

Speech by Secretary for Justice at luncheon in Dublin (English only)

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, on “Hong Kong – Asia’s World City and Gateway to China” at the luncheon organised by the Brussels Office, Hong Kong Economic and Trade Office in Dublin, Ireland today (October 5, Dublin time):

Minister Lenihan, Ladies and Gentlemen,

Introduction

It is truly a pleasure to be here in Dublin again. I was here not long ago on holiday and was greatly enchanted by your city, the lovely scenery in Wicklow and Glendalough, and the warmth and wit of your people.

The gentleman who picked us up from the airport yesterday, who I believe is in his 60’s, said in his heavy Irish accent, “It has never been better here in Dublin”. In the more refined words of your Minister of Finance, Mr. Brian Cowen, in his Budget speech, “the Irish are living in the midst of the longest and strongest era of sustained prosperity in all of Irish history.”

Perhaps for those of us who have encountered less certain times in the past, we tend to cherish more and work harder to make the most of every opportunity presented to us.

I think that applies to Ireland as well as to Hong Kong.

In Hong Kong, we have just celebrated the 10th anniversary of Hong Kong’s reunification with Mainland China. 1997 had been a sign of uncertainty for many in Hong Kong, with some deciding to emigrate overseas. And in the past 10 years, we have weathered through the Asian Financial Crisis, SARS, Avian Flu, economic restructuring, question on the new constitutional order, and many more.

Today, however, Hong Kong is standing on a high point in terms of our economy and stability.

(i) For the 11th consecutive year, Hong Kong has been assessed as the freest economy in the “Economic Freedom of the World: 2007 Annual Report” published by the Cato Institute and other world-class research bodies.

(ii) Despite keen competition from other Asian countries, and rising cities in the Mainland, Hong Kong is still the preferred magnet in Asia in attracting international investment and business.

(iii) Last year, we have seen a number of mega banks from Mainland China seeking IPO listings on the Hong Kong Stock Exchange, breaking new records of the capital raised. For example, in October 2006, the Industrial and Commercial Bank of China, China’s largest bank, raised a staggering sum of 10 billion Euro.

(iv) This year, as many of you ladies and gentlemen know, the Hang Seng Index, the index of the Hong Kong Stock Exchange, has scaled historic new heights. On Tuesday, we broke through the 28,000 mark with a lot of money coming in from overseas and also from the Mainland China.

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(i) Hong Kong is benefiting from the momentous changes and opportunities brought about by the reunification with the Mainland. We are part of China.

(ii) However, our success is buttressed upon Hong Kong's firm foundation of the rule of law and of the independent judiciary. Our system is different from that of the Mainland, despite being one country.

(iii) We are not merely the important gateway to China. We are, and will spare no effort to maintain our status as, the international financial centre of Asia.

The Rule of Law

The "One Country, Two Systems" Principle is enshrined in the Basic Law, our mini-constitution. The Basic Law ensures the continuation of the common law in Hong Kong. English remains the primary language of the law. As you know, wigs may soon disappear from the English courts, but I suspect it is likely to stay in Hong Kong for quite a while because of the importance, even symbolically, to maintain common law in Hong Kong. The common law is further enriched as the Basic Law also permits the reference to the judicial authorities of Australia, New Zealand, Canada, Europe and USA.

In particular, human rights cases from the European Court are constantly being cited in the Hong Kong. Human rights jurisprudence is developing rapidly in Hong Kong thanks to the wide range of guarantees provided by our Basic Law. There are 19 articles in the Basic Law guaranteeing fundamental human rights and freedoms and major international covenants including the ICCPR are applicable in Hong Kong.

Judicial independence is guaranteed under our constitution. The integrity and competence of our judiciary is unanimously recognized in all the regular reports on Hong Kong prepared by the US, the UK and EU, as well as international rating agencies.

Our Court of Final Appeal, which replaced the Judicial Committee of the Privy Council, comprises top local and overseas judges, including 4 serving Law Lords from the UK House of Lords, as well as top judges and ex-judges from Australia and New Zealand.

Judicial reviews based on the rights provided for in the Basic Law have mushroomed in the past 10 years. The Courts have upheld some and dismissed others. It demonstrates vividly the effectiveness of the Basic Law in protecting rights as well as the integrity of our court in adjudicating over difficult cases of constitutional significance.

The legal professions in Hong Kong remain strong and independent. There are now about 6,000 solicitors and 1,200 barristers practicing in Hong Kong. There are also over 800 foreign lawyers from about 25 jurisdictions practicing in Hong Kong. Among these foreign lawyers are those qualified in the Mainland. They provide a wide spectrum of expertise and clientele.

Gateway to China

The China factor has always been, and will continue to be, the edge Hong Kong enjoys over other places. I was speaking to some European arbitrators in Scandinavia two days ago. They said large international arbitration cases involving Chinese parties are on the rise. But they found it useful to have Hong Kong lawyers conducting or assisting in the arbitrations as they are, on the one hand, competent common law practitioners, and on the other hand, they can communicate effectively with the Mainland parties.

Legally, Hong Kong is a separate jurisdiction from the Mainland. It is also a separate customs territory according to the Basic Law. That's why Hong Kong is a member of the WTO and APEC in our own right, alongside Mainland China.

Speaking of arbitration, both Mainland China and Hong Kong are signatories to the 1958 New York Convention on the enforcement of arbitral awards. In addition, in 1999, Hong Kong and Mainland China entered into a further agreement to facilitate the enforcement of arbitral awards. The Hong Kong International Arbitration Centre handles cases involving numerous countries.

Apart from arbitration, there is increasing cooperation between the courts of Hong Kong and of Mainland China regarding mutual recognition and enforcement of court judgments. In July last year, a landmark agreement was signed between my Department and the Supreme People's Court in China to facilitate mutual enforcement of judgments concerning certain commercial disputes. We hope this will be the prototype of many others to come, and will provide further incentive for international investors to make use of Hong Kong's legal services and judicial process.

Further, Hong Kong lawyers as well as other professional are taking advantage of the Closer Economic Partnership Arrangement ("CEPA") between Hong Kong and Mainland China to tap into China's service markets. By virtue of this Arrangement, we have an edge over other foreign lawyers to terms of association with Mainland Law Firms as well as greater latitude as to the legal practice in the Mainland. At present, there are 71 Hong Kong law firms who have representative office in 12 cities of the Mainland.

The International Dimensions

Hong Kong has always been one of the most cosmopolitan cities of the world. As at 1 June 2007, 3,890 overseas companies had regional operations in Hong Kong, which is an all time high figure. This shows Hong Kong is still one of the most preferred locations for overseas companies managing main operations in Asia-Pacific.

The first class legal and judicial system provides the best investment environment for the international community. We have comprehensive securities and companies laws, stock exchange regulations, which provide the key elements of the best corporate governance. Our legal framework to protect intellectual property, for example, is also fully compliant with the WTO's Trade-Related-Aspects of Intellectual Property Rights protection. We have recently amended our copyright law to bring our law up to date by creating new offences in relation to business end-users piracy, anti-circumvention provisions and rental rights. We are now actively looking at amendments to protect IPRs in the digital setting.

Our financial infrastructure is also world-class and we are always quick to respond to changes and to adopt the best international practice. For example, Hong Kong has decided to be in the first wave of jurisdictions to adopt the revised capital framework released by the Basel Committee on Banking Supervision known as Basel II in January 2007, alongside major international financial centres such as London, Frankfurt and Tokyo.

Under the Basic Law, Hong Kong is intended to remain international. Since 1997, Hong Kong has negotiated and concluded some 150 bilateral agreements with foreign governments. Over 220 multilateral treaties continue to apply to Hong Kong and almost 80 of these multilateral agreements do not apply to Mainland China. These bilateral and multilateral agreements cover a 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 many more. Subjects like human rights protection, intellectual property rights and private international law are also covered.

This morning I have just signed with Minister Lenihan the Agreement for the Surrender of Fugitives. This is the 17th such agreements Hong Kong has agreed. A separate agreement on Mutual Legal Assistance in Criminal Matters was signed earlier in 2001. We have signed 22 such agreements including the one I just signed with Finland yesterday.

As we touch on more criminal matters, I should also mention that Hong Kong is an active member of the Financial Action Task Force in the battle against money laundering and terrorism.

Conclusion

Before 1997, many people predicted the downfall of Hong Kong. Many left and flocked to places like Toronto and Vancouver as emigrants. They were proven wrong.

Today, not only has Hong Kong not fallen but it rises to the challenge and is going strong. Not only have many of those Hong Kong emigrants sold their Canadian homes and returned, but many have moved to the Mainland to pursue their career and business. I believe all fair-minded observers will agree the implementation of the "One Country, Two Systems" has been a great success.

As the Irish saying goes, the grass is the greenest where the rain has been the heaviest. It is true of today's Ireland. It is also true of today's Hong Kong, as well as Mainland China.

Like you, ladies and gentlemen, we will move forward full steam capitalizing on the advantages we now possess. But we are complacent and are very much aware of the values to preserve and the pitfalls to guard against. We shall continue to be vigilant not to compromise the integrity of our legal system, which is based upon the rule of law, our core value, and which enables Hong Kong to thrive above all the ups and downs.

As mentioned earlier, there is a lot that we share. We look forward to greater cooperation between Hong Kong and Ireland, not just in the legal field, but also in business, culture, sports and so on. I know that horse-racing is a common interest. You are invited to have a feel of the racing scene in Hong Kong.

I wish you all good health and happiness. Thank you for the opportunity to share the situation in Hong Kong.

Ends/Friday, October 5, 2007