

**Keynote Speech by Mr Wesley Wong, SC Solicitor General  
at the LAWASIA Risk Management &  
Professional Indemnity Insurance Conference 2017  
15 June 2017 (Thursday)**

**“Weathering the Storm as a Centre for International  
Legal and Dispute Resolution Services – the Hong Kong experience”**

Good morning, Mr (Prashant) Kumar [President of LAWASIA], Mr (Thomas) So [President of The Law Society of Hong Kong], Distinguished Guests, Ladies and Gentlemen,

With LAWASIA having held its inaugural Risk Management and Professional Indemnity Insurance Conference in 2008 at Gold Coast, Hong Kong is proud to be hosting this biennial event for the third time in a row since 2013. It is indeed a great honour for me to address this assembly of distinguished experts and professionals.

2. The topics for this year’s conference are aptly chosen. As noted in the *Global Risks Report 2017* published by the World Economic Forum this January,

“the world is undergoing multiple complex transitions: towards a lower-carbon future; towards technological change of unprecedented depth and speed; towards new global economic and geopolitical balances. Managing these transitions and the deeply interconnected risks they entail will require long-term thinking, investment and international cooperation.”<sup>1</sup>

3. As if confirmation of the associated risks were required, the Trump administration’s decision to pull out of the Paris climate accord a fortnight ago and the outcome of the UK general election last week could not have been more telling.

4. This conference therefore provides an excellent platform, drawing us together, so that at least known unknowns can be identified and

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<sup>1</sup> See <http://reports.weforum.org/global-risks-2017/introduction/>.

the associated risks properly managed. To kick-start the conference, I would like to share with you the Hong Kong story on how we face uncertainty and sometimes, even amidst adversities, by holding fast to our revered first principles to success as an international financial centre by maintaining an open and free market, upholding the rule of law and combating corruption.

5. Those of us who live here know for a fact that Hong Kong has the highest life expectancy worldwide. It has in fact grown by eight years over the past 30 years for both sexes. Those, like some of you, who visit this place can also feel for themselves that it is one of the safest cities in the world. We also have the world's busiest international freight airport. But the picture, however, had not always been that rosy.

### ***The meaning of “one country, two systems” for Hong Kong***

6. Having experienced the anxiety over the Sino-British negotiations over its future which culminated in the signing of the Joint Declaration in 1984, Hong Kong entered the period of transition in the run-up to China's resumption of the exercise of sovereignty on 1 July 1997. In anticipation of the establishment of the Hong Kong Special Administrative Region enjoying a high degree of autonomy, the Basic Law was promulgated (an exercise which took five years) in 1990 to implement the principle of “one country, two systems” as a basic policy of the People's Republic of China regarding Hong Kong.

7. In the run-up to 1997, a whole host of issues straddling the date of reunification attracted attention to an unprecedented level: they ranged from questions as specific as to the prospects of the on-going infrastructure projects on the then uncompleted new airport (and the rail links to it) to those broader ones such as the retention of local as well as international talent and the financial viability of the future HKSAR government.

8. The international community held its breath in this very month 20 years ago, keen to find out how “one country, two systems” was going to work if it was to work at all. A smooth transition was never easy to start with and it was not made any easier by the 1997 Asian financial crisis, the outbreak of SARS in 2003 and the subprime meltdown which spiraled to

become the 2008 global financial tsunami. This is not to mention the challenges that globalisation brings with it and the instability caused by armed conflicts elsewhere.

9. What Hong Kong has been able to achieve over the past two decades therefore did not come easy. We are therefore especially proud that, for the past 23 years, the Washington-based Heritage Foundation has consistently named Hong Kong the world's freest economy. In that regard, our high quality legal framework has been praised as providing effective protection of property rights and strong support for the rule of law. You may also have noticed that in the *IMD Competitiveness Yearbook 2017* just published by the International Institute for Management Development World Competitiveness Center on 1 June, Hong Kong has again been ranked as the world's most competitive economy since we re-captured the title last year. So what has contributed to this success?

10. Earlier, when I mentioned three revered first principles to which Hong Kong holds fast, I had in mind the rule of law as the lynchpin of a free and open market and a corruption-free society. In fact, the rule of law is at the heart of our legal system. After the handover, the continuation of the common law system and the laws previously in force in Hong Kong is guaranteed by the Basic Law. The fundamental rights and freedom of our residents are all guaranteed by its Chapter 3. The high degree of autonomy which Hong Kong is able to exercise whilst being part of China means that it enjoys independent judicial power, with the power of final adjudication vested with its own Court of Final Appeal.

11. Under the Basic Law, our courts may refer to precedents of other common law jurisdictions and the Court of Final Appeal in particular may invite judges from other common law jurisdictions to sit when hearing cases. With eminent judges from the top courts in Australia, the United Kingdom and New Zealand prepared to sit at our highest court, the design has not only fortified international confidence in our judiciary but also allowed the applicable jurisprudence to develop within the common law world through cross-fertilisation. For users of legal and dispute resolution services, "one country, two systems" effectively means "one country, two legal systems".

### ***The Belt and Road Initiative***

12. Against this background, Hong Kong is well poised to embrace the opportunities offered by the Belt and Road Initiative which was announced by Chinese President Xi in 2013.

13. The Initiative provides a visionary blueprint for global economic development, covering some 65 countries from three continents. The opportunities which it may bring between China and countries along the Belt and Road routes are enormous. Chairing the Leaders' Roundtable Summit at the Belt and Road Forum for International Cooperation held in Beijing last month, President Xi remarked that the Initiative belongs to the whole world, with its development going beyond regions, stages of development and civilisations. Coining the expression "brand of cooperation", the President described the open and inclusive development as a global good jointly provided by all parties<sup>2</sup>.

14. According to the statistics released by the Chinese Ministry of Commerce for 2016, Mainland China's direct outward investment in Belt and Road countries amounted to US\$14.53 billion<sup>3</sup>. In the first quarter of 2017, the total value of trade in goods between the Mainland and Belt and Road countries exceeded RMB 1.6553 trillion whereas its newly-established non-financial direct investment in those countries reached US\$2.95 billion. Over the same period, 952 foreign contracted projects were signed, the aggregate contractual value of which reached US\$22.27 billion<sup>4</sup>.

15. Hong Kong's participation in the Belt and Road Initiative receives full support from the Central People's Government. In the "Outline of the 13<sup>th</sup> Five-Year Plan for the National Economic and Social Development of the People's Republic of China" issued in March 2016, a chapter was dedicated to the Hong Kong and Macao Special Administrative Regions. The dedicated chapter expresses clear support insofar as Hong Kong is concerned as a centre for international legal and dispute resolution services in the Asia-Pacific region, and our participation in the Belt and Road Initiative is strongly encouraged.

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<sup>2</sup> See [http://english.gov.cn/news/top\\_news/2017/05/15/content\\_281475656502266.htm](http://english.gov.cn/news/top_news/2017/05/15/content_281475656502266.htm).

<sup>3</sup> See <http://english.mofcom.gov.cn/article/newsrelease/press/201702/20170202515626.shtml>.

<sup>4</sup> See <http://english.mofcom.gov.cn/article/newsrelease/press/201705/20170502568294.shtml>.

16. Building on the solid foundations of a common law system where the rule of law and judicial independence are deep-rooted, Hong Kong enjoys a unique position to capitalise on the Initiative. Given our established trade practices, international lifestyle and proficiency in both the Chinese and English languages, Hong Kong is no longer just a useful springboard for foreign investors to explore the Mainland market, it can act as a “super connector”, offering assistance to Mainland enterprises going global as well.

17. Hong Kong is the world’s largest offshore Renminbi hub for good reason. Protection of private property rights, absence of foreign exchange control and a freely convertible currency are all entrenched on a constitutional level under the Basic Law on which our robust financial regulatory regime favouring a resilient banking sector is built.

18. With our open economy and strength in international financing and asset management, we stand ready to contribute to the success of the Asian Infrastructure Investment Bank (“AIIB”), the multilateral development finance institution designed to provide financial support for infrastructure development and regional connectivity in Asia. As Hong Kong has just become AIIB’s new member on 13 June<sup>5</sup>, this would create new opportunities for the relevant sectors, and in turn further reinforce our position as a premier international financial centre.

19. For Hong Kong’s legal services sector, we could leverage the demands for high-end cross-border legal services arising from the implementation of the Initiative. For instance, companies venturing into new markets in the Belt and Road countries have to face unfamiliar business operating environment involving different legal systems. Businesses may require legal advice on the relevant local laws and procedural rules as well as legal risks of the projects concerned, or tax and employment related matters such as relocation of operations and transfer of employees. Financing of cross-border infrastructure projects would require professionals who are experienced in international financial transactions. Support is also required in order to get clients prepared and properly advised in the event of disputes with their trading partners.

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<sup>5</sup> See [http://www.news.gov.hk/en/categories/finance/html/2017/06/20170613\\_130748.shtml](http://www.news.gov.hk/en/categories/finance/html/2017/06/20170613_130748.shtml).

20. Hong Kong's legal professionals are well-equipped to provide these services. We take pride in having a sophisticated and very open legal services market. Currently, Hong Kong has a strong pool of diversified lawyers, with over 1,300 practising barristers, over 9,100 practising solicitors and more than 1,300 registered foreign lawyers from 33 jurisdictions. Foreign lawyers, including lawyers coming from non-common law jurisdictions, may practise foreign law in Hong Kong by registering with the Law Society as registered foreign lawyers. They can also gain admission as local lawyers by passing the requisite examinations and satisfying the residency requirements. The presence of these professionals from different jurisdictions enhances our competitiveness in providing the legal services required under the Belt and Road Initiative.

### ***Closer Economic Partnership Arrangement***

21. Apart from the opportunities presented by the Belt and Road Initiative, under the Closer Economic Partnership Arrangement ("CEPA"), Hong Kong solicitors firms may enter the Mainland legal market in the form of partnership. Under CEPA, Hong Kong solicitors firms may operate in association with Mainland law firms in the form of partnership in the cities of Guangzhou, Shenzhen and Zhuhai. Lawyers employed by the partnership can jointly advise on matters that involve Hong Kong law, Mainland law or the law of other jurisdictions which the lawyers are qualified to practise. This new mode of operation enables the partnership to provide one-stop legal services and facilitates clients in executing cross-border transactions.

22. With the establishment of the various Free Trade Zones, the Department of Justice has been working with the legal and arbitration professions to promote their services in Mainland China, and to explore market liberalisation measures under the CEPA framework.

### ***Expanding Choice of Business Models for Lawyers***

23. Before moving on to the topic on dispute resolution, I would like to spend some time on the work the Department of Justice has done in improving our regulatory regime by working with the legal profession.

24. Acknowledging the legal liability and risks associated with the traditional form of general partnership whereby each partner is personally liable for the acts of the other partners and for all debts of the firm, solicitors firms and foreign law firms are now permitted to operate in the form of limited liability partnership (“LLP”). At present, 14 solicitors firms and 10 foreign law firms have taken advantage of this new business model.

25. The relevant amendments to the *Legal Practitioners Ordinance* (Cap. 159), which has come into operation on 1 March 2016, aims to provide for flexibility and protection of personal assets of partners. Now, an innocent partner of an LLP will not be held jointly and severally liable for any of its liability that arises from the provision of professional services by the LLP and as a result of the negligent or wrongful acts or omissions, or misconduct of another partner, an employee, agent or representative of the LLP who are not under his or her direct supervision.

26. This is achieved without compromising the demands of consumer protection through a number of built-in measures for additional professional indemnity coverage and compliance with certain disclosure and notification requirements. 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.

27. To facilitate the better provision of cross-border legal services, another new form of partnership now allows solicitors firms in Hong Kong to “partner up” with foreign law firms (including Mainland law firms which I just mentioned) by way of an association. By satisfying the requisite registration requirements, the two firms may not only share profits, but also premises, management and non-lawyer employees. At present, there are 14 associations between foreign law firms and Hong Kong solicitors firms.

28. The Department of Justice will continue to work closely with the Law Society to see to the early commencement of the relevant statutory provision<sup>6</sup> allowing solicitor corporations to be formed once the complementary *Solicitor Corporation Rules*<sup>7</sup> are ready.

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<sup>6</sup> See Part IIA, *Legal Practitioners Ordinance*, Cap. 159.

<sup>7</sup> To be enacted as subsidiary legislation to the *Legal Practitioners Ordinance*, Cap. 159.

### ***Hong Kong as a Neutral Venue for Dispute Resolution***

29. Now I wish to move on to dispute resolution. Over the years, we witness changing trends in the dispute resolution landscape. I do not think that it would be an exaggeration for me to say that the use of arbitration and mediation, once regarded as alternative methods of dispute resolution, are now mainstream, especially for the resolution of cross-border disputes. Hong Kong is at the forefront of this movement.

30. In the 2015 International Arbitration Survey by Queen Mary University of London<sup>8</sup>, Hong Kong ranks 3<sup>rd</sup> globally as the most preferred seat and the seat that has been used the most over the past five years, just behind London and Paris.

31. The Hong Kong International Arbitration Centre (“HKIAC”), our home-grown arbitration institution, is ranked in the same survey as the 3<sup>rd</sup> most preferred arbitral institution, and as the most improved arbitral institution over the 5 past years. In November 2015, the HKIAC reached an important milestone by being the first international arbitration institution to open a representative office in Mainland China. The representative office is located within the China (Shanghai) Pilot Free Trade Zone.

32. New grounds have also been made in relation to investment arbitration proceedings. Both the International Centre for Settlement of Investment Disputes and the Permanent Court of Arbitration (“PCA”) have used the premises of the HKIAC to hold their hearings. Not only has the PCA, in January 2015, signed a host country agreement and a related memorandum of administrative arrangements with the Central People’s Government to facilitate the conduct of PCA-administered arbitration (including investor-state arbitration) in Hong Kong, the HKIAC has also announced in October 2016 that it will offer its hearing and meeting rooms to parties free-of-charge in respect of dispute resolution proceedings they administer when one or more of the parties is a state on the OECD

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<sup>8</sup> Available at : [https://www.whitecase.com/sites/whitecase/files/files/download/publications/qmul-international-arbitration-survey-2015\\_0.pdf](https://www.whitecase.com/sites/whitecase/files/files/download/publications/qmul-international-arbitration-survey-2015_0.pdf)



Development Assistance Committee List of Official Development Assistance Recipients.

33. These measures are all very timely not just because there is growing attention to investor-state arbitration in Asia but also because of the relevance of the waiver to the Belt and Road Initiative in that it can benefit 70% of the 65 countries along the two routes.

### ***Modernising Hong Kong's Legislative Framework for Dispute Resolution***

34. At the same time, the modern legislative framework Hong Kong has put in place to facilitate arbitration and mediation needs constant updating as Hong Kong cannot afford to sit on our laurels. Since the major re-vamp of our *Arbitration Ordinance* (Cap. 609) which has come into force since June 2011 to unify our hitherto separate domestic and international arbitration regimes on the basis of the 2006 UNCITRAL Model Law on International Commercial Arbitration, we have been relentless in our efforts to make it more user-friendly for both local and overseas parties to choose Hong Kong as the seat of arbitration. They include the facilitation of reciprocal enforcement of awards with Mainland and Macao<sup>9</sup> and clarification that emergency relief granted by an emergency arbitrator in or outside Hong Kong is enforceable under our law.

35. Our dedicated *Mediation Ordinance* (Cap. 620) provides for a regulatory framework for the conduct of mediation in Hong Kong. As in the case of arbitral and related court proceedings, the confidentiality of mediation communications is also given express statutory protection as issues on their admissibility in court proceedings must be adequately addressed.

36. The preparation of what I am going to say next lasted till late yesterday afternoon: I am most pleased to report that the two amendment bills the Secretary for Justice introduced to perfect our Arbitration and Mediation Ordinances were passed less than 24 hours ago. In terms of risk management, I think I have to disappoint you by leaving you all to only wonder what it was that, happily, I don't now have to say.

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<sup>9</sup> By implementing the 1999 *Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards Between the Mainland and the HKSAR* and the 2013 *Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards Between the HKSAR and the Macao SAR*.

37. The *Arbitration (Amendment) Ordinance 2017* which primarily clarifies that disputes over intellectual property rights may be resolved by arbitration and that arbitral awards will not be regarded as contrary to public policy for the purpose of enforcement simply because such rights are involved will come into operation by 1 January 2018.

38. The *Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017* will make it clear that the common law doctrines of maintenance and champerty do not apply to third party funding of arbitration, mediation and related proceedings. It also covers the funding of services which are provided in Hong Kong for arbitrations and mediations taking place outside Hong Kong. The clarifying provisions will come into operation, after the issue of a code of practice setting out the practices and standards, including financial and ethical standards, with which third party funders will generally be expected to comply and the establishment of an advisory body to monitor and review the operation of the provisions in relation to the code of practice.

39. We hope that the coming into force of these amendments will enable Hong Kong to stay at the forefront of international dispute resolution practices and intellectual property trading.

### ***Bay Area Development Plan***

40. I don't think I can leave without touching on the development plan for a city cluster, including Hong Kong, which has a total population of some 66 million people. In March 2017, Chinese Premier Li Keqiang announced the launch of a joint study to prepare a development plan for the Guangdong-Hong Kong-Macao Bay Area. It covers nine Guangdong cities<sup>10</sup> (including the provincial capital of Guangzhou) plus Hong Kong and Macao. The formation of the Bay Area will facilitate the flow of people, goods and capital between the eleven cities. It is the Government's long-term vision that Hong Kong will similarly make use of its advantages such as those in financial and professional services to contribute to this joint development and to take early advantage of the synergy to be realised.

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<sup>10</sup> The 11 cities are: Guangzhou, Foshan, Shaoqing, Shenzhen, Dongguan, Huizhou, Zhuhai, Zhongshan, Jiangmen, Hong Kong and Macao.

### ***Concluding Remarks***

41. So what does it all leave us? What is it that this government official is trying to and can tell us about risk management for professionals? The answer to the first question is, “a lot”. The answer to the second question is, perhaps “very little” but I hope I have at least set the scene and given all participants a context to work on in their respective areas of interest and concern.

42. In the process of identifying and monitoring potential risks when facing challenges and embracing opportunities, I suppose we can draw from the wisdom of the Greek philosopher Heraclitus which is echoed by a local Cantopop songwriter and lyricist – “Change is the only constant.” With the list of eminent speakers from such diverse backgrounds and jurisdictions, I am sure that there will be plenty of insightful exchanges over the rest of these two days. On this note, it only remains for me to wish the Conference a huge success. Thank you.