

Speech by SJ at a luncheon in Kuala Lumpur today (English only)

\*\*\*\*\*

The following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at a business luncheon co-organised by the Asian Strategy and Leadership Institute and the Hong Kong Economic and Trade Office in Singapore today (November 25):

Dr Susan Cheah, distinguished guests, ladies and gentlemen,

Good afternoon. I am very pleased to be in Kuala Lumpur again. Although this is my first official visit in my capacity as Secretary for Justice, I have been here a number of times on holiday. I first set foot in Kuala Lumpur about 20 years ago when I was still in private practice. I was instructed to act for a Malaysian businessman in litigation with a bank in Hong Kong. I have very vivid memory of being taken to the street market to taste the local durian and mangosteen, and had my shirt all stained red.

Before I go any further, may I, first of all, thank the ASLI and our own Economic and Trade Office in Singapore for organising this business luncheon. And thank you all of you, ladies and gentlemen, for attending.

Close Links between Hong Kong and Malaysia

With the US and Europe still struggling to recover from the financial turmoil and the more recent sovereign debt crisis, Asia is undoubtedly assuming a more and more central position in the world economic order. The Asian economy combined is now comparable to that of the US in size. Currently, the Asia-Pacific Region accounts for over 43% of total world trade. And more importantly, Asia is growing fast. The IMF has forecast GDP growth in Asia to reach 7.1% this year, which is higher than the world average of 4.8%.

It is therefore natural and important for the economies in the Asia-Pacific Region to strengthen their partnership. Hong Kong and Malaysia have enjoyed a longstanding close economic relationship.

In 2009, Malaysia was our 10th largest trading partner, and we were Malaysia's eighth largest trading partner. In respect of the volume of bilateral trade between the two places, after a brief drop in 2009 due to

the global financial crisis, it rebounded significantly in the first nine months of 2010, with an increase of 31% when compared to the same period in 2009.

Apart from trade, we are a major source of investment for each other. In 2008, Malaysia was the 14th major source of inward direct investment into Hong Kong, and ranked 10th as the major destination of Hong Kong's outward direct investment.

Just within last year, three agreements were signed to strengthen our economic cooperation and to foster closer ties in the development of the financial services industry and the Islamic capital market. As pointed out by our Financial Secretary, Mr John Tsang, at a luncheon speech during his visit to Kuala Lumpur earlier in March this year, these recent financial liberalisation measures in the two places have "opened the door to new opportunities for even greater co-operation".

#### Rule of Law as bedrock of Hong Kong's success

In a talk given in Hong Kong, Mr Justice Kennedy of the US Supreme Court shared with us his thoughts when he looked out the window of the Mandarin Oriental in Central Hong Kong and saw the magnificent skyscrapers. What he admired was not just the architectural and engineering achievement, but also the legal expertise that contributed to the accomplishment, in terms of the signing of complex contracts, closing of numerous deals, the raising of substantial funds, and the resolution of inevitable disputes, and the sound supervision of the financial institutions.

Since we were reunited with the Mainland in 1997, Hong Kong has remained the world's freest economy in each of past 13 years, according to the US-based Heritage Foundation. The recently released Global Financial Centres Index ("GFCI") confirmed that Hong Kong's status as a global financial centre is on par with London and New York. Hong Kong now occupies third place in the global financial market and is only within 10 points of New York and London on a scale of 1,000 in the GFCI.

Indeed the legal infrastructure and capability of Hong Kong is the lynchpin of our success and our key competitive edge. Hong Kong is absolutely unique in the world as the most international city of the People's Republic of China, and a global financial centre run on a separate common law system with high degree of autonomy.

## Enriching common law

Continuation of common law in Hong Kong is guaranteed by the Basic Law, the constitution of the Special Administrative Region. But the common law is not only "preserved". It is actually enriched and liberalised, attaining a more international jurisprudential repertoire. As provided for under the Basic Law, precedents from other common law jurisdictions can be referred to in our courts.

## Court of Final Appeal

Judicial independence is guaranteed under the constitution. But the truly special feature of our new judicial system is the setting up of Hong Kong's own Court of Final Appeal, which is also unique in the world. The court is headed by the Chief Justice. There are three permanent judges, and a panel of non-permanent judges from Hong Kong and other common law jurisdictions, including serving Law Lords from the UK and former Chief Justices of the High Court of Australia.

Judgments of the Court of Final Appeal have been well regarded internationally and some, such as the ones on the defence of fair comment in defamation, the doctrine of substantive legitimate expectation in public law, and the interpretation of tax statutes, have been cited in other common law jurisdictions contributing to the development of the common law in other parts of the world.

Our Judiciary is trusted not just by the people of Hong Kong but also by the international business community. The Court, apart from maintaining a very high standard, initiates reforms to improve access to justice. For example, the Civil Justice Reform recently implemented put a strong emphasis on encouraging settlement of dispute by the use of alternative dispute resolution, in particular, mediation.

## Protection of human rights

Another reason why the international business community reposes confidence in our legal system is the comprehensive human rights protection under the Basic Law. There are 19 articles in the Basic Law guaranteeing fundamental human rights and freedoms, and major international covenants such as the ICCPR (International Covenant on Civil and Political Rights) are applicable in Hong Kong. These rights include the protection of rights

to property. The constitution also provides that the ownership of enterprises and the investment from outside Hong Kong shall be protected by law.

Judicial reviews based on the rights provided for in the Basic Law have mushroomed in the past 13 years. The Courts have upheld some and dismissed others. It demonstrates vividly the effectiveness of the Basic Law in protecting the rights as well as the integrity of our courts in adjudicating over difficult cases of constitutional significance.

#### Legal profession

A legal system could not work well without the support of top-class practitioners in the legal profession. In Hong Kong, our legal profession remains strong, independent and international. There are now about 6,700 solicitors and 1,100 barristers practising in Hong Kong. On top of that, we have over 1,200 registered foreign lawyers from various jurisdictions working in Hong Kong. The profession provides a wide spectrum of expertise to a variety of private and corporate clientele.

#### Corruption-free

Another key strength of Hong Kong which is closely connected with our legal system is our zero tolerance on corruption. Thanks to the work of the Independent Commission Against Corruption (ICAC), and to the support of Hong Kong's people, our city is free of any systemic and syndicated corruption. As an anti-corruption agency, the ICAC has become a model for many other such organisations. In Hong Kong, apart from enforcing the anti-corruption legislation, the ICAC has done a lot in terms of community education and prevention work to fight against corruption. The ICAC also attaches much importance to international cooperation, which is essential at a time when crime has become a global phenomenon and corruption crosses national borders.

#### Hong Kong as an international city

International cooperation is of course key to many more areas. In fact, the greater challenge for Hong Kong is how to position itself against the new global economic order I mentioned earlier. With the Mainland stretching her economic prowess into the global economic arena, how can Hong Kong maximise its inherent and strategic advantages to achieve a win-win situation for all?

First and foremost, Hong Kong will continue to strengthen its international status in order to secure a leading position as a global financial and business centre.

Thanks to the foresight of the "One Country, Two Systems" principle, the framework for Hong Kong to maintain its international links has been suitably featured in the design of the Basic Law. The Central Government is responsible for defence and foreign affairs. However, under the Basic Law, Hong Kong has been authorised to conclude and implement agreements with foreign states and regions and relevant international organisations in the economic, trade, financial, monetary, shipping, communications, tourism and cultural fields.

It is on that basis that Hong Kong is, for example, a separate customs territory and a separate member of the World Trade Organization and an associate member of the International Maritime Organization.

Since 1997, Hong Kong has negotiated and concluded over 180 bilateral agreements with around 70 foreign governments. These agreements cover various areas, such as air services, reciprocal judicial assistance and extradition. For example, we entered into an agreement with Malaysia on mutual legal assistance in criminal matters in October 2006, which came into effect in February 2008. A Protocol to promote more effective implementation of the agreement between the two places on surrender of fugitive offenders also entered into force in November 2007.

As it may be of bigger interest to the business community of Malaysia, I should add the latest example of a Joint Declaration on Strengthening Economic Cooperation entered into between Hong Kong and Malaysia at the margins of the Seventh Ministerial Conference of the WTO in December 2009. It lays the foundation for future discussion of a possible bilateral free trade agreement between Hong Kong and Malaysia.

Apart from bilateral agreements, a total of 240 multilateral treaties continue to apply to Hong Kong. They cover a vast spectrum of subjects such as merchant shipping, human rights protection, intellectual property rights and private international law. Almost one-third (some 75) of these agreements do not apply to Mainland China. Nonetheless, the Central Government accepts responsibility, as the State Party, for the implementation of all such treaties in Hong Kong.

In recent years, particularly in the post 9-11 era, Hong Kong has been active in international collaboration with other countries against terrorism, money laundering, corruption as well as trans-national crimes. In particular, Hong Kong has been an active member of the Financial Action Task Force, which is the leading international organisation specialising in anti-money laundering efforts.

The Basic Law also provides that representatives of the Hong Kong government may participate as members of the China delegation in organisations which are limited to States. A recent example is the G20 Leaders' Summit held in Seoul earlier this month, in which Hong Kong attended as part of China's delegation to discuss issues relating to the global economy and the G20 "Framework for Strong, Sustainable and Balanced Growth".

#### Hong Kong as Gateway to China

But, ladies and gentlemen, do remember Hong Kong is 100% part of China. No doubt, we have been a major beneficiary of the rise of the Mainland. China is no doubt the most important market and market maker today.

The free trade pact we signed with the Mainland in 2003, known as the Closer Economic Partnership Arrangement, or CEPA for short, and our ever-growing business and transport connections with our neighbouring Guangdong province, have unleashed new business opportunities for enterprises in the fast growing Mainland market, and indeed for many foreign companies incorporated in Hong Kong.

Hong Kong lawyers as well as other professionals are taking advantage of the CEPA to tap into China's service markets. By virtue of this Arrangement, we have an edge over other foreign lawyers in terms of association with Mainland Law Firms as well as greater latitude as to the legal practice in the Mainland. Up to July 2010, a total of 65 representative offices have been set up by Hong Kong law firms in 14 Mainland cities.

The Hong Kong legal profession consists of both local talents and experts from other jurisdictions who are well-versed with financial and international trade matters, many of whom have extensive experience in assisting the international business communities to establish their business in the Mainland or to collaborate with Mainland enterprises. With the added

advantage of sharing the same cultural heritage and speaking the same language as their Mainland counterparts, our legal professionals are well suited to assist the foreign business community, including that of Malaysia, to expand into the Mainland market.

#### Hong Kong as Leading International Arbitration Centre

Because of the unique position we occupy, it is the firm policy of the Hong Kong Government to develop Hong Kong into a leading regional dispute resolution centre.

To international businesses, Hong Kong is an ideal place to conduct arbitration, with its excellent facilities, highly qualified arbitration professionals, openness to professionals from elsewhere, and a mature and trusted legal system that is based on the common law.

Such advantages are further strengthened by the fact that Hong Kong arbitral awards are enforceable not only in more than 130 contracting states to the 1958 New York Convention, but that they are also enforceable in the Mainland China by virtue of a separate arrangement signed by my Department and the Supreme People's Court in 1999 to facilitate reciprocal enforcement of arbitral awards.

The Hong Kong International Arbitration Centre ("HKIAC"), our own home-grown arbitration body, just celebrated its 25th anniversary last week. The Centre handled over 300 international arbitration cases last year, which puts us, in terms of caseload, No 2 in Asia.

As large international arbitration cases involving Chinese parties are on the rise, some international arbitration bodies are already moving east into the Asia Pacific region. For example, the International Court of Arbitration ("ICA") of the International Chamber of Commerce ("ICC"), which is based in Paris, has opened its first ever branch of Secretariat in Hong Kong.

The Secretariat is serving the Asia Pacific Region and responsible for supervising ICC arbitrations in Hong Kong. This is a significant move by an international arbitration institution of high repute and a show of confidence in Hong Kong's position as a centre of dispute resolution.

Two weeks ago, Hong Kong reached yet another

milestone in its development as a world-class international arbitration centre with the enactment of a new Arbitration Ordinance. The Ordinance introduces a unitary regime for all types of arbitration on the basis of the UNCITRAL Model Law on International Commercial Arbitration. It will make our arbitration law more user-friendly to the international business community.

And four weeks ago, we also signed a Co-operation Arrangement with the China Council for the Promotion of International Trade. One of the aims of the Arrangement is to strengthen the cooperation between the Hong Kong arbitration and mediation bodies and their Mainland counterparts like the China International Economic and Trade Arbitration Commission ("CIETAC").

The arrangement is yet another confirmation of the role of Hong Kong in providing legal services for and fostering legal cooperation with the Mainland, as she continues to march into the global economy.

## Conclusion

Ladies and gentlemen, just as I was finalising the preparation of my trip, the Asian stock market suffered a significant set-back due to the military skirmishes on the Korean peninsula. As an international city with a very outward-looking economy, it is inevitable that Hong Kong is exposed to external turbulences. And, currently, like other Asian economies, Hong Kong is gearing up to tackle the effect of QEII, property speculation and inflation.

However, the experience in the past 13 years since the Re-unification testifies to the strength of Hong Kong and to the buttressing effect of our legal system. The implementation of the new constitutional order has not been challenge-free. There have been controversial litigations over the application of specific provisions of the Basic Law. And externally, we have also encountered global economic turmoil more than once.

However, our system has withstood these challenges. The rule of law and "One Country, Two Systems" are working very well, as confirmed by the reports prepared by independent outside observers including international rating agencies as well as the governments of US, UK and EU. There is no room for complacency. We will continue to be vigilant to safeguard what we already have, and to spare no efforts to ride on new opportunities. In a globalised world



economy, these pursuits will benefit not only Hong Kong, and the Mainland, but also our many close economic partners such as Malaysia.

Ladies and gentlemen, it only remains for me to thank you for your kind attention.

Ends/Thursday, November 25, 2010