

Speech by SJ at webinar “Hong Kong – Seizing Opportunities and Navigating Risk” (English only)

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the webinar "Hong Kong – Seizing Opportunities and Navigating Risk" held by the Department of Justice and Invest Hong Kong today (April 28):

Ladies and gentlemen,

Good evening. It is my great pleasure to welcome you all to tonight's webinar.

In recent years, Sino-Latin American trade has reached unprecedented levels, facilitating closer co-operation and partnership in many areas including commerce, investment, and infrastructure and construction. In 2018, the total value of Sino-Latin American trade reached US\$307.4 billion, making China the region's second largest trading partner, and for some countries in the region, China is now their top trading partner. For China, Latin America has consistently been one of its top foreign investment destinations. I have no doubt that Sino-Latin American ties will be further strengthened as trade continues to thrive, especially under the full-fledged implementation of the Guangdong-Hong Kong-Macao Greater Bay Area Development Plan and the Belt and Road Initiative.

Hong Kong SAR is an international city and gateway to the Mainland China. Hong Kong has been an important entrepot for Sino-Latin American trade, for instance, in 2019, about 10 per cent of the total trade between Mexico and the Mainland China was routed through Hong Kong.

Hong Kong's fair and open market environment with a well-established financial infrastructure for capital raising has attracted many overseas companies to use Hong Kong as a regional base. Hong Kong's robust common law system, underpinned by a solid foundation for the rule of law provides a business-friendly and predictable legal framework for the international business community. Furthermore, as enshrined in our Basic Law, Hong Kong courts exercise judicial power independently, free from interference, and the power of final adjudication rests with our Court of Final Appeal. We also have a pool of international and experienced professional talents which offer a range of professional services and in particular world-class legal and dispute resolution services. These important attributes as a whole create a unique ecosystem which makes Hong Kong an ideal deal-making hub for Latin American enterprises looking to do business in the region.

When engaging in cross-border transactions, disputes may arise. As national courts may not be the best forum for such matters by reasons of domestic rules of practice unknown to foreign parties, limitation on rights

of audience before courts, and lack of a multilateral mechanism for enforcing court judgments. Arbitration is often the preferred alternative.

Hong Kong is one of the world's leading international arbitration centres and has consistently been ranked as one of the top five preferred seats for arbitration globally since 2015. Hong Kong adopts the latest UNCITRAL Model Law as our arbitration laws, which ensures that our regime meets international standards. Parties are free to appoint arbitrators of their own choice, allowing total party autonomy with no restriction on nationality. Parties are also free to use lawyers from their own jurisdictions to represent them. Awards are generally upheld by local courts and enforced in other jurisdictions, including the Mainland China, ensuring finality and enforceability of Hong Kong awards. Hong Kong laws have also made clear that intellectual property disputes may be resolved by arbitration and that third party funding in arbitration is permissible. It is noteworthy that arbitrations in Hong Kong are independent from the court system and the Government does not interfere with the operation of arbitration institutions in administering their arbitrations.

In addition, I must mention a game-changing arrangement between the Mainland China and Hong Kong in 2019 under the principle of "one country, two systems". The arrangement allows parties to arbitral proceedings, which are seated in Hong Kong and administered by designated arbitral institutions, to seek assistance from the relevant court in the Mainland to obtain interim measures such as injunctions or freezing of assets. Hong Kong is the first and only jurisdiction outside the Mainland that can provide this service.

Apart from arbitration, Latin American enterprises may resort to mediation in resolving cross-border disputes so as to preserve the long-term relationship between the disputing parties and explore creative and forward-looking settlement solutions. Investment mediation is an area that Hong Kong is actively developing. In particular, the Investment Agreement between the Mainland and Hong Kong provides a comprehensive and flexible framework for mediation in the event of disputes involving, say, a Hong Kong investor investing in the Mainland. In other words, Latin-American enterprises can use Hong Kong as a base for its special-purpose vehicle for investing in the Mainland and enjoy investment protection and the use of an amicable dispute settlement procedure to resolve differences.

Furthermore, Hong Kong, as the regional hub in Asia, offers its flagship Investment Law and Investor-State Mediator Training Courses together with leading institutions such as ICSID of the World Bank. Our aim is to work towards developing Hong Kong into an international investment law and investment dispute resolution skills training base with a view to building up a team of investment mediators in Asia.

Lastly, I should also mention our efforts in harnessing the latest technologies to enhance the dispute resolution process through developing and promoting online dispute resolution (ODR) as an affordable and efficient mechanism to resolve cross-border disputes online. We have opted into the APEC Collaborative Framework on ODR of Cross-Border Business to Business

Disputes and supported the development of an ODR and deal-making platform by eBRAM Centre in Hong Kong.

Finally, may I thank Invest Hong Kong and our supporting organisations for organising this webinar. Thank you.