

**Speech by Mr Rimsky Yuen, SC, Secretary for Justice
at the Seminar on
“Hong Kong – An International Hub for Legal & Arbitration Services”
Ho Chi Minh City, Vietnam**

20 February 2014

Dear Mr Anh [Le Thuc] (President of Vietnam Bar Association), Mr Chai [Wenrui] (Chinese Consul General to Ho Chi Minh City), Distinguished Guests, Ladies and Gentlemen,

First of all, thank you for giving me this opportunity to address this distinguished audience. For years, Vietnam and Hong Kong have built strong ties whether in terms of trade, tourism or otherwise. Given my role as the Secretary for Justice of Hong Kong, my focus is naturally law-related. For the purpose of this seminar, we have chosen the topic “*Hong Kong – An International Hub for Legal & Arbitration Services*”. In the first session, our speakers will deal with legal issues and risk management in the context of cross-border and international business. In the second session, the panelists will discuss the topic “Arbitration in Hong Kong – Why & How?” On my part, I would like to give an outline of Hong Kong’s arbitration landscape.

Government Policy

2. Without seeking to down play the importance of other contributing factors, it is clear that the effectiveness of our legal system, legal infrastructure, and law-related services (including dispute resolution services) have played an important role in making Hong Kong a global financial and commercial center.

3. A quick look at some of the international ratings will illustrate this point. In the “Economic Freedom of the World: 2013 Annual Report” published by the Fraser Institute last September, Hong Kong continues to be ranked as the world’s number one free economy. In the World Competitiveness Report 2013 published by the IMD World

Competitiveness Centre, Hong Kong also came first. In the "Global Opportunity Index: Attracting Foreign Investment" published by the Milken Institute in March 2013, Hong Kong likewise came first in the context of attracting foreign direct investment.

4. Behind these assessments and ratings, one common feature is that the various institutes took into account the effectiveness of Hong Kong's legal environment, whether expressed as the "legislative framework", "legal enforcement of contracts", the "efficiency of legal framework in settling dispute" or otherwise.

5. Capitalising on our robust legal system and legal infrastructure, it is the steadfast policy of the Hong Kong Government, and one of the key priorities of my department (the Department of Justice), to promote Hong Kong as a center for international legal and dispute resolution services in the Asia Pacific region.

6. One of our focuses is naturally international arbitration, a mode of dispute resolution which enjoys great popularity amongst the international business community and is gaining more and more momentum in the Asia Pacific region. The reason for this trend is totally understandable. Businessmen normally do not prefer to litigate, still less to litigate in a foreign place and subject to a foreign legal system which they are not familiar. International arbitration is the natural substitute. Besides, confidentiality, cost-effectiveness, choice of venue, choice of expert arbitrators, flexibility of the arbitral process and ease of enforcement of arbitral awards also explain the growing popularity of international arbitration.

The role of Hong Kong for Vietnam

7. So what can Hong Kong offer in terms of international legal and dispute resolution services? Given its close proximity to Vietnam and the strong ties we have built, Hong Kong is an ideal neutral venue for international legal and arbitration services to Vietnamese businesses, including the resolution of disputes with foreign enterprises and Mainland Chinese companies. In this regard, may I highlight a few key features.

Robust legal system

8. First and foremost, Hong Kong has a robust legal system. Due to her colonial history, Hong Kong has long been a common law jurisdiction. After becoming a special administrative region of the People's Republic of China in 1997, Hong Kong remains a common law jurisdiction under the "One Country, Two Systems" principle and is indeed the only common law jurisdiction in the Greater China region. Common law is no stranger to the international business community and is known to be effective in protecting property and commercial rights.

9. We have a Judiciary known for its quality and independence, which is absolutely free from any interference. Indeed, judicial independence is guaranteed on a constitutional level under our Basic Law (which is in substance our mini-constitution). The Court of Final Appeal, our highest court, is served not only by top judges from within Hong Kong but also world class judges from other common law jurisdictions including serving Supreme Court judges from the United Kingdom and retired chief justices from Australia.

10. As regards commercial dispute resolution, our courts adopt an arbitration-friendly approach. Where parties have agreed to settle their disputes through arbitration, our courts will stay the courts proceedings in favour of arbitration and will uphold the wide discretion of arbitrators and the flexibility of the arbitral process.

11. According to the World Economic Forum Global Competitiveness Report 2012-2013, in so far as judicial independence is concerned, Hong Kong ranked 12th out of 144 countries and was amongst the best in Asia, and indeed the best out of all the jurisdictions that it surveyed in Northeast and Southeast Asia.

12. Besides, the judicial system of Hong Kong has been highly regarded by commentators, including expatriates. The 22 August 2012 edition of the *Asian Intelligence*, an independent fortnightly report on Asian business and politics, sets out a comparison table on expatriate perceptions

of the quality of the judicial systems of various Asian jurisdictions as well as Australia and the United States based on the views of a number of expatriate business executives. The following are the comments on Hong Kong:

“The [judicial] system is transparent, accessible, and efficient. Hong Kong is favoured as a center for commercial dispute resolution. The local system of barristers, [solicitors] and judges is complemented by more offices of foreign law firms than any other city in Asia, which is a testament to its openness and its international status. Many of the foreign offices are regional centers and also support Mainland China business.”

A strong legal profession

13. Hong Kong’s strong team of legal professionals and dispute resolution practitioners also contribute to Hong Kong’s success as a leading centre of international legal and dispute resolution services.

14. As at 30 January 2014, Hong Kong had a total of over 1,200 practising barristers, over 7,700 practising solicitors and over 1,400 registered foreign lawyers. In terms of law firms, there were a total of 817 Hong Kong solicitors firms and 72 registered foreign law firms. In short, there is readily available in Hong Kong top quality legal expertise and international legal services.

15. Other than helping their clients to resolve commercial disputes, many lawyers in Hong Kong are also highly experienced in advising on the legal issues and risk management relating to cross-border and international business, e.g., the protection of intellectual property rights in international trade. In fact, this is a topic for the seminar today, and I hope you will find the information and discussion useful.

16. One important point to note is that in Hong Kong, parties in arbitration may retain advisers without restrictions as to their nationalities and professional qualifications. In other words, Vietnamese companies and lawyers may team up with Hong Kong lawyers for arbitral proceedings conducted in Hong Kong.

A user friendly arbitration legislation

17. Hong Kong's role as an ideal neutral place for international commercial arbitration may also be attributed to our user-friendly legislative framework. Our current arbitration law, known as the Arbitration Ordinance (Cap. 609), came into effect in 2011. It is based on the UNCITRAL Model Law on International Commercial Arbitration, which is well understood by the international arbitration community.

18. The Hong Kong Arbitration Ordinance applies to arbitration whereby parties have chosen Hong Kong as a seat of arbitration. As you know, the seat of arbitration determines which jurisdiction's arbitration laws apply to the proceedings and which courts may exercise supportive and supervisory powers over the arbitration. In the case of Hong Kong, our Arbitration Ordinance reinforces the advantages of arbitration, including respect for parties' autonomy as well as savings in time and cost for parties opting to resolve their disputes by arbitration. At the same time, the Ordinance contains provisions which seek to enhance confidentiality of arbitration proceedings and related court hearings. Besides, our Arbitration Ordinance is updated from time to time to reflect the latest developments in the international arbitration scene. For example, in July 2013, legislative amendments were enacted to make it clear that emergency relief granted by an emergency arbitrator before the establishment an arbitral tribunal, whether in or outside Hong Kong, is enforceable in accordance with the provisions of the Arbitration Ordinance.

Enforcement of awards made in Hong Kong

19. Enforcement of arbitral awards is of course an important consideration in the context of dispute resolution. Why go for arbitration if you cannot enforce the arbitral award?! Parties who choose Hong Kong as the seat of arbitration can rest assured that arbitral awards made in Hong Kong are enforceable in over 140 Contracting States to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Arbitral awards made in Hong Kong can also be enforced in Mainland China and Macao through the arrangements signed between

Hong Kong and these jurisdictions for reciprocal enforcement of arbitral awards.

A diverse pool of international arbitrators

20. In Hong Kong, other than the lawyers, many professionals in other disciplines, such as accountants, engineers and surveyors, also serve as arbitrators or take on other roles such as counsel for parties or expert witnesses in arbitration proceedings. The Hong Kong International Arbitration Centre (“HKIAC”) maintains a Panel of Arbitrators comprising professionals with substantial experience as arbitrators, and a List of Arbitrators for other professionals qualified in the field of arbitration. As of January 2014, there were 336 persons on the Panel of Arbitrators and 124 persons on the List of Arbitrators. Many arbitrators on the HKIAC Panel or List are well-known and very experienced arbitrators of different nationalities and they have received their professional training from many different jurisdictions around the world.

World Class Arbitration Institutions

21. On top of our user-friendly legislation and a pool of highly qualified arbitration practitioners, Hong Kong is privileged in that its arbitration services are supported by the secretariats of well-known arbitration institutions that are housed in excellent facilities.

22. Our home-grown HKIAC has emerged as the focal point of arbitration in Hong Kong and beyond since its establishment in 1985. Over the years, HKIAC has earned international recognition and has been providing excellent support and services to the arbitration community as an independent and non-profit-making body.

23. In recent years, other reputable arbitration institutions have established their presence in Hong Kong. In 2008, the Paris-based International Chamber of Commerce opened the first overseas branch of the Secretariat of its International Court of Arbitration in Hong Kong. In 2012, the China International Economic and Trade Arbitration Commission

("CIETAC") also set up its Hong Kong office, which is the first such center established by CIETAC outside the Mainland.

24. A very recent development is the plan of the China Maritime Arbitration Commission ("CMAC") to set up a branch office in Hong Kong. Being a key maritime arbitration institution in Mainland China, CMAC's presence in Hong Kong would further enhance Hong Kong's role in the resolution of maritime disputes, and thereby reinforce our position as a leading international arbitration center in the Asia Pacific region.

25. Another international law-related organization which may likely enhance its presence in Hong Kong in the near future is the Permanent Court of Arbitration ("PCA"), a leading international institution with its headquarters in The Hague with a long history and good reputation in the field of international investment arbitration. In this regard, I note that the first ever PCA-administered Investor-State arbitration case heard in Hong Kong at the HKIAC last year was related to an investment dispute between the Government of Vietnam and a US investor. In that particular case, I learnt from a recent news report that the arbitral tribunal had issued the final award last month, which dismissed the investor's claim against the Government of Vietnam and awarded the state with full costs. With this experience I am sure that our HKIAC will stand ready to act as the host to help administer other Investor-State arbitration cases in the near future.

Conclusion

26. Ladies and gentlemen, Hong Kong will continue to ensure that our legal infrastructure will stay at the forefront of international development so as to maintain and enhance our status as a leading centre for international legal and dispute resolution services. It will be in our mutual interest to enhance co-operation between Hong Kong and Vietnam in the context of international legal and dispute resolution services, and I very much look forward to more dialogues and exchanges between the two places.

27. On this note, I wish you all an enjoyable seminar. Thank you.