

**The 8<sup>th</sup> IBA Asia Pacific Regional Forum Biennial  
Conference: Vibrant Asia – Land of opportunity  
and promise (20 February 2025)**

**Chief Justice's Keynote Address**

Vice-President of the International Bar Association, IBA Asia Pacific Regional Forum Co-Chairs, Conference Co-Chairs, Honoured Guests, Ladies and Gentlemen,

1. It is a pleasure to have been invited to give this keynote address at the 8<sup>th</sup> Asia Pacific Regional Forum Biennial Conference of the International Bar Association. The Association stands as the premier organisation of international lawyers, bar associations and law societies. Its significant contribution to the promotion and advancement of the rule of law globally cannot be overstated. The Association exemplifies how legal professionals not only uphold the rule of law, but also foster stability and world peace through the impartial administration of justice.

2. On behalf of the Hong Kong Judiciary, I would like to extend a warm welcome to all speakers and participants

attending this Conference. I hope you will find your time in Hong Kong both fruitful and enjoyable.

3. It is hard for me to think of a more fitting location to hold this Conference given its theme of “Vibrant Asia – Land of opportunity and promise”, as it is by the strength of the rule of law in Hong Kong that its economy has flourished and continues to prosper. Setting aside any personal favouritism, Hong Kong is a prominent example where the rule of law is no mere theory, but the foundation on which the Region’s legal, social, and economic systems stand, and continue to thrive.

4. The rule of law ensures that laws are applied equally to all, fairly and consistently, while protecting rights and resolving disputes impartially and predictably. It guarantees legal certainty. In developed societies, the rule of law serves as a fundamental pillar, and this is especially evident in how it fosters a secure and stable business environment. Legal certainty is a prerequisite for economic confidence – without it, businesses cannot effectively plan for the future or safeguard their interests. In this way, the rule of law is indispensable to the success of any economy, including Hong Kong.

5. Hong Kong's commitment to the rule of law is also reflected in its protection of human rights. These rights, enshrined in Chapter III of the Basic Law and safeguarded by the Hong Kong Bill of Rights, are based on internationally recognised standards. They provide a framework within which the law operates, ensuring that fundamental freedoms and liberties are protected. Although many of these rights are subject to limitations, what is important is that they are interpreted and enforced by an independent judiciary which guards against arbitrary and disproportionate restrictions.

6. In Hong Kong, the rule of law is also strongly grounded in its common law tradition. Under the "One Country, Two Systems" framework, the Hong Kong Special Administrative Region remains the only common law jurisdiction within the People's Republic of China. It is this innovative framework which allows for the co-existence of different legal systems and traditions within one sovereign state, thus enabling Hong Kong's longstanding common law tradition to continue on, and indeed play a central role in Hong Kong's economic success.

7. It is generally known that Hong Kong continues its common law tradition, but fewer may realise that the common law has been in operation in Hong Kong for over 180 years. Hong Kong's common law system is therefore well-established, and is a system that the people of Hong Kong and the international community are familiar with and trust. This system is set to endure, as is the "One Country, Two Systems" framework which represents a fundamental long-term state policy.

8. The defining characteristics of Hong Kong's common law system are clear: neutral and impartial judges, an adversarial mode of litigation, the presumption of innocence, the guarantee of due process, the standard of proof beyond reasonable doubt, and equality before the law. These are just a few of the fundamental principles entrenched in Hong Kong's justice system.

9. In our common law system, the legal principles that guide and inform decisions are just as important as the decisions themselves. Like courts in other well-established common law jurisdictions, our courts apply these principles consistently across all areas of law, whether commercial

disputes, family law, criminal prosecutions, judicial reviews, or national security cases. Speaking of the latter two areas, it is worth noting that Hong Kong has a robust judicial review regime and a rich body of public law jurisprudence. As for national security cases, the same legal principles apply as in other criminal cases. Fundamental safeguards – such as the presumption of innocence, the requirement to prove guilt beyond reasonable doubt, and the right to a fair trial – remain firmly in place.

10. But, of course, Hong Kong is a sophisticated and vibrant common law jurisdiction, with the remit of its courts extending well beyond matters of public law or national security. The courts are engaged in the steady, day-to-day work of resolving disputes and protecting rights, ensuring the smooth functioning of a modern city of over seven million people. While some court decisions hold significant jurisprudential value and attract attention abroad – as I will discuss further – many address everyday legal concerns that are equally vital. The rule of law in Hong Kong remains robust, impacting the daily lives and activities of individuals, businesses, and investors, both local and international.

11. The common law system has shaped and influenced the legal frameworks of jurisdictions with diverse cultures and traditions. At its core, it is underpinned by principles of fairness and equality, reinforced through the doctrine of precedent. This doctrine, unique to the common law, ensures that similar cases are treated alike, promoting consistency and predictability in judicial decisions while fostering public confidence in the legal system. The adversarial system of the common law as practised in Hong Kong places strong emphasis on rigorous analysis and reasoning by analogy. Combined with the doctrine of precedent, this approach encourages the continuous examination and refinement of legal principles in response to changing circumstances. Through the process of arguing and applying precedents, the common law in Hong Kong evolves – adapting to the complexities of a rapidly changing world. As others have observed, the common law’s pragmatism, flexibility, adaptability, and capacity for innovation enables it to meet new challenges and continuously serve the evolving needs of society.

12. The common law system is one that many of Hong Kong’s international business partners and investors are most familiar with, regardless of their backgrounds or whether their

home jurisdictions follow common law or civil law regimes. English, the language of the common law, is also the global language of international business and commerce. Alongside its common law system, Hong Kong remains a bilingual jurisdiction, with English and Chinese as official languages, and court proceedings conducted in either or both. Hong Kong judgments continue to be published in English, with important Chinese judgments being translated into English for ease of reference. The use of English in our judicial system ensures accessibility for those outside Hong Kong and reinforces confidence in our legal process. At the same time, the ability of most judges to read and use Chinese enhances efficiency, making our courts particularly attractive for resolving international commercial disputes involving extensive Chinese-language evidence and witnesses.

13. This leads me to a related point. Whilst the continuation of the common law system in Hong Kong serves to maintain our distinctive legal identity which is separate from that of the Mainland, Hong Kong is intrinsically linked to, and an indivisible part of, the People's Republic of China. As I will return to later, this positions Hong Kong as a unique jurisdiction that has deep-rooted connections to both the

Mainland, and through its common law system, the international community. Hong Kong acts as a bridge between East and West, leveraging its common law system to facilitate cross-border business growth.

14. This brings me back to today's conference, as the rule of law depends on the quality and independence of the legal profession. Lawyers play a vital role in upholding the rule of law – offering independent legal advice, representing clients, and facilitating dispute resolution. Whether in litigation, arbitration, or other forms of dispute resolution, their expertise ensures the effective protection of legal rights and maintains public confidence in the legal system.

15. Hong Kong continues to cultivate top legal talent by combining home-grown expertise with internationally and Mainland-trained professionals, including graduates from leading global law schools and Mainland universities. This diverse legal community, offering expertise in Hong Kong law as well as foreign and Mainland law, enhances the city's capacity to deliver world-class legal services, strengthens its role as a hub for international dispute resolution, and reinforces the rule of law.

16. Of course, excellence in the legal profession depends not only on talent but also on continuous training. Conferences like this are crucial for keeping lawyers abreast of new developments, expanding their expertise, and refining their skills. Over the next two days, this Conference will offer a rich programme on critical and cutting-edge topics.

17. Without pre-empting any of this Conference's speakers, I note with particular interest the topic of developments in arbitration, especially the interplay between insolvency and arbitration. Our 2023 decision in *Re Guy Lam*<sup>1</sup> arose from a bankruptcy order based on a disputed petition debt that was subject to an exclusive jurisdiction clause. Upholding the Court of Appeal's decision to allow the debtor's appeal, the Court of Final Appeal observed that a petitioner is ordinarily entitled to a bankruptcy order if the petition debt is not subject to a *bona fide* dispute on substantial grounds. Whether the debt is *bona fide* disputed on substantial grounds is a question of threshold: if the debt is disputed, the bankruptcy process is put on hold in order to allow the dispute to be resolved. This threshold nature of the dispute as to indebtedness leaves room

---

<sup>1</sup> *Re Lam Kwok Hung Guy, ex p Tor Asia Credit Master Fund LP* (2023) 26 HKCFAR 119.

for the court to exercise its discretion to decline jurisdiction in respect of a petition. In this case, the circumstance enlivening this discretion was the agreement between the parties to have their disputes determined exclusively in another forum. The Court of Final Appeal held that in the absence of countervailing factors such as the risk of insolvency affecting third parties, or a dispute that is completely frivolous, the exclusive jurisdiction clause will generally be upheld between the petitioner and debtor. The importance of the public policy interest in respect of the legislative scheme for bankruptcy jurisdiction is much diminished where the petition is brought by a single creditor with no evidence of a creditor community at risk.

18. In two subsequent appeals heard by the Court of Appeal last year,<sup>2</sup> the *Guy Lam* principles were extended by analogy to cover the insolvency-arbitration context, that is, where the underlying dispute about the petition debt was subject to an arbitration clause, as well as where the debtor company did not dispute the petition debt but sought to refer to arbitration its cross-claim which exceeded the petition debt. An important justification for this extension was the strong legal

---

<sup>2</sup> *Re Simplicity & Vogue Retailing (HK) Co Ltd* [2024] 2 HKLRD 1064; *Re Shandong Chenming Paper Holdings Ltd* [2024] 2 HKLRD 1040.

policy of requiring parties to abide by their contracts, particularly given the statutory framework protective of arbitration in Hong Kong.

19. This, however, may not be the approach in some other jurisdictions. And indeed, a different approach is now adopted in England and Wales following the recent Privy Council decision in *Sian Participation Corporation (in liquidation) v Halimeda International Ltd*,<sup>3</sup> on the basis that the presentation of a winding up petition is not a claim seeking the determination by the courts of a dispute about the debt. A winding up order based on a debt not disputed on substantial grounds, the Privy Council reasoned, does not offend the general objectives of arbitration legislation because it does not seek to resolve anything about the underlying debt or interfere with the resolution of any dispute about the debt. The Privy Council referred to and discussed no fewer than six Hong Kong decisions, including the three cases that I just mentioned, as well as decisions from other places, before deciding that this different approach was preferable. All this therefore makes for an interesting and lively discussion that will touch upon

---

<sup>3</sup> [2024] 3 WLR 937.

important considerations such as the significance of upholding arbitration clauses versus the primacy of the insolvency regime, as well as the nature of insolvency proceedings and procedures.

20. Whilst still on the topic of recent developments in arbitration, it is worth mentioning the Court of Final Appeal's decision in *C v D*.<sup>4</sup> This case addressed the distinction between "jurisdiction" and "admissibility", as well as the relationship between Articles 16 and 34 of the UNCITRAL Model Law on International Commercial Arbitration, concerning the reviewability of an arbitral tribunal's ruling on a jurisdiction objection. In its recent decision in *CBI Constructors Pty Ltd & Anor v Chevron Australia Pty Ltd*,<sup>5</sup> the High Court of Australia had to decide whether an arbitral tribunal that had ordered bifurcation became *functus officio* after issuing its first award on liability, with respect to liability matters not addressed in that award. It also examined whether the tribunal's subsequent decision on this issue was final or liable to *de novo* review by the court under Article 34(2)(a)(iii) of the Model Law. In addressing these issues, the High Court – both the majority and

---

<sup>4</sup> (2023) 26 HKCFAR 216.

<sup>5</sup> (2024) 419 ALR 126.

the minority – engaged in a detailed discussion of our decision in *C v D*.

21. Another important topic that will be discussed in the course of this Conference is that of cross-border asset recovery. Although Hong Kong has not adopted the UNCITRAL Model Law on Cross-Border Insolvency as part of its winding-up procedure, many of the Model Law’s provisions have been applied in practice by the Hong Kong courts. These include access to courts, recognition of foreign insolvency proceedings, and the provision of assistance in foreign winding-up proceedings. Our winding-up court will exercise jurisdiction to hear proceedings to wind-up a foreign company where three threshold requirements established by the Court of Final Appeal in *Kam Leung Sui Kwan v Kam Kwan Lai*<sup>6</sup> and affirmed in *Shandong Chenming Paper Holdings Ltd v Arjowiggins HKK 2 Ltd*<sup>7</sup> are satisfied. These are: (1) the foreign company must have sufficient connection to Hong Kong; (2) there must be a reasonable possibility that the winding-up order would benefit those applying for it; and (3) the court must be able to

---

<sup>6</sup> (2015) 18 HKCFAR 501.

<sup>7</sup> (2022) 25 HKCFAR 98.

exercise jurisdiction over one or more persons in the distribution of the company's assets. For restructuring proposals, foreign liquidators seeking court sanction to bind creditors in Hong Kong must also satisfy these three requirements.<sup>8</sup> It is worth noting that the requirement of a sufficient connection is similar to, but arguably less stringent than, the "Centre of Main Interests" test and the "Establishment" requirement under the UNCITRAL Model Law. In Hong Kong, the mere presence of assets, especially significant ones, will satisfy the "sufficient connection" requirement.<sup>9</sup>

22. Hong Kong courts will also assist foreign liquidators in the spirit of "modified universalism". Common forms of assistance Hong Kong courts have provided include orders requiring individuals in Hong Kong to provide information and documents or to hand over books, records and assets of companies in liquidation. In connection with recognition and assistance in the Mainland, Hong Kong is also party to an arrangement on mutual recognition and assistance to insolvency proceedings, which was promulgated in May

---

<sup>8</sup> *Re China Huiyuan Juice Group Ltd* [2021] 1 HKLRD 255.

<sup>9</sup> *Ibid.*

2021.<sup>10</sup> Under the arrangement, courts in three pilot areas in the Mainland, namely Shanghai, Shenzhen and Xiamen, will recognise Hong Kong insolvency proceedings if Hong Kong has been the company's "Centre of Main Interests" for at least six months, and the company's principal assets or place of business is located in one of these three pilot areas.<sup>11</sup> For Hong Kong courts, recognition and assistance are provided to all insolvency proceedings in the Mainland, and are not confined to the three pilot areas. This is a good example of Hong Kong's unique role in bridging East and West that I mentioned above.

23. Whilst on the topic of recognition of orders and legal assistance between Hong Kong and Mainland courts, I should also mention that, more broadly, a new arrangement for the reciprocal recognition and enforcement of judgments in civil and commercial matters became law in January 2024,<sup>12</sup> further

---

<sup>10</sup> The Record of Meeting of the Supreme People's Court and the Government of the Hong Kong Special Administrative Region on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region (14 May 2021).

<sup>11</sup> The Supreme People's Court's Opinion on Taking Forward a Pilot Measure in relation to the Recognition of and Assistance to Insolvency Proceedings in the Hong Kong Special Administrative Region.

<sup>12</sup> Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Cap 645) implementing the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region (18 January 2019).

expanding the scope of mutual recognition and enforcement between the Mainland and Hong Kong. Unlike a previous arrangement, this new arrangement does not require the presence of a choice of forum agreement and, more importantly, covers all matters which are considered to be of a “civil and commercial” nature under both Hong Kong and Mainland law. It excludes administrative or regulatory matters, corporate insolvency, debt restructuring, intellectual property disputes, matrimonial and family cases, personal bankruptcy, and succession. In drafting this arrangement, reference was made to the draft version of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, further integrating Hong Kong’s judicial practices with international standards.

24. This new arrangement, which makes Hong Kong courts an especially attractive forum for commercial litigation involving Mainland entities, is part of an evolving series, and its smooth implementation will enable further incremental expansion. The success of this and other arrangements between Hong Kong and the Mainland rests on an in-depth understanding of both legal systems, as well as careful observation and caution in addressing cross-border issues.

Through these arrangements, significant cross-border legal issues have not only been resolved, ensuring the effective operation of the “One Country, Two Systems” principle, but Hong Kong’s unique role in bridging the Mainland and the rest of the world has also been further strengthened.

25. I will stop here on these interesting topics but would add that these new developments illustrate the significance of the discussions ahead and highlight the importance of this Conference for legal professionals seeking to practise in Asia – both to stay updated and to seize the opportunities that the region offers. I will leave it to the eminent speakers in each session to expand upon these topics and explore other important ones.

26. The successful practice of lawyers and a strong legal profession is, as mentioned, critical to the continuous strengthening of the rule of law, and it would thus be appropriate for me to thank the IBA Asia Pacific Regional Forum and the Conference Co-Chairs for all their hard work in organising this conference, and express my gratitude to all speakers and participants for their time and efforts, and finally to all of you for your attention and engagement.

27. Thank you.