

Report on the Trip to Macau for the 1st Macau Lawyers' Congress

1. The 1st Macau Lawyers' Congress (“**the Congress**”) was successfully held by Associação dos Advogados de Macau on 20 and 21 September 2019 in Macau, and I attended the Congress as a member of the Standing Committee on Greater China Affairs on behalf of the Bar nominated by the Chairman Mr Philip Dykes SC.

Overview

2. The theme of the Congress was “The Legal Profession in Macau at the 20th Anniversary of the Macau SAR: Reflection and Future”.
3. The keynote speech was delivered by the President of Associação dos Advogados de Macau, Mr Jorge Neto Valente. He reviewed the history of the legal profession in Macau especially in the past 20 years after the handover and the establishment of Macau SAR.
4. In his speech, it was highlighted that, while the legal system has been maintained by the ‘one Country, two systems’ policy as enshrined by the Macau Basic Law, the legal profession keeps developing and benefiting from the growth of the social economy of Macau. Apart from local legal market, Macau lawyers have been playing an increasingly significant role as the connection between the Mainland and Hong Kong on one hand, and other Portuguese-speaking countries especially Portugal and Brazil on the other. Looking forward to the future, Mr Valente emphasised the advantage of Macau lawyers acting as a bridge connecting different international markets as well as legal systems.
5. According to Mr Valente, there are, however, challenges for the lawyers to overcome, in order to keep pace with the legal profession in other jurisdictions against the background of ‘One Belt One Road Initiative’ and the development of the Greater Bay Area. The legal profession in Macau is urged to contribute more in developing the alternative dispute resolution (“**ADR**”) mechanisms in Macau, especially mediation and arbitration, as the local law and practice in this area are less developed comparing to Hong Kong even the Mainland.

6. Other speeches were delivered by guests including the Secretariats for Administration and Justice of Macau, the Assistant Prosecutor-General of Macau, and the vice president of All China Lawyers Association from Beijing.

Highlights of the Congress

7. The 2-day Congress had an intensive schedule, which comprised eight panel discussions and more than thirty speakers. The topics covered a wide range of hot issues under Macau law and practice.
8. The following are some of the discussions which I found to be particularly interesting: -
9. **Role of Macau Lawyers and Statistics.** Ms Silva Lou Sio Fong, a practising lawyer, conducted a survey after the announcement of the *Notice of the Ministry of Justice on Expanding the Geographical Scope of Partnership Association of Mainland Law Firms and Hong Kong or Macao Law Firms* on 1 March 2019. It reveals that only 10% of Chinese-speaking Macau lawyers have no experience in working with Mainland lawyers, while 90% have cooperated with Mainland lawyers on case basis or regular basis. On the other hand, 50% of them have experience working with Portuguese or Brazilian lawyers. It shows that Macau lawyers' potential to help to connect the Mainland market and Portuguese or Brazilian ones. However, it calls for concerns that figure shows only 20% of Macau lawyers have experience in arbitration with PRC elements. Ms Fong encourages the lawyers to explore the opportunities to work together with Mainland lawyers especially in ADR practice.
10. **Status of Separate Legal Entity of Lawyer's Firms.** Ms Andreia Lao Siu Chi, a practising Macau lawyer and lecturer at the University of Macau, calls for the amendment of statute to give law firms the status of separate legal entity, upon her analysis that the current partnership as adopted by most of lawyers is not legally compatible with the concept of separate legal entity under Macau law. However, there is a real need that lawyers should work together under a firm's name that is able to assume liability. This suggestion was backed up by most of the speakers.

11. **Legal representation in Ancillary Civil Claim in Criminal Cases.** Ms Leong Choi Man explained a current loophole. A defendant in a civil case is eligible for legal aid after passing the income test but not in criminal cases. However, if there is an ancillary civil claim in a criminal case, the scope of court-assigned lawyer's service does not cover civil claim. In practice, although some court-assigned lawyers would also help the defendants to defend, some judges are of the view that papers relevant to the civil claim should be removed from the bundle before they are passed to such lawyer. Therefore, the defendant would have to engage a private lawyer or to apply for legal aid, which cause a lot of practical problems, for example, the defending strategies might be different or even conflicting in relation to the same set of facts. Mr Paulino Comandante, the Secretary General of Associação dos Advogados de Macau also a member of the legal aid committee, commented that in practice in considering the applications, they would prefer to engage the same lawyer representing the defendant in the criminal charge to defend his civil claim, but he also recognised that the issue should be solved upon carefully considering the power of the court in assigning lawyers in criminal cases and the power of the legal aid committee in handling applications in civil cases.

12. **ADR in Macau.** I personally joined the discussion with Ms Vong Sok Hei from the World Trade Center Macau Arbitration Center and Ms Kuok Weng Mui, President of the Macau Arbitration Association on the topic of ADR. I highlighted the advantage of Hong Kong arbitration as the local legislation supports international arbitration by adopting the UNCITRAL Model Law with minor changes. They mentioned that there is a new piece of legislation on arbitration around the corner, which they hope would help to catch up with Hong Kong. In relation to the enforcement of ad hoc award, I emphasised the recognition of Hong Kong ad hoc arbitration in the Mainland benefiting from the specific interpretation given by the Supreme Court in Mainland. It was agreed that Macau ad hoc arbitration might face problems in the enforcement in the Mainland.

13. There are other very interesting topics and insightful presentations including legal issues in gaming industry, labour and immigration laws in relation to foreign employees etc. Mr Fong Man Chong, a judge from the Court of Second Instance of Macau, also gave a speech sharing his view of the role of Macau lawyers and the relationship between lawyers and the court.

Exchanges with Macau Lawyers

14. During the two days, I got ample opportunities to communicate face-to-face with a number of lawyers from Macau as well as the Mainland. We shared views in respect of many legal issues, especially interface matters crossing the borders of Macau, Hong Kong, and the Mainland and the future collaboration of the legal profession.

15. At the cocktail reception after the closing ceremony of the Congress, I extended thanks to the President Mr Valente and the Secretary-General Mr Comandante on behalf of the Bar for their invitation and expressed that the Bar looks forward to continuing the close relationship between the two professional bodies. They also sent their gratitude to Mr Dykes SC and the Bar.

Dated 24 September 2019.

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