

Speech by SJ at Asia-Pacific Private International Law Summit under Hong Kong Legal Week 2022 (English only) (with video) (with photo)

Following is the closing remarks by the Secretary for Justice, Mr Paul Lam, SC, at the Asia-Pacific Private International Law Summit under Hong Kong Legal Week 2022 today (November 7):

Professor Tirado (Secretary-General of the International Institute for the Unification of Private Law (UNIDROIT), Professor Ignacio Tirado), Dr Bernasconi (Secretary General of the Hague Conference on Private International Law (HCCH), Dr Christophe Bernasconi), Mr Lee (Senior Legal Officer of the International Trade Law Division of the United Nations Office of Legal Affairs (UNCITRAL) Mr Lee Jae Sung), other friends from all international organisations, Consuls General, distinguished guests, ladies and gentlemen,

It is a great honour for me to be here today to speak at the closing of the inaugural Asia-Pacific Private International Law Summit (APPILS), jointly launched by UNIDROIT and the Department of Justice (DoJ) of the Hong Kong Special Administrative Region (HKSAR), which marks the opening of Hong Kong Legal Week 2022.

APPILS

The Asia-Pacific Private International Law Summit was conceived pursuant to the mutual aspiration of UNIDROIT and the DoJ to promote and further develop the understanding of private international law and international commercial law in the Asia-Pacific region.

This Summit is a particularly meaningful occasion because it denotes another milestone of our close partnership with UNIDROIT after the signing of our Memorandum of Understanding (MOU) in May this year regarding our mutual collaboration on private international law and international commercial law. (Note 1)

This Summit is also particularly momentous as it has brought together in one arena the three "sister organisations" of private international law - UNIDROIT, UNCITRAL and HCCH - all of which the DoJ has been working very closely with in the recent years, with support from the Central People's Government. We thank each

organisation for their trust in Hong Kong and we look forward to even closer co-operation among us as we pursue our common goals to promote the development of private international law and rule of law in general.

Review of topics discussed during APPILS

We have heard many insightful and excellent presentations today covering a very wide range of important private international law topics. The topics explored by our expert panelists today are timely and relevant to Hong Kong as a leading international financial and legal hub, as well as the greater Asia-Pacific region.

First session: Facilitating Access to Credit in the Asia-Pacific Region: International Instruments Supporting Asset-based Financing, Supply Chain Finance and Leasing

As a leading international financial hub with a robust legal system, Hong Kong continues to attract a multitude of financial institutions and organisations to conduct their businesses here. Asset-based financing and supply chain finance transactions are therefore an integral part of such businesses to access more credit and working capital.

In this respect, we have heard from the expert panel in Session 1 on the important international instruments available in support of these secured transactions. International instruments such as the Cape Town Convention (Note 2) and its protocols are fine examples of efforts to harmonise international security registration requirements and legal remedies, giving more confidence to financiers to extend credit to businesses. It is also encouraging to see the continued efforts by UNIDROIT, HCCH and UNCITRAL to further enhance harmonisation in this area, for example, through the Model Law on Factoring project and other relevant instruments by all these organisations.

Second session: Providing Legal Clarity for Emerging Technologies: Digital Assets and Private Law

In recent years, in line with the global trend, the HKSAR Government has been actively seeking to strengthen and develop our digital economy (Note 3). The local fintech and virtual asset industries have grown substantially, bringing with them numerous opportunities for financial innovation. Indeed, the HKSAR Government is also actively striving for new measures for virtual asset sector (Note 4).

The Government has been working to put in place a comprehensive system for the regulation of these emerging markets to ensure their orderly and sustainable development (Note 5). In this connection, UNIDROIT's Digital Assets and Private Law project (Note 6), which embodies best practices and international standards on the transfer and use of digital assets, is closely relevant. Today's discussion has given us much food for thought on how private international law principles may interact with the laws of our jurisdiction to regulate digital assets especially in light of their special characteristics.

Third session: Bridging the Gap in the Insolvency Legal Architecture (e.g. UNIDROIT's Project on Guidance for Bank Insolvency Proceedings)

In addition to our efforts made on the technological development to promote business growth, we are also fully aware of the need to practise good risk management and even debt restructuring during the business life cycle. This is particularly important in light of recent market volatilities, and the complex issues that would commonly arise in international transactions.

In Session 3, we have heard about the meaningful efforts being made to improve cross-border insolvency proceedings. An example of this is UNIDROIT's on-going project on Bank Insolvency (Note 7), which is working towards an international soft law instrument to provide legal guidance for smoother cross-border co-ordination on bank liquidation proceedings.

There is one good domestic example - it's the record of meeting on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and the HKSAR signed between the DoJ and the Supreme People's Court of the People's Republic of China in May 2021, which provides for the mutual recognition of and assistance to insolvency proceedings between these two jurisdictions (Note 8). The insights shared by the panelists on recent cases in this respect that have successfully utilised this arrangement are both enlightening and reassuring (Note 9). The continued effective implementation of this unique arrangement would go a long way to facilitate and encourage the rescue of financially troubled businesses which have commercial presence in both Hong Kong and the Mainland, which may also shed light for development of a co-operative mechanism for other jurisdictions and internationally.

Fourth session: Into the Future: Strengthening Engagement in the Asia-Pacific Region

The arrangement between the Mainland and the HKSAR has also showed the importance of cross-border co-operation, which is indeed important for this region with very diverse legal systems. Session 4, the last session, has highlighted the importance of co-operation and the need to strengthen engagement in the region as well as the very close ties that Hong Kong has formed over the years with renowned international organisations in this regard.

As mentioned during the panel discussion, the DoJ has secured invaluable opportunities to second our local legal talents to the offices of UNIDROIT, HCCH and UNCITRAL. Not only does this allow our lawyers to expand their knowledge of the operation of international organisations; it also allows us to inject some of our own perspective into the development of these international organisations and international law during such exchange (Note 10).

Another aspect of our collaborated efforts in strengthening engagement within Asia-Pacific can also be witnessed through participation in the capacity-building activities as a member economy of the Asia-Pacific Economic Cooperation (APEC). With a view to promoting strong, balanced, inclusive, innovative and sustainable growth in the region, we have been actively involved in the affairs of the Economic Committee (EC), which is tasked to promote structural reform and strengthen APEC economies' capability in both macro- and microeconomic issues. UNIDROIT, UNCITRAL and HCCH have all acquired the accredited guest status to participate in the meetings and activities of the EC.

Lastly, we are very proud that Hong Kong is host to offices for various international organisations, with which we work in close association. The HCCH Regional Office for Asia and the Pacific was established back in 2012, while the DoJ Project Office for Collaboration with UNCITRAL was set up in 2020. It is also worthwhile to mention that most recently, the AALCO (Asian-African Legal Consultative Organization) Hong Kong Regional Arbitration Centre was open in Hong Kong in May this year. They are all housed in the Hong Kong Legal Hub, in the very prime location on Hong Kong Island. These collaborations signify these organisations' unfailing faith in Hong Kong's rule of law, legal and dispute resolution services. It also cements Hong Kong's status as an international centre for legal, deal-making and dispute resolution services in the Asia-Pacific region.

We continue to welcome international organisations which are committed to the betterment of international law to join our Legal Hub and explore opportunities for further collaboration and for capacity-building work in the region. It is our sincere hope that our close synergy may create more opportunities and better prospects for the Asia-Pacific region and beyond.

Concluding remarks

Ladies and gentlemen, it is my pleasure to announce that the inaugural Asia-Pacific Private International Law Summit has come to a successful conclusion. The success of this Summit is the culmination of the collective efforts and dedication of UNIDROIT and my colleagues at the DoJ, as well as the distinguished participants from different organisations. My heartfelt thanks goes to everyone who have contributed to the organisation of this Summit. Last but not least, this Summit and other events of Hong Kong Legal Week 2022 would not have been possible without the steadfast and continuous strong support of the Central People's Government and other international organisations including HCCH and UNCITRAL, for which we are deeply grateful.

With the conclusion of this Summit, the first day of Hong Kong Legal Week 2022 also draws to an end. We welcome all of you to join in the rest of the exciting events that we have organised for you this week, covering a wide range of topics from transnational litigation, arbitration and mediation to online dispute resolution, to the Law Society of Hong Kong's 5th Belt and Road Conference, as well as the Rule of Law Congress on the last day, which is this Friday (Note 11). These events would no doubt bring insights into building a more inclusive and sustainable future for the development of rule of law in this region, and I look forward to welcoming you all to these events as well. Thank you very much.

Note 1: This is the second MOU with UNIDROIT relating to administrative arrangements for collaboration relating to private international law and international commercial law, while the first MOU signed between UNIDROIT and the Government of the HKSAR in 2021 was in relation to the secondment arrangement.

Note 2: Please find linked UNIDROIT's webpage on the Cape Town Convention: www.unidroit.org/instruments/security-interests/cape-town-convention/overview/

Note 3: www.ogcio.gov.hk/en/news/press_releases/2022/05/pr_20220511.html

Note 4: www.hkma.gov.hk/eng/news-and-media/press-releases/2022/09/20220920-4/

Note 5: Article by Secretary for Financial Services and the Treasury Mr Christopher Hui on "New measures for virtual asset sector" (March 17, 2022), see: www.news.gov.hk/eng/2022/03/20220317/20220317_112137_332.html

Note 6: See www.unidroit.org/work-in-progress/digital-assets-and-private-law/. For the latest status of the working group on this topic, please see: www.unidroit.org/wp-content/uploads/2022/08/W.G.6-Doc.-3-Tracked-Principles-and-Issues-Paper.pdf

Note 7: See: www.unidroit.org/work-in-progress/bank-insolvency/

Note 8: Please see the press release (May 14, 2021) on the signing of the record of meeting: www.info.gov.hk/gia/general/202105/14/P2021051400219.htm.

Note 9: Relevant cases include (but are not limited to): Re Joint and Several Liquidators of Ozner Water International Holding Ltd (In Liquidation) [2022] HKCFI 363; Re Samson Paper Co Ltd (in Creditors' Voluntary Liquidation) [2021] HKCFI 2151)

Note

10: www.doj.gov.hk/en/miscellaneous/secondment_programmes_to_international_organisations.html

Note 11: Schedule of Days 2 to 5 of Legal Week 2022: Day 2 - (i) HCCH Conventions Supporting Transnational Litigation in Civil or Commercial Matters: A Workshop to celebrate the Tenth Anniversary of the Regional Office for Asia and the Pacific; (ii) Generations in Arbitration Conference. Day 3 - (i) Workshop on ASEAN (Association of Southeast Asian Nations) Online Dispute Resolution: ODR in Facilitating Cross-Border Trade and Investment for ASEAN and Hong Kong Businesses; (ii) Hong Kong Mediation Lecture. Day 4 - The Law Society of Hong Kong's 5th Belt and Road Conference. Day 5 - Rule of Law Congress: Rule of Law and Justice for All.

Ends/Monday, November 7, 2022

