

Is China a boon or curse for Hong Kong's maritime arbitration aspirations?

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- OPINION
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Belt and Road will provide the impetus, but Beijing has to convince the world that Hong Kong is not just another Chinese territory



HONG KONG FACES FIERCE COMPETITION FROM SINGAPORE IN REGIONAL ARBITRATION SERVICES.

NO ONE should underestimate Hong Kong's ambition to reclaim its title as the arbitration centre of Asia.

Think of its desirable attributes: a well-established judicial system based on English common law, a deep talent pool of legal professionals from various nationalities, as well as worldwide recognition and enforcement of arbitral awards.

But what really distinguishes Hong Kong's prospects from its closest competitor Singapore is perhaps proximity to China, the pivot of the Belt and Road Initiative and arguably the up and coming leader in the next round of globalisation.

That was the topic discussed by a panel of Hong Kong-based lawyers and arbitrators at a BRI seminar held by the Hong Kong International Arbitration Centre on Monday.

Beijing's long-term vision backed with multi-trillion dollar investments makes the US Marshall Plan look like "chicken feed", David Beavers, managing partner of Ince & Co, told the audience.

So, while the initiative spans 60 countries and jurisdictions, investors will need reliable arbitration venues, such as Hong Kong, to resolve disputes and bolster their confidence in doing business abroad.

Mr Beavers may be right that the former British colony, now a Chinese special administrative region with an independent legal system, looks to be an ideal choice.

It is certainly favoured by Chinese enterprises, which have already been spending billions overseas on ports and rail networks, among other infrastructure projects. Besides its judicial advantages, Hong Kong has also been included in Beijing's 13th five-year plan with the aim of becoming the international legal and dispute resolution services hub in the Asia Pacific.

It is also easier for foreign counterparties to accept Hong Kong, largely owing to one of its key assets, namely, neutrality. Or is it?

Don't forget Beijing has sovereignty over Hong Kong and the authority to interpret the city's mini-constitution, the Basic Law. The central government has increasingly made that evident to locals as well as the rest of the world over the past few years.

“It’s an issue, yes,” said Arthur Bowring, convenor of the Hong Kong Maritime Arbitration Group and former managing director of the Hong Kong Shipowners Association.

People do think Beijing has too much influence in Hong Kong and its legal community, he admitted. As such, his organisation, which is a division of HKIAC, has been revving up efforts to explain why the autonomous territory’s law is different from that on the mainland.

Integrity

Christoforos Bisbikos, a partner at Watson Farley & Williams, said so far concerns were mostly about integrity of the Basic Law rather than legal disputes from the commercial side.

Other panellists, including Stephenson Harwood senior associate Elizabeth Sloane and Troutman Sanders partner Ronald Sum, argued that Hong Kong’s judicial system would remain independent and impartial, backed by well-respected courts and the “one country, two systems” framework that will be valid over the next 30 years.

They are all correct. A charterer that wants to hire a Chinese vessel to transport cargo along BRI routes, probably would not view Hong Kong’s neutrality as a major concern when drafting the dispute resolution clause.

However, for foreign investors or investees, who embark on decades-long infrastructure projects involved with substantial Chinese interests, such as a port, the story could be quite different.

Hong Kong, without question, has the potential to successfully ramp up its arbitration services, among its many aspirations. Beijing just has to be more convincing that the city is not only a part of China, but also a part of the world.