

Speech by Rimsky Yuen, SC, JP
Secretary for Justice of the HKSAR
The HKU Convocation Speech (20 June 2013)

“The Future of Hong Kong: A Legal Perspective”

Mr. S.Y. Choi, Chairman of the Convocation, Fellow Alumni, Distinguished Guests, Ladies and Gentlemen:

1. First of all, thank you for inviting me to this event. It is my honour to have the opportunity to deliver this Convocation Speech, which, as I understand, kicks off the “Meet the Ministers” series organized by the Convocation.

The Topic

2. The topic chosen for tonight is “*The Future of Hong Kong: A Legal Perspective*”. Our law or legal system does not provide any crystal ball. Nor are lawyers fortune-tellers. So, one may legitimately ask the question: what is the relationship, if any, between law and a city’s future?
3. My short answer is this: law and a city’s development (whether economic, social or otherwise) have a close interactive relationship. A city’s economic and social development have an impact on her legal system and legal infrastructure, and *vice versa*. Amongst others, one may demonstrate the existence of such an interactive relationship from at least three perspectives.
4. First, the historical perspective. In his book *Civilization*¹, Professor Ferguson considered, from a historical perspective, why the Western countries have dominated over the rest of the world. He concluded that

¹ Nail Ferguson, *Civilization* (Penguin Books) (2012).

the West's dominance is a result of six "institutions and associated ideas and behaviours", the six "killer apps" ["apps" as in those applications one downloaded in one's mobile phones] as Professor Ferguson called them by using the language of today's computerized world. One of such "killer apps" is "the rule of law as a means of protecting private owners and peacefully resolving disputes between them"². Such an analysis bespeaks the relationship between law and a place's development. If one can learn from history, one can use history as a telescope to look into the future. In other words, history has illustrated that our law, our legal system and our legal infrastructure can have an important role to play in shaping our future.

5. The second perspective concerns researches undertaken by economists and experts of other related disciplines. One example is an earlier research programme sponsored by the Asian Development Bank, which resulted in the publication of a book known as *The Role of Law and Legal Institutions in Asian Economic Development 1960 – 1995* (Oxford). This research led to the following observation:

*"Law played an important role in Asia's remarkable economic growth during the second half of the twentieth century. This role has been largely ignored, even disputed as irrelevant. This book, the result of an interdisciplinary research effort by legal and economic experts from Asia and the West, offers a different perspective. We test competing theories about law and its relation to economic development against the experience of six Asian economies over 35 years, between 1960 and 1995. The results suggest that far from being irrelevant, law made an important contribution to Asia's economic development and was most effective when it was congruent with economic policies."*³

6. The third perspective is the commonality in the approaches adopted by international think-tanks or institutions when assessing a city's competitiveness and related attributes. When making their assessment,

² *Ibid.*, at p.p.12-14.

³ At p. 1.

leading institutions such as the Heritage Foundation⁴, the Milken Institute (which published the Global Opportunity Index⁵), and the IMD World Competitiveness Center⁶ invariably made references to the effectiveness of the legal system and the legal infrastructure of the relevant cities.

7. Enough, I believe, has been said about the relationship between law and development. The pertinent questions, in our present context, would be the questions of *what* to do, *how* to do and *where* to do. The answers to these questions are by no means straightforward. Nor do I pretend that I have all the answers to these questions. What, if I may propose to do, is to share with you some of my thoughts on some possible answers.

The Positioning of Hong Kong

8. The overall policy objective adopted by the current Administration in this regard is clear --- Hong Kong should position herself as a centre and regional hub for legal services (including both domestic and international legal services) and dispute resolution in the Asia Pacific region. This policy is stated in no uncertain terms in the latest Policy Address⁷.
9. Not only do we believe that Hong Kong has the necessary attributes to so position herself, we have no hesitation that such a policy is in the best interest of Hong Kong and indeed the Mainland. Putting aside other relevant factors such as our geographical locations, our strong legal profession and independent judiciary, may I highlight the following.
10. First, the promotion of Hong Kong as a legal service centre complements Hong Kong's status as an international financial and commercial centre. Without the requisite support of professional services including legal

⁴ In the 2013 Index of Economic Freedom published by the Heritage Foundation, Hong Kong was again ranked the world's freest economy (and has been so for 19 consecutive years).

⁵ This Global Opportunity Index focus on a city's competitiveness in attracting foreign investment. In the latest report published in March 2013, Hong Kong came first amongst 98 jurisdictions (for the year 2011).

⁶ In the latest report on world competitiveness, Hong Kong was ranked third (see IMD World Competitiveness Yearbook 2013).

⁷ See para. 39 of the 2013 Policy Address (16 January 2013).

services, it is difficult to imagine how Hong Kong can continue to remain a vibrant international financial and commercial centre.

11. Second, the promotion of Hong Kong as a centre for legal and dispute resolution services is plainly beneficial to our economic growth. For the year of 2010, Hong Kong's export of legal services amounted to HK\$1.55 billion, an increase of 2.8% from 2009. Of this amount, Asia (including the Mainland) accounted for 46.3%, whilst North America and Western Europe accounted for 28% and 16%⁸ respectively. In 2011, the total income went up to HK\$1.97 billion⁹. The actual overall contribution would be even more significant when one takes into account the collateral benefits derived by other industries as a result of the provision of legal services. Examples include hotel accommodation when parties come to Hong Kong to conduct arbitration or mediation, as well as incidental or supporting services such as secretarial or translation services.
12. Third, such a policy will have a long-term benefit for both Hong Kong and the Mainland. In this regard, one point which I repeatedly stress is that whilst Hong Kong is an integral part of China, Hong Kong should not be contented to be just another city of China. Instead, we should make the best use of the "One Country Two Systems" concept and maintain her unique characteristics.
13. One such aspect is the fact that Hong Kong is the only common law jurisdiction within the entire China, and indeed the entire Greater China region. Our rule of law, our independent judiciary, as well as our strong legal profession¹⁰ with ability to provide top-quality legal services are well recognized by the international community. The most recent international recognition came from the European Union when the Joint Report to the European Parliament and the Council (published on 17

⁸ See: *Legal Services Industry in Hong Kong*, published by Hong Kong Trade Development Council (14 May 2012).

⁹ See: *Hong Kong Trade in Services Statistics in 2011* (published in Feb 2013), Table 6 at p. 35.

¹⁰ As at 11 March 2013, there are a total of 1,172 barristers, a total of 7,439 practising solicitors (housed under 807 solicitors' firms), and a total of 1,428 registered foreign lawyers (under 70 foreign law firms).

June 2013) stated as follows:

“In 2012, the principle of ‘one country, two systems’, ... continued to work well, as the rights and fundamental freedoms of the people of Hong Kong continued to be respected, the rule of law protected and the market economic system and business environment maintained.”

14. Such a unique characteristic on the part of Hong Kong put her in the best position to act as the gateway to the Mainland, which generates immense mutual benefit. The economic benefit to Hong Kong hardly requires further elaboration. On the part of the Mainland, Hong Kong’s status as a centre for legal and dispute resolution services offers an additional, and often preferred, option to the business community from other jurisdictions (especially when business disputes arise as Hong Kong can be chosen as the neutral venue for resolving commercial disputes).

The Way Forward

15. To maintain Hong Kong’s status as regional hub for international legal services and dispute resolution, efforts on both the domestic and international fronts would be necessary. The following are some of the steps that should be taken, although it is far from being an exhaustive list of what can or should be done.
16. First, the contents of our law. Timely and effective law reform (whether initiated by the Law Reform Commission or otherwise) would be necessary so as to ensure that our law can meet the needs of our ever-changing society. The massive exercise of re-writing the Companies Ordinance, the introduction of the Competition Ordinance and the Mediation Ordinance are but recent examples of law reform.
17. Second, the legal environment for lawyers. It is necessary to ensure that our legal landscape is such that both local and foreign law firms would find it attractive to operate. The introduction of amendments to the Legal Practitioners Ordinance made in last year to allow limited liability

partnership is one of such examples.

18. Third, international visibility and presence. Trade, commerce and indeed other forms of human activities are much affected by globalisation and regional integration. Hong Kong must have a clearly visible presence in the international legal community. This explains why the Administration pursues the policy of inviting reputable international law-related organisations, such as the Hague Conference on Private International Law, to establish their regional or representative offices in Hong Kong.
19. Fourth, government promotion and co-ordination. Since it is the Administration's policy to promote Hong Kong as a centre for legal and dispute resolution services, the Department of Justice, together with such other relevant departments, institutions or stakeholders, would join force to drive the promotion. Since 1 July 2012, activities including road-show to India and seminar in various cities of the Mainland have been held. Plans are being drawn up to better co-ordinate the activities of law-related services, such as how arbitration can be better promoted.
20. Fifth, legal research. In the business sector, R&D (research and development) commands great importance. In the same vein, legal research (whether on substantive law or legal policy) is no less important. As once pointed out by Sir Anthony Mason, legal research is a challenge, but if taken up by the academic community and the profession, would contribute to the evaluation of policy issues and law reform¹¹. In this regard, Hong Kong is less well developed as some other cities such as London, although I am sure we have no less legal talents and experts. To facilitate proper future planning, it is hoped that more attention and resources can be put into this aspect.

The Relevant Markets

21. I have so far dealt with the rationale of the Administration's policy, and

¹¹ See: Sir Anthony Mason, "Legal research: Its function and its importance", contained in Geoffrey Lindell (ed.), *The Mason Papers* (The Federation Press) (2007), pp. 345-360 (at p. 359).

also outlined of some of the steps that may be taken. Before I conclude, perhaps it would be pertinent to say a few words on certain jurisdictions which would be of particular interest.

22. The Mainland is naturally the first one that springs to one's mind. I don't think I need to stress the volume of legal business that the Mainland has generated over the past decade or so. Instead, what should be of particular interests would include: (1) how best to improve the CEPA arrangement (2) how to promote the use of Hong Kong law and Hong Kong dispute resolution services (including arbitration, mediation and other forms of ADR) in the Mainland, especially areas such as Qianhai, Nansha or Xiamen; (3) how to make best use of the "early and pilot measures" (先行先試) approach in respect of cross-boundary business initiatives between Hong Kong and Guangdong; and (4) as the Chief Executive recently said when he visited New York, see how Hong Kong's involvement in formulating the next National 5-Year Plan would help meet the aspirations of Hong Kong and make the most of Hong Kong's advantages in our country's development¹².
23. A few Asian countries are of particular interest and warrant immediate attention. Apart from India, the three jurisdictions of Vietnam, Cambodia and Myanmar are of particular interest (especially in the context of promoting Hong Kong's arbitration and mediation services). In addition to their respective growing bilateral trade with Hong Kong, it is pertinent to note that for the year 2012: (a) a total of HK\$42.1 billion worth of trade (which is 10.8% of the total trade) between Vietnam and the Mainland was routed through Hong Kong; (b) a total of HK\$6 billion worth of trade (being 26.5% of the total trade) between Cambodia and the Mainland was routed through Hong Kong; and (c) HK\$1,518.7 million worth of trade (which is 2.8% of the total trade) between Myanmar and the Mainland was routed through Hong Kong.
24. Last but not least, the European Union ("EU") should not be ignored. In

¹² See the Speech by the Chief Executive at HK-US Business Council Breakfast Meeting (on 12 June 2013, New York time).

2012, the EU was Hong Kong's second-largest trading partner after the Mainland. Bilateral trade between the EU and Hong Kong reached a total of €44.2 billion. Besides, as of June 2012, the EU was the largest source of foreign companies in Hong Kong, with 453 regional headquarters, 740 regional offices and 697 local offices¹³. Although most of the EU member states are not common law jurisdictions, they do have confidence in Hong Kong's rule of law¹⁴ and Hong Kong's international arbitration and mediation services constitute a fertile area of future co-operation (especially for those EU companies which conducted China trade).

25. On the whole, it is plain that the Mainland is a market which providers of legal services in Hong Kong can ill afford to ignore. However, in conducting strategic planning and taking into account competition in the region, the other emerging Asian markets and the EU likewise cannot be ignored. At the end of the day, Hong Kong should be truly international even though the policy is to be the regional hub for the Asia Pacific region.

Conclusion

26. On this note, apart from reiterating my gratitude for inviting me to this enjoyable event, may I conclude by wishing the Convocation and the University of Hong Kong every success in their future activities.

Thank You.

¹³ See the Joint Report referred to in para. 13 above.

¹⁴ *Ibid.*