

Speech by SJ at The Hague Academy of International Law's Advanced Course in Hong Kong – 2nd Edition (English only) (with photo)

Following are the opening remarks by the Secretary for Justice, Mr Paul Lam, SC, at The Hague Academy of International Law's Advanced Course in Hong Kong – 2nd Edition today (December 2):

Professor Jean-Marc (Secretary-General of The Hague Academy of International Law, Professor Jean-Marc Thouvenin), Teresa (Founder Member and Co-Chairman of the Asia Academy of International Law, Ms Teresa Cheng), distinguished guests, ladies and gentlemen,

Good morning. Firstly, I would like to welcome all of you to the second edition of The Hague Academy of International Law's Advanced Course in Hong Kong, co-organised by The Hague Academy of International Law and the Asian Academy of International Law (AAIL), and supported by the Hong Kong International Legal Talents Training Academy of the Department of Justice of Hong Kong (DoJ). A heartfelt welcome to all of you, especially to those who have travelled all the way to join us here in Hong Kong. It is truly a privilege for us to host The Hague Academy's advanced course in Hong Kong for the second consecutive year.

The 1st Edition of this course on Current Trends on International Commercial and Investment Dispute Settlement held last year was a tremendous success. The positive feedback we received highlighted not only the high quality of the content and speakers but also its overall effectiveness in achieving the learning outcomes. The success of the inaugural edition has set a very strong precedent, and we are eager to build on that foundation. I must express my sincere appreciation to Secretary-General Professor Jean-Marc Thouvenin and the Curatorium of The Hague Academy, and for their continuous collaboration with us to bring this significant project to fruition.

This year, the second edition focuses on the recognition and enforcement of foreign judgments in civil and commercial matters, which is a critical area under private international law. Nowadays, cross-border transactions have increased at an unprecedented pace, driven by globalisation, technological advancements – especially the growth of e-commerce – and evolving regulatory frameworks. As a result, the number of cross-border disputes has also risen and the question for recognition and enforcement of foreign judgment has become increasingly critical. It is therefore essential for policy makers, as well as the legal professionals, to grasp a deep understanding of the relevant private international law principles, as well as the specific mechanisms available for recognising and enforcing foreign judgments.

Against such a background, this course would focus on the recognition and enforcement of foreign judgments. We are very honoured to have a distinguished lineup of speakers who are top experts in this field. I am sure their insights, experiences, and practical knowledge could be readily taken away and applied in your own legal practices. I encourage you all to engage actively in discussions, ask a lot of questions, and share the perspective from the jurisdiction where you are coming from. This course is not only about learning from our esteemed speakers, but also about fostering a collaborative environment where we can all benefit from each other's experiences. I hope that by the end of the course, you will all depart with a greater appreciation and understanding of the various topics in this area.

Hong Kong's participation in the 2019 Judgments Convention

The HCCH (Hague Conference on Private International Law) 2019 Judgments Convention, which entered into force on September 1, 2023, represents a significant advancement in private international law. The HKSAR (Hong Kong Special Administrative Region) is most privileged to have contributed to its deliberations. Since 1998, representatives of the HKSAR, as part of the Chinese delegation, had actively participated in the Hague Conference's Judgment Project which gave birth not only to the Judgments Convention, but also the Choice of Court Agreements Convention in 2005. We participated actively in the discussions and the drafting of these two Conventions, sharing our views and comments from a common law perspective. And with the strong support of the Central People's Government, the Informal Working Group II on Common Courts, and Group IV on declarations with respect to judgments pertaining to governments were held in Hong Kong in February 2019, contributing to the successful conclusion of the Judgments Convention in July 2019.

Besides, two months after its conclusion, Hong Kong hosted the first global conference on the Judgements Convention in September 2019. More than 200 participants from 18 jurisdictions were addressed by distinguished experts, including practising and academic lawyers, judges and officials from Asia, Europe and Latin America who had participated in the negotiation of the ground-breaking new convention. In September 2023, the HCCH also chose to hold its Asia Pacific Week in Hong Kong, celebrating its 130th Anniversary, and also, more importantly, marking the entry into force of the Judgments Convention on September 1, 2023.

The Judgments Convention facilitates the effective international circulation of judgments in civil and commercial matters by providing legal certainty and predictability. The Judgments Convention therefore builds an enabling environment for multilateral trade, investment, and movement of people.

Hong Kong's distinct advantages under "one country, two systems" – REJ Arrangement with Mainland China

Such achievement of the Judgements Convention echoes the long standing

policy and commitment of Hong Kong to maintaining a robust legal environment that supports cross-border trade and commerce under our unique status as enshrined by the "one country, two systems" principle.

Under the "one country, two systems" principle, Hong Kong is the only common law jurisdiction in China. Article 2 of the Basic Law provides that the HKSAR enjoys independent judicial power, including the power of final adjudication. At the same time, judgments made by the Mainland courts would not automatically be enforceable in Hong Kong and vice versa. Therefore, there is a need to build a bridge between the two different legal systems of the Mainland and Hong Kong in relation to mutual recognition and enforcement of judgments.

Therefore, the Judgments Convention, which seeks to bridge common law and civil law systems around the globe, provided invaluable reference to the arrangement between Hong Kong and the Mainland on reciprocal enforcement of judgments in civil and commercial matters. Modelled on the advanced draft of the Judgments Convention, and sharing substantially similar objectives, the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region (REJ Arrangement) took effect in January 2019 in both Hong Kong and the Mainland. In fact, our REJ Arrangement even goes beyond the Judgments Convention by not only covering a wide range of judgments on civil and commercial disputes, but also expressly includes judgments in respect of certain types of disputes over intellectual property (IP) rights, for instance, judgments on contractual disputes involving IP rights, and tortious claims for infringement of certain IP rights.

The approach in relation to the coverage of judgments on IP-related disputes adopted in the REJ Arrangement reflects the commonly recognised territoriality principle applicable to IP rights on the one hand, and the practical needs and circumstances of Hong Kong and the Mainland on the other. This major breakthrough makes Hong Kong the first jurisdiction to have an arrangement with the Mainland on reciprocal recognition and enforcement of judgments with such a wide coverage, reflecting Hong Kong's unique advantage of "one country, two systems". This distinct position makes Hong Kong an increasingly attractive destination for intellectual property trading, as well as a centre for international legal and dispute resolution services, as highlighted in the National 14th Five-Year Plan.

Hong Kong International Legal Talents Training Academy

Apart from our policy initiative in strengthening Hong Kong as a centre for international legal and dispute resolution services, it is also our policy initiative to develop Hong Kong as a capacity-building hub in the region and beyond. The Hong Kong International Legal Talents Training Academy, as mentioned in our Chief Executive's Policy Address in 2023 and 2024, has officially been launched last month during the Hong Kong Legal Week. I am particularly pleased today as this advanced course is in fact the very first training programme supported by the Academy.

The Academy seeks to capitalise on Hong Kong's unique strengths and advantages made possible by the "one country, two systems" principle as the only bilingual common law system using both English and Chinese, with international characteristics, which always enjoy a high reputation around the world. It will serve as a capacity-building, as well as knowledge and experience-sharing, platform for legal professionals in Hong Kong, the Mainland and other jurisdictions, in particular those along the Belt and Road.

In the future, the Academy will regularly organise different practical legal courses, seminars and international exchange activities, etc, in order to promote legal talent exchanges along the Belt and Road, and provide foreign-related legal talent training for our country. In addition to regular courses, the Academy will also offer tailor-made programmes designed to meet the specific needs of participants. I very much welcome all of you to come to Hong Kong to participate in other events and activities organised by the Academy. We also welcome collaborative opportunities with different jurisdictions and organisations.

Conclusion

Ladies and gentlemen, I hope this advanced course will provide a valuable platform for both our speakers and participants to share and exchange their expertise and insights. I am sure you will take full advantage of the opportunities available during this course. Hong Kong, as a vibrant legal hub in the region equipped with a robust common law system, could serve as a bridge between different legal systems, making it an ideal setting for this important dialogue. I also urge you to explore what Hong Kong has to offer, not just in terms of its legal infrastructure, but also its rich cultural diversity and dynamic business environment.

In closing, I would like to reiterate my gratitude to The Hague Academy, the AAIL and each of you for your participation. I wish you all a very fruitful and enlightening week here in Hong Kong. Thank you very much.

