

Speech by SJ at "Why Invest in Hong Kong: A Look to the Future" webinar (English only)

Tony (Chairman of the Asian Academy of International Law, Dr Anthony Neoh), Stephen (Director-General of Investment Promotion, Mr Stephen Phillips), distinguished speakers, ladies and gentlemen,

I wish to first thank all the panellists and speakers for this afternoon's stimulating discussions. The panellists and speakers that we have here this afternoon are all based in Hong Kong and of the highest standard, effectively demonstrating to us why, looking into the future, we should invest in and through Hong Kong.

I have the great honour to make closing remarks for this afternoon's session, but also effectively to do closing remarks for the "Why Hong Kong" series that we have been having these few months. As you are aware, the "Why Hong Kong" webinars stemmed from the "Why Hong Kong is Irreplaceable" webinar held by the Asian Academy

of International Law to address and dispel concerns about using Hong Kong as a deal-making and dispute resolution centre. Since then, we have held four webinars to showcase Hong Kong's strengths and to clarify the unjustified concerns. I believe we have done just that.

As Ann (Deputy Chief Executive, Bank of China (Hong Kong), Mrs Ann Kung) was saying just now when she sees "Why Hong Kong", her answer immediately is "why not?" And I hope that is what you will be concluding after this series of webinars. I would like to utilise this opportunity to consolidate and highlight three main strengths to answer the question of "Why Hong Kong": the solid and mature financial and legal infrastructure, the business opportunities, and the soft power - the talents.

First, Hong Kong has a robust and business friendly legal infrastructure. With our well-established common law legal system, our open, transparent and independent judiciary, and the unique aspects of our legal regime which

is only possible under the "one country, two systems" arrangement, Hong Kong offers unique strengths.

As the only common law jurisdiction in China, Hong Kong's system is well tested, open and transparent, rule-based, and independent. The independence of our judiciary is premised on the solid infrastructure that has been laid down primarily in the Basic Law, including the security of tenure, the immunity of judges, the non-revolving door, and most importantly, the express provision in Article 85 of the Basic Law guaranteeing judicial independence, that is to be free from any interference. The judicial officers are chosen for their professional and judicial qualities, adjudicating cases based only on the law and evidence before them. The product of the judicial process, the judgments themselves, are publicly available and set out all the analysis that lead to the conclusion.

Under the "one country, two systems" arrangement, Hong Kong is also able to conclude arrangements with the Mainland which facilitate and promote the development of

the legal and business sectors, seizing the opportunities afforded by the policy of the Central Authorities. Such measures include the interim measures arrangement¹ and the supplemental arrangement on the enforcement of arbitral awards² in relation to arbitration; the arrangement with the Mainland on the reciprocal recognition and enforcement of judgments in relation to civil and commercial matters³ which also include mutual enforcement of certain intellectual property judgments; and the most recent co-operation mechanism between Hong Kong and the Mainland in the area of insolvency and debt restructuring⁴, where liquidators and provisional liquidators

¹ Arrangement Concerning Mutual Assistance in Court ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR.

² Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR.

³ Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region, signed in January 2019.

⁴ Record of Meeting of the Supreme People's Court and the Government of the Hong Kong Special Administrative Region on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region signed on 14 May 2021.

from Hong Kong may apply to a court in Shanghai, Xiamen and Shenzhen for recognition and assistance. All of these measures I have briefly outlined are unique to Hong Kong and are only possible under the "one country, two systems" policy.

The strength of Hong Kong law, especially in the civil and commercial fields, has been consistently recognised internationally. In the World Competitiveness Yearbook 2021 which was published by the Institute for Management Development just last week, Hong Kong retained its number one ranking in the "Business legislation" sub-factor.

Looking to the second strength, Hong Kong's business environment and the solid financial infrastructure as well. As an international financial centre, Hong Kong offers first-rate professional financial services, for example being the number one initial public offering (IPO) venue globally in seven of the past 12 years. In 2020 alone, HK\$397.5 billion was raised in the Hong Kong IPO market - the

highest amount raised in a single year since 2010⁵. As the facts that have been highlighted by Nicholas (Chief Executive Officer, Hong Kong Exchanges and Clearing Limited, Mr Nicolas Aguzin) just now have told you, the facts themselves illustrate that the statement in the Hong Kong Exchange that Hong Kong is the most dynamic and vibrant capital market is very well supported. Hong Kong's resilient financial market is also able to attract a lot of investments in and through Hong Kong. Hong Kong's strength as an international financial centre has also been consistently recognised, for example in the World wide Governance Indicators by the World Bank⁶, Hong Kong ranked in the 90th percentile for the past 17 years in its "Regulatory Quality" component, which captures perceptions of the ability of the government to formulate and implement solid and sound policies and regulations that permit and promote private sector development.

⁵ See https://www.hkex.com.hk/Join-Our-Market/IPO/Listing-with-HKEX?sc_lang=en.

⁶ See <https://info.worldbank.org/governance/wgi/>.

With the shift of the global economy to Asia and China's ascent in the world financial system will no doubt bring in further opportunities for Hong Kong. We have previously heard from Victor (Chairman of Fung Group and 2022 Foundation, Dr Victor Fung) and others how one should be looking at the developments and opportunities that are afforded in the Greater Bay Area (GBA). Hong Kong is undoubtedly China's premiere offshore Renminbi (RMB) centre as well, having the world's deepest RMB liquidity pool outside Mainland China of over RMB600 billion with 70 per cent of the world's RMB payments settled through Hong Kong⁷. I believe that this number will continue to grow as China's 14th Five-Year Plan released earlier this year sets out and reaffirms Hong Kong's role as a RMB offshore centre.

As we have heard today and in previous webinars, the recently passed Limited Partnership Fund Ordinance⁸

⁷ See <https://www.hkma.gov.hk/eng/key-functions/international-financial-centre/hong-kong-as-an-international-financial-centre/dominant-gateway-to-china/>.

⁸ Limited Partnership Fund Ordinance, Cap. 637.

introduces a new entity type for private equity and venture capital funds for Hong Kong, and amendments to the Inland Revenue Ordinance⁹ allow for tax concessions for carried interest of private equity funds operating in Hong Kong. Coupled with the Government Green Bond Programme to issue more green bonds totalling US\$22.5 billion over the next five years¹⁰, these exciting new initiatives by the Hong Kong Government makes investing in and through Hong Kong a very enticing prospect.

The 14th Five-Year Plan and the GBA as highlighted by Victor provide us with unparalleled opportunities that no other jurisdiction will be able to benefit. Hong Kong, as Victor described, is to be a connector between the Mainland and the ASEAN, a centre for innovation, and a trade finance centre riding on Hong Kong's strength as a financial centre and also an orchestrator of global supply chain. For me, I would say that the GBA allows Hong

⁹ Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Bill 2021, passed on 28 April 2021.

¹⁰ See <https://www.budget.gov.hk/2021/eng/se.html>. US\$22.5 billion is equivalent to HK\$175.5 billion.

Kong to have a great opportunity to be a prime deal-making centre. And I will tell you what we are looking towards in the future from the Department of Justice in this particular aspect.

Let me go to our third strength. The final but very important point that evidences our strength is the immense wealth of talent converging in Hong Kong. It is essential for any international legal and finance hub to be backed by a sufficient number of professional talents and bodies, and not only does Hong Kong have the brightest legal and dispute resolution individuals, we also have an array of outstanding professionals in areas such as financial services, taxation, accounting, engineering, shipping and information technology, to name just a few.

As to the legal sector, Hong Kong has around 12,500 barristers and solicitors, with more than 1,500 registered foreign lawyers in Hong Kong from 33 jurisdictions and 86 registered foreign law firms. Many legal professionals in Hong Kong are qualified in more than one jurisdiction,

speak several languages, and is cognizant and appreciative to both Western and Chinese business practices.

These talents form the backbone of the software of Hong Kong's professional services, and as Eddie Yue, Chief Executive of the Hong Kong Monetary Authority notes in the "Why Hong Kong is Irreplaceable" keynote speech, talent always follows the money. And you have heard that Hong Kong provides ample opportunities for the money to come in and through Hong Kong. And therefore, Hong Kong is a very good place to attract the talents. You might think how our talents are different from talents from other parts of the world. Again, also already highlighted by our speakers, we do have an international perspective and are very keen to maintain and keep that. But in the meantime, we also have a very good understanding of the Chinese, not just the language, but also the culture, and therefore able to provide a very good service in whichever professional area to link and connect between the international world and the Mainland China.

Looking into these strengths, we would say that these multitude of different strengths that Hong Kong has, as explained in these webinars, can probably be summarised in this way: Hong Kong can run the 100-metre dash, because we are very quick, but we can also do the marathon and ultimately win the race. Why is that? We are resilient. We have a very strong and robust financial and legal infrastructure. We also have a very competitive spirit, a can-do spirit, that is based on the open and transparent as well as the level playing field that we have in Hong Kong. And importantly, we have a continuous supply of opportunities from the Mainland, from the 14th Five-Year Plan and the GBA. These three key elements allow Hong Kong to continue to thrive and be very active in the business opportunities that one can look at in this part of the world.

So what in the future the Department of Justice is going to be looking at? The first one that is I think most important and has been touched upon by Norman (Former Chief Executive of the Hong Kong Monetary Authority, Mr

Norman Chan) in his session is Hong Kong enterprises in the GBA. One of the initiatives that we are working on, is to try and ensure that Hong Kong enterprises in the GBA could have the opportunity that without foreign-related elements, they can choose Hong Kong law as the law that governs their commercial contracts, as well as to use Hong Kong as the seat of arbitration. We will perhaps have to try out first on a pilot scheme with a smaller area and hopefully, ultimately to encourage the whole of the GBA to adopt that approach. This is going to be beneficial not just for the Hong Kong lawyers or the Hong Kong businesses, but it will be beneficial also for attracting investments into the GBA, because there will be companies which will be a lot more comfortable if they are to continue to use the common law that they are familiar with, and also perhaps to come back to arbitrate here in Hong Kong. This will give them the opportunity to choose the law and the seat of arbitration they like.

The second also very important area that we are dedicated to continue to develop and uphold is the rule of

law, premised primarily on the use of common law way beyond 2047. We hope that the use of common law will continue to be a very important pillar in Hong Kong, and that will allow the businesses to use Hong Kong as their place for investing in and through into the Mainland China and of course also into the international world.

The third is, I think one of the speakers mentioned, the "I" in the IFC. We will continue to develop the international aspect and a few areas have just been materialised. In November, we are going to organise a workshop with the Economic and Technology Co-operation under Chapter 9 of the Hong Kong-ASEAN FTA (Free Trade Agreement), hoping to explore areas by which we can further collaborate. And other areas with APEC and UNCITRAL are something that we are working on, too.

Fourthly, the Mainland side. The Department of Justice will continue to negotiate with relevant authorities in the Mainland to explore arrangements that will be uniquely available under the "one country, two systems". That will

put Hong Kong in an even stronger strength than what we have at the moment.

To close, I would like to express my thanks to all the speakers, convenors and panellists that have participated in the "Why Hong Kong" series. Without their support, this webinar series would not have been successful. I would like to express my thanks to you all who are listening online, and I would encourage you to spread the word that Hong Kong is indeed irreplaceable, that Hong Kong arbitration and law is preferable, and that we should invest in and through Hong Kong with lots of opportunities. And to end, I would echo the remarks of our two speakers just now: come to Hong Kong and come back to Hong Kong and see for yourself the opportunities that are lying here in Hong Kong. Thank you very much.

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