

**Speech by Mr Rimsky Yuen, SC
Secretary for Justice
at 2017 Annual Conference of In-House Lawyers
on 29 September 2017 (Friday)**

Mr Thomas So [President, Law Society of Hong Kong], Mr Grand Chan [Chairman, In-House Lawyers Committee, Law Society], Distinguished Guests, Ladies and Gentlemen,

To begin with, may I express my gratitude for inviting me to this year's Annual Conference of In-House Lawyers, and also for giving me this opportunity to address such a distinguished audience.

2. In 2011, the Law Society decided to establish the In-House Lawyers Committee to promote the interests of in-house lawyers. Since its establishment, the Committee has done a lot of good work for the in-house legal community and indeed the legal professional as a whole. Among them is the organization of this annual conference which provides a very effective platform for in-house lawyers (and indeed other members of the legal profession) to get together to connect, and to share ideas on subjects of common interests.

Changing Role of In-house Counsel

3. In 1989, the American legal scholar Robert Eli Rosen published an article on the dramatic growth in the size and influence of internal legal counsel in large US corporations. Rosen argued that in-house-lawyers had gone from a position of marginality to being “general counsel”, a pivotal role in defining and serving the legal needs of powerful corporations¹.

¹ See: “The In-House Counsel Movement, Metrics of Change”, David B Wilkins, LegalBusiness World, 20 Jan 2017.

6. In the 28 years since Rosen's article, the status and influence of in-house lawyers worldwide has only continued to grow. Many large companies have general counsel offices. In-house legal departments also rival large law firms as a destination of choice for talented lawyers.

7. Today's corporate lawyers have become essential partners in business. In-house lawyers are of course expected to offer legal advice to their respective corporations, but they also provide sound business advice, risk management and suggestions about many other complex issues. A greater number of in-house counsel are now an integral and indispensable part of their company's strategic and operational teams, and they work closely together with their board of directors to find solutions to business problems, manage growth, and plan for the future. As a matter of fact, many top in-house lawyers have ascended to the CEO seat.

8. In many cases, your role has become even more challenging as a result of the modernisation and globalisation of the world's economies in recent decades. Substantive legal and business issues that confront in-house counsel on a daily basis; examples include compliance and regulatory issues, issues arising from cybersecurity and FinTech.

9. Managing your organization's legal issues in an ever-increasing regulatory environment is one thing, but how do you do so in an effective manner while keeping external legal costs down? What should you be doing to prevent disputes escalating, or to provide more effective support to the company? These are some of the questions that most, if not all, in-house counsel would have to consider at one stage or another. Allow me to take this opportunity to briefly introduce the latest developments which may be relevant to our in-house legal community.

The Belt and Road Initiative

10. First of all, I would like to start with the “Belt and Road Initiative” which was first proposed in late 2013. It is a mega initiative that encompasses more than 60 jurisdictions, with a combined gross domestic product of over US\$20 trillion, and a combined population of more than 4 billion people spreading across Asia, Europe and Africa.

11. As China’s most international city with well-developed legal institutions which are familiar to investors of the international commercial community and a deep understanding of Chinese culture and business practices, Hong Kong is in an enviable position to take advantage of the Initiative’s opportunities. We also have many competitive strengths that are unmatched by other cities in the region.

12. For example, we are part of China and yet we are the only city in China that operates under a common law system; we are the world’s leading offshore Renminbi market; and we are a gateway for Mainland investors to invest overseas and for overseas investors to invest in the Mainland. Our financial and securities regulations are amongst the best in the world, and we have a strong pool of educated, multilingual professional working in key services areas, such as law, financial services, accounting and information technology to provide support for investors whenever they are needed.

13. We of course also understand that the world is fiercely competitive. Hence, there is every reason that we should continue to improve our competitiveness so as to maintain and consolidate our status as an international financial centre, as well as the leading centre for international legal and dispute resolution services in the Asia Pacific region. As and when the Belt and Road Initiative picks up momentum (as it now does), it will not only present us with business opportunities, but also challenge our

ability and capacity to identify and handle them better than our competitors can.

14. That is why the Government has taken a number of measures to maximize our exposures to the opportunities of the Initiative that lay ahead. They include, among others, our participation in the Asian Infrastructure Investment Bank as a member, the signing of Free Trade Agreement and Investment Agreement between Hong Kong and ASEAN in November this year, and the setting up of the Infrastructure Financing Facilitation Office by the Hong Kong Monetary Authority to build capacity and knowledge on infrastructure investments and financing.

15. We will of course continue to do more in the future, including in the maritime sector and the Fintech sector. The in-house legal community can help enhance our chances of realizing those opportunities by providing us with ideas, by sharing with us your experience and insights, and by preparing for the legal challenges that will come with them in the months and years ahead.

Hong Kong as a Leading Centre for International Legal and Dispute Resolution Services

16. The Belt and Road Initiative, amongst others, aims to promote infrastructure connectivity of the countries along the route. According to a report issued by the Asian Development Bank earlier this year, it is estimated that Asia infrastructure investment, over a 15-year period from 2016 to 2030, would amount to US\$26 trillion (i.e. about US\$1.7 trillion per year). Indeed, as at mid-August 2017, China's investment in the 68 countries along the Belt and Road route has reached the total amount of around US\$33 billion, surpassing the whole-year investment amount of US\$31 billion in 2016. Further, according to a recent report of the Bank of China International, it forecasts that Mainland enterprises could be awarded US\$1360 billion

worth of construction contracts in 2030, representing a promising compound annual growth rate of 19% during 2016 to 2030.

17. When infrastructure such as highways, railways and ports are connected, the bilateral and multilateral trades are expected to increase more and more in this circle.

18. The opportunities lay ahead for Mainland enterprises are undoubtedly enormous. However, there are always two sides of a coin. The rosy prospect is accompanied by a basket of risks that investors need to take care of when venturing into the market. As you may well appreciate, the legal systems along the route range from common law and continental law, to Islamic law and socialist law. In addition to the vast differences and divergence in the legal systems and legal culture, the legal framework in some developing countries may impose strict restrictions on foreign investment entry threshold or may not be sophisticated enough to provide protection for such kind of investment.

19. Further, local laws and regulations represent another key factor in determining whether an enterprise would decide to “go global”. For example, local laws and regulations on labour and environmental protection, which some developing countries’ concern raises increasingly, are certainly other risks to be fully taken into account.

20. As unpleasant as they are, business conflicts and disputes are inevitable collateral consequences of business activities. They occur all the time, and will surely continue to occur in the future. Hence, as business activities associated with the Belt and Road Initiative pick up momentum, more commercial and investment disputes would arise.

21. In the face of these risks, in-house lawyers have a vital role to play in scrutinizing the local laws, providing advice on how to successfully implement projects in compliance with the

local legal framework, and managing the risks involved.

22. In this regard, it is always useful to remember that arbitration and mediation (or the combination of the two, as well as other forms of dispute resolution) offer a relatively simple and cost-effective process to resolve disputes between parties than traditional court litigation, and Hong Kong offers one of the best dispute resolution services in the region.

23. Today, we are one of the prime venues and indeed one of the best neutral venues for resolving commercial disputes. For example, the total disputed amount of all arbitration cases handled by the Hong Kong International Arbitration Centre (HKIAC) in 2016 has reached a staggering sum of US\$2.5 billion². Moreover, according to the International Arbitration Survey released by Queen Mary University of London in 2015, Hong Kong is the third preferred place of arbitration, after London and Paris, and the HKIAC is the most preferred arbitral institution outside of Europe and the third best arbitral institution worldwide.

24. According to an article posted on the website of the In-house Division of the Law Society of England and Wales³, mediation is regarded as very effective. About 90% of the UK commercial disputes settle. Mediation is quicker, less expensive and less risky than many alternatives, and invaluable when a relationship or reputation might be at stake. Like arbitration, it is also strictly confidential.

25. In this regard, I would venture to suggest that Hong Kong's strengths in the context of dispute resolution have not

² The disputed amount recorded an exceptional sum of US\$6.2 billion in 2015, representing a historical high.

³ "Mediation: Cutting the cost of conflict", Andrew Hildebrand, 30 Jan 2017, Website of the In-house Division of the Law Society of England and Wales (<http://communities.lawsociety.org.uk/in-house/insideout-magazine/january-2017/mediation-cutting-the-cost-of-conflict/5060083.fullarticle>)

only increased our capability for supporting the Belt and Road Initiative, they have also enhanced our international image and overall competitiveness in the Asia Pacific region. Many of you would know that the Department of Justice has put in a lot of efforts in recent years in bolstering our competitive strengths in dispute resolution services. We will continue to do more in the future. The following is a brief summary of the key recent developments in this regard.

Arbitration

26. First on arbitration. Following the signing of the “Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region” in 1999, we can see exchanges between the arbitration sectors of the Mainland and Hong Kong proliferate. The setting up of the China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center in 2012, and the China Maritime Arbitration Commission Hong Kong Arbitration Center in 2014 indicate these arbitral organizations’ recognition of Hong Kong as a regional centre for international arbitration and their support in this regard. Reciprocally, in 2015, HKIAC became the first international arbitration institution setting up a representative office in the Mainland. The presence of these institutions in Hong Kong is greatly conducive in promoting the use of arbitration.

27. Since our Arbitration Ordinance, which is modelled after the latest version of the UNCITRAL Model Law on International Commercial Arbitration, coming into effect in 2011, we have introduced successive legislative amendments to refine and keep it up to date. For example, two bills were passed by the Legislative Council this June, one amending the Arbitration Ordinance to clarify that disputes over intellectual property rights are capable of resolution by arbitration; the other amending the Arbitration Ordinance and the Mediation Ordinance to clarify that

third party funding of arbitration and mediation is not prohibited by the common law doctrines of maintenance and champerty.

Mediation

28. Next on mediation. Hong Kong enacted the Mediation Ordinance in 2013 to provide an effective regulatory framework for conducting mediation. The Ordinance is also instrumental in promoting the resolution of disputes by mediation, and it protects the confidential nature of mediation communications.

29. Since then, there have been important developments on mediation in Hong Kong. One example is that, in December 2015, the China Council for the Promotion of International Trade and the Hong Kong Mediation Centre set up the CCPIT-HKMC Joint Mediation Centre in Hong Kong to provide a platform for resolving cross-boundary commercial disputes between the Mainland and Hong Kong. As a matter of fact, more and more cross-boundary disputes are now resolved through mediation.

30. The other example is our efforts in promoting evaluative mediation in addition to facilitative mediation. Thus far, mediation in Hong Kong has been largely facilitative in nature. However, both from experience and from exchanges with end-users, there is a growing demand for evaluative mediation. As a result, a special committee under the Steering Committee on Mediation has been set up to look into issues concerning evaluative mediation. Our aim is to provide yet another option for end-users so that they can choose a form of dispute resolution that best suits their needs.

31. To further create an environment conducive to amicable resolution of disputes, the Apology Ordinance was enacted this July. Hong Kong is the first Asian jurisdiction to have enacted such legislation. By stating the legal consequences of an apology, the object of the Apology Ordinance is to promote and encourage

the making of apologies, with a view to preventing the escalation of disputes and facilitating their amicable resolution. My colleague, Ms. Ada Chen, will speak on this new legislation at one of the sessions this morning.

Concluding Remarks

32. Ladies and gentlemen, the significance and influence of in-house lawyers in the organizations they serve are growing under the increasingly complex business environment. While we will strive to ensure that our legal infrastructure will stay at the forefront of international development, I trust we can count on you in shaping a better legal landscape for Hong Kong as well as in enhancing Hong Kong's competitiveness.⁴ I look forward to having more opportunities to exchange views with you on how we can together achieve more for the in-house legal community and Hong Kong as a whole.

33. On this note, it remains for me to wish you all a fruitful conference today and wish this conference every success.

Thank you.

⁴ The Secretary for Justice (SJ) at this juncture added two remarks which are not part of this script. In substance, he echoed the Law Society President (Mr. Thomas So) that in-house lawyers can have a role to play in helping to explain to people from overseas the rule of law situation in Hong Kong. SJ said that there are two areas which in-house lawyers may consider explaining to the overseas business community. First, there have been suggestions that Hong Kong is not a neutral arbitration venue because Hong Kong is part of China. SJ said that this is totally groundless, and that an experienced judge of the High Court of England and Wales in a 2015 case described Hong Kong as a forum well known for its neutrality. Second, on judicial independence, SJ refers to a recent speech by Lord Neuberger which reiterated that judicial independence in Hong Kong remains intact.