

Speech by SJ at 4th UNCITRAL Asia Pacific Judicial Summit – Judicial Roundtable (English only) (with photo)

Following is the closing remarks by the Secretary for Justice, Ms Teresa Cheng, SC, at the 4th UNCITRAL Asia Pacific Judicial Summit: Sustainably Adapting to a New Normal – Judicial Roundtable under Hong Kong Legal Week 2021 today (November 2):

Anna (Secretary of the United Nations Commission on International Trade Law (UNCITRAL), Ms Anna Joubin-Bret), distinguished judges, ladies and gentlemen,

It is a great honour for me to be here today to speak at the closing of the Judicial Roundtable 2021. This year's Judicial Summit marks the first time for Armenian simultaneous interpretation to be arranged so that Armenian judges may be able to listen in and participate in the discussions. My special thanks go to the Asian Development Bank (ADB) and the UNCITRAL Regional Centre for Asia and the Pacific for making this possible and for facilitating this process. Along with our Armenian judicial colleagues, we have judicial officers from around 20 jurisdictions participating in the Roundtable today.

I hope that your experience today has enabled you to share our belief that the Judicial Summit has somehow contributed to judicial capacity building in different parts of the world. It is my wish that we can join hands with different international organisations such as the ADB to bring the Judicial Summit to more stakeholders in different parts of the world in the future, reflecting our desire to work together in the spirit of inclusiveness in future capacity building projects.

Indeed, we all recognise the need to work in solidarity to tackle challenges brought by the pandemic, which has been affecting almost every aspect of our lives, from our homes to the global economy. Yet life must go on, with the pandemic developing into a new way of living for all of us and resulting in greater reliance on digital technologies. This reliance is not just for organising hybrid conferences like today's, but legal professionals and judges must also adapt to emerging technologies brought about by the aftermath of the pandemic.

Adapting to this new normal may not be enough – we must also be sustainable when doing so. That is precisely why we are here today, to dive into the possible legal issues surrounding supply chain disputes, emerging technologies, and insolvency and restructuring, and at the same time drawing on your judicial insights developed through overseas and local jurisprudence on these topics.

First, we have seen a rising number of trade disputes as a result of the disruption of the supply chain caused by the pandemic. Today, we have heard

about the usefulness of tools such as the CISG (United Nations Convention on Contracts for the International Sale of Goods) and CLOUT (Case Law on UNCITRAL Texts) in addressing such disputes. In Session 1, insights were drawn on CISG case studies from CLOUT which demonstrate the real world application of the CISG by providing practical examples from worldwide courts on how they have dealt with supply chain trade disputes caused by the pandemic.

I am pleased to say that here in Hong Kong we have passed the Sale of Goods (United Nations Convention) Bill in September this year to implement the CISG, and the relevant Ordinance will come into operation in the near future. As Anna states in her opening address, the CISG is the most successful substantive uniform commercial law treaty. Hong Kong is proud to join in the development of the uniform interpretation of commercial law which will, as Anna notes, contribute significantly to introducing certainty in commercial transactions and decreasing their costs. As the CISG will form part of our local law, we will continue to pay close attention to the latest jurisprudence, in particular on the interesting issue of how Article 79 of CISG (Note) comes into play in COVID-19 related disputes. As mentioned in the conference celebrating the 40th anniversary of the CISG held by the Department of Justice last October, the pursuit of a wider adoption of this uniform law is conducive to sustainably adapting to this new normal in that people and business can co-exist in harmony.

Another result produced by the pandemic is that we have seen the increasing use of technology. In Session 2, we have heard experts discussing on how digital technologies are now commonly used by legal and business professionals, both in court and in dispute resolution proceedings.

Long identifying the impact of legal technology, the Hong Kong Government is committed to developing and promoting online dispute resolution (ODR), and in 2020 Hong Kong opted into the APEC Collaborative Framework for Online Dispute Resolution of Cross Border Business-to-Business Disputes. However, as pointed out by the presenters, we must not lose sight of the potential legal issues involved when we leverage on lawtech and ODR. Recognising this, we have launched the Inclusive Global Legal Innovation Platform on ODR (iGLIP on ODR) comprising experts from around the globe to keep track of the relevant international developments and study the relevant issues. I note that at its recent 54th Session, the UNCITRAL Commission has endorsed for the UNCITRAL Secretariat to continue to collaborate with the DoJ Project Office and to take part in iGLIP on ODR. We are committed to further contributing to relevant international developments and will continue to strive to provide timely and relevant capacity building projects for judges, officials and practitioners in the region.

Finally, as there will be disputes that cannot be resolved satisfactorily with the latest technology or by the best judges, there may come the unfortunate truth of the possible eventuality of insolvency and restructuring for some enterprises which may succumb to the difficulties presented in cross-border situations. Session 3 today raised some cross-border issues in insolvency and how UNCITRAL instruments and tools can tackle the matter.

As you have heard from our presenters, under the new co-operation mechanism between Hong Kong and the Mainland on corporate insolvency and debt restructuring, liquidators and provisional liquidators from Hong Kong may apply to a court in Shenzhen, Shanghai or Xiamen for recognition of bankruptcy proceedings in the Mainland. Similarly, bankruptcy administrators from the Mainland may continue to apply to our High Court for recognition and assistance according to existing common law principles in Hong Kong. We look forward to sharing with you our jurisprudence on this subject and how this unique mechanism has impacted the insolvency and restructuring sector when we gather again, hopefully in person.

To conclude, my heartfelt thanks go once again to all the moderators, presenters and audiences for today's Judicial Roundtable and everyone who has contributed to make this Judicial Summit a success during this new normal. I am sure that all of you have lots of ideas and inspiration to take home. To close, I would like to extend an invitation for you to work with us in exploring opportunities for collaboration and capacity building, and we always welcome ideas in this respect from different countries and entities. I hope that we can welcome you all to Hong Kong physically in our upcoming events, and I hope to see you all in person, mask-free, at the next Judicial Summit in Hong Kong in 2023. Thank you very much.

Note: Article 79 of the CISG provides that "[a] party is not liable for a failure to perform any of his obligations" if the party has encountered a certain impediment defined therein. There are controversies on whether Article 79 as a rule exempts a party from specific performance claims and the so-called "hardship" cases are within the ambit of Article 79.

