

**Speech of Hon Rimsky Yuen, SC, Secretary for Justice
at a session of the "Town Hall Forum Series: Meet the Ministers"
organised by the Hong Kong General Chamber of Commerce
on 14 March 2013**

**Hong Kong as a Regional Centre for Legal Services
and Dispute Resolution in the Asia Pacific Region**

Mr CK Chow, Distinguished Guests, Ladies and Gentlemen:

It is my great honour to have the opportunity to address this distinguished gathering of the Hong Kong General Chamber of Commerce ("HKGCC") this afternoon. This session was originally scheduled for 22 February, but had to be rescheduled due to a last minute unforeseen commitment on my part. Please do accept my apologies for any inconvenience caused.

2. As I stressed on various different occasions, and as confirmed in the Chief Executive's recent Policy Address¹, it is our policy to enhance Hong Kong's status as a regional hub for legal and dispute resolution services in the Asia Pacific region. I would like to take this opportunity to share with you some of my views on three aspects of this policy: first of all, why it is desirable to adopt this policy; secondly, what we have been doing so far to implement this policy; and lastly, to raise a few areas which may be worth considering in mapping the future strategy.

(I) Why adopt this policy

3. Dealing with the first question first: why do we adopt the policy

¹ See: para. 39 of the Policy Address.

of enhancing Hong Kong as a regional hub for legal and dispute resolution services in the Asia Pacific region?

4. To begin with, this policy will assist Hong Kong in maintaining and enhancing her status as an international financial and commercial centre.

5. As researches conducted in the West and in the Asian region show, law and business have a close interactive relationship. A recent survey also helps to illustrate this point. In the latest Global Competitive Report published by the World Economic Forum in September last year, Hong Kong has risen 2 ranks and is ranked as the 9th most competitive economy amongst the 144 economies covered by the survey. 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”, and that Hong Kong ranks the 6th highest amongst the 144 economies.

6. From a micro perspective, this policy would assist the development of professional services and business support in Hong Kong. As mentioned in the latest Budget Speech² delivered last month, professional services and business support (which included legal services) is one of the pillar industries of the Hong Kong economy, accounting for 12% of GDP. Besides, we believe the promotion of Hong Kong as a regional centre for legal and dispute resolution services would benefit not only the legal profession, but would bring about collateral benefits in one form or another to other trades and industries (such as hotel and conference facilities).

7. From a macro perspective, the policy goes beyond mere

² See para. 61 of the Budget Speech.

economic benefits as such. The positioning of Hong Kong is crucial for shaping Hong Kong's future. Other key directions aside, it would be of utmost important to ensure that Hong Kong remains an international city, and has sufficient international presence in areas relevant to Hong Kong's long term development.

8. The world's economic powerhouse has moved from the West to the East, with the Mainland as the heart of the world's economic engine. Under the "One Country, Two Systems" principle, Hong Kong is the only city within China where the common law legal system applies. Against this backdrop, enhancing Hong Kong as a leading centre and the regional hub for legal and dispute resolution services in the Asia Pacific region would benefit both Hong Kong and the Mainland. Amongst others, Hong Kong could continue to stand out differently from other cities in the Mainland, which is the very value of Hong Kong to the Mainland.

(II) Recent development in arbitration and mediation

Arbitration

9. Moving on, if I may, to deal with the recent development of legal services and dispute resolution.

10. Arbitration is certainly no stranger to HKGCC. It is one of the objects of the Chamber, as spelt out by its founders in 1861, to "arbitrate between disputants". The role of HKGCC in the provision of arbitration service in Hong Kong was noted as early as in the first report published by the Law Reform Commission ("LRC") in 1982 on the topic of "commercial arbitration". The LRC Report gratefully acknowledged that HKGCC played

an important role in the development of arbitration in Hong Kong by setting up an arbitration committee which appointed arbitrators and umpires.

11. Apart from being a pioneer in providing arbitration service in Hong Kong, credits should also go to the HKGCC for joining hands with four other chambers of commerce and the Government to create the Hong Kong International Arbitration Centre ("HKIAC") in 1985.

12. Since the 1980's, the arbitration scene in Hong Kong has undergone substantial changes. The HKIAC is now one of the leading and most active international arbitration centres in the world. In 2011 alone, the HKIAC handled around 500 cases of arbitration, with the majority of them being international arbitration.

13. The more recent significant development in the arbitration context can be outlined as follows:-

- (a) In 2008, the International Chamber of Commerce ("ICC") opened a branch of the Secretariat of its International Court of Arbitration in Hong Kong. This is the first and so far the only branch outside its headquarters in Paris. Not only was this a vote of confidence in Hong Kong's legal system, it also showed Hong Kong's important status as an arbitration centre.
- (b) The new Arbitration Ordinance, which came into operation in June 2011, offers a unified arbitration regime based on the UNCITRAL Model Law on International Commercial Arbitration. It has features that encompass the latest and best international practice, and provides a solid foundation for the

future healthy development of arbitration in Hong Kong.

- (c) The China International Economic and Trade Arbitration Commission ("CIETAC") set up its Hong Kong Arbitration Centre in September 2012, which is the first such centre established by CIETAC outside the Mainland. The establishment of the centre, coupled with the other arbitral institutions in Hong Kong mentioned earlier, will place Hong Kong in a stronger position to meet the demand for high-end arbitration services.
 - (d) Another important development is the formal declaration by the Government of India in March 2012 that China (including Hong Kong) is a reciprocating partner for the purposes of enforcement of arbitral awards under the New York Convention. With this confirmation, parties to commercial contracts with an Indian connection should no longer have any hesitation to choose Hong Kong as an arbitration venue. In this regard, representatives of the Department of Justice has joined forces with HKIAC and the Hong Kong Bar Association in a road show to India earlier this month to promote Hong Kong as an arbitration centre.
14. We have also been working hard to expand further the network of award enforcement in Greater China. In January, Hong Kong and Macao concluded an Arrangement on reciprocal enforcement of arbitral awards. The necessary legislative amendments to implement this Arrangement will be introduced during the 2013 legislative session. At the same time, we are also canvassing the possibility of concluding a similar arrangement with Taiwan.

Mediation

15. Aside from arbitration, the Government has spared no efforts in promoting the development of mediation. In this regard, I wish to express my gratitude to the HKGCC for its support by being one of signatories of the "Mediate First" Pledge and through which pledging to consider mediation before considering litigation.

16. In terms of statutory regime, the Mediation Ordinance was enacted in June 2012, and has come into effect since 1 January 2013. The Ordinance provides a basic legislative framework for the conduct of mediation in Hong Kong, with special emphasis on the protection of confidentiality. Hong Kong is one of the few jurisdictions where such mediation legislation is enacted. As I understand, various other jurisdictions are following our development with keen interests.

17. As mediation is gaining popularity, the quality of mediators and their training are receiving increasing attention. The establishment of the Hong Kong Mediation Accreditation Association Limited ("HKMAAL") in August 2012 is thus another significant milestone in the development of mediation in Hong Kong. As an industry-led body, it will perform important roles such as accreditation of mediators in Hong Kong and disciplinary functions.

18. With the stakeholders' support, the Department of Justice has recently set up a new Steering Committee on Mediation ("Steering Committee"), which is chaired by myself and comprise members from different sectors of the community including legal professionals, judges, medical practitioners, academics, social workers and insurers.

19. The Steering Committee is assisted by three Sub-committees to

deal with specific areas, namely: (1) regulatory regime; (2) accreditation and training; (3) publicity and public education. Apart from monitoring the operation of the Mediation Ordinance and the work of HKMAAL, other key focuses include the drawing up of guidelines for conducting mediation research without breaching confidentiality, the need for an apology legislation (which has proved to be of considerable help in other jurisdictions). On the community level, we plan to promote the use of mediation to resolve disputes involving small amount at stake, especially disputes between owners or occupiers of multi-storey buildings such as water leakage disputes.

Opportunities in Qianhai and Nansha

20. The legal landscape is changing rapidly and will continue to evolve. More international and cross-border work would come up under rapid globalisation and with a fast-growing Chinese economy. This brings me to two places in which both the HKGCC and the legal profession, among other professions, share a keen interest, namely Qianhai and Nansha.

21. I believe the Chamber's interest in these two places can be best demonstrated by the series of its recent visits, including a study tour to Qianhai and Nansha in January last year, as well as last month's 40-member delegation to Guangzhou. As pointed out by the Chairman, Mr. CK Chow, at the end of the Guangdong trip, the Hong Kong business community can play an active role in the construction and development of these areas, as well as contribute towards enhancing the overall quality of the services industry in Guangdong.

22. The same enthusiasm is shared by the legal and arbitration

professionals in Hong Kong. Like HKGCC, what they see is not only the huge potential of Nansha and Qianhai, but also the mutual benefits which can be achieved by fostering closer cooperation. The Department of Justice has been working with the relevant professional bodies and institutions to study and convey appropriate proposals to the Mainland authorities. Our main objectives include promoting the use of Hong Kong law in commercial contracts concluded by enterprises conducting business in Qianhai and Nansha, the choice of Hong Kong as the arbitration and dispute resolution venue, and the implementation of the initiative to establish association in the form of partnership between Hong Kong and Mainland law firms.

Office space in the Former CGO

23. Our efforts to strengthen Hong Kong's status as a regional centre for legal services and dispute resolution would not be complete without mentioning the Government's recent decision to allocate certain office space in the West Wing of the former Central Government Offices for use by law-related organizations. The new plan will help create a more favourable environment for the organizations concerned to develop their service or operation in Hong Kong, and will place us in a stronger position to attract suitable international legal organisations as well as arbitration and mediation institutions to set up offices in Hong Kong. Late last year, the Hague Conference on Private International Law set up its Asia Pacific Regional Office in Hong Kong. This is the sort of organizations which we intend to house in the West Wing of the former Central Government Offices. Further, we are working hard on other reputable international organizations, and I hope I would be in a position to give you further good news in not too distant the future.

(III) The Road Ahead

24. So much for what have been done thus far. Question: what next? I do not have a crystal ball, but may I venture to raise a few areas which I believe may be worth considering.

25. First, so far, apart from traditional court litigation, the key modes of alternative dispute resolution employed in Hong Kong remain arbitration and mediation. Arbitration and mediation are certainly not the only modes of alternative dispute resolution. Experience in other jurisdictions show that other modes of alternative dispute resolution, such as expert determination, early neutral evaluation (e.g. by retired judges or reputable experts in the relevant field) or the combination of mediation and arbitration (often called “med-arb” or “arb-med”), can also be very valuable modes of dispute resolution in the appropriate circumstances.

26. The question we need to seriously consider is what other modes of alternative dispute resolution are suitable in the Hong Kong context? And how best they can be promoted in Hong Kong? It is commonly accepted that no one single form of dispute resolution can be universally appropriate to resolve all different forms of dispute. The important point is to provide more options to the end-users, so that they can, with proper professional advice, choose the most appropriate mode to resolve their disputes as and when the need arises.

27. Second, the promotion of different modes of alternative dispute resolution is not the end, but a way to facilitate people to rethink, if not to transform, our dispute resolution culture. One common feature of court litigation, arbitration and mediation is that the process is normally only

engaged after a dispute has arisen. This should not be the only way to handle conflicts or disputes. Rather, in many contexts, there are good reasons to design and put in place a regime of conflict management which involves well-designed mechanism that help to identify, prevent, address and defuse conflicts or potential conflicts at the earliest possible stage.

28. Lastly, as I mentioned earlier, the Hague Conference on Private International Law established its Asia Pacific Regional Office in Hong Kong late last year. The Hague Conference is a very extensive network linking numerous jurisdictions with different legal systems. Now that her Asia Pacific Regional Office is established in Hong Kong, the commercial community may wish to consider how the Hague Conference can assist them in conducting international or transnational business.

(IV) Conclusion

29. Ladies and Gentlemen, enhancing Hong Kong's position as a legal services and dispute resolution hub in the Asia-Pacific region and strengthening our role as an international legal services centre are long term commitments. Looking ahead, we have to stay vigilant and make timely efforts to keep up Hong Kong's strength and competitiveness in providing these services. I am sure the Administration can count on the continuous support of the HKGCC and its members in pressing for the relevant initiatives in the years ahead.

Thank you very much.