

Speech by SJ at Asia Pacific Regional Arbitration Group
Conference 2013 (with photo)

Following is the full text of the speech delivered by the Secretary for Justice, Mr Rimsky Yuen, SC, at the opening ceremony of the Asia Pacific Regional Arbitration Group Conference 2013 held in Beijing this morning (June 28) (the initial part of the speech was delivered in Putonghua, which is an expression of gratitude for having the chance to address the audience.):

尊敬的最高人民法院周強院長、萬季飛會長、董松根副會長、于建龍主席、馬來西亞吉隆坡區域仲裁中心主任 Rajoo 先生、聯合國國際貿易法委員會秘書長 Sorieul 先生、各位嘉賓、女士們、先生們：

大家好！很高興今天有機會出席「亞太區域仲裁組織大會」2013 年會議的開幕式，與來自世界各地的仲裁專家交流經驗。

就這次大會的主題「亞太國際仲裁未來十年——機遇與挑戰」發言之前，我衷心感謝「貿仲委」對香港的支持。去年九月，「貿仲委」在香港設立仲裁中心，這決定代表「貿仲委」對香港作為亞太區仲裁中心投下重要的信心一票。

此外，我希望特別感謝「貿仲委」董會長這次的邀請與協助。我有機會跟大家見面，完全是「貿仲委」和「貿仲委」香港仲裁中心朋友們的功勞。

由於很多在座的朋友是外國朋友，容許我現在轉用英語就這次大會的主題跟大家分享我的意見。

Ladies and gentlemen,

It is my great pleasure and honour to have this opportunity to address so many arbitration experts from all over the world at this welcome and opening session of the Conference.

The theme of this year's Conference is the exploration of the opportunities and challenges of international arbitration in the Asia-Pacific region in the next decade. I would like to take this opportunity to (1) share with you some of my thoughts on the future development of arbitration in the region, and (2) outline what Hong Kong, as an international centre for legal and dispute resolution services in the Asia-Pacific

region, has been doing so as to provide high-quality dispute resolution services.

(i) Certain thoughts on the development of arbitration

Mapping out the future development of arbitration in the Asia-Pacific region is no easy task. With so many leading experts gathering here, I am sure there would be fruitful exchanges on what will happen and what should be done. May I just highlight some of my views in this aspect.

To begin with, I am confident that the development of arbitration, and indeed other forms of alternative dispute resolution (ADR), in the Asia-Pacific region is heading towards a golden age.

As pointed out in various economic reports, the Asia-Pacific region has since become the top destination for investors, with China occupying the top rank and India coming next. This year, Asia is leading the global economic recovery. It is obvious that the global economic balance has shifted from the West to the East with the Greater China region being the key growth engine in the Asia-Pacific region. What does this mean? The answer is obvious: the more economic and trade activities, the higher the need for arbitration and ADR services.

Another relevant factor is the fact that globalisation and regional integration will continue, which means that there will be more cross-border or international trade disputes. Whilst litigation will remain as a traditional form of dispute resolution, international arbitration and other forms of ADR will certainly become more and more popular as they can offer advantages that traditional litigation cannot.

The growing interest in investment arbitration is but one example that illustrates this point. The World Bank released a report in May projecting a threefold increase over the current level in the investment flows into the developing countries and regions in the next 20 years. By 2030, China will be the largest investor in the world, accounting for 30 per cent of the global gross investment while India will have a share of 7 per cent.

With a significant boom in cross-border or international investment activities, private-to-government (P2G) investment disputes, along with private-to-private (P2P) commercial disputes, are expected to increase in the Asia-Pacific region. To provide protection for cross-border investment activities, investment promotion and

protection agreements emerged in the mid-20th century. In recent years, with the World Trade Organization (WTO) Doha Round repeatedly ending in deadlock, many WTO members have actively entered into bilateral and plurilateral free trade agreements, economic partnership agreements as well as regional trade agreements, many of which contain provisions on investment protection.

Investment protection agreements and related provisions generally allow foreign investors to submit investment disputes with a host country to arbitration. As shown by the statistics released by the United Nations Conference on Trade and Development (UNCTAD) in May, the number of cases filed under the investor-state dispute settlement (ISDS) mechanism reached a record high of 58 last year, reflecting that foreign investors are increasingly resorting to the mechanism for resolving their disputes with the government of a host country.

Chinese companies as investors have also started making use of the P2G investment arbitration mechanism. For instance, China Heilongjiang International Economic & Technical Cooperative Corp and other parties submitted a request for arbitration in 2010 to the Permanent Court of Arbitration under the United Nations Commission on International Trade Law (UNCITRAL) framework pursuant to the China-Mongolia bilateral investment agreement. In addition, Ping An Life Insurance Company of China, Ltd. and another party filed a request for arbitration to the International Centre for Settlement of Investment Disputes (ICSID) last September. Ping An was seeking compensation for its economic losses caused by the nationalisation of Fortis Bank by the Belgian Government amid the financial crisis in 2008. At a time when multinational enterprises regard China as a preferred investment destination and China's own enterprises are striving to "go global", it is foreseeable that investment disputes in the Asia-Pacific region, including the Greater China region, will keep growing.

With the onset of a golden age of arbitration in the Asia-Pacific region, the next natural question is what steps should be taken to prepare ourselves. Amongst others, I think there are at least three areas that merit our attention.

First, there is a need to build up an arbitration culture and an arbitration-friendly environment within the region. This requires efforts not only from the arbitration community, but other relevant stakeholders including the government, the business community, the legal profession as well as the judiciary.

Second, steps should be taken to facilitate the sustainable development of arbitration within the region. Issues such as the quality of arbitrators, appropriate monitoring of arbitration costs and efficiency of the arbitration process are some of the aspects that deserve consideration. Further, research, including multi-disciplinary research, on how best arbitration can develop in the Asia-Pacific region, taking into account its cultural differences from the West, should be conducted on a continuous basis.

Third, the relationship between arbitration and other modes of ADR is another aspect that warrants studies. Different modes of ADR offer different advantages. The end users should be allowed more choices when they have a need to resolve disputes. Arbitration need not be a stand-alone option. Instead, in appropriate cases, arbitration can be combined with other forms of ADR so as to create maximum flexibility and benefits. The combination of arbitration with mediation is but one such example.

(ii) Hong Kong as an international centre for legal services and dispute resolution in the Asia-Pacific region

As the Secretary for Justice, it is one of my roles to market Hong Kong's legal and dispute resolution services. So, permit me to move on to outline our recent development. As an international centre for legal and dispute resolution services in the Asia-Pacific region, Hong Kong has made continuous efforts to enhance its arbitration and mediation regimes.

Reform of arbitration law in Hong Kong

First of all, we have been working continuously to enhance our arbitration law. The existing Arbitration Ordinance unifies our previous domestic and international arbitration regimes on the basis of the Model Law on International Commercial Arbitration of UNCITRAL. By adopting a generally familiar international arbitration regime, we provide a good reason for parties to choose Hong Kong as the venue to conduct arbitration.

We also keep a close eye on developments in the arbitration sector. Earlier on, we introduced a Bill to amend the Arbitration Ordinance, so that any emergency relief granted by an emergency arbitrator is enforceable under the Arbitration Ordinance. We expect that the Bill will be passed by the Legislative Council by mid-July.

Worldwide recognition and enforcement of Hong Kong arbitral awards

General recognition and enforceability of arbitral awards in other jurisdictions are the major considerations when parties decide where to arbitrate. Over the years, Hong Kong arbitral awards are already recognised and enforceable in over 140 jurisdictions under the New York Convention.

We continue to seek to enlarge the enforcement network for arbitral awards with other jurisdictions. In March last year, the Indian Government helpfully declared that the People's Republic of China (including Hong Kong) is a reciprocating partner for the purposes of enforcement of arbitral awards under the New York Convention, thereby affirming the enforceability of Hong Kong arbitral awards in India.

As colleagues in the international arbitration community would agree, there has been a marked increase in major international arbitration cases involving Chinese enterprises. As early as 1999, Hong Kong and the Mainland concluded an Arrangement Concerning Mutual Enforcement of Arbitral Awards, effective since February 1, 2000. The enforceability of Hong Kong arbitral awards in the Mainland gives users of Hong Kong arbitration services certainty in this regard.

In January this year, Hong Kong concluded an Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards with Macao. Upon commencement of the Bill I mentioned just now, Hong Kong courts may enforce Macao arbitral awards under the Arrangement.

As we understand, Hong Kong and Taiwan arbitral awards should be reciprocally enforceable under the current legal frameworks of the two places. Taken together, Hong Kong's arbitral awards are enforceable all over the Greater China region. Considering the expectation of arbitration service users for a clear-cut arrangement to facilitate the enforcement of arbitral awards of the two places, the Hong Kong Government is pressing ahead with a proposal to establish a clearer and simpler arrangement with Taiwan on the reciprocal enforcement of arbitral awards.

Presence of branch offices of world-class arbitration institutions

Another edge of Hong Kong is the presence of branch offices of world-class arbitration institutions. Locally, the home-grown Hong Kong International Arbitration

Centre, which has been established since the 1980s, serves as an independent dispute resolution body.

In 2008, the International Court of Arbitration of the International Chamber of Commerce opened in Hong Kong its first ever branch of the Secretariat outside the Paris headquarters. Last September, the China International Economic and Trade Arbitration Commission established a branch office in Hong Kong, also its very first arbitration centre outside the Mainland. The presence of branch offices of these reputable international arbitration institutions in Hong Kong, coupled with our existing arbitration institutions, places Hong Kong in an even stronger position to meet the demand for high-end dispute resolution services in the Asia-Pacific region.

Looking ahead, we will pursue vigorously our efforts to attract more reputable international legal, arbitration and mediation institutions to set up offices in Hong Kong so as to strengthen Hong Kong's position as an international centre for legal services and dispute resolution in the Asia-Pacific region. Not long ago, the Hong Kong Government announced its decision to allocate part of the space in the former Central Government Offices for NGOs related to law, arbitration and mediation to set up their offices. This serves to help them to develop relevant services in Hong Kong, which will in turn enhance our competitiveness in the international arena.

Investment arbitration

Earlier on, I made reference to investment arbitration. With a mature common law legal system, internationally renowned arbitration institutions, well-developed arbitration facilities and talents with global visions and a solid grasp of international rules, Hong Kong is well placed to handle all kinds of arbitration, including P2P and P2G ones. Hong Kong's convenient location in the Asia-Pacific region and its close proximity to the Mainland also mean that Hong Kong enjoys a distinct advantage in the provision of quality dispute resolution services involving civil and commercial disputes in the Asia-Pacific including the Greater China region.

Mediation

Apart from arbitration, Hong Kong is committed to the promotion and development of mediation. Our new Mediation Ordinance, which came into operation on January 1 this year, provides a legal framework with emphasis on the protection of confidentiality of mediation communications. In August last year, the Hong Kong

Mediation Accreditation Association was incorporated. This industry-led body aims at providing an effective accreditation system which will ensure the quality of mediators. This in turn will strengthen the mediation services available in Hong Kong and enhance our position as a dispute resolution centre in the Asia-Pacific region.

(iii) Conclusion

The incumbent Chief Executive of Hong Kong has reaffirmed in his Policy Address published early this year that it is an important policy of the Hong Kong Government to enhance our position as an international centre for legal and dispute resolution services in the Asia-Pacific region. As an international financial and commercial centre in the Asia-Pacific region, we have been playing an active role in the economic development of the region. We believe that Hong Kong can leverage its advantages to provide high-end and excellent dispute resolution services to address the growing civil and commercial disputes in the region.

On this note, may I reiterate my gratitude for giving me this valuable opportunity to address you and wish this Conference every success.

Thank you.