

SJ's speech at the 11th Hong Kong Forum Luncheon (English only)

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Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the 11th Hong Kong Forum Luncheon organised by the Federation of Hong Kong Business Associations Worldwide at the HKCEC today (December 2):

Good afternoon, Fred, Mr Matheson, Distinguished Guests, Ladies and Gentlemen,

It is my great pleasure to join you at the forum today. A very warm welcome to all of you, our friends from different Hong Kong associations from various parts of the world.

#### Introduction

Hong Kong is the world's freest economy for the 16th consecutive year in the 2010 Index of Economic Freedom, jointly published by The Heritage Foundation and The Wall Street Journal. This view is also shared by the Cato Institute of the United States in conjunction with other prominent research institutes of the world. In their 2010 Annual Report published in September this year, Hong Kong is again considered the world's freest economy, a position we have occupied in that report for 14 consecutive years.

I am a lawyer. I am not a scientist but I remember back in my university days a physicist once mentioned a theory to me. It is something like "Matters can only function freely if they are attached to some definite norm". It is one of those paradoxes in the universe as well as in the economic world that there is only true freedom when everyone abides by some form of binding framework and standards.

Hong Kong's success depends on many factors. But the rule of law enshrined in our legal system and our attitude undoubtedly is a crucial one, if not the most crucial one.

#### Judicial independence

The rule of law is the cornerstone of Hong Kong's success as a leading international commercial and financial centre. It provides a secure environment for individuals and organisations. It also helps to ensure a

level playing field for all businesses.

Here in Hong Kong, a firm foundation in the rule of law is laid in our independent judiciary. Judges of Hong Kong are trusted not just by the people of Hong Kong but also by the international business community. Judicial independence is guaranteed by the Basic Law Constitution. Our Court of Final Appeal is of international renown, comprising non-permanent judges such as serving Law Lords from London and former Chief Justices of the High Court of Australia. Judgments of our Court of Final Appeal, touching on many subjects such as interpretation of tax statutes, have been cited in courts of other common law jurisdictions.

### Legal profession

A legal system cannot work well without the support of first-class practitioners in the legal profession. In terms of our lawyer population and profile, Hong Kong is home to about 6,700 solicitors and 1,100 barristers. In addition, we have some 1,200 registered foreign lawyers from 28 jurisdictions, with the largest number of foreign lawyers coming from the United States, England, the Mainland and Australia. Bearing in mind that the Mainland is a separate jurisdiction from Hong Kong.

Keen and healthy competitions from overseas law firms in Hong Kong have resulted in a sophisticated legal sector with cross-fertilisation of experience. Our legal profession possesses a wide spectrum of expertise in areas such as capital markets, corporate finance, securities, banking, intellectual property, information technology, maritime law and more.

Hong Kong is attracting top-notch lawyers who are eyeing the vast Chinese legal services market. We are continuing to provide a more favourable environment and to create more opportunities for lawyers.

For example, a new law has been enacted earlier this year to enable solicitors to acquire rights of audience before the High Court and the Court of Final Appeal. The Department of Justice has also introduced a new bill to enable solicitor firms in Hong Kong to operate in the form of a limited liability partnership (LLPs), which will confer limited liability on innocent partners. The introduction of LLPs would be good news to foreign law firms practising as LLPs and will enhance Hong Kong position as a legal services hub.

## Other dispute resolution options

For any place to call itself a legal services hub, and indispensable to any international financial centre, there must be readily available, effective and diverse resolution facilities.

It is our Government's policy to develop Hong Kong as a centre of dispute resolution in the Asia-Pacific region, in particular, in the development of international arbitration.

On November 10 this year, we have reached a major milestone with the enactment of the new Arbitration Ordinance. The new Ordinance unifies the domestic and international arbitration regimes on the basis of the UNCITRAL Model Law. We have also included various recent initiatives proposed by the UNCITRAL, which, for example, would empower the Hong Kong court to recognise and enforce interim measures ordered by an arbitral tribunal sitting outside Hong Kong. With this new Ordinance, our arbitration regime becomes clearer, more certain and more easily accessible to arbitration users and practitioners from across the world.

As experienced businessmen, no doubt you will be managing your risks astutely when it comes to incurring litigation costs. At the global level, an increasingly popular alternative to litigation is mediation. It is a flexible and more client-oriented process, which has the potential of reaching settlement at lower costs, and saving business relationship.

Here in Hong Kong, thanks to the initiative of the Judiciary, there is now procedural requirement in place to ensure the parties and their legal advisers attempt mediation before litigation. The Government also set up a Working Group who had made 48 recommendations to promote and facilitate the wider and more sustainable use of mediation in Hong Kong. We look forward to creating a new environment and culture in Hong Kong where commercial disputes could be resolved with creative and amicable solutions.

## Updating our law

The development of mediation highlights the important truth that the law has to meet the needs of the day and serve the purposes for which it is made.

Apart from revamping our arbitration law and

promoting mediation, we are also constantly updating other laws with a view to providing an even better business environment.

Just to give you a few examples: We are re-writing our Companies Ordinance to further enhance corporate governance for more than 840,000 companies in Hong Kong. New measures recommended include those clarifying the director's duty and standard of care, and enhancing transparency of accountability, and strengthening shareholders' protection. The new legal framework will ensure better regulation, facilitate business and underpin Hong Kong's status as an international business and financial centre.

We are also reforming our trust law to strengthen the competitiveness of our trust services industry and to attract more high net worth individuals to use the asset management service in Hong Kong.

To meet the challenges posed by advances in technology, we are in the process of introducing legislative amendments to the Copyright Ordinance to strengthen copyright protection in the digital environment.

Other proposals we are working on include introducing a new competition law, devising a new corporate rescue procedure, setting up an Independent Insurance Authority, as well as establishing a Financial Dispute Resolution Centre to resolve monetary disputes between consumer and financial institutions through the combined means of mediation and arbitration.

The high regard for the rule of law within society

The rule of law cannot benefit a society unless it is embraced by the people as an integral part of their lives.

A well-known strength of Hong Kong closely connected with our legal system is our zero tolerance on corruption. Thanks to the work of the Independent Commission Against Corruption, and the support of the Hong Kong's people, our city is free of any systemic and syndicated corruption.

Hong Kong also is one of the safest places in the world. Our police force is highly professional, as demonstrated in their handling of demonstrations during the 6th Ministerial Conference of WTO held in Hong Kong

in 2005.

Another reason why the international business community repose confidence in our legal system is the comprehensive human rights protection under our Constitution. There are now 19 articles in the Basic Law guaranteeing fundamental human rights and freedoms, and major international covenants on human rights are applicable in Hong Kong. Rights protected include rights to property. Our Constitution mandates that ownership of enterprises and the investment from outside Hong Kong shall be protected by law. All of these are important facets of a modern and global economy.

Hong Kong's strength and the China factor

Ladies and Gentlemen, it is undeniable that Asia today is assuming a more central position in the world economic order. The IMF has forecast GDP growth in Asia to reach 7.1% this year, which is higher than the world average of 4.8%.

In terms of competitiveness, the recently released Global Financial Centres Index (GFCI) has put Hong Kong very close to London and New York as a global financial centre. Hong Kong now occupies the third place in the global financial market and is steadily closing the gap with London and New York. We are currently just 10 points behind New York on a scale of 1,000 in the GFCI, compared with 76 points when the index was first introduced in March 2007.

Hong Kong's economic recovery from the global financial crisis has been robust. In the third quarter of 2010, our GDP leaped by 6.8% in real terms over a year earlier. We have forecast GDP growth of between 5% and 6% for our economy this year, and the upside looks promising.

In 2009, Hong Kong ranked first globally in terms of initial public offerings (IPOs) with US\$32 billion raised. Already this year we have broken our own 2009 record. Total IPO funds raised so far in 2010 exceed US\$40 billion. In terms of IPOs in Hong Kong, the Mainland element is remarkable. At the end of September 2010, some 556 Mainland enterprises were listed on Hong Kong Stock exchange, representing 41% of the total number of listed companies and 57% of the total market capitalisation.

Undoubtedly, Hong Kong has been a major beneficiary

of the Mainland's monumental economic growth. Hong Kong is going to be fully included in the Central People Government's 12th five-year plan for the economic development of the country.

We shall make the most of our unique position under the "One Country, Two Systems" principle to better connect ourselves with the Mainland economic powerhouse. We will be building the express rail link which joins Hong Kong with the Mainland railway network. We will be constructing the Hong Kong-Macau-Zhuhai Bridge to better connect these busy economic regions. We shall draw on the fullest advantages offered by CEPA, the free trade pact we signed with the Mainland. We shall continue to strengthen the ever-growing business connections within the Pearl River Delta, buttressed further by the Outline Plan for Reform and Development of the Pearl River Delta Region last year and the Framework Agreement on Hong Kong and Guangdong Co-operation signed earlier this year.

We are very international

But, in the meantime, we are also acutely conscious of the fact that Hong Kong's strength, and Hong Kong's worth to the Mainland, lies in our being a global financial and business centre, the most international city within the entire PRC, run on a separate common law system with high degree of autonomy.

Thanks to the foresight of those devising the new constitutional order under the "One Country, Two Systems" principle, Hong Kong has a separate legal system based on the common law and is a separate customs territory. We have been authorised under our Constitution to conclude and implement agreements with foreign states and regions in the economic, trade, financial, monetary, shipping, communications, tourism, cultural as well as judicial assistance fields. That's why Hong Kong has concluded 180 bilateral agreements with around 70 foreign governments. That's why a total of 240 multilateral treaties continue to apply to Hong Kong, even though one-third of them do not apply to the Mainland. That's why Hong Kong is a separate member of the World Trade Organization.

Not only that, Hong Kong has also been very active in international collaboration with other countries against terrorism, money laundering, corruption as well as trans-national crimes. All these efforts ensure Hong Kong remains a world city, actively participating in the

affairs of the globe and contributing to the well-being of the international community.

## Conclusion

On official visits overseas meeting with business groups, I have encountered certain FAQs. Some ask: Is Shanghai going to surpass Hong Kong? Others ask: With increasing economic integration with the Mainland, will Hong Kong become more inward-looking, gradually diminishing to become just another city of China? Well, ladies and gentlemen, my answers are these:

First, despite the rapid rise of leading cities in the Mainland and the on-going keen competition from other Asian countries, Hong Kong is still the preferred city in Asia for attracting international investment and businesses. Currently, the number of regional headquarters for overseas and Mainland businesses in our city stands at 3,640, which is 50% over that in 1997.

Second, both Hong Kong and the Central People's Government appreciate the importance of, and are committed to uphold, the integrity of the "One Country, Two Systems" principle. Economic integration and co-operation with the Mainland flourish on the unique premise that even though Hong Kong is part of China, it remains also a mature international city and a special economic region operated under a separate legal system and in accordance with the best international commercial and financial best practices.

As you may have read from the newspapers yesterday, Vice Premier Wang Qishan told the delegation of the Hong Kong Association of Banks in Beijing on Monday that with its ability to offer mature and quality financial services of the international standard, Hong Kong is best placed to provide a platform for Renminbi to step out into the global arena.

Third, why Hong Kong can fulfil the role as China's global financial centre? The uncompromising commitment to the rule of law and the highly internationalised professional legal services all help to establish our stronghold and our claim. There is no room for complacency. We shall continue to be vigilant to safeguard what we already have, and to spare no efforts to ride on new opportunities.

On this note, Ladies and Gentlemen, I wish you

fruitful exchanges at the Forum and an enjoyable and memorable stay in Hong Kong. Thank you.

Ends/Thursday, December 2, 2010