

**Welcome Speech of Ms Teresa Cheng, SC
Secretary for Justice
Business of IP Asia Forum
6 December 2019 (Friday)**

Distinguished guests, ladies and gentlemen,

It is my great pleasure to welcome you all here to this thematic breakout session entitled “Legal Infrastructure for a Sustainable, Resilient and Inclusive Future for Business of IP”, co-organised by the Department of Justice (“DoJ”) and the Hong Kong Trade Development Council. I am happy to see that we have two distinguished panels of eminent experts today to share with us their insight and experience on a vast range of topics.

2. The theme of this thematic breakout session is well-chosen. It has three words which I would like to

elaborate on: sustainable, inclusive and resilient. I would like to approach it by looking at what legal infrastructure Hong Kong can offer to achieve a sustainable, inclusive and resilient future for businesses of IP.

Sustainable

3. To achieve a sustainable future for all businesses, including IP, rule of law is of utmost importance. Hong Kong is well-known for its solid foundation for rule of law, its robust and independent judiciary and its strong dispute resolution professional communities.

4. Hong Kong ranks No.2 in Asia and World No. 11 in respect of the rule of law in 2018 in the Worldwide Governance Indicators project of the World Bank Group.

5. Under the Basic Law, the power of final adjudication is vested in the Court of Final Appeal of Hong Kong. Renowned judges from apex courts of other common law jurisdictions have been appointed to sit as non-permanent judges since 1 July 1997.

6. According to the *Global Competitiveness Report* published by the World Economic Forum in October this year, Hong Kong continues to rank among the top 10 globally. Such high ranking speaks volumes about the status of judicial independence and the rule of law here.

7. Furthermore, everyone in Hong Kong has his or her fundamental rights and freedoms, for example, equality before the law, freedom of speech and freedom of assembly, expressly safeguarded under the Basic Law. Private property rights, including intellectual property

rights, are also well protected by law. Articles 34 and 139 of the Basic Law stipulate that the Government of the HKSAR shall protect by law achievements in scientific and technological research, patents, discoveries and inventions as well as the achievements and the lawful rights and interests of authors in their literary and artistic creation.

8. Hong Kong ranks No.1 in Asia and World No.3 in the Human Freedom Index 2018 (Cato Institute) by scoring 8.78 (out of 10), with Integrity of Legal System scored at 8.3. Hong Kong has also been ranked as the world's freest economy according to the *Economic Freedom of the World: 2019 Annual Report* published by the Fraser Institute of Canada.

9. Our deep pool of legal and dispute resolution

professionals is an important support for a sustainable future for IP businesses. As of November 2019, there were over 10,000 practising solicitors and about 1,500 practising barristers. Over 1,600 registered foreign lawyers from over 33 jurisdictions. The transactional lawyers in Hong Kong could provide excellent services from advice to execution of well thought-through contracts containing suitably crafted governing law and dispute resolution clauses. Our dispute resolution professionals have substantial experience in resolving IP disputes. In this regard, the Hong Kong International Arbitration Centre (“HKIAC”) has maintained a Panel of Arbitrators for IP Disputes which comprises members who have extensive experience and strong expertise in resolving IP disputes. As at December 2019, there are 50 arbitrators on the panel. Hong Kong’s robust and transparent legal system is bolstered by the support of a

community of quality, independent and international legal practitioners in different areas of law.

10. Hong Kong has also gained international recognition as an attractive seat of arbitration. According to the International Arbitration Surveys conducted by the Queen Mary University of London, Hong Kong is one of the top 5 preferred seats of arbitration since 2015.

11. To further promote the rule of law in the years to come, the DoJ will, in 2020, launch a ten-year initiative, namely the “Vision 2030 for Rule of Law”. Under this new initiative, a dedicated inclusive platform will be set up for stakeholders, including youth, practitioners and experts, to take forward the initiative through academic and professional exchanges, research and capacity building activities to promote and reinforce the rule of

law in Hong Kong and beyond. We hope that, with this new initiative, not only can we strengthen the rule of law and promote inclusive access to justice, but also contribute to “China’s National Plan on implementation of the 2030 Agenda for Sustainable Development”.

Inclusive

12. Turning to the word “inclusive”, Hong Kong has been promoting diversified and inclusive means of dispute resolution, including litigation, arbitration and mediation.

Litigation

13. In relation to IP litigation in Hong Kong, a new Practice Direction 22.1 took effect on 6 May this year, whereby an IP Specialist List was created. By virtue of

this new list, all interlocutory applications and trials in IP cases will now be listed before the judge in charge of the IP List, Mr Justice David Lok, or other designated judges. This new list is much welcomed in Hong Kong as there were long delays for IP matters coming to trial. The new list should reduce these delays considerably and bring Hong Kong in line with other developed countries such as the UK, Japan and Singapore which have all established specialized IP lists. The establishment of the specialist IP list in Hong Kong will undoubtedly improve the handling of IP cases and ensure that IP disputes could be resolved in a timely and cost effective manner.

14. Besides, it is noteworthy that the “Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the

Mainland and of Hong Kong”, while closely resembling the recently concluded Judgments Convention of the Hague Conference on Private International Law, has taken a step further by covering some of the IP related judgments, such as those on contractual disputes involving IP rights, and tortious claims for infringement of certain IP rights, thus making Hong Kong even more attractive for resolving IP disputes.

Arbitration

15. It is also increasingly common for parties to opt for arbitration when resolving international IP disputes. However, different countries have different approaches towards the issue of arbitrability of IP disputes. To remove any uncertainty, legislative amendments have been made to the Arbitration Ordinance of Hong Kong in

2017 to clarify that disputes over IP rights are capable of resolution by arbitration, and it would not be contrary to the public policy of Hong Kong to enforce an award solely because the award involves an IPR dispute. The amendments relating to IP arbitration came into operation on 1 January 2018. We believe that the enactment will reinforce Hong Kong's edge over other jurisdictions in the region in resolving IPR disputes and consolidate the status of Hong Kong as a leading international arbitration centre as well as a premier IP trading hub in Asia and beyond.

16. Apart from the above legislative amendment, Hong Kong has concluded in April this year the ground-breaking *“Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and*

the Hong Kong Special Administrative Region” with the Mainland, making Hong Kong the first and so far the only jurisdiction outside the Mainland where, as a seat of arbitration, parties to arbitration proceedings administered by eligible arbitral institutions would be able to apply to the Mainland courts for interim measures. The Arrangement came into force on 1 October 2019.

17. This Arrangement is particularly useful in the context of cross border disputes involving violation of IP rights where urgent interim measures such as evidence and property preservation measures are usually called for. It is expected that this game-changing arrangement will benefit parties from all over the world, irrespective of their nationality, domicile or place of business and will be conducive to the effectiveness of dispute resolution in Hong Kong by opening up an effective and accessible

route for seeking interim measures from the Mainland courts. This major breakthrough will ensure access to justice and the pursuit of the rule of law by preventing a disputing party from deliberately destroying the evidence or dissipating the property.

Mediation

18. Litigation and arbitration are by no means the only ways for resolving disputes, the HKSAR Government is committed to promoting the use of mediation locally, regionally and internationally in different sectors. To raise awareness on the use of mediation by the local sector, the DoJ launched the “Mediate First” Pledge in 2009. The “Mediate First” Pledge is a statement of policy aimed at encouraging greater use of mediation as a flexible, creative and constructive approach in

resolving disputes. Companies and trade organizations are encouraged to sign the Pledge to signify their willingness to first explore the use of mediation in the course of their operation before resorting to other means of dispute resolution such as litigation. As at September this year, over 650 companies and associations have already signed the Pledge. Our “Mediate First” Pledge has also attracted attention outside Hong Kong, and we have co-organised “Mediate First” Pledge events with institutions in Shanghai and Shenzhen this year and we have received invitations to co-organise such events in Southeast Asia next year.

19. One of the panels this afternoon will discuss the creative and entertainment (“C&E”) and innovation sectors, for which mediation is particularly useful. When disputes involve intellectual property (“IP”) rights

in such sectors, the crux of conflict often involves privacy, preservation of secrets as well as confidential technical information. Confidentiality is thus of the essence. Mediation conducted in confidence can provide a private and confidential environment to resolve IP disputes. There are also other advantages of mediation which will be further discussed by our distinguished speakers later.

Online Dispute Resolution

20. Lastly, it is worthwhile to mention that we strive to facilitate inclusive access to justice for the global community by making good use of LawTech in dispute resolution. The DoJ gives policy support to the private sector's initiative of developing an efficient and cost-effective online dispute resolution and deal making

platform, eBRAM International Online Dispute Resolution Centre (“eBRAM Centre”). eBRAM Centre will use internet-based platform to facilitate the provision of one-stop dispute resolution services. One of the characteristics under development by eBRAM Centre is making use of artificial intelligence and advanced technology to provide a secure platform for the upload, download and exchange of case materials to assist parties in resolving disputes and entering into business deals. Users will be able to access the platform anywhere around the world with only a secure internet connection. It will not only facilitate development of local micro, small and medium-sized enterprises and legal professionals under the Belt and Road Initiative as well as Greater Bay Area Development Plan, but also create synergy with existing dispute resolution service providers.

21. Online dispute resolution is in fact gaining international recognition and attention. In addition to the publication of the UNCITRAL Technical Notes on Online Dispute Resolution in 2016, Asia Pacific Economic Cooperation (APEC) Economic Committee has endorsed in August this year the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes. Such Framework and online dispute resolution in general may help to resolve cross-border IP disputes in a cost effective and timely manner.

Resilient

22. Finally, I must come back to the word “resilient” in light of the current situation in Hong Kong.

Controversies and disturbances over the past few months in Hong Kong have been widely reported in international media. However, it is pertinent to be appraised of the situation in context and we hope that your presence in Hong Kong will enable you to see a more complete picture. Despite the disruptions, our legal system, judicial system, financial infrastructure and trade transactions have continued to function well.

23. The principle of “One Country, Two Systems” provides the constitutional guarantee for Hong Kong’s continued development and success as a free and open society. Freedom of expression and other human rights that are enshrined in our Bill of Rights Ordinance and guaranteed under the Basic Law are very much cherished and protected in Hong Kong. On the other hand, those who break the laws will be brought to justice through our

legal and judicial systems.

24. Hong Kong remains a vibrant and welcoming society. In the past few months, we have successfully hosted various large-scale international events, such as the 2019 Colloquium on International Law, the Inaugural Global Conference of the Judgment Convention of the Hague Conference on Private International Law, the Belt and Road Summit, the Hong Kong Arbitration Week, the 3rd UNCITRAL Asia Pacific Judicial Summit and the 32nd LAWASIA Annual Conference. All these events were well attended by participants from all over the world and we received very positive feedbacks. Looking ahead, we will continue to organize important international legal events in Hong Kong, for example, we will co-organise with UNCITRAL an international conference in celebration of the 40th anniversary of the

UN Convention on Contracts for the International Sale of Goods on 22 March next year and we very much welcome your participation.

25. Hong Kong has always been resilient and we are confident that despite recent disruptions, it will further advance itself to another level through a strong legal system, the solid institutional foundation of our economy and society, and the concerted efforts of the people of Hong Kong.

26. Ladies and Gentlemen, not only do we have excellent soft legal infrastructure mentioned above, we also have very good hardware for a sustainable, resilient and inclusive future. Our Legal Hub will house a mix of local, regional and international law-related organisations (“LROs”). Office space will be provided

to these LROs in West Wing of the Justice Place and the former French Mission Building for provision of legal and dispute resolution services. Together with the offices of DoJ, the whole area will form a Legal Hub at the heart of Hong Kong. It is expected that these LROs will move in as our neighbours at the Legal Hub from next year onwards. Hong Kong is determined to continue to remain active as an international legal and dispute resolution services centre.

27. We look forward to your continuous support from all over the world and may I wish this forum every success, and for those coming from overseas, an enjoyable stay in Hong Kong!