

**Keynote Speech by
Mr Rimsky Yuen, SC, JP, Secretary for Justice
at the ALB Hong Kong In-House Legal Summit 2015
on 22 September 2015 (Tuesday)**

**Opportunities and Challenges for Lawyers under
the Mainland’s “Belt and Road Initiative”**

Mr Brian Tang, Distinguished Guests, Ladies and Gentlemen,

First of all, thank you for inviting me to this 12th Annual Hong Kong In-house Legal Summit, and for giving me this opportunity to address such a distinguished audience.

2. Recently, there has been considerable discussion on the “Belt and Road” Initiative from the economic and trade perspectives. This morning, I would like to look at the Belt and Road Initiative from the angle of legal and dispute resolution services, including the opportunities arising from the Initiative, and also to give you an outline of the steps that the Government has been taking to consolidate the position of Hong Kong as a centre for legal and dispute resolution services in the Asia Pacific region.

The Belt and Road Initiative: An Outline

3. Let me start off by giving a brief background on the Belt and Road Initiative.

4. In 2013, the Central People’s Government announced a strategic initiative to foster closer cooperation between places lying on two ancient economic corridors, namely the “*Silk Road Economic Belt*” and the “*21st Century Maritime Silk Road*”. These, together, are known as the “Belt and Road” Initiative, which is a very substantial strategic scheme to develop closer economic and other ties with partners stretching from Central Asia to Europe on land and through South East Asia to South Asia and Africa ending up in Europe again by sea.

5. In March 2015, the National Development and Reform Commission, the Ministry of Foreign Affairs and the Ministry of Commerce jointly released a broad blueprint, with a view to promoting trade links, capital flows, infrastructural investment and policy coordination among different places in Asia, Europe and Africa. Amongst others, this include the initiative to establish the Asian Infrastructure Investment Bank (“AIIB”), which is intended to be the key financial institution providing support for the Belt and Road Initiative. On 29 June 2015, representatives from more than 50 countries attended a signing ceremony for the Articles of Agreement of the AIIB held in Beijing. The Bank, which will be based in Beijing, is expected to be in operation by the end of this year.

6. Another point made in the blueprint also merits attention, namely, the Central People’s Government would seek to leverage the unique role of Hong Kong and encourage Hong Kong to participate in and contribute to the Belt and Road Initiative.

Capitalising on the opportunities brought by the Belt and Road Initiative

7. The first natural question is what are the opportunities that may arise from the Belt and Road Initiative. In this regard, the discussions and analysis point to one direction – that the Initiative will generate huge business potentials and opportunities.

8. The remarkable economic growth in Asia has shifted the global economy’s centre of gravity eastward even before the announcement of the Belt and Road Initiative. The Mainland’s economic activities are also in constant expansion from the domestic to the international arena. The Belt and Road Initiative will further open up immense business opportunities to the world. The areas covered by the Belt and Road run through Asia, Europe and Africa and involve more than 60 countries with a population of about 4.4 billion people, accounting for 63% of the entire global population, and an aggregate GDP of over USD20 trillion, representing around 30% of global GDP. The implementation of this Initiative will promote opening up and integration for countries and regions along the Belt and Road, which will create huge opportunities for the Mainland enterprises to explore new markets along the two corridors in the process of “going global”.

9. Under the Initiative, construction of large-scale infrastructure (including railways, highways, ports and communication facilities) will be priority projects. In addition, there will be opportunities for trade and investment. Against such a background, we foresee there will be enormous demand for professional services, including legal and dispute resolution services.

10. Further, whilst the infrastructure and other development projects will be funded by the AIIB and the Silk Road Fund, the projects will also generate a huge demand for financing services and financial intermediary services. Hong Kong's financial and capital market and the related professions, such as accounting and legal, would be able to benefit from these new investment opportunities if any of the financing and fund-raising activities of these projects are to be launched in or via Hong Kong.

11. It is also expected that as the Belt and Road Initiative materializes, there would be an increase in merger and acquisition activities in regions along the Belt and Road. Lawyers, including in-house counsel, are required to review compliance with the relevant regulatory requirements across jurisdictions. Transfer of employees may also take place and it may be necessary for lawyers to review the relevant employment contracts and the employment laws in the relevant jurisdictions to ensure compliance with the applicable laws.

12. As in any case of making foreign investment, it is inevitable that investors under the Belt and Road Initiative have to face the complicated business operating environment and different legal systems of the countries and regions concerned. Both in-house counsel and lawyers in private practice will have a vital role to play in providing advice on the local laws, procedural rules and business practices of the destination, so as to facilitate a better understanding of the potential risks involved, as well as to mitigate the risks and to achieve the commercial objectives while complying with the relevant legal requirements. In the event of disputes, it is important that lawyers should appreciate the difference in the legal systems in countries and regions along the Belt and Road and propose the most effective and efficient means of dispute resolution, both legally and commercially, in resolving disputes.

13. At this juncture, let me also highlight a few points contained in an opinion recently promulgated by the Supreme People's Court ("SPC") of the People's Republic of China in July 2015 on how the people's court may provide judicial services and protection on the Belt and Road Initiative (《關於人民法院為“一帶一路”建設提供司法服務和保障的若干意見》) (the "Opinion").

14. First of all, the SPC indicated support towards the use of international commercial and maritime arbitration for resolving cross-border disputes arising from the Belt and Road Initiative. Specifically, foreign arbitral awards relating to the Belt and Road Initiative should be promptly recognized and enforced in accordance with the law. There should also be put in place a unified system concerning the rescission and refusal of enforcement of arbitral awards involving parties from Hong Kong, Macau and Taiwan in order to promote the use of arbitration.

15. Arbitration aside, the SPC also indicated support towards the use of mediation to resolving cross-border disputes arising from the Belt and Road Initiative.

16. In addition, the SPC indicated that the People's Courts should aptly apply international treaties and practice, and seek to verify and apply foreign laws in dealing with cross-border cases in order to raise the credibility of judgments given by the courts.

17. To enhance the efficiency in resolving legal disputes, it is set out in the Opinion that bilateral and multilateral mutual legal assistance should be promoted. In this connection, it is suggested that reciprocal recognition and enforcement of judgments among different jurisdictions along the Belt and Road should be encouraged.

18. What is the significance of this Opinion? In short, the Opinion represents the policy support given by the highest court in Mainland over the Belt and Road Initiative. It demonstrates the importance attached by the SPC to international arbitration and mediation as means of dispute resolution, and this stance will provide yet another strong impetus to the further development of international arbitration and mediation in the region and

beyond. When these judicial imperatives eventually sink in, it is evident that there are ample opportunities open to Hong Kong's legal and dispute resolution professionals under the Belt and Road Initiative.

Seizing the Opportunities

19. While we have a historic opportunity before us, we should also be prepared for the challenges arising therein. On the part of the Hong Kong SAR Government, we are consolidating our own strengths and developing new initiatives to proactively seize the opportunities arising from the Belt and Road Initiative.

20. Starting with the strengths of Hong Kong, the first point that would come to our mind is our legal system and legal infrastructure. Hong Kong is the only common law jurisdiction within China, a legal system which is familiar to the international business community. The rule of law, our core value, provides a secure and predictable environment for individuals and organisations. It also ensures a level playing field and promotes fair competition for all businesses. International investors can rest assured that their investments and interests are protected by a well-established legal system with highly effective means of resolving disputes including independent and impartial courts and a mature and user-friendly dispute resolution system.

21. Apart from the system, we are privileged to have top legal and dispute resolution professionals from local and overseas. As of July this year, Hong Kong has about 10,000 lawyers. There are also about 1,200 registered foreign lawyers. In addition to 850 local law firms, there are 78 foreign law firms and 21 Mainland law firms registered with the Hong Kong Law Society. The registered foreign lawyers come from 30 jurisdictions covering a number of countries along the Belt and Road. These professionals of different nationalities constitute a sophisticated legal sector which can provide a full range of professional services as required under the Initiative.

22. With these advantages, Hong Kong will have a pivotal role to play in providing the requisite legal and dispute resolution services when the Mainland enterprises “go global” and pursue the Belt and Road Initiative. On the other hand, with their experience and expertise in dealing with the Mainland business environment, Hong Kong legal professionals can assist overseas corporations to expand into the Mainland markets. In other words, the Hong Kong legal professions, whether in-house or lawyers in private practice, can and will have a key role to play in this two-way traffic.

23. In addition, as you would be aware, considerable efforts have been done to enhance Hong Kong’s position as a centre for dispute resolution. This edge of Hong Kong, we believe, we also enable us to make the best use of the opportunities arising from the Belt and Road Initiative.

24. In the mediation context, the Steering Committee on Mediation recently conducted a public consultation on the enactment of apology legislation in Hong Kong. If enacted, the apology legislation will seek to declare that an apology made in the context of dispute does not constitute an admission of fault, and should not be taken into account in the determination of fault. We hope that by removing the legal uncertainties that discourage the making of apologies, it will facilitate the early settlement of disputes and reduce litigation. The feedback received are generally supportive and the Steering Committee is now considering how to take the matter forward.

25. On a different front, the Department of Justice is also working on expanding the scope for using mediation to resolve intellectual property disputes. Apart from the popular facilitative mediation process, steps are being taken to explore the use of evaluative mediation. Studies so far reveal that evaluative mediation may provide yet another useful option for end-users in IP disputes, such as in licensing disputes.

26. In the context of arbitration, we are likewise working with the relevant stakeholders in enhancing Hong Kong’s capability in specialised areas of arbitration.

27. In January this year, arrangement was made with the internationally renowned Permanent Court of Arbitration (PCA) based in The Hague to facilitate the conduct of PCA-administered arbitration in Hong Kong, including state-investor arbitration. With the growth of international investment as well as bilateral and multilateral free trade agreements, we foresee international investment arbitration is one of the key areas to watch out for.

28. Investments aside, Hong Kong has a long tradition as a regional maritime hub. Indeed, maritime arbitration would be familiar to those of you who work for shipping companies. That said, in order to respond to competition from other jurisdictions in the region, Hong Kong will continue to capitalize on its geographical and institutional advantages and develop high value-added maritime services, including maritime legal and dispute resolution services, to better serve our users.

29. As regards IP arbitration, studies are being conducted with a view to clarifying the arbitrability of IP rights. Some jurisdictions have specific legislations to deal with this aspect. Our aim is to introduce legislative provisions to clarify the legal position in Hong Kong, so as to encourage the use of arbitration to resolve IP disputes.

Concluding remarks

30. To conclude, Hong Kong is well placed as the principal gateway connecting the Mainland market with the 60 plus economies along the Belt and Road. With the collective wisdom of the business sector, the legal profession and the Government, I believe Hong Kong can seize the ample opportunities presented by the Belt and Road Initiative.

31. On this note, it remains for me to wish this summit every success, and to wish you all a fruitful day. Thank you.