⁵⁹ *Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards between the Hong Kong Special Administrative Region and the Macao Special Administrative Region*, available at: <http://www.doj.gov.hk/eng/mainland/pdf/macaoe.pdf> (accessed 1 August 2016).

Macao apply to) is enforceable in the same way as a judgment of the court, but only with the leave of the court. If leave is given, the court may enter a judgment in terms of the award. Section 86 of the Arbitration Ordinance sets out seven grounds for refusal to enforce an award, which are almost identical to those set out in Article V of the New York Convention, but with an additional ground of “for any other reason the court considers it just to do so.”

On the other hand, in Taiwan, the enforcement of arbitral awards from Hong Kong and Macao are governed under the same rules as those which govern recognition of arbitral awards from other foreign countries. This is set out in Articles 47 to 51 of Taiwan’s Arbitration Law (1998), which is largely based on the Original Model Law, and provides for the refusal of recognition on grounds corresponding to the first six grounds of refusal in Article V of the Convention, as well as the additional ground that refusal may be enforced where the award is “contrary to the public order or good morals of the Taiwan area.”

Lastly, there is a limited system of reciprocal enforcement of court judgements. Under the Foreign Judgments (Reciprocal Enforcement) Ordinance, arbitral awards made in Hong Kong that become enforceable in the same manner as court judgment may also be registered in Australia, several Commonwealth countries, Israel and a few European countries⁶⁰. This means that if an arbitral award is registered as a court judgment in Hong Kong, then it can be enforced under these bilateral arrangements in respect of court judgments as well as in addition to the New York Convention.

7.1.2 Highly arbitration friendly government and courts

The general consensus from our research is that Hong Kong is perceived as a highly arbitration friendly jurisdiction. This was confirmed by both our consultations and survey results. In our survey, Hong Kong ranked 1st in “perceived arbitration friendliness” when compared to China, Singapore, Korea, and Malaysia. It is firmly established that the Hong Kong courts generally take a “hands off” approach in relation to arbitration proceedings⁶¹, and their pro-arbitration stance is well documented in various court judgments at all levels⁶².

More specifically, Hong Kong is considered highly arbitration friendly because its laws and courts:

(a) Apply the separability doctrine and the competence-competence principle

The recognition of the separability doctrine and the competence-competence principle are enshrined in Section 34 of the Arbitration Ordinance, which enacts Article 16(1) of the Model Law. These sections provide that an arbitration clause shall be treated as an agreement independent of other terms of the contract. Article 16 applies the doctrine of total separability of the arbitration agreement from an underlying contract of which it forms part. Therefore, an arbitrator may determine the validity or existence of the contract containing the arbitration clause, and if the arbitrator decides that the contract is null and void this does not entail, by operation of law, the invalidity of the arbitration clause. Section 34 of the Arbitration Ordinance also enacts the competence-competence principle, which means that an arbitral tribunal may rule on its own jurisdiction.

(b) Limit the ability to appeal a tribunal’s decision on merits

In Hong Kong, rights of appeal against a tribunal’s decision are very limited and no appeal on merits is permitted except in the case of domestic arbitration where the opt-in provisions in Schedule 2 of the Arbitration Ordinance are adopted. This has been upheld at the second highest level of the Hong Kong

⁶⁰ s. 2 of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319). For a full list of countries that has entered into reciprocal enforcement arrangements with Hong Kong, see Schedule 1 and 2 of the Foreign Judgments (Reciprocal Enforcement) Order (Cap 319A).

⁶¹ Justin Lo, Alan Zhang and Alice Leung, ‘Why should parties consider Hong Kong as an arbitral venue?’, *King & Wood Mallesons*, <http://www.kwm.com/en/uk/knowledge/insights/why-should-parties-consider-hong-kong-as-an-arbitral-venue-20141205#>, (accessed 1 August 2016).

⁶² *Pacific China Holdings Ltd v Grand Pacific Holdings Ltd* [2012] 4 HKLRD 569; *Hebei Import & Export Corporation v Polytek Engineering Co. Ltd* [1999] 1 HKLRD 665; *Karaha Bodas Co LLC v Perusahaan Pertambangan Minyakdan Gas Bumi Negara (Otherwise Known as Pertamina)* (2009) 12 HKCFAR 84; *Swire Properties Ltd and Others v The Secretary for Justice* (2003) 6 HKCFAR 236; *VK Holdings (HK) Ltd v Panasonic Eco Solutions (Hong Kong) Company Ltd* [2015] HKEC 35; *Gong Ben Hai v Hong Kong International Arbitration Centre* [2015] 2 HKLRD 537.

courts. In *China International Fund Limited v Dennis Lau & Ng Chun Man Architects & Engineers (HK) Limited v Secretary for Justice*⁶³, the Court of Appeal held that s. 81(4) Arbitration Ordinance, under which a party who wishes to appeal from a decision of the Court of First Instance on setting aside an arbitral award must obtain leave to appeal from the CFI, is necessary and proportionate in limiting the power of final adjudication of the Court of Final Appeal, and hence constitutional⁶⁴.

(c) Narrowly interpret scope of permitted public policy exceptions

The public policy exception is a ground for non-enforcement of an arbitral award under s. 84 Arbitration in Hong Kong. This has been interpreted narrowly by the Hong Kong courts.

In *Hebei Import & Export Corp v. Polytek Engineering Co Ltd*, the Court of Final Appeal reversed the lower court's decision in refusing enforcement of an award against *Polytek*. The Court of Appeal found that *Polytek*'s conduct in failing to raise the issue of potential bias before the tribunal when it could have done so gave rise to an estoppel, a breach of the bona fide principle or the principle that non-compliance of the rules shall be raised promptly in arbitration was such as to justify the court in enforcing the award. The Court noted that refusing to enforce a Convention award requires a high burden of proof, which was not met by *Polytek* in this case⁶⁵.

In *Gao Haiyan & Anor v Keeneye Holdings Ltd & Anor*, the Court of Appeal held, *inter alia*, that the court will give considerable weight to the decision of the court of the seat in which arbitration is conducted in deciding whether or not there was a case of actual or apparent bias contrary to public policy. If the conduct complained of is a matter of common practice in the place where it occurred, the court would not necessarily find it contrary to public policy notwithstanding that such conduct may be regarded as uncommon in Hong Kong⁶⁶.

In *Pacific China Holdings Ltd (In Liquidation) v Grand Pacific Holdings Ltd*, the Court of Appeal affirmed the decision *A v R* [2009] 3 HKLRD 389 that where a party was unsuccessful in setting aside or resisting enforcement of the arbitral award, the court would, in the absence of special circumstances, order costs on an indemnity basis. The court in the main judgment of that case emphasised that the threshold to set aside an arbitral award on the grounds of lack of due process should remain high and the conduct complained of must be sufficiently serious or egregious to attract the court's intervention⁶⁷. This decision to grant indemnity costs for challenges which fail serves as a further deterrent to parties who may want to rely on the public policy ground to challenge arbitral awards.

(d) Narrowly define the non-arbitrability doctrine

In Hong Kong, most civil disputes are capable of settlement by arbitration. The Arbitration Ordinance does not give effect to Article 1(5) of the 2006 Model Law, which expressly excludes non-arbitrable subject matter from being arbitrated. Therefore the Arbitration Ordinance leaves the determination of what matters should not be arbitrable to the court, so as not to hinder the development of the law. Currently, the following subject matters are considered to be non-arbitrable: (i) enforcement of IP rights; (ii) disputes reserved to particular courts or tribunals for resolution, such as liquidation of companies, tax liabilities, and questions of nationality or residence; and enforcing rights or obligations of a contract that is illegal and void ab initio⁶⁸. It is clear that the scope of the non-arbitrability doctrine is fairly limited in Hong Kong since the above subject matters are also commonly regarded as not arbitrable in many other jurisdictions.

⁶³ *China International Fund Limited v Dennis Lau & Ng Chun Man Architects & Engineers (HK) Limited v Secretary for Justice* [2015] 4 HKLRD 609.

⁶⁴ J. D'Agostino, D. Geiser, B. Young, 'Hong Kong Court of Appeal Upholds Arbitration Ordinance Limits on Rights of Appeal', *Herbert Smith Freehills*, 13 August 2013.

⁶⁵ *Hebei Import & Export Corp v. Polytek Engineering Co Ltd* [1999] 1 HKLRD 665, at paras 93-95.

⁶⁶ *Gao Haiyan & Anor v Keeneye Holdings Ltd & Anor* [2012] 1 HKLRD 627, at paras 64-69.

⁶⁷ *Pacific China Holdings Ltd (In Liquidation) v Grand Pacific Holdings Ltd* [2012] 4 HKLRD 569, at para 94.

⁶⁸ N. Kaplan, R. Morgan, 'National Report for Singapore (2013)', in J. Paulsson and L. Bosman (ed.), *ICCA International Handbook on Commercial Arbitration*, Kluwer Law International, 1984, pp. 24-25; see also s. 20 of the Arbitration Ordinance.

7.1.3 Stability and high quality of political and legal environment

Hong Kong has an excellent political and legal environment to support its arbitration services. It is a politically stable jurisdiction with a solid legal system based on the rule of law and keeping its laws up-to-date with the latest developments.

Hong Kong has been a Model Law jurisdiction since 1990, after the amendment of the Arbitration Ordinance (Cap 341). From the standpoint of attracting international arbitration business to a particular seat of arbitration, the early adoption of the Model Law has contributed to Hong Kong's success as a leading seat of arbitration⁶⁹. After the update of the Original Model Law in 2006, the Arbitration Ordinance came into effect in 2011, incorporating the revisions to the Original Model Law into Hong Kong law. In fact, Hong Kong was the second jurisdiction in Asia (after Brunei)⁷⁰ to implement the 2006 Model Law, which included new features such as a mechanism by which the arbitral tribunal is empowered to grant interim measures⁷¹. In addition, the Arbitration Ordinance harmonised the legislative regimes for domestic and international arbitrations, thus allowing domestic arbitrations to be conducted in more or less the same manner as international arbitration. Since 2013, the new Arbitration Ordinance has been amended almost yearly to implement new arbitration arrangements, to update the list of New York Convention signatories, and to provide for new mechanisms in arbitration proceedings.

The pro-arbitration approach has continued, with the recent publication of the Law Reform Commission report on third party funding for arbitration by the Third Party Funding for Arbitration Sub-committee⁷². At present, it is unclear in Hong Kong whether or not the application of the doctrines of maintenance and champerty prohibit third party funding for arbitration. In *Unruh v Seeberger*⁷³, the Court of Final Appeal upheld the validity of a Third Party Funding agreement for an arbitration conducted outside of Hong Kong and expressly left open the above question⁷⁴. In response to this ambiguity in the law, the report recommends the amendment of the Arbitration Ordinance to state that the common law doctrines of maintenance and champerty (both as to civil and criminal liability) do not apply to an arbitration to which the Arbitration Ordinance applies, to proceedings before Emergency Arbitrators as defined under the Arbitration Ordinance, or to mediation and court proceedings under the Arbitration Ordinance⁷⁵. Such initiatives to keep the arbitration related laws and policies up to date with new developments and to permit more opportunities in the market place will help enhance Hong Kong's attractiveness as a seat of arbitration. Undertaking policy related consultations on these kinds of topical issues and implementing them will also help bring the focus of the international arbitration community on Hong Kong, further increasing its profile as a leading seat.

Hong Kong also has a strong legal system supported by the rule of law, judicial independence, and low corruption.

Under the principle of "One Country, Two Systems" enshrined in the Basic Law⁷⁶, Hong Kong preserves its common law system and the core value of the rule of law⁷⁷. Important facets of the rule of law such as equality before the law and a mechanism for the judiciary to review the actions of the administration⁷⁸,

⁶⁹ S. Greenberg, C Kee and R Weeramantry, *International Commercial Arbitration – An Asian Pacific Perspective* (Cambridge University Press, 2010), p. 35.

⁷⁰ C. Caher and S. Finizio (ed.) 'International Arbitration 2014 - Asia Pacific Overview', ICLG, http://www.klgates.com/files/Publication/8a8a860e-858c-4a22-80a3-8fad4273f3df/Presentation/PublicationAttachment/433d6dfe-d919-4f85-b166-20190a5f4f8d/IA14_Chapter-62_USA.pdf, (accessed 1 August 2016).

⁷¹ See s. 35 and 36 of the Arbitration Ordinance and Article 17 of Model Law.

⁷² See the Law Reform Commission of Hong Kong's *Report on Third Party Funding for Arbitration*, October 2016, <http://www.hkreform.gov.hk/en/publications/rtpf.htm>, (accessed 31 October 2016).

⁷³ *Unruh v Seeberger & Anor* [2007] 10 HKCFAR 31.

⁷⁴ See the Law Reform Commission of Hong Kong's *Report on Third Party Funding for Arbitration*, October 2016, http://www.hkreform.gov.hk/en/docs/rtpf_e.pdf, (accessed 31 October 2016), p. 8.

⁷⁵ See the Law Reform Commission of Hong Kong's *Report on Third Party Funding for Arbitration*, October 2016, http://www.hkreform.gov.hk/en/docs/rtpf_e.pdf, (accessed 31 October 2016), p. 42.

⁷⁶ Articles 2 and 8 of the Basic Law.

⁷⁷ The Chinese University of Hong Kong, Communications and Public Relations Office, 'CUHK Releases Survey Findings on Views on Hong Kong's Core Values' (30 October 2014), http://www.cpr.cuhk.edu.hk/en/press_detail.php?id=1915 (accessed 1 August 2016).

⁷⁸ Articles 25 and 35 of the Basic Law

ensures that the legal system in Hong Kong will continue to give effect to the rule of law well into the future. The efforts of the Hong Kong community in upholding the rule of law is reflected in international studies. Hong Kong ranked 16th in the WJP Rule of Law Index 2016, scoring particularly high in the area of “Absence of Corruption”, “Order and Security”, “Civil Justice”, and “Criminal Justice”. Judicial independence is also guaranteed under the Basic Law. Under Article 19, Hong Kong is vested with independent judicial power, including that of final adjudication. By virtue of Article 85, the courts of Hong Kong shall exercise judicial power independently, free from any interference. Moreover, characteristics of judicial independence, including security of tenure, financial security, professional immunity, and independence in administration of justice, are generally present in Hong Kong. These characteristics ensure that the courts of Hong Kong have the necessary safeguards to enable them to adjudicate cases independently and fairly without the fear of external interference; which is confirmed by our consultations and by the World Economic Forum Global Competitiveness Report for 2016 - 2017, which ranked Hong Kong 3rd in terms of judicial independence amongst the common law jurisdictions and the first in Asia⁷⁹.

In addition, the High Court of Hong Kong also maintains a Construction and Arbitration List, which designates judges with special expertise to hear specialised classes of civil action, including applications relating to arbitration, within the list⁸⁰. The presence of such a list helps facilitate the disposal of arbitration-related applications more efficiently and consistently by judges who are technical specialists in the field.

Further, Hong Kong’s political environment is largely stable, although within the arbitration community there have been discussions over whether certain recent events will jeopardise that long-standing stability. Two in particular have received widespread media coverage.

On June 10 2014, the Information Office of the State Council issued a white paper on “The Practice of the ‘One Country, Two Systems’ Policy in the Hong Kong Special Administrative Region”⁸¹. The publication prompted a silent march by legal community in protest to the White Paper and has stirred up concerns over the Central Government interference with Hong Kong’s courts⁸².

On 28 September 2014, the Occupy Central Movement, a non-violent civil struggle for democracy began in Hong Kong, and lasted for an approximately two months. While the event may have led to concerns that the long-standing stability of Hong Kong’s political environment has changed, mainstream media appears to have reported that the movement did not involve law-breaking or other activities aimed at undermining the rule of law⁸³. However, such events have been used by some jurisdictions to emphasise their own stability and to fan doubts about Hong Kong’s suitability as an international arbitration venue⁸⁴.

It is noteworthy that in the 2015 QMU Survey (released in October 2015), Hong Kong was ranked 3rd in the world as the seat that the survey respondents or their organisations had used the most over the past five years, after London (1st) and Paris (2nd). Further, London, Paris and Hong Kong were also listed as the top three seats preferred by the respondents and that neutrality and impartiality of the local legal system was listed as the most important reason for the respondent’s preference for certain seats of

⁷⁹ See the Competitiveness Rankings published by World Economic Forum, <http://reports.weforum.org/global-competitiveness-index/competitiveness-rankings/#series=EOSQ144> (accessed 1 August 2016).

⁸⁰ See Practice Direction 6.1.

⁸¹ Information Office of the State Council, The Practice of the ‘One Country, Two Systems’ Policy in the Hong Kong Administrative Region (10 June 2014).

⁸² The Wall Street Journal, ‘Hong Kong Lawyers March for Judicial Independence’ (27 June 2014), <http://www.wsj.com/articles/hong-kong-lawyers-march-for-judicial-independence-1403873329>, (accessed 31 October 2016).

⁸³ See, for example: M. C. Davis, ‘Occupy protests breaking law, but not undermining Hong Kong’s rule of law’, <http://www.scmp.com/comment/insight-opinion/article/1634329/occupy-protests-breaking-law-not-undermining-hong-kongs-rule?page=all> (accessed 1 August 2016); W. Chan, ‘Democracy isn’t dead, say Hong Kong’s Occupy Central activists’, <http://edition.cnn.com/2014/09/03/world/asia/hong-kong-democracy-occupy-central/> (accessed 5 January 2016).

⁸⁴ See, for example SIAC’s introduction page on its website: <http://www.siac.org.sg/2013-09-18-01-57-20/2013-09-22-00-27-02/articles/198-singapore-the-hub-of-arbitration-in-asia> (accessed 1 August 2016).

arbitration⁸⁵.

7.1.4 Highly reputable arbitration bodies

As discussed above in section 1.2 above, Hong Kong is home to four permanent institutions, HKIAC, ICC Asia, CIETAC Hong Kong, and CMAC Hong Kong. In addition to HKIAC, which is regarded as one of the leading international arbitration institutions in the region, the presence of other overseas institutions in the city adds to Hong Kong's reputation and presence in the international arbitration community. Additionally, it also shows that there is a healthy market for opportunities in the jurisdiction, as institutions would not set up in Hong Kong if they did not believe there was a business case to do so. While CIETAC and CMAC do not provide separate figures for the caseloads at CIETAC Hong Kong and CMAC Hong Kong, we would anticipate the numbers to be quite small at this time given they are relatively new to the city. However, over time, the two institutions can serve as important alternatives to HKIAC for China-related disputes.

As a side note, Penta Arbitration, a newer private arbitration institution, has recently been established to provide affordable domestic arbitration services for disputes where the amounts involved are relatively more modest⁸⁶. Although it is not as reputable as other arbitration bodies, Penta Arbitration may serve to broaden the user base of arbitration in Hong Kong and provide training opportunities for aspiring arbitrators.

7.1.5 Geographically convenient and accessible

One of Hong Kong's key advantages is that it is conveniently situated at the centre of Asia, which increases its strategic importance. As a major hub for international flights in Asia, Hong Kong has frequent direct flights to and from most major cities around the globe. Parties from all of Asia's key markets can reach Hong Kong by direct flight within 4 hours, and Hong Kong's 4-hour economic circle covers half of the world's population. This makes Hong Kong a convenient dispute resolution destination for parties.

Hong Kong has the 7th busiest airport in the world. According to the 2015 statistics of Airports Council International, the Hong Kong International Airport had the 3rd highest passenger load in Asia in 2015, beaten only by the Beijing Capital International Airport and the Tokyo Haneda Airport. This shows the high frequency of flights and connectivity of the jurisdiction.

Hong Kong has granted nationals of 170 countries and territories visa-free visiting periods. Nationals from major economies, including Great Britain, the USA, Germany and Japan, all enjoy up to 90 days of visa-free stay in Hong Kong⁸⁷ as visitors. However, it should be noted that there are no special arrangements for arbitrators, arbitration service providers or related parties as to work permits.

Hong Kong also has excellent local public transport services. With the Airport Express metro system, visitors can reach the central business district from the Hong Kong International Airport in less than 25 minutes⁸⁸. Travelling within the city is convenient, with an extensive metro system, taxi, bus and mini-bus services.

⁸⁵ QMU, 2015 *International Arbitration Survey: Improvements and Innovations in International Arbitration* at 14, <http://www.arbitration.qmul.ac.uk/docs/164761.pdf> (accessed 31 July 2016).

⁸⁶ They handle disputes involving claims up to HK\$5,000,000. For more information, see Penta Arbitration's website: <http://www.pentaarbitration.com/>, (accessed 1 August 2016).

⁸⁷ See the visit and entry requirements as provided on the Immigration Department website:

<http://www.immd.gov.hk/eng/services/visas/visit-transit/visit-visa-entry-permit.html> (accessed 1 August 2016).

⁸⁸ Hong Kong International Airport, 'Airport Express', <http://www.hongkongairport.com/eng/transport/to-from-airport/airport-express.html>, (accessed 25 March 2015).

Figure 26: Four-hour and five-hour economic zones of Hong Kong⁸⁹



7.1.6 Excellent and accessible arbitration facilities

HKIAC, located at the heart of the central business district of Hong Kong, and next to the Hong Kong Station, offers world-class facilities for dispute-resolution. Equipped with state-of-the-art technology and modern furnishings, HKIAC’s 17 custom-built rooms can be combined and configured to provide anywhere from 15 to 340 square metres of room space for arbitration and meetings⁹⁰. Their multi-lingual support staff provide a full suite of business services, which have been highly rated by many interviewees. The room rates at HKIAC vary depending on the size of rooms, from HK\$1,700 per day for the smallest room to HK\$27,200 per day for the largest merged hearing room during weekdays⁹¹. The high regard for Hong Kong’s arbitration facilities is confirmed in our survey results, which ranked Hong Kong 2nd in “Quality and availability of physical hearing facilities” among the five key cities examined, only marginally beaten by Singapore. Further, in its new hearing centres survey, Global Arbitration Review ranked HKIAC first in a number of categories, including “location”, “perceived value for money”, “IT services”, and “helpfulness of staff”⁹².

7.1.7 Extensive pool of professionals

Hong Kong has an extraordinarily large pool of multilingual professionals from which arbitrators, counsel, lawyers, advisors and experts can be drawn. Currently, there are over 1,300 barristers⁹³, over 8,647

⁸⁹ See Invest HK website: <http://www.investhk.gov.hk/why-hong-kong/strategic-location.html> (accessed 1 August 2016). New Delhi, India is approximately five and a half hours flight from Hong Kong.

⁹⁰ See the page on facilities on the HKIAC website: <http://www.hkiac.org/our-services/facilities> (accessed 1 August 2016).

⁹¹ See the rates provided on the HKIAC website: <http://www.hkiac.org/our-services/facilities> (accessed 1 August 2016). Rates are higher on weekends and public holidays.

⁹² Global Arbitration Review, ‘Hearing Centres Survey’, in Guide To Regional Arbitration (Volume 3), 7 October 2013, <http://globalarbitrationreview.com/benchmarking/guide-to-regional-arbitration-volume-3/1037001/hearing-centres-survey>, (accessed 1 August 2016).

⁹³ See the introductory page on the Hong Kong Bar Association website: <http://www.hkba.org/the-bar/aboutus/index.html> accessed 17 April 2015.

practicing solicitors⁹⁴, 1,299 registered foreign lawyers⁹⁵, approximately 14,900 engineers⁹⁶, over 40,000 accountants⁹⁷, over 6,000 surveyors⁹⁸ and over 3000 architects⁹⁹.

Hong Kong has adopted policies to attract foreign law firms to set up office in Hong Kong, long before many Asian jurisdictions took similar measures. Under the Legal Practitioners Ordinance (Cap 159), a Hong Kong law firm may be registered as an association with one or more foreign law firms. Firms within the same association are allowed to share premises, personnel and facilities¹⁰⁰, thereby reducing various barriers that foreign law firms may face when setting up a presence in Hong Kong. The opening of the market not only boosted the number of lawyers in Hong Kong, it has also helped to promote the quality of local legal practitioners through increased competition. This has raised Hong Kong's international profile in the legal services sector and has also attracted other related service providers (such as legal journalists, publishers and academics) to Hong Kong.

The growth in demand for maritime arbitration became evident with the formation of the HKMAG as a division of HKIAC in 2000. The HKMAG has continued to actively promote maritime arbitration in Hong Kong, despite being only a voluntary association of professionals working on a part-time basis. It has worked with the HKIAC to develop a special short form and a long form clause, tailored-made for users in the maritime sector, and these can be easily incorporated into shipping contracts. In addition, the HKMAG maintains a list of arbitrators and mediators with shipping experience willing to hear maritime disputes, and organises various events for them. These activities encourage the further development, specialisation and promotion of this field and also fosters a sense of community amongst themselves. Other notable accomplishments include bringing the 14th International Congress of Maritime Arbitrators to Hong Kong in October 2014, and publishing the "Maritime Dispute Resolution in Hong Kong: A Practical Guide" in November 2014 (which is a freely available publication that promotes Hong Kong's dispute resolution capabilities in the maritime sector). Further, we also understand that the HKMAG is also working to bring the LMAA-style arbitrations to the Hong Kong market to enable it to compete with other emerging seats.

Other voluntary associations of professionals with arbitration committees or lists include the Alternative Dispute Resolution Committee of the Hong Kong Bar Association¹⁰¹, the Arbitration Committee of The Law Society of Hong Kong, CIArb (East Asia Branch)¹⁰², HKIArb¹⁰³, the Joint Panel of Arbitrators of The Hong Kong Institute of Surveyors and The Hong Kong Institute of Architects¹⁰⁴ and the Alternative Dispute Resolution Committee of The Hong Kong Institution of Engineers¹⁰⁵.

Hong Kong is also at the forefront of training future ADR professionals, with three tertiary institutions offering arbitration and alternative dispute resolution training programmes.

7.1.8 Status as an international financial centre

Hong Kong has long been considered as a leading global financial centre. In the Global Financial Centres Index 18, which looks at the business environment, financial sector development, infrastructure, human

⁹⁴ Law Society of Hong Kong, statistics as of 31 December 2015, available at: http://www.hklawsoc.org.hk/pub_e/about/ (accessed 1 August 2016).

⁹⁵ Law Society of Hong Kong, statistics as of 31 December 2015, available at: http://www.hklawsoc.org.hk/pub_e/about/ (accessed 1 August 2016).

⁹⁶ Statistics from the Hong Kong Institute of Engineers, based on telephone enquiry on 20 April 2015.

⁹⁷ Based on member search results on the Hong Kong Institute of Certified Public Accountants website: <https://app1.hkicpa.org.hk/membership/list/members/index.php> (accessed 1 August 2016).

⁹⁸ HKIS Membership Statistics as at 2 June 2016, <http://www.hkis.org.hk/ufiles/memstat-20160602.pdf>, (accessed 1 August 2016).

⁹⁹ Architects Registration Board of the Hong Kong Special Administrative Region, 2014-2015 Annual Report, http://www.arb.org.hk/pdf/annual_report_2014_2015.pdf, (accessed 1 August 2016).

¹⁰⁰ Section 7(3)(b) of the Foreign Lawyers Practice Rules (Cap 159R)

¹⁰¹ Hong Kong Bar Association, <http://www.hkba.org/the-bar/aboutus/special-committees.html>, (accessed 1 August 2016).

¹⁰² The Chartered Institute of Arbitrators (East Asia Branch), http://www.ciarbasia.org/en_index.php, (accessed 1 August 2016).

¹⁰³ The Hong Kong Institute of Arbitrators, <http://www.hkiarb.org.hk/en/index.php>, (accessed 1 August 2016).

¹⁰⁴ Hong Kong Institute of Surveyors and The Hong Kong Institute of Architects Joint Panel of Arbitrators, <http://www.jdrc.com.hk/JointPanelArbitrator.htm> (accessed 1 August 2016).

¹⁰⁵ Hong Kong Institution of Engineers, http://www.hkie.org.hk/eng/html/news/adr_am.htm, (accessed 1 August 2016).

capital, and reputation of major economies in the world, Hong Kong was considered the third best global financial centre in the world, after London and New York¹⁰⁶. Not only does this confirm Hong Kong's status as a global hub for international financial transactions, it also indicates Hong Kong's strong performance in many of the factors of competitiveness of a seat of arbitration as those factors are common to both its success as a financial centre and as a centre for arbitration.

7.1.9 Economically free market

Hong Kong has for a long time been considered the freest economy in the world. According to the Economic Freedom Ratings prepared by the Fraser Institute, since 1980, Hong Kong has constantly been the top ranking economy in terms of overall economic freedom¹⁰⁷. It is this free market environment in Hong Kong that has driven and shaped the development of Hong Kong's arbitration sector.

This free market environment, in combination with the extensive pool of professionals in Hong Kong has driven further innovations in the market as stakeholders respond to both domestic and international competitive forces. Examples of this include the development of private arbitral institutions (such as Penta Arbitration) and also different modes of collaboration, like the Arbitration Chambers. Arbitration Chambers is not a barristers' chambers, but a unique facility providing professional office accommodation to arbitration counsel and arbitrators from various jurisdictions around the world (including such luminaries as Lord Hope of Craighead, Neil Kaplan CBE QB SBS and John Beechy CBE) allowing different modes of collaboration and co-operation between members.

7.1.10 High English and Chinese language proficiency and use

A good command of Chinese and English by many service providers in Hong Kong, is one of the key reasons why Hong Kong is a popular destination for international businesses including dispute resolution related services. Under the Basic Law of Hong Kong, both Chinese and English are official languages in Hong Kong¹⁰⁸. According to a report published by the Census and Statistics Department¹⁰⁹, over 60 percentage of the "economically active" persons surveyed rated their Cantonese, English, and/ or Mandarin as "average" or above. The truly bilingual ability of Hong Kong people, as noted in our consultations, means that English-speaking and Chinese-speaking parties will generally not face any language barrier when conducting an arbitration in Hong Kong. This is a key advantage for Hong Kong.

7.1.11 The Vis East Moot competition

Hong Kong is host of the Vis East Moot¹¹⁰ and the ADR Moot¹¹¹, which are held on a yearly basis. The two competitions provide chances for law students (undergraduates and graduates) from all over the world to meet and learn about methods of ADR and crucial aspects of international arbitration.

The Vis East Moot, in particular, has become a significant event. The Vis East Moot runs in parallel with the Willem C Vis International Commercial Arbitration Moot, the leading and most prestigious international arbitration mooting competition. Its goal is to promote the study of international commercial arbitration and to train future legal leaders in methods of alternate dispute resolution. Since the inaugural event in 2003, as an initiative of Ms Louise Barrington, the Vis East Moot has grown in both popularity and status going from 14 teams in 2003 to 107 teams in 2015¹¹². The competition is so popular now that the organisers have had to place a limit on the number of teams that can enter due to logistical constraints. In total, there are approximately 1,000 participants involved in the annual

¹⁰⁶ Z/Yen Group, 'Global Financial Centres Index 18', http://www.longfinance.net/images/GFCI18_23Sep2015.pdf, (accessed 25 September 2015).

¹⁰⁷ See Fraser Institute, <http://www.freetheworld.com/release.html>, (accessed 31 October 2016).

¹⁰⁸ Article 9 of the Basic Law.

¹⁰⁹ Census and Statistics Department. 'Use of Language in Hong Kong 2012' Hong Kong Monthly Digest of Statistics June 2014.

¹¹⁰ Vis East Moot Foundation Ltd, 'Home', <http://www.cisgmoot.org/>, (accessed 1 August 2016).

¹¹¹ International Mooting Competition, 'The International ADR Mooting Competition 2015', http://www.cityu.edu.hk/slw/ADR_Moot/, (accessed 1 August 2016).

¹¹² Vis East Moot Foundation Ltd, '12th Vis East Moot (2014-2015)', <http://www.cisgmoot.org/en-US/content/2062>, (accessed 1 August 2016).

competition, with a vast majority of them coming from outside Hong Kong. For these people, many of whom will later become future practitioners, the Vis East Moot provides them with their first opportunity to experience Hong Kong and to familiarise themselves with our legal and arbitration related services.

7.2 Hong Kong's opportunities

7.2.1 Growth in demand for dispute resolution services in Asia

In recent years, there has been a wave of industrialisation at an unprecedented speed and scale driving growth across emerging economies in the world¹¹³. This has resulted in a gradual shifting of the economic centre of gravity from the economies of those surrounding the Atlantic Ocean to those of the Pacific Ocean¹¹⁴. This surge in economic investment and activity in our region will lead to a growing demand for cross border dispute resolution services and, with that, greater demand for arbitration as it is currently the preferred form of dispute resolution for such disputes.

7.2.2 Global regulatory changes in other markets

With the growth in demand for arbitration, it follows that there will also be a parallel increase in the demand for experienced arbitration professionals and training in this field. With its existing extensive pool of talent and the variety of institutions already offering arbitration training, Hong Kong is well positioned to take advantage of this rising demand.

From our consultations, it was noted that Russia and India have become major trade partners of Hong Kong over the past few years. The economic sanctions imposed in 2014 against Russia by Europe and the USA have prompted many Russian businesses to move their investments or businesses elsewhere and to look for other dispute resolution venues, which has benefited Hong Kong¹¹⁵. At the same time, India's gazetting of Hong Kong and China means that arbitral awards rendered in Hong Kong will now be recognised and enforced by the Indian courts under the New York Convention. These factors will increase the opportunities for more frequent use of Hong Kong arbitration by Russian and Indian parties.

7.2.3 Increasing China related opportunities

A key part of Asia's growth has been driven by the Mainland Chinese economy. But after years of being a net foreign investment recipient, China is now entering a new economic phase. There has been a surge in China's outbound investment in recent years and this is expected to continue. China became a net capital exporter for the first time in 2014 when its outbound direct investment exceeded its capital inflows¹¹⁶. In the first four months of 2015, China made more than US\$35 billion of non-financial investment in overseas markets, which represents a 36 percent increase year on year¹¹⁷.

In 2013, PRC President Xi Jinping announced the "Belt and Road Initiative", which continues China's "Go Global" strategy¹¹⁸ of supporting outbound investments. The Belt and Road Initiative refers to the

¹¹³ R. Dobbs, J. Remes, J. Manyika et al., 'Urban World: Cities and the Rise of the Consuming Class' (2012), http://www.mckinsey.com/insights/urbanization/urban_world_cities_and_the_rise_of_the_consuming_class, (accessed 1 August 2016) at 1.

¹¹⁴ R. Dobbs, J. Remes, J. Manyika et al., 'Urban World: Cities and the Rise of the Consuming Class' (2012), http://www.mckinsey.com/insights/urbanization/urban_world_cities_and_the_rise_of_the_consuming_class, (accessed 1 August 2016), at 16.

¹¹⁵ In terms of the arbitration market, the impact of the sanctions on the use of European and American arbitral institutions is immense. For instance, the scope of the sanctions could prohibit the institutions from accepting payment of deposits required to commence the arbitration. See Boltenko, O. 'Hong Kong Emerges as Russia's Refuge while the EU's Sanctions Cripple Major Russian Businesses' *Kluwer Arbitration Blog* (24 November 2014). (<http://kluwerarbitrationblog.com/2014/11/24/hong-kong-emerges-as-russias-refuge-while-the-eus-sanctions-cripple-major-russian-businesses/>), (accessed 1 August 2016), and J. D'Agostino, 'When the East Meets the Far East: the Impact of Russian Sanctions on Commercial Arbitration in Asia', *Kluwer Arbitration Blog* (30 April 2015), <http://kluwerarbitrationblog.com/2015/04/30/when-the-east-meets-the-far-east-the-impact-of-russian-sanctions-on-commercial-arbitration-in-asia/>, (accessed 31 July 2016).

¹¹⁶ Xinhua, 'China's overseas investment surge 36 pct in January-April', <http://english.mofcom.gov.cn/article/counselorsreport/europereport/201507/20150701033918.shtml>, (accessed 1 August 2016).

¹¹⁷ Xinhua, 'China's overseas investment surge 36 pct in January-April', <http://english.mofcom.gov.cn/article/counselorsreport/europereport/201507/20150701033918.shtml>, (accessed 1 August 2016).

¹¹⁸ Overseas Chinese Affairs of the Office of the State Council of China, "'走出去"战略概述', <http://qwgzyj.gqb.gov.cn/yjyt/159/1743.shtml>,

New Silk Road Economic Belt, linking China with Europe, and the Maritime Silk Road, connecting China to Southeast Asia, Africa and Europe¹¹⁹.

Alongside the Belt and Road Initiative, in 2014, the Interim Secretariat of the China-led AIIB was established with over 50 states, including countries from Europe, Asia and the Middle East, signing its Articles of Agreement¹²⁰. The AIIB formally opened for business on 16 January 2016¹²¹. This institution will likely serve as a vehicle for China to expand its investment in the Asian region as part of the Belt and Road Initiative.

From our consultations, interviewees noted that the Belt and Road covers many developing countries with high economic, political, social or other risks. In addition, Chinese investors may face various cultural, religious, and resource barriers when investing in the Belt and Road countries¹²². Therefore, being the most cosmopolitan and internationally-connected jurisdiction in the Belt and Road area, and having a well-established legal system and a strong tradition of rule of law, Hong Kong is well positioned to become a dispute resolution hub for cross-border transactions under the Belt and Road Initiative.

As a key platform for Mainland China's outbound investment, Hong Kong is well placed to benefit from the increase in investment and merger and acquisition activities¹²³. In addition, it is anticipated that Hong Kong's leading capabilities in the global logistics, maritime, and financial fields will enable it to ride high on the wave of outbound investments from the Mainland. This will also create opportunities for Hong Kong arbitration professionals and for the city to be a preferred seat of arbitration in respect of disputes arising out of these investment transactions.

Within Mainland China itself, there are also new opportunities as its economic development continues, particularly for Hong Kong legal service providers. While China has been gradually opening up its legal services market (following its entry into the World Trade Organisation in 2001¹²⁴), Hong Kong service providers have received additional preferential treatment. Under the Closer Economic Partnership Arrangement between Mainland China and Hong Kong legal practitioners from Hong Kong are allowed to provide certain professional assistance and services in the Mainland China in association with Mainland China law firms, subject to certain conditions¹²⁵. This was the first time such tie ups have been permitted. The DoJ is currently engaging Guangdong Government officials to discuss legal co-operation initiatives, including the implementation of measures on legal services in Guangdong on a pilot basis¹²⁶. In addition, from 2014, a pilot scheme in the Shanghai Free Trade Zone was launched to allow domestic Mainland China firms to enter associations with foreign law firms within its boundary¹²⁷.

(accessed 1 August 2016).

¹¹⁹ Ministry of Commerce People's Republic of China, 'Belt and Road Initiative', 8 April 2015, http://english.mofcom.gov.cn/article/zt_beltandroad/news/201504/20150400945683.shtml

¹²⁰ AIIB, 'Prospective Founding Members', <http://www.aiib.org/html/pagemembers/> (accessed 31 July 2016).

¹²¹ AIIB, 'AIIB open for business. Jin Liqun elected as first President', 16 January 2016, http://www.aiib.org/html/2016/NEWS_0116/84.html (accessed 1 August 2016).

¹²² N. Kwan, 'Belt and Road Explained', *HKTDC Hong Kong Means Business* (23 September 2015), <http://hkmb.hktdc.com/en/1X0A3PHG/first-person/Belt-and-Road-Explained> (accessed 1 August 2016).

¹²³ B. Wong, 'One Belt, One Road Initiative: The Implications for Hong Kong', http://hkmb.hktdc.com/en/1X0A23VV/hktdc-research/One-Belt-One-Road-Initiative-The-Implications-for-Hong-Kong?DCSext.dept=12&WT.mc_id=1816089&utm_source=google&utm_medium=sem&utm_term=en03k01&utm_campaign=baripromo (accessed 1 August 2016).

¹²⁴ See a fuller discussion in Huang L., 'The Legal Services Market in China: Implementation of China's GATS commitments and foreign legal services in China' *Tsinghua China Law Review* [2012] 30 (http://www.tsinghuachinalawreview.org/articles/PDF/TCCLR_0501_HUANG.pdf) (accessed 1 August 2016).

¹²⁵ See information on CEPA on the Trade and Industry Department website: https://www.tid.gov.hk/english/cepa/tradeservices/leg_liberalization.html (accessed 1 August 2016).

¹²⁶ DoJ, '2015 Policy Initiatives of the Department of Justice', <http://www.doj.gov.hk/eng/public/pdf/2015/ajls0116e.pdf>, (accessed 1 August 2016).

¹²⁷ Kreigler, Y. 'Shanghai to pilot China's legal market liberalisation measures', 14 March 2014, <http://www.thelawyer.com/news/regions/asia-pacific-news/shanghai-to-pilot-chinas-legal-market-liberalisation-measures/3017640.article>, (accessed 1 August 2016).

While these are small steps on the road to opening up the Mainland Chinese legal services market, one can expect the further, albeit slow and gradual, opening up of this market in the coming years which will provide new opportunities for arbitration service providers.

7.2.4 The Trans-Pacific Partnership

The TPP is a trade deal that was concluded on 5 October 2015 between 12 countries around the Pacific Rim, namely: Australia, Canada, Japan, Malaysia, Mexico, Peru, the USA, Vietnam, Chile, Brunei, Singapore, and New Zealand¹²⁸. Its key features include:

- The promotion of trade in goods and services by lowering tariffs and removing regulatory barriers;
- A consensus on cross-border services which provide the basis for small and medium-sized enterprises to gain greater market access;
- Enhancing the viability of e-commerce by addressing issues in customs duties, authentication of electronic transactions, and consumer protection;
- Strengthening intellectual property rights in order to increase trade in digital goods;
- Promoting fair, transparent and non-discriminatory government procurement; and
- Providing standard legal mechanism for settling disputes between investors and states.

As at 13 November 2015, while an agreement has been reached among the 12 countries as to the legal text of the TPP, it has not been ratified in any of those countries. Therefore the full approval of the trade pact by contracting countries will take some time, especially in view of the controversies it has stirred up in these countries¹²⁹.

Broadly speaking, given that Japan, Malaysia, Vietnam and Singapore are parties to the trade pact, the TPP may lead to some foreign investment being diverted from Hong Kong and China to their neighbouring jurisdictions in the region because of the discrepancy in market access¹³⁰. On the other hand, this could be outweighed by the anticipated overall growth in cross-border commercial transactions in the Asia-Pacific region as a result of the reductions in trade barriers between the 12 countries. This may benefit Hong Kong as a seat of arbitration because it is a neutral non-TPP jurisdiction.

The TPP includes international arbitration of investment disputes as part of the investor-state dispute settlement system¹³¹. Under its Investment chapter, the TPP specified that an investment claim may be submitted under one of the four alternatives:

- The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington, 1965) and the ICSID Rules of Procedure for Arbitration Proceedings;
- The ICSID Additional Facility Rules;
- The UNCITRAL Arbitration Rules; and
- Any other arbitral institution or any other arbitration rules.

As the “default” arbitral institution under the TPP, the ICSID is anticipated to capture a substantial proportion of the investment arbitration cases that arise out of the TPP. Hence, some may view that to the extent there are additional investment disputes arising under the TPP, they will mainly go to the ICSID. Overall, we would expect this to therefore have a neutral effect on the number of investment arbitrations in Hong Kong.

¹²⁸ Office of the United States Trade Representative, ‘The Trans-Pacific Partnership’, *Executive Office of the President*, <https://ustr.gov/tpp/> (accessed 1 August 2016).

¹²⁹ S. Donnan, ‘TPP: Seven Things Worth Knowing’, *Financial Times*, <http://www.ft.com/intl/cms/s/0/df9ce46c-6aea-11e5-8171-ba1968cf791a.html#axzz3sl7e8sbm>, (accessed 1 August 2016).

¹³⁰ F. Neumann and J. Incalcaterra, ‘TPP reaches Asean – Vietnam Greatest Potential Gainer from Pacific Trade Pact’, *HSBC Insights*, 30 October 2015, <http://www.gbm.hsbc.com/insights/growth/tpp-reaches-asean>, (accessed 1 August 2016).

¹³¹ See Article 9.18 of the legal text of the TPP: <https://ustr.gov/sites/default/files/TPP-Final-Text-Investment.pdf>, (accessed 1 August 2016).

On the other hand, with the TPP being a USA-led initiative, it is expected that a significant portion of the transactions made following the TPP will involve the USA Government or USA investors. Where disputes arise out of these transactions, this may present an opportunity for Hong Kong as a non-TPP jurisdiction with excellent dispute resolution services for parties who do not wish to go to ICSID arbitration. Therefore there could be opportunities (though limited) to position Hong Kong to nationals of TPP countries as an attractive neutral third party forum to resolve disputes.

7.3 Hong Kong's challenges

7.3.1 Issues related to IP arbitration

Due to the rapid economic development in Mainland China, there has been a huge demand for IP, especially in trademarks and industrial designs. As an international financial centre and a gateway to China, Hong Kong has seen significant IP trading activities and Patent applications¹³². In fact, it was noted in a recent study by the World Intellectual Property Organization that Hong Kong was the fourth fastest growing patent office in the world in 2013, following China, Australia and South Korea¹³³.

On the other hand, Hong Kong's position on the arbitrability of key IPR issues is currently unclear. Since enforcement of an IPR may affect the rights of third parties or even the world at large, it is generally considered that many IPR issues are most appropriately dealt with by courts rather than by arbitration¹³⁴. Therefore in many jurisdictions such as PRC and France, disputes concerning the granting and validity of IP rights are not arbitrable and must be litigated in the courts¹³⁵. However, some pro-arbitration jurisdictions do not prohibit the resolution of patent issues by arbitration, including patent validity, as long as no third party will be bound by the IPR¹³⁶. While the Arbitration Ordinance has deliberately left the issue of arbitrability to be dealt by the courts, there has yet to be an opportunity for the Hong Kong courts to clarify the scope of arbitrability of IP disputes. Such uncertainty in the law is seen as a hurdle that needs to be overcome in order to develop and enhance Hong Kong as an IP arbitration centre. The process may be hastened by a deliberate policy or statutory enactment.

7.3.2 Growing regional options for international arbitration

In Asia, jurisdictions such as Singapore, Korea and Malaysia are investing heavily in both their hardware and software to promote development of their respective arbitration sectors. As these jurisdictions continue to update their national arbitration laws, upgrade hearing facilities, encourage global institutions to establish a presence in the place, and increase the availability of experienced and internationally reputable arbitrators who are familiar with the seat, the intensifying competition and maturing of the arbitration market will drive segmentation and differentiation between seats, creating new challenges to Hong Kong. As we noted in our research, various jurisdictions are developing their own niche in international arbitration. Seoul is focusing its services to the "Northern Arc" countries, i.e. China, the US, Japan, and Russia. While in the "Southern Arc", Singapore has become a popular seat among Indian, Australian, ASEAN and some South American users due to its sophisticated legal system, economic ties and closer geographic proximity to those users. This has driven Kuala Lumpur to offer itself as a low cost alternative to these same markets, and also leverage its Islamic finance capabilities in order to draw on its connections to other Islamic countries. With more available options in Asia for users of international arbitration, this might dilute Hong Kong's regional market share in arbitration.

¹³² Working Group on Intellectual Property Trading of the Hong Kong SAR Government, *Report of the Working Group on Intellectual Property Trading* (2015), Government Logistics Department, p.7.

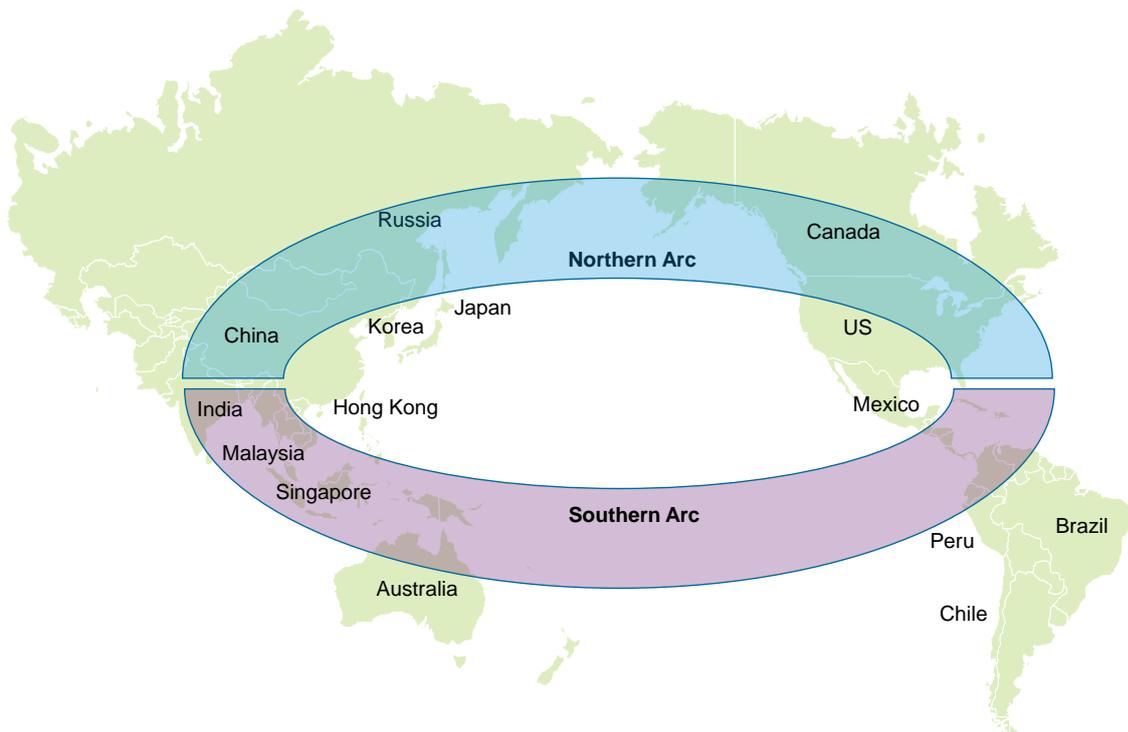
¹³³ WIPO, *World Intellectual Property Indicators (2014)*. Available at http://www.wipo.int/edocs/pubdocs/en/wipo_pub_941_2014.pdf, (accessed 1 August 2016).

¹³⁴ N. Kaplan, R. Morgan, 'National Report for Singapore (2013)', in J. Paulsson and L. Bosman (ed.), *ICCA International Handbook on Commercial Arbitration*, Kluwer Law International, 1984, pp. 24. Working Group on Intellectual Property Trading of the Hong Kong SAR Government, *Report of the Working Group on Intellectual Property Trading* (2015), Government Logistics Department, p. 54.

¹³⁵ J. Budge, 'IP Arbitration in Hong Kong', http://bipasiaforum.com/sources/ppt/2014/3B_John_Budge_IP_Arbitration.pdf, (accessed 1 August 2016), p. 9.

¹³⁶ K. Adamo., *Overview of International Property Rights Issues*, 2 Global Bus. L. Rev. 7 2011-2012, p. 16.

Figure 27: Competitors in the northern and southern arcs of the Asia-Pacific region



7.3.3 Growth of other dispute resolution methods

While the demand for dispute resolution services will continue to grow in tandem with economic growth in the region, arbitration itself is also facing challenges from broader global developments and competition from other forms of dispute resolution. In recent years, there have been growing concerns about the speed and cost of arbitration proceedings¹³⁷. This has driven up the popularity of other forms of alternative dispute resolution, such as mediation and adjudication, diverting cases that might have otherwise gone to arbitration. In tandem with this has been the development of multi-tiered dispute resolution clauses, which provide for different forms of dispute resolution in one clause increasing the chance of the dispute being settled prior to reaching the final stage, arbitration. There have also been controversies in respect of investment arbitration, with countries such as Indonesia actively letting bilateral treaties (with investor-state dispute resolution clauses) lapse, so as to reinstate new ones on better terms¹³⁸. Others like Brazil, South Africa and India have withdrawn or have planned to withdraw from treaties with investor-state dispute resolution clauses. With the lapsing of, or withdrawal from BITs between various countries, the mandatory arbitration clauses under these BITs will no longer be applicable. This could lead to a diminished or reduced preference for investment arbitration globally in the future.

Another potential area of change may be an increase in the popularity of using domestic court litigation as a method to resolve international commercial disputes. In 2005, the Hague Conference on Private International Law concluded the Convention on Choice of Court Agreements. It entered into force on 1 October 2015. While at present only the European Union, Mexico, Singapore and the USA have signed the Hague Convention, other major economies are anticipated to follow. This will provide a way for parties to choose domestic litigation to resolve their disputes and to have those judgments enforced globally in the same way as arbitral awards are enforced under the New York Convention. Together with

¹³⁷ S. E. Lipner, 'Is Arbitration Really Cheaper?', *Forbes*, 14 July 2009, <http://www.forbes.com/2009/07/14/lipner-arbitration-litigation-intelligent-investing-cost.html>, (accessed 1 August 2016).

¹³⁸ M.E. Chow and J.J. Losari, 'Indonesia is Letting its Bilateral Treaties Lapse so as to Renegotiate Better Ones', *Financial Times Comments*, 15 April 2014, <http://www.ft.com/intl/cms/s/0/20c6c518-c16c-11e3-97b2-00144feabdc0.html#axzz3sl7e8sbm>, (accessed 1 August 2016).

the establishment of internationally focused commercial courts in Singapore and Dubai¹³⁹, manned with reputable judges from around the world to decide cases, the worldwide enforceability of judgments from domestic courts may diminish the need (and thus popularity) of arbitration as the preferred form of dispute resolution for international commercial disputes.

7.3.4 Growth of new financial and business centres

A key strength of Hong Kong as a centre for international commercial arbitration arises from its position as a global business hub and international financial centre. However, as other centres develop in Asia, there will be a movement of financial and business activity to other cities. Some of it will be natural and unavoidable as new industries grow and old ones fade. But some are the result of deliberate policies and economic incentives offered to pull these businesses to a certain location¹⁴⁰. As other countries promote their cities as financial and business centres, it is inevitable that some business will relocate to those places, in the same way that Hong Kong seeks to attract overseas businesses here. However, in some sectors, there is a risk that there will be a loss of a “critical mass” away from Hong Kong, meaning that there will no longer be a sufficient number of businesses in a particular sector to support a deep pool of professionals and related service providers, which will lead to a loss of the synergistic cluster effect. There are already concerns in Hong Kong that its status as a leading centre for both maritime and financial services is being challenged by Singapore and Shanghai.

7.3.5 Closed domestic arbitration market in Mainland China

Under the Contract Law of the PRC, parties to a contract involving foreign elements may apply for arbitration to “Chinese arbitration institutions or other arbitration institutions” under an arbitration agreement¹⁴¹. If there is no “foreign-related” element, an arbitration agreement between the parties to resolve the dispute by a foreign arbitration institution is likely to be held invalid by the courts of Mainland China. This means the domestic arbitration market in Mainland China is currently closed to foreign arbitration institutions unless the arbitration is “foreign-related”. The courts of Mainland China have considered the HKIAC as a foreign arbitration institution in this respect, and this therefore presents a challenge to fully capitalizing on Hong Kong’s close connection to Mainland China.

The definition of who is considered a domestic party is broad and covers wholly foreign-owned entities as well as foreign joint ventures established under the laws of Mainland China¹⁴². Therefore, where both corporate parties are established under the laws of Mainland China and the subject matter of dispute is in Mainland China, such a dispute will not be regarded as “foreign-related” even if the parties’ shareholders are all foreign investors. As a result, any agreement in respect of a domestic arbitration by such parties that specifies a foreign arbitration institution as the administering body is likely to be declared invalid under, inter alia, the PRC Arbitration Law.

It follows that since a FIE has the status of a legal person under the laws of Mainland China, it seems that a contract to which such an enterprise is a party must involve a foreign-related element if the contract is to stipulate Hong Kong or any other foreign arbitration institution as the administering institution. The Supreme People’s Court held in 2010 that an arbitration clause providing for arbitration by the HKIAC entered into between a Mainland Chinese citizen and a Mainland Chinese company was invalid under the laws of Mainland China as there was no foreign-related element¹⁴³.

A similar decision was made by the Second Intermediate People’s Court of Beijing in January 2015. The court in this case refused enforcement of an arbitral award made by the Korean Commercial Arbitration Board in South Korea on the ground that the relevant arbitration agreement was invalid because, inter

¹³⁹ See Dubai International Financial Centre Courts website: <http://difccourts.ae/> (accessed 1 August 2016).

¹⁴⁰ P. Low, ‘Should Investors be Able to Choose Where to Sue Governments?’ *South China Morning Post*, 4 February 2015.

¹⁴¹ Article 128(2) of the *Contract Law* provides that parties to a foreign-related contract may, according to the relevant arbitration agreement, apply to a Chinese arbitration institution or any other arbitration institution for arbitration.

¹⁴² At present, FIEs set up in the Mainland may operate in the form of Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or WFOEs. An FIE set up in the form of a company is regarded as a legal person under Mainland law.

¹⁴³ 張洪興與六盤水恒鼎實業有限公司(最高人民法院(2010)民二終字第86號民事裁定書,日期:2010年8月26日)

alia, the South Korean owned FIE registered in Beijing should be regarded as a Mainland entity¹⁴⁴.

More recently however, the First Intermediate People's Court of Shanghai appears to have taken a more liberal view. It held in November 2015 that an arbitral award made by the SIAC in respect of a dispute between two WFOEs incorporated in the Mainland be recognised and enforced¹⁴⁵. In deciding to recognise and enforce the award made by SIAC, the court identified the following foreign-related elements:

(a) Both parties were incorporated as WFOEs in the Shanghai Free Trade Zone, aimed at facilitating foreign investment trade. The source of this type of companies' capital, their ultimate ownership interests and their business decision-making process were all closely connected to foreign investors; and

(b) The contract had features of an international sale of goods contract because the goods had to be imported from abroad to the Shanghai Free Trade Zone, then stored in bond before passing through custom procedures in Mainland China.

While it remains to be seen whether similar flexibility would be exercised by the other courts of Mainland China, in the meantime, it appears that the safest route for FIEs is to use domestic Mainland China arbitration institutions unless the dispute is clearly "foreign-related".

¹⁴⁴ 北京朝來新生體育休閒有限公司申請承認與執行大韓商事仲裁院仲裁裁決 (北京市第二中級人民法院 (2013) 二中民特字第 10670 號民事裁定書, 日期: 2015 年 1 月 15 日)

¹⁴⁵ 西門子國際貿易 (上海) 有限公司訴上海黃金置地有限公司申請承認和執行外國仲裁裁決 (上海市第一中級人民法院 (2013) 滬一中民認 (外仲) 字第 2 號民事裁定書, 日期: 2015 年 11 月 27 日)

8 CONCLUSION AND RECOMMENDATIONS

The development of Hong Kong's arbitration sector has prospered over the last three decades and it now makes a significant contribution to Hong Kong's economy and, in particular, its legal sector economy. This growth has come about due to an open market approach, which is supported by pro-arbitration policies and is underpinned by a strong rule of law. This underlying philosophy should be continued, but in light of growing regional competition and changing trends in dispute resolution, we recommend that the Hong Kong Government could take more pro-active steps to support market participants and guide growth in strategic areas so as to sustain economic growth generated by arbitration activities in Hong Kong. Therefore, we propose the following recommendations to maintain and enhance Hong Kong's position as the leading arbitration centre in Asia Pacific and one of the leading centres globally.

8.1 Create a single peak body or council to lead and co-ordinate efforts to promote Hong Kong as a leading dispute resolution hub

The creation of a single peak body to lead Hong Kong's promotion and development as an international dispute resolution centre is the most efficient and effective way to set strategic priorities and to co-ordinate and maximise synergies from the promotion of Hong Kong's arbitration-related services, including the measures discussed in this chapter. The single peak body should be responsible for the development and promotion of all forms of dispute resolution including mediation, arbitration and litigation. This broad mandate aligns the objectives of the single peak body to the needs of users and enables it to drive stakeholders to focus on how Hong Kong can creatively and competitively meet the needs of parties in resolving their disputes, rather than focusing just on promoting one or two particular methods of dispute resolution.

To maximise the possible synergies, existing advisory bodies could be folded into the new body as sub-committees, as it would be more efficient and advantageous to co-ordinate their activities under a single peak body focused on encouraging Hong Kong as an international centre for the resolution of disputes. A single peak body would also be better placed to collect and collate relevant sector-wide data to guide future policy and market development to ensure a higher diversity and quality of options available in the Hong Kong market.

8.2 Promote Hong Kong's institutions and openness

Hong Kong's success to date as an international arbitration centre has been due to its strong institutions (including its adherence to the rule of law, its common law legal system, low corruption, efficient and independent judiciary) and its free market economy. These fundamental underlying institutions and principles should be maintained to ensure the continued development of Hong Kong as a leading arbitration centre. They should also be promoted as a fundamental strength of Hong Kong, and the message should come from authoritative leaders in the community, including members of the Government and the judiciary.

8.3 Promote Hong Kong’s neutrality as a seat of arbitration

Our survey research shows respondents rated Hong Kong’s neutrality very highly¹⁴⁶, and this was confirmed by the consistent results of the 2015 QMU Survey¹⁴⁷. Nevertheless, a concern for Hong Kong’s perceived neutrality as a seat of arbitration is that, due to its sub-national political status, it is not easily recognised as a separate legal jurisdiction from that of Mainland China. This has been a problem for counterparties, particularly those in Europe and North America, who are less familiar with the “One Country, Two Systems” principle. Therefore, in China related transactions, these counterparties may not fully appreciate Hong Kong to be a neutral seat for the arbitration. Accordingly, promoting Hong Kong’s neutrality as a seat of arbitration should continue to be a high priority so parties will be comfortable in choosing Hong Kong as the seat of arbitration for China related deals. This can be done by addressing the issue directly and forthrightly in promotional activities and speeches by authoritative leaders in the community, including the Government and the judiciary. Efforts should be made to highlight Hong Kong’s guaranteed separate legal status which gives it neutrality, while its Common Law heritage affords familiarity for international users. At the same time, it also has an extensive pool of culturally attuned professionals with both English and Chinese language fluency.

8.4 Enhance Hong Kong’s position as a financial and business centre

The location of a company’s office and the (positive) familiarity with that place arising from having staff or doing business there can also be an important positive factor in the choice of seat. Even if it is not often consciously expressed, familiarity with Hong Kong arising from having an office presence here or having done business here in the past gives people an understanding of Hong Kong’s advantages and could sway their preference for the choice of Hong Kong as seat or venue for arbitration. Therefore the Government should continue with measures that make Hong Kong an attractive place to do business. Specific measures include increasing the number of double taxation agreements. Hong Kong has concluded 42 such agreements (though 3 are pending ratification), compared with Singapore which has more than twice that number (currently, 76 comprehensive, 8 limited, and 8 pending ratification)¹⁴⁸.

Similarly, encouraging specific clusters of businesses to come or stay in Hong Kong (such as maritime, IP, banking and finance etc.) will also have the effect of extending the pool of professionals in Hong Kong. The presence of such professional and commercial clusters also creates and drives opportunities for synergies, specialisations and innovations with the arbitration community in Hong Kong.

8.5 Establish voluntary associations to encourage specialisation and self-promotion

One of Hong Kong’s core strengths is that it already has an extensive pool of experienced and aspiring arbitrators and professionals. Many of them have already formed voluntary associations or specialist panels in different sectors, as discussed in paragraph 7.1.7 of the Report. In order to facilitate market participants and stakeholders to further promote arbitration in different sectors and to become more specialised, they should be encouraged to form non-profit making associations and given basic resources (such as office space and a secretariat) to do so. Such stakeholder-led voluntary associations are more efficient and capable of determining the best ways to meet the needs of the particular niches of the

¹⁴⁶ See paragraph 5.2.3 and Tables 4 and 5.

¹⁴⁷ As discussed in paragraph 7.1.3, Hong Kong was ranked 3rd in the world as the “most preferred and widely used seat” by the respondents in the 2015 QMU Survey, and neutrality and impartiality of the local legal system was listed as the most important reason for the respondent’s preference for certain seats of arbitration.

¹⁴⁸ See Inland Revenue Authority of Singapore website: <https://www.iras.gov.sg/irashome/Quick-Links/International-Tax/> (accessed 1 August 2016).

market they are seeking to serve.

We believe bringing professionals together in voluntary associations will encourage them to network and self - promote, and in doing so, they will also promote Hong Kong as an arbitration centre. This would also be preferable to establishing specialist panels, which would need to be designed, approved, administered and/or controlled by an institution. The rules for getting on to such panels could also lead to the exclusion of aspiring and less experienced arbitrators, not to mention the likelihood of there being additional fees and other requirements imposed, which will act as barriers to entry.

8.6 Give a permanent home to the Vis East Moot

The universities have been successfully raising the profile of arbitration through events such as annual lectures and mooting competitions, and this should be encouraged and supported. One particular program that has achieved significant success and recognition for Hong Kong is the Vis East Moot. It is however without a permanent home and relies on the goodwill and voluntary efforts of a few key individuals and CityU. The success of the Vis East Moot could be further enhanced if it was given a permanent home with a basic level of administrative support, freeing up the volunteers to run and promote the moot as well as potentially increasing their capacity to accommodate more teams into the competition. To this end, the creation of the “legal hub” in Central (as discussed in Chapter 3 of the Report) could provide an appropriate venue for this purpose. The Government should also consider providing funding for an annual Alumni of Vis East Moot event, so that former participants (who are likely to now be practitioners themselves) can be encouraged to come back to Hong Kong and maintain their connection to Hong Kong’s arbitration community.

8.7 Create “pupillage” opportunities for aspiring arbitrators

The lack of opportunities to obtain practical experience, as opposed to formal training, is a key problem for aspiring arbitrators. The Government should work with the arbitral institutions to create new opportunities by implementing or expanding existing tribunal secretary programs and internship programs as these provide practical learning experiences for aspiring arbitrators at the institutions based in Hong Kong. In addition, the Government could fund or give incentives to encourage experienced arbitrators to take on aspiring arbitrators as a paid assistant (similar to the way a barrister takes on a pupil) with a view to enabling them to have first-hand opportunities to witness and assist tribunals in the conduct of arbitration proceedings.

8.8 Explore and expand schemes that provide for arbitration of consumer disputes

The Government should consider exploring the use of arbitration to resolve appropriate types of consumer disputes (including the option of mediation then arbitration) so as to provide a cost-effective and quick way of resolving such disputes, while at the same time, providing more practice or training opportunities for practitioners.

Giving consumers an option of being able to refer their disputes with traders and businesses to an arbitration scheme gives them a fast, efficient and court free procedure to have their disputes resolved. While the primary purpose of such a scheme is not to train arbitrators, the nature and type of disputes that are likely to be resolved by such a scheme would mean it is unlikely senior arbitrators would take up such roles. Such schemes would therefore be beneficial for the arbitration community as they provide opportunities for aspiring arbitrators to sit as arbitrators and, in particular, in writing awards. In order to enhance the learning opportunities that arise from such schemes, safeguards should be

implemented to ensure that the arbitrators have some experience in arbitration, are sufficiently experienced and given appropriate levels of support and supervision. The awards should also be scrutinised before publication, so as to ensure both the quality of awards rendered and to give proper feedback to the arbitrators.

8.9 Promoting Hong Kong through the institutions

We note the Government's current policy of encouraging a diversity of arbitration institutions to establish in Hong Kong is well advanced. This has brought many benefits to Hong Kong's reputation as a regional dispute resolution centre. However, the Government should further promote the usage of those institutions with secretariats in Hong Kong. In particular, as the HKIAC is the home-grown institution and has a designated role under the Arbitration Ordinance, the Government should consider measures to further enhance its usage. We note that an arbitration administered by the HKIAC under its rules will, more often than not, result in an arbitration proceeding seated and heard in Hong Kong. This maximises the economic benefits for Hong Kong.

The HKIAC should be encouraged to undertake more promotion and marketing related activities - in particular, in overseas markets. We believe there would be merit in the HKIAC stationing permanent staff overseas in key markets to undertake such activities. This could be achieved through 'in kind' support or similar arrangements, such as allowing the institution to station permanent staff in key overseas and Mainland China offices of the HKTDC.

The HKIAC should also be encouraged to pursue innovative strategies, such as working with industry associations and chambers to develop and incorporate arbitration clauses into commonly used standard form contracts. Such activities can both raise Hong Kong's profile as a seat of arbitration and also bring more arbitrations to Hong Kong, if and when disputes arise.

Finally, any financial or 'in kind' support for the institutions could also be tied to other initiatives, such as creating more opportunities for aspiring arbitrators.

8.10 Establishing more arbitration facilities and encouraging other international institutions to set up in Hong Kong

Consideration should be given to the establishment of an institution-neutral shared hearing facility for arbitration and other dispute resolution proceedings, particularly having regard to the creation of the "legal hub" in Central (as discussed in Chapter 3 of the Report).

While the HKIAC has, and should retain, its own facilities (not least as a source of revenue), an alternative set of high quality hearing facilities should be made available for use by other institutions and parties engaging in ad hoc arbitrations as well as other ADR service providers. Favourable terms for access to these facilities and office space in the same building could also be offered as a way to encourage other well-known arbitral institutions to establish permanent offices in Hong Kong. The presence of additional arbitral facilities and international arbitral bodies in the city will further enhance the existing policy of increasing the variety of offerings available in Hong Kong as well as increasing the overall competitive environment in Hong Kong.

8.11 Promote to overseas market intermediaries

Given that the potential population of users of arbitration is quite a large and diverse group globally, it is more efficient to promote Hong Kong's arbitration capabilities to market intermediaries. These are the

groups of lawyers and other trusted advisers to business who are repeat players in cross border transactions. These groups are easily identifiable in their home countries and have the ability to influence their client's choice of governing law in commercial agreements and also choice of seat, if arbitration is chosen as the dispute resolution mechanism. Therefore marketing activities could be used to undertake activities for organisations such as the American Bar Association, the Japanese Bar Association, European Company Lawyers Association and the Latin American Corporate Counsel Association, to raise their level of awareness and understanding of Hong Kong's status and arbitration offerings. Special focus may be placed on those market intermediaries in the countries along the Belt and Road and also those in the TPP block, given the opportunities for Hong Kong arbitration that could be brought by the potential growth in cross border commercial transactions as a result of these trade initiatives.

8.12 Promote Hong Kong arbitration in “non-traditional” markets

Due to the economic embargo imposed against Russia by Europe and the USA, Russian businesses have been looking to move their investments or businesses elsewhere, in particular Asia¹⁴⁹. This presents a unique opportunity to market Hong Kong's arbitration capabilities to Russian businesses who would normally not consider using Hong Kong, and to build long term relationships with them.

Similarly, India remains another key market which should not be ignored. India is already one of the world's top destinations for foreign direct investment alongside China and the USA, and Hong Kong has a significant local Indian community with business ties to their home country. While it has long been seen as a natural market for Singapore and London, it is also a good market for Hong Kong as parties want more choices. Recent legislative changes now place Hong Kong awards on the same enforceable footing as those from Singapore and the UK. Accordingly, Hong Kong should now be marketed as a regional alternative to Singapore to give parties, including Indian parties, more choices.

8.13 Leverage opportunities from Mainland China's outbound investments

As part of Mainland China's official Belt and Road Initiative, there has been and will continue to be a dramatic increase in China's outbound investment. This presents immediate and significant opportunities for both Hong Kong and other seats of arbitration globally.

While it may be seen as a natural and easy market for Hong Kong to secure, Mainland Chinese parties have different and unique needs to other international users and promotional activities and it cannot be assumed they will choose Hong Kong as their preferred seat of arbitration. Therefore, it is important that tailored marketing and promotion be undertaken for both Mainland Chinese parties and overseas parties on Hong Kong's advantages as a seat of arbitration, though the content and key messages of such activities for each audience will be bespoke.

8.14 Leverage Hong Kong's pre-eminence in education and training

Hong Kong has leading educational facilities and formal training programs in the field of dispute resolution. These should be leveraged to enhance Hong Kong's reputation as a pre-eminent centre for dispute resolution related training, through offering scholarships to overseas students and young practitioners from developing countries to study arbitration in one of Hong Kong's educational

¹⁴⁹ J. D'Agostino, 'When the East Meets the Far East: the Impact of Russian Sanctions on Commercial Arbitration in Asia', *Kluwer Arbitration Blog* (30 April 2015), <http://kluwerarbitrationblog.com/2015/04/30/when-the-east-meets-the-far-east-the-impact-of-russian-sanctions-on-commercial-arbitration-in-asia/>, (accessed 31 July 2016).

institutions or to intern at an arbitral institution.

An important and useful way by which Hong Kong's status as a hub for international legal and dispute resolution services can be reinforced is for Hong Kong to enhance its role in the provision of legal and dispute resolution-related training/capacity building opportunities for professionals and government officials from developing countries. This would have the dual advantage of enhancing their capacity for adopting different means of dispute resolution and increasing awareness of Hong Kong's role as an international legal and dispute resolution centre in these countries, thereby also bringing more business opportunities to Hong Kong. As a medium to long term initiative, consideration should be given to institutionalise the provision of such training/capacity building services through the establishment of a legal and dispute resolution training centre (or centres of excellence within existing institutions) in Hong Kong, but with a global or regional focus.

8.15 Provide clarity for IP disputes

There have been some doubts as to the arbitrability of IP disputes. At present, the lack of certainty is a major obstacle to the parties using arbitration to resolve their IP disputes. As noted in Chapter 3 of this Report, the DoJ has already published a consultation paper on arbitrability of IP disputes which also discusses this issue. While the DoJ considers and assesses the responses to that consultation process, we believe that in order to promote the most arbitration friendly landscape, the categories of permissible disputes should be set as widely as possible and permit the arbitration of disputes in respect of the ownership, validity, infringement and the licensing of trademarks¹⁵⁰.

8.16 Implement a mutual recognition and enforcement mechanism with Taiwan

The missing piece in Hong Kong's mutual recognition and enforcement scheme for judgments and arbitral awards is an agreement with Taiwan. Awards from Hong Kong are considered as being presently enforceable in accordance with Taiwanese domestic laws that apply to other foreign awards. Generally, Taiwanese courts will follow international standards and practice in determining an application for recognition and enforcement of an arbitral award, though the arbitration law allows the court to dismiss such applications, if the jurisdiction where the arbitral award was made or whose law is applied to the arbitration does not recognise arbitral awards made in Taiwan¹⁵¹.

If the Government is able to negotiate an agreement to implement a clear and more efficient mechanism with Taiwan, the agreement would clearly set out how Hong Kong arbitral awards can be recognised under Taiwan law and provide a streamlined or simplified procedure for enforcement of them and vice versa¹⁵². This would provide a competitive advantage for Hong Kong, and make Hong Kong arbitration ideally placed for Taiwan-related and all intra-China related agreements.

8.17 Explore preferential access to Mainland China market for Hong Kong's arbitral institutions

The Government should explore with the relevant Mainland China authorities whether Hong Kong's

¹⁵⁰ See Working Group on Intellectual Property, *Report of the Working Group on Intellectual Property Trading*, 2015 at 53.

¹⁵¹ Article 49(2) of the Arbitration Act (Taiwan).

¹⁵² Presently under the Arbitration Ordinance, Taiwan arbitral awards are subject to an additional ground for non-enforcement compared to those under the New York Convention: See s. 86 of the Arbitration Ordinance which governs awards that are not from New York Convention countries, mainland China or Macao. Under s. 86(2)(c) of the Arbitration Ordinance, enforcement of an award may be refused for "any other reason the court considers it just to do so".

arbitral institutions can be permitted to operate in the Mainland China as approved institutions to administer arbitration cases domestically. As discussed at paragraph 7.3.5 above, the domestic arbitration market in Mainland China is closed to foreign institutions and parties must choose an authorised domestic arbitration institution to administer cases considered to be domestic. The courts of Mainland China have considered the HKIAC as a foreign arbitration institution in this respect.

In our consultations, foreign parties have expressed a desire to use the HKIAC if they could for domestic disputes involving their wholly owned foreign subsidiaries and joint ventures in Mainland China. Therefore if the HKIAC were permitted to do so, we are confident there would be a sufficient level of demand for its services to justify a business case for the HKIAC to enter this market. It would also provide the HKIAC with significant additional growth opportunities as a first mover in the Mainland China market and further enhance Hong Kong's reputation as a leading centre for arbitration.

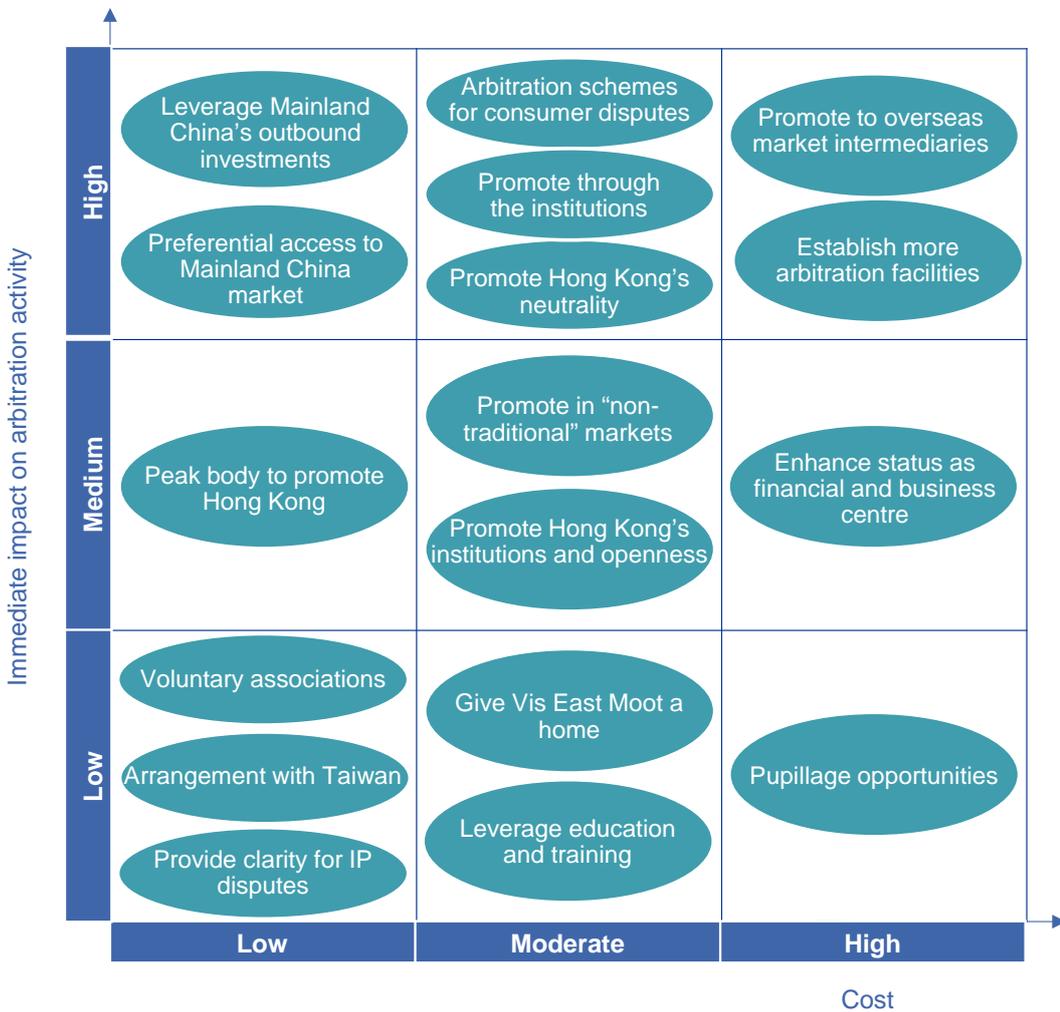
[The remainder of this page has been intentionally left blank]

8.18 Relative cost-effectiveness analysis of recommendations

Based on the consultation feedback, and our further analysis, we set out below in Figure 28, the estimated cost and the likely immediate impact on arbitration activity of each recommendation in order to guide the prioritisation of implementation. However, as the implementation of the recommendations can be undertaken in a number of different ways, which will affect both the cost and effectiveness of the measures, it is not possible at this stage to do a detailed cost effectiveness analysis for each recommendation. Accordingly, the table is for illustrative purposes only, and is based on our preliminary estimate of the likely modes of implementation and outcomes.

We have set out the estimated cost on the x-axis, and the chart graphs the immediate impact on arbitration activity on the y-axis. Therefore those in the 'low' range captures recommendations which will provide longer term benefits, while those in the 'high' range captures recommendations which are likely to have a more immediate impacts on the level of arbitration activity.

Figure 28: Relative cost-effectiveness of recommendations for illustrative purposes



Source: KPMG analysis.

Note: This table is for illustrative purposes as a guide to implementation priorities, based on a preliminary estimation of likely mode of implementation and outcomes. However, as the implementation of the recommendations can be undertaken in a number of different ways, which will affect both the cost and effectiveness of the measures, it is not possible at this stage to do a detailed cost effectiveness analysis for each recommendation.

Contact us

Fergal Power

Partner

T +852 2140 2844

E fergal.power@kpmg.com

Jonty Lim

Director

T +852 2847 5011

E jonty.lim@kpmg.com

Patrick Cowley

Partner

T +852 2140 2836

E patrick.cowley@kpmg.com

www.kpmg.com

© 2016 KPMG Transaction Advisory Services Limited, a BVI limited liability company operating in Hong Kong and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. [Printed in Hong Kong.]

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

#460965v3