

Speech by DSJ at UNIDROIT Conference on Promoting Cross-Border Investment through Transnational Legal Standards in Rome (English only) (with photo)

Following is the speech by the Deputy Secretary for Justice, Mr Cheung Kwok-kwan, entitled "Hong Kong's Investment-Friendly Legal Order: Present to Future", at the UNIDROIT (International Institute for the Unification of Private Law) Conference on Promoting Cross-Border Investment through Transnational Legal Standards in Rome, Italy, on March 6 (Rome time):

President Malaguti (President of UNIDROIT and event Chair, Professor Maria Chiara Malaguti), His Excellency Ambassador Jia Guide (Ambassador Extraordinary and Plenipotentiary of the People's Republic of China to the Republic of Italy, Mr Jia Guide), Secretary-General Tirado (Secretary-General of UNIDROIT, Professor Ignacio Tirado), Excellencies, distinguished panellists, honoured guests, ladies and gentlemen,

Good evening. I would like to first express my gratitude to UNIDROIT for organising this conference, and to His Excellency Ambassador Jia Guide and his staff of the Chinese Embassy here in Rome for their assistance in making my time here in Rome go so smoothly. We are having a fruitful time here in Rome, strengthening our relationship with UNIDROIT and friends, and building new ones. It gives me great pleasure for this opportunity to introduce Hong Kong's legal order to our friends from the business, legal and dispute resolution sectors here in Italy and beyond. As the theme of tonight is promoting cross-border investment, I hope to give you a glimpse of some of the unique features of Hong Kong's legal system which would facilitate your pursuit of the ample opportunities for cross-border investments both in and through Hong Kong.

Hong Kong/Italy relationship

Italy has the third largest population in the EU (European Union) and is the world's eighth largest economy.

Allow me to briefly set out Hong Kong's position on the global stage. According to the United Nations Economic and Social Commission for Asia and the Pacific, Hong Kong recorded an average annual Foreign Direct Investment (FDI) inflows growth of 4 per cent from 2017 to 2021, which was higher than the Asia-Pacific's 3.8

per cent average annual FDI inflows growth. Similarly, in terms of FDI outflows, Hong Kong had an average annual FDI outflows growth of 9.3 per cent in the last five years, taking into account the effects of the pandemic for the past few years, which was much higher than the Asia-Pacific's 3.2 per cent average annual FDI outflows growth. Additionally, the Fraser Institute in its latest rankings ranked Hong Kong as the world's freest economy, being the top ranker in the "Freedom to Trade Internationally" and "Regulation" sub-categories. Further, Hong Kong has been ranked as the world's top IPO venue in seven of the past 13 years.

Against this backdrop, Italy and Hong Kong share a close trade and investment relationship. On the trade front, Italy was Hong Kong's fourth largest trading partner, fourth largest export market and the second largest import market in the EU in 2021. On the investment front, Hong Kong was the fourth largest destination in Asia for Italian investors in 2020. Similarly in the same year, Hong Kong was also ranked as the fourth largest Asian investor in Italy, with a total FDI stock of 634 million Euros.

That is not to mention intangible factors such as the reputation that Italian food and wine enjoys in Hong Kong, the popularity and abundance of Italian fashion brands in the hearts of Hong Kong consumers and tourists to Hong Kong, and the appreciation of Italian art masterpieces in Hong Kong, such as the bringing of baroque pieces from the Museo di Capodimonte to be shown in our Hong Kong Museum of Art for the first time last year.

UNIDROIT's role in creating an internationally investment-friendly environment

The facilitation of such investment and trade globally, and specifically between Italy and Hong Kong, requires a robust legal system consisting of reliable and transparent commercial laws and rules aiming at promoting an internationally investment-friendly environment. In this respect, UNIDROIT has the noble aim of studying the needs and methods for modernising, harmonising and co-ordinating private and in particular commercial law between states and groups of states and to formulate uniform law instruments, principles and guidelines to achieve that end.

Hong Kong's legal order - most conducive to international trade and investment

In my view, an investment-friendly legal order should, at minimum, possess two fundamental features. The first is that the jurisdiction should have substantive legal rules which match or align with international norms, so that investors and businesses

will have a sense of certainty when doing business in that jurisdiction. Secondly, it is crucial to have dispute resolution mechanisms which are efficient and trustworthy. I proudly present Hong Kong to you, which is blessed to possess these two features.

Substantive laws compatible with international standards

Firstly, Hong Kong's substantive laws on civil and commercial matters are congruent with international norms and standards. Under the unique and innovative principle of "one country, two systems", Hong Kong retains the common law system, which is bilingual; both Chinese and English are official languages. In this regard, English is the common language of the global business community and its use in Hong Kong as an official language facilitates business both in and through Hong Kong. In the commercial field, Hong Kong has also built up a body of well-established case law that is highly regarded by the international business community and foreign investors.

As far as substantive commercial laws are concerned, our laws conform to international norms and we have been actively monitoring and appropriately implementing international standards so that we can be as investment-friendly to the global business community as possible. For example, Hong Kong has recently passed legislation to implement the United Nations Convention on Contracts for the International Sale of Goods (CISG), adopting a modern and fair regime for contracts for the international sale of goods in Hong Kong. While we are a common law jurisdiction, we are agile and pragmatic in ensuring that our commercial and investment laws are friendly not only to common law jurisdictions but also civil and continental ones.

Robust dispute resolution mechanism

On the second feature relating to dispute resolution mechanisms, Hong Kong's litigation and alternative dispute resolution regimes boasts a strong reputation in the international business community.

Hong Kong courts exercise independent judicial power, free from any interference, and enjoy powers of final adjudication. This is constitutionally guaranteed under the Hong Kong Basic Law, which is our constitutional document. The Basic Law also sets out the procedures for the appointment of judges, and provides for the protection of their remuneration and benefits, allowing our judges to

enjoy security of tenure. Our judiciary is well-respected globally for its independence, quality and transparency, with Hong Kong judgments being cited and applied in the courts of other common law jurisdictions from time to time.

Apart from litigation, Hong Kong offers diversified dispute resolution options, such as our comprehensive and up to date legislative framework on arbitration, which is based on the global standard of international commercial arbitration, the UNCITRAL (United Nations Commission on International Trade Law) Model Law on International Commercial Arbitration.

Our legislative framework also offers various funding options, such as outcome related fee structures for arbitration and third party funding. With the New York Convention being applicable in Hong Kong, arbitral awards made in Hong Kong can be enforced effectively all around the world. Under "one country, two systems", a mechanism for mutual legal assistance has been set up between Hong Kong and Mainland China whereby parties to Hong Kong-seated arbitrations and administered by designated arbitral institutions can apply to Mainland courts for interim measures such as property preservation, evidence preservation and conduct preservation.

Additionally, Hong Kong houses many well-established and internationally-known dispute resolution institutions including our home-grown Hong Kong International Arbitration Centre. Hong Kong is the third most preferred seat for arbitration in the world as reported in the Queen Mary University of London's International Arbitration Survey 2021.

With a business-friendly and internationally aligned commercial legal framework, coupled with Hong Kong's well-respected judiciary and a comprehensive arbitration regime and world-class arbitral institutions, there is no doubt that Hong Kong possesses an investment-friendly legal order to support the international business community.

Legal order in Hong Kong to be maintained

I would be remiss not to mention that China is determined for Hong Kong to maintain such an investment-friendly legal order. Just last year, President Xi reiterated China's full support for Hong Kong to maintain its distinctive status and edges and to maintain the common law, and we have the strong backing from the Central Government through the positioning of Hong Kong as a centre for

international legal and dispute resolution services in the Asia-Pacific region under the relevant overarching national strategies.

Indeed, our Financial Secretary noted in this year's Budget speech that Hong Kong will continue to integrate into the national development, and "fully leverage our unique advantages and irreplaceable role under 'one country, two systems'". This includes actively promoting Hong Kong as a functional platform and a key link for the Belt and Road Initiative, this year being the Initiative's 10th anniversary.

Comprehensive mechanism with Mainland China in mutual legal assistance

As the only common law jurisdiction in China, Hong Kong plays a unique role in complementing Mainland China's development of its own investment-friendly legal order. Notably, the Basic Law makes it possible for Hong Kong to establish and develop a comprehensive mutual legal assistance framework between the Mainland and Hong Kong. This includes the bundle of arrangements with the Mainland on arbitration matters which I have just outlined and also on reciprocal enforcement of judgments covering a wide range of civil and commercial matters, including intellectual property rights. This arrangement, modelled on the then prevailing draft Hague Judgments Convention, enhances certainty and predictability and at the same time reduces risks, legal costs, and time associated with the cross-boundary enforcement of judgments.

Indeed, I would say that Hong Kong is the jurisdiction that has established the most comprehensive mechanism on mutual legal assistance in civil and commercial matters with Mainland China. Along with the enhanced protection of parties' interests, certainty and efficiency in terms of evidence taking, and the enforcement of arbitral awards and judgments, this not only makes Hong Kong an ideal venue for dispute resolution, but also contributes to Hong Kong as a perfect investment environment.

Hong Kong's powers to conduct external affairs - maintaining international connections

Furthermore, under "one country, two systems", Hong Kong is authorised to conduct external affairs on its own in fields including economic, trade, financial and monetary, shipping, communications, tourism, culture and sports. This enables Hong Kong to maintain and develop close connections with the world. It also allows us to participate in international organisations and conferences not limited to states, such as

the World Trade Organization and the Asia-Pacific Economic Cooperation.

As such, Hong Kong not only benefits from deep integration with Mainland China, but also closely connects with the rest of the world. We are well suited to act as a multi-level bridge, linking countries along the Belt and Road, such as Italy, with China.

National Security Law provides stability and prosperity for Hong Kong

At this juncture, I would like to address some misconceived perceptions regarding the enactment of the National Security Law in Hong Kong. It goes without saying that safeguarding national security lies at the crux of a state's sovereignty. As an inalienable part of China, safeguarding national sovereignty, security and development interests of China is undeniably a constitutional requirement of Hong Kong, and is also in the interests of all Hong Kong residents.

Indeed, businesses only thrive in a stable environment with law and order. All major global economies have their own national security laws to maintain stability. Businesses enjoy the benefits and protection that such laws bring to investment environment.

Our National Security Law clearly stipulates and provides for the protection of human rights and strictly adheres to the principle of the rule of law. All law enforcement actions taken under this law, as with all other Hong Kong laws, are based on evidence and is in accordance with the law. Elements of the offences under the National Security Law are clearly stipulated, and prosecutorial decisions by the Department of Justice are free from any interference.

Detailed safeguards to exercise of investigative powers are stipulated in clear terms under the National Security Law. Investigative powers, for example, production of documents, restraint of assets, under the National Security Law are confined by extremely detailed Implementation Rules. Hong Kong law enforcement agencies have to follow these stringent procedural requirements in exercising investigative powers and may be subject to court scrutiny; aggrieved persons may also challenge such exercise of powers on established grounds. Undoubtedly, there are sufficient safeguards for businesses and individuals subject to those investigative powers.

We have witnessed that since the enactment and application of the National

Security Law in Hong Kong in 2020, order and stability has been restored, and Hong Kong is back on track to thrive with stability and prosperity. We see new capital keep flowing into Hong Kong, making a vote of confidence for Hong Kong with the stability brought by the National Security Law. Compared to the pre-implementation of the National Security Law, funds raised by IPO increased by 30 per cent, and assets managed by Hong Kong asset management industry grew by 20 per cent.

Concluding remarks

Just before I hand the floor over to our esteemed panellists, I would like to once again express my gratitude to UNIDROIT for not only organising this event, but also for our continued collaboration and co-operation. I have mentioned before that Hong Kong, in particular the Department of Justice, is deeply invested in monitoring, participating in and promoting the harmonisation of global investment and commercial legal norms. Our collaboration with UNIDROIT plays an important part in this initiative. We have built up a close relationship through the joint organisation of flagship events to promote private international law such as the Asia-Pacific Private International Law Summit in Hong Kong in November last year. I am sure that Maria and Ignacio would share my view that we are constantly finding new ways for collaboration. This has been facilitated by our successful secondment programme launched in 2021, with the Department's first secondee Michelle soon to complete her period of secondment. I am sure future secondees from Hong Kong will continue to contribute to UNIDROIT's most meaningful work in modernising, harmonising and co-ordinating private and international commercial law.

To conclude, I hope businesses, investors, and legal and dispute resolution professionals here in Italy would appreciate Hong Kong's unique strengths in providing quality and reliable legal support for international trade and investment. Indeed, we place great importance on fostering a closer relationship with countries in this area, in particular in Italy, which is an important partner of the Belt and Road Initiative. In this respect, I look forward to hearing your insightful views and our exchanges this evening. Thank you.

Ends/Tuesday, March 7, 2023