

Speech by SJ at 2024 Investment Law and Investor-State Mediation Training (English only) (with photo)

Following are the welcome remarks by the Secretary for Justice, Mr Paul Lam, SC, at the 2024 Investment Law and Investor-State Mediation Training today (May 31):

Good morning, Ms Teresa Cheng (Founder Member and Co-Chairman of the Asian Academy of International Law (AAIL)), Mr Adrian Lai (Deputy Secretary General of the AAIL), trainers, participants and colleagues. As the famous Confucius saying goes, "Isn't it delightful to have friends coming from afar?" 遠道而來，不亦樂乎。 So friends from the Mainland, ASEAN countries and AALCO member states, it is my great pleasure to give you my warmest welcome to the 2024 Investment Law and Investor-State Mediation Training (ILIM) – The Mediation Module.

The ILIM

In the past decades, the rising trend of multi-lateral trade opportunities had led to the inevitable upsurge of investor-State disputes. According to the statistics published by United Nations Conference on Trade and Development, the total number of known investment treaty cases rose to over 1 300 by the end of 2023. With increasing concern on whether investor-State arbitration may be taking too long and too expensive in resolving inter-states investment disputes, how to resolve the disputes quickly while balancing the interest of various stakeholders has become a prime question. Global communities have called for cheaper and more efficient solutions to resolve investor-State disputes and, as a result, investment mediation has grown significantly.

When an investor-State dispute happens, not only is the investment of a foreign investor in jeopardy, the reputation and the future of foreign trade of the whole state may also be at stake. Mediation facilitates effective communications and could help overcome barriers arising from different legal and cultural backgrounds. In addition, the process focuses on the underlying interests and aims to assist the parties to resolve the disputes amicably, thereby preserving goodwill and long-term relationships.

Seeing the need on capacity building for investor-State mediation, since 2018, the Department of Justice, together with the Asian Academy of International Law, has organised the ILIM to offer training for mediators and state officials on how mediation is apt to resolve investor-State disputes and the practical know-how in participating in one.

Throughout these four editions of the ILIM, more than 200 participants from 38 jurisdictions have learnt from top-notch trainers and gained invaluable insights from the discussions and interactive exercises with their

fellow participants. This year, in this training for state-officials only, trainers will walk you through the mediation process and discuss possible objections to it from government and investors. In the interactive mock mediation section, you will engage in mediation process on behalf of your states including dealing with preparatory matters such as designing a mediation process and undertaking a stakeholder analysis. You will engage in negotiation and settlement of the dispute. Together with exercises on stakeholder mapping, intercultural competency and finalising a settlement agreement, after this intense two-day training, we trust that you would be able to grasp the essence of mediation, have meaningful exchange and interflow of ideas and cultures and gain mutual understanding. So brace yourself for a very eventful and informative training.

Practice mediation

The second, less quoted but perhaps equally important, saying of Confucius is, "Isn't it a pleasure to practice what you have learned?" 子曰：「学而时习之，不亦悦乎？」 This saying would best illustrate our goals for this training. The training may end after tomorrow; however, we hope the effect would be far-reaching. While surely all of you would be submerged in information about investor-State mediation, we would hope that you would practise what you will have learnt here when you bid farewell to this meaningful weekend. We hope that you would become ambassadors for mediation when you return to your office: Participate in mediation. Promote mediation. Persuade your fellow officials to consider mediation, and you will find that the benefits of mediation transcend investor-State disputes.

International Organization for Mediation

This brings me to my next point. As all of you may be aware, Hong Kong is blessed to have been chosen to host the headquarters for the International Organization for Mediation, the IOMed, which further enhances Hong Kong's role as an international hub for dispute resolution in the Asia-Pacific region. Once established, the IOMed will be an international intergovernmental organisation that provides friendly, flexible, economical and efficient mediation services for international disputes. The establishment of the IOMed shows that more and more countries are appreciating the power of mediation and would explore to use mediation to resolve disputes they encounter. Here, may I impress upon you to support the meaningful work of the IOMed by applying the mediation knowledge and skills you gain in this training.

Before I end my welcome remarks, I must extend our gratitude to our co-organiser, the Asian Academy of International Law and the esteemed trainers from the Centre for Effective Dispute Resolution, in particular Mr James South and Mr Wolf von Kumberg, and Professor TK Iu from Hong Kong. This training course would not have come into place without their very strong support. I wish this training course every success, and I hope everyone will have a fruitful experience and a pleasant stay in Hong Kong. Thank you.

