

Keynote Luncheon Speech by Mr
Rimsky Yuen, SC,
Secretary for Justice
at the Chartered Institute of Arbitrators Centennial
Conference in Hong Kong on 20 March 2015

Mr. Christopher To, Distinguished Guests, Ladies and Gentlemen,

First of all, may I express my utmost gratitude for inviting me to this luncheon event, and also for giving me the opportunity to address such a distinguished audience.

2. Founded in 1915, this year marks the 100th anniversary of the Institute, which was first established in the United Kingdom to promote arbitration as an alternative means of dispute resolution. Notwithstanding the challenges and changes that took place during the past century, the Institute has achieved marked success across the globe and is now a leader in many aspects in the field of dispute resolution. In Hong Kong, the Institute is an integral part of our dispute resolution community. Through the operation of its East Asia Branch, and with its administration being assisted by the Secretariat of the Hong Kong International Arbitration Centre (“HKIAC”), the Institute is a driving force in shaping the dispute resolution landscape in Asia and beyond.

3. When you look at the members’ directory of the Institute, you will have no doubt about its popularity in the region. As of early February 2015, the Institute had a total of over 12,000 members from around the world. About 1,500 of them were East Asia Branch members, with almost 1,300 of them based in Hong Kong. Further, prominent arbitrators and members from Hong Kong have over the years played an important role in the development of the Institute.

4. Arbitration has a long history in Hong Kong. Indeed, arbitration was used as a means of dispute resolution as soon as Hong Kong became a British colony in the late 19th century. In the past few decades, the arbitration landscape in Hong Kong has witnessed significant development. Given the presence here today of so many friends from overseas jurisdictions, may I be permitted to take this opportunity to briefly deal

with a few key aspects which are relevant to the development of the arbitration landscape in Hong Kong.

Government Policy

5. Let me start with the attitude of the Hong Kong Government towards arbitration.

6. For years, the Hong Kong Government has placed great emphasis on the development and promotion of arbitration. Examples of efforts made in the earlier years include the Government's efforts to facilitate the establishment of the HKIAC.

7. In recent years, the position of the Hong Kong Government concerning dispute resolution services including arbitration cannot be clearer. For two consecutive years (i.e. 2014 and 2015), both the Policy Addresses by our Chief Executive and the Budget Speeches by our Financial Secretary stated in no uncertain terms that it is the Hong Kong SAR Government's policy to maintain and promote Hong Kong's status as a centre for international legal and dispute resolution services in the Asia Pacific region. (For the benefit of our friends from overseas jurisdictions, the Policy Address and Budget Speech are the two highest level government policy paper in our system.)

8. My Department, the Department of Justice ("DoJ"), has the privilege to oversee the implementation of this government policy objective. Both my predecessor and myself, together with a dedicated team of DoJ colleagues, have been in constant touch with the relevant stakeholders so as to discuss and explore how arbitration can be further developed in Hong Kong.

9. In December last year, and as part of the new initiatives to develop arbitration in Hong Kong, the DoJ established the Advisory Committee on Promotion of Arbitration. This Advisory Committee, comprising representatives of key stakeholders and eminent members of the arbitration community, is responsible for overall co-ordination and strategic planning for the future development and promotion of arbitration services. We hope that with the co-ordination of the Advisory Committee, concerted efforts made by various institutions and stakeholders of our dispute resolution services will take the promotion of Hong Kong's arbitration services to a new height.

10. Another aspect of government policy concerns the initiative to provide space for dispute resolution institutions. In 2013, the Hong Kong SAR Government announced its decision to allocate part of the office space in the former Central Government Offices, together with the entire building currently occupied by the Court of Final Appeal, for selected law and dispute resolution related organizations to set up their offices as well as to provide modern hearing facilities. This plan is currently under active implementation, and the intention is to complete the project in around late 2017. The area in question is at the heart of our Central Business District. With its accessibility and convenient location, we believe the area will become the legal hub at the heart of Hong Kong.

The rule of law

11. The second aspect I wish to deal with is the rule of law, with which arbitration has a close relation.

12. As Lord Bingham explained, one of the key elements of the rule of law is the provision of effective means to resolve *bona fide* civil disputes which the parties themselves are unable to resolve¹. Such effective means of dispute resolution should not be confined to court litigation. Arbitration certainly fits into this rubric, and has an important role to play. Indeed, this is one of the key reasons why the Hong Kong SAR Government places so much emphasis in developing and promoting dispute resolution, including arbitration.

13. On the other hand, the healthy development of arbitration requires an environment (such as that in Hong Kong) where the rule of law is respected and cherished. In this regard, as the Secretary for Justice of the Hong Kong SAR, may I deal with two issues head-on.

14. First, there is from time to time the suggestion that Hong Kong has been “too close” to China after China resumed exercise of sovereignty over Hong Kong in 1997. People who take this view worry, or even argue, that Hong Kong therefore has lost its advantage of being a neutral venue for arbitration. Such a perception or concern, if I may stress, is utterly without foundation. If one cast aside subjective perception and looks at the objective facts, one sees the fact that the common law legal system of Hong

¹ Tom Bingham, *The Rule of Law* (Allen Lane) (2010), Chapter 8 (at p. 85).

Kong continues to be very much well and alive. There is simply no objective evidence to suggest that the outcome of litigation or arbitration is tilted in favour of the government or parties with Chinese connection. More importantly, our Judiciary is one of top quality. Our Court of Final Appeal continues to enjoy the assistance of eminent judges from other common law jurisdictions, including Lord Neuberger who are here with us today. One simply asks the question, if the rule of law and judicial independence are not respected, would these eminent judges still willing to serve in our judicial system.

15. In this regard, I am pleased to note that Lord Hoffmann has become one of the latest prominent legal figures to endorse Hong Kong as a seat of arbitration. According to his speech at the HKIAC last December, “*the rule of law in international arbitration means having a system of legal rules at the seat of the arbitration which is fair and efficient and which people can understand, and having a judiciary that is independent and competent to lend support to the arbitration*”.² Indeed, the Hong Kong Judiciary is well known for its quality and independence and its pro-arbitration position is well documented in court judgments.

16. Second, there are people who harbour doubt over Hong Kong’s situation ever since the “Occupy Movement” which we have experienced in the latter part of last year. It is true that we have experienced mass scale public order events at the end of last year. Admittedly, those events have posed challenges to the rule of law in Hong Kong. However, Hong Kong has withstood the challenge, and the short term public disorder has absolutely no adverse impact on Hong Kong’s ability to deliver first class arbitration services.

Arbitration legislation

17. The third aspect I wish to touch on is Hong Kong’s legislative regime concerning arbitration.

18. In Hong Kong, it is no exaggeration to say that the popularity of using arbitration to resolve international commercial disputes is attributed to our user-friendly legislative framework. The current Arbitration Ordinance, which came into effect in June 2011, is based on the 2006 version (which is the latest version) of the UNCITRAL Model Law on International Commercial Arbitration. Hong Kong is one of the pioneers

² “Hong Kong: Lord Hoffmann’s rule of law musings”, *Global Arbitration Review*, 10 December 2014.

in the region to adopt this version of the UNCITRAL Model Law as the basis of its arbitration regime.

19. The Arbitration Ordinance also contains new initiatives which seek to enhance confidentiality of arbitration proceedings and related court hearings. Ad hoc arbitration, on top of institutional arbitration, is allowed under our arbitration regime. Arbitral tribunal and the court are empowered to make orders for interim measures of protection to support arbitrations. Indeed, Hong Kong is among the first few jurisdictions in Asia to strengthen the powers of the courts to make such orders, and enforce such orders made by a foreign court or arbitral tribunal, in relation to arbitral proceedings conducted outside Hong Kong. As a result, our Arbitration Ordinance reinforces the advantages of arbitration, including respect for parties' autonomy as well as savings in time and cost for parties opting to resolve their disputes by arbitration.

20. Further, we have been working actively with the arbitration community from time to time to update our Arbitration Ordinance so as to reflect the most recent developments in the international arbitration scene.

21. In this regard, I should add that our Law Reform Commission is actively looking into the issue of third party funding for arbitration. It is anticipated that the relevant Sub-Committee of the Law Reform Commission will in the near future publish a consultation report containing various recommendations concerning third party funding for arbitration.

22. Further, another area we are looking into is the arbitrability of intellectual property disputes. We intend to explore ways to clarify the law in this area, so that there will not be any doubt as to whether intellectual property disputes can be made subject-matter of arbitration in Hong Kong.

World-class arbitration institutions

23. The fourth aspect I wish to touch on is the arbitration institutions present in Hong Kong. On top of our user-friendly legislation, parties to arbitration conducted in Hong Kong may have their disputes administered by reputable arbitration institutions of their choice.

24. Our home-grown HKIAC has always been the focal point of arbitration in Hong Kong and beyond since its establishment in 1985. Over the past 30 years, the HKIAC has earned international recognition

and has been providing excellent support and services to the arbitration community.

25. In 2008, the Paris-based International Chamber of Commerce opened the first overseas branch of the Secretariat of its International Court of Arbitration in Hong Kong. In 2012, the China International Economic and Trade Arbitration Commission (“CIETAC”) set up its Hong Kong office, which is the first such centre established by CIETAC outside the Mainland. In November 2014, the China Maritime Arbitration Commission (“CMAC”) also set up an arbitration centre in Hong Kong, which is its first such centre outside the Mainland.

26. One of the various developments we have been closely monitoring is investor-State disputes. In recent years, we have seen a growing number of investor-State disputes in Asia, involving either Asian claimants or Asian respondents. Accordingly, the DoJ decided to enhance Hong Kong’s capacity and infrastructure to offer quality services for handling investor-state disputes. With the support of the Central People’s Government (“CPG”), a Host Country Agreement between the Central People’s Government and the Permanent Court of Arbitration (“PCA”) on the conduct of dispute settlement proceedings in Hong Kong and a related Memorandum of Administrative Arrangements between the Hong Kong SAR Government and the PCA were signed in early January this year. The signing of these two documents will facilitate the conduct of PCA-administered arbitration in Hong Kong, including state-investor arbitration.

Conclusion

27. Ladies and Gentlemen, as Chairman of the Advisory Committee on Promotion of Arbitration, I look forward to having more exchange and co-operation with the Chartered Institute of Arbitrators, so that we can join hand to take the development of arbitration to a new level. On this note, it remains for me to wish the Centennial Conference every success, and for those coming from overseas, an enjoyable stay in Hong Kong. Thank You.