Opening remarks of
Dr James Ding, Commissioner
Inclusive Dispute Avoidance and Resolution Office

Generations in Arbitration Conference
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Distinguished guests, ladies and gentlemen,

1. It gives me great pleasure to address you at the Generations in Arbitration Conference during the Hong Kong Legal Week 2021. I would like to thank the Moot Alumni Association for inviting me and for organizing this meaningful event to foster the sharing of views and knowledge on latest issues in international arbitration.

2. I note that there will be two panel discussions. Panel 1 will discuss why strong legal and judicial systems strengthen (rather than weaken) international arbitration while Panel 2 will discuss whether public policy is really only a last line of defence.

3. As a background for the panel discussion, I would like to share with you some unique strengths of Hong Kong's legal and judicial systems and explain why they strengthen the use of international arbitration as a means of resolving cross-border disputes.

4. Hong Kong has a well established legal system underpinned by the rule of law and the independence of the judiciary. Under the Basic Law, Hong Kong practices common law, which is the same legal system as the world's major economies and familiar to the international community. In particular, our legislative framework for arbitration is up-to-date and in compliance with international norms. The Arbitration Ordinance in Hong Kong is based on the latest version of the UNCITRAL Model Law, which is well understood by practitioners from both civil law and common law jurisdictions and familiar to the international business community. Our Arbitration Ordinance has been constantly reviewed to make sure that our arbitration laws are in line with the latest international arbitration

practice. In particular, the Ordinance was updated in 2017 to make it clear that third party funding in arbitration is permissible in Hong Kong. Provisions confirming the arbitrability of IP disputes and the enforceability of IP arbitral awards were also introduced in the same year.

5. Our legal regime on arbitration also comprises various reciprocal arrangements between the Mainland and Hong Kong. One of the arrangements is the groundbreaking interim measures arrangement signed in April 2019 which enables parties to arbitral proceedings seated in Hong Kong and administered by an eligible arbitral institutions to apply to the Mainland courts for interim measures directly. Hong Kong is the only jurisdiction outside the Mainland which has such an arrangement with the Mainland on interim measures in aid of arbitral proceedings. The Arrangement has greatly enhanced Hong Kong's attractiveness as a seat of arbitration, and showcases our unique strengths under "One Country, Two Systems". We also signed the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards with the Mainland in November 2020 to refine the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR signed in 1999 to further facilitate recognition and enforcement of arbitral awards between the two places. The Supplemental Arrangement has been fully implemented since May this year.

6. Apart from a strong legal system, Hong Kong has an independent and well-regarded judiciary which is supportive of the use of arbitration. The courts in Hong Kong have always strived to ensure that party autonomy is respected in line with procedural propriety. The pro-arbitration approach adopted by Hong Kong courts are well documented in its judgments. Where there exists a valid arbitration agreement between the parties, the court will stay the court proceedings in respect of disputes between the parties favour of arbitration. The court also upheld the wide discretion of arbitrators and the flexibility of the arbitral process. Further, there is a specialist list of judges in the Hong Kong Court of First Instance who deal with arbitration matters. Awards made in Hong Kong have generally been upheld by Hong Kong courts, which ensures finality and enforceability

of awards.

7. The courts in Hong Kong is known for its pro-enforcement approach. In the case of *KB v S & Ors* [2016] 2 HKC 325, the Court has set out the principles adopted by it towards enforcement of arbitral awards. In summary, the primary aim of the Court is to facilitate the arbitral process and to assist with enforcement of arbitral awards. The court should interfere in the arbitration of the dispute only as expressly provided for in the Arbitration Ordinance. Further, enforcement of arbitral awards should be "almost a matter of administrative procedure" and the courts should be "as mechanistic as possible". In considering whether or not to refuse enforcement of the award, the court does not look into the merits or at the underlying transaction and it is only concerned with structural integrity of the arbitration proceedings. As such, awards, whether they are made in Hong Kong or not, can generally be enforced in Hong Kong.

8. The above features of Hong Kong's legal and judicial systems mean that parties do not necessarily have to resort to litigation to resolve their disputes. This is particularly so for parties in cross-border disputes who may wish to avoid litigating the dispute in each other's home court. By using international arbitration as a means to resolve their disputes in Hong Kong, they can also avoid any difficulty of enforcing the court judgment as arbitral awards made in Hong Kong are enforceable in over 160 jurisdictions under the New York Convention and under our relevant arrangements with the Mainland and Macao SAR. In gist, our legal and judicial system support and enhance the use of international arbitration for cross-border disputes.

9. On the subject to be discussed in Panel 2, I would briefly mention that the Hong Kong Arbitration Ordinance (Cap. 609) provides for the refusal of the enforcement of arbitral awards under the public policy ground. However, consistent with the pro-arbitration and pro-enforcement approach adopted by the judiciary, the courts tend to apply the public policy ground in a restrictive manner as shown from the case law.

10. For example, in the case of *Gao Haiyan & Anor v Keeneye Holdings*

Ltd & Anor [2012] 1 HKLRD 627, in determining whether a private meeting over dinner as part of the mediation-arbitration process outside Hong Kong would render the arbitral award concerned tainted by bias or apparent bias, the Court of Appeal reiterated the important principle that the enforcement of an award should only be refused if to enforce it would be contrary to the fundamental conceptions of morality and justice of Hong Kong. By showing respect for the usual way of conducting mediation in the place where the mediation took place, the court found that there was no apprehension of apparent bias based on the facts and refused to invoke the public policy ground solely because the mediation was conducted differently from the way it would usually be conducted locally.

11. Indeed, the issue of whether the enforcement of arbitral awards would be contrary to public policy was not taken lightly by the Hong Kong courts. The Hong Kong courts only set aside an enforcement order for arbitral awards based on public policy ground in exceptional and clear cases.

12. On this note, I am sure speakers of today's panel sessions will continue with in-depth discussions on the application of the public policy ground in the enforcement of arbitral awards, and will further elaborate on how and why strong legal and judicial systems would strengthen rather than weaken international arbitration. May I wish you all a fruitful conference and wish this event every success.

13. Thank you very much.