

**Keynote Address by the Hon Rimsky Yuen, SC, JP
Secretary for Justice
at the 3rd Asian Mediation Association Conference
on 3 April 2014 (Thursday)**

“Legal Framework and Social Change”

Mr. Francis Law, Distinguished Guests, Ladies and Gentlemen:

First of all, thank you for inviting me to this 3rd Asian Mediation Association Conference. On behalf of the Department of Justice and the Government of the Hong Kong Special Administrative Region, may I extend to all of you our warmest welcome.

2. The setting up of the Asian Mediation Association (“AMA”) in 2007 is a milestone in the development of mediation in the Asian region. It represents the common aspiration and joint efforts of the member jurisdictions to promote the use of mediation as a means of dispute resolution. Since 2007, a lot has happened in the development of mediation amongst the Asian jurisdictions which embrace and promote the use of mediation.

3. Hong Kong is very privileged to have the opportunity to host this Conference, and we look forward to having more opportunities to have exchange with members of the mediation community of the Asian region and beyond. Let me make use this opportunity to share with you, first, the development of mediation in Hong Kong since 2007, and then certain thoughts on the future development of mediation in Asia.

A Brief History Since 2007

4. In the context of mediation promotion, the year 2007 is a significant year. Not only did Hong Kong Mediation Centre become one of the founding members of AMA, the year 2007 is also the year when the Hong Kong Government expressed, for the first time, its official commitment to promote mediation through the then Chief Executive’s Policy Address. Since then, much efforts have been made by our Government in the promotion of mediation.

5. Following this announcement of official commitment, the Working Group on Mediation was established in early 2008. It published its Report in February 2010, putting forward a total of 48 recommendations. The implementation of the recommendations was followed by the Task Force on Mediation, which was set up in December 2010 and which completed its task in around mid-2012. To continue with the promotion of mediation, a cross-sector Steering Committee on Mediation was established in late 2012. This Steering Committee is supported by three sub-committees, one overseeing the regulatory framework, the other supervising matters concerning accreditation and training standards of mediators, whilst the third one is responsible for handling publicity and public education.

6. As a result of the efforts of the Administration and the stakeholders, we have seen the enactment of the Mediation Ordinance in June 2012, which has since come into operation on 1 January 2013. The enactment of the Mediation Ordinance is one of the key recommendations made by the Working Group on Mediation mentioned earlier. It provides a legislative framework for the conduct of mediation in Hong Kong, which can safeguard the fundamentals of mediation and at the same time allows maximum flexibility of the conduct and future development of mediation. Its key provisions include the protection of confidentiality, as well as the clarification of the limited circumstances where mediation communications can be admissible in court proceedings.

7. To maintain the general public's confidence in the mediation process, we place importance in ensuring the quality of our mediators without losing sight of the fact that mediation is a very flexible process and that different types of mediation merits different qualities on the part of mediators. In this regard, the incorporation of the the Hong Kong Mediation Accreditation Association Limited ("HKMAAL") in August 2012 is another mile-stone in the development of mediation in Hong Kong.

8. HKMAAL is a non-statutory and industry-led body. One of its founding members is Hong Kong Mediation Centre, which (as I have said earlier) is also a founding member of AMA. HKMAAL is responsible for setting standards for training and accreditation, as well as addressing disciplinary matters, with a view to becoming the premier accreditation body for mediators in Hong Kong. As at 21 February this year, HKMAAL has a total of 1,602 accredited mediators on its list.

9. Apart from the Government, the Judiciary has played a pivotal role in the development of mediation in Hong Kong. Amongst others, the underlying objectives set out in Order 1A, rule 4(2) of the Rules of the High Court (which was introduced as a result of the Civil Justice Reform implemented in 2009), together with the Practice Direction on Mediation (PD 31) (which was made effective from 1 January 2010) as well as the other Practice Directions (concerning specific areas of dispute such as admiralty actions, personal injuries actions and shareholders and winding up disputes), have proved to be strong impetus in the promotion of mediation in Hong Kong.

10. Further, the Judiciary's efforts in relation to sector-specific mediation, such as the areas of matrimonial disputes and building management as well as the Mediation Information Office set up in 2010, have also made significant contribution in spreading the culture of mediation in resolving disputes in Hong Kong.

11. Legal aid is another aspect worth mentioning. In the past, legal aid was only granted to litigants in respect of the legal costs incurred in court litigation. With the support of our Legal Aid Department, Hong Kong is one of the few jurisdictions which has, since 2009, provided legal aid for mediation conducted in the course of litigation so as to facilitate effective settlement of disputes.

12. In the context of publicity and promotion, we have had numerous seminars and conference on mediation over the past 7 years. Just last week, we had our Mediation Week (which took place from 20 to 27 March) comprising a 2-day mediation conference with eminent international and local speakers, as well as other activities including workshops and mock mediation. In July 2013, we organized our second "Mediate First" Pledge Reception to encourage members of the commercial community to consider the use of mediation as a means of dispute resolution before resorting to litigation. Up to now, around 160 companies and organizations (ranging from international banks to small and medium enterprises) have signed the pledge.

13. On the whole, through the joint efforts of the Government, the Judiciary and the other relevant stakeholders, mediation has undergone healthy development in Hong Kong since 2007. I am happy to say that mediation is now firmly part of the dispute resolution landscape in Hong Kong.

Looking into the Future

14. Much has been said about the past. What about the future?

15. My Department (the Department of Justice) and the Government are firmly committed to the further promotion and development of mediation in Hong Kong. This strong commitment is put in no uncertain terms in the latest Policy Address and Budget Speech, which are two of the Government policy documents of the highest level. For instance, in the Policy Address delivered in this January, our Chief Executive stated as follows (para. 31):

“Hong Kong has a fine tradition of the rule of law and a well-developed legal system. The Government will continue to actively promote Hong Kong’s legal and dispute resolution services to enhance our status as a centre for international legal and dispute resolution services in the Asia-Pacific region. The Government will strengthen its promotion efforts overseas, continue to co-ordinate the development of mediation services through the Steering Committee on Mediation”

16. To take this commitment forward, we will endeavour to consolidate our efforts in various areas including the provision of a mediation-friendly environment, and an infrastructure conducive to mediation. We will also strengthen our efforts in the context of capacity building, enhance public understanding and interests in the use of mediation, and also enhance Hong Kong’s competitiveness and international image as a mediation services centre in the Asia Pacific region.

17. Amongst others, the Steering Committee is monitoring the operation of the Mediation Ordinance as well as looking into the question of whether it is appropriate to introduce an apology legislation in Hong Kong. As many mediation practitioners would agree, an apology at the right time can very often facilitate the conclusion of a settlement in various areas of dispute (especially in cases where monetary compensation is not the only concern of the parties).

18. So much has been said about Hong Kong. What about Asia as a whole? With the presence of so many distinguished speakers and participants in this Conference, I am sure you will have a fruitful discussion on the challenges and opportunities in the future development of mediation in Asia over the next two days. May I just venture to make two observations.

19. First, although mediation is a very flexible process, experience tells us that cultural and linguistic differences do have their impacts in the conduct of mediation. Asia is a vast region, with each of the jurisdictions having her own history, culture and even her own language. I would urge members of the mediation community, whether within or beyond the Asian region, to place emphasis in the study of how cultural and linguistic differences affect the conduct of mediation and how best one can take into account such differences. Such a task is a daunting one, and would require the joint efforts of the mediation community as well as professionals from other disciplines to meet the challenge.

20. Second, mediation is but one of the various means of dispute resolution. To maximize the potentials of mediation, it is necessary to further explore how mediation can be best fitted into the overall landscape of dispute resolution, and how mediation can interact constructively with other means of dispute resolution such as arbitration, expert determination and early neutral adjudication. This, likewise, require a multi-disciplinary approach and the joint efforts of the dispute resolution community.

21. On this note, may I wish this Conference every success. May I also wish all our guests from overseas jurisdictions would have an enjoyable stay in Hong Kong and would have time to enjoy the vibrant character of this city.

22. Thank You.