

Speech by SJ at 8th ICC Asia Pacific Conference on International Arbitration (English only)

Following is the speech by the Secretary for Justice, Mr Paul Lam, SC, at the 8th ICC Asia Pacific Conference on International Arbitration today (June 27):

Distinguished guests, ladies and gentlemen,

Firstly, on behalf of the Department of Justice (DoJ) of Hong Kong, may I extend our warmest welcome to all of you here, especially to our guests coming from different countries to attend this Conference. I would like to congratulate the ICC International Court of Arbitration on its centenary. Over the years, ICC has been the market leader in dispute resolution services and has gained an excellent reputation among users. This is indeed evidenced by the 2021 International Arbitration Survey conducted by the Queen Mary University of London in partnership with White & Case, in which ICC stands out as the most preferred arbitral institution.

ICC is a longtime partner of Hong Kong, whether in the context of dispute resolution or beyond. As early as 2008, the ICC International Court of Arbitration established its Secretariat's Asia Office in Hong Kong as its first overseas branch to administer ICC cases in the Asia Pacific region. This development recognises not only the growing importance of the Asia Pacific region to ICC dispute resolution services but also the status of Hong Kong as the leading centre for international arbitration services. Further, since the opening of the Legal Hub in Hong Kong in November 2020, the Secretariat of the Asia Office of the ICC International Court of Arbitration has been our tenant. In terms of place of arbitration, Hong Kong has been among the top 10 most frequently selected cities in ICC-administered arbitration since 2019, according to the ICC Dispute Resolution Statistics. With respect to our co-operation on capacity building, the DoJ and ICC Hong Kong co-organised the "ICC International Commercial Mediation Competition – Hong Kong" (ICC Mediation Competition-HK) twice in Hong Kong in 2018 and 2019/2020 respectively. The ICC International Commercial Mediation Competition is widely recognised as the world's leading mediation competition for university students. The ICC Mediation Competition-HK has not only enhanced the skills and experience of the younger generation in mediation, it also provided opportunities for Hong Kong mediators to share ideas with top professionals from the international mediation community.

The status of ICC is well recognised not just by the Hong Kong SAR (Special Administrative Region) but also our country China as a whole. In September 2019, the Asia Office of the ICC International Court of Arbitration was confirmed by the Supreme People's Court of the People's Republic of China and the Hong Kong SAR Government as a qualified arbitral institution for the purposes of the Interim Measures Arrangement in relation to arbitration. In

the recent review of the list of qualifying institutions under the Interim Measures Arrangement in March this year, the Asia Office was once again confirmed as one of the qualified institutions.

Issued in January this year by ICC, the ICC Centenary Declaration on Dispute Prevention and Resolution has set out ICC's vision to shape dispute resolution and prevention for the next century. In the Declaration, ICC has made 10 pledges including Pledge number 10 on "Co-operation" by which ICC is committed to work across ICC and in partnership with like-minded purpose-driven organisations and individuals globally, guided by its belief that access to justice and the rule of law enables peace and prosperity. Hong Kong, in particular the Hong Kong SAR Government, will undoubtedly be one of such partners in the future. The Hong Kong SAR Government has strong commitments to promoting and developing international arbitration in Hong Kong and we also share the common core values as ICC as set out in the Declaration. In this regard, we very much look forward to working closely with ICC in bringing Hong Kong's arbitration services to new heights in the next 100 years.

And coincidentally, the Chinese Communist Party also celebrated its centenary in 2021, not too long ago. In Chapter 13 of the Report to the 20th National Congress of the Chinese Communist Party written by President Xi in October last year, the Central People's Government expressly supports Hong Kong's better integration into the overall development of the country and to play a greater role in realising national rejuvenation. In this respect, both the 14th Five-Year Plan and the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area explicitly support Hong Kong to develop into a centre for international legal and dispute resolution services in the Asia Pacific region. Hong Kong will certainly seize the opportunities brought about by the national development and proactively integrate itself with the national strategies.

IP arbitrability

As evidenced by various initiatives in recent years, the DoJ has spared no efforts to strengthen Hong Kong's status as a centre for international legal and dispute resolution services. In terms of our legislative framework for arbitration, we have amended our Arbitration Ordinance from time to time to ensure that it will stay at the forefront of international development. In June 2017, legislative amendments have been made to the Arbitration Ordinance to clarify that disputes over intellectual property (IP) rights may be resolved by arbitration, and it would not be contrary to the public policy of Hong Kong to enforce arbitral awards involving IP rights. The amendments relating to IP arbitration already came into operation on January 1, 2018. In light of the rapid development of innovation and technology around the world which inevitably gives rise to IP disputes, these amendments are important and timely. They give Hong Kong a competitive edge over other jurisdictions in the region in resolving IP disputes and at the same time, consolidate Hong Kong's status as a leading international arbitration centre as well as a premier IP trading hub in Asia and beyond.

Third party funding and ORFSA

We have also amended the Arbitration Ordinance to provide more funding options for arbitration users. Back in June 2017, the Arbitration Ordinance was amended to clarify that third party funding of arbitration is permissible in Hong Kong. A Code of Practice has been put in place since December 2018, setting out the standards and practices required for third party funders in arbitration. The relevant provisions relating to third party funding of arbitration already commenced on February 1, 2019. We believe that this amendment could facilitate arbitration parties lacking financial means to pursue their claims with additional funding, thereby improving access to justice.

Whilst disclosure of third party funding was made in only three arbitrations in 2020, as at April 30, 2023, there were 86 arbitration cases in Hong Kong in which third party funding has been disclosed. Such an increase in the use of third party funding means that there is a growing demand for funding options by arbitration users.

Apart from third party funding of arbitration, we have also amended the Arbitration Ordinance in June 2022 to provide that certain agreements using outcome-related fee structures for arbitration (ORFSA) are not prohibited by the common law doctrines of maintenance, champerty and barratry. One unique and innovative feature of our ORFSA regime is the availability of the hybrid damages-based agreements, which perhaps makes our regime more attractive than the other comparable regimes. With ORFSA, arbitration users and their lawyers now have greater flexibility in entering into fee arrangements that suit their financial and business needs. The relevant subsidiary legislation also came into operation in December 2022, which sets out a detailed regulatory framework and safeguards for ORFSA, including fee caps on different types of ORFSA agreements, and clients' rights to seek independent legal advice before entering into these sorts of agreements.

To familiarise the legal community and arbitration users with this new funding regime in Hong Kong, the DoJ has organised various workshops and seminars on ORFSA. With the support of the Advisory Body on ORFSA, the DoJ organised two workshops entitled "ORFSA Rules in Focus: The Practical Know-how" for members of the Law Society of Hong Kong and the Hong Kong Bar Association on September 30, 2022, and October 7, 2022, respectively. On February 23 this year, the DoJ and other stakeholders have also co-organised a seminar entitled "New Arbitration Funding Options in Hong Kong – Making Your Best Informed Choice" to promote the use of ORFSA. The seminar was well received and attracted over 130 online participants from different jurisdictions. More trainings are in the pipeline and in this respect, I am pleased to see that the DoJ will co-organise another seminar on ORFSA with ICC Hong Kong tomorrow.

The groundbreaking Interim Measures Arrangement

In recent years, Hong Kong has entered into several important mutual legal assistance arrangements with the Mainland including the groundbreaking Interim Measures Arrangement signed in April 2019. Such an arrangement allows parties to arbitration seated in Hong Kong and administered by designated institutions to apply to the Mainland courts for interim measures before the

issue of an award. Such interim measures include property preservation, evidence preservation and conduct preservation. Hong Kong is the first, and until now the only, common law jurisdiction outside the Mainland to enjoy this unique arbitration convenience. This arrangement is of extreme practical importance as many international arbitrations involve Mainland parties and/or assets. It certainly makes Hong Kong a more attractive seat of arbitration.

Since its implementation in October 2019, the Interim Measures Arrangement has been well received and widely used. As at April 30 this year, more than 93 preservation applications were made to the Mainland courts. So far, the Mainland courts have issued 67 court orders involving RMB15.7 billion worth of assets.

There are currently seven designated institutions under the Interim Measures Arrangement, and the Asia Office of the ICC International Court of Arbitration is one of them. As I have mentioned earlier, I am glad to learn that the ICC International Court of Arbitration has helpfully published a Note to provide guidance on interim measures applications in support of the arbitration seated in Hong Kong and administered by the Asia Office. To provide further training to the arbitration community, the DoJ and ICC International Court of Arbitration will co-organise a seminar on the Interim Measures Arrangement this Friday. If you are interested in learning more about the latest development of the arrangement, please come and join.

Lawtech and ODR development

On the development of lawtech and ODR services, the Hong Kong SAR Government has been an active supporter. In April 2020, Hong Kong opted into the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes (APEC ODR Framework), which promotes the use of ODR by micro, small and medium-sized enterprises in resolving low-value cross-border disputes. Since May 2022, eBRAM International Online Dispute Resolution Centre (eBRAM), our home-grown dispute resolution institution, has been listed as one of the few registered providers for the APEC ODR Framework. This encouraging development would further contribute to the international development and usage of ODR, which will, at the same time, strengthen the position of Hong Kong as a leading international dispute resolution centre.

To embrace digitalisation and enhance efficiency in the legal and dispute resolution sector, the DoJ launched the Hong Kong Legal Cloud services in March last year. It is a cloud-based document platform equipped with advanced information security technology to provide reliable and affordable data storage services for the local legal and dispute resolution industries. Eligible local professionals could enjoy free subscription to the Hong Kong Legal Cloud services for up to three years. All these innovations showcase the readiness of Hong Kong and our professionals in offering high-quality and high-tech legal and dispute resolution services to the local and international community.

Strong pool of legal talents

Last but not least, it is worthwhile to mention that Hong Kong has a very strong pool of legal talents. While our local practitioners are familiar with international arbitration law and practice, we also have a very good understanding of the Mainland legal and business culture, which give us a distinct advantage in dealing with disputes between Mainland enterprises and international businesses. Moreover, we welcome overseas arbitrators, lawyers and experts to come to Hong Kong to do arbitration. The Hong Kong SAR Government has earlier launched a pilot scheme in June 2020 to provide immigration facilitation for eligible nationals of countries who may visit Hong Kong visa-free (Visa-free Nationals) to participate in arbitral proceedings in Hong Kong on a short-term basis. The pilot scheme covered four categories of Visa-free Nationals, namely: (i) arbitrators; (ii) expert and factual witnesses; (iii) counsel in the arbitration; and lastly (iv) parties to the arbitration. These persons were allowed to participate in arbitral proceedings in Hong Kong as visitors without the need to obtain an employment visa. Upon review, since March 1 this year, the pilot scheme has been expanded to cover all visitors, including those who require a visit visa or entry permit to enter Hong Kong and also residents of the Mainland, Macao and Taiwan. We believe that the expansion of the pilot scheme will help to attract more legal and dispute resolution talent to Hong Kong, hence further consolidating Hong Kong's status as a centre for international legal and dispute resolution services in the Asia Pacific region.

Concluding remarks

Before I conclude, I would like to express our utmost gratitude to the ICC International Court of Arbitration for choosing Hong Kong as the venue for holding this very important conference. I also wish to thank the ICC Court for its tremendous efforts in providing top quality dispute resolution services over the years, including to render arbitral awards of the highest standards. The DoJ and indeed the whole of Hong Kong look forward to further and closer ties with ICC in the promotion of international arbitration, whether in Hong Kong or beyond.

On this note, I wish all overseas delegates a very enjoyable stay in Hong Kong and after that a pleasant trip back home. Thank you very much.