

**Speech by Mr Wesley Wong, SC  
Solicitor General, Department of Justice  
at the 2015 (4<sup>th</sup>) Annual Conference of In-house Lawyers  
on 4 September 2015 organised by the  
Law Society In-house Lawyers Committee**

Good morning, Ms Pang, Ms Tsui, Distinguished Guests, Ladies and Gentlemen,

It gives me enormous pleasure to address this distinguished assembly of legal brains at my maiden speaking engagement as Solicitor General. I can hardly imagine a more fitting occasion to associate myself with a conference such as this organised under the umbrella of the Law Society when I, for one, have been an in-house lawyer by career since my appointment as a legal officer well over twenty years ago.

2. As Solicitor General, I do not think I can possibly be excused for not saying anything about the development of Hong Kong's legal and dispute resolution services. In fact, this is an important part of the work of the Department of Justice.

**The Rule of Law as pivot to Hong Kong's stability and prosperity**

3. Before I go straight into that, I cannot emphasise enough the importance of the rule of law and that it is the cornerstone on which we have been building our community, a community of which we are all part proudly as its citizens. The rule of law, as we know it, means more than just that the power of government must be derived from the law and exercised in accordance with it. It also dictates that all persons, regardless of race, sex, status (social or financial) and creed (political or religious), are equal before the law. The rule of law further demands that the courts must be able to adjudicate in an environment where judges can dispense justice impartially and independently. It is the bedrock of Hong Kong's continued success as a leading and trusted global financial and commercial centre.

4. The embodiment of the principle of “One Country, Two Systems” can be found in the Basic Law for which we have just celebrated the 25<sup>th</sup> anniversary of its promulgation. The constitutional framework for Hong Kong as a Special Administrative Region of the People’s Republic of China is underpinned by it. What ensures that the legal system in Hong Kong gives effect to the rule of law also stems from the Basic Law itself. Hong Kong therefore enjoys a high degree of autonomy and is permitted to maintain its own common law system with which the international community is familiar.

5. The guarantee of fundamental rights and freedoms of all Hong Kong residents (not just permanent residents) is enshrined at a constitutional level here because these rights have been incorporated into the Basic Law. Article 4 of the Basic Law provides that Hong Kong shall safeguard the rights and freedoms of the people in Hong Kong in accordance with law. There are 19 articles in the Basic Law on fundamental human rights and freedoms. Furthermore, the provisions of the two international covenants, one on civil and political rights and the other on economic social and cultural rights, and international labour conventions as applied to Hong Kong are entrenched in the sense that they prevail over local laws. Rights to property, the ownership of enterprises and investment from outside Hong Kong are particularly mentioned as protected by law.

6. The Government may only formulate policies and propose legislation which are not in contravention with the Basic Law. The exercise of governmental powers is subject to restraints of the law. The courts in Hong Kong exercise judicial power independently, free from any interference. My experience as a civil litigator and prosecutor myself tells me that judicial independence is well and kicking.

7. The fact that all types of disputes, be they those with big businesses, with individuals or with the government, can be fairly and impartially decided by an independent judiciary continues to serve not only as a major attraction for international businesses to invest and conduct important transactions here but also as an enticer to talents from all over the world to work and study here.

8. The recent Occupy Movement may have heightened disharmony between groups subscribing to different viewpoints and created disruptions to people's everyday lives to levels not experienced in decades. Be that as it may, the fact that it had ended peacefully is testament to our ability to uphold and conviction to adhere to the rule of law even in times of tremendous difficulties. That is why I said I cannot emphasise enough the importance of the rule of law to Hong Kong's continued success. In understanding and reflecting upon the meaning of the rule of law, the need on everyone's part to appreciate the importance of judicial independence and one other underlying factor is crucial.

9. The overarching importance of judicial independence is perhaps obvious to all of us here. That is why you may not be in any way surprised when the Department of Justice, determined as it is in upholding the rule of law in Hong Kong, will be the first to defend judicial independence against irresponsible criticisms, abusive attacks and other unwarranted conduct which would undermine the independence of the judiciary and public confidence in the administration of justice. What then is the other underlying factor?

### **A strong and diversified legal profession**

10. That other underlying factor is no other but Hong Kong's strong team of legal professionals and dispute resolution practitioners. Each and every one of you should rightly be congratulated and acknowledged for discharging your role professionally. That one may be acting for one client only because he or she is employed by a public authority or a corporation does not make it any different. All lawyers must uphold the high standards expected of them.

11. The setting up of the Law Society's own In-house Lawyers Committee in 2011 demonstrates in its own way that you are a vital part of the legal industry. Together with the over 1,300 practising barristers, 8,400 practising solicitors and close to 1,300 registered foreign lawyers as at August 2015, you – we have just heard that the population of in-house lawyers is 1,200 strong – are the other significant factor in contributing to the maintenance of the rule of law in Hong Kong.

12. If you are an in-house lawyer, you are at the same time a provider of legal services as well as a consumer of the wide range of specialist help which Hong Kong's 850 solicitors firms, 78 registered foreign law firms and 134 sets of barristers' chambers may have to offer. That there is readily available in Hong Kong top quality legal expertise that may be required by parties involved in even the most sophisticated commercial transactions is pivotal also to our success as a leading centre of international legal and dispute resolution services in a Hong Kong where the rule of law thrives.

13. You are part of this large pool of talents. Built on objective entry criteria, our legal professionals are able to provide a wide spectrum of expertise in different areas of law. Our lawyers and our legal institutions are fundamental in upholding the rule of law in Hong Kong. This is vital for Hong Kong if we wish to remain as an international financial and commercial centre and also its cosmopolitan lifestyle. Hong Kong, however, cannot afford to be complacent about what we have achieved.

## **Improving the regulatory framework**

### ***Limited Liability Partnership***

14. Keeping our legal system competitive and in line with international development is vital to our continued success as a hub for legal and alternative dispute resolution services in the Asia-Pacific region. We have been working closely with the legal professional bodies to improve the regulatory framework within which lawyers and professionals in other streams can provide their services in Hong Kong.

15. The *Legal Practitioner (Amendment) Ordinance* passed in 2012 allows law firms in Hong Kong (including registered foreign law firms) to practise in the form of a limited liability partnership ("LLP"). This serves to attract legal talents from outside Hong Kong to establish their practice here as well as encourage the amalgamation of small local firms into larger ones that have the capacity to offer one-stop and all-round legal services to clients.

16. Unlike a general partnership, partners of an LLP are generally not jointly and severally liable to clients for the professional default of their fellow partners. Having said that, there are a number of built-in consumer protection measures, including additional indemnity coverage for claims and mandatory compliance with certain disclosure and notification requirements under the Ordinance. With the relevant subsidiary legislation in place and with the agreement of the Law Society, we wish to bring the Ordinance into operation by early next year.

### ***Solicitor Corporations***

17. The *Legal Services (Miscellaneous Amendments) Ordinance 1997*, as amended by the *Statute Law (Miscellaneous Provisions) Ordinance 2012*, provides the legal basis to enable solicitors to incorporate their practice as limited companies.

18. When the relevant legislation for LLP and solicitor corporations comes into operation, solicitors may choose a business model that best suits their practice. This will hopefully translate eventually to wider consumer choices, enhancing Hong Kong's overall competitiveness in the provision of legal services.

### **Class Actions**

19. On the proposal of introducing a class action regime in Hong Kong, starting first with consumer cases as a pilot, I am taking over chairmanship of a Working Group – by the way, it is meeting again next week – to consider the recommendations made by the Law Reform Commission in its report on class actions published in May 2012.

20. In a nutshell, a class action is a legal procedure which enables the claims of a number of persons against the same defendant to be determined in one legal suit. There are many advantages associated with a class action regime such as improved access to justice for members of the public who could not otherwise afford to bring an action themselves individually against such

defendant, increased judicial economy, avoidance of multiple related lawsuits, to name just a few. As one can, on the other hand, expect, there are, understandably, controversies on the proposal particularly over concerns that a class action regime might facilitate unnecessary and unmeritorious legal proceedings, and become a major disincentive to investments in Hong Kong.

21. I am sure that as in-house lawyers, you have a keen interest over this matter, having its own impact on the business community in Hong Kong especially in relation to litigation risks. I look forward to hearing your valuable insights in the consultation exercise on the proposals to be conducted in due course.

## **Arbitration**

22. Many of you would agree with me that arbitration is a better choice of dispute resolution for commercial disputes. Some of the major advantages of choosing arbitration over litigation are these: confidentiality, cost-effectiveness, free choice of venue and the legal seat of arbitration, free choice of expert arbitrators, flexibility of the arbitral process, limited rights of appeal which favour finality of arbitral awards and ease of enforcement of arbitral awards.

23. The Department of Justice spares no efforts in the promotion of arbitration as an alternative method of dispute resolution not only in Hong Kong but in the Mainland and other jurisdictions in the Asia-Pacific region and beyond.

### ***Advisory Committee on Promotion of Arbitration***

24. To facilitate the overall co-ordination and strategic planning for the future development and promotion of arbitration services, the Department of Justice set up, in December 2014, the Advisory Committee on Promotion of Arbitration chaired by the Secretary for Justice himself. One of the key functions of the Advisory Committee is to serve as a forum for discussing such issues, including the promotion of arbitration, as may be raised by the legal and dispute resolution sectors.

### ***Arbitration Study***

25. To promote wider use of Hong Kong's arbitration services, we are collaborating with the Hong Kong Trade Development Council to conduct a comprehensive study on the development of arbitration in Hong Kong so as to identify: (a) the benefits to, and challenges faced by, Hong Kong in promoting arbitration; and (b) the ways and means for the Government and relevant stakeholders to enhance Hong Kong's position as a venue for international arbitration.

26. We hope that the findings and recommendations from the study will greatly assist our long-term policy planning and strategic development of Hong Kong's arbitration services.

### ***Development of specialised areas of arbitration***

27. We are also working alongside the relevant stakeholders in enhancing Hong Kong's capability in specialised areas of arbitration, such as investment arbitration and maritime arbitration.

28. In 2013, the Permanent Court of Arbitration ("PCA") conducted an arbitration hearing in Hong Kong. This was a state-investor arbitration case which was also the first such hearing conducted in Hong Kong. The PCA, which has a history of over 100 years, has an excellent reputation in handling international investment arbitration, and is a leading international institution with its headquarters in The Hague.

29. In January 2015, a Host Country Agreement between the Central People's Government and the PCA on the conduct of dispute settlement proceedings in Hong Kong and a related Memorandum of Administrative Arrangements concerning such proceedings between the HKSAR Government and the PCA were signed. The signing of these two documents will facilitate the conduct of PCA-administered arbitration in Hong Kong, including state-investor arbitration. By paving a smoother path for those who wish to choose Hong Kong as the venue for PCA-administered arbitrations in the future, closer

cooperation between the Department of Justice and the PCA would provide opportunities for Hong Kong-based legal practitioners to develop their skills in investment arbitrations and diversify their arbitration practices.

30. Investment arbitration aside, Hong Kong has a long tradition as a regional maritime hub. In fact maritime arbitration would be familiar to those of you who work for shipping companies. That said, in order to respond to stiff competition from other jurisdictions in the region, we consider that Hong Kong should take every opportunity to showcase our ability to provide first class arbitration services in maritime disputes and keep our edge.

31. For example, at the Legal Services Forum held in Qingdao last September organised by the Department of Justice, we included a maritime arbitration session in which experienced Hong Kong maritime arbitrators shared their expertise and knowledge with a Mainland audience. The Department of Justice also supported the holding of the 19<sup>th</sup> International Congress of Maritime Arbitrators held in Hong Kong in May this year. We are also working closely with the Transport and Housing Bureau in promoting Hong Kong's maritime arbitration services through events such as the annual Hong Kong Asian Logistics and Maritime Conference hosted here.

### ***Promotion of Hong Kong's arbitration services overseas***

32. Promoting Hong Kong as a hub for international legal and arbitration services overseas is another important task undertaken by the Department of Justice. In the last three years, places visited by the Secretary for Justice and representatives of the Department of Justice include Singapore, The Hague, London, Seoul and New Delhi. In recent years, the Department of Justice held promotional seminars in emerging economies, including Vietnam, Cambodia and Myanmar's. Later this month, a Hong Kong delegation led by the Secretary for Justice will be visiting Jakarta, Indonesia to promote Hong Kong's legal and arbitration services.



## **Mediation**

33. Other than arbitration, the Government is also committed to the promotion and development of mediation services in Hong Kong and the Department of Justice has been active in this regard.

34. One of two notable achievements is the enactment of the *Mediation Ordinance* (Cap. 620) which took effect on 1 January 2013. The Ordinance provides a regulatory framework for the conduct of mediation in Hong Kong with express provisions in it to protect the confidential nature of mediation communications. The other is the formation of the Hong Kong Mediation Accreditation Association Limited (“HKMAAL”) in 2012 which has since come into operation in 2013. HKMAAL is an industry-led body serving accreditation and disciplinary functions. The aim is to ensure the public’s confidence in the mediation process and to help develop mediation services in Hong Kong.

35. The benefits of using mediation in resolving disputes are plain to see, especially when business relationship is valued by the parties and where both parties wish to protect the confidentiality of the dispute. It also has the potential commercial benefits of saving time and costs. As in-house lawyers, you may consider “Mediate First” when it is necessary to seriously consider and advise your companies on the means to resolve disputes even if mediation may not be a panacea to all types of disputes.

## **Apology Legislation**

36. As in-house lawyers, you would also likely be involved in preventing disputes in the first place or, when they present themselves, in avoiding their escalation. Sometimes this can be achieved by one of the parties making a timely apology as circumstances may require. This brings me to my next point which is about the proposed apology legislation.

37. As you may know, the Steering Committee on Mediation conducted a public consultation on the enactment of the apology legislation in

Hong Kong in June this year. Riding on overseas experience in similar legislation, a proposed apology legislation, if enacted, is likely to make changes in three aspects of applicable proceedings:

- (1) declarative aspect – to declare that an apology does not constitute an express or implied admission of fault;
- (2) relevance aspect – an apology is irrelevant to, and thus must not be taken into account in, any determination of fault;
- (3) procedural aspect – an apology is inadmissible as evidence of fault in connection with the matter for which the apology was given.

38. The proposed apology legislation would also provide that an apology shall not affect any insurance coverage that is, or would be, available to the person making apology and that an apology shall not constitute an acknowledgement of a right of action for the purposes of the *Limitation Ordinance* (Cap. 347).

39. It is hoped that these changes would remove the inertia against making apologies thereby changing culture and increasing the chances of apologies being offered. Studies have shown that timely and appropriate apologies would prevent the escalation of disputes and facilitate their amicable settlement. I am pleased to learn that most, if not all, of the feedback received are generally supportive of such legislation. The Steering Committee is now considering the feedback before submitting a final report to the Department of Justice for consideration. Please stay tuned on this matter.

## **Opportunities from Mainland Initiatives**

### ***“One Belt, One Road” and the Asian Infrastructure Investment Bank***

40. I do not think I can leave without saying anything about the opportunities available to Hong Kong lawyers in the Mainland. Two recent developments in the Mainland are worthy of mention. Both are expected to

provide valuable opportunities which lawyers as well as businesses may wish to seize, bearing in mind Hong Kong's rightful place as an effective springboard to the Mainland market.

41. With the introduction of the concept of the "Silk Road Economic Belt" and the proposal to construct a "21<sup>st</sup> Century Maritime Silk Road" by President Xi Jinping in 2013, what is more affectionately known as the "Belt and Road Initiative" is gradually taking shape as a strategic vision to foster closer cooperation between places far and near lying on two ancient economic corridors.

42. In March this year, the National Development and Reform Commission, the Ministry of Foreign Affairs and the Ministry of Commerce jointly released a broad blueprint, with a view to promoting trade links, capital flows, infrastructural investment and policy coordination with different places in Asia, Europe and Africa. This, in particular, includes the initiative to create the Asian Infrastructure Investment Bank, which will be the key financial institution supporting the development of the Belt and Road Initiative.

43. On 29 June 2015, representatives from more than 50 countries attended a signing ceremony for the Articles of Agreement of the Asian Infrastructure Investment Bank held in Beijing. It is reported that the Asian Infrastructure Investment Bank, which will be based in Beijing, is expected to be in operation by the end of this year.

44. The Belt and Road Initiative will open up immense business opportunities. The areas covered by it involve more than 60 countries and regions with a population of 4.3 billion people, accounting for 63% of the global population, and an aggregate GDP of over USD 20 trillion, representing around 29% of the global GDP. The implementation of this initiative will create huge opportunities for Mainland Chinese enterprises. They will no doubt actively explore new markets along the two corridors in the process of "going global".

45. Hong Kong can help contribute to the success of the Belt and Road Initiative. As stated in the blueprint, the Central Government would leverage on the unique role of Hong Kong and encourage Hong Kong's participation in and contribution to the Belt and Road Initiative. Hong Kong can act as a "super-connector" linking the Chinese mainland with the rest of the world in areas which Hong Kong enjoys comparative advantages.

46. One of Hong Kong's prominent strength is the abundance of world-class professionals with expertise in different areas such as law, banking, accountancy, shipping, construction etc. Our seasoned professionals can provide a full range of specialist services as required under the initiative.

47. In relation to legal and dispute resolution services, the related economic activities will create a huge demand for high-end cross-boundary legal and dispute resolution services, thereby providing ample opportunities for Hong Kong legal and dispute resolution professionals. Hong Kong's legal and dispute resolution professionals are already highly regarded in the Asia-Pacific region. They consist of local talents, experts, as well as highly qualified lawyers and professionals in other disciplines who have rich experience in financial and international trade matters, and can provide high quality legal and dispute resolution services in various specialised areas.

48. As I said at the beginning, Hong Kong is able to maintain its common law system with which the international community is familiar under the "One Country, Two Systems" concept. Ours is in fact the only common law jurisdiction within China. We also have the added advantage of sharing the same language and culture with the Mainland. Hong Kong will have a vital role to play in providing the requisite legal and dispute resolution services when the Mainland enterprises "go global" in pursuit of the Belt and Road Initiative.

49. The Department of Justice has been actively promoting Hong Kong's legal and dispute resolution services in the Mainland in the context of the Belt and Road Initiative. Seminars have been held in Chongqing, Chengdu, Beijing and Shanghai respectively. There are also plans to organise similar

seminars in other Mainland cities and in jurisdictions along the “Belt and Road”.

### ***The National Five Year Plan***

50. It is the long-term policy of the HKSAR Government to develop and promote Hong Kong as a leading centre for international legal and dispute resolution services in the Asia-Pacific region. This initiative has been stated by the Chief Executive in his last three Policy Addresses (i.e. 2013, 2014 and 2015). This initiative will be given a great boost if Hong Kong’s efforts are recognised and affirmed at the national level. The Government has therefore proposed to the Central Government to include in its 13<sup>th</sup> National Five-Year Plan a statement indicating clearly that the Central Government supports and endorses the positioning of Hong Kong as a centre for international legal and dispute resolution services in the Asia-Pacific region.

### **Looking Ahead**

51. Ladies and Gentlemen, the Department of Justice has been taking an active role in such ways we can in strengthening Hong Kong’s development as a regional hub for international legal and dispute resolution services. We will continue to listen to the views of the users as well as providers of these services, and to make timely efforts in enhancing Hong Kong’s strength and competitiveness by keeping an eye on the changing international legal landscape.

52. I know that the areas in which today’s Conference seeks to have its participants engaged cover a vast range of general and special topics of common interest, some of which not necessarily legal in nature. But it is precisely this kind of useful and free exchanges outside an office setting which has brought you all here to stocktake and to reflect on the way ahead. Together, I have full confidence that we can weave a network of mutual support, as this forum has done in past years, which makes the profession strong.

53. On this note, may I wish the Annual Conference another year of great success. Thank you.

#440150 v8