

**Welcome Remarks by the Hon Rimsky Yuen, SC,
Secretary for Justice
at United Nations Commission on International Trade Law
Regional Centre for Asia and the Pacific
Asia Pacific Judicial Roundtable on Judicial Interpretations
New York Convention and UNCITRAL Model Law
on 26 October 2015 (Monday)**

Mr (Renaud) Sorieul [Secretary of UNCITRAL], Distinguished Judges,
Ladies and Gentlemen,

Good morning! It is a great privilege on my part to have the opportunity to meet and address such a distinguished assembly of judges from the Asia-Pacific region. On behalf of the Government of the Hong Kong Special Administrative Region, may I extend our warmest welcome to all the speakers and judges who take part in this Judicial Roundtable.

2. The Hong Kong SAR, and especially the Department of Justice, is very honoured to have the privilege to co-organise with the Regional Centre for Asia and the Pacific of the United Nations Commission on International Trade Law (“UNCITRAL”) and the Hong Kong International Arbitration Centre (“HKIAC”) the very first UNCITRAL Asia Pacific Judicial Summit in Hong Kong. UNCITRAL, being one of the subsidiary organs of the General Assembly of the United Nations, is the core legal body of the United Nations system in the field of international trade law. It has an excellent reputation for the high-quality texts it has been producing not only within the United Nations, but also amongst its Member States.

3. Each aspect in an arbitral process plays an important role. From the point of view of the parties to an arbitration, recognition and enforcement of arbitral award perhaps plays a particularly crucial role. Unless a dispute is settled, parties to an arbitration expect (and if I may say, legitimately expect) that the arbitral process will result in an award which is enforceable. Even in the case of a settlement, the settlement is often embodied in an arbitral award. Hence, in either cases, the arbitral award can be regarded as the end product of the dispute resolution process. Unless an arbitral award is readily enforceable, the award means nothing more than a mere document. Indeed, the entire arbitral process may be rendered meaningless if the award cannot be enforced.

4. Compared with foreign court judgments, the process for enforcing international arbitration award is generally more simple and easy. Besides, there is also in existence international conventions such as the New York Convention (“the Convention”) or similar regime for enforcing international arbitral award. These are generally regarded as one of the principal advantages of international arbitration over traditional court litigation. Amongst the various international regimes, the New York Convention is no doubt one of the convention that is most familiar to the international arbitration community and plays a crucial role.

5. It is against this background that the focus of this Judicial Roundtable will be on the judicial interpretation and application of the New York Convention and the UNCITRAL Model Law (“the Model Law”). I am confident that joint efforts such as this Judicial Roundtable will help to build an even better arbitration culture in the Asia Pacific region, which in turn will further encourage the use of arbitration as a means of dispute resolution.

6. As today also happens to be the beginning of the “Hong Kong Arbitration Week 2015”, and since it is not too often we can assemble so many judges together, may I take this opportunity to give you an outline of the arbitration landscape in the Hong Kong SAR and some of the latest developments.

Facilitative Legislative Framework

7. In 1997, China resumed the exercise of sovereignty over Hong Kong. Pursuant to the “One Country, Two Systems” enshrined under the Basic Law, the Hong Kong SAR maintains the common law legal system. Building on our strong rule of law heritage and long tradition of judicial independence, we encourage the use of arbitration to resolve international civil and commercial disputes. Indeed, it is now a steadfast policy of the Hong Kong SAR Government to promote the use of arbitration as a means of dispute resolution, as well as to enhance the Hong Kong SAR’s status as an international legal and dispute resolution services centre in the Asia Pacific region.

8. In Hong Kong, the conduct of arbitration is supported by a modern legal infrastructure. Our current Arbitration Ordinance came into effect in June 2011. On the basis of the 2006 version of the Model Law, the Arbitration Ordinance facilitates effective dispute resolution, while at the same time fully respects parties' autonomy and confidentiality. Further, parties who choose to conduct arbitration in Hong Kong may retain advisers (whether legal or otherwise) without restrictions on their nationalities and jurisdictions in which they are qualified.

9. Since its enactment, we have been working closely with the arbitration community to update our arbitration regime from time to time so as to ensure that the latest developments in the international arbitration scene can be promptly reflected in our statute book. The 2013 amendments concerning the enforcement of emergency arbitral awards are but one of such examples.

10. Looking ahead, our Law Reform Commission ("LRC") is looking into the question of introducing legislation to expressly allow third party funding for arbitration, which is not uncommon in overseas jurisdictions such as Australia. In this connection, the LRC just released a consultation paper last week proposing that third party funding for arbitration taking place in Hong Kong should be permitted under Hong Kong law. The LRC is of the view that the current law in Hong Kong needs to be reformed to expressly permit third party funding for arbitration, subject to compliance by third party funders with appropriate ethical and financial standards.

11. In the context of enforcement, the Hong Kong SAR is a party to the New York Convention and has an extensive network for enforcing arbitral awards. At the moment, arbitral awards made in Hong Kong are enforceable in over 150 signatory states of the Convention. In addition, arbitral awards made in the Hong Kong SAR can also be enforced in Mainland China and our neighbouring Macao Special Administrative Region through arrangements made between the Hong Kong SAR and these jurisdictions respectively for the reciprocal enforcement of arbitral awards. It is pertinent to note that these arrangements are also modelled on the Convention.

Arbitration Institutions

12. Both *ad hoc* and institutional arbitration are allowed under our arbitration regime. For those who prefer to engage the services of an arbitration institution, Hong Kong has a number of choices to offer. Our home-grown HKIAC, which is celebrating its 30th anniversary this year, has since been the focal point of arbitration in Hong Kong and beyond. Over the past 30 years, the HKIAC has earned international recognition, whether in terms of its administration, services or hearing facilities.

13. Furthermore, Hong Kong has attracted many world-class arbitral institutions to establish their presence here. These include the Secretariat of the Paris-based International Court of Arbitration of the International Chamber of Commerce, the China International Economic and Trade Arbitration Commission and the China Maritime Arbitration Commission.

14. In January this year, the Permanent Court of Arbitration (“PCA”) entered into arrangement with the Chinese Central People’s Government and the Hong Kong SAR Government so as to facilitate the conduct of PCA-administered arbitration in Hong Kong, including state-investor and other forms of international investment arbitration. Given the growing importance of investment arbitration, this arrangement with the PCA places Hong Kong in an even stronger position to provide high-end dispute resolution services to the international business community.

Developing Specialised Areas of Arbitration

15. Investment arbitration aside, we will continue to work with the relevant stakeholders to enhance Hong Kong’s capability in specialised areas of arbitration. Two examples that immediately spring to mind is as maritime arbitration and intellectual property (“IP”) arbitration.

Maritime Arbitration

16. Hong Kong has a long tradition as a regional maritime hub. With increasing maritime activities in Asia, we see great potential for growth for maritime arbitration services which the Hong Kong SAR could benefit from by capitalizing on its geographical and institutional advantages.

Intellectual Property Arbitration

17. In the context of IP activities, it is anticipated that China will have a rising status as a major IP user, buyer, provider as well as seller. Hong Kong can play a key role in providing Mainland and overseas players with a range of intermediary services, in such areas as IP agency and management, consultancy, legal services, dispute resolution and due diligence.

18. In March 2015, the Working Group on Intellectual Property Trading issued a report setting out its recommendations on promoting Hong Kong as an IP trading hub. The Working Group recommended promoting the use of arbitration and mediation as means to resolve IP disputes. To take this forward, a working group has been set up by the Department of Justice to study the need for legislative amendments to clarify the law on the arbitrability of IP disputes.

The “Belt and Road” Initiative

19. When looking into the future for the development of legal and dispute resolution services, one factor that certainly cannot be ignored is the latest “Belt and Road” Initiative.

20. In 2013, the Chinese Central People’s Government announced a strategic initiative to foster closer cooperation with places along two ancient economic corridors, namely, the “Silk Road Economic Belt” and the “21st Century Maritime Silk Road”. Under the “Belt and Road” Initiative, China will 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.

21. In March this year, 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 with different places in Asia, Europe and Africa. This, in particular, includes the initiative to create the Asian Infrastructure Investment Bank (“AIIB”), which will be the key financial institution supporting the development of the “Belt and Road” Initiative.

22. The “Belt and Road” Initiative will no doubt open up immense business opportunities for countries along the Belt and Road. The areas covered involve more than 60 countries and regions, including the home countries of some of you. Hong Kong as well as countries along the Belt and Road can benefit from the success of this development strategy. As stated in the blueprint, the Central People’s Government would leverage on the unique role of the Hong Kong SAR and encourage Hong Kong’s participation in, and contribution to, the “Belt and Road” Initiative. As our Chief Executive has repeatedly explained, the Hong Kong SAR can act as a “super-connector” linking the Mainland with the rest of the world in areas which Hong Kong can offer its expertise.

23. As you can imagine, the related economic activities will generate a huge demand for high-end cross-border legal and dispute resolution services, thereby providing ample opportunities for legal and dispute resolution professionals. With this historic opportunity before us, Hong Kong looks forward to exploring ways in which we can work with the judiciaries and legal professions of your countries to provide high quality legal and dispute resolution services in various specialised areas.

24. At this juncture, let me also make a passing reference to 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 Initiative¹ (the “Opinion”).

25. In the Opinion, 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. 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.

¹ 《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》

26. 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.

27. 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 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 the Belt and Road Initiative will be yet another catalyst in the use of arbitration as a means for resolving international commercial disputes.

Conclusion

28. Distinguished judges, ladies and gentlemen, the development of international arbitration is reaching a new height in the Asia Pacific region. With the economic growth currently taking place in the region, together with the Belt and Road Initiative that will provide long-term impetus to further economic development, international arbitration will continue to play a significant role as a means of dispute resolution in the Asia Pacific region. The Hong Kong SAR very much looks forward to having more exchanges and dialogues with other jurisdictions in the region, and beyond, so that we can joint hands in building an international landscape that can better serves the international community.

29. On that note, may I wish the Judicial Roundtable every success. For all those who come from overseas jurisdictions, may I also wish you an enjoyable stay in Hong Kong.

Thank you.