

Speech by SJ at World Maritime Merchants Forum (English only) (with photo)

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the World Maritime Merchants Forum today (October 20):

Distinguished guests, ladies and gentlemen,

It is a great honour to speak at the first World Maritime Merchants Forum and to address such a distinguished audience from the maritime, legal and commercial sectors around the globe.

COVID-19 has changed the world, forcing global economies to rethink their mode of operation, in particular in the area of supply chain and logistics. Technology is an inevitable part of the equation in this rethinking given the new normal that the world may well have to adapt to.

There is a clear shift of maritime and trading activities to the East, meaning a larger demand for maritime-related financial and legal services. This trend is inevitable when, out of the world's top 10 container ports, China accounts for seven of them, and three of which are cities of the Greater Bay Area (GBA), namely Shenzhen, Guangzhou and Hong Kong.

As reported by BIMCO, the volume of container shipping in the first quarter of this year hit 42.9 million TEUs, representing an increase of 10.7 per cent from the first quarter of 2020. China's export alone has increased by 33.7 per cent from January to August this year, and generated an increase in shipping activities outbound. However with little or no inbound shipment back, shipping costs have more or less doubled.

Hong Kong prides itself as a centre for the provision of services for the maritime industry. It is the policy of Hong Kong to develop high value-added maritime business services, including ship registration, ship finance and management, marine insurance and marine legal and arbitration services. More tax concessions will also be introduced to attract the commercial principals of the maritime and trading industry to establish a business presence in Hong Kong.

In addition, the National 14th Five-Year Plan and the GBA Development Plan explicitly support Hong Kong in consolidating and enhancing its status as a centre for international legal and dispute resolution services in the Asia-Pacific region. With our unique position under these two national policies, Hong Kong's maritime industry and related services have been given new impetus for growth.

Hong Kong is now home to nearly 900 maritime-related local and foreign companies, in ship owning and management; ship broking and agency; maritime-

related financial, insurance and legal services; and classification societies. These form a quality and full-fledged service cluster appealing to the international maritime community. Hong Kong's ship finance business is flourishing. In the past decade, shipping loans and advances here in Hong Kong have surged by an average of 8.6 per cent per year, amounting to about \$129.1 billion by the end of 2020. In fact, eight of the world's top 10 book runners have offices in Hong Kong. Eighty-five local and foreign insurance companies operate in Hong Kong and they underwrote total gross premiums of about HK\$2.76 billion for insurance on ships in 2020, with a growth rate of 14.6 per cent. Twelve out of the 13 principal member clubs (which underwrite 90 per cent of the world's ocean-going tonnage) under the International Group of P&I Clubs have established their offices in Hong Kong, making our city the largest P&I cluster outside London.

The advantages of Hong Kong in legal and dispute resolution services are plentiful. I will first focus on areas that are unique to Hong Kong. Hong Kong has entered into various reciprocal arrangements with the Mainland. In 2019, Hong Kong signed a reciprocal arrangement with the Mainland to allow parties arbitrating in Hong Kong to seek interim measures before the Mainland courts. Such measures include freezing injunctions, preservation of evidence, etc. Hong Kong is the only jurisdiction in the world outside of Mainland that has this arrangement with the Mainland, thanks to the "one country, two systems" policy.

Apart from arbitration-related arrangements, in 2019 Hong Kong and Mainland have also concluded an arrangement for reciprocal recognition and enforcement of court judgments in civil and commercial matters. Legislation will soon be introduced in Hong Kong to implement the arrangement.

Since last year, Hong Kong is one of the four designated arbitration venues in BIMCO's Law and Arbitration Clause 2020, which provides for arbitration to be conducted in accordance with the Hong Kong Maritime Arbitration Group (HKMAG) Terms. To embrace the technology trend, the HKMAG Terms have been updated to allow the use of electronic signature of the award, expediting the publication of award and thus saving time and costs for parties.

With these unique and other core advantages, the question arises as to how one is to capitalise on them and to ensure Hong Kong's strengths as an international shipping law centre and maritime arbitration centre continue to thrive. I propose to approach the matter in three aspects.

First, consider choosing Hong Kong law as the applicable law in the relevant transactions. It is not in dispute that English law has been the most chosen law to govern transactions in maritime matters. However with the shift of the maritime and trade activities to the East, the increasing number of shipowners and shipping companies that are established in China, and the businesses' desire to use common law as the legal system, there is a lot to be said about choosing Hong Kong law as the applicable law. First, under "one country, two systems", Hong Kong practises common law. Hong Kong law is premised on the English law and has a lot of common roots in its approach to legal, in particular commercial, questions. Secondly, Hong Kong law is the

only bilingual common law in the world, where English and Chinese can be used. Our legislations are all bilingual and available online at Hong Kong e-Legislation. Judgments set out the reasons for the decisions and can be made in English or Chinese, and they are all available publicly online.

Hong Kong law provides a feasible and viable alternative in the new normal.

Secondly, it is the choice of methods of dispute resolution, be they litigation arbitration or mediation. Hong Kong provides a very good venue. Hong Kong provides a comprehensive choice of methods of dispute resolution.

First, the independent judiciary in Hong Kong provides a solid foundation for the rule of law. The Basic Law provides that Hong Kong is vested with independent judicial power, including that of final adjudication. Furthermore, the courts shall exercise the judicial power independently, free from any interference. The security of tenure and the immunity given to judges as well as the judicial oath afford them the right and duty to adjudicate cases impartially and independently, in accordance only with the law and the evidence. This ensures that our rule of law is well protected.

The most common form of method to resolve shipping disputes however is actually by way of arbitration. It provides for a speedy, final and binding award, made in accordance with the applicable law chosen by the parties and the relevant procedural rules governed primarily by the arbitration laws of the seat of arbitration and the rules of the administering body.

The more modern trend is to provide for mediation in shipping disputes. This has the benefit of preserving working relationships, finding a creative solution to the conflict with a view to addressing and achieving a common goal and thereby creating a win-win situation. In Hong Kong we embrace the concept of mediation and have provided lots of opportunities and training that will promote the use of mediation in international, investment and commercial disputes, including those of maritime disputes.

Thirdly, given that arbitration is the most commonly chosen method in shipping disputes, we must continue to promote the use of Hong Kong as the seat of arbitration. Hong Kong recognises ad hoc arbitration, as well as institutional arbitration. Hong Kong has a mature arbitration community with experienced practitioners from around the world. We have the most up-to-date arbitration laws (based on the latest version of UNCITRAL Model Law) and a pro-arbitration and arbitration-friendly judiciary ensuring that party autonomy is respected in line with procedural propriety.

Importantly, the HKMAG set up in 2019 (originally formed as a Division of the Hong Kong International Arbitration Centre since 2000) provides specialised arbitration services in maritime disputes. The list of arbitrators includes both lawyers as well as commercial men in the industry who are experienced in this field.

The unique attraction of choosing Hong Kong as the arbitral seat includes the ability for parties to arbitration in Hong Kong, if administered

by a designated body such as HKMAG, to seek interim measures from the courts in the Mainland as explained above. Furthermore awards are enforceable under the New York Convention in over 160 jurisdictions as well as in other parts of China by reason of the mutual legal assistance arrangements that have been in place.

Ladies and gentlemen, the current environment, whilst challenging, provides for unique opportunities for Hong Kong to consolidate and capitalise on its inherent strengths and the national policies to be an international shipping law and maritime arbitration centre. This is the direction that Hong Kong will continue to move toward. I wish the discussions this afternoon around the world will be very fruitful and insightful. Thank you very much.

