

**Speech by Mr Wesley Wong, SC
Solicitor General at
Russia – Hong Kong Business and Legal Summit
Organised by the HKIAC and Russian Arbitration Association
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“Role of Government in Economic Development”**

Good morning, Mr (Alexander) Kozlov (Consul General of the Russian Federation in the Hong Kong SAR and the Macao SAR), Mr (Vladimir) Khvalei (Chairman of Board, Russian Arbitration Association), Ms (Teresa) Cheng (Former Chairperson, HKIAC), Ladies and Gentlemen,

As Russian writer Leo Tolstoy said, “The key to success in life is using the good thoughts of wise people”, I am therefore most thankful that the Russian Arbitration Association (“RAA”) and the Hong Kong International Arbitration Centre (“HKIAC”) are putting this inaugural Business and Legal Summit together in Hong Kong so that we can share each other’s ideas. I do feel humbled to be given this opportunity to address an audience of such diverse background and interests assembled here today.

2. In fact, I cannot think of a more opportune time to have thought-leaders like you brought together to engage in high-level dialogue about the newly strengthened economic axis of trade between Russia and this part of Asia and to discuss investment opportunities and risks between the two regions. Whilst Asia has been regarded for some time as the powerhouse of global economic growth, Russia in its own right has been one of the world’s fastest growing economies. It is currently the 6th largest economy in the world. In 1998, the GDP¹ of Russia was around US\$1.25 trillion. By last year, it was already about US\$3.5 trillion. By 2019, it is expected to increase to almost US\$4 trillion, or more than three-fold the figures over some two decades.

3. Speaking for ourselves, Hong Kong’s total exports to Russia in 2016 have risen by 22% to US\$2 billion, with the majority being re-exports of Chinese origin. This should not come as any surprise given the close ties between the two countries in trade as well as in other spheres.

¹ All figures are adjusted by adopting purchasing power parity exchange rate without necessarily factoring in any inflationary effects.

4. You will soon hear more about the visionary Belt and Road Initiative proposed by Chinese President Xi Jinping in 2013 and its obvious impact over trade and investment involving Russia and other Asian countries along the two routes, many of which adopt Russian as their lingua franca or operates a legal system modelled after that of Russia's. I shall leave it to the distinguished speakers at the 1st session this morning which will begin shortly to provide us more insight into that aspect.

5. On the role of government in economic development, which is the topic I am asked to talk about, it may seem a contradiction in terms to trumpet what the government does in a market economy, especially in a place like Hong Kong where its capitalist way of life prior to its reunification with the motherland in 1997 and different aspects of economic freedom are preserved and protected on a constitutional level at the degree prescribed by our Basic Law which implements the policy of "one country, two systems".

6. On this, I can give you one very recent example as to how governments can play a positive role in facilitating mutually beneficial economic activities. It is the comprehensive double taxation agreement ("DTA") between Russia and Hong Kong which has just come into effect earlier this year² through which the tax liabilities of foreign investment of both places would accordingly be reduced.

7. As solicitor general, however, I suppose I would be better off confining myself to what the Department of Justice ("DoJ") has been doing to facilitate economic development, first, by maintaining the rule of law which is the cornerstone for Hong Kong being an international financial centre and, second, by enhancing our status as a leading international legal and dispute resolution centre for the Asia Pacific region.

A Legal Landscape conducive to Economic Development

8. A sound legal system where the rule of law can flourish is vital in fostering the growth of business and protecting the fruits of that growth. In

² The DTA was signed on 18 January 2016. It entered into force in Russia and Hong Kong on 1st January and 1st April 2017 respectively. For details of the DTA, please see *Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Russian Federation) Order*, Cap. 112CW.

this connection, the rule of law cannot flourish unless we have a government which supports and respects judicial independence and one which also works in partnership with the legal and dispute resolution services sectors.

9. In Hong Kong, we are blessed that the continuation of the common law system with which we are inherited is guaranteed under the Basic Law. Article 2 of it provides that the high degree of autonomy enjoyed by the HKSAR in terms of independent judiciary power includes the power of final adjudication. The rights to confidential legal advice, access to the courts (including taking the executive authorities before it) and choice of lawyers, etc. are specifically provided for under Article 35.

10. Detailed provisions under Section 4 of Part IV of the Basic Law governs the appointments, operation and other aspects of the Judiciary in such a way to ensure judicial independence and that our common law jurisprudence may continue to develop. This legal environment is conducive to free trade and the free flow of capital backed by a freely convertible currency without foreign exchange control. As the only common law jurisdiction in China, Hong Kong also operates as a separate customs territory and exercises its own immigration control. At the same time, rights to property, ownership of enterprises and investment from outside Hong Kong are all protected by law.

11. The HKSAR Government is not paying lip-service when it says it is committed to the rule of law. It abides by the decisions of the courts. Unless otherwise restricted by law, their reasoned judgments are publicly available after full arguments are ventilated in open court. Respect for the due process of the law and the outcome of judicial proceedings is fundamental, even if the government may find it inconvenient or the consequences not easy to bear. This, on the other hand, applies also to private individuals and commercial enterprises alike whatever their political persuasion and financial interests may be.

12. The confidence which our courts command is well-known. Their independence is acknowledged, for example, in the *Global Competitiveness Report 2016-2017* published by the World Economic Forum. Hong Kong ranks 8th in terms of judicial independence, being the third among common law jurisdictions and the only Asian jurisdiction within the top ten.

13. With the establishment of Hong Kong's own Court of Final Appeal since 1 July 1997, eminent judges and jurists from the United Kingdom, Australia and New Zealand have been invited to sit when hearing substantive appeals thereto. Many of the judgments from our highest court have become landmark cases within the common law world and are cited by superior courts and law reform commissions elsewhere. At the same time, reference is made to precedents from other common law jurisdictions in the adjudication of cases before our courts as is permitted under Article 84 of the Basic Law.

14. That the Washington-based Heritage Foundation has consistently named Hong Kong as the world's freest economy for the past 23 years is owed, in no small part, to our high-quality legal framework which has been praised as providing effective protection of property rights and strong support of the rule of law for our dynamic city.

Partnership with Stakeholders

15. As I have said earlier, it is also important that the government works in partnership with the legal and dispute resolution sectors to enrich choice and improve competitiveness of service providers. I emphasise the word "partnership".

16. Hong Kong has a strong legal profession comprising solicitors and barristers who are self-regulated respectively by the Law Society and the Bar Association. In formulating legal policies in this regard, the DoJ works together with the Law Society, for example, to modernise the practice model of solicitors so that limited liability partnership ("LLP") are now allowed. This business model limits the exposure of an innocent partner from the law firm's liability that arises from the provision of professional services as a result of the negligent or wrongful acts or omissions, or misconduct of another partner, an employee, agent or representative in an LLP who are not under his or her direct supervision. Since 1 March 2016, solicitors' firms and registered foreign law firms can now organise themselves as LLPs. I wish to pause here and explain that we have a large pool of 1,371 lawyers qualified in other jurisdictions who are registered with the Law Society to practise the law of their home jurisdiction in Hong Kong as registered foreign lawyers.

17. The introduction of LLPs serves to attract legal talents from all over the world to establish their practice here, as well as to 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. This can happen without undermining consumer protection because built-in measures, including additional indemnity coverage for claims and mandatory compliance with certain disclosure and notification requirements are put in place. While I speak, there are now already 13 solicitor's firms and 10 registered foreign law firms which are LLPs.

18. Likewise, we also work hand in hand with the arbitration and mediation communities to promote different methods of dispute resolution. This is after all part of the DoJ's steadfast policy to enhance Hong Kong's status as a leading international legal and dispute resolution services centre in the Asia Pacific region.

19. To achieve this, we actively encourage the use of arbitration, mediation (or a combination of both) as well as other methods to resolve local as well as cross-border civil and commercial disputes. This we do by first making sure that our legislative framework governing both arbitration and mediation are up-to-date and on par with international practices.

20. Hong Kong has for a long time benefitted from an extensive network for enforcement of arbitral awards worldwide. The application of the *New York Convention* was first extended to Hong Kong in the 1970s, and arbitral awards made in Hong Kong are enforceable in over 150 Contracting States to the Convention and vice versa. With Hong Kong and Macao's reunification with China, Hong Kong arbitral awards can also be enforced in the Mainland and the Macao SAR through arrangements made in 1999 and 2013 respectively between Hong Kong and these two jurisdictions for reciprocal enforcement.

21. Our arbitration law was revamped by re-enacting a new *Arbitration Ordinance* (Cap. 609) which came into effect in 2011. It is based on the 2006 version of the UNCITRAL Model Law on International Commercial Arbitration and seeks to provide a more user-friendly statutory framework to attract parties to choose Hong Kong as the seat of arbitration.

22. There are no restrictions on lawyers qualified elsewhere to participate in arbitral proceedings in Hong Kong. The *Arbitration Ordinance* allows a person, whether he is legally qualified or not and whether he is from Hong Kong or another jurisdiction, to be appointed by the parties of arbitral proceedings in Hong Kong as an arbitrator, advocate or expert witness. Parties in arbitration may appoint a person as an arbitrator regardless of the nationality and professional qualification of that person. Another salient feature of the Ordinance is that it provides for the powers of the arbitral tribunal and the court to make orders for interim measures of protection to support arbitrations. In 2013, amendments were made to the Ordinance to provide for the enforcement of emergency reliefs granted by an emergency arbitrator prior to the establishment of the arbitral tribunal.

23. We have also recently introduced into the Legislative Council two amendment bills to the *Arbitration Ordinance* on the arbitrability of intellectual property (“IP”) rights and third party funding of arbitration. With the increase in IP trading activities, there is a growing demand for IP dispute resolution services. However, at present, there is no specific provision in our statute book or authoritative judgment in Hong Kong concerning the arbitrability of IP rights. The proposed changes through the *Arbitration (Amendment) Bill 2016* therefore seeks to clarify that disputes over IP rights are capable of resolution by arbitration, and it would not be contrary to public policy to enforce an award solely because it involves an IP rights dispute. We believe that the amendments could clarify the legal position and thereby facilitate more parties to resolve their IP rights disputes by arbitration here.

24. With regard to third party funding of arbitration, it has become increasingly common over the last decade in many jurisdictions around the world. Potential claimants, who are in lack of financial resources, may wish to enter into third party funding arrangements in order to seek redress through legal proceedings. On the other hand, parties who do have the financial resources to fund contentious proceedings may also wish to seek third party funding as a financial or risk management tool.

25. In Hong Kong, the legal position as to whether the common law doctrines on maintenance and champerty prohibiting third party funding for court litigation also applies to arbitration and mediation is not entirely clear. To address this concern, the *Arbitration and Mediation (Third Party Funding)*

(Amendment) Bill 2016 will serve, first, to clarify that third party funding of arbitration and mediation is not so prohibited and, second, to provide for the related measures and safeguards. It will provide a framework by which standards and practices (including those on the financial and ethical dimensions) third party funders would generally be expected to comply with are to be set. I would like to add that the proposed amendments also apply to funding of services which are provided in Hong Kong for arbitrations taking place outside Hong Kong.

26. These two legislative proposals are brought as a result of the recommendations of a Working Party on the Arbitrability of IP Rights and a Sub-committee of the Law Reform Commission respectively through which stakeholders have been fully engaged. Completion of the relevant legislative work will enable Hong Kong to stay at the forefront of international arbitration practices and IP trading.

27. Before I move on to deal with mediation, I wish to mention that Hong Kong is also well-equipped and experienced in administering investor-state arbitration. Both the International Centre for Settlement of Investment Disputes (“ICSID”) and the Permanent Court of Arbitration (“PCA”) have used the excellent premises of the HKIAC (which you can now see for yourselves) to hold their hearings.

28. For ICSID, it has a standing arrangement to hold hearings at the HKIAC. In 2010 and 2012, an ICSID arbitral tribunal held hearings at HKIAC premises on the issues of jurisdiction of the tribunal and exclusion of evidence respectively. The claim was made by a US-owned power company against the Government of Cambodia in relation to the breach of agreements for the financing, construction and operation of a power plant in Cambodia.

29. As for the PCA, it has signed a cooperation agreement with the HKIAC in 2010, allowing each institution to hold hearings and meetings at the other’s premises and to assist with the arrangement of local support services for such events. In June to July 2013, the first investor-state arbitration case, involving the Government of Vietnam and a US investor, administered by the PCA was heard in Hong Kong at HKIAC premises.

30. 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. With the signing of these two documents, the conduct of PCA-administered arbitration in Hong Kong, including investor-state arbitration, can be further facilitated.

31. To promote the use of mediation, a regulatory framework for its conduct in Hong Kong is provided for by way of a dedicated *Mediation Ordinance* (Cap. 620) which came into force in 2013. In particular, it expressly protects the confidential nature of mediation communications and addresses issues on its admissibility in court proceedings.

32. Experience shows that the making of timely apologies can help prevent the escalation of disputes and facilitate their amicable resolution. The DoJ has therefore, after wide consultation, proposed the enactment of apology legislation in Hong Kong. The *Apology Bill 2017* will serve to alter the legal implications of the making of an apology. This is to be achieved by stating, for example, that it will not constitute an admission of fault or liability in judicial, arbitral and other identified proceedings and that the validity of any insurance coverage will not be affected.

33. In addition to chairing the Advisory Committee on the Promotion of Arbitration, the Secretary for Justice also chairs the Steering Committee on Mediation. In the context of expanding the use of mediation in different sectors, the cross-sector composition of the steering committee is instrumental in formulating and promoting new initiatives for the wider use of mediation to resolve disputes particularly in the medical, community, commercial (including cross-border disputes) and IP sectors.

34. The Steering Committee on Mediation will, for example, further explore the possibility of the use of evaluative mediation, which involves the neutral expression of views on the merits of the case or on the appropriateness of settlement offers, in addition to facilitative mediation, to resolve IP disputes. Our aim is to provide more choices for end-users so that mediation will be put to its best possible use.

35. A salient success of the government taking a facilitative role in promoting the use of mediation is the setting up of the Hong Kong Mediation Accreditation Association Limited (“HKMAAL”). It is a non-statutory industry-led body which has commenced operation since 2013 to serve accreditation and disciplinary functions. The primary aims include setting of standards for the training and accreditation of mediators, enhancing public confidence in mediation services and maintaining the credibility of mediation in Hong Kong. Today, over 2,000 mediators (including general and family mediators) have been accredited by HKMAAL.

Hong Kong’s idea for a Legal Hub

36. Last but not the least, to improve the infrastructure under which law-related organisations (“LROs”), including world-class dispute resolution bodies and research institutes³, can operate in Hong Kong, the DoJ is pressing ahead with its plan to provide these organisations a more favourable environment. The former French Mission Building, once occupied by the Court of Final Appeal, and part of the office space in the West Wing of the former Central Government Offices are now reserved for allocation to LROs. Together with the DoJ offices at Justice Place, the whole area is intended to form a Legal Hub at Central which is the heart of Hong Kong’s central business district to create synergy.

37. I am pleased to report that Stage 1 of the application exercise for space in the Legal Hub has just been completed in March this year. The names of twelve LROs whose application has been successful have since been announced. Please do not panic that the HKIAC is not among them. This is because, as earlier announced by the Secretary for Justice personally at the ceremony opening of the legal year, the HKIAC is here to stay at its current venue equipped with state-of-the-art technology and modern furnishings.

³ The HKSAR Government already sponsors the accommodation of a number of law-related organisation, namely:

- Hong Kong International Arbitration Centre
- Asia Office of the International Chamber of Commerce, International Court of Arbitration
- Asia Pacific Regional Office of the Hague Conference on Private International Law
- China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center
- China Maritime Arbitration Commission Hong Kong Arbitration Center

Concluding Remarks

38. The DoJ will continue to actively engage both users as well as providers of legal and dispute resolution services to make timely efforts in enhancing Hong Kong's strength and competitiveness in the ever-changing politico-economic outlook in the international arena.

39. I understand that the Summit is the first of its kind in Hong Kong to bring together leading members of the business and legal communities to explore issues of common interests in anticipation of a closer economic partnership between Russia and this part of the world. Given the list of eminent speakers and guests, I am sure there will be more exchanges which are as lively and they are enlightening for the rest of today which surely would not disappoint those, like me, who agree with Tolstoy. On this note may I wish the Summit a great success.

40. Thank you.