

**Keynote Speech by Mr. Rimsky Yuen, SC, JP,
Secretary for Justice, the Hong Kong SAR
at Georgetown University Law Center
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***The Role of the Hong Kong SAR as a Centre for International
Legal and Dispute Resolution Services in the Asia Pacific Region***

Professor Feinerman, Distinguished Guests, Ladies and Gentlemen,

First of all, thank you for organizing this event and I am truly honoured to have this opportunity to meet and exchange views with some of the brightest legal minds of the Georgetown Law Centre.

2. I am glad to note that Georgetown Law Centre and law schools in Hong Kong have entered into cooperation activities¹. I also note with interest that Georgetown Law Centre runs “Law-Asia” which focuses on enhancing scholarly exchange between the faculty and students of Georgetown and their counterparts in East Asia.

3. Partly with this Asian dimension in mind and partly because I am from Hong Kong, the topic that I have chosen for this event is “*The Role of the Hong Kong SAR as a Centre for International Legal and Dispute Resolution Services in the Asia Pacific Region*”. I intend to very briefly discuss three main questions: (1) Why the Hong Kong Special Administrative Region (“HKSAR”) finds it appropriate to

¹ Running the Law Street Programme with the University of Hong Kong: <http://www.law.hku.hk/cepl/tc/cons/lep/index.html> and a faculty member of Georgetown Law joined the review panel on providing advice on the strategic direction of the School of Law of the City University of Hong Kong: <http://www6.cityu.edu.hk/puo/CityUMember/Story/Story.aspx?id=20081208161913>

focus on international legal and dispute resolution services? (2) What we have been doing? (3) What about the future?

Why International Legal and Dispute Resolution Services?

4. First question first: Why do we focus on international legal and dispute resolution services? The answer involves both matters of principle as well as considerations of practical needs. Economic benefits aside, we believe it is important as a matter of principle to promote international legal and dispute resolution as well as is important to cater for the needs of the international business community.

5. From the perspective of principle, the promotion of international legal and dispute resolution services is part of our efforts to promote the rule of law. As Lord Bingham once explained, one of the sub-rules of the concept of the rule of law is that “means must be provided for resolving, without prohibitive cost or inordinate delay, *bona fide* civil disputes which the parties themselves are unable to resolve”.² This element of the rule of law has both domestic and international dimension. As far as the international dimension is concerned, there should be available to the international business community fair and effective means to resolve disputes. Besides, as certainty and predictability are crucial for the proper development of businesses (including international businesses), the regimes and rules for resolving international commercial disputes should be as reasonably certain as possible.

6. From the perspective of practical needs, the global economic development in the past few decades is a relevant factor. Put short,

² See the lecture entitled “*The Rule of Law*” given by the Rt. Hon Lord Bingham of Cornhill KG on 16 November 2006 at the Centre for Public Law (the 6th in the series of lectures in honour of Sir David Williams).

economic activities in the Asian region have increased so significantly that the demands for international legal and dispute resolution services are also experiencing a sharp increase. Indeed, some commentators and experts in the field have suggested that Asia is experiencing the golden age of international arbitration.

7. One other important factor that cannot be ignored is the “Belt and Road” Initiative. This Initiative, we believe, is going to have immense and profound impact not just for the business community but also for the legal and dispute resolution sectors.

8. Very briefly by way of background, the Belt and Road Initiative was first announced by China in 2013. The “belt” – which is the “Silk Road Economic Belt” – refers to the Eurasian landmass stretching from China to Europe. The “road” – which is the “21st-Century Maritime Silk Road” – refers to the maritime routes connecting China, Southeast Asia and the Indian Ocean region, up to Africa and the Mediterranean. The Initiative covers over 60 countries with a population of about 4.4 billion (which is about 63% of the world total), and gross economic volume of about US\$22 trillion (about 30% of the world total).

9. According to the “Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road” published by the Chinese National Development and Reform Commission (“NDRC”) together with the Ministries of Foreign Affairs and the Commerce in March 2015 (“Vision and Actions”), the Belt and Road Initiative “aims to promote the connectivity of Asian, European and African continents and their adjacent seas” and “establish and strengthen partnerships amongst the countries along the Belt and Road”. The Vision and Actions specifically stated that China would leverage on the unique role of Hong Kong and encourage it to

participate in and contribute to the Belt and Road Initiative.

10. So, what does the Belt and Road Initiative mean to the legal and dispute resolution sectors? One may perhaps ascertain the answer by looking at the likely projects that would result from the Belt and Road Initiative. One of the key aspects is the construction of an international transport corridor connecting China with her neighbouring countries. Indeed infrastructure plays a key role in connecting the economies along the Belt and Road.

11. The expansion of infrastructure would require new financial channels. The Asian Infrastructure Investment Bank (“AIIB”) will play a vital role in this regard. The AIIB will seek funding through capital markets in addition to its initial capital. Hong Kong has long been an international financial centre and its strengths in international financing and asset management can help support the AIIB’s operation and in other platforms of fund raising. In addition, related services including legal services would certainly benefit from these new opportunities as and when the financing and fund-raising activities of these projects are to be launched in or *via* Hong Kong.

12. Further, of direct relevance to the legal sector is that many Chinese enterprises will enhance their (so-called) “go global” activities in pursuit of opportunities arising from the Belt and Road Initiative. Legal support is needed in many areas when Chinese enterprises expand their global market. There is thus little doubt that the legal profession would have a vital role to play in the context of legal risk management. Indeed, the reverse is also true when overseas enterprises enter the Mainland markets.

13. It is of course also essential to be prepared in the event of future disputes with trading partners. Commercial and investment

disputes are all the more likely to have a multi-jurisdictional dimension. Whilst traditional court litigation would still be around, international arbitration and other means of dispute resolution (such as mediation) will certainly gain even greater popularity as they can offer advantages that traditional litigation cannot. Indeed, different surveys consistently indicated that the international business community prefers international arbitration or mediation to court litigation.

14. On the whole, considering the economic development in the Asia Pacific region and also taking into account the impact of the Belt and Road Initiative, there will no doubt be an increasing need for international legal and dispute resolution services. The question is how to make provision for such an increasing need, and how to ensure that international legal and dispute resolution services can best serve the international community so as to facilitate a sustainable business environment in the relevant region and beyond.

What have we been doing?

15. Moving on to the next question: What has the Hong Kong SAR been doing in enhancing and consolidating its role as an international legal and dispute resolution services centre in the Asia Pacific region?

16. First, we are making the best use of our unique status as a special administrative region. Pursuant to the principle of “One Country, Two Systems” enshrined in the Basic Law (which is our constitutional document), the Hong Kong SAR continues its common law system and remains as the only jurisdiction in China that adopts the common law system which is familiar to the international business community.

17. Second, it is a long term policy of the Hong Kong SAR Government to enhance Hong Kong's position as a leading centre for dispute resolution in the Asia-Pacific region.

18. On the arbitration front, we focus on the provision of an arbitration-friendly legislative and enforcement regime, and back it up with the support of both local and international arbitration institutions.

19. The Hong Kong SAR's current Arbitration Ordinance is based on the latest version of the UNCITRAL Model Law on International Commercial Arbitration with which the international community is familiar. We also regularly keep it up-to-date so as to meet the needs of the international arbitration community. One recent example is the amendments concerning emergency arbitrators and emergency relief.

20. We fully appreciate the importance of enforcement of arbitral award. Arbitral award is the end product of the arbitral process. Unless an arbitral award can be promptly and effectively enforced, it might render the entire arbitral process meaningless (at least to the winning party). Accordingly, the Hong Kong finds it important to and does maintain an extensive network for enforcing arbitral awards. At the moment, Hong Kong arbitral awards are enforceable in over 150 signatory states of the New York Convention, including the U.S. In addition, the Hong Kong SAR has entered into arrangements with Mainland China and the Macao SAR respectively for mutual enforcement of arbitral awards, and those arrangements were closely modelled on the New York Convention.

21. Thus far, I am glad to note that our efforts have received international recognition. For instance, in the 2015 International Arbitration Survey released by the Queen Mary University of London,

the Hong Kong SAR is ranked the third most preferred seat worldwide (i.e. behind London and Paris), and is also rated the most preferred seat overall outside Europe.

22. Moreover, Hong Kong is blessed with the presence of world-class local and international arbitration institutions. In the same report prepared by the Queen Mary University of London, our home-grown Hong Kong International Arbitration Centre was named as the most preferred arbitral institution outside Europe and was also ranked as the third best arbitral institution worldwide. Other internationally well-known arbitration institutions that have established a presence in Hong Kong include the Secretariat of the International Court of Arbitration of the International Chamber of Commerce, the China International Economic and Trade Arbitration Commission and the China Maritime Arbitration Commission. From the end-users' point of view, the presence of these arbitration institutions offer them abundant quality choices.

23. In January this year, arrangement was made with the Permanent Court of Arbitration ("PCA") to facilitate the conduct of PCA-administered arbitration in Hong Kong. The intention is to develop investor-state arbitration, so as to cater for the need of the growing demand arising from dispute resolution clauses in free trade agreements or bilateral or multilateral trade agreements.

Mediation

24. Arbitration aside, we also spent much effort to promote the use of mediation in Hong Kong.

25. Hong Kong's Mediation Ordinance came into effect in 2013. The Ordinance provides a legal framework with emphasis on the

protection of confidentiality of mediation communications, and at the same time preserves the flexibility of the mediation process. We have also established the Hong Kong Mediation Accreditation Association for the purpose of overseeing matters concerning accreditation, discipline and training of mediators. The latest effort in the context of mediation development is our study on the desirability of introducing apology legislation, with a view to enhancing chances of settlement (especially in cases, such as medical negligence claims, where financial compensation might not be the only consideration).

26. We also believe the demand for quality legal and dispute resolution services in intellectual property will increase. We are therefore taking active steps to strengthen the legal framework for IP arbitration and promote the use of both facilitative and evaluative mediation for resolving IP disputes.

The Future: What?

27. Moving on to the last question: what about the future? I do not have a crystal ball, nor am I a fortune-teller. However, I do believe in the traditional wisdom that there is a close relationship between law and business, and that this wisdom extends to international business. Viewed thus, I guess one may venture to fathom the future from a few different perspectives.

28. First, from the practitioners' point of view, there will be a growing demand for international legal and dispute resolution services. To ride on this trend, it would be wise for the legal and dispute resolution practitioners to plan ahead and map out the strategy.

29. Second, from the legal culture perspective, there is a

possibility that we are in the process of witnessing the development of a new dispute resolution culture in the Asia-Pacific region or the Belt and Road route. Questions such as whether the traditional arbitration culture would require modification or changes to meet the emerging and changing circumstances also deserve attention.

30. Third, from the legal policy perspective, there is the question of how best the regimes for international legal and dispute resolution services shall be framed and developed, so as to enhance the rule of law on the international level and at the same time facilitate instead of inhibit the sustainable development of international and regional business activities.

31. These interesting questions deserve careful consideration and research, and I am sure the top legal brains in the Georgetown University Law Centre (if you are interested) would be able to come up with good analysis and suggestions.

32. On this note, I thank you once again for giving me this opportunity to speak to you.