



Arbitration in Hong Kong

**Louise Barrington, International Arbitration Consultant,
Goldbolt & Co, Solicitors**

Centre of Excellence

In the mid-1990s, the world council of the International Chamber of Commerce was deciding where to situate its new Asian regional office. Contenders were not lacking. Kuala Lumpur, Singapore, Manila, Jakarta and Bangkok were all in the running – each claiming to be the ‘hub’ of South-East Asia. The ICC chose Hong Kong, not only for its geographical location, communications and modern infrastructure, but also because of its historic role as the gateway to China. Another key factor in their decision was Hong Kong’s fine reputation in the field of in-dispute resolution.

Janus-faced, Hong Kong looks both west and east. It is very much a part of Asia. A cosmopolitan pot-pourri, it attracted traders, investors, technical experts and their professional advisers from the entire region. These immigrants brought with them not only their ideas and expertise, but also their families, languages and cultures. Consequently, many Asian commercial operators feel comfortable in Hong Kong, although they would hesitate about arbitrating in New York, London or Geneva.

Yet Hong Kong law developed in tandem with English law during its century and a half as a British colony. Hong Kong judges followed English precedents and the court of last resort was the English Privy Council. With the Handover (or as the Chinese prefer to

say, the Reunification), Hong Kong’s status as a Special Administrative Region (SAR) of the People’s Republic of China promised ‘one country, two systems’ for the following 50 years. Now Hong Kong has its own Court of Final Appeal and has promulgated many new laws, but its legal system and training remain reassuringly close to those in Britain.

As a British colony, Hong Kong had been party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. China agreed that after 1 July 1997, Hong Kong would continue as a Convention jurisdiction. Regrettably, in the few years leading up to the Handover and until last year, prudent international experts became reluctant to choose Hong Kong as a venue for arbitration because of a bizarre anomaly. Because of the ‘one country, two systems’ situation, Mainland China and Hong Kong are distinct legal jurisdictions. Yet the New York Convention operates only between sovereign nations, which Hong Kong is not. Thus, no legal mechanism allowed for each side of the border to enforce the other’s arbitration awards. That situation came to an end with an agreement signed between Hong Kong and Beijing in June 1999.

Prior to 1997, Hong Kong’s government had realised the commercial advantages of having a modern arbitration law, and the Arbitration



Ordinance (cap.341), is state of the art. The Ordinance provides two regimes, one for domestic and the other for international arbitrations. For international cases Hong Kong adopted the UNCITRAL Model Law in 1990. In a Hong Kong arbitration, the authority of the arbitral tribunal is extensive and court intervention is minimal. Over the years, amendments to the Ordinance have harmonised domestic and international procedures to a great extent. Parties have the option of 'opting out' of the UNCITRAL law in favour of the domestic regime set out in Part II of the Ordinance.

Over the last 15 years, but especially in the last two years since the Asian financial crisis, Hong Kong has seen a steady upsurge in the number of international arbitrations it hosts each year. The ICC Court of Arbitration had three cases in Hong Kong in 1999 and four so far this year. According to Christopher To, Secretary General of the Hong Kong International Arbitration Centre, 1999 was their busiest year to date, and he expects the Centre to host over 300 arbitrations this year.

In fact, the HKIAC is another good reason for coming to Hong Kong to arbitrate. Established in 1985 as an independent dispute resolution forum, today the HKIAC, in its Exchange Square offices, hosts both domestic and international arbitrations, mediations, and a number of related professional associations. Meeting rooms, CCTV and modern telecommunications facilities are available. The library is accumulating an impressive collection of dispute resolution texts and journals. HKIAC staff can handle everything from translations to transcripts. They'll even order pizza or a Chinese buffet for those overtime negotiations.

With a wealth of legal and technical expertise available, Hong Kong is becoming a focal point for regional cooperation and cutting-edge dispute resolution initiatives. Groups like the ICC's Hong Kong Business Council Arbitration Committee, the Chartered Institute of Arbitrators, the Hong Kong Institute of Arbitrators and Construction Law Society and the Mediation Council all use the HKIAC as base. Their cumulative efforts augur well for the SAR's continued status as a dispute resolution hub par excellence.