

Speech by SJ at Law, Peace and Harmonious Development Roundtable III (English only)

Following are the opening remarks by the Secretary for Justice, Mr Paul Lam, SC, at the Law, Peace and Harmonious Development Roundtable III today (October 21):

Distinguished guests, ladies and gentlemen,

Good afternoon. On behalf of the Department of Justice, I would like to extend our warmest welcome to everyone here, who may have travelled far to attend this meaningful event.

The topic of today's event is a well-chosen one. One special feature of international arbitration is that it brings together individuals from diverse cultures and backgrounds to resolve cross-border disputes. With different cultural backgrounds, it is not difficult to imagine that parties and practitioners may have different approaches or practices in resolving disputes. Given the challenges that these cultural differences may at times pose, it is crucial for dispute resolution practitioners to not just master the necessary legal knowledge and skills, but also to understand different cultures of the participants towards "harmony" and how they may impact on the dispute resolution process. I believe today's discussions on exploring the culture of harmony across users would bring us new perspectives and greatly facilitate our work.

Today, the roundtable focuses on collaborative dispute resolution practices. The concept of collaborative arbitration is a novel one, not least because arbitration has traditionally been recognised and practised as an adversarial dispute resolution process. Nevertheless, in recent years, with the increasing calls for greater efficiency and reduced cost in the arbitral process, it is extremely timely and worthwhile for us to explore this topic and examine the benefits collaborative dispute resolution practices may bring to arbitration users and practitioners in a more co-operative working relationship. I am sure our distinguished speakers today will give us new insights on how to overcome the time and cost challenges inherent in arbitration.

Over the years, the Department of Justice is committed to promoting peaceful dispute resolution and access to justice as well as building inclusive institutions at all levels, which align with the objectives set out in United Nations Sustainable Development Goal No. 16 – Peace, Justice and Strong Institutions (SDG 16).

SDG 16 is about promoting peaceful and inclusive societies, providing access to justice for all and building effective, accountable and inclusive

institutions at all levels. In terms of peaceful dispute resolution, Hong Kong enacted the Apology Ordinance in 2017 to encourage the making of apologies, and we are the first jurisdiction in Asia to enact such a piece of legislation. It provides that in most civil proceedings, an apology does not constitute an express or implied admission of fault or liability and must not be taken into account in determining fault, liability or any other issue to the prejudice of the apology maker. In particular, an apology is generally not admissible as evidence for determining fault, liability or any other issue. Without such a legislation, the alleged wrongdoer would be reluctant to say sorry, fearing that it might be used against him or her in legal proceedings. The refusal to say sorry at all would give the alleged victim the impression that the other side has no sincerity to resolve the dispute, which may escalate to the dispute and widen the gap for reaching settlements.

Since 2009, we have also launched the Mediate First Pledge campaign to encourage the use of mediation as the first step to resolve disputes. The Mediate First Pledge is a non-legally binding commitment by pledgees to first explore the use of mediation to resolve disputes before resorting to other means of dispute resolution, such as court litigation. As of today, over 890 companies, organisations and individuals have signed the Pledge and the number is still growing. Apart from holding this event locally, we also hope to spread the awareness of peaceful dispute resolution in our surrounding jurisdictions. In March last year, the Department of Justice collaborated with the Thailand Arbitration Center to promote the Mediate First Pledge in Thailand for the first time during our Resolve2Win promotional campaign. The event was well-received and 35 legal and business organisations, enterprises and individuals in Bangkok agreed to sign the Pledge to support first exploring the use of mediation to resolve disputes.

Further, as stated in the Chief Executive's 2023 Policy Address, one of the major policy initiatives of the Department of Justice is to deepen mediation culture in various sectors of community. This coincides closely with the objective of today's roundtable session, which is to promote a culture of peace and harmony as the philosophical foundation for peaceful dispute resolution. It is our vision that mediation can be used to effectively resolve conflicts in various sectors of the community, and can help to build a harmonious and stable society and foster a culture that embraces mutual support, respect, harmony and inclusiveness. To this end, we are working to incorporate a mediation clause in all government contracts so as to promote the use of mediation as a means to resolve disputes amicably. By incorporating such a mediation clause, we hope that the government departments could, as far as practicable and to the extent appropriate, first consider using mediation to resolve disputes. To take a step further, we will also encourage private parties to include similar mediation clause(s) in their contracts, which will help promote the Mediate First culture.

As announced by the Chief Executive in his 2024 Policy Address last week, the Department of Justice will further promote mediation culture in the coming year. We plan to co-operate with the Civil Service College to provide more mediation training to civil servants. Meanwhile, we will also launch a two-year community mediation pilot scheme to deepen the mediation culture in

the community through the training of community workers so as to help them gain a better understanding towards mediation and empower them with mediation skillsets in resolving the daily disputes.

To further strengthen our role as an international mediation centre, we will also enhance the system on local accreditation and disciplinary matters of the mediation profession. We hope that by doing so, we would be able to reinforce the professionalism of mediators and instil confidence among individuals and businesses in the use of Hong Kong's mediation services. In this regard, the Department of Justice has already set up a working group for reviewing the current system and making recommendations.

Apart from the above, the Government is also supportive of using mediation to resolve family disputes. The Home and Youth Affairs Bureau recently launched the Maintenance Mediation Pilot Scheme through the Community Care Fund to subsidise a non-governmental organisation in providing mediation services on maintenance to people who are eligible for the Pilot Scheme, including maintenance payers and payees. Parties involved in maintenance payment disputes are eligible to apply for the Pilot Scheme free of charge, provided that one of the parties is a Hong Kong resident and meets the income eligibility limit. The Pilot Scheme is run for three years and is expected to process a total of 1 200 cases, benefitting 2 400 separating or divorcing persons.

One related development I should mention is the establishment of the headquarter of the International Organization for Mediation (IOMed) in Hong Kong, which will certainly contribute to peaceful dispute resolution across the world. The IOMed will be the world's first intergovernmental organisation dedicated to settling international disputes by mediation. It will be a valuable complement to the existing dispute resolution mechanisms, offering new options for the peaceful settlement of international disputes. I am pleased to inform you that the last round of negotiations of the international convention relating to the establishment of the IOMed were successfully concluded last week. The signing ceremony of the relevant international treaty will be held in Hong Kong next year. The Department of Justice will continue to do its utmost to provide support so that the IOMed will commence operation soon.

Another significant development I must mention is that the Hong Kong International Legal Talents Training Academy will be officially launched this year. To make good use of Hong Kong's bilingual common law system and international legal status, the Training Academy will regularly organise practical training courses, seminars, international exchange programmes and more to promote exchanges among talents in regions along the Belt and Road region. It will also provide training for talents in the practice of foreign-related legal affairs for the country, and nurture legal talents who are familiar with international law, common law, civil law, so on and so forth. The dedicated office and expert committee established under the Department of Justice are pressing ahead with the related work. In future, we may use this capacity building platform to enable practitioners from different jurisdictions to exchange ideas on how to promote the culture of harmony.

Last but not least, I would like to thank the organisers and supporting organisations for their relentless contributions and efforts in holding this event and promoting peaceful dispute resolution processes. I am hopeful that today's discussions will spark more useful ideas on peaceful dispute resolution. We also hope to take this opportunity to encourage all of you to join our annual flagship event, the Hong Kong Legal Week, which will take place two weeks later, from November 4 to 8. For those coming from overseas, I wish you all a pleasant stay in Hong Kong. I wish to close by wishing you all fruitful exchanges and discussions in the sessions to come. Thank you very much.