

**Opening Speech by Mr. Rimsky Yuen, SC
Secretary for Justice, Hong Kong SAR
at the
Seminar on Investor-State Dispute Resolution:
PCA and other latest developments
3 March 2015 (Tuesday)**

Distinguished Guests, Ladies and Gentlemen,

It is my great pleasure to welcome you to this seminar organized by the Department of Justice (“DoJ”) on investor-state dispute resolution. May I, first of all, wish you a happy and prosperous Year of the Ram!

PCA-administered proceedings in Hong Kong

2. As you would be aware, the promotion of Hong Kong as a leading centre for international legal and dispute resolution services in the Asia Pacific region is one of the key policy objectives of the Government. It is also one of the key areas of work undertaken by the Department of Justice. In implementing this policy, we constantly keep an eye on the global and regional trend, with a view to keeping Hong Kong on the forefront of the development of international arbitration.

3. One of the various developments we have been closing monitoring is investor-state disputes. In recent years, we have seen a growing number of investor-state disputes in Asia, involving either Asian claimants or Asian respondents. According to the statistics published by the United Nations Conference on Trade and Development, in the year 2013 alone, around 25% of the new “investor-state dispute settlement cases” filed pursuant to international investment agreements involved Asian countries. Further, according to the Permanent Court of Arbitration (“PCA”), a total of 28 out of PCA’s 96 currently pending cases involve one or more parties from Asia. With the increase in investor-state disputes in Asia, we anticipate a growing demand for dispute resolution services in the region.

4. It is against this background that the Department of Justice decided to enhance Hong Kong’s capacity and infrastructure to offer first class services for handling investor-state disputes. Accordingly, with the support of the Central People’s Government (“CPG”) (especially the Ministry

of Foreign Affairs, including the Office of the Commissioner of the Ministry of Foreign Affairs in Hong Kong), the CPG signed with the PCA a host country agreement (“HCA”) in January this year on the conduct of dispute settlement proceedings in Hong Kong. At the same time, the Hong Kong SAR Government signed with the PCA a memorandum of administrative arrangements (“MAA”) to give effect to the administrative and practical aspects of the HCA.

5. As an intergovernmental organization with a history of around 120 years and over one hundred member States, the PCA is a renowned global arbitration institution which has been providing services for the resolution of disputes involving states, state entities, intergovernmental organizations, and private parties. Back in 2013, the PCA concluded smoothly its first hearing in the Hong Kong in an arbitration between a foreign investor and an Asian state. The HCA and the MAA will greatly facilitate the conduct of dispute resolution proceedings by the PCA in Hong Kong and will, we believe, attract more parties, particularly those in the region, to choose Hong Kong as the venue for conducting hearing of PCA-administered cases.

HKSAR as an international centre for dispute resolution

6. One may ask what Hong Kong can offer to parties to resolve investor-state disputes. The answer is: we do have a lot to offer. Let me briefly highlight six key aspects.

7. First, the Hong Kong Government has a long-standing policy of promoting Hong Kong as a centre for international legal and dispute resolution services in the Asia Pacific region. In this regard, the Department of Justice has been sparing no effort in implementing this policy over the years. On top of other efforts, we set up the Advisory Committee on Promotion of Arbitration in December last year to coordinate and advise on the overall strategies, with a view to taking the promotion of Hong Kong’s arbitration services to a new height.

8. Second, Hong Kong has strong common law tradition as well as modern legal infrastructure. Not only does Hong Kong remain a common law jurisdictions under the principle of "One Country, Two Systems", it enjoys an international reputation for its respect of the rule of law. Besides, known for its high quality and independence, our courts adopt an arbitration-friendly approach all along.

9. Third, Hong Kong is privileged to have first-class local and overseas legal and dispute resolution practitioners. As of January this year, Hong Kong had over 10,000 practising lawyers, including registered foreign lawyers. In terms of law firms, there are over 800 local law firms and almost 80 registered foreign law firms. Hong Kong has long-standing expertise and experience in international arbitration, and parties in arbitration conducted in Hong Kong may retain legal advisers without restrictions as to their nationalities and professional qualifications.

10. Fourth, we have a modern and robust legal framework. Our current Arbitration Ordinance (Cap 609) is based on the latest version (that is the 2006 version) of the UNCITRAL Model Law on International Commercial Arbitration, which is well understood by the international arbitration community. Indeed, Hong Kong is one of the forerunners in the region which adopted this latest version of the UNCITRAL Model Law. As a result, our Arbitration Ordinance reinforces the advantages of arbitration, including respect for parties' autonomy as well as savings in time and cost for parties opting to resolve their disputes by arbitration. Further, we have been working actively with the arbitration community to update our Arbitration Ordinance so as to reflect the most recent developments in the international arbitration scene. We will continue to strive to ensure that our legal framework is clear, user friendly and provides the best environment for conducting international arbitration in Hong Kong.

11. Fifth, the presence of many world class arbitration institutions in Hong Kong not only entrenches, but also reinforces, Hong Kong's status as an international centre for legal and dispute resolution services. Our home-grown Hong Kong International Arbitration Centre ("HKIAC") has been the focal point of arbitration in Hong Kong since 1985. Over the years, HKIAC has earned international recognition for its excellent services to the arbitration community as an independent and non-profit-making body.

12. In recent years, other reputable arbitration institutions have established their presence in Hong Kong. In 2008, the Paris-based International Chamber of Commerce opened its first overseas branch of the Secretariat of its International Court of Arbitration in Hong Kong. In 2012, the China International Economic and Trade Arbitration Commission ("CIETAC") also set up its Hong Kong office, which is the first such centre established by CIETAC outside Mainland China. In November last year, the China Maritime Arbitration Commission ("CMAC") Hong Kong Arbitration Center was inaugurated in Hong Kong. As in the case of CIETAC, the

CMAC Hong Kong Arbitration Center is CMAC's first arbitration center outside the Mainland.

13. Sixth, we have a very extensive and effective network of enforcement. Parties who choose Hong Kong as the seat of arbitration can enforce their arbitral awards in over 150 Contracting States to the New York Convention. In addition, arbitral awards made in Hong Kong can also be enforced in Mainland China and Macau through reciprocal arrangements signed between Hong Kong and these jurisdictions.

14. With these advantages, there can be little doubt that Hong Kong is an ideal venue for conducting international arbitration, be it international commercial arbitration or investor-state arbitration. Accordingly, I do hope that you would encourage your clients or your organizations to make good use of Hong Kong's facilities and services in conducting dispute resolution proceedings, including PCA-administered dispute resolution proceedings, here in Hong Kong.

Concluding remarks

15. Ladies and Gentlemen, Hong Kong has long been an international arbitration centre. The signing of the HCA and MAA is yet another milestone in the history of Hong Kong's development as an international arbitration centre, and represents an important step in Hong Kong's quest to develop as a centre for investor-state arbitration.

16. I am most grateful for the valuable assistance we received from the speakers and moderator today. First of all, I am indebted to Ms Judith Levine and Mr Gary Born who travelled from overseas to Hong Kong for this seminar. I must also thank Professor Anselmo Reyes, Ms Teresa Cheng SC and Ms Chiann Bao for their valuable contribution and support. With such a panel of prominent speakers, I am sure this seminar will offer us an invaluable opportunity to find out more about PCA-administered arbitration as well as other aspects of international investment arbitration. On this note, I wish the seminar a great success and I also wish every one of you an enjoyable afternoon.

Thank you.