

SJ's speech at reception hosted by Royal Swedish-HK Society and London Office, HK Economic and Trade Office (English only)

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, on "Hong Kong as Asia's World City - The Legal Perspective" at the reception hosted by the Royal Swedish-Hong Kong Society and the London Office, Hong Kong Economic and Trade Office in Stockholm, Sweden today (October 3, Stockholm time):

Good afternoon, ladies and gentlemen,

Introduction

It's wonderful to be here. First, may I thank the Royal Swedish - Hong Kong Society for organising this event and for the good work they have been doing in fostering closer ties between Sweden and Hong Kong.

I arrived in Stockholm this morning at 6:00 am. It is my first official visit to Sweden. I am very impressed by this city and the people. I had good discussions with the Minister of Justice and members of the Bar Association. People here are down-to-earth and the city is magnificent.

As for Hong Kong, it is well known as a city at the crossroads of global trade and investment; a city that has made its mark as the strategic two-way platform for doing business in China.

Let me give you the appraisal of Hong Kong. Hong Kong stands firm as the world's freest economy. It's not only my own word. It's according to the Economic Freedom of the World: 2007 Annual Report published by the Cato Institute of the United States in conjunction with the Fraser Institute of Canada and a group of independent research and educational institutes in over 70 countries. We have been occupying the top position for the 11th consecutive year. After 1997, we remain the world's freest economy.

As at June 1, 2006, close to 4 000 overseas companies had regional operations in Hong Kong, which is an all time high figure over and above the figure in 1997. And also for those people who are familiar with the listings in Hong Kong in the past two years, we have seen a number of mega banks and companies from the Mainland seeking listings on the Hong Kong Stock Exchange, some together with their listings on the Shanghai Stock Exchange, breaking new records of the capital raised. For example, the Industrial and Commercial Bank of China, China's largest bank,

raised a staggering sum of around 10 billion Euros on Hong Kong Stock Exchange, and that is not the only one.

One of the keys of Hong Kong's continued success is our rule of law, which commands the very important trust and confidence among the international investors. And also, it is the determination of Hong Kong under the new constitutional order to remain truly an international city, which makes a whole world of difference. Your friendship and support are absolutely important.

The Rule of Law in Hong Kong

Hong Kong is absolutely unique in world history. Under the innovative principle of "One Country, Two Systems", we are a part of China and yet at the same time we have an entirely different legal system from the Mainland.

Continuity of common law

We have our constitution, the Basic Law, which guarantees the continuity of our common law system. The laws previously in force in Hong Kong shall be maintained, except for those contravene the Basic Law and the constitution. Hong Kong remains a common law jurisdiction. The language of the law is still predominantly English. I was a barrister in private practice two years ago before I joined the government. When I appear in Court, I still wear my wig and gown. Not only do we retain the common law jurisdiction, we also open our law to other jurisdictions of the common law family. Under the Basic Law, we are allowed to cite cases from other common law countries like Australia, New Zealand, Canada and Europe, so that we are enriching the common law archives in Hong Kong.

In Hong Kong, in terms of the legal profession, many of you will know we still have the division between barrister and solicitor. We have at the moment close to 6 000 practising solicitors and about 1 200 barristers. On top of that, we have close to 1 000 foreign lawyers from about 25 jurisdictions. I think the Americans are topping the list. Mainland lawyers come second. Mainland lawyers are also foreign lawyers. They are not allowed to practise Hong Kong law. They can only practise the law of their own jurisdiction as well as international law. So, we are extremely rich in terms of the talents we have in Hong Kong.

Independence of the Judiciary

When we talk about legal system, one of the most important elements is judicial independence. That is guaranteed under our constitution. When the court exercises judicial power, it is independent from any interference. Hong Kong again is doing very

well in terms of the courts' independence and also their competence. I can do no better than quoting the section about Hong Kong in US State Department's 2006 Country Reports on Human Right Practices:

"The Basic Law provides for an independent judiciary, and the government generally respected judicial independence in practice. The judiciary, underpinned by the Basic Law's provision that the common law tradition be maintained, provided citizens with a fair and efficient judicial process."

The theme has been constant. Just looking at the UK Six-monthly Report to Parliament on our judicial and legal system, it said that during the ten years since the establishment of the SAR, the judiciary had demonstrated the highest standards of independence and impartiality. This had played a major role in maintaining international confidence in Hong Kong.

One more quotation is the survey on "Confidence in Asian Judicial Systems" conducted by the Political and Economic Risk Consultancy Ltd. As reported in its 29 August 2007 Report, Hong Kong's grading is the best among the Asian Judicial Systems, with Singapore being the next. In fact, worldwide, Hong Kong's score on confidence in the judiciary is only second to Australia, but higher than that of the USA in terms of judicial confidence.

Our international dimension is evident in our highest court, the Court of Final Appeal. It replaced the Privy Council in London at the time of Reunification as our ultimate judicial body. When the Court hears cases, the panel of judges includes eminent judges from the United Kingdom, Australia and New Zealand. There are four Law Lords from the UK as well as existing and retired judges from Australia and New Zealand. Many of the cases decided by CFA in Hong Kong have actually been cited in other common law jurisdictions.

Interpretation of the Basic Law

So much about judicial independence. To be frank, I must say the greatest challenge that Hong Kong's legal system has faced is in the area of the interpretation of the Basic Law. Under Article 158 of the Basic Law, the ultimate power to interpret the Basic Law is vested in the Standing Committee of the National People's Congress, the highest authority in the Mainland. Hong Kong courts are authorised to interpret the Basic Law in adjudicating cases, although in certain situations they must seek an interpretation by the Standing Committee before deciding a case. Hong Kong is not independent. Under the "One Country, Two Systems", we have a high degree of autonomy. Foreign affairs and defence will still be the prerogative of the Central People's Government. In relation to

these matters, before adjudicating cases affecting the interpretation of the Basic Law, our constitution dictates that the Court should refer the matters to the Standing Committee for interpretation and follow their decision.

Since Reunification, the Standing Committee of National People's Congress has on three occasions interpreted provisions in the Basic Law. The first one related to provisions on the right of abode. The second one related to constitutional development and the third one was concerned the term of the Chief Executive. There is no time to go into details. But I have to say that all three interpretations had been controversial. However, in view of the provisions of Basic Law as structured and later on elucidated by the Court of Final Appeal repeatedly, all three interpretations have been lawful and constitutional in terms of our constitutional set up.

A common law lawyer may find the situation strange that the ultimate power to interpret the Basic Law should vest with a non-judicial body. However, as Sir Anthony Mason, an eminent judge from Australia who sits on our Court of Final Appeal, said in one case, this is how the two systems are linked under the Basic Law. Under the Chinese law, the national law of China, NPCSC is the highest authority to interpret the provisions of constitution and national law in China. The Basic Law is part of the law of China. So, that provides the basis in terms of the interpretation.

The NPCSC interpretation of the Basic Law, though being part of the new constitutional order, is certainly not to be resorted to lightly. It is recognised in Hong Kong and by the leading authority of the Mainland. Since 1997, in the past ten years, our Courts have rapidly developed Hong Kong's own jurisprudence in handling the matters of that kind. By the interface between Hong Kong and the Mainland legal systems, we have gained a deeper understanding of the Mainland legal system and vice versa. The Mainland is developing the rule of law rapidly themselves.

I believe that through a common goal to make Hong Kong prosper, through frank and frequent communications, mutual understanding and trust could be built. "One Country, Two System" needs not be just an experiment or a cause of concern, on the contrary, it provides an opportunity for the advancement of the rule of law both in Hong Kong and China. Indeed because of the close relationship, Hong Kong stands a good stead in assisting China to develop the rule of law. That is a big topic we can discuss further in future.

Protection of Human Rights

The Basic Law contains 19 articles guaranteeing particular

human rights, such as freedom of speech, freedom of association, freedom of religious belief and so on. It also provides that the major International Covenant on Human Rights as applied in Hong Kong shall remain in force. These provide an important framework in protecting human rights in Hong Kong. In the colonial days, we did not have a elaborate system in protecting human rights. Before the handover, there was the enactment of the Bill of Rights. But in terms of the extent of protection, the Basic Law is more comprehensive.

Since then, because of the guarantee, we have seen a number of public law cases, challenging particular legislation or government action as being inconsistent with the Basic Law. We won some cases and lost some. But the record shows that Basic Law does have teeth. It does provide protection of human rights by overriding inconsistent provisions previously in force. It does demonstrate that judicial independence is real in Hong Kong.

Protection of Intellectual Property Rights

In addition to protecting human rights, the HKSAR Government is committed to maintaining a robust intellectual property protection regime, and thereby providing a favourable environment for international investment.

Insofar as our legal system for the protection of intellectual property rights (IPRs) is concerned, it fully meets our obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In fact, we have an elaborate system based on the common law system protecting copy right and patent registration. We also keep reviewing our legislation. Indeed, in July this year, we have just completed a major legislative exercise to amend our Copyright Ordinance to reflect the latest social and technological developments. Some of the amendments concern introduction of new offences against business end-user piracy, anti-circumvention provisions and rental rights. We are looking into the latest situation to see what need to be done. Separately, we have just completed a public consultation on how best to enhance copyright protection in the digital environment. We can proceed to make legislative amendments soon.

Apart from legislation, we also have an efficient and user-friendly IPR registration system, which provides not only traditional paper-based services, but also easy-to-use electronic services in line with the practice in other international intellectual property offices. Businesses can conduct search and file applications in respect of trademarks, patents and design articles round the clock through electronic means. They can also renew their registrations and change the registrant's name online

instantly. These facilities enable companies to manage their intellectual assets in a more efficient way.

Enforcement is also very important. The Hong Kong Government has been taking sustained actions to combat IPR offences. Ten years ago, the pirated optical disc sale was very large. In 1998, we have about 1 000 outlets selling pirated optical discs. We have, over ten years, stepped up our efforts and greatly stamped out these activities. This year, we have less than 40 outlets selling these pirated discs in Hong Kong. Of course, you would say Hong Kong is fine but what about China. In terms of transshipping, we have been taking stringent measures. We can provide reference as to how Hong Kong tackles the problem and provide ready examples to our contacts in China. These are the efforts we are putting in on intellectual copyright protection.

Hong Kong the International City

Hong Kong's success, ladies and gentlemen, lies in our dual capacity, as part of China and at the same time as "Asia's World City". That is why it is very important for us to continue and also expand our international ties on various fronts.

Since 1997, Hong Kong has negotiated and concluded some 150 bilateral agreements with foreign governments, covering a very wide range of subjects such as air services, merchant shipping, investment promotion and protection, mutual legal assistance in criminal matters, surrender of fugitive offenders, transfer of sentenced persons, trafficking in narcotic drugs, and so on. In fact, this evening I will be flying to Helsinki to sign an agreement with Finnish government on mutual legal assistance in criminal matters. We have signed 21 such agreements with different countries throughout. After that, I will be going to Dublin to sign another agreement on surrender of fugitive surrenders. We have signed 16 of such agreements with different countries. Albeit a tight schedule, that is very important in establishing network in terms of enforcement.

Hong Kong is a separate customs territory under the Basic Law. Hong Kong has been authorised to participate in international organisations and international conferences either on our own. You may recall recently that at the APEC meeting in Sydney, our Chief Executive sits at the same table as the President of China and they were all wearing the same outfit for the group photo. You will find it funny why Hong Kong, as part of China, has to have separate representation. That is because of the "One Country, Two Systems".

Actively participating in international co-operation against crime

I need not mention our efforts on money laundering. As a major international financial centre, Hong Kong is an active member of the Financial Action Task Force, which is the international body combating money laundering. We are joining hands with the international community in laying down anti-terrorism and anti-money laundering standards. In fact, in last month, my department hosted the 12 annual general meeting of the International Association of Prosecutors. We invited prosecutors from over 18 countries to come to Hong Kong to discuss how we can combat transnational crime and discuss common problems, like the transparency and accountability of prosecutors.

Promotion of Hong Kong as a Dispute Resolution Centre

I want to mention the international dimension on arbitration, which is very important to Hong Kong. Hong Kong arbitral awards are not only enforceable in more than 130 contracting states to the 1958 New York Convention, but also in the Mainland by virtue of a Memorandum of Understanding (Note 1) signed by the Department of Justice and the Supreme People's Court in June 1999 to further facilitate enforcement of arbitral awards. We have the China factor here and Hong Kong has an edge. I welcome international arbitration bodies to come to Hong Kong. There is room for cooperation. Of course there will be competition. On top of competition, there must be common interest that we can pursue and work together. I have policy responsibility over this and I welcome any advice and suggestions in this respect.

Conclusion

The last decade has not been all plain sailing in Hong Kong. We have weathered through the Asian Economic Crisis, SARS, Avian Flu, economic restructuring. We are more than recovering. Our economy is doing extremely well. When we take stock of the experience so far, I believe fair-minded observers will agree that the implementation of "One Country, Two Systems" has been a great success. Our integration with the Mainland Chinese economy has been developing rapidly, we are benefiting from that.

In my capacity as Secretary for Justice of the HKSAR Government, I will do my utmost to preserve the rule of law in Hong Kong and to protect fundamental human rights. And at the same time to take advantage of the opportunity by assisting the legal profession to develop the legal services market and helping China in the development of rule of law. In that connection, I will have to rely on your help. I know that many of you have rendered support to Hong Kong and China.

Thank you very much.

Ends/Wednesday, October 3, 2007

Note 1: The Memorandum of Understanding Concerning the Mutual Enforcement of Arbitration Awards between the Mainland and the Hong Kong SAR.