

LegCo Panel on Administration of Justice and Legal Services

The Administration's response to the motion passed at the meeting on 22 July 2014

Introduction

At the Panel meeting on 22 July 2014, the Panel passed the following motion –

“That this Panel urges the Government to give full support and resources to the Hong Kong International Arbitration Centre and other international arbitration bodies so as to enable Hong Kong to become the leading international dispute resolution centre in the Asia Pacific region.”

We set out in this note our response to the motion.

Government Policy

2. It is the clear and firm policy of the Hong Kong Special Administrative Region Government to enhance Hong Kong's status as a leading centre for international legal and dispute resolution services in the Asia Pacific region. This policy has been made crystal clear on various occasions, including the Chief Executive's 2013 and 2014 Policy Addresses and the Financial Secretary's 2014 Budget Speech. It is also reiterated in the paper provided by the Department of Justice to the Panel for discussion at the aforesaid meeting on 22 July 2014.

3. Pursuant to this policy, the Department of Justice has been working closely with the arbitration community and has been sparing no efforts to enhance the competitiveness of our arbitration services. The Government will continue its efforts to facilitate the presence and growth of world class arbitration and law-related organisations (“LROs”) in Hong Kong. Moreover, an Advisory Committee on Promotion of Arbitration will be established to co-ordinate and step up the joint efforts between the Department of Justice and the legal / arbitration sector to foster the development and growth of arbitration in Hong Kong.

Provision of support to arbitration institutions

4. It is pursuant to the above policy that the Government has been providing support to various arbitration institutions. One important area of such support is the provision of accommodation, which is required by arbitration institutions for the conduct of arbitral proceedings and other related purposes.

5. The Government is currently providing accommodation support to a number of arbitration institutions in the central business district. These institutions include the Hong Kong International Arbitration Centre ("HKIAC"), the Asia Office of the International Chamber of Commerce, International Court of Arbitration, the China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center. For the HKIAC, which is our home-grown arbitral institution, the Government has provided funding support towards the cost of its setting up and its initial running expenses. In recent years, the Government has provided *ad hoc* support to the HKIAC for individual projects and through various funding schemes of the Government.

6. As the Government has announced, we will set aside a portion of the space in the West Wing of the former Central Government Offices ("CGO") and the entire former French Mission Building ("FMB") for the use by arbitration institutions and other LROs, the arrangements of which were discussed at the Panel meeting on 22 July 2014.

7. The Government also provides support to the arbitration institutions in other forms, including promotion activities and other events. For example, the Secretary for Justice led a delegation of professionals in the legal and arbitration sectors, comprising the Chairman of the HKIAC and representatives of arbitration institutions in Hong Kong, on a promotional visit to Vietnam and Cambodia in February 2014. This was followed by a similar visit led by the Solicitor General to Myanmar in late August. Based on the feedback received, these visits are regarded by participating dispute resolution institutions and professionals as important means for them to explore new opportunities in emerging markets. In addition to overseas activities, the Secretary for Justice and other colleagues of the Department of Justice often participated in seminars and

other similar events in Hong Kong, and delivered speeches with a view to promoting the legal and dispute resolution services that can be offered by Hong Kong. Further, the Secretary for Justice also made it a point to introduce Hong Kong's advantages in this aspect when he had meetings with relevant parties such as Consuls-General and representatives of chambers of commerce.

8. Given the multi-disciplinary nature of arbitration, apart from lawyers, other professionals such as engineers, accountants, surveyors and architects may also be active players in arbitration proceedings who may serve as arbitrators, representatives of parties or expert witnesses. Hence arbitration would benefit the continued development of Hong Kong in this direction. We will continue to support arbitration institutions the work of which will contribute towards the attainment of the above-mentioned policy objective.

Need for a balanced approach in the provision of support

9. In providing support to the arbitration institutions, the Government considers it imperative to adopt a balanced approach. Amongst others, it requires the proper consideration of the following factors. First, the support provided to arbitration institutions must not in any way undermine their independence, perceived or otherwise. Second, the nature of support provided by the Government must be conducive to enhancing Hong Kong's position as a leading international arbitration centre. Third, since government resources are limited and there are strong competing demands for support, the Government must ensure that public monies are used effectively in a prudent manner and in the overall interest of Hong Kong.

10. On the first of these considerations, it is an important principle that an arbitral institution should be independent from any other body or organisation in the administration of arbitration proceedings. In line with this principle, one of the selection criteria to be adopted for the provision of accommodation support for arbitration institutions and other LROs in the West Wing of the former CGO and the former FMB, if the demand for space outstrips the area that can be provided, is the financial position of the LROs and the prospect of their becoming self-financing in the longer-term for paying market rental.

11. Indeed, world-class arbitration institutions pride themselves on their independence from other bodies, including governments. In the case of HKIAC, it is all the more important to safeguard its independence because it is also performing a statutory power under the Arbitration Ordinance (Cap.609) to appoint arbitrators and determine the number of arbitrators under certain circumstances.

12. Accordingly, it is vital to strike an appropriate balance, and we need to be cautious when considering the provision of financial assistance to arbitration institutions (local and those from outside Hong Kong), so as to ensure that the independence of arbitration institutions operating in Hong Kong, in form and in substance, is not compromised. This is particularly important as the Government may become a party to arbitral proceedings administered by these institutions.

Conclusion

13. To maintain and enhance Hong Kong's status as a leading centre for international legal and dispute resolution services in the Asia Pacific region is a top priority of the Department of Justice and a firm policy of the Government. There is no doubt that the Government will continue to provide such support to the HKIAC and other arbitration bodies in Hong Kong as may be appropriate so as to help them as well as Hong Kong to scale new heights in the provision of international arbitration services in the Asia Pacific Region.

Department of Justice
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