

Hong Kong Legal Week 2023
“New Domains in Mediation and Arbitration”
8 November 2023

Closing Remarks by Mr Clifford Tavares
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Distinguished guests, ladies and gentlemen,

It has been a real pleasure being with all of you here today, seeing you all in person and also online. On behalf of the Department of Justice, thank you for joining us on Day 3 of the Hong Kong Legal Week 2023. Our gratitude to all the partners, moderators and speakers who have helped put this event together and made it a great success.

2. From commercial mediation to arbitration, from regulatory framework to practical experience, and from the regional context to the international context, through the various panels today, we have from different perspectives examined many pertinent issues on mediation and arbitration. On mediation, we have discussed cross-border enforcement of mediated settlement agreements, enhancement of mediation professionalism, strengthening of capacity building. On arbitration, we have discussed some latest developments domestically and in the

international arena. We have shared the diversified dispute resolution services that Hong Kong can offer to users both far and near, and how Hong Kong is uniquely placed to contribute to the national development with its legal strengths and with the benefit of collaborating with our counterparts and partners in other places in the Mainland.

3. Today's morning session signifies the 6th time that we joined hands with our Shanghai partners in discussing how the development of commercial mediation for effectively resolving cross-border disputes helps contribute to the building of a law-based business environment, and the need to address convergence issues between the two jurisdictions and to ensure the high quality of mediators through suitable training mechanisms. Later this evening, the 5th Hong Kong Mediation Lecture will continue to explore future opportunities for mediation as an effective and efficient mechanism for resolving international disputes.

4. The afternoon session began with an interesting dialogue addressing the contemporary trends and latest global developments in arbitration, covering novel areas such as the interplay of AI and ESG with arbitration. The last panel discussion of today featured a focused discussion on the new arbitration funding options available in Hong Kong and experience sharing of the practice of arbitration funding in other major arbitral jurisdictions.

5. Seeing many experienced practitioners and such an impressive audience from the region and the local legal sector, I would like to take this opportunity to share one latest news on Outcome Related Fee Structures for Arbitration (“ORFSA”). Our ORFSA regime, comprising the amended arbitration legislation and the supporting rules, became fully implemented in Hong Kong in December last year. Being the latest addition in the arbitration funding option spectrum both locally and internationally, with the benefit of valuable references from overseas practice, Hong Kong’s ORFSA regime with its variety of ORFSA agreements, we believe, offers diverse and flexible funding options to arbitration users that can suit their needs depending on the circumstances.

6. Coupled with the third party funding of arbitration regime which came into effect in February 2019, we are proud to say that Hong Kong provides comprehensive arbitration funding options in addition to traditional fee arrangements, not only to keep up with international practice, but also to cater for the evolving needs of arbitration users and to enhance access to justice for those in need. Indeed, statistics shows that as of September 2023, it was disclosed that 87 arbitration cases were conducted with third party funding and 4 arbitration cases were conducted with ORFSA. As the first anniversary of the ORFSA regime approaches, it is encouraging to see that ORFSA is gaining momentum by being put into real practice and good use in the arbitration community among other funding options.

7. As part of our ongoing efforts in providing legal guides and tools to facilitate the use of arbitration funding options, in February and August this year, we have published a leaflet on “Funding Options for Arbitration in Hong Kong” and a set of “Top 20 Frequently Asked Questions (FAQs) on ORFSA” respectively, to introduce the key features of arbitration funding options in Hong Kong. The leaflet and FAQs are available on DoJ’s website.

8. To further assist users of ORFSA, I am delighted to announce that a “Guidance Note and Checklists for ORFSA” is published today. The Guidance Note and Checklists provides practical information to assist arbitration users who wish to enter into ORFSA agreements, and serves as a handy tool for arbitration users to ensure that their ORFSA agreements to be entered into are valid and enforceable. Hard copies of the Guidance Note and Checklists are available on-site. You may also download it by scanning the QR code displayed here. Thanks must go to the members of the Working Group on ORFSA Checklist for their dedicated support and insights contributed in preparing this piece of user-friendly tool, which, I am sure, will benefit actual and potential users of the ORFSA regime.

9. Ladies and gentlemen, echoing the theme of today’s event, we are entering into new domains in mediation in terms of taking measures to further enhance mediation professionalism domestically, enhancing our contribution to the GBA development and the Belt and Road Initiative regionally, and contributing to resolution of disputes and related capacity

building internationally particularly through the work of the International Organization for Mediation Preparatory Office and the ongoing Investment Law and Investor-State Mediator training that we have been arranging. We are also entering into new domains in arbitration with the multiple funding options offered by the new ORFSA regime, and we welcome you all to come to Hong Kong to join us at the ICCA Hong Kong Congress in May 2024. Going forward, embracing these new opportunities, Hong Kong, as the centre for international legal and dispute resolution services in the Asia-Pacific region under the national 14th Five-Year Plan, will continue to make good use of its unique edges in providing advanced dispute resolution services for all.

10. On this note, may I once again thank our co-organisers and all the distinguished panelists for their insightful sharing, and all of you for joining today's event. Wish you all a pleasant evening. Thank you.