

**Information paper for the Legislative Council Panel on
Administration of Justice and Legal Services
26 November 2001**

The Hong Kong Institute of Arbitrators

(Working for Hong Kong)

Purpose

The purpose of this information paper is to inform panel members about the role of the Hong Kong Institute of Arbitrators. In particular, how the Institute can assist the Hong Kong business community, promote the development of legal and arbitration services in Hong Kong, and enhance Hong Kong's role as an international financial and services centre.

About the Institute

The Hong Kong Institute of Arbitrators (the Institute) was established in 1996 as a company limited by guarantee, by leading Hong Kong legal and arbitration professionals. Its objective is to encourage the use of arbitration and dispute resolution processes for the benefit of the Hong Kong business community and promote Hong Kong as the key regional centre for international dispute resolution. The Institute sets minimum standards of education and experience for admission of members, provides training for local arbitrators, and where the Institute is nominated as the appointing body, appoints arbitrators and mediators. It also encourages continuing professional development for its members. The Institute has charitable status. Since its inception it has worked closely with the Hong Kong International Arbitration Centre. Since 1996, the membership of the Institute has grown to over 400 members and it has forged strong links and entered into co-operation agreements with a number of Mainland and regional arbitration organisations. The Council of the Institute anticipate an expanding role in the promotion of Hong Kong as an international financial and services centre.

What the Institute can do for Hong Kong

Since its foundation in 1996, the Institute has established a key role in the arbitration community and is actively promoting arbitration as an effective, user-friendly dispute resolution process to the Hong Kong business community as well as to Mainland and Taiwan parties.

This is being achieved by:

- (a) promoting the wider use of Chinese in arbitration proceedings;
- (b) encouraging cultural values and overcoming cultural barriers;
- (c) complimentary exchanges between Hong Kong and the Mainland as well as regional organisations;
- (d) setting professional and quality standards for arbitrators;
- (e) promoting professional ethics;
- (f) promoting the best features of Hong Kong arbitration to Mainland arbitration organisations;
- (g) pro-actively helping the Hong Kong business community; and
- (h) promoting Hong Kong as the preferred centre for commercial arbitration in Asia.

Relationship with the Hong Kong International Arbitration Centre (HKIAC)

Members have already been informed of the role and background of the HKIAC. The Institute has a different but largely complimentary role with the HKIAC, and fully supports its various activities. The Institute has been able to forge links with Mainland and regional legal and arbitration organisations, which on the one hand promotes Hong Kong, and may ultimately draw business to Hong Kong and the HKIAC.

The Institute has also worked for legal reform in arbitration. In co-operation with the HKIAC, and with the approval of the Secretary for Justice, the Institute established in 1998 a Law Reform Committee to update and improve the law relating to arbitration.

Why would the international business community choose Hong Kong to resolve their business disputes?

Probably the main attraction of international business to Hong Kong for settlement of disputes is its legal system and modern arbitration law. Under the arbitration ordinance, arbitration awards can be summarily enforced in the same way as a court judgment. As a signatory of the New York Convention (under the umbrella of the PRC) international arbitration awards can be readily enforced. Most important, Hong Kong also has the necessary legal and professional infrastructure to support major international arbitrations. The international business and legal community may be further attracted by Hong Kong's liberal taxation regime which, unlike some competitor jurisdictions, does not deduct a high proportion of fees at source.

How Hong Kong can benefit

Any increase in arbitration related business in Hong Kong will enhance the image of Hong Kong being a leading commercial hub in the region. This will result in demand for supporting services and participation in proceedings from the legal and other professions. All visitors require accommodation and other services during their stay. Successful outcomes can fuel repeat business, and continuing growth. The benefits flow on to the wider community.

Potential for Hong Kong to attract new arbitration business

By world standards, Hong Kong already has a high arbitration caseload. In line with other jurisdictions, the majority of arbitration cases in Hong Kong generally relate to construction or shipping disputes. But there are other categories of arbitration that are not routinely decided in Hong Kong. For example, transnational corporations tend to prefer Europe over Asian locations for major trade arbitrations. The potential for attracting a portion this business to Hong Kong is significant, but would require a concerted marketing effort.

How LegCo and the business community can help

The Institute asks that LegCo members support the legal community in promoting Hong Kong as the leading regional centre for dispute resolution. Further, we would ask that LegCo members take every opportunity to urge the Central People's Government, and especially the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), to advise investors in the Mainland to include Hong Kong in their business agreements as a second alternative for resolving any disputes. Finally, we would urge the Hong Kong business community to support the use of the excellent facilities provided by the HKIAC.

Looking to the future

The Institute fully supports the Secretary for Justice's aim to develop litigation and arbitration business in Hong Kong to enable Mainland enterprises to negotiate and sign contracts with foreign enterprises in Hong Kong. We see that this, together with other measures mentioned above, can positively enhance Hong Kong's role as the leading regional centre for legal services and international dispute resolution, and open up new opportunities for the legal and other supporting professional services. The benefits will ultimately flow to the wider community of Hong Kong people.

**Wong Kwai Huen, President
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