

Speech by SJ at ALB Hong Kong In-House Legal Summit 2024 (English only)

Following is the speech by the Secretary for Justice, Mr Paul Lam, SC, at the ALB Hong Kong In-House Legal Summit 2024 today (September 12):

Distinguished guests, ladies and gentlemen:

First of all, a very good morning, and I would like to thank Thomson Reuters for organising this 21st ALB Hong Kong In-House Legal Summit 2024 and for giving me this opportunity to address such a distinguished audience.

I understand that most of you are senior-level legal and compliance professionals mainly from Hong Kong. The President of the Law Society told me recently that there are actually around 4 000 in-house lawyers in Hong Kong, constituting about 1/4 of its members. At the Annual Conference of In-House Lawyers organised by the Law Society this Monday, a few days ago, I made the point that in-house lawyers may assist in promoting and enhancing Hong Kong's status as an international legal and dispute resolution services centre by performing four roles, "PPRT" in short, i.e. promoters, protectors, reformers and teachers. I would like to recap what I said briefly:

(a) First, as promoters. In-house lawyers may procure and encourage your own companies and counterparts to set up businesses in Hong Kong, to choose Hong Kong law as the applicable law in the relevant contracts and Hong Kong as the place to resolve disputes by whatever means. Whenever necessary and appropriate, you should assist in dispelling any misunderstanding and misgivings about our legal and judicial system.

(b) Second, as protectors. I would encourage you to procure your companies to comply with the fast-changing environmental, social and governance (ESG) and other regulatory requirements, which will be critical to maintain the reputation and competitiveness of the Hong Kong business community as a whole.

(c) Third, as reformers. In-house lawyers, owing to their direct involvement in the business environment, tend to be more sensitive as to what changes to the existing law and regulations may be required. Therefore, you are welcome to put forward legal reform proposals proactively to ensure that our law will keep up with the ever-changing business needs.

(d) Lastly, as teachers. With your unique experiences, in-house lawyers may assist in capacity-building for other lawyers both within and outside Hong Kong.

In order to enable you to perform these roles more effectively, it is very important to ensure that you are aware of the latest and important legal developments in Hong Kong. For this reason, I would like to take this opportunity to share with you some useful information in this respect.

First, I would like to refer to some recent developments concerning the mutual legal assistance arrangements between the Mainland and Hong Kong. As you may already know, Mainland and Hong Kong have concluded nine arrangements on mutual legal assistance. These arrangements are of critical importance to Hong Kong, because they provide the linkage between the common law system practised in Hong Kong and the Mainland legal system; and they enable Hong Kong to play the role as a "super connector" and "super value-adder" connecting China and other countries around the world. People may take advantage of the high-quality and reputable legal services provided by Hong Kong whilst exploring investment and business opportunities involving the Mainland.

Three of the nine arrangements are concerned with arbitration. They give Hong Kong unparalleled advantages as a place to resolve disputes entailing Mainland elements by arbitration.

The Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR (Interim Measures Arrangement) signed on April 2, 2019, is most worth-mentioning. By virtue of this arrangement, Hong Kong becomes the first and only common law jurisdiction that, as a seat of arbitration, parties to arbitral proceedings administered by the designated arbitral institutions may apply to the Mainland courts for interim measures including preservation of assets, evidence and conduct. The most popular one is preservation of assets. As of August 2024, a total of 132 applications were made to the Mainland courts for preservation of assets, with value of assets successfully preserved amounting to around RMB18.5 billion. According to the statistics published by the Supreme People's Court, just in last year 2023, the Mainland courts have received a total of 20 applications, 19 of which concerned preservation of assets involving a total sum of RMB2.8 billion, and the remaining one concerned preservation of conduct. Among these applications, 17 were allowed, one was withdrawn and two were refused on procedural ground, namely absence of jurisdiction and making application to the wrong court respectively.

The two other arbitration-related arrangements allow arbitral awards in Hong Kong to be recognised and enforced on the Mainland and vice versa, by adopting in substance the same procedure and principles in the New York Convention. According to the statistics published by the Supreme People's Court, once again in 2023, the Mainland courts received altogether 23 applications: 19 were allowed, three were withdrawn and only one was refused on the ground that the applicant failed to appear in court at the scheduled time.

Last Thursday on September 5, 2024, the Supreme People's Court (SPC) published the summary of six landmark cases, in which the respective Mainland Courts agreed to uphold the validity of agreements to arbitrate in Hong Kong, grant interim measures in support of Hong Kong arbitral proceedings as well as recognise and enforce Hong Kong's arbitral awards. I would strongly encourage you to visit the SPC's website and take a look at those case summaries. These landmark decisions of the Mainland Courts, as well as the efforts of SPC in collecting and publishing these cases, demonstrate their

supportive stance towards arbitration in Hong Kong.

Turning to mutual recognition and enforcement of court judgments in civil and commercial matters, on January 29 this year, the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance, which implemented the mutual legal assistance arrangement in this respect, came into operation. Compared to the previous arrangement, which can only be invoked if the parties have included an express choice of jurisdiction clause in the relevant contracts, the new arrangement removes such requirement, and covers a much diverse range of civil and commercial matters including both monetary and non-monetary awards. In particular, it covers certain types of judgments concerning intellectual property (IP) rights. In this respect, the arrangement is superior to the 2019 Hague Judgments Convention, which excludes judgments concerning IP in entirety.

Moving on to mutual legal assistance on procedural matters, the arrangement for mutual service of judicial documents in civil and commercial proceedings between the Mainland and Hong Kong courts has been in place for over 25 years. Once again, according to the statistics published by the Supreme People's Court, in 2023, the number of applications was almost 3 000 and, as compared to 2022, has increased by 34 per cent. However, for various reasons, the success rate was only around 50 per cent. The Department of Justice, together with the Judiciary, has been actively negotiating with the Supreme People's Court with a view to revising the arrangement by providing more modes of service. I am happy to tell you that the discussions are very close to fruition, and we shall be able to announce some good news in the near future.

As a matter of course, Hong Kong's legal and dispute resolution services will be most useful only if people are willing and able to choose Hong Kong law as the applicable law and Hong Kong as the place to resolve disputes. Under the Mainland law, generally speaking, as Hong Kong enterprises are not foreign entities, they are not entitled to choose Hong Kong law as the applicable law or Hong Kong as the place to arbitrate disputes in their contracts. At present, there are pilot measures in specific areas: Qianhai in Shenzhen and the Free Trade Zones in the Mainland, whereby Hong Kong enterprises are allowed to choose Hong Kong law as the applicable law, or Hong Kong as the seat of arbitration. We are actively seeking to expand these measures to more Mainland cities in the Greater Bay Area. And again, we are reasonably confident that there will be some good news in this respect soon.

Turning to mediation, one of the most significant development is that, with the staunch support of the Central People's Government, the International Organization for Mediation (IOMed) Preparatory Office was set up in Hong Kong in early 2023 to carry out the preparatory work and conduct the negotiation of the relevant international Convention (the IOMed Convention). In early 2024, it was agreed by consensus that, upon establishment of the IOMed, China would be the host country of its headquarters, and the IOMed headquarters would be located in Hong Kong. The IOMed, once established, will be the first international intergovernmental legal organisation in the world specialising in settlement of international disputes by mediation. We are hopeful that the IOMed Convention will be

concluded very soon. And as agreed by the negotiating parties of the IOMed Convention, the headquarters of the IOMed should be made available within next year to facilitate the commencement of its operation.

Lastly, a good way to promote Hong Kong's legal and dispute resolution services is the provision of capacity building to legal and related professionals on the Mainland and in other parts of the world. The Department of Justice is in the course of establishing the Hong Kong International Legal Talents Training Academy with a view to providing practical trainings in different areas of international legal practice. In this respect, a dedicated office within the Department of Justice and an expert group will be set up within the next couple of months, and the Academy aims at starting operation by the end of this year or possibly early next year.

All in all, by these examples of the latest legal developments in Hong Kong, I hope you will be convinced that Hong Kong is fully committed to maintaining and enhancing its stance as an international legal and dispute resolution services centre. The top-quality and reputable international legal services that Hong Kong can offer based on our common law system are indeed one of the most distinctive and significant advantages of Hong Kong under the principle of "one country, two systems". Such an advantage should and must be put to better use in practice. And therefore I would like to end by imploring all of you once again to try your best in performing the four roles i.e. the PPRT roles that I mentioned at the outset.

On this note, I wish you all a very enjoyable, fruitful and constructive experience at this ALB Summit. Thank you.