

Speech by Secretary for Justice at Autumn Conference 2008 of the Consulegis
(English only)

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the Autumn Conference 2008 of the Consulegis today (October 3):

Mr Ziegenfeuter, [Mr] Michael [Lintern-Smith], ladies and gentlemen,

Good morning. I am grateful for the opportunity to address the Autumn Conference of the Consulegis this morning. It is my pleasure and privilege to welcome you all to Hong Kong.

Introduction

Inevitably, everyone's attention these days is on the global financial turmoil. Could the meltdown we see in the US happen in our own backyard? We are indeed so closely connected with one another in this day of globalization.

But globalization, particularly in the provision of legal services, does normally hit a more positive note. Two weeks ago, the International Bar Association held their Asia Pacific Conference in Hong Kong with the theme of Asia being the new centre stage of international business. Last week, my department, the Department of Justice, hosted the Third Regional Conference of the Hague Conference on Private International Law attended by over 200 delegates from more than 20 jurisdictions. Next month, we will be celebrating the opening of the Secretariat of the International Court of Arbitration of the International Chamber of Commerce in Hong Kong. We are kept very busy on the international front, but very happily so.

Business success buttressed on quality of law

Despite rapid changes in the economic landscape including the rise of leading cities in the Mainland, and the on-going keen competition from other Asian countries, Hong Kong is still the preferred magnet in Asia in attracting international investment and business. The number of overseas and Mainland owned regional operations in our city is now approaching 4000, which is 50% over and above that in 1997. In terms of equity funds raised in 2007, Hong Kong was ranked second in Asia and fifth globally with total funds raised at around US\$9 billion. The Fraser Institute of Canada has just rated Hong Kong as the world's freest economy in its Economic Freedom of the World Index for another year. We have earned the top spot every year since the Index began.

The business and economic success of Hong Kong is buttressed upon Hong Kong's firm foundation of the rule of law and a most reliable, competent and independent judiciary.

The legal profession in Hong Kong remains strong and independent. We have at the moment about 6,100 solicitors and 1,100 barristers practicing in Hong Kong. On top of that, we have over 1,100 foreign lawyers from 27 jurisdictions, including

the Mainland, practicing foreign law in Hong Kong. The profession provides a wide spectrum of expertise to a variety of private and corporate clients.

Judicial independence, one of the core values of Hong Kong, is guaranteed by our constitution the Basic Law. The quality of Hong Kong's Judiciary is well-known. Our Judiciary is also forward-looking and dedicated in providing quality services for the people. Wide-ranging changes in civil court procedure aiming at simplifying process and reducing costs will be implemented next year as part of our Civil Justice Reform. One of the key changes is the greater use of alternative dispute resolution particularly mediation.

Since 1997, not only has common law been preserved but it has in fact been enriched in Hong Kong. We have further moved on from the predominantly English basis to attain a more international jurisprudential repertoire. As guaranteed by the Basic Law, precedents from other common law jurisdictions can be referred to in our courts. Serving Law Lords of England and former Chief Justices of Australia and New Zealand sit on our Court of Final Appeal.

The Role of Department of Justice

Being the Secretary for Justice under the new constitutional order and in this age of globalization, you can imagine is a tall challenge.

With over 300 lawyers working in my department, I am running the largest law firm in Hong Kong. The profile of my team is fairly international. Apart from local colleagues, we have lawyers from England, Scotland, Australia, New Zealand and Canada. Earlier this year, we recruited the former Chief Parliamentary Counsel of the State of Victoria in Australia, and currently President of the Commonwealth Association of Legislative Counsel, to lead our Law Drafting Division.

With the support of my colleagues, I perform the role as the Government's principal legal adviser, responsible for providing independent, sound and effective legal advice to ensure that the Government's policies and proposed laws are lawful and in compliance with constitutional requirements, including human rights guarantees.

I have five Law Officers helping me who head their respective divisions.

The Solicitor General heads the Legal Policy Division who oversees issues relating to the constitution, human rights, and general legal policy. Lately he and his colleagues have been kept busy preparing the amendment bill which seeks to streamline the domestic arbitration regime with that governing international arbitration under the UNCITRAL Model Law.

Apart from the Law Draftsman who takes care of all legislative drafting business, the Director of Public Prosecutions heads the largest division in my department. Under the Basic Law, our constitution document, my department is responsible for prosecution decisions, free from any interference. Our DPP is on the Executive Committee of the International Association of Prosecutors and Hong Kong

has been playing an active role in combating trans-national crime and in international collaboration against terrorism and money-laundering.

Two other Law Officers take care of the Civil Division and the International Law Division respectively. My Law Officer in the Civil Division has been kept very busy with a wide spectrum of advisory and litigation work including public law challenges.

My Law Officer of the International Law Division has an interesting portfolio covering international treaties and mutual legal assistance between Hong Kong and other jurisdictions. Under the Basic Law, Hong Kong is authorised to enter into bilateral agreements with other countries in areas other than foreign affairs and defence. My department has been rendering legal advice to other bureaux and departments on such agreements and on matters concerning international law. Since 1997, Hong Kong has negotiated and concluded some 160 bilateral agreements with foreign governments. Over 200 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 and surrender of fugitive offenders, etc.

Three broad policy directions

Apart from the day-to-day work outlined above, let me share with you three specific policy directions which my Department is pursuing.

Promoting Hong Kong as a regional dispute resolution centre

First, we see the potential of Hong Kong to become a leading international dispute resolution centre in the region and are working hard to realise it.

Hong Kong is suited to play that role as an international arbitration centre both technically and strategically. Technically, apart from the first class legal and business structure, Hong Kong has longstanding expertise and experience in international arbitration. The Hong Kong International Arbitration Centre, our own home-grown arbitration body, ranked 4th in the world and 2nd in Asia in terms of number of cases handled in 2007 and is rapidly expanding into other areas of international disputes such as those over domain names.

I have mentioned earlier about our reform in arbitration law. We are confident that these changes will help better the environment for conducting international arbitration in Hong Kong.

Strategically, Hong Kong's proximity to the Mainland and the economic integration of the two economies make it an ideal venue for arbitration of commercial disputes between Mainland enterprises and international businesses.

Before 1997, Hong Kong has already been a member of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In 1999, a separate arrangement was entered into between Mainland China and Hong

Kong in order to facilitate reciprocal enforcement of arbitral awards. This arrangement covers ad hoc arbitration as well as institutional arbitration. My department has been liaising with the Supreme People's Court and other authorities in the Mainland to seek to bring about even closer cooperation in this regard.

For those of you specializing in international arbitration practice, you will agree that large international arbitration cases involving Chinese parties are clearly on the rise. Some international arbitration bodies are already considering moving east.

As I mentioned earlier, the International Court of Arbitration of the International Chamber of Commerce, which is based in Paris, will shortly be opening a branch of its Secretariat in Hong Kong. The Secretariat will be serving the Asia Pacific Region and responsible for supervising ICC arbitration in Hong Kong. This is a significant move by an international arbitration institution of high repute and a show of confidence in Hong Kong's position as a centre for dispute resolution. My department will continue to discuss with other international arbitration bodies with a view to inviting them to establish a presence in Hong Kong, making Hong Kong a regional hub of arbitration.

Promoting Mediation

The second policy direction which we are working on is the promotion of mediation in Hong Kong.

I am currently chairing a cross-sector Working Group on Mediation to work out an overall strategy to promote the development of mediation services in Hong Kong. Like the rest of the world, we believe mediation should be promoted with a view to reducing legal costs, bettering access to justice and preserving harmony. Issues that will be examined by the Working Group include public education and publicity, accreditation and training, and regulatory framework affecting the promotion and use of mediation in Hong Kong. We shall be looking at promoting mediation over the whole spectrum of disputes from the higher-end commercial disputes to the more routine disputes between individuals in the community.

The Judiciary is also playing an active role in the promotion of mediation including changes in that connection in the Civil Justice Reform I mentioned earlier and the undertaking of various pilot schemes. The legal professions are all gearing up and getting prepared for the changes ahead.

Promoting Legal Cooperation with the Mainland

Last but not least, a very important on-going task is to promote legal cooperation with the Mainland China. There are many facets for this endeavour.

In addition to arbitration, there is increasing cooperation between the courts of Hong Kong and of Mainland China regarding mutual recognition and enforcement of court judgments. A new law has just come into effect on 1 August this year implementing yet another arrangement between my department, and the Supreme People's Court in Mainland China to facilitate mutual enforcement of judgments in

certain commercial disputes. We hope this will provide further incentive for international investors to make use of Hong Kong's legal services and judicial process, with a view to enforcing Hong Kong awards on Mainland assets.

Further, Hong Kong lawyers as well as other professionals are taking advantage of the Closer Economic Partnership Arrangement ("CEPA") between Hong Kong and Mainland China to tap into China's services markets. By virtue of this Arrangement, Hong Kong lawyers may form association with Mainland law firms and enjoy greater latitude as to the legal practice in the Mainland. As at June 2008, 77 representative offices have been established by Hong Kong law firms in 13 cities of the Mainland. We will continue to explore with the relevant authorities in the Mainland further market liberalization and ways to achieve closer cooperation.

Hong Kong has a special part to play in the Mainland's development on the rule of law. With the enormous growth of the Mainland economy, and her entry into WTO, the development of the legal and judicial system in the Mainland is being driven by both commercial demands and international obligations. We have seen vigorous efforts on legislation and law reforms, not only in respect of market economy, but also targeting the improvement of the legal and judicial proceedings. Hong Kong stands ready to share our experience. In the past few years, my department has entered into cooperation agreements with our counterparts in eight cities or regions in China, aiming at promoting understanding of each other's system at a practical level such as lawyer exchange programme.

Conclusion

Ladies and gentlemen, following the euphoria of the Olympics, the world is facing an economic downturn, starting with Lehman Brothers and the heavy government intervention in the financial markets in America, Japan and Europe on an enormous scale. Despite the difficulties facing the global financial markets, Hong Kong's fundamentals remain strong. We will move forward full steam capitalising on the advantages we possess to meet the challenges ahead.

On that note, I wish you all most fruitful exchange at the Conference and a memorable and enjoyable stay in Hong Kong. Thank you.

Ends/Friday, October 3, 2008