

Speech by SJ at The Hague Academy of International Law's Advanced Course in Hong Kong - 1st Edition (English only)

Following is the speech by the Secretary for Justice, Mr Paul Lam, SC, at The Hague Academy of International Law's Advanced Course in Hong Kong - 1st Edition today (December 11):

Professor Thouvenin (Secretary-General of The Hague Academy of International Law, Professor Jean-Marc Thouvenin), distinguished guests, ladies and gentlemen,

Good morning. Firstly, I would like to welcome all of you to the first edition of The Hague Academy of International Law's Advanced Course in Hong Kong, co-organised by The Hague Academy of International Law (The Hague Academy), the Asian Academy of International Law (AAIL), and the Department of Justice (DoJ). Particularly to those who have travelled from afar to Hong Kong, a very warm welcome. It is our great honour to host this special edition of The Hague Academy's advanced course face-to-face here in Hong Kong.

As you may be aware, we had to reluctantly postpone this advanced course several times due to the pandemic over the last three years. While the DoJ has kept the momentum through organising webinars together with The Hague Academy and the Asian Academy, today marks the true beginning of the first ever The Hague Academy's advanced course in Hong Kong. Our excitement for finally kick-starting the advanced course physically is beyond words. I must express my gratitude to the Secretary-General Professor Thouvenin for deciding to host the advanced course in Hong Kong, for his staunch support and that of The Hague Academy's Curatorium, and for continuously working closely with us in order to realise this meaningful project.

The Hague Academy's worldwide reputation for being one of the world's most prestigious institutes of international law is well recognised and needs no further introduction. Throughout this five-day course, I hope our distinguished speakers, and around 40 participants from about 20 jurisdictions will have a very comprehensive understanding of different perspectives in relation to the current trends of international commercial and investment dispute settlement, and will be able to share their valuable experience and visions with one another and hopefully leave with a deeper appreciation and understanding of various subject matters.

A. Hong Kong as a centre for international legal and dispute resolution services

The focus of the advanced course has aptly echoed Hong Kong's status as a leading centre for international legal and dispute resolution services in the Asia-Pacific region. Our city's unique strengths have made us an ideal service centre for deal making and resolving international investment and commercial disputes.

i. Hong Kong and the international legal arena

Hong Kong, as just mentioned by Teresa (Founder Member and Co-Chairman of the AAIL, Ms Teresa Cheng, SC), is a Special Administrative Region of the People's Republic of China. Under the Basic Law of the HKSAR (Hong Kong Special Administrative Region) and pursuant to the principle of "one country, two systems", the HKSAR exercises a very high degree of autonomy. In accordance with the provisions of the Basic Law, Hong Kong retains its own common law system, making Hong Kong the only common law jurisdiction within China.

Hong Kong has a wealth of legal and dispute resolution professionals, who are proficient in multiple languages. With a population of more than seven million, there are over 1,500 practising barristers, around 11,000 practising solicitors and over 1,500 registered foreign lawyers from more than 40 jurisdictions, working in over 900 local law firms plus around 90 registered foreign law firms here. The presence of major international law firms and the offices of over 20 law-related organisations can also be found in Hong Kong.

Hong Kong has always been a city well connected with the international arena for decades. Under the Basic Law, Hong Kong is authorised to conduct relevant external affairs on its own. Using the name "Hong Kong, China", Hong Kong may also maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organisations in various fields. Over 250 multilateral treaties apply to Hong Kong. Hong Kong has also entered into more than 260 bilateral agreements with over 70 countries and jurisdictions throughout the world. For example, Hong Kong has entered into free trade agreements as well as investment promotion and protection agreements with various different jurisdictions. Hong Kong is also a member in its own right in a number of international organisations. For instance, it is a founding member of the World Trade Organization, WTO, as well as a member of the Asia-Pacific Economic Co-operation, APEC, and

the Asian Development Bank.

Furthermore, Hong Kong is home to many renowned international legal bodies. Officially opened on November 2, 2020, the Hong Kong Legal Hub provides office accommodation for law-related organisations (LROs) and dispute resolution institutions. We are committed to facilitating international and regional LROs and dispute resolution institutions to set up offices in Hong Kong, to enhance effective promotion of exchanges and collaborations. Again, for example, the Regional Office for Asia and the Pacific of the Hague Conference on Private International Law (HCCH) was established in Hong Kong over 10 years ago. Another example, AALCO Hong Kong Regional Arbitration Centre was opened in Hong Kong in May last year. And moreover, earlier this year, the International Organization for Mediation Preparatory Office has just been established in Hong Kong to take forward the work relating to the negotiation of the relevant international convention and the other preparatory work relating to the establishment of the International Organization for Mediation in, hopefully, the very near future.

ii. International dispute resolution

Dispute resolution and lawtech

With respect to the legal framework for dispute resolution, we have very comprehensive legislation covering both mediation and arbitration. Apart from our long standing Arbitration Ordinance, we have enacted the Mediation Ordinance to encourage the wider use and development of mediation as an effective means of dispute resolution. Hong Kong is also the first jurisdiction in Asia to have an apology legislation which would promote and encourage the making of apologies between parties with a view to preventing the escalation of disputes and facilitating their amicable resolution.

We also regularly review our legislation to ensure that they will keep track of international developments and the needs of the parties in modern days. Quite recently, the Outcome Related Fee Structures for Arbitration statute has come into force, which permits lawyers and clients to enter into outcome-related fee structure agreements in arbitration. The new regime allows a broad range of fee options, including conditional fee agreements, damages-based agreements and hybrid damages-based agreements. With this regime, along with the third party funding regime for arbitration, Hong Kong provides multiple funding options which enable

flexible fee arrangements in arbitrations. Last month, we have published the Guidance Note and Checklists for Outcome Related Fee Structures for Arbitration to facilitate users or potential users of the outcome-related fee structure agreements.

Hong Kong also provides facilitation measures for people from outside Hong Kong to take part in arbitrations in Hong Kong in different capacities. The Pilot Scheme on Facilitation for Persons Participating in Arbitral Proceedings in Hong Kong launched in June 2020 allowed visa-free nationals who are arbitrators, lawyers, experts and parties to arbitration to come to Hong Kong to participate in arbitral proceedings under the Scheme without the need to obtain any employment or working visa. Since March 1 this year, the Pilot Scheme has been expanded to cover all visitors, including those who would have required a visit visa or entry permit to enter Hong Kong and also residents of the Mainland China, Macao and Taiwan.

At the same time, for those who, for whatever reason, do not come to Hong Kong but wish to make use of the excellent dispute resolution services that Hong Kong can offer, we have been actively promoting the use of online dispute resolution (ODR). eBRAM International Online Dispute Resolution Centre Limited has been established in Hong Kong which is dedicated to serve as an efficient, cost-effective and secure platform for online deal-making and resolving disputes among parties in any part of the world by state-of-the-art technology, such as blockchain, smart contracts and AI (artificial intelligence).

It is worth mentioning that Hong Kong, China opted into the APEC framework for online dispute resolution (APEC Framework). eBRAM is one of the few listed ODR providers under the APEC Framework since May last year to cater for the needs of businesses, especially micro, small and medium enterprises. In addition to its Online Mediation and Arbitration Platforms, eBRAM has recently launched its Online Deal-making Platform in August, providing a set of comprehensive tools for cross-border dispute resolution and deal-making.

Furthermore, the DoJ Project Office for Collaboration with UNCITRAL established in Hong Kong, provides support to the Inclusive Global Legal Innovation Platform on ODR (iGLP on ODR), a project to facilitate studies on ODR-related issues in collaboration with UNCITRAL since 2020. Last month, iGLIP on ODR just held its third meeting to keep track of the latest development in ODR around the world and to identify potential issues surrounding the use of ODR.

Another initiative in relation to lawtech is the launch of the Hong Kong Legal Cloud services last year, to improve the capability of the local legal and dispute resolution profession and to facilitate cross-border deal-making and dispute resolution.

iii. Co-operation between the Mainland and Hong Kong in legal affairs

Leveraging on our strength in international legal and dispute resolution services, Hong Kong is also very much well equipped to provide legal and dispute resolution services between Hong Kong and the other parts of China.

With the strong support of the Central Government, Hong Kong and the Mainland have so far concluded nine arrangements on mutual legal assistance covering a wide range of civil and commercial matters, including service of documents and taking of evidence. Now this is a very important area that Teresa has already given a very detailed explanation in her speech. This is a very important part that I ought to give some important points on top of what she has said.

Many of these arrangements are indeed, as Teresa has already mentioned, modelled on the relevant Hague Conventions such as the Hague Service Convention and Evidence Convention, which aim to bridge the gaps between civil law and common law legal systems. Our arrangements with the Mainland provide an excellent illustration on the importance and value of the Hague Conventions in bridging such gaps.

Among other things, it is worth mentioning the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the HKSAR (REJ Arrangement) which was signed in January 2019 to establish a more comprehensive and clearer mechanism for reciprocal recognition and enforcement of civil and commercial judgments between these two places within the same country. This arrangement makes reference to the Judgments Project of the HCCH, and seeks to establish a bilateral mechanism for the reciprocal recognition and enforcement of judgments in civil and commercial matters. One particular feature, once again which has been highlighted by Teresa, is that this arrangement covers judgments involving intellectual property rights, so in this respect, the scope of the arrangement can be said to be more extensive than that of the Hague Judgments Convention.

The local legislation implementing the REJ Arrangement in Hong Kong, as well as the judicial interpretation implementing the arrangement in the Mainland, will simultaneously take effect on January 29, 2024. So at the end of next January, the implementation of the REJ Arrangement will certainly reduce the need for re-litigation and offer more protection to the parties' interests.

B. Hong Kong as a regional hub for capacity building

Lastly, I would like to mention Hong Kong's role in capacity building. We have been developing Hong Kong as a centre for capacity building by organising or supporting various training courses on a regular basis. For example, we provide regular support to the AAIL for the "China-Asian-African Legal Consultative Organization Exchange and Research Program on International Law" and co-organise the Investment Law and Investor-State Mediator Training Course in Asia with the International Centre for Settlement of Investment Disputes under the World Bank Group and the AAIL.

In September this year, we were very honoured that the HCCH held its Asia Pacific Week 2023 in Hong Kong for the celebration of its 130th anniversary, which sought to enhance understanding and exchanges on the application and implementation of various HCCH instruments. With strong support from the Central People's Government, the DoJ will continue to work closely with the HCCH in the years to come.

Last month, we held the Hong Kong Legal Week, which is a significant annual flagship event for Hong Kong with numerous side events, organised by the DoJ with different organisations including UNCITRAL. The Legal Week forms a vital platform for exchanges on various topical issues in the legal and dispute resolution sector among judges, government officials, academics, legal professionals and other professionals from Hong Kong and around the world. The Hong Kong Legal Week has displayed a powerful demonstration of our unwavering commitment in strengthening our unique status as the "super connector" in the legal field between Mainland China and the rest of the world.

Last week, with the DoJ's support, the AALCO Hong Kong Regional Arbitration Centre successfully hosted the 3rd AALCO Annual Arbitration Forum in Hong Kong. The Forum is the flagship international event of the Asian-African Legal Consultative Organization (AALCO) and a valuable platform for promoting international

commercial arbitration among the AALCO's 47 member states and for exchanging views on issues arising from arbitration practices across different jurisdictions in Asia and Africa.

On top of that, in order to nurture more legal talent, since 2015, a series of secondment programmes has been launched to arrange local legal professionals to work at international organisations. Arrangements have been reached with the HCCH, UNIDROIT, UNCITRAL and AIIB for creating or providing opportunities and exposure for local legal talent to enhance their knowledge of international legal matters.

In line with our Chief Executive's 2023 Policy Address, the DoJ will set up a dedicated office and an expert group next year to take forward the establishment of the Hong Kong International Legal Talents Training Academy (the Academy). The Academy, once established, will strive to regularly organise practical training courses, seminars, and international exchange programmes to promote exchanges among legal professionals, judges and government officials in the Asia-Pacific region as well as around the world. Leveraging Hong Kong's bilingual common law system and international status, the Academy will also offer regular training courses for talents in the practice of foreign-related legal affairs, and nurture a pool of legal talent and professionals conversant with international law, common law, and perhaps civil law in the Mainland, and, while fostering collaborative relationships between international organisations and different jurisdictions.

Conclusion

Ladies and gentlemen, I hope this advanced course will serve as a platform for both the speakers and participants to share and exchange their expertise and experience in relation to international law and its recent development. I also hope that the participants, whether based locally in Hong Kong or coming from overseas, will seize the opportunities and explore what Hong Kong can offer, in terms of both the comprehensive international legal and dispute resolution services and also the excellent training opportunities that you are most welcome to take full advantage of.

Lastly, I wish to express my appreciation again to each and every one of you for joining us today. I also thank the dedication of my colleagues in the DoJ and our co-organisers for making the advanced course possible. I wish you all a very fruitful and enlightening week here in Hong Kong. Thank you very much.

Ends/Monday, December 11, 2023