

Speech by Mr Frank Poon, JP
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Hong Kong to India Road Show –
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Distinguished guests, ladies and gentlemen,

It is a great pleasure to be here in India. I am grateful to the Hong Kong International Arbitration Centre and the Hong Kong Trade Development Council for organizing this Road Show to India. Otherwise I would not have the chance to embark on this my first visit to India. I must say I am very impressed by the sights and sounds of India. I look forward to knowing your country more, including how Hong Kong and India can jointly promote the use of arbitration to settle civil and commercial disputes.

Links between Hong Kong and India

2. There has been a long history of trade between Hong Kong and India since the middle of the 19th century. There are now around 1,500 Indian companies registered in Hong Kong. Hong Kong is also host to a large number of Indian professionals working in the fields of banking, IT and shipping. Numerous global financial majors, investment institutions and fund managers operating in India have established regional headquarters in Hong Kong. The former Chief Executive of Hong Kong, Mr Donald Tsang, visited India in October 2010 with the aim of reinforcing the relationship between the two places.

Hong Kong as a global business and financial centre

3. Hong Kong's position as a global financial centre has not changed since we were reunited with the Mainland of China in 1997. Hong Kong has been the world's freest economy in each of the past 15 years, according to the 2013 Index of Economic Freedom jointly published by the US-based Heritage Foundation and the Wall Street Journal. Hong Kong is also the 2nd easiest place to do business in the world, according to the 2013 World Bank's Doing Business Report.

4. Our stock market was the second largest in Asia in terms of market capitalisation as at the end of September 2012. Hong Kong was also the most active market for initial public offering (“IPO”) in terms of funds raised globally in 2009, 2010 and 2011.

5. Indeed, Hong Kong’s status as a leading global financial centre is reaffirmed in the 2012 Global Financial Centres Index. According to that index, Hong Kong maintains its position as the third largest global financial centre, closely behind London and New York. I would like to take this opportunity to share with you more about the strength and credentials of Hong Kong as a global business and financial centre.

Rule of Law as bedrock of Hong Kong’s success

6. Hong Kong’s continued prosperity since 1997 is solidly based on the concept of “one country, two systems” which allows Hong Kong to carry on as usual after the resumption of the exercise of sovereignty by China. The principle of “One Country, Two Systems” which underlines the unique status of Hong Kong within China is enshrined in the Basic Law, which is a constitutional document for Hong Kong. As far as the legal system is concerned, Hong Kong enjoys a high degree of autonomy under a common law system, separate from the legal systems in the rest of China. The rule of law has always been the most important reason for Hong Kong’s success.

Judicial Independence

7. The importance of judicial independence cannot be overstated. It helps to ensure that businesses operate on a level playing field for all. The judiciary of Hong Kong is renowned for its high standard and independence. According to the World Economic Forum Report in 2012, in so far as judicial independence is concerned, Hong Kong ranked 12th out of 144 countries/territories and was among the best in Asia.

8. Since 1997, Hong Kong enjoys the power of final adjudication. While we had cut our ties with the Privy Council since 1997 in relation to final appeal, our own Court of Final Appeal, which is the highest court in Hong Kong, is able to maintain a strong link with other common law jurisdictions by inviting eminent overseas common law judges to sit as non-permanent judges. This practice has no doubt enriched the common law in Hong Kong and preserved the continuity of our common law tradition. The judgments of the

Hong Kong Court of Final Appeal are well regarded internationally and they have been cited in other common law jurisdictions.

Protection of human rights

9. The comprehensive protection of human rights and freedoms is another reason why the international business community has confidence in our legal system. There are 19 articles in the Basic Law on fundamental human rights and freedoms. Major international covenants such as the ICCPR (International Covenant on Civil and Political Rights) are applicable in Hong Kong. Rights to property, the ownership of enterprises and investment from outside Hong Kong are protected by law. Another key strength of Hong Kong is our zero tolerance towards corruption.

A strong legal profession

10. A robust legal system could not work well without the support of top-class practitioners in the legal profession. There are now almost 7,500 solicitors and 1,200 barristers practising in Hong Kong. In addition, we have over 1,300 registered foreign lawyers from 28 jurisdictions practising foreign laws in Hong Kong and I understand that at least 4 of them are from India.

11. Our legal profession is well experienced in dispute resolution (including litigation, arbitration and mediation), corporate and commercial law, as well as information technology, maritime law, intellectual property and more.

Promoting Hong Kong as a regional hub for legal services and dispute resolution

12. With a high concentration of legal talents, Hong Kong is an important regional hub for legal services and dispute resolution. Indeed, in December last year, the Hague Conference on Private International Law, a leading global inter-governmental organization in the field of private international law, set up its Asia Pacific Regional Office in Hong Kong. This represents a vote of confidence in Hong Kong's legal system and bears witness to Hong Kong's status as a regional hub for international legal services and dispute resolution. In fact, a long-standing policy of the Hong Kong Government is to enhance our position as a leading legal services and arbitration centre in the Asia-Pacific.

Our New Arbitration Ordinance

13. As part of our effort to promote Hong Kong as an ideal venue for conducting international arbitrations, we have recently improved and modernized our arbitration legislation. The Arbitration Ordinance (Cap 609) has undergone a major re-vamp. It came into effect in June 2011. This Ordinance unifies our previous domestic and international arbitration regimes on the basis of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law. The new Ordinance reinforces the advantages of arbitration, including respect for parties' autonomy as well as savings in time and cost for parties in arbitration. At the same time, the Ordinance contains new initiatives which seek to enhance confidentiality of arbitration proceedings and related court hearings.

World Class Arbitration Institutions

14. Effective legislation aside, we have our home-grown arbitration body: the Hong Kong International Arbitration Centre ("HKIAC") which has made significant contribution to arbitration and alternative dispute resolution in Hong Kong since 1985. The HKIAC is a totally independent non-Government body. In October 2012, with the support of the Hong Kong Government, the office and hearing capacity of the HKIAC have expanded substantially in order to provide better arbitration services.

15. The International Court of Arbitration of the International Chamber of Commerce ("ICC"), which is based in Paris, opened the first branch of its Secretariat in Hong Kong in November 2008 to administer ICC arbitrations in the region, including India.

16. In September 2012, the China International Economic and Trade Arbitration Commission (CIETAC) from China, the largest arbitration institution in Asia in terms of the number of cases handled, has also established an arbitration centre in Hong Kong known as the CIETAC Hong Kong Arbitration Centre. The Hong Kong centre is also its first branch office outside Mainland China.

17. The presence of these reputable international arbitration institutions in Hong Kong means that Hong Kong offers the international business community excellent choices as a venue for dispute resolution, including arbitration.

Worldwide Recognition and Enforcement of Arbitral Awards

18. Arbitral awards made in Hong Kong can be enforced in over 140 States party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This is complemented by an arrangement concluded by Hong Kong and Mainland China in 1999 for reciprocal enforcement of arbitral awards. In January this year, we have concluded another similar arrangement with Macao. We are hoping to conclude a similar arrangement with Taiwan. With these initiatives, Hong Kong will have a complete enforcement network for arbitral awards with other parts of Greater China.

19. I am also grateful to the Indian Government for taking the necessary legislative step in March 2012 to include the People's Republic of China (including Hong Kong and Macau) as a reciprocating partner in the Arbitration Act of India for the purposes of enforcement of arbitral awards. With this clarification, parties to commercial contracts may choose Hong Kong as the seat of arbitration, with the comfort that the final award may be recognized and enforced in India.

Hong Kong as a Gateway to China

20. I believe you would agree that China is no doubt the most important market and market maker today. Although international investors are gaining direct access into the China market, Hong Kong remains a strategic gateway to China.

21. Hong Kong occupies a strategic geographical location, as we are the southern gateway to China. Hong Kong is also within five hours' flying time to half the world's population. Many still consider it advantageous to use Hong Kong as the stepping stone in entering the China market.

CEPA

22. The free trade pact that we signed with Mainland China in 2003, known as the Closer Economic Partnership Arrangement, or CEPA for short, and our ever-growing business and transport connections with our neighbouring Guangdong Province have brought new business opportunities for enterprises in the fast growing Mainland China market, and indeed for many foreign companies incorporated in Hong Kong.

23. CEPA provides tariff-free access to Mainland China for Hong Kong made products and enhanced market access in 48 service sectors. CEPA is nationality-neutral which means that products produced in Hong Kong by Indian companies can enjoy tariff-free access to the China market. Subsidiaries of Indian companies incorporated in Hong Kong may also enjoy preferential market access under CEPA provided that they qualify as Hong Kong service suppliers. In short, there are many opportunities in Hong Kong for Indian businesses.

Reciprocal Recognition and Enforcement of Judgment in Civil and Commercial Matters between the Mainland and Hong Kong

24. With regard to enforcement of court judgments between Hong Kong and Mainland China, I should like to highlight an arrangement which has become effective since 2008 and which provides for reciprocal enforcement of money judgments given by either a competent court in Hong Kong or Mainland China. The key requirement under the arrangement is that the judgment must have been given by a court that has been chosen by the parties in a choice of court agreement as the exclusive forum for adjudicating the dispute. In other words, the parties to a commercial contract may choose arbitration or litigation in Hong Kong and there are existing arrangements enabling the resulting arbitral award or judgment to be enforced in Mainland China.

Conclusion

25. Ladies and Gentlemen, I have shared with you the strength of Hong Kong as a global business and financial centre, as well as the aspiration of Hong Kong to be a leading regional centre for international arbitration. The Hong Kong Government shall continue to make the most of our unique and strategic position to promote Hong Kong as a reliable platform for international businesses to pursue opportunities in the Asia Pacific region, which is the fastest growing region in the world. We look forward to many more opportunities for India and Hong Kong to work together, both in the business and in the legal field.

26. Thank you very much.