

**For discussion
on 30 April 2018**

**Legislative Council Panel
on Administration of Justice and Legal Services**

**Consultancy Report on
“Enhancing Hong Kong’s Position as the Leading International Arbitration
Centre in Asia-Pacific” (“the Report”) and
the Government’s Response to the Report**

PURPOSE

This paper presents the findings and recommendations of the Consultancy Report on “Enhancing Hong Kong’s Position as the Leading International Arbitration Centre in Asia-Pacific” (“the Report”) and the Government’s response to the recommendations in the Report.

BACKGROUND

2. One of the main policy objectives of the Department of Justice (“DoJ”) is to enhance Hong Kong’s status as a leading centre for international legal and dispute resolution services in the Asia-Pacific region, in particular as an international arbitration hub.

3. To facilitate the achievement of this policy objective, KPMG was commissioned by the Hong Kong Trade Development Council (with the support of DoJ) to assess the role played by arbitration in Hong Kong’s legal and dispute resolution sector and the economy generally, and to assess its competitiveness within a broader international and regional context.

4. The objective of the study is to:

- (a) review the current arbitration sector in Hong Kong and practices;
- (b) conduct an economic impact assessment to quantify the societal economic value of the sector;
- (c) assess Hong Kong’s profile and competitiveness as a centre for

- international arbitration through literature reviews, surveys, interviews and roundtables with relevant stakeholders;
- (d) compare Hong Kong's strengths and weaknesses in international arbitration services with its key competitors and, in doing so, identify opportunities and threats to Hong Kong; and
 - (e) make recommendations on enhancing Hong Kong as the leading regional centre for international arbitration.

RESEARCH METHOD

5. The study is informed by a wide number of information sources and consultations with members of the arbitration community, including:

- (a) a survey conducted in 2015 which received 223 responses from both local (63%) and overseas¹ (37%) users and service providers of arbitration;
- (b) 113 consultations with stakeholders both in Hong Kong and internationally to gain the views of users and providers about the perceived strengths and weaknesses of Hong Kong's arbitration sector;
- (c) a comparative analysis of strengths and weaknesses, opportunities and challenges on Hong Kong's arbitration sector, relative to Singapore, Seoul, Kuala Lumpur and Beijing; and
- (d) two round-table focus groups on education and training comprising legal sector stakeholders conducted in Hong Kong.

KEY FINDINGS

6. The survey conducted in 2015 shows that approximately 72% of the arbitration cases with a Hong Kong connection² were international in nature, whilst 28% were domestic cases. Approximately 76% of the arbitration cases were seated in Hong Kong, while another 10% were heard in Hong Kong although not seated here. The split between institutional and *ad hoc* arbitration was 56%: 44%. About 78% of the arbitration cases between 2012 and 2014 were shipping and maritime (37%), corporate and commercial (24%) and

¹ Including those based in Mainland China.

² That is, arbitrations seated or heard in Hong Kong, or cases where secretarial support or services were provided from the Hong Kong office of an arbitration institution.

infrastructure and construction (17%). The survey also finds that the average amount of dispute per case was US\$16 million. The average cost of an arbitration case in Hong Kong was US\$1.2 million. The average duration of reported arbitration cases from the survey was about 21 months.

7. International arbitration activity brought significant economic activity to Hong Kong. In 2014, the total Gross Value Added of arbitrations (both direct and induced contribution) in Hong Kong was approximately HK\$1.964 billion, which contributed to 13% of the legal sector's GDP, or around 0.09% of Hong Kong's total GDP. This economic activity also supported over 2,600 full-time equivalent jobs in Hong Kong and contributed over HK\$170 million to the HKSAR Government in 2014 fiscal receipts.

8. The Report identifies that the top five criteria that Hong Kong's arbitration services score the highest rankings in the Asian-Pacific region are as follows:

- (a) availability of quality arbitrators, legal practitioners and expert witnesses;
- (b) ease of entry and convenience to get into Hong Kong and arbitrate here;
- (c) quality of, and/or experiences with, Hong Kong's local arbitral institutions;
- (d) standards of Hong Kong transport and infrastructure (e.g. IT, communications, etc.); and
- (e) choice of hotels and ancillary services (e.g. sightseeing, shopping, catering).

9. Notwithstanding the competitive advantages of Hong Kong, there is intensified competition in the regional arbitration market as other centres improve their arbitration offerings and the development of other dispute resolution methods, giving users more choice than ever before in terms of both where and how they resolve their disputes. These developments pose threats to Hong Kong's position and require positive action to be taken.

RECOMMENDATIONS

10. The Report concludes that the growing regional competition and

changing trends in dispute resolution require the HKSAR Government to take more pro-active steps to support market participants if Hong Kong is to maintain its leading position and market share.

11. Given that a number of findings and recommendations touch on the operation of the Hong Kong International Arbitration Centre (“HKIAC”), DoJ has approached HKIAC for such initial views it may have on the Report in order that the Government may also take them into account. In this regard, HKIAC considers the Report to be a good and useful paper in general, and has provided specific comments in some areas, including supplementing and updating the information and data in the Report with HKIAC’s experience. These include, for example, caseload data to show a rising trend in HKIAC’s caseload since the data collection period in the report³; information about HKIAC’s internship programme for arbitrators and training programme for arbitral tribunal secretaries; its capabilities in administering investor-State arbitration; and its promotional efforts, including the well-established Hong Kong Arbitration Week which attracts hundreds of participants both locally and internationally every year.

THE GOVERNMENT’S RESPONSE

12. A table setting out (a) the recommendations in the Report; and (b) the Government’s response to these recommendations, is at **Annex A**.

13. Broadly speaking, the recommendations are along the following general direction: (1) enhancing the promotion of the strengths of Hong Kong and its arbitration services, including promoting its arbitration institutions and openness, and Hong Kong’s neutrality as a seat of arbitration; and leveraging opportunities from Mainland’s outbound investments; (2) adopting measures to strengthen the local arbitration community, such as through voluntary arbitrators’ associations to encourage specialisation and self-promotion; and pupillage opportunities for young arbitrators; (3) establishing more arbitration facilities and encouraging international institutions to establish permanent offices in Hong Kong; and (4) refining the arbitration law in certain specific areas such as

³ In terms of the trend of HKIAC caseload, there was a steep increase in new arbitration matters since the survey data was collected in 2015: in 2014, HKIAC received 252 new arbitration matters, in 2015, 271 new arbitration matters, in 2016, 262 new arbitration matters, and in the 12-month period immediately following the report, 297 new arbitration matters.

consumer and intellectual property disputes.

14. The Government welcomes the report for providing a useful overview of the arbitration scene in Hong Kong and more clearly identifying its strengths and weaknesses as well as the opportunities and challenges to Hong Kong's arbitration services. The Government considers the proposed recommendations to be useful generally in further enhancing Hong Kong's role as a leading centre for international legal and dispute resolution services in the Asia-Pacific region, and will pro-actively work towards the implementation of these recommendations or their variants.

15. Members are invited to note this paper. A copy of the full Report can also be found at <http://www.doj.gov.hk/eng/new/index.html> and <http://www.doj.gov.hk/eng/public/arbitration.html#adv>.

Department of Justice
April 2018

Responses of the Government to the recommendations in the Report

Consultant's Recommendations	Government's Response
<p>The Consultant set out the following recommendations in Chapter 8 of the Report:</p>	
<p><u>Recommendation 8.1</u></p> <p>A single peak body or council should be created to lead and co-ordinate efforts to promote Hong Kong as a leading dispute resolution hub.</p>	<p>The Government, through the Department of Justice, has been implementing its steadfast policy of promoting Hong Kong as a leading international legal and dispute resolution services centre in the Asia-Pacific region.</p> <p>Meanwhile, the Advisory Committee on Promotion of Arbitration and the Steering Committee on Mediation, both chaired by the Secretary for Justice, were respectively set up in December 2014 and November 2012, and have been taking an important role in developing the strategies for promoting arbitration and mediation in Hong Kong.</p> <p>We will continue to study the feasibility of Recommendation 8.1.</p>
<p><u>Recommendation 8.2</u></p> <p>Hong Kong's institutions (including its adherence to the</p>	<p>The rule of law is a cornerstone of Hong Kong's success. We</p>

Consultant's Recommendations	Government's Response
<p>rule of law, its common law legal system, low corruption, efficient and independent judiciary) and its free market economy should be promoted.</p>	<p>spare no efforts in upholding the rule of law in Hong Kong and safeguarding judicial independence, as well as promoting the same from time to time through key leaders of the Government and the Judiciary. We will continue our efforts in this regard.</p>
<p><u>Recommendation 8.3</u></p> <p>Hong Kong's neutrality as a seat of arbitration should be promoted.</p>	<p>We have been working closely with the legal professional bodies and the dispute resolution sector to promote Hong Kong's arbitration services (including Hong Kong's neutrality as a seat of arbitration) as well as Hong Kong's status as a regional hub of international legal and dispute resolution services to the local and international business communities in Hong Kong, the Mainland and the rest of the world, particularly in emerging economies in the Asia-Pacific region. We will continue with the work.</p>
<p><u>Recommendation 8.4</u></p> <p>The Government should enhance Hong Kong's position as a financial and business centre.</p>	<p>It is an established policy of the Government to enhance Hong Kong's position as an attractive place to do business. We will continue to pursue and implement the policy.</p>

Consultant's Recommendations	Government's Response
<p><u>Recommendation 8.5</u></p> <p>Experienced and aspiring arbitrators and professionals should be encouraged to form non-profit making associations and given basic resources (such as office space and a secretariat) to do so.</p>	<p>HKIAC has been the focal point of arbitration in Hong Kong since its establishment in 1985 and within it the Hong Kong Maritime Arbitrators Group (HKMAG) was formed in 2000. In recent years, other reputable international arbitral institutions have chosen Hong Kong as the first location to establish their presence outside their home jurisdictions. These include the International Court of Arbitration of the International Chamber of Commerce (ICCICA), China International Economic and Trade Arbitration Commission (CIETAC) and the China Maritime Arbitration Commission (CMAC). We will continue our efforts in attracting more world-class dispute resolution institutions to set up offices in Hong Kong.</p> <p>As to the provision of office space, the Government has decided to allocate part of the office space in the West Wing ("WW") of the former Central Government Offices and the former French Mission Building ("FMB") to law-related organisations ("LROs") so as to create a more favourable environment and infrastructure to facilitate them in providing services or setting up offices in Hong Kong. Such office space together with the DoJ offices in the Justice Place will form a legal hub at the heart of Hong Kong (the "Legal Hub"), providing synergy and legal co-operation in the dispute resolution industry. So far, applications from a total of</p>

Consultant's Recommendations	Government's Response
	<p>17 LROs have been accepted for provision of office space in the Legal Hub. Under current planning, a Stage 2 application exercise will be launched later this year.</p> <p>Our current target is to complete the renovation and conversion works in respect of WW and FMB in around end of 2018 and mid-2020 respectively, after which space in the Legal Hub could be made available to the selected LROs.¹</p>
<p><u>Recommendation 8.6</u></p> <p>The Vis East Moot should be given a permanent home at the Legal Hub.</p>	<p>The Vis East Moot has confirmed its acceptance of the Government's offer of space in the Legal Hub. (See response to Recommendation 8.5 above.)</p>
<p><u>Recommendation 8.7</u></p> <p>The Government should work with the arbitral institutions to create "pupillage" opportunities for aspiring arbitrators.</p>	<p>It is noted that HKIAC has been running an internship programme since the early 2000s, which offers interns <i>inter alia</i> the opportunity to attend hearings at HKIAC's hearing facilities and work on arbitration proceedings administered by HKIAC.</p>

¹ In January 2017, the Government announced that HKIAC will remain at its premises on 38/F, Two Exchange Square, Central.

Consultant's Recommendations	Government's Response
	<p>Since December 2015, HKIAC has regularly run tribunal secretary training programmes in Hong Kong (and elsewhere). Successful participants are listed on HKIAC's website along with their CVs for public consultation.</p> <p>In addition to HKIAC's Panel of Arbitrators, HKIAC maintains a List of Arbitrators comprising more junior arbitrators who are qualified for appointment as an arbitrator. Arbitrators for the List must demonstrate substantial experience in arbitration (whether as arbitrators, counsel, expert witnesses, instructing solicitors or otherwise), with at least five years of full time arbitration experience (or equivalent); and have participated in the issuance of two arbitral awards. HKIAC assesses applications to the List every quarter and actively invites qualified junior arbitrators to apply.</p> <p>We will continue to follow up with the professional institutions based in Hong Kong so that the training needs of aspiring arbitrators can be addressed by relevant and updated training courses and programmes to be organised.</p>
<p><u>Recommendation 8.8</u></p> <p>The Government should consider exploring the use of</p>	<p>Currently, consumer disputes can be referred to arbitration.</p>

Consultant's Recommendations	Government's Response
<p>arbitration to resolve appropriate types of consumer disputes, while at the same time, providing more practice or training opportunities for practitioners.</p>	<p>Section 15 of the Control of Exemption Clauses Ordinance (Cap. 71) provides that arbitration may be used to resolve consumer disputes, as long as the consumers have given written consent after the disputes have arisen or the consumers have themselves had recourse to arbitration in pursuance of the relevant arbitration agreements.</p> <p>We will study any identified advantages of extending the use of arbitration or other forms of dispute resolution to resolve consumer disputes against the background that there already exist various schemes administered in Hong Kong whereby different types of disputes, including consumer disputes, may be resolved in one way or another (e.g. the scheme administered by the Financial Dispute Resolution Centre²).</p>
<p><u>Recommendation 8.9</u></p> <p>The Government should further promote the usage of arbitration institutions with secretariats in Hong Kong, especially HKIAC.</p>	<p>We join forces with HKIAC and international arbitral bodies having a secretariat in Hong Kong (mentioned in the response to Recommendation 8.5 above) from time to time to promote the use of arbitration services at local, regional and international seminars and conferences and when forming delegations to visit places outside Hong Kong.</p>

² See http://www.fdr.org.hk/en/html/aboutus/aboutus_fdrs.php.

Consultant's Recommendations	Government's Response
	<p>In terms of promotion of arbitration, including the hosting of major arbitration events held in Hong Kong, the Hong Kong Arbitration Week organised by HKIAC, among other promotion efforts of the Centre, has been running for seven years and is well-established locally and internationally. Every year it attracts hundreds of visitors to Hong Kong and wide media coverage.</p> <p>HKIAC considers itself well-equipped to administer investor-State arbitrations. Its Secretariat has extensive experience in administering investment treaty arbitrations, and it has also hosted a number of investment treaty arbitration hearings. HKIAC offers free hearing space to parties in cases involving a State eligible for Organisation for Economic Co-operation and Development (OECD) Development Assistance Committee (DAC) Official Development Assistance (ODA) where they agree to HKIAC administration; a measure which it observes would be relevant to many investor-State arbitrations.</p> <p>We will continue to explore ways to further the promotion through HKIAC and other arbitration institutions with secretariats in Hong Kong.</p>

Consultant's Recommendations	Government's Response
<p><u>Recommendation 8.10</u></p> <p>Consideration should be given to the establishment of an institution-neutral shared hearing facility and other hearing facilities for arbitration and other dispute resolution proceedings, for use by institutions apart from HKIAC, parties engaging in <i>ad hoc</i> arbitrations as well as other alternative dispute resolution service providers. Favourable terms for access to these facilities and office space in the same building could also be offered as a way to encourage other well-known arbitral institutions to establish permanent offices in Hong Kong.</p>	<p>The formation of the Legal Hub is intended to attract reputable arbitration bodies and LROs to set up offices in Hong Kong.</p> <p>The LROs allocated space in the Legal Hub will share the space in close geographical proximity to each other.</p> <p>We will study the feasibility of establishing an institution-neutral shared hearing facility in the Legal Hub context, or otherwise.</p>
<p><u>Recommendation 8.11</u></p> <p>Promotion of Hong Kong's arbitration capabilities should be directed to market intermediaries in countries along the Belt and Road, etc.</p>	<p>We organise promotions to the legal and business community in various emerging economies in the Asia-Pacific region from time to time.</p> <p>Consideration will also be given to reinforcing Hong Kong's role in the provision of legal and dispute resolution-related training/capacity building opportunities for professionals and government officials from the Belt and Road countries.</p> <p>We will take Recommendation 8.11 into account in planning our</p>

Consultant's Recommendations	Government's Response
	future promotional activities.
<p><u>Recommendation 8.12</u></p> <p>Hong Kong should promote its arbitration capabilities in the “non-traditional” markets of Russia and India.</p>	<p>We would consider sponsoring events, such as seminars, forums, competitions and moots for the purpose of promoting to Russia and India. Apart from having our delegates attend legal forums in Russia (e.g. the Solicitor General and the Senior Assistant Solicitor General (Arbitration) attended St. Petersburg International Legal Forum in May 2017 and the Eastern Economic Forum in Vladivostok in September 2017. The Solicitor General was one of the speakers at both events), we will also consider organising promotional trips to Central Asia and Europe including Russia.</p> <p>We would consider sponsoring or supporting arbitration moots participated by students from developing countries such as India.</p>
<p><u>Recommendation 8.13</u></p> <p>Hong Kong should leverage the opportunities arising from Mainland China's outbound investments.</p>	<p>Hong Kong Legal Services Forum is held on a biennial basis to promote Hong Kong legal and dispute resolution services to enterprises and other users in the Mainland. Previous Legal Services Forums were held in Shanghai (2010), Guangzhou</p>

Consultant's Recommendations	Government's Response
	<p>(2012), Qingdao (2014) and Nanjing (2016). This is in addition to other promotional seminars held recently in the Mainland, e.g. Chongqing, Chengdu, Beijing, Shanghai, Guiyang, Xi'an and Wuhan.</p> <p>We will liaise with the relevant government bodies in the Mainland to explore ways to promote Hong Kong's arbitration services to the Mainland companies, including state-owned enterprises.</p>
<p><u>Recommendation 8.14</u></p> <p>Hong Kong should leverage its pre-eminence in education and training in the field of dispute resolution.</p>	<p>It is our long term goal to run capacity building programmes for the judicial officers and legal professionals of our target economies. DoJ has collaborated with UNCITRAL and HKIAC to co-organise the biennial Judicial Summit, which includes capacity building programmes for judicial officers from the Asia-Pacific region.</p>
<p><u>Recommendation 8.15</u></p> <p>Clarity as to the arbitrability of intellectual property disputes should be provided in the law, and so as the scope of permissible disputes.</p>	<p>The Arbitration (Amendment) Ordinance 2017 was enacted in June 2017 to amend the Arbitration Ordinance (Cap. 609) to clarify that disputes over intellectual property rights are arbitrable.</p>

Consultant's Recommendations	Government's Response
	The relevant provisions came into effect on 1 January 2018.
<p><u>Recommendation 8.16</u></p> <p>The Government should negotiate an agreement to implement a mechanism for mutual recognition and enforcement of arbitral awards with Taiwan.</p>	<p>Both Hong Kong and Taiwanese awards are, in principle, enforceable under the respective laws of both jurisdictions.</p>
<p><u>Recommendation 8.17</u></p> <p>The Government should explore preferential access to Mainland China market for Hong Kong's arbitral institutions.</p>	<p>In November 2015, HKIAC opened a representative office in the China (Shanghai) Pilot Free Trade Zone and became the first international arbitration institution to open a representative office in Mainland China.</p> <p>We are exploring with the relevant Mainland authorities the viability of allowing Hong Kong arbitral institutions to administer arbitration cases domestically in Mainland China.</p>