

Welcome remarks by Dr James Ding
Commissioner, Inclusive Dispute Avoidance and Resolution Office
“Think Asia, Think Hong Kong” Thematic Session
“From Deal-making to Dispute Resolution:
What Hong Kong can Offer to US Enterprises”

Ladies and Gentlemen,

(A) Introduction

1. Good afternoon, it is my honour to deliver the welcome remarks at this thematic session co-organised by our Department and Hong Kong Trade Development Council.
2. Hong Kong Trade Development Council successfully organized a similar event last year in Tokyo with the title, “Think Global, Think Hong Kong”. This year, the theme is “Think Asia, Think Hong Kong”. Hong Kong is such a prominent Asian and global city that will fit both descriptions.
3. Our focus today is Asia. As those of you who have attended the main symposium this morning may have noted, Asia is the world’s most dynamic region, accounting for 60% of global economic growth¹. Such a tremendous market offers abundant business opportunities, necessitating the services of deal-making and dispute resolution. With our developed legal infrastructure, platform and network, Hong Kong is well-positioned as a gateway to the dynamic and fast-growing Asia market.

(B) BRI and GBA

4. Hong Kong Government has a long-standing policy to promote Hong Kong as a leading international legal and dispute resolution services centre in the Asia-Pacific region.
5. In February this year, the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area was promulgated. Again, it expressly supports

¹ <http://www.hktdc.com/ncs/thinkasiathinkhk2019/en/s/info-program.html>

Hong Kong to establish itself as the centre for international legal and dispute resolution services in the Asia-Pacific region and to become a service centre for resolving investment and commercial disputes relating to Belt and Road projects. Just a week ago, the first Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference was held in Hong Kong to strengthen the legal exchanges and collaborations with a view to jointly promoting legal development in the Greater Bay Area, thereby providing more comprehensive and inclusive legal and dispute resolution services to enterprises.

(C) IDAR Office

6. To better capitalize on the opportunities arising from the Belt and Road Initiative and the Greater Bay Area Plan, my office, Inclusive Dispute Avoidance and Resolution Office was established earlier this year by the Secretary for Justice under her direct steer.

7. My office promotes the concepts of “inclusive growth and sustainable development”, “inclusive economy” and “inclusive society”, in line with Goal 16 of the United Nations Sustainable Development Goals (UNSDGs). It is tasked to co-ordinate and implement various initiatives in promoting the use of arbitration, mediation and other means of dispute resolution. It also pursues co-operation or partnership arrangements with other jurisdictions and international organisations with a view to raising the international profile of Hong Kong in deal making and dispute resolution through capacity building and promotional activities.

8. To this end, my office has been working closely with renowned international, regional and local organisations, including the United Nations Commission on International Trade Law (UNCITRAL), the Hague Convention on Private International Law (HCCH), the Asian-African Legal Consultative Organization (AALCO), the International Centre for Settlement of Investment Disputes (ICSID) and the Asian Academy of International Law (AAIL) on a wide range of capacity building programs, contributing to UNSDGs and the Belt and Road Initiative. In addition to a number of major international conferences co-organized with these international organizations earlier this year, we will host the 3rd UNCITRAL Asia and Pacific Judicial Summit in Hong Kong on 4

November and we also welcome your participation by registering online.

(D) Recent developments

9. Turning to what Hong Kong can offer to the US enterprises, while our distinguished speakers on the two panels will tell you much more, I would just like to draw your particular attention to a few recent developments in Hong Kong.
10. In April this year, the ground-breaking arrangement on mutual assistance in court-ordered interim measures in aid of arbitral proceedings was signed between Hong Kong and Mainland China.
11. The arrangement will come into effect very soon, making Hong Kong the first and only jurisdiction outside the Mainland where parties to arbitral proceedings seated in Hong Kong and administered by designated arbitral institutions can apply to the Mainland courts for interim measures.
12. Another area I would like to highlight is the use of investment mediation.
13. Whilst arbitration has been the dominating means to settle investor-State disputes, it has attracted criticisms such as inconsistent arbitral awards, high costs and conflict of interests on the part of arbitrators. UNCITRAL Working Group III has embarked on a study of possible reform in this regard. Investment mediation has been identified as one of the options for such reform.
14. The Investment Agreement under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement, though not an investment treaty as such, is a bilateral arrangement between the two jurisdictions which provides a good example of a mediation mechanism for resolving investment disputes.
15. Such mediation mechanism facilitates and encourages the use of mediation services under the Investment Agreement. The lists of designated mediation institutions and mediators agreed by the two sides were published in December last year.

16. The United Nations Convention on International Settlement Agreements Resulting from Mediation signed in August this year provides impetus for the further development of mediation as a dispute resolution mechanism and will encourage mediation to be more widely used around the world. The US was among the first 46 countries to sign this Convention.
17. To build up a team of investment mediators in Asia to handle disputes arising from the Belt and Road Initiative and the Greater Bay Area, our Department co-organized the first training course in Asia last year with the International Centre for Settlement of Investment Disputes of the World Bank Group and Asian Academy of International Law. We plan to organize similar training regularly. The next one has already been scheduled in late October this year.
18. Apart from promoting mediation, I must not forget mentioning our determination to promote the use of online dispute resolution (ODR). We have been participating very actively in the pilot ODR project of the Asia Pacific Economic Cooperation (APEC). The APEC Economic Committee (which I now chair) has just endorsed in August the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes, for use by APEC economies such as USA.
19. In this connection, we are supporting the private sector's initiative of developing an ODR platform, eBRAM, which is efficient, cost-effective and secure, for resolving disputes between parties in any part of the world, to overcome geographical and language barriers between parties to a dispute involving APEC economies and beyond.
20. The platform will integrate state-of-the-art technology such as neural machine translation, artificial intelligence and smart contract to facilitate deal making and dispute resolution. You will hear more from the speaker from eBRAM later on.

(E) Statistics and current situation in Hong Kong

21. Finally, some statistics about Hong Kong. Hong Kong **ranks No.1 in Asia** and **World No.3** in the Human Freedom Index 2018 (Cato Institute). HK **ranks**

No.2 in Asia and **World No. 14** (in the 2018 update) in respect of the rule of law in the Worldwide Governance Indicators project of the World Bank Group. In the Global Competitiveness Report 2018 published by the World Economic Forum, Hong Kong **ranked 4th** in the efficiency of legal framework in settling disputes.²

22. Hong Kong can come with such excellent international ranking because of our mature legal system and judicial independence which provide a solid foundation for its development into an international legal and dispute resolution services centre in the Asia-Pacific region.
23. Hong Kong enjoys a high degree of autonomy under the principle of “one country, two systems”. While Hong Kong is part of China as provided by the Basic Law, its common law system is distinct from the civil law system of China. We have our own courts, our own legislation and our own legal professionals. Hong Kong’s common law legal system is familiar to the international business community and is well recognised, as supported by the statistics above.
24. In short, we have a strong and solid foundation for the rule of law, an independent judiciary, application of common law and protection of human rights as guaranteed under the Basic Law, as well as the very well-developed infrastructure that Hong Kong can offer to enterprises aspired to venture into the Asian market. Having said that, some might concern about the recent situation in Hong Kong.
25. Earlier this year, the Hong Kong Government proposed amendments to the Fugitive Offenders Ordinance, which is based on the United Nations Model Treaty 1990. There were opposition from the public about the proposed amendments. Peaceful demonstrations took place, where people exercised the freedom of speech to voice out their views. Subsequently, some public

² <https://info.worldbank.org/governance/wgi/#home>: The 2018 update was released on 21 September 2018. HK’s percentile rank in respect of rule of law has improved from 69.85 in 1996 to 93.75 in 2017. HK has scored above 90 (out of 100) consistently since 2003 in the aggregate indicator in respect of the rule of law.

events have turned violent and, certain snapshots and clips have gone viral, even though they may not necessarily represent the full picture.

26. As a sincere effort to mend the perceived polarization in Hong Kong, the Hong Kong Government has announced earlier this month that we would formally withdraw the Fugitive Offenders Bill. Our officials would sit down with the people to find a way out through dialogue, regardless of their stances and backgrounds.³ As our Chief Executive has said, “Let’s replace conflicts with conversations, and let’s look for solutions.”
27. Hong Kong is resilient. While it may be a challenging time for Hong Kong, we, as always during times of challenge, will continue to forge on in the quest to advance Hong Kong to another level, through our strong legal system and solid infrastructure.

(F) Conclusion

28. Moving forward, we will step up our efforts to enhance the level of services which Hong Kong can offer, especially in terms of deal-making and dispute resolution. I hope that after this session, you may appreciate how much more Hong Kong can offer to US enterprises for tapping in the blooming Asia market.
29. Since we are so close to Hollywood, I would end my remarks by using the phrase commonly used by film studios – “cut to the chase”, and pass the floor to our distinguished panels. Thank you very much.

³ <https://www.info.gov.hk/gia/general/201909/04/P2019090400704.htm>