CIETAC Investment Arbitration Seminar and Award Ceremony for The 18th edition of the Frankfurt Investment Arbitration Moot Court – CIETAC Chinese (Mainland) National Rounds

12 April 2026 (Sunday)

Keynote Speech

Mr. Gu (GU Yan, Vice President of the China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Court), Prof. Zhang (Prof. ZHANG Liang, Dean of School of Law, Sun Yat Sen University), Distinguished guests, ladies and gentlemen,

1. Good evening. It is a real pleasure to join you all today. This evening is, above all, a celebration: of the winning teams, and also of all the other teams, since no effort is ever lost in this Moot when valuable lessons have been learnt and personal growth has been achieved.

2. Whatever the result, you have already achieved something important. You have stepped beyond the lecture hall, and learned to turn a dense and complicated factual record into a persuasive and coherent theory of the case; to identify what truly mattered; and to defend your position under pressure when challenged by the tribunal. That requires not only knowledge, but also judgment, composure, and intellectual courage. These are precisely the qualities that will serve you well, whatever career path you choose to pursue.

3. Allow me to share a few observations as the presiding arbitrator in the Final. I was particularly impressed by the level of preparation on both sides. Counsel demonstrated a clear command of both facts and law, and were able to navigate complex issues with confidence, even under sustained questioning. What stood out most, however, was your ability to engage with questions. In real arbitration, the tribunal's interventions

are not interruptions; they are opportunities. The best advocates used those moments not defensively, but strategically: to clarify, to persuade, and sometimes even to reframe the case. These are not merely moot court techniques. They are essential professionals skills in real-world arbitration, diplomacy, and treaty negotiations.

4. In fact, this Moot is more than an academic exercise. The issues in question also arise in real disputes involving substantial amounts of money, sensitive public policies and sometimes the economic direction of entire industries. This brings me to the topic of international investment law and investor-State dispute settlement (ISDS) that I wish to share with you tonight.

International Investment Law and ISDS

5. According to the United Nations Conference on Trade and Development (UNCTAD), there are today over 2,800 bilateral investment agreements worldwide, many of which include provisions allowing investors to bring claims directly against the host States. Correspondingly, the number of known ISDS cases has grown significantly. UNCTAD reports that a total of 1,463 treaty-based ISDS cases had been submitted as of 13 December 2025, with more than 400 of those filed between 2020 and 2025 alone. The number of ISDS cases is also on a rising trend.

6. To understand the trend, it is helpful to go back in history. Before the emergence of treaty-based ISDS, a foreign investor that believed it had been treated unfairly by a host State had very limited options. While one may resort to diplomatic protection, that process was often slow, uncertain and politically dependent. Alternatively, the investor could pursue relief before the domestic courts of the foreign State whose conduct it was challenging, often under a legal system unfamiliar to the investor, apart from any concerns and scepticism about independence

and impartiality. This could undermine investor confidence and weaken the overall investment climate.

7. It is against this background that treaty-based ISDS was developed. By granting investors the right to bring claims directly before a neutral forum, the system effectively depoliticises investment disputes. It removes the need for State-to-State confrontation, thereby preserving diplomatic relations, while giving investors the independent, rules-based forum they need to feel secure. In this regard, this mechanism was designed to foster confidence, provide stability, and facilitate the global flow of foreign direct investment.

8. For many of you in this room, mastering this area of law is of profound relevance and practical importance. Over the past few decades, China has transformed from being primarily a destination for foreign capital into one of the world's largest outbound investors. As Chinese enterprises expand their global footprint, in particular, under the Belt and Road Initiative, by investing heavily in cross-border infrastructure, energy, and technology projects, they inevitably encounter certain regulatory and political risks in foreign jurisdictions. For such investment, it is the framework of international investment law that provides an important measure of protection. Before long, one of you will probably be advising those investors or host States. Some of you may also sit as arbitrators, while some may even be policy makers or negotiator of investment treaties. In whatever capacity you will serve, you will play a vital role in the area of international investment law.

Investment Protection

9. In the area of international investment law, Hong Kong's enterprises have long been active participants in cross-border investment for decades and contributed to the development of the relevant law. What may surprise some of you is that a Hong Kong-incorporated company

was involved in one of the earliest investor-State arbitrations brought under a bilateral investment treaty, in the well-known *AAPL v Sri Lanka case*, which involved the destruction of a shrimp farm.

10. That historical milestone reflects a deep, long-standing commitment to legal certainty, a commitment that Hong Kong continues to actively pursue today. Under the Basic Law, the Central People's Government has authorised the Hong Kong Special Administrative Region (Hong Kong SAR) to negotiate and conclude its own Investment Promotion and Protection Agreements (IPPAs). To date, Hong Kong SAR has signed 24 of these agreements, covering 33 foreign jurisdictions.

11. These agreements are not merely symbolic; they provide investors with internationally recognised standards of protection, including fair and equitable treatment. Crucially, all of them contain ISDS mechanisms granting investors direct recourse to various international arbitration rules. A very high-profile case of this mechanism in action was the *Philip Morris Asia v Australia* case, in which the investor invoked the 1993 IPPA between Hong Kong and Australia to challenge Australia's tobacco plain packaging regulation.

12. Recognising the practical commercial value of these protections, Hong Kong SAR is actively working to expand its IPPA network even further. Looking ahead, Hong Kong SAR will continue to seek accession to the Regional Comprehensive Economic Partnership, and Hong Kong SAR is currently advancing negotiations on new IPPAs with other economies such as Qatar, Saudi Arabia, Bangladesh, Egypt, and Peru.

ISDS Reform and the role of Hong Kong SAR

13. In spite of the popularity of treaty-based ISDS in the past, in recent years, it has been criticised for its high costs, its perceived inefficiency, and fundamentally, a lack of legitimacy. While arbitration has always

been promoted as a streamlined alternative to litigation, the reality of investor-State disputes tells a somewhat different story. Today, an average ISDS claim takes nearly three and a half years to resolve and entails exorbitant legal costs. Even more concerning is the sheer scale of financial exposure for host States. Over the past decade, the average ISDS award has nearly quadrupled, with one in twenty awards now exceeding one billion US dollars. For many countries, particularly developing countries, the financial burden of defending these claims and complying with such massive awards is simply unsustainable, diverting crucial public funds away from domestic needs.

14. Beyond questions of cost and efficiency, however, more fundamental concerns have been raised regarding the systemic integrity of the regime. First, the absence of a binding doctrine of precedent means that *ad hoc* tribunals frequently arrive at contradictory interpretations of similar treaty provisions. This generates a degree of legal uncertainty that undermines the very predictability the system was designed to achieve.

15. Second, the regime has been criticised for encroaching upon the legitimate regulatory space of sovereign States. When governments face the prospect of substantial financial liability merely for enacting *bona fide* public interest measures, whether in the fields of public health, environmental protection, or climate policy, a so-called "regulatory chill" may take hold. States may be deterred from pursuing necessary and lawful regulatory action.

16. Third, concerns persist regarding the diversity and independence of adjudicators. This is often fuelled by the perception of a "revolving door", in which a relatively small pool of practitioners frequently alternates between the roles of counsel and arbitrator. When decisions of such profound public consequence are rendered by private individuals, and often without full transparency, it is hardly surprising

that the legitimacy of the entire ISDS system is now subject to intense international scrutiny.

17. That said, despite these profound criticisms, it should be made clear that the answer is not to abandon the system. To do so would defeat the very purpose for which it was created. Instead, what is required is a comprehensive reform that restores legitimacy without discarding the system's foundational virtues.

18. In this regard, since 2017, the United Nations Commission on International Trade Law (UNCITRAL) Working Group III has been entrusted with the mandate to undertake work on ISDS reform. At its most recent session, held just two weeks ago, the Working Group advanced discussions on developing two separate statutes for a new standing mechanism to resolve international investment disputes: one establishing a first-tier standing body, and another establishing an appellate standing body.

19. Hong Kong SAR has indeed made significant contribution to the ISDS Reform process at UNCITRAL. I and other colleagues from the Department of Justice have participated actively as part of the Chinese delegation in Working Group III. In particular, Hong Kong hosted Working Group III pre-intersessional meeting in 2020 and an intersessional meeting in 2021, contributing to the successful adoption of the UNCITRAL Guidelines on Mediation for International Investment Disputes.

20. I believe that the future of dispute resolution cannot rely on adversarial processes alone. That is why Hong Kong has promoted investment mediation as a vital and complementary pathway. Unlike arbitration, a zero-sum legal battle, mediation offers a consensual, collaborative approach. It empowers parties to devise flexible commercial solutions while avoiding the exorbitant costs and lengthy timelines that burden

ISDS. Most importantly, mediation provides ready answers to all the major questions identified by Working Group III, namely, cost and time, inconsistency and legitimacy issues under the current ISDS regime.

21. While UNCITRAL is still advancing its work in the field of dispute resolution, another noteworthy recent international development in the field of dispute resolution is the establishment of the International Organization for Mediation (IOMed), which is headquartered in Hong Kong and has commenced its operation since October last year. As the world's first intergovernmental international legal organisation devoted exclusively to resolving international disputes through mediation, the IOMed fills a significant institutional gap and offers an important public good in the field of international rule of law and global governance. As Foreign Minister Wang Yi stated at the signing ceremony of the Convention on the Establishment of the International Organization for Mediation in Hong Kong last year, the IOMed is an actualisation of the purposes and principles of the Charter of the United Nations, filling an institutional gap in international mediation and serving as an important public good for better global governance. In this regard, the national 15th Five-Year Plan has also expressed support for making better use of the IOMed.

22. In addition to providing institutional support, Hong Kong SAR also places great importance on capacity building. No institutions or mechanisms could function well without capable people to sustain them. Lasting reform therefore requires sustained investment in capacity building of legal and dispute resolution professionals to support the relevant institutions or mechanisms.

23. As such, the Hong Kong International Legal Talents Training Academy was launched by the Department of Justice in November 2024 to leverage our bilingual common law system and serve as a premier capacity-building platform for legal professionals across the Chinese

Mainland, Hong Kong, and foreign countries, in particular, the Belt and Road jurisdictions. Since then, the Academy has worked with over 20 international legal organisations, national ministries and local professional bodies to deliver more than 12 programmes in the Chinese Mainland, Hong Kong and overseas, covering public international law, common law, commercial and trade law as well as international dispute resolution, providing training to over 2,000 participants worldwide. In this way, it supports the development of foreign-related legal talents by equipping the next generation, like you, to work across jurisdictions and to understand not only different legal systems, but also different legal cultures. You are most welcome to join future events or activities of the Academy in Hong Kong, Chinese Mainland or overseas in the years to come.

24. Lastly, let me end where I began. What you have demonstrated in this Moot goes beyond a mere technical exercise; it marks the beginnings of true professional work. International law depends not only on rules or written agreements, but ultimately on the people who negotiate, draft, interpret, apply and uphold them. In the years ahead, that responsibility will increasingly rest with your generation. I hope you will approach it with the same rigour, vigilance, integrity and professionalism that you have displayed throughout this competition. You are the future of our profession, and the future architects of the international legal order.

25. Thank you very much.