

**Welcome Remarks by Mr Rimsky Yuen, SC  
Secretary for Justice of the Hong Kong SAR at  
the ADR in Asia Conference 2016 on 18 October 2016 (Tuesday)**

Ms. (Teresa) Cheng, Sir Vivian (Ramsey), Distinguished Guests,  
Ladies and Gentlemen,

Good morning. It gives me great pleasure to attend today's ADR in Asia Conference, a flagship event of the Arbitration Week organized by the Hong Kong International Arbitration Centre. On behalf of the Government of the Hong Kong Special Administrative Region ("SAR") (and in particular the Department of Justice), may I extend to all of you our warmest welcome, especially to those who came from overseas jurisdictions to participate in the events of the Arbitration Week. Judging from the topics chosen and the list of speakers and participants, I am sure that the discussion and exchange of views within the course of today will certainly be both enlightening and fruitful.

**Future Development of Hong Kong arbitration**

2. As the Principal Official within the Hong Kong SAR Government responsible for the overall development of arbitration in Hong Kong, may I take this opportunity to highlight the Government's legislative programme concerning our arbitration regime and also briefly touch on the opportunities offered by the Belt and Road Initiative.

*IP arbitration*

3. The first area concerns intellectual property ("IP") disputes.

4. In recent years, we witness a significant increase in IP activities. According to our Intellectual Property Department, the total number of applications for IP rights received in Hong Kong has increased by 16% during the 4-year period from 2011 to 2015. According to the World Intellectual Property Organization, the number of patent applications received worldwide has increased by 70% during the period from 2004 to 2014. In particular, the number of applications received in Asia has doubled, and that in China has risen six-fold in the same period.

5. With a view to catering for the needs of the local and international community, IP disputes have become one of the key areas of our promotion of arbitration services. Apart from promoting the use of evaluative mediation to resolve IP disputes, we see the need to address the doubts, valid or otherwise, expressed from time to time by the arbitration and IP communities over the arbitrability of IP disputes, especially over the validity of registered IP rights including trademarks and registered designs.

6. With the help of a group of IP specialists, we are now ready to set in motion the process of bringing the necessary amendments to the *Arbitration Ordinance* (Cap.609). We will introduce specific provisions to clarify the legal position that IP disputes are capable of settlement 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 concerns IP rights. We believe the proposed legislative amendments will remove the legal uncertainties surrounding the arbitrability of IP disputes, and that the consequential certainty will further enhancing the use of arbitration to resolve IP disputes in Hong Kong.

### Third Party Funding for Arbitration

7. The other area that we are working on concerns third party funding for arbitration, which is another important concern for parties in commercial disputes and the international arbitration community. Parties who are considering whether to resolve their disputes by arbitration will take into account the potential financing options available to them in conducting such arbitrations. Parties may wish to obtain third party funding as a form of financing for the efficient allocation and management of their financial resources. Accordingly, we believe clarity and certainty of the law concerning third party funding for arbitration is essential.

8. In 2013, the Third Party Funding for Arbitration Sub-committee established under the Law Reform Commission of Hong Kong (“LRC”) conducted a review of our law and analysed the legal regimes for third party funding for arbitration in a number of common law and civil law jurisdictions as well as under the Washington Convention. Some of you may have already noticed that the LRC issued a report last Wednesday (12 October 2016), recommending that the *Arbitration Ordinance* should be amended to set out clearly that the common law doctrines of maintenance and champerty do not apply to arbitration.

9. The proposed legislative amendments will make it clear that third party funding for arbitration is permitted under Hong Kong law. The Report also acknowledges that many lawyers and experts in Hong Kong, among other service providers, work on arbitrations that take place outside Hong Kong. The LRC considers it important that their work should also fall within the scope of the proposed amendments. Hence, the LRC recommends that the proposed statutory amendments should also apply to services

provided in Hong Kong for arbitrations taking place outside Hong Kong.

10. On the whole, the LRC takes the view that third party funding for arbitration, subject to appropriate ethical and financial standards, can help level the playing field between small or medium-sized enterprises and large multilateral corporations, thereby enhancing access to justice.

11. The LRC's recommendations have received overwhelming support in the legal and dispute resolution communities. On our part, we see the merits of the LRC recommendations, and are working on the necessary legislative process. The Department of Justice aims to introduce the legislative amendments into the Legislative Council within the current legislative session.

### **Belt and Road Initiative**

12. Looking ahead, whilst there are bound to be challenges, we are confident that the prospect of international arbitration remains a bright one.

13. One of the reasons which gives us such confidence is the Belt and Road Initiative. As you would recall, the Belt and Road Initiative is the mega project announced by China in 2013, which seeks to enhance connectivity and promote trade among the over 60 countries along the Belt and Road route. It is generally agreed that the Belt and Road Initiative will provide a strong catalyst in the economic development for a whole host of countries along the routes. As the jurisdictions along the Belt and Road routes have very different legal systems, arbitration is definitely one of the best

options to resolve cross-border commercial disputes. In addition, the Supreme People's Court of the People's Republic of China also gives its full support of using arbitration and mediation in lieu of litigation to resolve disputes involving cross-border trade and infrastructure investment in countries along the Belt and Road routes<sup>1</sup>.

14. In a similar vein, we also expect that the operation of the Asian Infrastructure Investment Bank ("AIIB"), a multilateral development bank established this year to fund various infrastructure projects under the Belt and Road Initiative, will bring in new opportunities for the legal and dispute resolution sectors.

### **Concluding remarks**

15. Before I conclude, may I express my gratitude to the Hong Kong International Arbitration Centre for holding this Conference. May I also thank the distinguished speakers and all participants for taking time out of your busy schedule to take part in this conference and for sharing your valuable insights and expertise.

16. On this note, it remains for me to wish this conference and the other events of the Arbitration Week every success. For those coming from overseas jurisdictions to attend this conference and the Arbitration Week, I wish you an enjoyable stay in Hong Kong. I also hope that you can spare some time to experience the vibrancy of our Asia's world city.

Thank you.

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<sup>1</sup> See Clause 11 of 《最高人民法院關於人民法院為「一帶一路」建設提供司法服務和保障的若干意見》