

Speech by SJ at London Law Expo 2014 (English only)

Following is the speech delivered by the Secretary for Justice, Mr Rimsky Yuen, SC, at the London Law Expo 2014 held in London yesterday (October 14, London time):

Hong Kong as a Leading Centre for International Legal and Dispute Resolution Services

Distinguished guests, ladies and gentlemen,

It is my great pleasure to attend the London Law Expo 2014, which is well known to be Europe's largest law expo. Needless to say, I am also very honoured to be given the opportunity to address this distinguished audience.

Hong Kong has strong ties with the United Kingdom in many aspects. In the legal context, Hong Kong has a strong link with the United Kingdom for a long time. This link continues after Hong Kong ceased to be a British colony and became a Special Administrative Region (SAR) of the People's Republic of China in 1997. By reason of the "One Country, Two Systems" policy enshrined under our Basic Law (which is in effect the quasi-constitution of Hong Kong), our legal system and legal landscape continue to develop to meet both domestic and global challenges.

Capitalising on her robust legal system and modern legal infrastructure, Hong Kong has been positioning herself as a centre for international legal and dispute resolution services in the Asia-Pacific region for a considerable period of time. What I intend to do today is to highlight six reasons why you should consider choosing Hong Kong as a venue for international legal and dispute resolution services, and, in so doing, outline to you the relevant latest developments in Hong Kong.

First Reason: Geographic Location and Global Economic Trend

The first reason is Hong Kong's geographic location and the trend of global economic development.

If one rolls out the map, one can easily see that Hong Kong is not just a city at the southern part of China, but a city ideally located at the heart of Asia. With our world-class airport and over 100 airlines offering flights to about 180 locations, all Asia's key markets are less than four hours' flight away and half of the world's population is within five hours' flight time.

Geography is not the only consideration. Instead, Hong Kong's geographic location should be considered against the backdrop of economic development in the Asia-Pacific region. As observed in various economic reports, the Asia-Pacific region has since become the top destination for investors, with China occupying the top rank. A report released by the World Bank in May last year projected a three-fold increase of investment flows into the developing countries and regions in the next 20 years. By 2030, China is likely to become the largest investor in the world, accounting for 30 per cent of the global gross investment. It is therefore not surprising that some commentators observed that the global economic balance has shifted from the West to the East with China being the key growth engine in the Asia-Pacific region. Hong Kong, as a city of China with unique attributes, is both a gateway to China and a springboard to the rest of the Asia-Pacific region.

Economic development aside, there is also the ongoing process of globalisation and regional integration, which necessarily means that there will be more and more cross-border or international trade activities between jurisdictions in the Asia-Pacific region and those beyond.

One asks the question: What do all these changes mean to legal business and legal practice? The answer is obvious: the more economic activities, the stronger the need for legal

and dispute resolution services. In other words, the Asia-Pacific region is a huge market for legal and dispute resolution services, and with huge potential for future growth. Hong Kong, with her strategic location at the heart of the Asia-Pacific region and with the other reasons that I am about to outline, naturally stands out as an ideal venue for such services.

Second Reason: Hong Kong's Legal System

The second reason is Hong Kong's legal system, which has been a common law legal system for over a century. Hong Kong continues to be a common law jurisdiction after China resumed her exercise of sovereignty in 1997, and indeed is the only common law jurisdiction within the entire Greater China region.

I have no intention to suggest that common law is necessarily more superior to other systems of law. The point I wish to make is this: Common law is a system of law that is familiar to the international community, including the business communities in Western countries. Accordingly, by choosing Hong Kong as a venue for legal and dispute resolution services, one can avoid all the uncertainties and uneasy feeling one may naturally face when having to operate or resolve disputes in a jurisdiction whose legal system is completely foreign to the parties.

Third Reason: The Rule of Law and Judicial Independence

The third reason, which is related to the second, is the fact that Hong Kong is a jurisdiction which upholds the rule of law and enjoys complete judicial independence.

In this regard, I appreciate that queries have recently been raised as to the state of the rule of law or judicial independence in Hong Kong, especially after the issue of the White Paper by the State Council on "The Practice of the 'One

Country, Two Systems' Policy in the Hong Kong SAR". However, all those assertions and queries which sought to suggest that the rule of law and judicial independence in Hong Kong are being eroded are no more than mistaken perception. Not only is there no evidence to support such bare assertions, the objective circumstances point to the opposite direction, i.e. the rule of law and judicial independence in Hong Kong are as good as before.

As I will be speaking further on this topic tomorrow at another function organised by the Chatham House, I would for the present purpose only highlight the following aspects.

From the constitutional perspective, the rule of law and judicial independence are firmly guaranteed by our Basic Law. Amongst others, Articles 2 and 19 of our Basic Law provide in no uncertain terms that Hong Kong enjoys independent judicial power, including that of final adjudication.

Further, Article 82 of our Basic Law provides that the power of final adjudication of Hong Kong shall be vested in the Court of Final Appeal, which has taken over the role of the Judicial Committee of the Privy Council and has since acted as the final appellate court of Hong Kong. One important aspect to note is that Article 82 puts in place a unique arrangement which permits the invitation of judges from other common law jurisdictions to sit on the Court of Final Appeal.

Since the establishment of the Hong Kong SAR in July 1997, eminent judges and jurists from the United Kingdom, Australia and New Zealand have been invited to sit on our Court of Final Appeal. As a matter of fact, final appeals of all types of cases (including cases raising important constitutional issues or judicial review applications touching on important government policies) were and still are being heard by a panel of five judges, which invariably include one such overseas judge.

At the moment, we are privileged to have a total of 12 such overseas judges sitting at our Court of Final Appeal from time to time. They include Sir Anthony Mason, Lord Neuberger, Lord Hoffmann, Lord Millett, Lord Walker, Lord Collins, Lord Phillips, Lord Clarke and Mr Justice Gleeson.

One asks these questions: Would these eminent judges be willing to sit in our Court of Final Appeal if they do not enjoy judicial independence? Or would these eminent judges remain silent if they ever felt any form of interference in the discharge of their judicial duties? I don't think I need to tell you the answer. The fact that Hong Kong can continue to attract such eminent overseas judges to sit in our Court of Final Appeal is a strong testimony to the state of judicial independence and the rule of law in Hong Kong.

Other strong testimonies are extra-judicial observations made by the judges themselves. I guess many of you here are aware of the speech delivered by Lord Neuberger in Hong Kong on August 26 (Note 1), during which His Lordship queried whether there is anything to worry about in the White Paper issued by the State Council.

Further, allow me also to quote from a speech made by Mr Justice Patrick Chan, a former Permanent Judge of the Court of Final Appeal, delivered at his Farewell Sitting on October 18 last year. Mr Justice Chan was appointed as a judge in 1987 and has served under four Chief Justices of Hong Kong (including the current one). In his farewell speech, Mr Justice Chan said as follows (Note 2):

"There is one thing I have wanted to say for a long time to those who still perceive any doubt about the independence of our Judiciary. Since 1995, I have been involved in the selection of judges, either as a member of the Judicial Service Commission or the Judicial Officers Recommendation Commission or the Judiciary's internal selection committee. I can bear witness to the fact that there has never been any

interference from any quarter or any person in the appointment of judges. All my colleagues were appointed on their own merits."

In short, you can be reassured that the Hong Kong SAR Government will continue to make every effort to protect and uphold the rule of law as well as to ensure judicial independence, as they are the core values shared by the entire community of Hong Kong.

Fourth Reason: Strong Team of Local and Overseas Professionals

The fourth reason is the presence of a strong team of legal and dispute resolution practitioners, who can offer professional services on various different areas of law and dispute resolution.

As at September 26, 2014, there were a total of 1,294 practising barristers in Hong Kong. As regards solicitors, there were a total of 829 local solicitors firms and a total of 8,101 solicitors with practising certificates which enabled them to practise Hong Kong law. In addition, there were 80 foreign law firms offering services of the law of their respective jurisdictions, and a total of 1,334 registered foreign lawyers. These registered foreign law firms and foreign lawyers came from an array of different jurisdictions including the United Kingdom, the United States, Italy, France, Germany, Japan, Canada and the British Virgin Islands.

On top of lawyers, we also have both local and overseas dispute resolution practitioners such as arbitrators and mediators. I shall come back to this when I deal with dispute resolution in the latter part of this speech.

From the point of view of the end users, there is a wealth of expertise and experience in Hong Kong which can meet their needs. From the point of view of legal and dispute resolution

practitioners in the United Kingdom and other jurisdictions, there is plenty of room of co-operation with their counterparts in Hong Kong, whether on an ad hoc or long-term basis, which I am sure will create synergy and consequential benefits to the clients.

Fifth Reason: Government Policy

The fifth reason is strong government support. As I stated at the outset, Hong Kong positions herself as a leading centre for international legal and dispute resolution services in the Asia-Pacific region. Over the past decades or so, this objective has become one of the top policy initiatives of our Government. To demonstrate the importance we attach to this policy, clear statements were made to such effect in the 2013 and 2014 Policy Addresses by our Chief Executive, as well as the 2014 Budget Speech by our Financial Secretary (which are three of the most recent and highest-level policy documents of our government).

Given the top priorities we accord to this policy objective, the Hong Kong SAR Government has spared no efforts to enhance our competitiveness in this regard. I shall give you some examples of our efforts when I turn to the next reason.

Sixth Reason: Robust Infrastructure

This brings me to the sixth and final reason, namely Hong Kong possesses a modern and robust infrastructure which supports the effective provision of international legal and dispute resolution services.

Starting, if I may, with arbitration. We have been working continuously to enhance our arbitration law. The existing Arbitration Ordinance, which came into effect in June 2011, unifies our previous domestic and international arbitration regimes on the basis of the 2006 version of the UNCITRAL Model Law on International Commercial Arbitration.

Hong Kong is amongst the first jurisdictions in the world, and indeed the first jurisdiction in Asia, to adopt the 2006 version of the UNCITRAL Model Law. By so doing, not only do we stay at the forefront of the international arbitration arena, we operate under an arbitration regime which the international community will find familiar and reliable.

At the same time, we also keep a close eye on developments in the arbitration sector. One example is the recent amendments made to the Arbitration Ordinance so that any emergency relief granted by an emergency arbitrator is enforceable under the Arbitration Ordinance.

General recognition and enforceability of arbitral awards in other jurisdictions are the major considerations when parties decide where to arbitrate. In this regard, Hong Kong has an extensive enforcement network. As of now, Hong Kong arbitral awards are already recognised and enforceable in about 150 jurisdictions under the New York Convention, including Mainland China.

Another edge of Hong Kong is the presence of both a local arbitration centre and also branch offices of world-class arbitration institutions:

(1) The home-grown Hong Kong International Arbitration Centre, which was established in 1985, serves as an independent dispute resolution body with modern hearing facilities. It maintains a panel of arbitrators which comprises leading local and overseas arbitrators with a great diversity of backgrounds and expertise.

(2) In 2008, the International Court of Arbitration of the International Chamber of Commerce set up in Hong Kong its first ever branch of the Secretariat outside the Paris headquarters. Such a move represents a vote of confidence on Hong Kong's status as an arbitration centre in the region.

(3) In September 2012, the China International Economic and Trade Arbitration Commission (commonly known as CIETAC) established a branch centre in Hong Kong, also its very first arbitration centre outside the Mainland. One point to note is that the arbitral awards made by the CIETAC Arbitration Centre in Hong Kong are subject to Hong Kong law and are enforceable in the Mainland pursuant to the New York Convention.

(4) Next month, the China Maritime Arbitration Commission will also be setting up a branch office in Hong Kong, again its very first branch office outside the Mainland. This development will naturally strengthen our competitiveness in the context of maritime arbitration.

(5) Further, I should add that negotiations with the Permanent Court of Arbitration (which, as you know, is a well-known international arbitration institution based in the Hague) on the terms of a host country agreement on the conduct of dispute settlement proceedings in Hong Kong as well as a Memorandum of Administrative Arrangements have recently been concluded. The formal signing of these documents will soon take place. We are confident that the conclusion of this arrangement will further and better facilitate the hearing of international disputes, especially international investment arbitrations, in Hong Kong.

Another latest development I must add is this. Not long ago, the Hong Kong SAR Government announced its decision to allocate part of the space in the former Central Government Offices, together with the entire building currently occupied by our Court of Final Appeal, for organisations related to law and dispute resolution to set up their offices. The intention is to convert the entire area to become the legal hub of Hong Kong. This, we believe, will in turn enhance our competitiveness in the international arena.

Apart from arbitration, Hong Kong is committed to the

promotion and development of mediation. Our new Mediation Ordinance, which came into operation on January 1, 2013, provides a legal framework with emphasis on the protection of confidentiality of mediation communications. In this regard, Hong Kong is one of the few jurisdictions in the Asia-Pacific region which have a standalone legislation on mediation.

We are fully conscious of the importance of the quality of mediators. To this end, the Hong Kong Mediation Accreditation Association was incorporated in August 2012. This industry-led body aims at providing an effective accreditation system which will ensure the quality of mediators. Further, in order to better promote the future development of mediation in Hong Kong, we have set up a Steering Committee on Mediation comprising mediation specialists and representatives from key stakeholders. Under this Steering Committee are three sub-committees which are tasked to oversee regulatory regime, accreditation, training and discipline, as well as publicity and promotion. One of the projects currently undertaken is the study on the desirability of introducing an apology legislation in Hong Kong, since making an apology at the right time can be highly conducive to the conclusion of an amicable settlement.

Conclusion

Ladies and gentlemen, Hong Kong has the highest number of corporate headquarters in the region and is Asia's leading financial and commercial centre. Hong Kong is also a vibrant cosmopolitan city full of energy and opportunities. With her robust legal system and legal infrastructure, Hong Kong can offer a wide spectrum of international legal and dispute resolution services. For those who are end users of such services, I would urge you to choose Hong Kong when the need arises. For those who are legal and dispute resolution practitioners, I would invite you to advise your clients to consider Hong Kong when there is a need to seek legal and

dispute resolution services in the Asia-Pacific region.

On this note, it remains for me to wish this Law Expo another year of success, and also to wish you all a very fruitful conference today.

Thank you.

Note 1: The speech, entitled "The Third and Fourth Estates: Judges, Journalists and Open Justice", delivered on August 26, 2014, at the Hong Kong Foreign Correspondents' Club, is available at the website of the UK Supreme Court.

Note 2: Farewell Sitting for the Honourable Mr Justice Chan PJ (2013) 16 HKCFAR 1012, para. 10 at 1019.

Ends/Wednesday, October 15, 2014