

**IBA Bar Breakfast Co-Hosted by the Law Society of
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**Hong Kong's Unique Role as an Asian International
Legal Hub under "One Country, Two Systems"**

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**Good Morning, My Fellow Panellists, Distinguished
Guests, Ladies and Gentlemen,**

1. It is my great pleasure to speak in this breakfast meeting on Hong Kong's unique role as an Asian international legal hub under "one country, two systems".

"One Country, Two Systems" and the Basic Law

2. "One country, two systems" is a unique and insightful policy. The Constitution of the People's Republic of

China (“PRC”), in particular its Article 31¹, lays the very foundation of the establishment of the Hong Kong Special Administrative Region, and the Basic Law was enacted in 1990 in accordance with the PRC Constitution to implement the policy of “one country, two systems”, turning it into a reality.

3. While recognising that Hong Kong is an inalienable part of the PRC, the Basic Law ensures that Hong Kong exercises a high degree of autonomy and enjoys executive, legislative and independent judicial power, and continues to practise the capitalist system and its common law-based legal system.

¹ Article 31 of the PRC Constitution provides that “[t]he state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People’s Congress in the light of specific conditions.”

4. With the Basic Law serving as the backbone of the legal infrastructure and providing for the independent exercise of prosecutorial and judicial power, Hong Kong enjoys world-renowned reputation for its solid rule of law foundation, its strong legal fraternity and its robust and independent judiciary.
5. Under the Basic Law, the power of final adjudication is vested in the Court of Final Appeal of Hong Kong, with eminent judges of the apex courts of other common law jurisdictions sitting on it as non-permanents judges.
6. Furthermore, everyone in Hong Kong – not just its residents² – has his / her fundamental rights and freedoms, including, for example, equality before the

² Article 41 of the Basic Law provides that “[p]ersons in the Hong Kong Special Administrative Region other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed in this Chapter.”

law, freedom of speech and freedom of assembly, expressly safeguarded under the Basic Law.

Reflection on the Current Situation

7. The controversies over the past few months have been widely reported in international media. However, everything you have read, seen or heard on the news or social media should be considered in the full context. Hong Kong's legal system remains robust, human rights are safeguarded, and we remain active in the international legal community. In fact, just two weeks ago, we hosted the inaugural global conference for the Judgments Convention of the Hague Conference on Private International Law.

Deal-Making and Dispute Resolution Hub

8. On the deal-making side, with strong fundamentals as evidenced by being the world's freest economies in 25 consecutive years³, the presence of 70 of the world's 100 biggest banks⁴ and over 1,600 registered foreign lawyers⁵, business remains as usual in Hong Kong and Hong Kong is expected to be in the top three globally in terms of total funds raised in 2019⁶.

³ See the 2019 Index of Economic Freedom report of the Heritage Foundation (available at https://www.heritage.org/index/pdf/2019/book/index_2019.pdf).

⁴ See InvestHK, "Hong Kong: A Key Link for the Belt and Road", at p.10 (Available at https://www.investhk.gov.hk/sites/default/files/2019.01_BnR%20Booklet_EN.pdf).

⁵ See the data from the Law Society of Hong Kong as of end-June 2019 as reported in <http://hong-kong-economy-research.hktdc.com/business-news/article/Hong-Kong-Industry-Profiles/Legal-Services-Industry-in-Hong-Kong/hkip/en/1/1X000000/1X003UYK.htm> (12 July 2019).

⁶ See "KPMG predicts solid pipeline to drive year-end uptick in Hong Kong IPO market after positive signs late in third quarter" (19 September 2019) (available at <https://home.kpmg/cn/en/home/news-media/press-releases/2019/09/solid-pipeline-drive-year-end-uptick-hk-ipo-market.html>).

9. Given Hong Kong's role as a multilateral bridge connecting the Mainland and the world of business under "one country, two systems", it is well-positioned to fully capture the opportunities provided by the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Greater Bay Area.
10. In this regard, the business community is certainly aware that the Belt and Road Summit 2019 was successfully held in Hong Kong two weeks ago, with more than 5,000 delegates attending and coming from over 60 countries and regions around the world.
11. With greater volume of cross-border transactions, disputes are bound to arise. In this regard, Hong Kong has recently adopted various initiatives, which illustrate its strength as an international dispute resolution centre and a deal-making hub.

Dispute Resolution for Intellectual Property Rights Related Disputes

12. For disputes in international transactions involving intellectual property (“IP”), the disputing parties would inevitably look for certainty to ensure that such disputes are capable to be resolved by arbitration. To provide such certainty, legislative amendments have been made to the Arbitration Ordinance of Hong Kong in 2017 to clarify that disputes over IP rights are capable to be resolved by way of arbitration.
13. With respect to IP-related disputes, it is noteworthy that the “*Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of Hong Kong*”, while closely resembling the recently

concluded Judgments Convention of the Hague Conference on Private International Law, has taken a step further by covering some of the IP related judgments, such as those on contractual disputes involving IP rights, and tortious claims for infringement of certain IP rights, thus making Hong Kong an even more attractive seat for IP arbitration or litigation.

Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings

14. Nevertheless, in cross-border disputes involving violation of IP rights, urgent interim measures such as evidence and property preservation measures are usually called for. In this regard, Hong Kong has

concluded in April this year the ground-breaking “*Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings*” with the Mainland, making Hong Kong the first and only jurisdiction outside the Mainland where, as a seat of arbitration, parties to arbitration proceedings administered by eligible arbitral institutions would be able to apply to the Mainland courts for interim measures. In fact, a list of six qualifying arbitral and dispute resolution institutions that are eligible for applying to the Mainland courts for interim measures under the Arrangement will be announced today. It is expected that this game-changing Arrangement can ensure access to justice and the pursuit of rule of law by preventing a disputing

party from deliberately destroying the evidence or transferring the property.

Third Party Funding in Hong Kong

15. However, given that international arbitration can be an expensive process, third party funding may be required.
16. With respect to third party funding, Hong Kong is one of the few jurisdictions in Asia that have conducted legislative reform, and has clarified that third party funding of arbitration is not prohibited by the common law doctrines of maintenance and champerty.
17. A very broad scope of application is given to the third party funding regime of Hong Kong to cover also international arbitration for which the place of arbitration is outside Hong Kong or there is no place of arbitration, such as ICSID arbitration.

18. In relation to the disclosure requirements, unlike some jurisdictions which have placed the burden on the legal advisers to the disputing parties, Hong Kong requires the funded party to disclose to the other disputing party and the arbitral tribunal as to the existence of the funding agreement, the identity of the third party funder and the termination of the funding agreement.
19. A “light-touch” regulatory approach on third party funders, with the use of Code of Practice for Third Party Funding, has been adopted in Hong Kong. To navigate this area prudently, an advisory body has been established and is expected to issue a report reviewing the implementation of the Code of Practice after three years and make recommendations on the way forward.
20. Arbitration is by no means the exclusive way for resolving disputes, and Hong Kong has been actively

promoting the use of mediation, through various initiatives such as our flagship “Mediate First” campaign. Our legislative reform in respect of third party funding is also one of such examples in that mediation proceedings are also covered and we plan to issue the related Code of Practice for Third Party Funding of Mediation as soon as practicable.

Conclusion

21. It is the best of times and it is the worst of times. Notwithstanding the challenge that we are facing, Hong Kong has always been a resilient global city with a strong rule of law tradition. We have faith that the current situation will subside, law and order will be fully restored, challenges will be overcome, and in the

years come, Hong Kong will continue its success and prosper under “one country, two systems”.

22. Thank you.