

Speech by SJ at 2021/22 Investment Law and Investor-State Mediator Training (English only)

Following is the welcoming remarks by the Secretary for Justice, Ms Teresa Cheng, SC, at the 2021/22 Investment Law and Investor-State Mediator Training today (March 11):

Good morning, good afternoon, and good evening. It is my great pleasure to welcome you to the 2021/22 Investor-State Mediator Training.

Investment Law and Investor-State Mediator Training 2018 and 2019

In 2018, the inaugural Investment Law and Investor-State Mediator Training in Asia was organised in Hong Kong, with a view to building up a team of investment mediators for the Asia-Pacific region. Thus far, we have attracted more than 90 participants from 26 (Note 1) jurisdictions coming to Hong Kong taking part in this intensive training course.

2021/22 Investment Law and Investor-State Mediator Training

For the past two years, the world has been coping with the pandemic. Adaptations have to be made and we have split the training course: the investment law module was first held in October 2021 virtually in the hope that the Investor-State mediator training module could be held physically in Hong Kong this year. Unfortunately, the pandemic persists, rendering it impossible to conduct the training physically. Therefore, we are here today conducting the training online. I am pleased to see 43 participants from 15 (Note 2) jurisdictions joining us today despite the time zone differences.

I must take this opportunity to thank the International Centre for Settlement of Investment Disputes (ICSID), the International Energy Charter, the Centre for Effective Dispute Resolution (CEDR) and the Asian Academy of International Law (AAIL) for making this training possible for the third time. No doubt their efforts would make a mark in the history of investment mediation.

Growth in investor-State disputes

Despite the challenges of the pandemic, there is still a strong demand for dispute resolution services for investor-State disputes. According to the statistics of United Nations Conference on Trade and Development, in 2020, at least 68 known treaty-based investor-State dispute settlement (ISDS) cases were initiated. The total ISDS case count had reached over 1,100 by the end of 2020 (Note 3). To cater for the growing phenomenon of investor-State disputes, there is definitely a call for a faster and more efficient means of dispute resolution in the investor-State dispute arena (Note 4).

Mediation and ODR

The advancement and dependence on technology has unleashed the potential of online dispute resolution (ODR) and investor-State dispute settlement options.

Investor-State dispute resolution has, traditionally, relied heavily on arbitration or court proceedings. Mediation is gaining traction as a cheaper and faster alternative that provides amicable and more acceptable solutions for both sides, and aims to devise a solution focusing on the interests of the parties, preserving goodwill and long-term relationships.

Effective communication, as a key to successful mediation, could now be made online in confidence, overcoming barriers such as pandemic and indeed would be conducive to carbon reduction simply by reason of the reduction in flights.

The inherent flexible nature of mediation, giving autonomy to the parties and the mediators to creatively design the process, echoes with the adaptability of ODR. ODR allows the parties to resolve disputes with efficiency and flexibility in a secure manner without the need for physical presence at a meeting or hearing. The synergy of mediation in investor-State dispute settlement and ODR has been explored internationally. It is expected that ODR and mediation would continue to gain spotlight as their coaction is imperative and beneficial in resolving investor-State disputes effectively.

While we leverage on lawtech and ODR, we must not lose sight of the potential legal issues involved. The Department of Justice has set up the Inclusive Global Legal Innovation Platform on ODR (iGLIP on ODR) to facilitate studies on ODR-related issues in collaboration with UNCITRAL (United Nations Commission on International Trade Law). I am also pleased to share with you that the UNCITRAL Commission at its 54th Session in July 2021 endorsed its Secretariat's suggestion to continue to collaborate with the Department of Justice Project Office for Collaboration with UNCITRAL in this area and to take part in iGLIP on ODR.

eBRAM in Hong Kong

As an ODR initiative in Hong Kong, eBRAM has been established to provide a full spectrum of ODR services to assist parties to resolve disputes via a secure and user-friendly online platform. Jointly built by practitioners, lawyers and IT specialists, eBRAM tasks itself to enhance Hong Kong's arbitration and mediation services. The eBRAM platform is equipped with different features that support parties in every step of their businesses. It is a deal-making and dispute resolution platform providing for negotiation, mediation and arbitration.

In this four-day training, we are delighted to have eBRAM providing the platform and technical support. I hope all of you could enjoy this virtual Hong Kong hospitality.

Conclusion

Ladies and gentlemen, it is important for us to keep track of the latest

developments in the ISDS arena and equip ourselves with skills to tackle the challenges in investor-State disputes. I hope this training will serve this purpose, and will continue to provide skilled players, be they host state government officials, management staff of investors, legal representatives and mediators, to ensure sustainable growth in the use of mediation for investor-State disputes.

Last but not the least, I would also like to extend my gratitude to Ms Anna Joubin-Bret (Secretary of the UNCITRAL) for joining us today to give the opening remarks. May I close by wishing you all fruitful exchanges and discussions in this training. Thank you very much.

Note 1: Ghana, Hong Kong, Indonesia, Kenya, Laos, Libya, Mainland, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Pakistan, Palestine, Saudi Arabia, Singapore, Somali, Thailand, the Philippines, Trinidad, Turkey, Uganda, UK, Vietnam, Zimbabwe

Note 2: Mainland, Hong Kong, Pakistan, Malaysia, USA, Indonesia, UAE, Mongolia, UK, Japan, India, Iran, Turkey, Laos, Thailand

Note 3: unctad.org/system/files/official-document/diaepcbinf2021d7_en.pdf

Note 4: According to the ICSID caseload statistics 2021, one out of 58 cases used conciliation as the method of dispute resolution: icsid.worldbank.org/sites/default/files/Caseload%20Statistics%20Charts/The%20ICSID%20Caseload%20Statistics%202021-2%20Edition%20ENG.pdf