

Speech by Mr. Rimsky Yuen SC
Secretary for Justice
Closing Address at the 2016 Hong Kong Summit on
Financial and Investment Dispute Resolution in China
on 17 October 2016 (Monday)

Madam Wang (Hongkong), Dr. Chen (Fuyong), Mr. Richard Leung, Mr. David Fong, Distinguished Guests, Ladies and Gentlemen,

1. May I begin by expressing my gratitude to the organizers of this Summit, Beijing Arbitration Commission, Beijing International Arbitration Centre, The Chartered Institute of Arbitrators (East Asia Branch), and also the sponsors and supporting organizations, for giving me the honour to address you at the conclusion of this Summit.
2. The Belt and Road Initiative (which I shall refer to as “the Initiative”) has attracted huge attention ever since it was announced in 2013. There is no doubt that the Initiative has already made its impact and will continue to have far-reaching influence on many aspects of human activities around the world. In the dispute resolution community, the Initiative has likewise become a topic that no serious player can afford to ignore.
3. This Summit provides a platform for the constructive exchange of views on the topics chosen. I am sure that you have already heard many enlightening views in the course of today. As the last speaker, I am not sure if I have anything useful to add. Perhaps, let me try to make a few points from the legal policy perspective, so as to hopefully highlight some different angles in the overall discussion.
4. Let us first consider the Initiative’s impact on the demand for

dispute resolution services. According to the figures released by the Ministry of Commerce, Mainland China's outward investment hit a record high in 2015 and has now occupied the world's second place. One of the contributing factors is the pursuit of the Initiative. In 2015 alone, Mainland Chinese enterprises conducted direct investment in 49 countries along the Belt and Road route, with a total investment of US\$14.82 billion (which represents an increase of 18.2% year on year). Besides, Mainland Chinese enterprises undertook about 3,987 foreign contract projects in 60 countries along the Belt and Road route, and the volume of the newly signed contract reached US\$92.46 billion.

5. This sharp increase of investment activities naturally generates, and will continue to generate, a significant demand for dispute resolution services. As rightly focused at this Summit, financial and investment disputes will be part of the core areas that will benefit from this trend, in addition to disputes arising from infrastructure construction and maritime activities.
6. Pausing here, I wish to stress that when I refer to “dispute resolution services”, I am not confining to services such as mediation or arbitration which are services rendered after disputes have arisen. In my view, apart from “post-dispute services”, there will also be a greater need for “pre-dispute services”, which refers to services concerning the design and putting in place of mechanisms for preventing disputes from arising or from escalating so as to avoid the need for proceedings and adjudication. The more complex an investment project is, the greater the desirability to devise and put in place such mechanisms, and this is certainly relevant to the Belt and Road context since many of the projects and the incidental financial arrangement or investment involved are very substantial and complex.

7. In this aspect, it is worth noting that about 120 enterprises took part in a survey, jointly conducted by LexisNexis and China Institute of Corporate Legal Affairs, which led to the publication of the “*2015-2016 Survey Report on Chinese Enterprises Going Global*”. Two of the findings are relevant:
 - (1) The enterprises failed to make adequate preparation and take risk preventive measures in a comprehensive and systematic manner. As a result, over 50% of them were involved in litigation or arbitration. This plainly illustrates the need for promoting pre-dispute mechanisms as part of legal risk management.
 - (2) The top three most popular mechanisms for resolving disputes indicated by the parties are arbitration, settlement of their own accord and litigation. Among those which favoured arbitration, over 60% of them tended to use international arbitral institutions, while about 30% of them went for domestic arbitral institutions and the remaining portion opted for *ad hoc* arbitration.

8. Having touched on the Initiative’s impact on dispute resolution, let’s look at it from the reverse angle. One may ask: what is the role of dispute resolution in the implementation of the Initiative. The short answer is that the availability of robust dispute resolution mechanisms can ensure that contractual and property rights are effectively protected. Such protection enhances investors’ confidence and reduces disharmony, which in turn ensures the sustainability as well as the continuous success of the Initiative. As much as effective dispute resolution enhances a jurisdiction’s competitiveness, the availability of fair and robust dispute resolution is pivotal to the successful implementation of the Initiative.

9. The Mainland authorities fully appreciate the importance of dispute resolution. The Opinion promulgated by the Supreme People's Court ("SPC") in July 2015 dealt with this issue head-on. In the Opinion, the SPC indicated strong support towards the use of international commercial and maritime arbitration for resolving cross-border disputes arising from the Initiative.
10. Further, state leaders have on different occasions encouraged Hong Kong to actively participate in the Initiative because, among others, of our experience in dispute resolution. In the 'Hong Kong-Macao Chapter' of the 13th National Five-Year Plan, clear support is given to Hong Kong to build itself as a centre for international legal and dispute resolution services, and such policy support is not unrelated to the Initiative.
11. This brings me to the question of how can dispute resolution effectively perform its role in the successful implementation of the Initiative. In this regard, it is pertinent to note that the Initiative seeks to promote inter-governmental policy coordination, facilities (especially infrastructure) connectivity, unimpeded trade, financial integration and people-to-people bonds¹. In short, the Initiative is a mega project which seeks to link up the countries along the Belt and Road route, and there are over 60 of them, with very different legal systems, legal cultures and dispute resolution regimes. However, unlike the usual arrangement adopted for most international or regional economic cooperation, the Initiative does not prescribe any over-arching agreement, and hence there is neither pre-agreed nor uniform regimes for resolving disputes arising from the implementation of the Initiative.

¹ See the Action Plan jointly released by the National Development and Reform Commission, Ministry of Foreign Affairs and Ministry of Commerce on 28 March 2015.

12. In the circumstances, there is a pressing need to consider the question of how to build an appropriate cross-border dispute resolution order that can best serve the Initiative. This involves the consideration of a multitude of questions, including (but certainly not limited to): (1) whether the existing dispute resolution regimes, such as regimes under the UNCITRAL Model Law and the New York Convention concerning international arbitration, can be adopted in a wholesale manner to handle disputes in the context of the Initiative, or is there any need to modify the provisions of those international instruments; (2) whether there is a need to effect harmonization of the international arbitration law, a question that has been raised and explored by various people and institutions²; (3) how best can dispute resolution civilization be cultivated and promoted among the countries along the Belt and Road; and (4) what efforts, actions and plans should be mapped out to facilitate the healthy development of dispute resolution in the context of the Initiative.

13. This morning, Madam Wang, the Vice-Chairperson of the Beijing Arbitration Commission, highlighted the importance of strengthening cooperation and exchange within the international arbitration community, especially among arbitration practitioners from the Belt and Road countries and regions. I would, on my part, respectfully echo Madam Wang's view. The successful promotion of dispute resolution among the Belt and Road countries and regions cannot be achieved by one or two countries or jurisdictions. Instead, it calls for the close cooperation and joint efforts of all the

² For example, the International Academy of the Belt and Road released the '*Blue Book on the Dispute Resolution Mechanism for the Belt and Road*' on 11 October 2016, which put forward a proposed uniform dispute resolution mechanism for the Initiative.

parties and countries involved.

14. As you would appreciate, Hong Kong has a keen interest in promoting dispute resolution, including international arbitration and mediation. We stand ready to cooperate with other jurisdictions and the international dispute resolution community, and we welcome exchange of views and ideas, whether on the questions I mentioned earlier, or in other areas such as research, training and promotion. Given that the Initiative covers more than 60 countries and some of their legal systems may not be familiar to many of us, the importance of research and sharing of information is more than obvious.
15. On this note, may I once again thank Beijing Arbitration Commission, Beijing International Arbitration Centre and The Chartered Institute of Arbitrators (East Asia Branch) for their effort in organizing this meaningful Summit. I wish all the organizations and persons involved in this Summit every success in their future endeavours and look forward to seeing you all in future dispute resolution events.

Thank you.