

**Opening remarks by Mr Wesley Wong, SC  
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**BIP Asia Forum 2015  
IP Arbitration and Mediation:  
An effective alternative to resolve IP disputes  
on 4 December 2015 (Friday)**

Distinguished Guests, Ladies and Gentlemen,

It is my great pleasure to welcome you all to this seminar on IP Arbitration and Mediation: an effective alternative to resolve IP disputes.

2. In recent years, the surge in global and regional demand for IP, especially in the Mainland over the past two decades, offers huge market potential and trading opportunities in this area. These increased IP transactions will undoubtedly generate more disputes relating to IP matters. For instance, in Mainland China, the number of first instance civil IP cases accepted by local courts in 2013 was around 89,000, increased by 106% as compared to around 43,000 cases in 2010.

3. While litigation may be an option for resolving IP disputes, we believe that alternative dispute resolution, notably arbitration and mediation, can also be a viable, if not better, means to resolve such disputes. They are typically technical in nature, and hence call for specialist adjudicators, and require speedy resolution, finality of award and confidentiality.

4. The Department of Justice has, therefore, highlighted IP as one of the areas in developing and promoting Hong Kong as a regional hub for international legal and dispute resolution services. Be that as it may, doubts have been expressed from time to time among the arbitration and IP community on the arbitrability of IP disputes, especially on the validity of registered IP rights, such as patents, trade marks and registered designs, granted by government authorities. Different approaches have been adopted by different jurisdictions as to the arbitrability of IP disputes. In Hong Kong, there is at present no specific legislative provision addressing this issue.

5. In order to deal with it, the Secretary for Justice has initiated the setting up of a Working Group on Arbitrability of IP Rights to consider and advise the Government on the need for and, if so, the extent of necessary legislative amendments. Chaired by myself and comprising representatives from the Department of Justice itself, the Intellectual Property Department, the Hong Kong International Arbitration Centre and legal practitioners with IP expertise, the Arbitrability Working Group is expected to soon publish a consultation paper on the possible way ahead in addressing any need to clarify the issue of arbitrability. Once the legal position is clarified, we believe that more parties from the Mainland and beyond will be drawn to Hong Kong to resolve their IP disputes here by arbitration. This will also give Hong Kong the competitive edge to stay ahead of other jurisdictions in the Asia-Pacific region as a prime venue for resolving IP disputes.

6. Apart from laying the legal foundation, the Department of Justice also actively promotes Hong Kong as an international IP arbitration and mediation centre overseas. Just in September this year, the Secretary for Justice himself headed a legal delegation to Jakarta and addressed the participants in a seminar jointly organised with the Hong Kong Trade Development Council on “Legal & Dispute Resolution: Key for International Trade”, choosing IP as a main theme to showcase Hong Kong’s dispute resolution services. Thanks to the support of Hong Kong legal and arbitration professionals, the seminar was well received by Indonesian business and legal professionals.

7. Mediation, noting its effectiveness and flexibility as a means of dispute resolution, has now become an integral part of the legal landscape of Hong Kong as a result of the continuous efforts of the Government in the promotion and development of its wider use to resolve disputes. The Mediation Ordinance (Cap. 609), which came into force in January 2013, provides a framework for the conduct of mediation, protects the confidentiality of mediation communications and preserves the flexibility of the mediation process.

8. In this regard, the advantages of using mediation to resolve IP disputes are also well recognised. In fact, one of the recommendations in the Report of the Working Group on Intellectual Property Trading chaired by the Secretary for Commerce and Economic Development is to promote and develop the use of mediation to resolve

IP disputes in Hong Kong and explore the use of evaluative mediation on top of facilitative mediation for the purpose.

9. With a view to promoting the wider use of mediation to resolve IP disputes, the Department of Justice and the Intellectual Property Department organised an IP Mediation Workshop earlier this year. The workshop attracted strong interest of IP practitioners and generated much discussion on the use of evaluative mediation for the purpose. We shall continue with our efforts, together with the Intellectual Property Department and stakeholders, to further explore the use of mediation in IP disputes.

10. Talking about showcasing Hong Kong's dispute resolution services, I wish to take this opportunity to mention some good news to you in case you have not already learnt about it. We are very much encouraged by the results of a recent global arbitration survey conducted by the Queen Mary University of London. The results reveal that the Hong Kong International Arbitration Centre is the most preferred arbitral institution outside Europe and the third best arbitral institution globally. Moreover, Hong Kong is ranked as the third most preferred seat of arbitration in the whole world (only after London and Paris) and the most preferred seat overall outside Europe.

11. With these very encouraging results, we shall continue to work with the relevant stakeholders to foster the development of IP arbitration and mediation in Hong Kong and to promote Hong Kong as an international IP dispute resolution centre in the Asia-Pacific region.

12. On this note, may I express my gratitude to our distinguished speakers, the Hon. Mr Andrew Liao SC, Ms Winnie Tam SC, Mr C K Kwong and Mr James Rogers, for their valuable contribution to this seminar. I wish this seminar every success and all of you a fruitful session. Thank you.