

Speech by SJ at 26th ICCA Congress Opening Ceremony (English only) (with photo)

Following is the speech by the Secretary for Justice, Mr Paul Lam, SC, at the 26th ICCA Congress Opening Ceremony today (May 5):

Dr Alexandrov (President of the International Council for Commercial Arbitration (ICCA), Dr Stanimir Alexandrov), Justin (Co-Chair of the ICCA 2024 Hong Kong Host Committee Mr Justin D'Agostino), Neil (Co-Chair of the ICCA 2024 Hong Kong Host Committee Mr Neil Kaplan), Rimsky (Co-Chairperson of Hong Kong International Arbitration Centre (HKIAC) Mr Rimsky Yuen, SC), David (Co-Chairperson of HKIAC Mr David Rivkin), Joanne (Secretary-General of HKIAC, Ms Joanne Lau), distinguished guests, ladies and gentlemen,

Let me begin by expressing my gratitude to ICCA for agreeing to host the Congress in Hong Kong, which is a very strong vote of confidence in Hong Kong as an international arbitration centre. I must also congratulate the HKIAC on its successful organisation of the Congress. The Department of Justice is indeed very pleased to be one of the supporting organisations by providing financial and other supports.

I can now understand why the ICCA Congress is hailed as the Olympics of the international arbitration community. The Olympics is renowned for the great diversity and high standard of the participants. This ICCA Congress has attracted over 1 300 leading experts in international arbitrations from more than 70 jurisdictions. This is a new record, which I believe will be extremely difficult to break.

With so many friends from other parts of the world and the Mainland, as the Secretary for Justice of Hong Kong, I feel duty bound to seize the opportunity to impress on you that Hong Kong is and will remain to be a leading international arbitration centre. I am going to recast the four letters "ICCA" as an acronym to illustrate the unique strengths and qualities possessed by Hong Kong that make it stand out as one of the best venues for international commercial arbitration.

"I" – Institutional support

"I" stands for "institutional support". Hong Kong is home to many world-class and internationally renowned arbitral institutions. As our home-grown dispute resolution institution, HKIAC has always been ranked as one of the most-preferred arbitral institutions in the world. It is very encouraging to see that HKIAC received a total of 281 arbitration filings in 2023. I think Joanne mentioned some other relevant figures. They continued to be predominantly international arbitration featuring parties from 45 jurisdictions. The total amount in dispute in all arbitration cases was HK\$92.8 billion, which is equivalent to about US\$12.5 billion, representing a

record high for HKIAC.

Among sponsors of the ICCA Congress are other reputable arbitral institutions with offices based in Hong Kong, such as the China International Economic and Trade Arbitration Commission (CIETAC), and the South China International Arbitration Center (Hong Kong) (SCIA(HK)).

"C" – Comprehensive legal framework

The first "C" stands for our "comprehensive legal framework" in arbitration. The Arbitration Ordinance in Hong Kong forms the backbone of our arbitration framework. Coming into effect in 2011, the Ordinance is largely based on the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, which is familiar to practitioners from both civil law and common law jurisdictions, as well as the international business community.

Taking note of arbitration users' needs for flexible funding options, we have refined our arbitration law to specifically provide for third party funding of arbitration in February 2019. In addition, the Outcome Related Fee Structures for Arbitration (ORFSA) was fully implemented in Hong Kong in December 2022. As at March 2024, based on statistics provided by our arbitral institutions, 88 arbitration cases were disclosed to be conducted with third party funding and five cases were conducted with ORFSA.

As to enforcement, arbitral awards made in Hong Kong are enforceable in Hong Kong, and over 170 contracting parties to the New York Convention. But more importantly, Hong Kong enjoys a unique strength that is not shared by other jurisdictions. Under the principle of "one country, two systems", Hong Kong has entered into three mutual legal assistance arrangements with the Mainland on not only mutual enforcement of arbitral awards, but also mutual assistance in interim measures which allow parties to arbitral proceedings administered by the designated arbitral institutions to apply to the Mainland courts for interim measures for preservation of asset, evidence and conduct, before an arbitral award is made. As at March 2024, Hong Kong's arbitral institutions had processed 118 applications for interim measures made to the Mainland courts, and court orders in respect of over RMB16.3 billion worth of assets had been issued.

"C" – Court's pro-arbitration approach

The second "C" stands for "the Court's pro-arbitration approach". The Hong Kong judiciary has long been adopting a very pro-arbitration approach. And such an approach is confirmed by a number of recent court judgments.

Last year, a landmark judgment C v D was handed down by the Hong Kong Court of Final Appeal. The judgment recognised the distinction between admissibility and jurisdiction, and held that there is a presumption that the issue of non-compliance with a precondition to arbitration is a question of admissibility to be decided by the arbitral tribunal, thereby limiting the scope of court intervention in the arbitral process. In a more recent case of CNG v G, the Court of First Instance reaffirmed the fundamental principles

that arbitration is a voluntary and consensual process of final dispute resolution; and it was stressed that the Court must not only respect the autonomy of the tribunal, but also leave the tribunal free to decide the dispute with the proper exercise of its case-management powers, when the tribunal is clearly in the best position to manage its own proceedings and procedure. Lastly, in two very recent judgments handed down around two weeks ago, *Re Simplicity & Vogue Retailing (HK) Co Ltd*, and *Re Shandong Chenming Paper Holdings Ltd*, the Hong Kong Court of Appeal noted and ruled that, save in wholly exceptional circumstances, the court should decline to entertain a petition for winding up or bankruptcy when there is an arbitration agreement concerning the debt in question.

"A" – Accessibility to the international legal community

Lastly, the letter "A". Letter "A" stands for the accessibility to the international legal community. I wish to emphasise that the international arbitrations in Hong Kong are accessible to the international legal community. There is no doubt that Hong Kong itself has a very strong tool of legal talents specialised in international arbitrations. This is demonstrated by the large number of sponsors and organisers of not just official events but side events, many of which are leading law firms and barristers' chambers in Hong Kong.

But the point that I really wish to make is that Hong Kong welcomes friends from the Mainland and other parts of the world to take part in international arbitrations conducted here. As an example, to enhance immigration convenience, last year, the Government has expanded the Pilot Scheme on Facilitation for Persons Participating in Arbitral Proceedings in Hong Kong for all visitors to participate in arbitral proceedings here as arbitrators, expert and factual witnesses, counsel in the arbitration, and parties to the arbitration, without the need to obtain any employment visa. From March 2023 to March 2024, 96 persons were allowed to participate in Hong Kong arbitral proceedings without the need to obtain any employment visa under the scheme.

I truly and firmly believe that Hong Kong's reputation as a leading international arbitration centre is well deserved. However, to enable Hong Kong to maintain and enhance such a status, we need your trust and support, in particular, those of you from overseas. Seeing is believing. I hope that, apart from taking part in the official and side events of this ICCA Congress, you will have the chance to experience the Hong Kong life including our delicious food, unique culture and beautiful scenery. I am sure you will be convinced that Hong Kong remains to be a very open, friendly and diversified international society with a solid foundation based on the rule of law.

On this note, I wish to say thank you again, and I wish you all a pleasant evening in celebrating the commencement of the ICCA Congress, and of course, a very fruitful, constructive and pleasant stay in Hong Kong. Thank you very much.

