

For discussion on
26 November 2001

**PANEL ON ADMINISTRATION OF JUSTICE
AND LEGAL SERVICES OF THE LEGISLATIVE COUNCIL**

Promoting Hong Kong as an international arbitration centre

Introduction

This paper provides Members with background information on the recent proposal of the Administration to promote Hong Kong as a legal services centre for the negotiation and documentation of China-related contracts, and as a dispute resolution centre for such contracts.

Hong Kong's arbitration service

2. Since the establishment of the Hong Kong International Arbitration Centre (HKIAC) in 1985, Hong Kong has been building on its expertise and reputation as one of the leading arbitration centres in the region. Disputes referred to the HKIAC fall into four major categories, namely commercial, construction, joint venture and shipping. Over the last nine years, the total number of cases received by the HKIAC has been ever-increasing, ranging from 195 cases in 1992 to 298 cases in 2000. This compares favourably with 21 and 81 cases respectively in London. In Singapore, the figures were 7 in 1992 and 67 in 1999 (the figure in 2000 being not available). The Mainland's principal arbitral body, China International Economic and Trade Arbitration Commission, handled 543 cases in 2000.

3. The SAR's arbitration services are also supported by the Chartered Institute of Arbitrators (East Asia Branch) and the Hong Kong Institute of Arbitrators.

4. With China's accession to the WTO, it is expected that the liberalisation of the Mainland market will create, amongst other things, a strong demand for legal services, including arbitration services, to resolve civil and

commercial disputes.

Attraction of Hong Kong as an arbitration centre

5. Hong Kong has many attributes to support its claim to be a leading arbitration centre in the region. These include : -

- the Government's commitment to uphold, as well as the community's respect for, the Rule of Law, which forms the bedrock of the community's daily life;
- a legal system based on the widely recognised principles of the common law;
- a jurisdiction to which the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958* applies, which is complemented by an arrangement with the Mainland for reciprocal enforcement of arbitral awards (discussed further in para 6 below);
- an updated and effectively enforced Arbitration Ordinance;
- Hong Kong's unique empathy with the Asian traditions of mediation and its skills at blending the best of east and west;
- a wealth of English-speaking legal practitioners and arbitrators for international arbitration; as well as Chinese-speaking ones who have knowledge of China and China laws for disputes involving transactions in the Mainland;
- a world centre of expertise in commerce, finance, information technology, shipping and construction, with an enormous pool of experienced professionals, including lawyers, accountants, architects, bankers, engineers and insurance experts offering specialist assistance in the resolution of disputes by arbitration;
- a convenient geographic location;
- a combination of superb infrastructure, first rate communications and

transport systems and accommodation;

- a well-established and successful centre for arbitration; and
- a clean government.

Government's support

6. There has been strong government support, both before and after the reunification, to the promotion and provision of arbitration service in Hong Kong. Examples include :-

- arranging for disputes involving the Government to be resolved by arbitration where appropriate, e.g. the Airport Core Project and Container Port Project disputes;
- keeping in close contact with the arbitration service and the business sectors with a view to providing them with the best supporting services in the resolution of disputes. For instance, when the HKIAC was set up in 1985, the Hong Kong Government made available premises to the HKIAC at a nominal rent. Over the last 16 years, the HKIAC has established its reputation as an independent and impartial focus for the development of all forms of disputes resolution in the HKSAR and Asia-Pacific. The Government and the HKIAC will continue to work together closely with each other in the development of arbitration laws and provision of arbitration services;
- the arbitration law has been reviewed and updated from time to time with a view to laying down a clear and user-friendly legal framework for both international and domestic arbitrations. For instance, in 1982 radical amendments were made to the Arbitration Ordinance (Cap 341) to follow the English Arbitration Act 1979, with various improvements. In 1989, further amendments were made to the Ordinance so as to incorporate the *UNCITRAL Model Law for International Arbitrations* to govern both domestic commercial arbitrations (if the parties opt to adopt such a regime) and international

commercial arbitrations (unless the parties opt out). The UNCITRAL system establishes essentially a liberal regime which promotes parties' autonomy and the primacy of the arbitral tribunals in the arbitration process. As a continuation of the exercise to update the arbitration law, the Ordinance was further amended in 1996 to streamline the arbitration process;

- initiating and implementing arrangements for enforcement of arbitral awards made in the Mainland and the Macao SAR after the reunification. Since 1 July 1997, the New York Convention, being an international agreement, has ceased to apply to the enforcement of arbitral awards between the Mainland and the HKSAR. In June 1999, an arrangement was made with the Mainland authorities to put in place a mechanism by which awards made in the two jurisdictions would be mutually enforceable in court. The arrangement reflects the spirit and principles of the New York Convention. In January 2000, the Arbitration Ordinance was amended to give effect to it. From 1 February 2000 (on which date the arrangement came into force) to 31 October 2001, the HKSAR court received a total of 40 applications for enforcing Mainland awards in Hong Kong. Following these applications, 10 Mainland awards were enforced in the same period. In June 2000, the Ordinance was further amended so that awards made in non-Convention states or territories (e.g. Albania, Brazil, Iraq, Newfoundland and the Macao SAR) are summarily enforceable in the Hong Kong courts.

Administration's proposal

7. The Administration's proposal is to promote Hong Kong as a place where China-related contracts may be negotiated and made, and encourage the use of Hong Kong law as the applicable law in China-related contracts and the use of Hong Kong as a dispute resolution centre whether through arbitration, litigation or other forms of alternative dispute resolution. The Administration is of the view that:

- China's accession to the WTO will create opportunities for various sectors of the SAR, including the arbitration service sector;
- although the Mainland's legal profession has grown rapidly in recent years, there are still insufficient lawyers (only 5,000 odd lawyers out of 110,000 in the Mainland) also to handle foreign-related business;
- development in opening up the Western Region of the Mainland will further generate demand for high quality legal services in the West;
- upon accession to the WTO, foreign-related disputes will become a pressing issue for the adjudication work of the Mainland courts;
- China law (subject to certain exceptions) allows parties to a foreign-related contract to choose applicable laws, including Hong Kong law, to resolve disputes;
- the resolution of disputes through arbitration in Hong Kong will :-
 - i) help enhance the confidence of foreign investors in the Mainland;
 - ii) help relieve some of the pressure that the Mainland courts might face at the early stage of China's accession to the WTO;
 - iii) bring new opportunities to the legal and arbitration service industry; and
 - iv) strengthen the status of the HKSAR as an international financial and service centre, providing strong support to foreign businessmen investing in the Mainland.

8. On the basis that the free choice of the parties to a China-related contract should continue to be respected, the Mainland authorities have expressed a positive initial response to the proposal that the HKSAR be developed as a regional centre for dispute resolution by way of arbitration.

Promotional activities

9. The Administration plans to increase its promotion of Hong Kong's arbitration service through bodies such as the Trade Development Council, Invest Hong Kong, the Hong Kong Economic and Trade Offices overseas and the Beijing Office. For example, in mid-December this year, the Hong Kong Trade Development Council and the HKIAC, with the support of the Hong Kong Bar Association and the Hong Kong Law Society, will jointly organize a seminar in Beijing on Hong Kong's arbitration service. It is hoped that through this seminar and other promotional activities, the business sectors in the Mainland and their foreign counterparts will be able to understand the arbitration service provided in Hong Kong and will be encouraged to choose the HKSAR as an international arbitration centre.

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