

AJLS Panel

Development of Hong Kong as a Legal Services Centre

I. Objectives and targets for expanding the scope of legal services

One of the Department of Justice's policy objectives is to assist in the building up of Hong Kong as a regional centre for legal services and dispute resolution.

2. Our targets in pursuing this policy objective are –

- to improve the regulatory framework within which lawyers can provide their services in Hong Kong;
- to make Hong Kong more attractive as a dispute resolution centre;
- to assist Hong Kong lawyers to gain access to the Mainland legal market; and
- to promote understanding in the Mainland and in other countries of the advantages that Hong Kong offers as a regional centre for legal services and dispute resolution.

3. In pursuing these targets, the Department keeps in close contact with the two legal professional bodies, and bodies such as the Hong Kong International Arbitration Centre ("HKIAC"). Apart from informal meetings, the Secretary for Justice maintains regular contact with representatives of the legal profession through the Legal Practitioners Liaison Committee. The Department is also represented in the Mainland Legal Affairs Committee of the Law Society of Hong Kong. In addition, a committee to study the impact of China's accession to the World Trade Organisation ("WTO") on Hong Kong legal services was set up in January 2000. This committee, chaired by the Solicitor General, comprises representatives from the Bar Association and the Law Society. Regular meetings have been held in order to discuss the relevant issues and to explore opportunities arising from the opening up of the legal

services market in the Mainland. The views have been duly reflected to the authorities concerned.

II. Measures taken and progress made

Improving the regulatory framework

4. The regulatory framework within which lawyers provide their services in Hong Kong should be modern and free from unnecessary restrictions. The Department of Justice has been active in improving that framework.

(a) Solicitor Corporations

5. Amendments were made to the Legal Practitioners Ordinance in June 1997 to enable solicitors (if they wish) to incorporate their practices as companies, which are in law a separate legal entities. Once a solicitor corporation is established, it can raise capital, borrow money and enter into contracts in its own capacity as a legal person. However, Rules first need to be put in place to regulate solicitor corporations.

6. The Department has been working closely with the Law Society on the draft Rules, which are now being finalized by the Law Society.

(b) Barristers admission

7. Being a member of the WTO, Hong Kong is obliged to ensure, amongst other things, that the legal services sector is liberalised and the practitioners' admission rules are compatible with the WTO regulations. Following the liberalisation of solicitors admission rules in 1994, the Department introduced amendments to the Legal Practitioners Ordinance in June 2000, in order to comply with Hong Kong's obligations under the General Agreement on Trade and Services, especially with respect to the admission criteria for barristers.

8. Under the new system, which commenced operation on 28 March 2003, an avenue is provided for legal practitioners from all other jurisdictions to qualify as a local barrister. They have to sit and pass examinations set by the

Bar Council in order to apply for admission as barristers. The Examination is administered by the Bar Council and will be held once a year starting from 2004.

(c) Notaries Public

9. After reunification, a local system of appointment of notaries public was set up pursuant to the enactment of the Legal Practitioners (Amendment) Ordinance 1998. The Department has since been working closely with the Hong Kong Society of Notaries to put in place the relevant subsidiary legislation, which aims to provide for the detailed appointment procedures, examination requirements, professional practice and disciplinary proceedings of notaries public. These rules have now been finalized and it is expected that they will become operative within this year.

Making Hong Kong more attractive as a dispute resolution centre

10. It is expected that the liberalisation of the Mainland markets will create a strong demand among Mainland enterprises for high standard legal services, including litigation and arbitration services. Hong Kong can offer such services, and must encourage international and Mainland businessmen to choose Hong Kong as the centre for dispute resolution.

11. As a general rule, Mainland laws allow parties to a foreign-related contract to choose applicable laws, including the laws of Hong Kong, to resolve disputes. Hence, in negotiating and signing contracts with Hong Kong and Mainland enterprises, the parties concerned (including foreign investors) may consider choosing courts or arbitration bodies in Hong Kong as the venue for resolution of contractual disputes and the law of Hong Kong as the applicable law.

12. The Department has been keeping abreast of these developments and has initiated the following measures to facilitate the resolution of cross-boundary civil and commercial disputes. These measures will help to develop Hong Kong as a regional centre for legal services.

(a) Service of Judicial Documents

13. On 14 January 1999, the Memorandum of Understanding on the

Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts was signed by Director Yang Runshi of the Research Office of the Supreme People's Court and Chief Judge Patrick Chan of the High Court of Hong Kong. Under this Arrangement, which is supported by amended the Rules of the High Court of Hong Kong, judicial documents (including copies of an originating summons, writ, judgment, notice of appeal, and notarized documents) can be served reciprocally through the Higher People's Courts in the Mainland and the High Court of the Hong Kong.

(b) Reciprocal Enforcement of Arbitration Awards between the Mainland and Hong Kong

14. On 21 June 1999, a Memorandum of Understanding on the Arrangement concerning Mutual Enforcement of Arbitration Awards between the Mainland and the Hong Kong SAR, reflecting the spirit of the 1958 New York Convention, was signed by Mr Shen Deyong, the Deputy President of the Supreme People's Court, and Miss Elsie Leung, the Secretary for Justice. The Arbitration Ordinance was amended accordingly. To implement the arrangement in the Mainland, the Supreme People's Court issued a Notice in January 2000, containing a judicial explanation of the Arrangement. The operative date of the Arrangement dovetailed with that of the amendment Ordinance in Hong Kong, namely, 1 February 2000.

15. Mainland awards enforceable in Hong Kong under the Arrangement are those made by recognised Mainland arbitration authorities, a list of which has been published by the Secretary for Justice in the Gazette. At present, there are over 100 such recognised authorities.

16. Between the coming into effect of the Arrangement and 17 September 2003, a total of 56 applications for enforcement of Mainland arbitration awards were made and 53 of them were successful.

17. As the awards made in Hong Kong can also be enforced in the Mainland, the Arrangement no doubt serves to encourage Mainland enterprises, as well as foreign investors in the Mainland, to employ arbitration services in Hong Kong and thereby strengthen Hong Kong's role as a regional disputes resolution centre.

18. Since the operation of the Arrangement, the Department has been actively monitoring its implementation alongside the profession. Views have been collected from the Working Party on the Review of the Enforcement of Hong Kong Arbitration Awards in the Mainland, on which the Department is represented. These views have been reflected to the Mainland authorities by the Secretary for Justice, and appropriate adjustments and measures have been taken on board.

(c) Proposed Reciprocal Enforcement of Judgments in Commercial Matters between the Mainland and Hong Kong

19. At present, there is no arrangement for reciprocal enforcement of judgments (“REJ”) between the Mainland and Hong Kong. To facilitate the development of Hong Kong as a centre for commercial disputes resolution, it is important that judgments made in Hong Kong are recognised and enforceable in jurisdictions where the judgment debtors keep their assets. An arrangement on REJ with the Mainland will not only benefit Hong Kong’s business sector, but also the international community doing business with the Mainland and Hong Kong. It has therefore been proposed that an arrangement should be put in place, so that Mainland and Hong Kong parties to commercial contracts will be able to agree that the courts of Hong Kong be chosen as the forum for settlement of disputes on the basis that judgment made in Hong Kong can be recognised and enforced in the Mainland.

20. For the purpose of establishing such a mechanism, the Department has held two rounds of informal meetings with Mainland authorities to discuss the scope of the arrangement and the technicalities involved in the recognition and enforcement of the judgments of both jurisdictions. This process of consultation will continue and it is hoped that an arrangement will be drawn up as soon as practicable.

(d) Hague Convention on International Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters

21. The Department has participated actively in the negotiation of the Hague Convention as part of the PRC delegation since 1998. The legal profession and various stakeholders have been kept up-to-date and their views tapped in respect of the negotiation by means of three separate consultation

papers and an update.

22. As a regional financial centre, Hong Kong will benefit from the proposed Convention if it is extended to Hong Kong. Apart from promoting judicial cooperation, the Convention will also facilitate international trade and commerce because it would instill confidence in doing business in Hong Kong. The interests of Hong Kong as a legal services centre, as well as a centre for international business, require that there be an appropriate worldwide instrument for reciprocal enforcement of judgments. Hong Kong's role as a legal services centre could be further enhanced if businesses are encouraged to choose the courts of Hong Kong as the forum for resolving their disputes, with the comfort that the resulting judgments will be enforceable in other jurisdictions through this international treaty.

(e) Development of arbitration and mediation services

23. In the area of Hong Kong's arbitration and mediation services, the HKIAC, set up in 1985 with the support of the Government and the private sector, has continued to provide an independent venue for disputes resolution. In the past decade or so, there has been a remarkable growth in terms of its caseload. In 1992, it provided arbitration services in 185 cases, and in 2002, its caseload went up to 320 cases. These figures compare favourably with 21 and 88 cases respectively in London. In Singapore, the figures were 7 in 1992 and 56 in 2001 (the figure in 2002 being not available).

24. In 2003, as a result of the adverse effect of the Severe Acute Respiratory Syndrome (SARS), the HKIAC's caseload was brought down to 287. There was, however, a steady growth in its arbitration services in relation to cross-boundary trade. In that year, it handled 14 arbitration cases in which both parties were from the Mainland. This compares with 13 cases in 2002, 7 cases in 2001 and 5 cases in 2000. Furthermore, in 2003 it handled 35 arbitration cases, which involved only non-Hong Kong parties, as compared with 32 cases in 2002. These figures are indicative of an increasing acceptance of Hong Kong as one of the world's preferred centres for disputes resolution internationally.

25. Another pleasing development of Hong Kong's arbitration services relates to the promotion of Hong Kong as a cyber arbitration centre. In 2001,

the HKIAC joined hands with the China International Economic Trade Arbitration Commission (“CIETAC”) to set up the Asian Domain Name Dispute Resolution Centre, which was later accredited by the Internet Corporation for Assigned Names and Numbers (ICANN) as the fifth provider for disputes resolution services for top-level domain names. As of 16 December 2003, there were a total of 51 cases referred to the HKIAC. Besides, in mid-2001 the HKIAC was appointed by the Hong Kong Domain Name Registration Company Limited as the sole disputes resolution provider for the “.hk” domain names. As of 15 December 2003, 10 cases were filed with the HKIAC. Moreover, in September 2002, the HKIAC was approved by the China Internet Network Information Centre (CNNIC) to be one of the two approved centres (the other being the CIETAC) to handle “.cn” domain name disputes. So far, 10 cases of such disputes have been filed with the HKIAC.

26. The Hong Kong Mediation Council (“HKMC”), a division of the HKIAC, has been actively promoting the attributes of mediation as a means of disputes resolution to the Hong Kong community. In January 2003, it has launched a Construction Industry Mediation Pilot Scheme, under which HKIAC-accredited mediators would provide up to three days of their time on a free-of-charge basis for a construction dispute of a total value not exceeding HK\$ 2 million. Further, in July 2003 it initiated an Insurance Mediation Pilot Scheme, which provides low cost mediation service to an insurance dispute of a total value below HK\$ 2 million. So far, 18 insurers have indicated interest in the Scheme and have pledged their support.

27. HKMC has also provided support to the Pilot Scheme on Family Mediation introduced by the Judiciary in 2000. The HKIAC Mediator Accreditation Committee accredits mediators for the Scheme, while HKMC, with the assistance of the Law Society of Hong Kong, provides the requisite training for those who seek to obtain accreditation. Of the 844 mediation cases, 69.3% reached full settlement, while 9.8 % reached partial settlement. Besides, HKMC is currently in the process of establishing a mentor scheme to provide the would-be mediators with the opportunities to gain experience in conducting mediation.

28. Apart from those cases handled by the HKIAC and HKMC, there are cases taken by individual arbitrators and mediators, many of them are members of the Chartered Institute of Arbitrators and Hong Kong Institute of

Arbitrators. Some of them are also on the panels of the arbitration commissions in the Mainland. They handle cases in Hong Kong, the Mainland and overseas. It appears that over the last few years, these cases are also increasing in numbers.

Gaining access to the Mainland legal market

(a) Closer Economic Partnership Arrangement between the Mainland and Hong Kong (“CEPA”)

29. The Department of Justice has actively promoted measures that will assist Hong Kong lawyers to gain access to the Mainland legal market.

30. CEPA, which came into force on 1 January 2004, includes measures that allow Hong Kong lawyers to have better access to the Mainland legal services market ahead of foreign counterparts, within the confines of the WTO regulations. These measures include –

- i) permitting the representative offices of Hong Kong law firms to operate in association with Mainland law firms;
- ii) allowing Hong Kong legal practitioners to be employed by Mainland law firms;
- iii) allowing Hong Kong permanent residents who are of Chinese nationality to sit the State Judicial Examination;
- iv) allowing those Hong Kong residents who pass the Examination to practise as Mainland lawyers in non-litigation matters; and
- v) reducing the residence requirement for the representatives of Hong Kong law firms in the Mainland from six to two months a year, except for Guangzhou and Shenzhen where the requirement is completely lifted.

31. The liberalisation of market access to the Mainland legal services sector has an immediate and profound impact on Hong Kong legal practitioners who plan to extend their professional services in the Mainland. The relevant measures would effectively give Hong Kong practitioners a competitive edge

over their counterparts in other jurisdictions. Under the framework of CEPA, the legal profession of both sides would have more opportunities for quality professional co-operation. Through such co-operation, experience in a wide range of areas of practice, such as corporate finance, intellectual property, information technology, international trade and commercial disputes resolution, could be exchanged. The implementation of CEPA is also expected to help attract Mainland and foreign investors, as well as lawyers, to employ the services rendered by the Hong Kong legal profession, thereby strengthening Hong Kong's position as the regional hub for legal services.

32. The concluding of CEPA is just the initial step to open up the legal services market in the Mainland. A great deal of effort has to be contributed by the local legal profession to make CEPA work as it is intended. The Secretary for Justice will continue to assist local practitioners to develop further inroads in the Mainland, by gauging the effectiveness and implementation of the current arrangements, and constantly reflecting the feedback and suggested improvements to the Mainland authorities.

(b) Co-operation Agreements with Mainland Justice Bureaux

33. As part of the Department's efforts in pursuing a successful implementation of CEPA and fostering systematic co-operation between the legal profession of the Mainland and Hong Kong, the Department has so far entered into Legal Services Co-operation Agreements with the Justice Bureaux of six different provinces and municipalities, namely –

- (i) Qingdao (in September 2002);
- (ii) Chongqing (in December 2002);
- (iii) Beijing (in October 2003);
- (iv) Nanjing (in December 2003);
- (v) Shanghai (in December 2003); and
- (vi) Zhejiang (in January 2004)

34. Under these agreements, the Department and the relevant Bureaux

are to exchange information on the law, legal system and legal profession, and enhance the government officials' understanding of such information by way of training at the practical level. The agreements also provide channels whereby technical and procedural problems arising from the implementation of CEPA in the relevant provinces or municipalities can be discussed and resolved.

35. The Department will continue to explore opportunities to enter into similar agreements with Justice Bureaux in other parts of the Mainland.

Promoting Hong Kong as a legal services centre

(a) Visits, Conferences, Seminars etc.

36. The Department has been actively promoting Hong Kong's legal services by organising, supporting or sponsoring visits, conferences, symposiums, forums, seminars and exhibitions. This promotional work is often carried out in collaboration with professional and trade related bodies in Hong Kong, the Mainland and overseas. Examples of these bodies include the Law Society of Hong Kong, Trade and Industry Bureau, Trade Development Council, Invest Hong Kong, Hong Kong Institute of Arbitrators, Beijing Office and Economic and Trade Offices overseas, municipal bureaux of justice and lawyers associations in the Mainland, and chambers of commerce in overseas countries. In view of the long term and macroscopic benefits resulting from CEPA, the Secretary for Justice has been leading delegations of our legal profession to have direct talks with Mainland authorities and counterparts.

37. These visits and conferences are not only attended by lawyers, journalists and government officials, but also by entrepreneurs from the business sector. Many of these gatherings in the Mainland are supplemented by "meet-your-clients" sessions, whereby lawyers from Hong Kong would provide free consultation to those attending. This form of exchange provides opportunities for Hong Kong lawyers and potential clients (including legal practitioners) to understand the services supplied and demanded, and to build the necessary contacts and networking.

38. During the period 2001 through 2003, a total of 20 such visits were made to overseas countries (including the UK, Australia, New Zealand, Canada, and Austria), and 49 visits were made to the Mainland and Macao. During the

same period, 119 visitors or delegations were received and briefed, of which 88 were from the Mainland. Moreover, the Secretary for Justice and her staff participated in 32 conferences and seminars held in Hong Kong in which Hong Kong's attributes as a regional legal services centre were fully explained.

39. The feedback from local practitioners has been that enquiries about their legal services from the Mainland and overseas have increased markedly, and an upward trend in terms of business volume has also been suggested. The Department is pleased that Hong Kong lawyers are now offering services in respect of, for example, the organisation of Beijing Olympic Games 2008, the listing of Mainland companies in Hong Kong, acquisition and mergers, financing and restructuring of corporate finances, as well as expanding their markets internationally.

(b) Information Dissemination

40. The Department has engaged in disseminating information on Hong Kong's legal system, including the legal profession and services provided, through the Department's website. Speeches and information papers are uploaded regularly, including the regulations governing various aspects of the implementation of CEPA promulgated by the Ministry of Justice in November 2003. Furthermore, a CD-ROM introducing the key features and provisions of CEPA in relation to legal services has been produced and will be ready for distribution to the legal practitioners of Hong Kong and their counterparts in the Mainland shortly. Information about Hong Kong's legal profession and services has also been disseminated through the outlets set up by the Government's overseas Economic and Trade Offices.

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