

Speech by SJ at sixth Belt and Road Summit (English only) (with photos)

Following is the welcome remarks by the Secretary for Justice, Ms Teresa Cheng, SC, at the thematic breakout session titled "Fostering Trade and Resolving Disputes in the Post-COVID Era – Hong Kong's Legal and Dispute Resolution Services" of the sixth Belt and Road Summit today (September 1):

Distinguished guests, ladies and gentlemen,

It gives me great pleasure to welcome you all to this thematic breakout forum: "Fostering Trade and Resolving Disputes in the Post-COVID Era – Hong Kong's Legal and Dispute Resolution Services".

I recall delivering a speech at the Belt and Road Summit last year noting that the COVID-19 pandemic has created tremendous challenges to all societies, be they developed or developing countries. Since then, a year has passed and the global economy has started to proceed to the post-COVID recovery era. While it takes time for an economy to be back to full swing, cross-border trade and dealings have revitalised in many places under the new normal. According to the UNCTAD's Global Trade Update released on May 19, 2021 (Note 1), global trade has rebounded in the first quarter of 2021, increasing by about 10 per cent year over year and 4 per cent quarter over quarter, with such a rebound continued to be driven by the strong export performance of East Asian economies. The global trade is expected to continue growing in 2021 and remain strong in the second half of 2021.

Hong Kong's success as a long-standing international financial centre is premised upon its mature and robust legal system and legal infrastructure, which in turn is supported by a mature and independent judiciary. The Basic Law guarantees the capitalist system underpinned by Hong Kong's common law system, which is the same legal system as the world's major economies, such as the United Kingdom, the United States and Australia, and is indeed compatible with many international business rules.

In Hong Kong, the financial market has continued to prosper. A total of US\$51.3 billion was raised in 2020 through initial public offerings (IPOs) in Hong Kong, while US\$40.1 billion was recorded in 2019. We have been ranked as the world's top IPO venue in seven of the past 12 years. In the securities market, the average daily turnover for the first six months of 2021 was HK\$188.2 billion, representing an increase of 60 per cent when compared with HK\$117.5 billion for the same period in 2020. Additionally, there has been a steady rise in total deposits in our banking system, which had reached HK\$14.86 trillion by the end of May 2021. All these demonstrate that Hong Kong provides businesses with the right and optimal environment for dealmaking.

Our leading position in dispute resolution is also evident in various

aspects. Hong Kong has been continuously ranked among the top five preferred seats for arbitration globally since 2015 according to the International Arbitration Surveys conducted by Queen Mary University of London. Hong Kong was ranked third in 2015, fifth in 2018. This year, we surpassed Paris and are again ranked the third most preferred seat for arbitration. The call for online dispute resolution (ODR) becomes all the more pressing given the disruption to in-person dispute resolution processes during the pandemic. While arbitration hubs around the world have been keen on developing reliable, efficient and cost-effective ODR platforms, eBRAM has been established in Hong Kong back in 2018 to develop an online dispute resolution and also a dealmaking platform, leveraging the latest technologies including artificial intelligence, blockchain, cloud and soft robotics. The idea of eBRAM in providing a one-stop-shop platform for commercial parties from all over the world has been reported in a study published by the LawtechUK in early August this year (Note 2).

Our commitment to developing and promoting ODR does not stop here. With support by the Department of Justice Project Office for Collaboration with UNCITRAL (DoJ Project Office), the Inclusive Global Legal Innovation Platform on ODR (iGLIP on ODR), which is composed of experts around the world, was set up to facilitate studies on ODR-related issues. The UNCITRAL at its 54th Session in July has just endorsed the suggestion of the Secretariat to continue to collaborate with the DoJ Project Office and to take part in iGLIP on ODR, so as to utilise the expertise, resources, and connections available to co-operate in promoting, raising awareness and capacity-building in ODR (Note 3).

Apart from technology, a sufficient pool of legal and dispute resolution talents is also necessary for post-COVID recovery. To further attract and encourage people to use the top-tier arbitration services in Hong Kong, the Government launched the Pilot Scheme on Facilitation for Persons Participating in Arbitral Proceedings in Hong Kong (the Scheme). Under the Scheme, nationals of countries who may visit Hong Kong visa-free (visa-free nationals) and are in possession of the "Letter of proof" are allowed to participate in arbitral proceedings in Hong Kong without employment visas. The Scheme is complemented by the mechanism exempting eligible arbitrators, mediators or qualified legal practitioners from compulsory quarantine. The Scheme and mechanism can benefit arbitration users from other jurisdictions and complement the Belt and Road Initiative as well as the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) development.

I turn now to the business opportunities and the unique position and hence advantages of Hong Kong under the "one country, two systems". The 14th Five-Year Plan and the GBA Outline Development Plan explicitly support Hong Kong as the centre for international legal and dispute resolution services in the Asia-Pacific region. These two national policies have afforded incredible opportunities to the legal sector and therefore the businesses that utilise our legal and dispute resolution services.

With the staunch support of the Ministry of Justice, the inaugural GBA Legal Professional Examination was held successfully in July in Hong Kong.

After passing the examination and obtaining the relevant practice certificate, Hong Kong legal practitioners with accumulated legal practice experience of five years or above would be allowed to provide legal services in Chinese law in the nine Mainland municipalities in the GBA on specified civil and commercial matters to which the Mainland laws apply. Importantly, Hong Kong lawyers that are qualified to practise in the GBA will be able to provide comprehensive legal services to enterprises, be they Chinese, Hong Kong or foreign enterprises, that are investing and doing business in the GBA. Furthermore, Hong Kong will be a unique platform for inbound and outbound investments to and from the Mainland, whether in the aspects of raising capital, compliance measures and dispute resolution. The legal services in Hong Kong therefore provide a one-stop shop for businesses interested in investing in the GBA.

Qianhai has been a pilot area for exploring close co-operation between Hong Kong and the Mainland. The initiative to allow "WOKEs (wholly owned Hong Kong enterprises) to adopt Hong Kong law" received a major breakthrough in Qianhai last year. Since October 2020, over 11 000 WOKEs registered in Qianhai can choose Hong Kong law as the governing law when entering into civil and commercial contracts in the absence of "foreign-related elements". The DoJ is actively seeking the support of the Central Government in extending the measure to Shenzhen and hopefully later on to the entire GBA.

Four instruments were executed during my visit to Beijing in July this year. One of those is the tripartite memorandum of co-operation amongst the State-owned Assets Supervision and Administration Commission of the State Council and the Ministry of Commerce. It establishes an exchange platform in the form of roundtable discussions amongst members of the DoJ's Standing Panel of Legal Experts and representatives of state-owned enterprises and major private enterprises in the Mainland to discuss legal issues that could arise in Belt and Road Initiative and other projects in a focused and in-depth manner. Further, it provides a channel of communication for the Hong Kong legal experts to meet Mainland enterprises for exporting our legal services in aid of their trade and investment abroad.

Recent arrangements signed between Hong Kong and Mainland, for instance, interim measures for arbitration, and recognition and enforcement of insolvency proceedings, result in Hong Kong being the only jurisdiction outside of the Mainland that can apply to the Mainland courts for interim measures in aid of arbitration in Hong Kong and allow liquidators from Hong Kong to apply to the Mainland courts for recognition of insolvency proceedings in Hong Kong, while bankruptcy administrators from the Mainland may likewise apply to the High Court in Hong Kong for recognition of bankruptcy proceedings in the Mainland. The arrangements in insolvency proceedings will provide better protection for creditors and investors on the one hand, and on the other the restructuring schemes will help alleviate the need to wind up companies, thereby ensuring employment.

Reiterating what I have said in the "Why Hong Kong" webinar series, there are certain intrinsic strengths, opportunities and attributes that are unique to Hong Kong businesses. Businesses will see for themselves where lie

the greatest opportunities and find a geographic location that has the necessary infrastructure, services and talents that would best serve their interests. I am sure today's breakout session will continue to elaborate on the unique strengths of Hong Kong's dealmaking and dispute resolution services. I thank the Panel Chair and speakers for their sharing.

Thank you very much.

Note 1: UNCTAD's Global Trade Update (released on May 19, 2021): unctad.org/system/files/official-document/ditcinf2021d2_en.pdf

Note 2: LawtechUK feasibility study and proof of concept (published on August 6, 2021): resources.lawtechuk.io/files/SME_ODR-LawtechUK_feasibility_study.pdf

Note 3: Note by the UNCITRAL Secretariat (A/CN.9/1064/Add.4): undocs.org/en/A/CN.9/1064/Add.4

