

立法會 *Legislative Council*

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司法及法律事務委員會

立法會秘書處為2010年2月22日會議擬備的 背景資料簡介

在香港就與內地有關的爭議進行仲裁

目的

本文件旨在提供背景資料，說明在香港就與內地有關的爭議進行仲裁的相關事宜。

背景

2. 在香港作出的仲裁裁決可在135個以上作為《承認及執行外國仲裁裁決公約》(紐約公約)簽署國或地區的司法管轄區執行。鑒於中國是紐約公約的簽署國，香港特別行政區(下稱"香港特區")自1997年7月1日起亦成為該公約的成員，該公約亦因而適用於香港。紐約公約作為國際公約，並不適用於香港特區與內地之間仲裁裁決的相互執行。根據《基本法》第九十五條(訂明香港特區與中國其他地區可相互提供司法協助)，香港與內地於1999年6月簽訂了兩地相互執行仲裁裁決的安排，該安排已於2000年2月1日生效。

3. 在2001年11月26日的議上，政府當局向司法及法律事務委員會(下稱"事務委員會")簡介其建議，表示擬將香港推廣為洽談和締結與中國有關合約之地，以及可通過仲裁、訴訟或其他替代方式調解有關糾紛的中心。政府當局表示，只要與中國有關合約的訂約各方的自由選擇權繼續獲得尊重，內地當局初步對將香港發展為本地區透過仲裁調解糾紛的中心此建議有積極回應。政府當局會透過貿易發展局、投資推廣署、香港駐各地的經濟貿易辦事處及香港特區政府駐北京辦事處等機構，加強宣傳香港的仲裁服務。

4. 對於並無具體數字顯示香港仲裁裁決在內地的執行情況是否令人滿意一事，一直備受事務委員會關注。吳靄儀議員曾於2005年1月26日的立法會會議上就執行商事仲裁裁決及判決的情況提出口頭質詢。請委員注意，政府當局向事務委員會提供有關香港國際仲裁中心於2006年所處理糾紛的資料載於**附錄I**。

最新發展

律政司的新措施

5. 律政司司長在2009年10月22日的會議上，向事務委員會簡介2009-2010年度律政司的政策措施時表示，政府當局將加強香港與內地民商事方面的法律合作，使民商事爭議能以更方便、更具成本效益的方法解決。政府當局會利用香港作為亞洲其中一個主要仲裁中心的優勢，致力提升香港的能力，使之成為一個解決與內地有關的商業糾紛(特別是涉及海外投資企業與其他內地法人的爭議)的地點。政府當局會密切留意現有3項與內地簽訂的相互法律協助安排，以便在有需要時改善其執行機制。

6. 請委員注意，律政司司長於2009年6月16日在第三屆區域仲裁機構論壇的致辭中，闡述當局最近為發展香港成為地區性國際仲裁(特別是與內地有關的仲裁)中心所作的努力。律政司司長致辭內容載於**附錄II**。

《仲裁條例草案》委員會的轉介

7. 在法案委員會審議《仲裁條例草案》期間，政府當局告知法案委員會，根據國內制度的一般規則，似乎是只有在合約包含涉外元素的情況下，當事各方才可同意在內地以外的地方進行仲裁。律政司正與內地有關當局商討有關制定明訂條文，訂明具有中國法人地位的海外投資企業可自由選擇就爭議進行仲裁的地點。應法案委員會要求，政府當局同意向事務委員會匯報與內地當局商討的進展情況。

立法會秘書處

議會事務部2

2010年2月12日

附錄 I

2006 年個案統計數字

2006 年香港國際仲裁中心處理的爭議 (2006 年 1 月 1 日至 2006 年 12 月 31 日)

在 2006 年，香港國際仲裁中心處理的個案數目為 394 宗，而 2005 年及 2004 年的數字分別為 281 宗及 280 宗(詳情請參閱該中心網頁 <http://www.hkiac.org>)。爭議金額由港幣 370,531 元至超過港幣 3.69 億元不等。當事人的國籍包括美國、澳洲、英國、中國(香港特區)、中國(澳門特區)、中國(中國內地)、荷蘭、菲律賓、法國、德國、匈牙利、印度、日本、韓國、尼日利亞、波蘭、卡塔爾、新加坡、瑞士、台灣、泰國及越南。

394 宗個案中，有 18 宗來自中國內地，案中雙方當事人均為中國內地的法人／公民，在仲裁條款中指明以香港作為進行仲裁的地點。同類的個案，在 2005 年有 15 宗，2004 年有 20 宗，2003 年有 14 宗，2002 年有 13 宗，2001 年有 7 宗，2000 年有 5 宗。

香港國際仲裁中心 2006 年統計數字

	仲裁	調解
建築	181	30
商業	102	8
船務	18	0
合作企業	0	0
其他(未能分類)	0	0
社團	0	0
總計	301	38
域名	93	不適用

- 在 301 宗仲裁個案(不包括域名爭議)中：
 - 99 宗涉及香港和不同國家

- 42 宗只涉及非香港當事人
- 160 宗只涉及香港當事人

- 在 99 宗涉及香港和不同國家的個案中：
 - 62 宗涉及香港和中國內地
 - 37 宗涉及香港和其他國家
 - 78 宗涉及在香港執行的合約
 - 21 宗涉及在其他地方執行的合約

- 在 42 宗只涉及非香港當事人的個案中，雙方當事人的國籍如下：
 - 中國內地／中國內地：18 宗
 - 美國／中國內地：8 宗
 - 日本／中國內地：3 宗
 - 英國／中國內地：3 宗
 - 瑞士／中國內地：2 宗
 - 德國／中國內地：1 宗
 - 荷蘭／中國內地：1 宗
 - 越南／中國內地：1 宗
 - 新加坡／中國內地：1 宗
 - 澳洲／新加坡：1 宗
 - 菲律賓／韓國：1 宗
 - 日本／日本：1 宗
 - 卡塔爾／印度：1 宗

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**附錄II
(只備英文本)****Press Releases**

Speech by Secretary for Justice at Third Regional Arbitration Institutes Forum (English only)

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the Third Regional Arbitration Institutes Forum today (June 16):

Russell, distinguished guests, ladies and gentlemen,

Good afternoon. Thank you for giving me the opportunity to address this gathering of distinguished arbitration professionals and practitioners. It is indeed my pleasure to welcome all of you, particularly those of you who are visiting. I hope apart from attending the conference, you will find some time to experience our hospitality and attractions.

The world has undergone very significant changes since your last Forum held in Brunei last August. The financial crisis has knocked the wind off our sails. But fortunately, in Asia, we saw the storm clouds gathering in the US and Europe, and that had given us a little time to prepare for a direct hit. Moreover, the Asian financial crisis a decade ago did teach us some painful but constructive lessons. This is perhaps why the Asia Pacific region appears better able to cope with the current difficulties than many other places. And, touch wood, we in Asia are also less hard hit by the Swine Flu though there is no room for any complacency.

The path to economic recovery is long and winding. But many will agree that the long-term outlook for this region is definitely upbeat. The Asian Development Bank reported last year in its Strategy 2020 report that the Asia Pacific region will account for some 45% of global GDP by 2020 in terms of purchasing power parity. It also forecasts the region to contribute about one third of the world trade by 2020.

While markets are slowing down, commercial disputes are on the rise. Many of these disputes relate to breach of contracts, obligations or enforcement of security. These turbulent times call for more honest and anxious reflection on the best way to resolve commercial disputes. Many more people are cornered with questions like: whether they should go to court to litigate, or whether they should go for arbitration or mediation, whether the business relationship with the would-be opponent in court is one which they would like to maintain rather than destroy through acrimonious litigation. Many will be asking very practical questions: Can arbitration really be cheaper? Does mediation really work?

For the Government and at the more macro level, there are other questions to ask: How should limited resources be utilised in terms of improving the access to justice, in terms of resolving different types of disagreements ranging from the high-end commercial disputes to the everyday squabbles between neighbours, in terms of integrating ADR into the traditional judicial system, and in terms of developing dispute resolution as a business rather than just a service?

The development and promotion of alternative dispute resolution is even more important and relevant for a growing and dynamic region such as the Asia Pacific. Instead of becoming more litigious, there is a chance for economies in the region to foster among their population a culture for harmony and less confrontational means of settling disputes amid economic growth and higher standards of living.

As you may have heard, a major reform in civil proceedings has been introduced in Hong Kong. The Civil Justice Reform was implemented in April this year to improve the cost-effectiveness of our civil justice system. One of the focuses of the Reform is greater use of ADR, in particular, mediation, within the judicial system. In promoting mediation even more generally, I am now chairing a dedicated cross-sector Working Group on Mediation with the objective of encouraging and facilitating the wider use of mediation to resolve disputes ranging from higher end commercial disputes to community disputes.

We are now working on specific issues including promotion of mediation in the commercial sector, strengthening of mediation training in law schools, promulgation and implementation of a code of practice for mediators, accreditation standards and the continued training of mediation professionals. We have just launched the "Mediate First" Pledge under which the signatories pledge to explore the use of mediation before resorting to other means of alternative dispute resolution or legal proceedings. As of today, more than 100 companies and organisations have signed the Pledge. I am encouraged by these developments which will surely put a positive spin towards promoting a more harmonious and less litigious society.

As this is a Forum on arbitration, I should focus more on our work on arbitration and what we see are important in our growth as a regional centre for international arbitration. You would of course be familiar with the Hong Kong International Arbitration Centre (HKIAC), who is doing a very good job in terms of enlarging Hong Kong arbitration capacity. It handled over 600 international arbitration cases last year, which puts it, in terms of quantity of such cases, No 2 in Asia. The Government is discussing with HKIAC to explore how we can further facilitate its development.

In addition to developing our home-grown arbitration body, we believe Hong Kong can offer an ideal landing for international arbitration bodies interested in extending their activities into the Mainland China market. As you know, the International Court of Arbitration of the International Chamber of Commerce (ICC) established a branch of its secretariat in Hong Kong in November 2008. This is the ICC's first ever branch of the Secretariat outside Paris and oversees the conduct of ICC arbitrations in the region. ICC's decision to come to Hong Kong bears testimony to the attraction of Hong Kong as a venue for international arbitration. I am heartened and excited to learn that the Hong Kong branch of the Secretariat is receiving new cases every week and that it is now handling over 100 ICC arbitration cases.

Admittedly, operation costs in Hong Kong are not cheap. But because of Hong Kong's special status as the only common law jurisdiction in the People's Republic of China enjoying a high degree of autonomy and judicial independence,

there is every reason for international arbitration bodies to consider coming here.

Anyone engaged in international arbitration practice like most of you here would agree that large international arbitration cases involving Chinese parties are clearly on the rise. China is undeniably the most influential emerging economy of the world. She has become a key engine of global economic growth. She is perceived by many to be a stabilising force in turbulent times.

While record foreign direct investments are flowing into the country, enterprises from China are also investing heavily outside China. The volume of business is such that it is essential for there to be an effective means of settling business disputes among companies in China and between Chinese companies and foreign companies.

The increase in Mainland-related arbitrations is reflected by the statistics of the HKIAC and other international arbitration institutions such as CIETAC. I also understand from the Hong Kong office of the ICC that one third of the cases that it is handling involve Hong Kong or Mainland Chinese parties.

Hong Kong's proximity to the Mainland and the economic integration of the two economies under the Closer Economic Partnership Arrangement (CEPA) concluded in 2003 have made Hong Kong an ideal venue for arbitration of commercial disputes with international elements. Today, more than 6 600 Mainland and overseas companies have a base in Hong Kong, and nearly 60% of them serve as regional headquarters or regional offices. These figures speak for themselves.

Recently, relationship across the Taiwan Strait is warming up rapidly. Apart from establishing direct transportation links, Mainland and Taiwan may also conclude an economic pact that is similar to CEPA. This will no doubt lead to more direct investment between Mainland and Taiwan. Apart from servicing the trade and economy of the Mainland and Taiwan, Hong Kong has huge potential to position itself as the perfect neutral venue to handle commercial arbitration between parties from Mainland and Taiwan. This will benefit the development of arbitration in Hong Kong and may well be another reason why international arbitration institutions are attracted to Hong Kong.

To facilitate arbitration involving Mainland parties, as long as ten years ago in 1999 we had already concluded and implemented an arrangement with the Mainland on reciprocal enforcement of arbitral awards. We are constantly monitoring the implementation of the arrangement and looking for room for betterment.

Hong Kong arbitral awards, and in fact awards from many countries, may be enforced in Taiwan under its domestic law. Hong Kong has amended its law more than a decade ago to facilitate the enforcement of arbitral awards from non-New York Convention parties such as Taiwan by offering facilities under our legislation to enforce such awards. We look forward to furthering our co-operation with Taiwan by putting the regime for recognition and enforcement of arbitral awards on a firmer footing.

We shall not take for granted the advantages we are

enjoying by virtue of our close connection with the Mainland and the recent improvement of cross-strait relationship. It is imperative for Hong Kong to work hard and to develop our own inherent strength so that our position can be firmly anchored on the arbitration map of the world.

Under the "One Country, Two Systems" principle enshrined in our Basic Law, Hong Kong has its own legal system and an independent judiciary, which mark us out from the rest of China. Our legal system is rooted in the English common law, which is being enriched since 1997 as precedents from other common law jurisdictions can be cited in our courts.

And of course talents and human recourses are paramount. We have a strong and independent judiciary with an excellent reputation for robustly safeguarding the rule of law. We have a wealth of legal practitioners and internationally renowned arbitrators. In terms of numbers, Hong Kong has nearly 8,000 local lawyers and over 1000 foreign lawyers. We also have the highest concentration of foreign law firms in the region.

There are many arbitration experts among them. Many of them are familiar with Mainland law and international commercial practices and are experienced in handling commercial documentation in both Chinese and English. We also have a deep pool of experienced professionals from all over the world specialising in different fields such as finance, IT, shipping and construction. They can assist arbitration by serving as advisers to parties, arbitrators or expert witnesses.

Another major milestone we are about to reach is the reform of our domestic arbitration law. With a view to reforming and improving our arbitration law, a Working Group of my department has been set up to make recommendations on changes. Years of hard work have come to fruition in the form of an Arbitration Bill which I will introduce into our Legislative Council in July. The Bill will unify the domestic and international arbitration regimes.

After the enactment of the new legislation, arbitration in Hong Kong will be based on the UNCITRAL Model Law. Under the proposed law, the court should only intervene in an arbitration to support arbitration. The Bill is also intended to be self-contained so that it will be easier to find all relevant provisions in one place. The Bill will also implement innovations recently introduced by the UNCITRAL to the Model Law. One such innovations relates to the court's ability to make orders for interim measures of protection to support arbitrations. We will be among the first jurisdictions in the world to strengthen the powers of our courts to make such orders, and enforce such orders made by a foreign court or arbitral tribunal, in relation to arbitral proceedings conducted outside Hong Kong.

We are confident that with these changes, Hong Kong's arbitration regime will be even more user-friendly. We will strive to provide the best environment for conducting international arbitration in Hong Kong by strengthening our legislation. Many of you here are arbitration practitioners and experts and no doubt you can give us your judgment once you have seen the new law on paper and in action.

The policy to develop Hong Kong as a centre for dispute resolution and legal services has been endorsed by our Chief Executive in his Policy Address. Our Government as a whole, and not just the Department of Justice, will continue to work hard to promote understanding in the Mainland and the rest of the world of the advantages offered by Hong Kong in legal services and dispute resolution.

We will also continue our dialogue with international arbitration institutions and will be as innovative and flexible as we can in fostering cooperation. We welcome any initiative that they may have on developing their business in the Asia Pacific region, including the establishment of a physical presence in Hong Kong.

Ladies and gentlemen, I believe that the global economic turmoil provides a genuine opportunity for us to re-think, to re-prioritise and to re-invent our wheels to come out stronger, more resilient, and to make wise use of globalisation. This is also a time to call for unity and co-operation. I am glad that this conference provides a platform for arbitration experts in this region to share ideas, to explore collaboration and to respond more effectively to the dynamics of changes in arbitration. Issues such as how we can reduce costs, and how we can integrate arbitration and mediation, and how the judiciary can help reinforce arbitrations are just some of the subjects coming to mind which are worthy of study and experience sharing.

On that note, ladies and gentlemen, I wish you all a very successful conference and a very enjoyable and memorable stay in Hong Kong. Thank you very much.

Ends/Tuesday, June 16, 2009
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