

Speech by the Hon Mr Rimsky Yuen, SC, JP
Secretary for Justice
at the LAWASIA Risk Management Strategies Conference
on Friday, 5 July 2013

Mr. Susuki, Mr. Huang, Fellow Members of the Profession, Distinguished guests, Ladies and Gentlemen:

I am delighted and honoured to have this opportunity to speak to such a distinguished gathering of experts and professionals at this LAWASIA Conference. May I first of all extend my warmest welcome to all the participants of this Conference, especially those who travelled from overseas to join us here.

2. The inaugural LAWASIA conference on Legal Professional Indemnity Insurance was held in 2008 in Australia. Following the success of that conference, LAWASIA hosted the second conference in Singapore in 2010. Hong Kong is privileged to host this third conference this year, and the scope of the conference has been broadened to cover a wider range of topics relating to risk management.

Importance of Risk Management

3. The theme of this Conference is “risk management strategies”, and the well-designed programme covers a multitude of topics including “Global Risk for Lawyers” (which is the topic aptly chosen for the Keynote Speech to be delivered by Mr. Douglas Richmond) as well as other issues concerning professional indemnity insurance, risk associated in cross-border transaction work, and also ADR and Mediation.

4. We may not like “risk”, but it is a fact of life that risks do exist; the sooner we acknowledge the need to deal with risk, the better. As Mr Charles Tremper, a risk-management expert in the United States, once observed, “[t]he first step in the risk management process is to acknowledge the reality of risk. Denial is a common tactic that substitutes deliberate ignorance for thoughtful planning”. A clear and sharp awareness of risk is very much an essential foundation for any meaningful discussion on “risk management” and its strategies.

5. Indeed, as business transactions become more complex and more globalized, the issue of “risk” likewise becomes more intricate. In its latest report on Global Risks released this January, the World Economic Forum noted that “[in] an interdependent, fast-moving world, organizations are increasingly confronted by risks that are complex in nature and global in consequence. Such risks can be difficult to anticipate and respond to, even for the most seasoned business leaders”.

Arrangement in place for HK's Legal Profession

6. It is fortunate that the legal profession in many jurisdictions around the world, including that in Hong Kong, has over the years attached great importance to professional indemnity insurance and risk management strategies. In Hong Kong, the Law Society introduced compulsory professional indemnity insurance for solicitors as early as in 1980. The current Professional Indemnity Scheme was set up in 1989 under which indemnity was provided by the Solicitors Indemnity Fund.

7. The Professional Indemnity Scheme aside, the Law Society has been implementing the Risk Management Education Programme pursuant to the Legal Practitioners (Risk Management Education) Rules, which is a subsidiary legislation introduced under the Legal Practitioners Ordinance (Cap. 159). Under this statutory framework and with the assistance of relevant professionals, practising solicitors, trainee solicitors and registered foreign lawyers in Hong Kong are required to undergo courses on risk management since November 2004.

8. There should be little dispute that putting in place appropriate professional indemnity arrangement and training requirement on risk management is crucial for the smooth and healthy operation of the legal profession. In the face of a world of increasing risks, this is particularly important for the legal profession in the Asia Pacific Region. As the shift of global economic power from the West to the East continues, it would no doubt pose new challenges which have to be carefully addressed by the profession in different jurisdictions across the region. There is much we can learn from each other and share with each other. I am sure that this Conference will provide a good platform for participants to exchange their insights and explore room of future cooperation.

Legal landscape of Hong Kong

9. As a centre for legal services and dispute resolution in the Asia Pacific region, Hong Kong has to keep herself abreast of the latest trend and to catch up with the latest development in all relevant fields. Hong Kong has a strong legal workforce, comprising over 1,100 practising barristers and over 7,000 practising solicitors as well as around 1,400 registered foreign lawyers coming from various different jurisdictions.

10. Our strong pool of legal professionals provides a wide spectrum of expertise and world-class service in different areas of law. This is very important for Hong Kong to remain as an international financial and commercial centre as well as a cosmopolitan city. As a column in the "Hong Kong Lawyer", the official journal of the Law Society of Hong Kong, rightly observed this January,

"The emerging trend to globalise legal practices has also seen law firms expanding their operations to wherever their valued clients do business. As a result, Hong Kong has become an attractive base for international law firms, which contributes to the growth of foreign legal capabilities in the region."

11. A recent highlight in the legal landscape of Hong Kong is the introduction of limited liability partnership ("LLP"). In July 2012, we enacted the Legal Practitioners (Amendment) Ordinance 2012 to allow law firms in Hong Kong to operate in the form of LLP. We are currently working on matters incidental to the Ordinance. Once the amendments come into operation, we are sure that they will help to ensure that our legal landscape is such that both local and foreign law firms would find it attractive to operate.

12. In the case of LLPs, a principal challenge for us when we designed the statutory provisions was how to maintain a proper balance between limiting the professional risks of a partner who is not in default on the one hand whilst at the same time provide sufficient protection to the client who has suffered loss as a result of the LLP's default on the other.

13. This was a delicate exercise. It also reminded us that risk management in the legal context is not about the lawyers only. It is also about the clients whom they serve. Indeed, when I was preparing this speech, a friend of mine (who, if I may stress, is not a lawyer) playfully said to me that

risk management in the present context means managing the lawyers, so that they will not create risk to themselves and to their clients (at least not the risk of a huge legal bill). On a more serious note, risk management definitely covers a wide range of issues from prevention of default to detection of money laundering, and the challenge ahead cannot be overstated.

ADR and Mediation

14. As I noted earlier, one of the panel discussions will be devoted to the topic of “ADR and Mediation”. Allow me to make a few observations on that topic, as that is an area where Hong Kong has been making conscientious efforts, and has made certain achievements in recent years. The Hong Kong SAR Government is very much committed to strengthening Hong Kong's position as an international centre for legal and dispute resolution services in the Asia-Pacific region. This was reaffirmed by the Chief Executive in his maiden Policy Address this January, and is one of the priorities of the Department of Justice.

15. With the presence of well-known arbitration institutions, excellent facilities, highly experienced arbitration professionals, and a mature and reliable legal system that is based on the common law, Hong Kong is an ideal place to conduct international arbitration. In 2008, the International Chamber of Commerce, for the first time, opened a branch of the Secretariat of its International Court of Arbitration in Hong Kong. In September last year, the China International Economic and Trade Arbitration Commission (“CIETAC”) also set up its Hong Kong Arbitration Centre here, which is the first such centre established by CIETAC outside the Mainland. Coupled with our home-grown Hong Kong International Arbitration Centre (“HKIAC”), they have helpfully placed Hong Kong in a competitive position in meeting the growing demand for high-end arbitration services.

16. Arbitration aside, we have made significant efforts in promoting and developing mediation. The Mediation Ordinance, which has come into effect since January this year, provides a legislative framework for the conduct of mediation in Hong Kong, with special emphasis on the protection of confidentiality. The Hong Kong Mediation Accreditation Association Limited (“HKMAAL”), established in August last year, is an industry-led body, and will perform important roles such as accreditation of mediators in Hong Kong and exercising disciplinary functions. For better coordination of the work on various fronts, the new Steering Committee on Mediation chaired by myself does comprises members from different sectors of the

community including legal professionals, judges, medical practitioners, academics, social workers and insurers. I am confident that, with the support of the relevant stakeholders, our mediation service will continue to grow from strength to strength.

17. In addition, we are actively pursuing a number of initiatives along this direction. These include:-

- (a) to work with the relevant authorities and stakeholders in both the Mainland and Hong Kong to facilitate Hong Kong professionals to provide legal and ADR services in the Mainland including places like Qianhai and Nansha;
- (b) to continue to enhance legal co-operation in civil and commercial matters between Hong Kong and other jurisdictions including the Mainland, so as to facilitate the resolution of civil and commercial disputes in a more convenient and effective manner, including to enhance the legal co-operation with Guangdong pursuant to the Framework Agreement on Hong Kong/Guangdong Co-operation; and
- (c) to allocate office space in the West Wing of the former Central Government Offices for use by law-related non-Government organizations. This new plan will help create a more favourable environment for the organizations concerned to develop their services or operations in Hong Kong, and will place us in a stronger position to attract suitable international legal organisations as well as arbitration and mediation institutions to Hong Kong which will no doubt reinforce our status as a regional hub for legal service and dispute resolution.

Conclusion

18. We pursue these initiatives and many others because we are acutely aware that our legal and ADR community's continued success is dependent on our keeping abreast of the times and changes in the legal and ADR landscape of the world. The world has become increasingly integrated. With the integration, there are new opportunities. However, inherent in new opportunities are new risks. Amongst others, globalisation means that risks faced in one jurisdictions can easily spread

to another, and there is an increasing need to join hand to build up a strong risk management culture, to promote more research on matters relating to risk management, as well as to provide appropriate training to the profession so as to meet the ever-changing risk environment.

19. Finally, it remains for me to wish you all a successful and fruitful conference. May I also extend my sincere wishes to all the overseas guests and speakers for an enjoyable stay in Hong Kong.

Thank you very much.