

**Speech by The Honourable Chief Justice Andrew Cheung
at the Standing International Forum of Commercial Courts
Third Full Meeting (12 March 2021)**

Short Reflections on Specialised Commercial Courts

1. I wish to start by thanking Chief Justice Menon and his Singaporean team, as well as the Steering Group led by Lord Thomas and the Secretariat of SIFoCC for organising this highly successful Meeting. I would like to share some brief reflections on specialised commercial courts.

2. There are many factors which may affect the appeal or usefulness, as it were, of a commercial court to litigants as a forum for dispute resolution when compared with other commercial courts or with arbitration and mediation. I will mention three obvious ones.

3. First, the availability of judges with the necessary expertise to man the commercial court. Where the jurisdiction is a relatively small one and the supply of legal and judicial talent is limited, experienced commercial judges may be difficult to find. Engaging part-time overseas judges with the necessary expertise to man the commercial court is certainly an attractive option. But the extent of willingness to do so varies from jurisdiction to jurisdiction. Amongst

other things, this would depend on the constitutional setup and the legal outlook of the jurisdiction concerned.

4. A similar point can be made regarding the supply of experienced commercial lawyers with the requisite skill and expertise. Allowing foreign advocates to be admitted on an *ad hoc* basis to appear in the commercial court is no doubt an attraction to the parties. Yet the protection of the local legal profession has to be borne in mind, not so much for the sake of the interest of lawyers as such, but for public interest's sake, as the maintenance of a strong and independent local legal profession is undeniably a matter of public interest.

5. Secondly, a user-friendly approach to the practice and procedure of a commercial court matters. Take the proof of foreign law as an example. The traditional common law approach of treating questions of foreign law as questions of fact to be established by partisan expert evidence can be costly and time-consuming. Instead, such issues may be treated as part of the legal submissions to be decided by the court. Again, to some extent, this would depend on the expertise and experience of the commercial judge concerned and whether foreign advocates are allowed. Another example is the appeals procedure. To what extent a jurisdiction is prepared to adopt, for instance, a leap-frog appeal procedure to shorten its normal appeals process may affect the parties'

willingness to litigate in its commercial court. Jurisdictions with different legal traditions and judicial outlook may come to different conclusions.

6. Thirdly, the question of enforcement of judgments may be crucial, absent the equivalent of a New York Convention for commercial judgments. A jurisdiction which has concluded many bilateral or multilateral agreements on mutual recognition and enforcement of commercial judgments with other jurisdictions is likely to have an edge in attracting international commercial litigation. Naturally, different parties may find different commercial courts to be more appealing, whether generally or specifically in relation to a particular dispute or type of dispute. For instance, the recent arrangement reached by Hong Kong and Mainland China for reciprocal recognition and enforcement of civil and commercial judgments is likely to make Hong Kong a particularly attractive forum for commercial litigation where one or more of the parties involved are Chinese Mainland entities, once the necessary local legislation is enacted.

7. So much for my thoughts on this topic. Thank you very much.
