

Welcome Address by Mr. Rimsky Yuen SC
Secretary for Justice at the Belt and Road Summit 2017
**Thematic Breakout Forum: “*Using Hong Kong as a Platform for*
Infrastructure Dispute Resolution”**
11 September 2017 (Monday)

Professor Teresa Cheng SC, Dr. Colin Ong, Mr. Justin D’Agostino, Mr. Paul Starr, Distinguished Guests, Ladies and Gentlemen,

1. On behalf of the Department of Justice, may I extend our warmest welcome to all of you here, especially to our guests who travelled from overseas jurisdictions to attend this Summit.
2. The theme for this breakout session is “*Using Hong Kong as a Platform for Infrastructure Dispute Resolution*”. On my part, I have absolutely no doubt that this theme is a well-chosen one. My reason is two-fold.
3. The first is the important role played by infrastructure projects in the Belt and Road context. You would appreciate that the key objective of the Belt and Road Initiative is to improve economic connections, and that one of the key areas of co-operation envisaged under the Initiative is “facilities connectivity”, which primarily focuses on the improvement of the connectivity of infrastructure construction and the formation of an infrastructure network connecting all sub-regions in Asia, and between Asia, Europe and Africa.
4. I believe the importance of, as well as the need for, infrastructure projects do not require detailed elaboration. A few figures will give an overall view of the big picture. A report issued by the Asian Development Bank earlier this

year estimated that Asia infrastructure investment, over a 15-year period (from 2016 to 2030), would amount to US\$26 trillion, equaling US\$1.7 trillion per year¹. In the specific context of the Belt and Road Initiative, it has been reported that China has invested more than US\$50 billion in Belt and Road economies since 2013². These figures, apart from being astronomical, illustrate the scale of projects that we are dealing with.

5. Such an upsurge in the need for and investment in infrastructure raises the question of professional management, including the need for proper legal risk management. Such legal risk management covers every step in the process, including the need for legal due diligence before commencement of infrastructure projects, the negotiation and drafting of the relevant infrastructure contract(s) and possibly incidental financing contracts, the choice of law clause, the design and drafting of dispute avoidance provisions, as well as dispute resolution clause (be it mediation, arbitration, adjudication, expert determination or otherwise).
6. Since the Belt and Road routes cover more than 60 jurisdictions, and given the fact that they have different legal systems as well as diverse legal cultures and legal tradition, the need for effective legal risk management is all the more indispensable. Besides, although we all would like to see that infrastructure projects proceed smoothly and successfully among the Belt and Road jurisdictions, disputes in one form or another are inevitable even if each party conduct themselves in a *bona fide* manner. Accordingly, robust dispute resolution mechanisms, supported by top-quality professionals, are essential, so that disputes can be resolved

¹ Wu Zheyu, "Dispute resolution and risk control mechanisms needed for B&R projects", *China Daily*, 13 April 2017.

² Sarah Grimmer and Christina Charemi, "Dispute Resolution along the Belt and Road", *Global Arbitration Review* (22 May 2017).

in a fair, expeditious and cost-effective manner.

7. This brings me to the second part of the reason as to why the theme of this session is well-chosen: Hong Kong, being an important centre for international legal and dispute resolution services in the Asia-Pacific region, is an ideal platform for resolving infrastructure disputes in the Belt and Road context.
8. Hong Kong has a long history in promoting dispute resolution, especially construction arbitration and international commercial arbitration. Since around the 1980s, if not earlier, arbitration was used by the construction industry and the commercial community to resolve disputes in Hong Kong. Indeed, the fact that Hong Kong has been continually having significant construction projects (including some mega projects such as the construction of the airport) has nurtured an extensive pool of experts who are experienced in handling infrastructure disputes.
9. Needless to say, the home-grown Hong Kong International Arbitration Centre, together with other relevant stakeholders and institutions, have also played a crucial role in providing the necessary service and expertise for resolving infrastructure disputes.
10. The Hong Kong Government, on the other hand, has all along recognized the importance of promoting arbitration and other means of dispute resolution, and has been giving such support as may be appropriate. Among others, the Department of Justice has been constantly modernizing and updating our dispute resolution-related legislation, including the Arbitration Ordinance and the Mediation Ordinance, to ensure that our legislative regimes meet the need of the end-users and is in alignment with international best practice.

11. I have alluded to the diversities among the Belt and Road jurisdictions. Such diversities call for an independent and neutral forum that can command the confidence and trust of the parties and the international arbitration community. In this regard, apart from the well-known quality and independence of our Judiciary as well as its pro-arbitration approach, it is pertinent to note the following observation made by a judge of the High Court of England and Wales³:

“... ... whilst Hong Kong is no doubt geographically convenient, it is also a well-known and respected arbitration forum with a reputation for neutrality, not least because of its supervising courts”.

12. Arbitration is meaningless unless we can enforce its end-product --- the arbitral award. This is why enforceability of arbitral award has been regarded as one of the most important factors when parties decide where to arbitrate. This is also one of the reasons why Hong Kong is an ideal arbitration venue, since arbitral awards made in Hong Kong can be enforced in over 150 jurisdictions pursuant to the New York Convention and also reciprocal arrangements made with the Mainland and the Macao SAR.
13. On the whole, Hong Kong can play a unique role in the resolution of infrastructure disputes in the Belt and Road context. Whilst being part of China, Hong Kong remains a neutral common law jurisdiction pursuant to the ‘one country, two systems’ policy with decades of experience in handling infrastructure disputes, as well as backed up by an array of other supporting professional services (such as quantity surveying, accounting and project management consultants).

³ *Shagang South-Asia (Hong Kong) Trading Co. Ltd. v Daewoo Logistics* [2015] 1 All ER (Comm) 545, per Hamblen J (as he then was) at para. 37.

14. We of course appreciate that the Belt and Road Initiative is a huge project, and that its successful implementation requires co-operation and collaboration among the jurisdictions along the Belt and Road route. Hong Kong is more than ready and willing to work with other jurisdictions to explore how different dispute resolution mechanisms can be further enhanced so as to better facilitate the implementation of the Belt and Road Initiative.

15. Today, we are privileged to have 4 very distinguished dispute resolution experts. We are grateful to Professor Teresa Cheng SC for agreeing to be the moderator, a role that looks easy but in fact never simple. Professor Cheng herself is a well-known figure in the international arbitration community and also has a strong background in construction. We will then have Dr. Colin Ong, QC, who will be speaking on the future landscape of dispute resolution in Asia. With the Belt and Road Initiative being implemented in full force, there have been much discussions and queries as to how the Initiative would impact upon the dispute resolution landscape. I am sure Dr. Ong QC will guide us to understand more about our future.

16. We are also very lucky to have Mr. Justin D'Agostino, an active player in the international arbitration community, to talk to us on disputes avoidance and project managements. Dispute resolution should not be confined to mechanisms for resolving disputes after they have arisen. Avoiding disputes in the first place is equally important, and we look forward to hearing Mr. D'Agostino's speech. Last but certainly not least, we will have Mr. Paul Starr, yet another well-known figure in the field, to address us on the new frontiers in dispute settlement for infrastructure investments in Asia. I am sure we will all benefit from the insights of these leading

speakers.

17. On this note, may I wish all of you an enjoyable and fruitful session.

Thank You.