

**Speech by the Hon Rimsky Yuen, SC, JP
Secretary for Justice
at the 27th Susan Yuen Memorial Lecture
of the Hong Kong Management Association
on 3 October 2012**

"Hong Kong - A Regional Centre for Dispute Resolution Services"

Dr Dennis Sun, distinguished guests, ladies and gentlemen,

I am most honoured to be invited to give the lecture this evening. Over these years, distinguished speakers from different fields have shared their experience and insights on areas of their expertise. It is truly my honour to join them by having the opportunity of delivering the lecture this year.

"Building Prosperity Amidst Uncertainty"

The theme chosen this year is "Building Prosperity Amidst Uncertainty". This is indeed a very appropriate theme. It is no exaggeration that we are currently living in an era of uncertainties, especially if one takes into account the Euro-debt crises and the prevailing global economic situation. The World Bank, when it published a report in January 2012 on global economy, saw fit to set the title of the report as "Global Economic Prospects January 2012: Uncertainties and Vulnerabilities".

This theme, which highlights the potential co-relation between prosperity and uncertainty, epitomizes the path which Hong Kong has gone through over the past few decades. In the 1960's, Hong Kong went through the riot, which led many people to ponder on their future. In the 1970's and 1980's, the uncertain fate of Hong Kong's manufacturing industry was replaced by the success story of the financial industry. Thereafter, Hong Kong people witnessed how the Sino-British talks on the future of Hong Kong began and developed, how Hong Kong has transformed herself from a British colony to a Special Administrative Region of the People's Republic of China, and how the Special Administrative Region bravely overcame various challenges including the Asian financial crises and the SARS outbreak.

Uncertainty, of course, would not be the sort of situation that everyone would love to face. However, viewed positively and handled appropriately, uncertainty means an opportunity to shape the future. The history of Hong Kong bespeaks this point, and the success stories of Hong Kong people show we can do it.

Success of Hong Kong and our dispute resolution services

One then asks the question: what can be done so as to build prosperity amidst the uncertainty Hong Kong is currently facing? Insofar as the legal landscape is concerned, one of the options is to build from our strength.

Notwithstanding the global situation, Hong Kong has remained strong with its fundamentals. According to the latest finding of the Global Financial Centre Index released in late September, Hong Kong continues to be one of the top three financial centres in the world, after London and New York. Similarly, the latest Global Competitiveness Report by the World Economic Forum, released also in the last month, ranks Hong Kong as the 9th most competitive economy among the 144 economies covered by the Report. Hong Kong has risen by 2 ranks from last year (11th). If one looks beyond the overall ranking and goes to the parameters of measuring the global competitiveness of an economy, one finds the parameter of "efficiency of legal framework in settling disputes". For this specific parameter, Hong Kong gets an even more impressive ranking of being the 6th highest.

Studies conducted in the West as well as in the Asian region have confirmed the strong relationship between a sound legal system and economic prosperity. These recent rankings and parameters further reinforce the significance of maintaining the rule of law, and amongst others, the vital importance of providing a legal framework for resolving disputes in a fair and efficient manner. In this regard, Hong Kong has been making conscientious efforts, and has made significant achievements with the Government's strong commitment to promote and develop Hong Kong as a leading centre for dispute resolution services in the Asia Pacific region.

Arbitration

Let me begin with arbitration. The new Arbitration Ordinance came

into effect in June 2011. The new legislation unifies domestic and international regimes of arbitration on the basis of the UNCITRAL Model Law on International Commercial Arbitration. The new Arbitration Ordinance reinforces the advantages of arbitration, including respect for the parties' autonomy as well as the savings in time and costs, and at the same time protects confidentiality in arbitration and related court proceedings.

Effective legislation aside, the important role played by the Hong Kong International Arbitration Centre ("HKIAC") cannot be ignored. The HKIAC is totally independent and free from governmental interference. It celebrated its 25th birthday last year. While HKIAC is Hong Kong's home-grown arbitration body, it is very international in that about 65% of the arbitration cases the HKIAC handled in 2011 was of international nature. More importantly, the HKIAC is internationally well-known and commands high respect in the international arbitration community.

The Government has been providing staunch support to the HKIAC. The provision of substantial additional office space to the Centre for enhancing its hearing capacity is a case in point. A launch party to mark the opening of the expanded premises will be held on 17 October, and I am sure this will be one of the highlights of the inaugural Hong Kong Arbitration Week hosted by the HKIAC.

One of the attractions for Hong Kong as a place for international arbitration is that arbitral awards made in Hong Kong can be enforced in over 140 contracting jurisdictions to the New York Convention. While concerns were previously raised on the enforcement of Hong Kong arbitral awards in India, I am glad to report that the situation has been clarified this year and steps taken to ensure enforcement of Hong Kong arbitral awards in India has been completed.

As regards the enforcement of Hong Kong arbitral awards in the Mainland, an arrangement modelled on the New York Convention was made and signed between Hong Kong and the Mainland in 1999. The arrangement has been working well over the years. We are now pursuing a similar arrangement between Hong Kong and Macao, and we anticipate legislative changes will be moved within the forthcoming legislative year. When the arrangement is in place, it will further enhance the network for mutual

enforcement of Hong Kong arbitral awards within the region.

The status of Hong Kong as a regional centre for dispute resolutions services is showcased by the presence of internationally well known arbitration institutions. The ICC International Court of Arbitration (generally known as "ICC ICA"), which is based in Paris, opened a branch of its Secretariat in Hong Kong in November 2008 to serve ICC arbitration in the Asia-Pacific Region. Last month, the China International Economic and Trade Arbitration Commission (often referred to as "CIETAC") has decided to establish its arbitration centre in Hong Kong, the first one established by CIETAC outside the Mainland. This move would further enhance Hong Kong's status as a dispute resolution centre in the Region.

Cooperation with the Mainland

The potential of international arbitration is further boosted by the project being pursued in Qianhai, Shenzhen. In this regard, the Approval of The State Council on "The Supporting Policies of the Development and Opening up of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of Shenzhen" promulgated in June this year has stated clearly that pilot policies are adopted in Qianhai to step up closer co-operation between the Mainland and Hong Kong. The policies cover legal and arbitration affairs, including exploring ways for Hong Kong arbitration institutions to establish offices in Qianhai and fostering closer co-operation between legal professionals of the Mainland and Hong Kong to identify better modes of association between Hong Kong and Mainland law firms, strengthening the implementation of various liberalisation measures for Hong Kong under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement and its supplements.

We believe Qianhai offers wholesome opportunities for the business and services community of Hong Kong including our legal and arbitration community. We will endeavour to promote the use of Hong Kong law in the Qianhai area, a direction which we believe will be of mutual benefit to both Hong Kong and Qianhai (and possibly Mainland China generally).

Needless to say, the market for our legal and arbitration services goes well beyond Shenzhen, and we have been taking active steps to promote our legal and arbitration services in the Mainland, together with the two legal

professional bodies, the HKIAC, the ICC ICA and the Hong Kong Trade Development Council. Following the success of the first forum in Shanghai two years ago, the second Hong Kong Legal Services Forum was held in Guangzhou in mid-September. The Forum was very well received and was attended by about 700 legal and arbitration services professionals, officials, and business representatives in Hong Kong and Guangdong. The enthusiastic response reflects the huge potential and the encouraging prospect involved.

We firmly believe that there is still room for closer cooperation between the legal and arbitration professions of Hong Kong and the Mainland. Such a closer partnership will achieve a “win-win” situation. It will benefit not only the service providers from Hong Kong, but also the Mainland enterprises in the process of their expansion or going global. As I said at the Hong Kong Legal Services Forum which I just mentioned, Hong Kong lawyers have all along been providing high quality legal services in various areas such as civil and business law. In addition, thanks to our excellent geographical location, advanced telecommunication networks and flourishing business opportunities, many renowned international law firms have chosen to set up branch offices in Hong Kong, offering a wide range of legal services. We are therefore in a very strong position to provide the necessary high end legal and arbitration services to meet the demand involved.

Mediation

Whilst we are working wholeheartedly to develop our arbitration service in order to keep up its competitive edge, we attach equal importance to the development of another means of alternative dispute resolution, namely, mediation.

Significant achievements have likewise been made in the past few years in the development of mediation in Hong Kong. First, the Mediation Ordinance, which aims at providing a regulatory framework for conducting mediation in Hong Kong, was enacted in May and is expected to come into effect in the near future. Second, we are most conscious of the importance of ensuring Hong Kong has good quality mediators. The quality of the 1 600-plus mediators in Hong Kong and their training are receiving increasing attention, which is not unexpected as mediation is becoming more and more popular. So far, mediators in Hong Kong are accredited by a number of different bodies

(both local and overseas), each adopting its own training and accreditation criteria. During the consultation conducted in 2010 on the way forward to facilitate the more effective use of mediation, we received overwhelming support for the early establishment of a single body for accrediting mediators.

It was against such background that the Hong Kong Mediation Accreditation Association Limited was incorporated and established this August. The Founding Members comprise Hong Kong Bar Association, the Law Society of Hong Kong, the HKIAC and the Hong Kong Mediation Centre. Such a profile of the Founding Members already shows the strong support received. As an industry-led body, the Association will perform important roles such as accreditation of mediators and disciplinary functions, marking a significant milestone in the development of mediation in the city.

Mediation has gained momentum in Hong Kong, and we will continue to promote the use of mediation to resolve disputes. Some of you may have already watched the recent TV commercials, using the concept of "untying the knot" or "unlocking the dispute". In fact, as early as May 2009, we launched a very successful "Mediate First" Pledge campaign with more than 100 companies and trade organisations pledging to consider the use of mediation first before resorting to other means of dispute resolution. We hope more companies and organisations will join this, no doubt including those managed by members of the Hong Kong Management Association, would agree to make the same pledge.

Closing remarks

Ladies and Gentlemen, I have talked about some of the key developments of our dispute resolution services, and I would urge you to continue to take a keen interest in our development on this front in the years to come. Hong Kong's success in offering and delivering quality and world class services in these areas would be important not only for the legal and arbitration community. It will also be instrumental to the continued prosperity of Hong Kong as an international financial and business centre or, in the words of the theme this year, the prospect of our "Building Prosperity Amidst Uncertainty".

By way of a concluding note, may I wish the Hong Kong Management Association and its members every success in the years to come. Thank you

very much.