

SJ's Speech at Ceremonial Opening of the Legal Year
2010

The following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the Ceremonial Opening of the Legal Year 2010 today (January 11):

Chief Justice, Chairman of the Bar Association, President of the Law Society, Members of the Judiciary, Distinguished Guests, Ladies and Gentlemen,

A very warm welcome to you all, particularly our guests from overseas and the Mainland.

As we begin a new decade, as well as a New Year, it is perhaps timely to review Hong Kong's place in a China which is now recognised as one of the great economic powers in a world which is still struggling to overcome the effects of the near collapse of its financial institutions. Almost all the analysis points to Hong Kong having an edge in our legal system: being part of China, yet having a separate and well-established legal system guarded by an independent judiciary, manned by a mature legal profession and trusted by the world. The annual Opening of the Legal Year is a fitting occasion to remind ourselves of the lynchpin of our success and to consider what more has to be done to strengthen it.

The foundation of our legal system is judicial independence. Despite the numerous constitutional and other challenges by way of judicial review, the Government does both appreciate and insist that the Court must continue to judge independently without fear or favour. With scrutiny by an able judiciary which is trusted by all, the Government has to be and has continued to be vigilant to ensure its actions, policies and legislative proposals are compliant with the law, particularly with regard to the rights protected under the constitution.

However, I would just echo the Chief Justice's remarks that the Court should not be burdened with essentially political or economic issues, and trust that the Court's

discretion on costs would be appropriately exercised so as to get that message across.

Prosecutorial independence is another important pillar in the administration of justice. After more than a decade of dedicated service as Director of Public Prosecutions (DPP), Mr Grenville Cross SC retired last October and was succeeded by Mr Ian McWalters SC. A new DPP provides an opportunity for a new look at the needs of the Prosecutions Division and how it can more effectively serve the community. As a first step, young counsel are being given more exposure to trial advocacy and sub-divisions have been streamlined to ensure greater specialisation and efficiency.

To increase the accessibility of legislation, the Department is also taking steps to make both the English and Chinese texts more readable and comprehensible. These include measures to simplify the language and to promote greater uniformity and consistency in its use, the adoption of a gender-neutral drafting policy and improvements to the appearance of our legislation. A feasibility study has also been commissioned on the establishment and maintenance of a verified and authenticated electronic database of Hong Kong legislation.

Expansion of Hong Kong's capacity as an international arbitration centre continues to be a prime policy objective. The Arbitration Bill, aiming at bringing the domestic arbitration regime in line with the Model Law of the United Nations Commission on International Trade Law (UNCITRAL), is now before a Bills Committee of the Legislative Council. New UNCITRAL initiatives to be implemented include conferring on the Hong Kong court the power to recognise and enforce interim measures ordered by an arbitration tribunal sitting outside Hong Kong.

It is encouraging to learn that the International Court of Arbitration of the International Chamber of Commerce, which established a secretariat in Hong Kong in 2008, is making good progress. By November last year, it was administering 120 arbitrations that were conducted in the region. The number of arbitrations handled by the Hong Kong

International Arbitration Centre in 2008 has also reached a record high of 602 cases. These figures are proof that arbitration is gaining popularity in Asia and Hong Kong is well-placed to serve as a regional hub for international arbitration.

As regards promotion of mediation, I am pleased to report that the cross-sector Working Group on Mediation has completed our Report and recommendations. We are now finalising the Chinese translation, and expect to release our Report in early next month for public consultation. Meanwhile, with a view to supporting the Practice Direction on mediation just implemented, the Working Group has promulgated the Hong Kong Mediation Code, which recommends standards expected of mediators in Hong Kong and a sample Agreement to Mediate.

I have already written to mediation service providers to encourage them to adopt the Code and to set up a robust complaints and disciplinary process for its enforcement. In addition, the Working Group has also launched the "Mediate First" Pledge, with leading businesses vowing to mediate before litigating. A pilot project is also underway making available two community centres for use as venues for community mediation.

To further internationalise Hong Kong's legal services and thereby enhance Hong Kong's position as a legal service hub in the Asia Pacific, a Bill to enable solicitors to form limited liability partnerships (LLPs) is expected to be introduced to the Legislative Council within the current legislative session.

Stakeholders are being consulted on our legislative proposals, which recognise the need to strike a proper balance between limiting professional liability on the one hand and safeguarding public interests on the other. We believe LLPs would encourage small local firms to join forces to diversify their practice, and also attract more foreign law firms operating as LLPs to come to Hong Kong.

The Legal Practitioners (Amendment) Bill 2009 to enable

solicitors to exercise higher rights of audience in the High Court and the Court of Final Appeal will resume its second reading on January 20. We expect the Bill to be enacted within the current legislative session. Under the Bill, solicitors who satisfy the eligibility requirements would be able to apply to an assessment board for higher rights of audience.

We anticipate the assessment board would be in a position to invite applications within one year after the Bill's enactment and after the necessary subsidiary legislation has been made. The public will then have a wider choice of advocates able to meet the standards required in the higher courts.

Moving on to the Mainland legal services market, the Closer Economic Partnership Arrangement has been instrumental in opening the door for Hong Kong's legal profession. However, experience in the past few years tells us that further development should be strategic and specific, both in terms of locality and measures.

Under the Supplement implemented since October 1, 2009, the criteria for forming association with Guangdong law firms and the period of pre-qualification training to be undertaken by those who passed the national judicial examination have been relaxed. The former is a pilot measure which we hope may be expanded to the rest of the Mainland if it proves effective and beneficial.

The Arrangement with the Mainland on Reciprocal Enforcement of Judgments in Civil and Commercial Matters, which came into effect in August 2008, demonstrates the goodwill and versatility on both sides to strengthen judicial co-operation. Statistics have revealed that since 2006, about 30% of marriages registered in Hong Kong annually involved a Mainland party. At present, there is no legal mechanism to facilitate recognition and summary enforcement of matrimonial orders, raising concerns regarding the welfare of ex-spouses and children of such marriages.

The Department is now reviewing the relevant issues and

has conducted initial discussions with the Supreme People's Court on establishing a mechanism to facilitate the mutual recognition and enforcement of matrimonial orders made by the courts.

On the related question of divorce decrees obtained outside Hong Kong, where our courts do not currently have jurisdiction to entertain applications for financial relief, we will propose a bill to amend the Matrimonial Proceedings and Property Ordinance (Chapter 192) later this year, so that the court would in certain circumstances be empowered to deal with such applications.

To maintain our status as an international city and the preferred gateway to China, we must take advantage of our unique status under the Basic Law and participate in the wider legal fraternity. For instance, as a member of the Financial Action Task Force (FATF), Hong Kong has been contributing towards the promulgation of international standards to combat money laundering and terrorism financing. Last year, the Department representing Hong Kong, China, took up a two-year appointment as co-chair of an Expert Working Group reviewing certain of the recommended legal standards, to improve their efficacy and implementation across member jurisdictions.

International co-operation, particularly in the form of multilateral treaties, presents challenges. One example is the increase of claims under what is known as the UN Convention Against Torture. I am pleased to learn that a Memorandum of Administrative Arrangements with the Duty Lawyer Service was concluded just before Christmas to enable screening of claims to resume in compliance with the legal requirements. After receiving the training organised by the profession, over 220 lawyers have been accredited by the Service to provide legal representation to claimants. I would like to express my gratitude to the legal profession for their assistance in this difficult situation.

The pursuit of economic progress and integration with the Mainland can and should be undertaken without compromising the "One Country, Two Systems" principle. Amidst

rapid changes globally and ever increasing economic integration and social interaction with the Mainland, there is no room for indifference or inertia. Hong Kong must embrace these challenges.

I should like to conclude by expressing our deep gratitude to the Chief Justice for his historic role in the successful implementation of the "One Country, Two Systems" principle and in the establishment of the Court of Final Appeal. With the impressive legal talent which he has recruited into the judiciary over the years, we have every confidence that our judges led by the new Chief Justice will continue to serve Hong Kong staunchly in the protection of the rule of law.

It only remains for me to wish you all good health and a happy new year.

Ends/Monday, January 11, 2010