

SJ's speech at Ceremonial Opening of the Legal Year 2009

The following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the Ceremonial Opening of the Legal Year 2009 today (January 12):

Chief Justice, Chairman of the Bar Association, President of the Law Society, Members of the Judiciary, Distinguished Guests, Ladies and Gentlemen,

May I join the Chief Justice in welcoming our guests especially those from other jurisdictions to this ceremony of the Opening of the Legal Year.

Introduction

The current financial crisis has brought about a seismic shift of the global economy. While we have to work hard to counter its adverse effects, we should not lose sight of the opportunity to strengthen our international competitiveness in the legal services market, particularly when the centre of gravity in many respects is moving east.

Arbitration

In the area of international arbitration, the Government and our business community welcome the opening in Hong Kong in November last year of a Branch Secretariat of the International Court of Arbitration of the International Chamber of Commerce. This goes to show the importance of Hong Kong as a centre for arbitration in the region and the strategic position enjoyed by Hong Kong as a venue for arbitration.

The Government and my Department will continue to seek opportunities to work with leading international arbitration institutions. We will also work closely with the Hong Kong International Arbitration Centre to promote Hong Kong as the preferred choice of arbitration venue in the region, particularly in relation to disputes involving the Mainland. The new development in respect of “rapprochement” or “San Tong” may bring new opportunities for Hong Kong as a dispute resolution centre serving businesses across the strait.

The new Arbitration Bill to unify the regimes of arbitration on the basis of the internationally recognised UNCITRAL Model Law will be introduced in the current legislative session. The new law would reinforce the advantages of arbitration, including respect for parties' autonomy as well as the savings in time and cost for the parties.

Hague Conference on Private International Law

Apart from promoting international arbitration, we are also conscious of the need to enhance Hong Kong's international status in other law related areas. Last September, we witnessed the successful conclusion of the Third Asia Pacific Regional Conference of The Hague Conference on Private International Law, jointly organised

by the Department of Justice and the Permanent Bureau of The Hague Conference on Private International Law. The Regional Conference was attended by almost 200 participants from 29 jurisdictions in the Asia Pacific region. It clearly demonstrated the need and the value of enhanced legal cooperation between Hong Kong and other jurisdictions through the work of The Hague Conference. The Department will continue to work closely with the Permanent Bureau to contribute to the work of the Hague Conference and to develop and enhance Hong Kong's status as a regional centre for legal services.

Closer Economic Partnership Arrangement

Thanks to CEPA, there are now 77 representative offices across 13 major cities in the Mainland set up by Hong Kong law firms. Many of these offices are established in cities other than Beijing, Shanghai and Guangzhou. Their presence in different cities serves the dual purposes of promoting their practices as well as introducing Hong Kong's legal system to the Mainland. Faced with competition from both Mainland and international law firms, Hong Kong firms operating in the Mainland demonstrate great resilience and versatility, making the best out of Hong Kong's unique status, connectivity and quality.

More Hong Kong residents are qualified to practise as Mainland lawyers, particularly after centres for examining local candidates were set up in Hong Kong since 2005. Taiwanese candidates can also take advantage of the examination venue here since 2008. Although the examination continues to be extremely rigorous, it is also encouraging to see that the passing rate for those who sat the examination in Hong Kong rose to 9% in 2008.

Mediation

The Chief Justice has already spoken on the efforts made by the Judiciary to promote mediation. With the adoption by the European Parliament of the European Mediation Directive for the promotion and use of mediation in May last year, the global trend in favour of the use of mediation to reduce the cost of dispute resolution is firmly established. Hong Kong cannot afford to lag behind.

The Government is giving full support to the development of mediation in Hong Kong. The cross-sector Working Group on Mediation, which I chair, have met four times and, together with our three Sub-groups, are now working on important issues including promulgating a Code of Conduct for Mediators, running a pilot scheme to provide venues for community mediations, strengthening mediation training in higher education, inviting the commercial sector to sign pledges to mediate before taking action in court, and considering the need of legislation to regulate mediation.

The Legal Aid Department has confirmed that, following the implementation of the Civil Justice Reform when mediation becomes an integral part of civil procedures, for those who qualify, legal aid will cover mediation in all civil cases to which the Rules of the High Court and District Court are applicable. Mediation in matrimonial cases has to be funded separately. Legislative amendments are to be made so that legal aid will also cover mediation in legally aided matrimonial cases.

Limited Liability Partnership

Heeding the calls of the solicitors' branch of the profession to allow solicitor firms to operate under a new and more flexible business model, my Department will introduce legislation in the next legislative session to allow solicitors to form limited liability partnerships (LLPs), in addition to existing general partnerships. The new legislation will also complement the option of operating as solicitors' corporation, which will be possible once rules under the existing relevant enabling legislation have been made.

LLP is a model for doing business which confers the privileges of limited liability on innocent partners so as to insulate their personal assets from claims based on the negligence of other partners. We believe that LLPs would encourage small firms to join forces to offer more diversified services to their clients. This should also encourage partners in LLPs to invest in the professional development and expansion of their businesses. However, the statutory regime for LLPs must also take into account the interests of clients and the right balance will need to be struck between the convenience and benefits for solicitors of operating LLPs and adequate protection for clients. This is what we shall seek to achieve eventually when the new legislation is enacted.

Higher Rights of Audience for Solicitors

Another development in the New Year that may affect the development of the legal profession is the grant of higher rights of audience to suitably qualified solicitors. My intention is to introduce the relevant legislation within the current legislative session to give effect to the recommendations of the Chief Justice's Working Party on this subject.

The underlying principle and overriding criterion of the Working Party's recommendations is the public interest. It is in the interest of the public that there should be a larger pool of skilled advocates capable of reaching the high standard of advocacy demanded by the higher courts and that the advocates who appear before the higher courts perform to that standard.

The proposal, to be reflected by the new legislation, is a modest one which would allow suitable and experienced candidates from the solicitors' branch of the profession to act as solicitor advocates. I am glad to say that both branches of the legal profession have expressed support for the proposal and I am sure that they will work together with us to bring the proposal to fruition.

Criminal Justice

Earlier this month, the department's new prosecution code, The Statement of Prosecution Policy and Practice 2009, became operational. Emphasis has been placed on the obligation of the prosecutor to ensure the appropriate conduct of domestic violence cases, to safeguard the interests of the unrepresented defendants, to seek the recovery of criminal assets, to provide appropriate levels of assistance to the media, to

be proactive in disclosing relevant matters to the defence, and to do all that is possible to facilitate the giving of evidence by vulnerable witnesses.

A broad consensus has been reached that in due course the bulk of prosecutions in the magistrates' courts ought to be conducted by the legally qualified, and our planning reflects this. The new Court Prosecutors we are recruiting will, unless legally qualified, concentrate on case management and administration, traffic courts, plea courts, miscellaneous hearings and liaison work. They will not, unless legally qualified, be involved in contentious advocacy in the general trial courts. These new arrangements will not affect the existing Court Prosecutors, who are highly experienced, and whose skills are widely acknowledged and many of whom, incidentally, already hold legal qualifications.

We plan to brief out more of our cases to barristers and solicitors on fiat in the magistracies in the year ahead, and there is general agreement that the legal profession as a whole must strive to ensure that its members who wish to prosecute have the necessary skills. In that regard, I welcome the proposals of the Bar Association and the Law Society to launch training courses, with appropriate evaluation or accreditation, to ensure prosecution skills of their junior members meet the necessary level of competence.

Conclusion

With immense and varied challenges coming with the economic downturn, a strong legal system buttressed by judicial independence and professional legal services, a steadfast respect for the rule of law, are all crucial. In times of widespread economic hardship, however, it is particularly worth remembering that compassion and forbearance in the exercise of legal rights will not only assist the less fortunate to meet their daily needs in the short term, but in the longer term, will almost certainly make good business sense.

I wish you all good health and a happy new year.

Ends/Monday, January 12, 2009