

**Opening Remarks by the Hon Rimsy Yuen, SC
Secretary for Justice
at BIP Asia Forum 2016
on 2 December 2016 (Friday)
“Resolution of IP Disputes – Recent Developments”**

Distinguished Guests, Ladies and Gentlemen,

Good afternoon. First of all, on behalf of the Department of Justice, may I welcome you all to this breakout session on “*Resolution of IP Disputes – Recent Developments*”.

2. The theme of this session is highly apposite. Asia is now the fastest-growing region in the world in terms of the number of IP applications. According to the World Intellectual Property Organization (“WIPO”), the number of patent applications received worldwide has increased by 70% during the period from 2004 to 2014. Further, it is pertinent to note that the number of applications received in Asia has doubled, and that in Mainland China has risen six-fold in the same period.

3. With this trend of increased IP activities, there is a real need to address the incidental question of legal risk management, including the resolution of IP disputes.

4. According to the 2013 WIPO’s Report on the “*Results of the International Survey on Dispute Resolution in Technology Transactions*”, the respondents clearly perceived a trend towards out-of-court dispute resolution mechanisms. Whilst 32% of the respondents indicated that court litigation remains the most frequently used means of dispute resolution, arbitration was a close second at 30%. These were followed by mediation where parties adopted multi-tier clauses in contracts prior to litigation, whilst expert determination was also considered to be a viable option. Although this survey was done in 2013, the development

that has since taken place appears to be even more in favour of arbitration and mediation.

5. Hong Kong, apart from being an international financial and commercial centre, is also an ideal international platform for IP trading, given our world-class legal system underpinned by an independent judiciary, robust IP protection and a strong pool of local and international IP specialists. Against this background, the Hong Kong SAR Government is actively building an even closer relation between IP protection and dispute resolution. Given Hong Kong's dual status as an important centre for international legal and dispute resolution services as well as a premier IP trading hub in the Asia Pacific region, we believe this logical union will generate synergy and enable Hong Kong to offer the much sought after services in the region.

6. This afternoon, we are privileged to have the presence of a panel of internationally renowned experts, not just in IP but also in arbitration and mediation, to share with us some practical tips as well as their insights in respect of resolving IP disputes through arbitration and mediation. Whilst our expert panelists and speakers will deal with specific issues, allow me to give you a brief outline of the Government's key efforts in the context of IP dispute resolution.

7. I shall start with mediation. Our Mediation Ordinance (Cap. 620) provides the legal framework for the conduct of mediation in Hong Kong without hampering its flexibility. It also provides statutory backing for preserving the confidentiality of the mediation process.

8. For the resolution of IP disputes, especially international IP disputes, mediation not only protects confidentiality but it also preserves amicable business relationships more effectively than adversarial processes. Mediation can also bring about speedy resolution of disputes and avoid prolonged periods of uncertainty

that businesses can hardly live with.

9. One point that I wish to stress is this. Nowadays, IP disputes very often have an international dimension, and it is not uncommon for the same or similar IP dispute would need to be resolved in more than one jurisdictions. In such cases of multi-jurisdictional and cross-border IP disputes, mediation provides an opportunity for the disputes to be resolved, once and for all, in all the relevant jurisdictions, and accordingly saves the parties the trouble of having to take the disputes to the courts in all the relevant jurisdictions. This could mean significant savings in terms of costs, time and resources.

10. Recently, there has been discussion on different models of mediation that may be more suitable for a particular kind of dispute. Indeed, one of the recommendations of the Report prepared by the IP Trading Working Group published in March 2015 is to promote the use of evaluative mediation for resolving IP disputes. Given that IP disputes frequently involve complex legal and technical issues, impartial expert evaluation during mediation may provide more useful information and assessment to the users of mediation to make informed decisions. This will be covered by one of the expert speakers today.

11. Let me move on to arbitration. Our Arbitration Ordinance (Cap. 609), which is based on the latest version of the UNCITRAL Model Law, provides certainty and accessibility to arbitration users and practitioners from around the world. The Arbitration Ordinance, however, is silent on whether disputes over IP rights are capable of being resolved by arbitration. We believe that express statutory provisions on the issue of arbitrability of disputes in IP rights would clarify the legal position and facilitate the resolution of IP disputes through arbitration in Hong Kong.

12. The Working Group on Arbitrability of Intellectual Property Rights (“Arbitrability Working Group”), chaired by our

Solicitor General and comprising representatives from the Hong Kong International Arbitration Centre and legal practitioners with expertise in IP and arbitration, has carefully considered legislative amendments that are necessary to address the issue of arbitrability of IP rights.

13. Having consulted the relevant stakeholders, the proposed amendments to the Arbitration Ordinance seeks to confirm, in no uncertain terms, that disputes on IP rights are capable of settlement by arbitration and that it is not contrary to the public policy of Hong Kong to enforce the ensuing award. With the positive support from the stakeholders, the Government has today gazetted the Arbitration (Amendment) Bill 2016 for introduction to the Legislative Council on 14 December 2016.

14. We are confident that the initiatives that I have just outlined will be of assistance to the IP community, whether the local one or the international one; and I hope it would also clearly demonstrate Hong Kong's commitment to fortify its credentials as a leading centre for resolving IP matters in the Asia-Pacific region.

15. On this note, apart from wishing this session very success, I would also like to express my utmost gratitude for Mr. Andrew Liao, SC, Mr. Anthony Rogers, QC, Mr. CK Kwong and Mr. Joe Liu for sharing with us their valuable insights and also to thank all of you for attending this seminar.

Thank you.