

Speech by SJ at Hong Kong Association forum in London (English only)

Following is the speech delivered by the Secretary for Justice, Mr Rimsky Yuen, SC, at a forum organised by the Hong Kong Association in London yesterday (September 26, London time):

The Crucial Role of Hong Kong's Legal and Dispute Resolution Services in making it a Global Centre for Finance and Commerce

Mr Michael Thomas, distinguished guests, ladies and gentlemen,

First of all, thank you for giving me this opportunity to address this distinguished gathering of business and professional leaders. Hong Kong and Britain maintain close links in many areas and at different levels, whether in terms of trade or otherwise. We of course treasure such close ties, and we are indebted to efforts and contributions made by organisations such as the Hong Kong Association in enhancing such ties.

As a legal professional and the Secretary for Justice of Hong Kong, I naturally focus on the ties which are law-related. Partly for this reason and partly for the reason that Hong Kong is an international financial and commercial centre, I choose the topic "The Crucial Role of Hong Kong's Legal and Dispute Resolution Services in making it a Global Centre for Finance and Commerce" as the theme for discussion today.

Law and Economic Development

As once observed by Lord Bingham, the suggestion that the law has any contribution to make in the commercial context might surprise many businessmen, and indeed some businessmen's unswerving ambition is to have as little to do with the law and lawyers as they possibly can.

Indeed, early studies on economic development hardly focused on the role played by law or the legal system. However, as explained by Professor Douglas W. Arner, the Director of the Asian Institute of International Financial Law, in his work "Financial Stability, Economic Growth, and the Role of Law", the role for government is to create an appropriate environment to attract investments and support economic growth. The rule of law is a central component of such an environment and its establishment is a necessary precondition for sustainable, long-term economic growth.

Professor Arner is certainly not alone in holding this view. Professor Niall Ferguson, in his earlier work "Empire: How Britain Made the Modern World", highlighted the important role played by common law in providing protection for investors. In his more recent work, "Civilisation", Professor Ferguson examined the reasons which led to the dominance of some of the Western countries. His conclusion is that such dominance is a result of six "institutions and associated ideas and behaviours" - the six "killer apps", as Professor Ferguson vividly called them by using today's smart phone language ("apps" as in those software applications one can download to one's mobile phones). One of such "killer apps" is "the rule of law as a means of protecting private owners and peacefully resolving disputes between them".

In the case of Hong Kong, there is no doubt that the effectiveness of its legal system and legal infrastructure, including dispute resolution, played a crucial role in maintaining her competitiveness and maintaining her status as one of the leading global financial and commercial centres after New York and London.

A quick look at some of the leading international ratings will demonstrate this proposition. In the "Economic Freedom of the World: 2013 Annual Report" issued by the Fraser Institute earlier this month (September 18), Hong Kong

continues to be ranked as the world's number one free economy. In the World Competitiveness Report 2013 published by the IMD World Competitiveness Centre, Hong Kong also came first. In the "Global Opportunity Index: Attracting Foreign Investment" published by the Milken Institute in March this year, Hong Kong again came first in the context of attracting FDI. Behind these assessments and ratings, one common feature is that the institutes took into account the effectiveness of Hong Kong's legal environment, whether expressed as the "legislative framework", "legal enforcement of contracts", the "efficiency of legal framework in settling dispute" or otherwise.

Government Policy

Capitalising on our well-developed legal system and legal infrastructure, it is the steadfast policy of Hong Kong's current Administration, as well as one of the priorities of my department (the Department of Justice), to consolidate, maintain, enhance and promote Hong Kong as a centre for international legal and dispute resolution services in the Asia Pacific region.

Not only do we believe that Hong Kong has the necessary attributes to so position herself, we have no doubt that such a policy is in the best interest of Hong Kong whether in terms of short-term economic benefit, medium-term development or long-term strategic planning.

Amongst the multitude of relevant considerations, may I highlight two aspects for the purpose of this discussion.

First, Hong Kong is an established international financial and commercial centre. Such a status is absolutely vital to Hong Kong's sustainable economic growth. At this age of globalisation, it would be even more important to be as truly international as possible. The promotion of Hong Kong as a centre for international legal and dispute resolution

services in the Asia Pacific region serves to complement Hong Kong's status as a global centre for finance and commerce. The availability of top quality legal services can provide the necessary support to the business community, whether in terms of pre-transaction advice, preparation of transaction documentation, tax planning or corporate restructuring.

Another aspect that we can ill afford to neglect, let alone ignore, is commercial disputes. As pointed out by Lord Donaldson and stressed by Lord Bingham, bona fide disputes are inherent in business transactions, and that businessmen accept sensible resolution of disputes is an integral part of commerce. Accordingly, Hong Kong, as an international financial and commercial centre, has every reason to provide strong policy support for developing Hong Kong as a regional dispute resolution centre.

Second, the economic trend is also relevant. The Asia Pacific region has since become a very popular destination for investors, with China occupying the top position. In a report released by the World Bank in May this year, it projected a threefold increase over the current level in the investment flows into the developing countries and regions in the next 20 years. By 2030, China is anticipated to be the largest investor in the world, accounting for around 30 per cent of the global gross investment.

Put shortly, the global economic balance has shifted from the West to the East with the Greater China region being the key growth engine in the Asia Pacific region. What does this mean in terms of legal and dispute resolution services? The answer is obvious. The more economic and trade activities, the greater the need for legal and dispute resolution services. This also explains why international commercial arbitration and international investment arbitration are expected to be heading towards a golden age in the Asia Pacific region.

The next question is what does this mean to Hong Kong.

In my view, Hong Kong's unique position enables her to take full advantage of the future economic development in the Asia Pacific region. Hong Kong is and will continue to be an ideal place for setting up regional offices for commercial activities in the Asia Pacific region. She will continue to be a good and effective gateway into the Mainland and at the same time a springboard to the rest of the emerging cities in the region.

Apart from her reputation as a free economy and an international financial and commercial centre, it is important to note that Hong Kong is the only common law jurisdiction in the Greater China region where the rule of law is steadfastly maintained and the independence of our judiciary jealously safeguarded. Further, Hong Kong has a strong legal profession. As at August 20, 2013, Hong Kong has a total of 1,255 practising barristers, 7,652 practising solicitors and 1,250 registered foreign lawyers; in terms of law firms, there are a total of 815 Hong Kong solicitors firms and 68 registered foreign law firms. The presence of such an array of local and international lawyers enables Hong Kong to provide top quality legal services in numerous different areas to meet the need of the local and international business community.

Recent Development

Let me also take this opportunity to outline the recent development in Hong Kong concerning legal and dispute resolution services.

New Legislations

Legislative framework plays an important role in building an environment conducive to sustainable economic development. We naturally recognise that over regulation and excessive legislation will be counter-productive. On the whole, we endeavour to adopt the approach that legislation

will only be introduced when there are no other realistic alternatives. However, we remain vigilant to ensure that our legal framework will be updated so as to meet the needs of the ever changing society.

We have recently undertaken a massive exercise to rewrite the Companies Ordinance. The new Companies Ordinance, which draws on experience from other common law jurisdictions including Britain and Australia, was passed in July 2012. This new Ordinance, together with the subsidiary legislations, are expected to come into operation in early 2014.

With a view to providing a level playing field for business activities, the Competition Ordinance was enacted in July 2012 and will be implemented in stages on dates to be decided. This new Competition Ordinance will provide the legislative framework to minimise anti-competitive conduct in a holistic manner.

I should also mention our recent trust law reform which will, among others, enable establishment of perpetual trusts and enhance the protection for beneficiaries and enhance the trustees' default powers and duties to better meet the needs of modern trusts. We believe the amended trust law will bolster the competitiveness of our trust services industry and strengthen our status as an international asset management centre.

Arbitration

In the context of arbitration, we have a revamped Arbitration Ordinance (Cap. 609), which came into effect in June 2011 and which unifies the regime of domestic and international arbitration based on the UNCITRAL Model Law on International Commercial Arbitration. Further amendment was introduced in July whereby provisions concerning enforcement of emergency reliefs granted by emergency arbitrators were introduced.

In addition, we have always put emphasis on strengthening the enforcement network of arbitral awards made in Hong Kong. In March last year, we had clarified with the Indian Government that Hong Kong arbitral awards are enforceable in India pursuant to the New York Convention framework. In January this year, we concluded a reciprocal enforcement and recognition arrangement with Macau. This arrangement was given legislative backing in the amendments to the Arbitration Ordinance made in July and is expected to come into effect later this year. With these further enhancements, the enforcement network is further expanded and Hong Kong arbitral awards can be enforced in over 140 different jurisdictions around the world.

Apart from the home-grown Hong Kong International Arbitration Centre which was established in the 1980s, the presence of internationally well-known arbitration institutions is another advantage enjoyed by Hong Kong.

In 2008, the International Court of Arbitration of the International Chamber of Commerce (ICC) opened in Hong Kong its first ever branch of the Secretariat outside its Paris Headquarters. Last September, the China International Economic and Trade Arbitration Commission (CIETAC) established its very first and so far the only arbitration centre outside the Mainland. Arbitral awards made by the CIETAC Hong Kong Arbitration Centre will be treated as any other arbitral awards made in Hong Kong, which means that the winning party can take advantage of the extensive enforcement network I mentioned earlier.

Looking ahead, we will continue to attract reputable international legal and dispute resolution institutions to establish presence in Hong Kong. In autumn last year, the Hong Kong Government announced its decision to allocate part of the former Central Government Offices to provide space for NGOs related to law and dispute resolution to enable them to

set up offices. This will help them to develop relevant services in Hong Kong, which in turn will fortify our status as the regional hub for international legal and dispute resolution services.

Mediation

Apart from arbitration, we are also very much committed to the promotion and development of mediation in Hong Kong. Our new Mediation Ordinance, which came into force on January 1 this year, provides a legal framework for the conduct of mediation with emphasis on the protection of confidentiality of mediation communications. In August last year, the Hong Kong Mediation Accreditation Association was incorporated. This industry-led body aims at providing an effective accreditation system which will ensure the quality of mediators, and is also tasked to look after matters concerning training standards and disciplinary matters. A Steering Committee on Mediation, chaired by me, was also set up at the end of last year. With the assistance of three sub-committees focusing on regulatory framework, accreditation and training as well as promotion and public education, this Steering Committee will monitor our legislative framework and explore new initiatives for promoting mediation.

Private International Law

Another area which I should also mention is private international law. Faced with the trend and consequences of globalisation and regional integration, the need to have a more effective and harmonious network of private international law becomes even more obvious than before. After considerable efforts, we managed to procure the setting up of the Asia Pacific Regional Office of the Hague Conference on Private International Law in Hong Kong. Through this regional office, Hong Kong will play a much more active role in furthering the harmonisation of private international law in the Asia Pacific region, whether in commercial activities

or otherwise.

Conclusion

Ladies and gentlemen, Hong Kong is an international city and will remain so. The current Administration of the Hong Kong Government fully appreciates the pivotal role played by the rule of law, the legal system and legal services in shaping the future of Hong Kong. Apart from endeavouring to make Hong Kong a just, fair and democratic society, we will spare no efforts to ensure that our legal infrastructure will stay at the forefront of international development so as to maintain and fortify Hong Kong's status as a global centre for finance and commerce.

On this note, may I conclude by reiterating my gratitude to those who organise this forum, and may I also wish the Hong Kong Association and all our friends here every success in all their future ventures.

Thank you.

Ends/Friday, September 27, 2013