

**Keynote Speech by Mr Rimsky Yuen, SC
Secretary for Justice of the Hong Kong SAR
at 2nd ICC Asia Conference on International Arbitration
on 29 June 2016 (Wednesday)**

Mr [Alexis] Mourre (President of the ICC International Court of Arbitration), Fellow Members of the Arbitration Community, Distinguished Guests, Ladies and Gentlemen,

First of all, on behalf of the Government of the Hong Kong Special Administrative Region (“Hong Kong”), may I extend our warmest welcome to all the participants of this conference, especially those who travelled from overseas jurisdictions. I would also like to express our gratitude for choosing Hong Kong as the venue for holding this importance conference. Needless to say, I also thank you for giving me the privilege to address such a distinguished audience.

2. It is no exaggeration to say that the International Chamber of Commerce (ICC) is a longtime partner of Hong Kong, whether in the context of dispute resolution or beyond. As early as 2008, the ICC International Court of Arbitration established its Secretariat’s Asia Office in Hong Kong, the first branch secretariat outside its Paris headquarters. I would venture to suggest that the assembly of this distinguished audience from all over the world speaks volumes in endorsing Hong Kong’s determination in implementing our stated policy of promoting dispute resolution including international arbitration.

3. For the purpose of today, I would like to give you a brief overview of the arbitration landscape in Hong Kong. I will also focus on two specific areas in the development of international arbitration, with Hong Kong as an example to illustrate how we have responded to these trends.

Hong Kong’s Arbitration Landscape

4. In an article published in the Asia Pacific Arbitration Review 2016 (the Global Arbitration Review), the following comment was made in respect of Hong Kong’s arbitration landscape:

“... Hong Kong continues to be a significant player in the international arbitration arena.”

The firm commitment of the government, the courts, eminent judges, the international arbitral institutions with a key presence in Hong Kong (the Hong Kong International Arbitration Center (HKIAC), ICC and China International Economic and Trade Arbitration Commission (CIETAC)), and the arbitration community at large in supporting Hong Kong as a premier international arbitration venue, is further evident in the variety of developments that have taken place recently – from the updated and innovative HKIAC rules, new procedures and guidelines issued by the HKIAC and CIETAC; to the ongoing updates to the Arbitration Ordinance ...

In summary, although Hong Kong has been measured by the international arbitration community and the world at large over the course of the past year, it has stood up well to the scrutiny and, importantly, not been found wanting.”¹

5. This quotation has summarized the essential elements of the international arbitration framework in Hong Kong, which I shall seek to elaborate further.

The Government Policy

6. Let me begin with government policy. Since the late 1970s, the Hong Kong Government has been supporting the promotion of arbitration. Apart from the introduction of the earlier version of the Arbitration Ordinance, the setting up of the Hong Kong International Arbitration Centre in 1985 is one of the examples of the earlier efforts jointly made by the Hong Kong Government and the arbitration community in the promotion of arbitration.

7. Since this term of the Government began, the promotion of dispute resolution including international arbitration and mediation has been made one of our key policy objectives, and also one of the top

¹ Kathryn Sanger and Yvonne Shek, “*Hong Kong in the spotlight – the rule of law and international arbitration*”, Asia Pacific Arbitration Review 2016 (Global Arbitration Review), pp. 38-43

priorities of the Department of Justice. Indeed, in the various Policy Addresses delivered by our Chief Executive since 2013, the Government's steadfast policy to support the development of arbitration has been made crystal clear. For the benefit of our friends from overseas jurisdictions, Policy Address is one of the highest levels of document setting out the government policy of Hong Kong.

8. Further, it is pertinent to note that such a policy promoted by the Hong Kong Government has obtained the endorsement of the Central People's Government of China. In the "Outline of the 13th Five-Year Plan for the National Economic and Social Development of the People's Republic of China" promulgated in March this year, its dedicated chapter on Hong Kong and Macao expressly supports Hong Kong in establishing itself as a centre for international legal and dispute resolution services in the Asia-Pacific region.

9. Put briefly, we take the view that arbitration (whether domestic or international) is an integral and indispensable part of the dispute resolution regime in Hong Kong. As Lord Bingham expounded, one of the key elements 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. Arbitration, we believe, fits into this description fairly and squarely. Not only can arbitration provides robust dispute resolution services to the commercial community, it is of great importance in protecting private property rights, assisting in the effective enforcement of contractual rights, as well as reinforcing the rule of law (whether domestically or internationally) in the sense as explained by Lord Bingham.

The fundamentals of Hong Kong's legal system

10. Let me move on to Hong Kong's legal system. As the only common law jurisdiction in China, Hong Kong is a robust manifestation of how we implement the principle of "One Country, Two Systems". We continue the traditions of the common law and an independent judiciary, which are part of the key features constitutionally entrenched in the Basic Law. Our Court of Final Appeal comprises not only the best judicial talents from within Hong Kong, but also top jurists from other

² For a more detailed discussion in this regard, see: Tom Bingham, *The Rule of Law* (Allen Lane, an imprint of Penguin Books) (2010), Chapter 8.

common law jurisdictions including the UK and Australia, and our independent judiciary is well-recognised worldwide. Indeed, in the survey recently published in the Global Competitiveness Report 2015-16 by the World Economic Forum, Hong Kong was ranked 4th in judicial independence out of 140 jurisdictions around the world, 2nd amongst common law jurisdictions and the only Asian jurisdiction in the top 10.

11. Another point that is worth noting is that the Hong Kong Judiciary has a proven track record of adopting a pro-arbitration stance regarding resolution of commercial disputes. This is evidenced by its favourable attitude in various cases towards parties' agreements to submit their disputes to arbitration and enforcement of the ensuing awards.

12. Openness, diversity and quality are some of the key characteristics of our legal and dispute resolution community. Our legal profession comprises members of different nationalities and cultural backgrounds. As at 31 May 2016, there are over 1,300 practising barristers, over 8,700 practising solicitors and more than 1,300 registered foreign lawyers in Hong Kong. Our registered foreign lawyers are qualified lawyers from 32 different jurisdictions outside Hong Kong³.

13. For arbitral proceedings conducted here, we encourage parties to select from a pool of international arbitrators with diversified backgrounds and experiences to suit their needs. Our legislation gives parties to arbitration the right to select arbitrators and legal representatives of their choice regardless of whether they are legally qualified and whether they are from within or outside Hong Kong.⁴

Legislative Regime

14. Of course, it is not possible to resolve disputes through arbitration without a proper legislative framework. In Hong Kong, the current version of the Arbitration Ordinance (Cap. 609, Laws of Hong

³ Including those from the Mainland.

⁴ Section 63 of the Arbitration Ordinance (Cap. 609) provides that section 44 (Penalty for unlawfully practising as a barrister or notary public), section 45 (Unqualified person not to act as solicitor) and section 47 (Unqualified person not to prepare certain instruments, etc.) of the Legal Practitioners Ordinance (Cap. 159) do not apply in relation to arbitral proceedings, other than things done in connection with court proceedings.

Kong) is the law governing the arbitral proceedings. It is based on the latest 2006 revised version of the UNCITRAL Model Law on International Commercial Arbitration, which is well understood by the international arbitration community. The Arbitration Ordinance was updated in 2013 and 2015 to ensure that the latest developments in the arbitration sector can be promptly reflected in our legislation. For example, in 2013, legislative amendments were enacted to make it clear that emergency relief granted by an emergency arbitrator before the establishment of an arbitral tribunal, whether in or outside Hong Kong, is enforceable in accordance with the provisions of the Ordinance. In formulating the underlying policy for those amendments, we took into account the emergency arbitrators provisions in the 2012 ICC Arbitration Rules and the 2013 HKIAC Administered Arbitration Rules.

15. Enforceability of arbitral awards is a highly relevant factor when parties consider where to arbitrate. In this regard, arbitral awards made in Hong Kong can be enforced in all Contracting States to the New York Convention and this is complemented by an arrangement between Hong Kong and the Mainland and an arrangement between Hong Kong and Macao for reciprocal enforcement of arbitral awards.

16. We are naturally conscious of the need to conduct other reviews of our law so as to make Hong Kong an arbitration friendly jurisdiction. In this regard, the Third Party Funding for Arbitration Subcommittee of the Law Reform Commission of Hong Kong is looking into issues concerning whether the law should be clarified to the effect that, subject to certain conditions, third party funding for arbitration should be expressly allowed. We anticipate that legislative amendments will be introduced to the Legislative Council in the next legislative session.

Facilitating the establishment and growth of world class arbitration organisations in Hong Kong and the development of Legal Hub

17. As mentioned in the earlier quote, Hong Kong is blessed with the presence of world-class local and international arbitration institutions, including HKIAC, ICC and CIETAC. From the end-users' point of view, the presence of these arbitration institutions offer them abundant quality choices.

18. As part of the initiative to provide a more favourable environment for the provision of legal and arbitration services, the Government is also taking forward a plan to allocate part of the space in the West Wing of the former Central Government Office to house law-related non-government institutions, including arbitration and mediation institutions. We hope that the enhancement in facilities may help to attract other reputable arbitration bodies and law-related organisations to set up offices in Hong Kong.

Major Developments of International Arbitration

19. Moving on, I would like to briefly share our effort in enhancing Hong Kong's capability in specialised areas of arbitration, namely, investor-state arbitration and Intellectual Property (IP) arbitration, which are most relevant to the international arbitration scene.

Investor-state arbitration

20. The continuing trend of globalization and regional integration gives rise to more cross-border, transnational or international trade disputes. Among others, the number of investor-state disputes has been growing in recent years. According to the statistics published by the United Nations Conference on Trade and Development, the number of investor-State dispute settlement cases initiated has reached a record high of 70 in 2015⁵.

21. In the morning session, I understand that we will hear how investor-state arbitrations are conducted under the ICC Rules. As a centre for international dispute resolution service, Hong Kong naturally takes an active interest in the promotion and development of investor-state arbitration. Our arbitral institutions in Hong Kong are well-equipped to administer the relevant investment arbitration proceedings. For example, in 2013, the first investor-state arbitration case administered by the Permanent Court of Arbitration (PCA) was heard in Hong Kong at the premises of the HKIAC, pursuant to a cooperation agreement signed between the PCA and the HKIAC in 2010 to allow each of them to hold hearings and meetings at the other's premises.

⁵ See: <http://investmentpolicyhub.unctad.org/ISDS/FilterByYear>.

22. Riding on the success of the above PCA-administered case heard at the HKIAC, the Department of Justice followed up with the PCA for further cooperation. In January 2015, the PCA signed a host country agreement with our Central People's Government and a related memorandum of administrative arrangements with the Hong Kong SAR Government to facilitate the conduct of PCA-administered arbitration in Hong Kong, including investor-state arbitration. Last year, my Department and the PCA held two seminars on investment arbitration in Hong Kong, and both of them were very well received.

23. PCA aside, another key player in investor-state arbitrations is the International Centre for Settlement of Investment Disputes (ICSID). I note with interest that, in March 2016, the ICSID entered into a cooperation agreement with the ICC International Court of Arbitration, through which the two leading arbitral institutions formalised collaborative efforts to facilitate the use of their respective hearing facilities. With its Asia Office strategically located here in Hong Kong, I would be most delighted to welcome ICC-conducted investment arbitration hearings here. I am sure that that would be a win-win situation for all those involved in the proceedings, including those arising from disputes between investors and host countries along the Belt and Road.

IP arbitration

24. Another hot topic in the international arbitration scene is IP arbitration. According to the World Intellectual Property Organization, the number of patent applications received worldwide has increased by 70% over the past decade (2004 – 2014). In particular, the number of applications received in Asia has doubled, and that in China has even risen six-fold in the same period⁶. With Asian companies becoming more acutely aware of the commercial value and importance of IP protection, there is huge market potential in IP trading and demand for incidental services, including arbitration.

25. To meet the needs of the community, we are actively promoting IP arbitration in Hong Kong. Indeed, the promotion of IP arbitration is the marriage of two important policies of the Hong Kong

⁶ World Intellectual Property Organization Data. (See: <http://ipstats.wipo.int/ipstatv2/IpsStatsResultvalue>)

Government, namely, the policy to enhance Hong Kong's status as a centre for international legal and dispute resolution services in the Asia Pacific region and also the policy to reinforce Hong Kong's role as an IP trading hub in the region.

26. In this regard, last year, my Department set up a working group chaired by Mr Wesley Wong, SC, our Solicitor General, to consider whether there is a need to amend our legislation to make it clear that disputes over IP rights are capable of resolution by arbitration, and that it would not be contrary to public policy to enforce an arbitral award solely because the award is in respect of a dispute or matter which relates to IP rights. While we will all look forward to hearing the views and insights from experts in the area in a session this afternoon to cover the development and promotion of IP arbitration, you will also hear from Mr Wong, who will be joining them at that session, for an update of our work in this regard.

27. Separately, the HKIAC has also launched a new Panel of Arbitrators for IP disputes earlier this year in March. Composed of 30 experienced arbitrators practice from 12 jurisdictions, the Panel assists in demonstrating Hong Kong's capability in handling IP arbitration.

The Future

28. Much has been discussed about the past and existing arbitration regimes in Hong Kong. May I venture to make two points about the future of international arbitration.

29. First, from the practitioners' point of view, with the growing popularity of arbitration among the international business community, we remain confident that the demand for international arbitration will continue to increase. It is true that the world economy is facing considerable uncertainty as a result of the BrExit referendum held in the UK last week and the prospect of the UK leaving the European Union. However, we believe that on the whole the trend of globalization and regional integration will continue. In particular, we expect the "Belt and Road" initiative put forward by China will provide a strong catalyst in the further economic development in the region. As the jurisdictions along the "Belt and Road" route have very different legal systems, we believe that arbitration is one of the best options to resolve commercial

disputes. Among others, the Supreme People's Court of the PRC is also pushing for arbitration for such purpose. Needless to say, there is also the Trans-Pacific Partnership which merits close attention, although when it would be implemented remains unclear. On the whole, while London, Paris and New York are the traditional favoured arbitral seats, we are confident that Asia, as it has been in the past decade or so, will continue to flourish and will make an impact in the international arbitration scene.

30. Second, from the legal culture perspective, we may be in the process of witnessing the development of a new dispute resolution culture in the Asia-Pacific region or along 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 deserve attention. Indeed, with the HKIAC and the ICC⁷ establishing its official presence in Shanghai in November 2015 and earlier this month respectively, we may expect even more cross-fertilization between the Western and Asian dispute resolution traditions and culture.

Concluding remarks

31. Before I conclude, I would like to once again express our utmost gratitude to the ICC International Court of Arbitration for holding this conference in Hong Kong, and for the efforts in promoting the wider use of arbitration and other modes of dispute resolution in Hong Kong and in the region since the establishment of the Asia Office of its Secretariat here in 2008. The Department of Justice and indeed the whole of Hong Kong look forward to further and closer co-operation with the ICC in the promotion of international arbitration, whether in Hong Kong or beyond.

32. On this note, it remains for me to wish the conference every success, and to those delegates who are from elsewhere, a very enjoyable stay in Hong Kong and a pleasant trip back home. Thank you!

⁷ See: <http://www.iccwbo.org/News/Articles/2016/Shanghai-inauguration-marks-ramped-up-ICC-presence-in-Asia/>