

**Speech by Ms Teresa Cheng, SC
Secretary for Justice
Hong Kong Association Seminar on “Hong Kong as an ideal hub for deal
making in the Guangdong-Hong Kong-Macao Bay Area”
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Distinguished guests, ladies and gentlemen,

Thank you very much for inviting me. The Hong Kong Association has been a very important and strong link between the UK and Hong Kong, and has always been very supportive. I also thank Clifford Chance for providing such an excellent venue for me to share my views on Hong Kong’s role in the Greater Bay Area. I hope my sharing could be short, because I believe it would be very useful that I have a chance to exchange views with you as well as answer some of your questions.

2. It has been mentioned that the Greater Bay Area is going to be a very important area. This idea of the Guangdong-Hong Kong-Macao Bay Area, if I may just call it the Greater Bay Area, emanated from a speech of Premier Li in March 2017 when he talked about how the three areas, Guangdong, Macao and Hong Kong, can work

together in forming a very important area, just like in other parts of the world where bay areas are important for economic development. There are the New York Bay Area, San Francisco Bay Area and Tokyo Bay Area.

3. Here, the development of the Greater Bay Area gives us a lot of opportunities. In the Greater Bay Area, the population is 68 million; the economic trading amount is USD 1.3 trillion in 2016; and according to the research done by the Hong Kong Trade Development Council, it is expected that the GDP would grow to USD 2.1 trillion in 5-year time, so it is going to be a very important growth area.

4. To be able to make this Bay Area a success in the economic sector, it is important to look at the strengths of each of these areas. As some of you may be aware and forgive me for stating the obvious, when we talk about the Greater Bay Area, we are talking about the “9+2”, meaning the nine cities in the Guangdong province and the two

Special Administrative Regions (SARs) established under the “one country, two systems” principle, Macao SAR and Hong Kong SAR.

5. In order to capitalise on each of these “9+2” cities, we focus on and look at the strengths of each of them. There are some ideas which I would be able to share with you as to how this is going to be done in a concrete way. But before I do that, let me also talk about some bigger pictures first and Hong Kong’s role, and then I will come down right at the end to the specific areas that would be of interest to the businesses here.

6. One of the main areas that the Greater Bay Area is going to focus on, like a lot of the other bay areas, is intellectual property (IP) rights, and innovation and technology. In the 2017 report of the World Intellectual Property Organisation, it noted that China’s applications in 2016 for patents, trademarks and other IP rights were more than those of the United States, Japan, Korea and the European Patent Office put together. In 2016, the number of applications came

to 1.3 million. If one is to look back in 1995, just 20 years before 2016, there were merely 18,700 applications. So you can see that the number of IP rights created, and applied for under the rightful situations, has grown significantly. One of the significant things for the start-up businesses is how does one capitalise on and nurture these IP rights that are being generated through innovation and invention.

7. According to Compass, a San Francisco-based research firm, Hong Kong is one of the top five fastest growing start-up centres in the world; it is also one of the top 25 start-up centres in the world. The reason I have to mention this is that while innovations and technologies are being created, not all of them can be commercialised or turned into industrial uses. Hence, the starting up of a business becomes a very important factor to bear in mind.

8. The other angle of the Greater Bay Area development relates to the Belt and Road Initiative, which I am sure that you have heard a lot about. The Belt and Road Initiative has a much bigger vision,

because it is about China collaborating with, at the moment, over 90 countries in the world. The tie between the Greater Bay Area and the Belt and Road is that the Greater Bay Area would provide a very good place to try out some of the pilot schemes that may be implemented. How two jurisdictions, for example Shenzhen and Hong Kong, are going to be able to collaborate together and complement each other's strengths would probably be best tested out in the Greater Bay Area. The Greater Bay Area Development Plan will come out very soon and some of these more concrete ideas would then be taken up.

9. I have mentioned Hong Kong's strengths in the area of start-ups. I would also like to mention a few other strengths of Hong Kong in doing business before I come to our legal strengths. For example, Hong Kong has been ranked first as the freest economy for 24 consecutive years by the Heritage Foundation; for 18 consecutive years by the Fraser Institute. Hong Kong based Fintech companies have raised USD 940 million from 2014 to 2017. And just by way of comparison to, for example, Singapore, it is three times what

Singapore has done in the past 3 years. Hong Kong is also the third largest foreign direct investment (FDI) recipient, according to the United Nations Conference on Trade and Development, showing again it attracts a lot of FDI in order to invest in other places, for example, inbound investment into China as well.

10. These are just some figures I would like to highlight and now I will move on to the legal angle in terms of Hong Kong being the hub for deal-making in this Greater Bay Area concept. From the business angle, you will no doubt appreciate what are the elements of success in any venture, especially in the context of the Greater Bay Area, namely that of IP rights, innovation and technology. Development very much depends on the identification, assessment as well as management of the risks involved. That would need much legal analysis which is something very important that Hong Kong can help bring in.

11. The second element no doubt is financing. From the various factors, experiences and rankings that I have mentioned, I hope you would agree that Hong Kong would be a very good hub in which you can raise capital funding and most importantly go for initial public offering (IPO). Hong Kong has been the second largest market in terms of the value for IPO in the past few years. Hong Kong is a very good place for one to utilize the financial services and the financing arrangements being put in place.

12. Now, I would also speak about disputes. It is extremely important when one is planning for a business, one also plans for the worst. That is what if it does not turn out as well as you planned it to be? How do you deal with it? Hong Kong provides very good dispute resolution services because it is a very good venue at which disputes can be resolved. I would come back to that when I talk about Hong Kong's rule of law and dispute resolution services.

13. In terms of planning for your businesses, I believe that you will no doubt have to deal with the risks, the financing and again, to plan for the worst. And one also has to deal with the domestic arrangements, such as the labour supply, the culture, the sentiment of the people, those very cultural but very domestic things. And when one is, for example, thinking of investing in the Mainland or in the Greater Bay Area, Hong Kong provides a very good springboard for that, because we understand how Mainland parties would be dealing with the local matters. The understanding of the culture and the way people function become extremely important.

14. So from that angle, what do businesses look for? I believe businesses would probably be looking for three specific matters. The first is the economy being a free economy and I have told you our rankings so I hope that would be a tick for you when you come to that. The next angle is what I would call the soft power - people. And for the last angle, I would like to suggest credibility, trustworthiness and international ranking.

15. Let me talk about the soft power. Hong Kong has a very great strength because Hong Kong is an international city. It attracts not just the Hong Kong people building their businesses but actually a lot of people from outside coming to Hong Kong to set up their businesses. Therefore, it becomes a talent pool comprising lawyers, professionals in the innovation and technology sector, as well as in other sectors. Our soft power provides a very good ground for businesses.

16. Credibility is, in my respectful submissions, something that Hong Kong has, compared to other cities in Asia. We have credibility in the sense of trust because of our efficient government as well as our zero tolerance to corruption. That is an important element for business. With credibility, it brings us to the next very important point and that is the rule of law in Hong Kong.

17. Now I would like to repeat something that some of you may be very familiar. But it is important to remind ourselves that Hong Kong, under the “one country, two systems” principle, preserves the common law as our legal system. The “one country, two systems” principle works extremely well because Hong Kong people administer Hong Kong affairs. We have our own immigration, our own tax and our own customs regimes, and we therefore are entirely free to deal with for example, bilateral investment agreements and free trade agreements which give us a lot of strengths in the international business world.

18. The Basic Law is an important document that provides for Hong Kong’s high degree of autonomy as well as our rule of law. It explicitly provides that our legal system is the common law system. And that becomes an important heritage that we have inherited from the time of the British rule, something that becomes the cornerstone of our society.

19. The second important element enshrined in the Basic Law that relates to the rule of law is judicial independence. Judicial independence is guaranteed under the Basic Law so that the judges in Hong Kong are free from any interference, with their independence being very well constitutionally protected. This judicial independence is again something that has been looked at by a number of international organisations. Hong Kong has been ranked first in Asia for a number of years by the Global Competitiveness Report of the World Economic Forum.

20. I mentioned the legal system and the rule of law. In that angle, I would also like to share with you another important ranking. Just now, I mentioned the World Economic Forum ranking, Hong Kong's judicial independence is always ranked very high and the first in Asia in the past few years, although fluctuating a little bit. In terms of the World Bank's figures which look at a 20-year trend, a longer-term trend, the Worldwide Governance Indicators Report shows that Hong Kong's rule of law percentile ranking was 69.9% in 1996, and it

grew to 93.3% in 2016. Over 20 years, Hong Kong's rule of law ranking moved from the top 70 to the top 15, and Hong Kong's percentile ranking has always been over 90 since 2003. This is a long-term trend as opposed to year-on-year fluctuations. They are useful to bear that in mind when talking about Hong Kong's rule of law because these are indicia that are objectively assessed by respectable international organisations.

21. When talking about rule of law and judicial independence, it is also important to look at how one assesses it. Does one assess it purely by looking at what is being repeated in the media? Or does one look at it with informed views? I would urge you all to do so with the latter approach. Therefore, if there is any suggestion about any court judgments that may be pre-set with other motives, I would urge you to read the judgment. This is the beauty of the common law system, because the judgment sets out the reasons why the judge has come to that particular view rather than a random flip-of-the-coin approach. The legal system and the judiciary reinforce our rule of law.

22. The legal profession also brings together a group of international talents, as I mentioned about our soft power. There are 9,950 solicitors, 1,100 barristers and 1,500 foreign lawyers in Hong Kong. So you can see the pool being very international. All these elements build together a strong, certain and predictable legal system.

23. I just mentioned that one has to assess the legal risks associated with a deal and in doing so, one has to apply and choose a law that is certain and predictable. Now, English law is always one of the main attractions because it has one of the most developed commercial laws. Hong Kong law has the benefit of learning and taking from the best traditions of the English common law, and developed a system that is now acceptable to Mainland entities. Hong Kong law also has the benefit of being bilingual. When Mainland party has to choose a particular law, they can choose Hong Kong law given this particular attraction.

24. If, for instance, you are familiar with English law and do not want to use the Mainland law, you can then consider the Hong Kong law, because that is familiar to the English law practitioners, and also to the Mainland law practitioners as they have the experience of using the Hong Kong law. Therefore, in that sense, when one is looking at deal making, there is such attraction that I urge you to consider.

25. The next thing, particularly relevant to the Greater Bay Area, is IP arbitration. Hong Kong has been the international arbitration center in Asia. We have always been ranked the top three or four in the past five to six years by the Queen Mary University of London Survey. Hong Kong has always been ranked one of the most preferred seats of arbitration. That of course is not enough, because when we are looking at the Greater Bay Area, we have to look at the specific types of disputes that would arise. And there will probably be a lot of IP disputes. When there is a IP dispute, people tend to think you would have to end up in the national court of the particular jurisdiction where IP right is being protected. But on the other hand,

there is case law as well as statutes in some places that provides for arbitrability of IP rights.

26. Hong Kong has just passed the law that explicitly says that IP rights are arbitrable, and therefore the award is enforceable, not just under Hong Kong law, but also under the regime of the New York Convention and the arrangements between Hong Kong and the Mainland on the enforcement of arbitral awards. With IP being probably one of the main areas that could give rise to disputes, the arbitrability of IP rights becomes an important angle that I would like to share with you.

27. The other angle that is worth noting is that Hong Kong has also just passed the amendment law to provide for third party funding for arbitration. This has become an important area, not just for major arbitration, because it allows people to plan their financial resources. When you have to pursue a long and winding arbitration, a third party funder, if it looks upon it as an investment, may provide you with the

means by which you could pursue for your legal rights, while your financial resources can be deployed in developing your business. So Hong Kong has allowed and catered for that.

28. Let me then look specifically what has happened in the Greater Bay Area and therefore what might be particularly useful to bear in mind. President Xi Jinping has directed a measure to allow universities and research institutions in Hong Kong to apply for funds earmarked for pushing technology and innovation in the Mainland. That would create more resources by which Hong Kong's business can venture into research, providing a very good base for further development in innovation and technology.

29. The Hong Kong Government has also announced that it will put aside 500 billion dollars for innovation and technology development because Hong Kong is determined to include this as one of our policy aims. With that, in terms of the legal angle, the main area that I think Hong Kong would be able to do, coupled with the

developing situations in Shenzhen in innovation and technology, is to commercialise IP rights. The commercialisation will depend on the business and fund-raising aspects that I have mentioned.

30. Thereafter the next thing that Hong Kong will be able to do is to provide for dispute resolution for IP disputes as well as for IP protection because the very strong IP laws in place in Hong Kong, both case law and statutes, would allow the IP rights to be properly protected. If there are disputes, they should be arbitrated in Hong Kong.

31. Thirdly, in terms of businesses and investments between Hong Kong and the Mainland, an investment agreement has been signed under the Closer Economic Partnership Arrangement, providing protections for investment between Hong Kong and Mainland businesses, in the same way as bilateral investment treaties that are in place between States. Therefore, it provides good protections for Hong Kong businesses investing in the Mainland, with

provisions such as fair and equitable treatment, protection against expropriation etc.

32. Lastly, for lawyers, there is a very likely to be successful opening up of the legal practice in the Greater Bay Area as well. The Department of Justice is talking closely with the Ministry of Justice of the Mainland to see how we can have more law firms to partner with Chinese law firms in order to set up joint ventures to provide legal services in the Mainland. Barristers in Hong Kong are now able to become legal consultants to Mainland law firms and provide legal services directly to some of the law firms. So for the legal services, this will hopefully open up a new way by which lawyers can enter the Mainland market first through the Greater Bay Area as a pilot scheme, and hopefully other areas in China as well.

33. I hope I have shared with you some useful information. I will be very happy to answer any questions you may have.

Thank you.

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