

**Closing Remarks by Mr Wesley Wong, SC, JP, Solicitor General
at the Hong Kong Business and Legal Summit
“Spotlight on African and Asian Opportunities”
co-organised by the Hong Kong International Arbitration Centre and
the Asian-African Legal Consultative Organization on 23 May 2019**

Ms [Sarah] Grimmer (Secretary-General, Hong Kong International Arbitration Centre), Professor [Kennedy] Gastorn (Secretary-General, Asian-African Legal Consultative Organization), Ladies and Gentlemen, good afternoon,

The inaugural biennial Hong Kong Business and Legal Summit in 2017, which I also have the privilege to attend, was an occasion bringing together thought-leaders from business and legal groups to engage in high-level dialogue on investment and trade across Europe and Asia. Two years on, I am very pleased to see that the series initiated by the HKIAC and, this time in collaboration with AALCO, is extending its geographical reach to another continent: Africa.

2. In this regard, the presence of AALCO Secretary-General and the very distinguished panel of eminent speakers have ensured this significant presence of decision-makers, advisers, facilitators amassed today. Among yourselves are in-house counsel, service professionals, corporate executives, government officials and researchers. In one way or another, you are influencers of the future. The vast range of topics chosen and discussed in depth during the course of today’s proceedings (including at refreshment breaks and the networking lunch) demonstrate that they are very much welcomed and that they did well beyond just whetting the appetite which is large over those issues actually covered:

- (a) Africa’s economic direction and investment opportunities;
- (b) economic relationship between the two continents;
- (c) Chinese company perspective over projects in Africa; and
- (d) the right approach to manage risks whether economic, political or natural.

3. In fact, I cannot think of a better place for ideas over these issues to be exchanged here in Hong Kong. I trust that those of you who travelled long distances to join would agree that it is worth taking the trip. You can see and feel for yourself how it is like to be in this safe city which has been ranked as the world's freest economy for the past 25 years by the Heritage Foundation.

4. The principle of "One Country, Two Systems" is implemented by the Basic Law, a Chinese national law which is also Hong Kong's constitutional instrument. If you are looking for one single legal document which seeks to marry two ostensibly incompatible systems, this is it. It guarantees Hong Kong's high degree of autonomy. It is precisely because of this that Hong Kong is a champion of free trade and the free flow of capital. We operate as a separate customs territory and exercise our own immigration control. Private property rights, including intellectual property ("IP") rights, are well protected by law

5. Ownership of enterprises and investment from outside Hong Kong are well-protected by local laws which must not contravene the Basic Law provisions protecting them. In fact, the Basic Law also stipulates that the Government of the Hong Kong Special Administrative Region ("HKSAR") shall protect by law achievements in scientific and technological research, patents, discoveries and inventions as well as the achievements and the lawful rights and interests of authors in their literary and artistic creation.

6. On the financial side of things, Hong Kong is an established international financial centre. According to Refinitiv data, the Hong Kong stock exchange reclaimed its crown as the No. 1 initial public offering ("IPO") market in the world last year, beating 2017's winner New York. As the reformed listing rules now allow dual-class share structures and pre-revenue biotech companies to list, Hong Kong has experienced the highest fund raising in eight years.

7. At the same time, we are also the premier renminbi business centre. We launched the first offshore market to renminbi business back in 2004. Since then, Hong Kong has become the global hub for renminbi trade settlement, financing and asset management, where a wide range of renminbi products and services is available to meet the needs of businesses, financial

institutions, and investors. China's *Thirteenth Five-Year Plan for National Economic and Social Development* announced in 2016 clearly supports Hong Kong to strengthen its status as a global offshore renminbi business hub and reinforces Hong Kong's status as an international financial centre. The figures from global payments processing network SWIFT show that Hong Kong's share of the world's renminbi payments consistently exceeds 70%, reaching as high as 79% in November and December last year and still at 75% in March this year.

8. The rule of law is the cornerstone of Hong Kong's economic success. The common law system is constitutionally entrenched here. As the only jurisdiction in China which practises common law, our courts may refer to judicial precedents from other common law jurisdictions. Renowned judges from apex courts of other common law jurisdictions have been appointed to sit as non-permanent judges ("NPJ") of our Court of Final Appeal ("CFA") established since the 1 July 1997 to exercise the power of final adjudication. This is not just some form of international commercial court allowing visiting judges to sit but a court having full jurisdiction to pass final judgment according to Hong Kong law on criminal and civil cases, including constitutional cases (i.e. those brought to impugn government decision, policy or legislation). This allows Hong Kong to continue developing its own common law jurisprudence, cases which are from time to time cited in superior courts of other common law jurisdictions.

9. Last year, Lady Hale, the serving President of the U.K. Supreme Court and Madam Justice McLachlin, former Chief Justice of Canada joined as the first female judges on the CFA bench. Just yesterday, an announcement was made that the Chief Executive has accepted the recommendation of the Judicial Officers Recommendation Commission on the appointment of Lord Sumption who just retired last December as a judge of the U.K. Supreme Court. With the endorsement of the Legislative Council, his lordship will increase the number of eminent jurists on the overseas NPJ panel to 15. The fact that Hong Kong can continue to attract such well-respected judges from other common law jurisdictions to sit speaks volumes about the status of judicial independence and the rule of law here. It therefore should not come as any surprise that at the latest World Economic Forum *Global Competitiveness Report*, Hong Kong ranks 8th globally in terms of judicial independence, 4th among common law jurisdictions and 1st in Asia.

10. We have heard today much that has been said about the attractiveness of the legal and dispute resolution services that Hong Kong has to offer and why it is an ideal neutral place to make deals and resolve disputes here. Without duplicating what has been said, I wish to focus on a few questions in case there may still be any lingering doubts in your mind. Some of you may ask, for example, whether an arbitral award can be enforced against a Chinese state-owned enterprise (“SoE”) in Hong Kong. This question was considered in *TNB Fuel Services SDN BHD v. China National Coal Group Corporation*, HCCT 23/2015; [2017] 3 HKC 588. In that case, Madam Justice Chan held that bearing in mind the nature and degree of the control which can be exercised by the State-owned Assets Supervision and Administration Commission (“SASAC”) on behalf of the Central People’s Government over the wholly state-owned enterprise in the case, the ability of this SoE (i.e. the China National Coal Group) to exercise independent powers of its own, and that its business and operational autonomy are in fact enshrined in and guaranteed under the applicable PRC law, it was not entitled to invoke Crown immunity and as a result, an arbitral award can be enforced in Hong Kong. This is just one aspect in which the courts in Hong Kong have shown that it is arbitration-friendly and respects party autonomy.

11. To the extent that time permits, I wish to move on to tell you more about the government’s initiative in modernising and updating our dispute resolution-related legislation framework which ensure that we stay at the forefront of international development. 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.

12. Under Hong Kong law, there are no restrictions on lawyers qualified elsewhere to participate in arbitral proceedings in Hong Kong. A person, whether or not from Hong Kong or qualified to practise law here may be appointed by the parties as an arbitrator, advocate or expert witness in arbitral proceedings seated in Hong Kong.

13. Statutory amendments clarifying, inter alia, that IP rights disputes are arbitrable and that third party funding for arbitration is permissible in Hong Kong were passed in 2017. Their coming into effect can facilitate parties to resolve their disputes by arbitration in Hong Kong and consolidate Hong Kong's competitiveness as a leading international arbitration centre.

14. On 2 April 2019, the *Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR* ("the Arrangement") was signed between HKSAR and the Mainland. Hong Kong becomes the first jurisdiction outside the Mainland where, as a seat of arbitration, parties to arbitral proceedings administered by its arbitral institutions would be able to apply to the Mainland courts for interim measures. Interim measures include property preservation, evidence preservation and conduct preservation. It aims at preventing one of the parties to arbitral proceedings from deliberately destroying the evidence or transferring the property and also ensuring that the arbitral proceedings can be carried out effectively.

15. When the Arrangement comes into effect, it will not only benefit Hong Kong or Mainland parties. Thanks to "One Country, Two Systems", the measure under the Arrangement can be enjoyed by any party from the international community, irrespective of their nationality, domicile or principal place of business, etc. as long as they choose to arbitrate their disputes in Hong Kong through proceedings administered by a designated arbitral institution. Arbitral proceedings can be carried out more effectively and speedy remedy can be obtained to prevent parties from deliberately destroying the evidence or transferring the property.

16. Turning to mediation, the Mediation Ordinance (Cap. 620), which came into force in 2013, provides a structured framework for the conduct of mediation in Hong Kong. In particular, it expressly protects the confidential nature of mediation communications and addresses issues on its admissibility in court proceedings.

17. Hong Kong is now the first jurisdiction in Asia to have apology legislation. With the enactment and coming into force of the Apology Ordinance (Cap. 631), we are also the first of the 65 common law

jurisdictions we studied to protect statements of facts made in relation to an apology. It promotes and encourages the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution. This is to be achieved by stating, for example, that making an apology 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.

18. In choosing and assembling one's own team of lawyers, a party from outside Hong Kong may also consider engaging the over 1,600 strong registered foreign lawyers coming from over 30 jurisdictions who are practising foreign law in Hong Kong. They come from both common law as well as civil law jurisdictions and include Lusophone and Francophone lawyers in addition to those who speak, say, German or Dutch.

19. Transactional lawyers in Hong Kong are well equipped to offer advice covering a wide range of practice areas such as corporate and commercial, construction and infrastructure, IP and IT, maritime, finance and investment and tax matters. Just imagine the prospects of putting together a multi-party cross-border telecommunication project or distribution network which not only has to be technologically and financially viable but also has the associated risks properly managed. Hong Kong professionals will be able to provide a one-stop service for the advice and execution of well thought-through contracts containing suitably crafted governing law and dispute resolution clauses.

20. On choosing the governing law, you may also wish to note that all Hong Kong Ordinances are bilingual with both the English and Chinese texts equally authentic. They are already accessible on the internet at the e-Legislation website managed by the Department of Justice ("DoJ") and are gradually put in verified version to replace printed copies. Reasoned judgments of our courts are searchable on the Judiciary's official website. Important judicial decisions in one official language are also translated into the other official language. Together they make Hong Kong law readily accessible.

21. To maintain Hong Kong's dual role as the "deal making" and "dispute resolving" hub for the emerging markets along the Belt and Road,

the HKSAR Government is actively looking at ways to attract relevant transactional lawyers and dispute resolution professionals to work here. In August 2018, the HKSAR Government promulgated a Talent List with a view to attracting high quality talents to the city to support our development into a high value-added and diversified economy. Successful applicants will be accorded immigration facilitation under the existing Quality Migrant Admission Scheme operated by the Immigration Department. In support of the HKSAR's role as an international legal and dispute resolution services hub, the following categories of professionals are included in the Talent List: (1) dispute resolution professionals specialising in resolving international financial and investor-state disputes; and (2) transactional lawyers, particularly those from developing Belt and Road countries, with specialised knowledge of and experience in cross-border transactions from investing or host states.

22. We also have a focus on LawTech. The government is giving policy support to the development of what you may remember simply as "eBRAM" which is an electronic platform for business-related arbitration and mediation (hence the acronym) under development of a non-governmental organisation to overcome geographical and language barriers in a secured and cost-effective manner.

23. To better cope with the challenges and to harness the additional opportunities offered by the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Greater Bay Area development plan, the "Inclusive Dispute Avoidance and Resolution Office" ("IDAR Office") has been established on 2 January 2019 within the DoJ, which will work directly under the Secretary for Justice. The establishment of the IDAR Office will help better coordinate and implement various initiatives that the DoJ has been undertaking in the areas of dispute avoidance and resolution.

24. The IDAR Office will pursue and conclude cooperation or partnership arrangements with other jurisdictions and international organisations. It will also organise, support or encourage a number of important international events and activities in Hong Kong, as well as raise the international profile of Hong Kong in deal making and dispute resolution through capacity building and promotional activities. Examples of such capacity building conferences and training course offered include (i) biennial

UNCITRAL Asia Pacific Judicial Summit held in Hong Kong since 2015; (ii) annual training session of China-AALCO Exchange and Research Program on International Law; (iii) Workshop on online dispute resolution under the auspices of APEC in Santiago, Chile in March 2019.

25. In October 2018, the DoJ, together with the International Centre for Settlement of Investment Disputes (“ICSID”) and Asian Academy of International Law, successfully organised an investment law and investor-State mediator training course in Hong Kong. Participants included mediators and government officials from 18 jurisdictions, including the Mainland, ASEAN countries and those from the Middle East, Africa (of course) and even as far away as South America. The training given by world-renowned experts covered topical issues raised in international investment disputes, dispute resolution process, and considerations specific to inter-cultural competency such as culturally-shaped preferences and expectations. The training course would help build up a team of expert investment mediators in Asia to handle international investment disputes.

26. Therefore, there is always something for anyone.

Concluding Remarks

27. Today, we have gone some way in identifying many challenges and uncertainties ahead but, at the same time, we discussed how we may face them, bringing in new perspectives. Asia and Africa are two large continents rich in diversity. Together we are resourceful. This is in terms of human resource, natural resource and financial resource. Hong Kong is open and inclusive. There is every reason to remember this place when building the infrastructure (and by that, I mean both physical and institutional infrastructure) in tapping into these vast resources in a manner which is consistent with Goal 16 of the *UN 2030 Sustainable Development Goals* in terms of facilitating access to justice and providing equitable opportunities for all walks of life and for all sectors of the economy without boundary.

28. To echo what Professor Gastorn said at his opening remarks: Yes, the sun does rise from the east. But don't forget that when we go to Africa, we all do get younger (even if only for a number of hours). I hope

that the good start we have today will spark off more informative and thought-provoking dialogues which will be translated into action.

29. Thank you.