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Professionals in Society Limited
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***“The Belt and Road Initiative and Infrastructure Dispute Resolution:
A Few Thoughts”***

Dr. Raymond Ho, Distinguished Guests, Ladies and Gentlemen,

First of all, may I express my gratitude for inviting me to this 22nd Anniversary Dinner of the Association of Engineering Professionals in Society Limited (“AES”), and also for giving me this opportunity to address such a distinguished audience.

Professionals play an important role in the society of Hong Kong, and the engineering professionals are no exception. In the past 22 years, the AES has made significant contributions to both the engineering profession and to our society as a whole. On behalf of the Government of the Hong Kong Special Administrative Region (“HKSAR”), I would like to extend our congratulations, as well as express our gratitude, to the achievements and contributions made by AES.

The topic that I have chosen for tonight is *“The Belt and Road Initiative and Infrastructure Dispute Resolution: A Few Thoughts”*. The key reason for choosing this topic is four-fold. First, there is no doubt that the Belt and Road Initiative (“BRI” or “the Initiative”) is a very visionary initiative, which is going to have significant and long-term impact on the world. The HKSAR, as an international city, has to position itself strategically in the Belt and Road context. Second, infrastructure, as we will see, has a vital role under the BRI. Third, with the dramatic increase of infrastructure activities along the B&R route, the demand for infrastructure dispute resolution will increase significantly. Fourth, the HKSAR possesses the strength for assuming a leading role in the resolution of disputes arising from Belt and Road infrastructure projects. With these considerations in

mind, allow me to briefly share with you a few personal thoughts concerning infrastructure dispute resolution in the Belt and Road context.

Huge Demand for Infrastructure

The key objective of the BRI is to improve economic connections throughout the relevant continental and maritime regions. One of the key areas of co-operation envisaged under the Initiative is “facilities connectivity”, which 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.

Infrastructure, as defined by the Asian Development Bank (“ADB”), includes transport, power, telecommunications, water supply and sanitation. It is an essential input into the production of goods and services and raises productivity. It powers factories and businesses and enables firms to trade. It encourages innovation and generates new economic opportunities and jobs as firms interact and discover new products, processes and markets. Efficient infrastructure lowers distribution costs and boosts living standards by making goods and services more affordable¹.

Following the implementation of the BRI and the economic development in Asia, infrastructure development is heading towards a booming age. According to ADB’s report issued 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 year². Figures from other sources also depict a similar picture. For instance, it has been reported that China has invested more than US\$50 billion in economies along the Belt and Road route since 2013³. On the other hand, infrastructure spending in Indonesia is expected to grow to about US\$165 billion by 2025⁴.

¹ See the Report entitled “*Meeting Asia’s Infrastructure Needs*” published by ADB in February 2017.

² *Ibid.* Also see: Wu Zheyu, “Dispute resolution and risk control mechanisms needed for B&R projects”, *China Daily*, 13 April 2017.

³ Sarah Grimmer and Christina Charemi, “Dispute Resolution along the Belt and Road”, *Global Arbitration Review* (22 May 2017).

⁴ PwC, “*A Summary of South East Asian Infrastructure Spending: Outlook to 2025*” (2014) 4.

Infrastructure projects, of course, are not just about building, construction and engineering. They also involve a multitude of supporting activities (such as supply of equipment and materials) as well as supporting services, such as financing, accounting, legal and dispute resolution services. If the economical values of these supporting activities and services are also taken into account, the figures would be even more unprecedented.

The Need for Legal Risk Management

The more infrastructure projects there will be, the greater the need for legal risk management. Properly understood, legal risk management is not confined to dispute resolution mechanism that can be resorted to after disputes have arisen. Rather, legal risk management should commence before a party decides whether to engage in an infrastructure project at a particular place, and covers each and every stage of the project thereafter. Put briefly, legal risk management includes: (1) legal due diligence, which should be carried out before concluding an infrastructure deal, facilitates the proper understanding of the legal and regulatory regime of the targeted place of investment; (2) consideration of the proper mode of contractual arrangement, such as whether a PPP (public-private partnership) or other investment model is more appropriate in any given case; (3) the proper drafting of contract, which can reflect the parties' intention, and cater for contingencies that should be addressed; (4) the design of clauses relating to dispute resolution, which should cover situation both before and after a dispute has arisen, as well as dispute prevention and other incidental matters such as choice of law.

All these matters require careful planning and handling before a deal is concluded. Lawyers, however, are not the only group of professionals who can or should contribute in this regard. Contribution by the engineering profession is definitely valuable, and should be encouraged so that appropriate or even tailor-made legal risk management can be devised and carried out.

In the Belt and Road context, legal risk management is not just important, but indispensable. The Belt and Road route, as you know, covers

more than 60 jurisdictions. Not only are these jurisdictions at different stages of economic development, they also have different legal systems with different legal culture and legal traditions.

Given such differences, the best approach is to embrace them by understanding the differences and by dealing with them head-on by way of proper legal risk management. Indeed, in 2015, the Supreme People's Court issued an opinion concerning the judicial services and safeguards for the implementation of the BRI⁵. This Opinion reflects the positive and progressive approach adopted by the central authorities in the handling of legal risk in the Belt and Road context, and one can see the importance it placed on (among others) dispute resolution.

The Role and Strength of the HKSAR

This brings me to the next point that I wish to make tonight --- the HKSAR can assume a leading role in providing legal risk management services for the infrastructure projects to be carried out along the Belt and Road routes.

Why do I say that? I have discussed the strength of the HKSAR as a dispute resolution centre on other occasions. As I wish to make a few suggestions before I conclude, I would only briefly recap the key points, which include Hong Kong's experience in infrastructure projects and arbitration, the presence of talents and expertise, a modern and robust legal regime including the Arbitration Ordinance and the Mediation Ordinance, our independent and yet pro-arbitration Judiciary, as well as our extensive network for enforcing arbitral awards.

There is one factor that I, however, wish to emphasize, namely, the HKSAR is an ideal neutral venue. I stress this point because from time to time, we come across the suggestion that the HKSAR is part of China and therefore cannot be regarded as a neutral venue when a dispute involves a Mainland party. Such a suggestion, sometimes made out of ignorance and sometimes made for other reasons, is completely groundless. In a recent

⁵ 《最高人民法院關於人民法院為“一帶一路”建設提供司法服務和保障的若干意見》(2015年6月16日)。

decision by the High Court of England and Wales, the High Court judge described Hong Kong as “a well-known and respected arbitration forum with a reputation for neutrality”⁶.

Concluding Remarks

Ladies and gentlemen, the investment in and the development of infrastructure facilitate the sustainable development of human society. Proper legal risk management, in turn, facilitates the smooth implementation of infrastructure projects.

Legal risk management and dispute resolution are not the prerogative of lawyers, but is best dealt with by adopting a multi-disciplinary approach. Such an approach is essential, especially in respect of the training of talents and the conduct of research. Speaking of training of talents, the double degree for engineering and law previously offered by the Law Faculty of HKU is apparently no longer on offer. I am given to understand that this was due to insufficient interests from students. If that were indeed the case, it is regrettable. And I do hope that the legal and engineering professions can join hands to impress upon our younger generation the importance of cross-disciplinary studies and researches. In my view, closer co-operation and collaboration among the engineering profession, the legal profession, the academic circle and the dispute resolution community is one of the best ways to further enhancing the HKSAR’s role in handling infrastructure disputes in the Belt and Road context and beyond.

Further, arbitration has thus far been the main focus of resolving infrastructure disputes. Arbitration of course has its advantages, and one can understand why it is a popular form of dispute resolution. However, dispute resolution mechanisms other than arbitration, such as mediation (be it facilitative, evaluative or otherwise), early neutral evaluation and expert determination should also be considered, either on its own or together with arbitration as part of a structured dispute resolution model. Since dispute resolution is there to serve the end-users (i.e. parties to disputes), what matters ultimately is the availability of different choices to the end-users so

⁶ See: *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.

that they can pick the dispute resolution method which can best suit their needs.

Lastly, may I stress that the Department of Justice looks forward to working closely with the engineering profession to further enhance Hong Kong's status as a leading centre for international legal and dispute resolution services in the Asia-Pacific region.

On this note, may I wish AES every success in its future endeavors and may I also wish all of you an enjoyable evening.

Thank You!