



Developments in Arbitration & Alternative Dispute Resolution in Hong Kong

Author: Christopher To*

The economic position of Hong Kong has been severely affected by global and regional factors that began with the Asian financial crisis in 1997 to the more recent incident that resulted in people turning their attention to health issues. The Severe Acute Respiratory Syndrome (SARS) not only affected Hong Kong, but other countries in Asia and North America as well. But Hong Kong has weathered the storm and is emerging and regaining its strength. People's attitude to health, the environment and a well-balanced life style is gaining high praise. This is reflected in a recent survey showing a growing number of organizations preferring to establish a presence in Hong Kong as their regional base in Asia as well as Hong Kong being ranked by the United Nations Human Development Index as the best place to live in Asia, second only to Japan.

With the impact of China trade and the recent conclusion between Hong Kong and the Mainland of China of the Closer Economic Partnership Arrangement (CEPA) in late June 2003, which grants duty-free access of Hong Kong products to the Mainland of China and gradual access of Hong Kong companies offering trade related services the right to market their services in the Mainland of China without quantitative restrictions, things are really looking bright for Hong Kong.

With increased trade, disputes are inevitable. The Hong Kong International Arbitration Centre (HKIAC) has seen a steady growth in its services, particularly in the area of cross-border trade. In 2002 there were 13 arbitration cases dealt with by the HKIAC in which both parties were from the Mainland of China. This is compared to 1997 during which there were no reported cases involving both parties from the Mainland of China. Another interesting statistic is that in 2002 there were 2 arbitration cases at the HKIAC involving both parties from the United States of America. This reflects a greater acceptance of Hong Kong as one of the world's preferred centres for the resolution of disputes. In 2002, the total number of arbitrations referred to the HKIAC stood at 320 of which 20 involved Internet Domain Name disputes. This figure does not include mediations. Figures for 2003 are due shortly but preliminary indications by the HKIAC Secretariat indicate that the figures may be slightly down compared to 2002. A major reason for this was the SARS factor as stated above.

In 2002, 23 commercial mediations were referred to the HKIAC, and in the same year 330 family mediations were conducted under the Judiciary's Pilot Scheme on Family Mediation. In March 2003, The Law Reform Commission of Hong Kong completed its report and recommendations on "The Family Dispute Resolution Process" and, if adopted, will make mediation an integral part of most family disputes. The Commission recommended that the Courts be under an active duty to promote mediation and that statutory provisions be made for legal aid to be available for mediation, guardianship, custody and access. It is also recommended that the Legal Aid Department should establish a proper scheme for the funding of family mediation that should include education, publicity and screening of potential cases. With these suggestions the Hong Kong Mediation Council, a division of the



HKIAC, has been actively promoting the benefits of mediation to the Hong Kong community. One initiative is the cooperation with the Hong Kong Federation of Insurers to provide low cost mediation services for the insurance industry where the total amount in dispute is less than HK\$2 million. More than 20 insurers have indicated interest in the scheme and have pledged their support. Another promising initiative is the construction pro bono mediation scheme, which has attracted interest from the various sectors of the construction industry.

HKIAC's cooperation with the China International Economic and Trade Arbitration Commission (CIETAC) in the Asian Domain Dispute Resolution Centre (ADNDRC) has been going from strength to strength. In total 47 Internet Domain Name dispute cases have been filed with ADNDRC since it was established. As of 30 September 2002, the HKIAC was approved by the China Internet Network Information Center (CNNIC) to be one of two approved centers (the other being CIETAC) to handle ".cn" Internet Domain Names disputes. As of 24 September 2003, a total of 5 ".cn" disputes have been referred to the HKIAC.

Hong Kong's record of enforcing arbitration awards has continuously received praise from the international legal community. In 2002, 23 arbitration awards (including awards rendered in the Mainland of China, United Kingdom, United States of America, Korea, Switzerland, Sweden and France) were referred to the Courts of Hong Kong for enforcement of which 3 applications were opposed and none were set aside (Details are available from HKIAC's website at www.hkiac.org under the section "Statistics"). This reflects strong support, commitment and understanding by the Hong Kong Judiciary with respect to the process of arbitration.

With these developments and Hong Kong's ranking by Canada's Fraser Institute as the freest economy in the world for the seventh year running, the HKIAC is positioned to continue its growth as an organization that business people and others rely upon and trust as their preferred dispute resolution centre.

For further updates on the activities of the HKIAC please refer to their website at www.hkiac.org .

*(Author is the Secretary General of HKIAC, Hong Kong. Author can be reached by email: christopher@hkiac.org)