

Business flourishes

(by Secretary for Justice, Ms Teresa Cheng, SC)

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The US government issued a so-called advisory expressing the view that risks of doing business in Hong Kong have increased after the enactment of the national security law on June 30, 2020. Hard facts and figures show otherwise.

The financial market has continued to prosper. A total of US\$51.3 billion was raised in 2020 through initial public offerings in Hong Kong, while US\$40.1 billion was recorded in 2019. We have been ranked as the world's top IPO venue in seven of the past 12 years.

In the securities market, the average daily turnover for the first six months of 2021 was HK\$188.2 billion, representing an increase of 60 per cent when compared

with HK\$117.5 billion for the same period in 2020. Additionally, there has been a steady rise in total deposits in our banking system, which had reached HK\$14.86 trillion at the end of May 2021.

These figures speak for themselves and can debunk any misrepresentations. Indeed, they indicate that, since the national security law was enacted, the certainty and predictability of Hong Kong's business environment has been enhanced, thereby attracting investment and businesses.

The enactment of the national security law has not affected the business environment and the operation of commercial law in any way. First, the substantive law in Hong Kong that governs business and commercial transactions has not changed.

Second, the jurisdiction of the courts in relation to the

adjudication of commercial disputes has not been affected, as provided for under Article 19 of the Basic Law: “The courts of the Hong Kong Special Administrative Region shall have jurisdiction over all cases in the Region...”

Third, the procedural rules in civil and commercial litigation continue to ensure due process.

Insofar as “acts of state” or other legally recognised privileges and immunities are concerned, the procedures that have been in place for years continue to apply. The court continues to adjudicate commercial disputes independently.

There is in place an arrangement between the Hong Kong courts and the courts of Shanghai, Xiamen and Shenzhen on mutual recognition of and assistance to bankruptcy and insolvency proceedings, Hong Kong being the only jurisdiction having established such cooperation with the

mainland. This arrangement will provide protection for creditors, while ensuring that restructuring schemes can be implemented to protect investments.

Importantly, party autonomy remains a highly respected element of commercial transactions. Parties are free to choose the law applicable to their contracts and the forum by which they resolve their disputes.

Hong Kong is the third most preferred seat of arbitration and our arbitration laws are in line with international practice, with parties enjoying the unique measures applicable only to Hong Kong under “one country, two systems”. These include being able to apply to mainland courts for interim measures in Hong Kong-seated arbitral proceedings administered by qualified Hong Kong arbitral institutions.

Finally, there is no change to Hong Kong’s open and

transparent market, and the level playing field that encourages fair competition.

The facts and circumstances prevailing in the city led to the recent statement from the American Chamber of Commerce in Hong Kong that, “Hong Kong remains a critical and vibrant facilitator of trade and financial flow between the East and West”.

In respect of the legal sector, we currently have about 12,500 solicitors and barristers, and more than 1,500 registered foreign lawyers from 33 different jurisdictions, as well as 85 foreign law firms in Hong Kong, providing services on cross-border and international legal issues.

Suggestions that businesses and individuals may inadvertently violate the provisions of the national security law represent a lack of understanding of that law, assuming of course that they were not made *mala fides* (in

bad faith).

In the national security law, the elements of each of the four offences - secession, subversion, terrorism, and collusion with foreign forces - which encompass the acts (*actus reus*) and intents (*mens rea*) required to constitute an offence, their respective penalties, and the scope of application, are clearly set out. The necessary corollary of the need for proof of intent in any prosecution under the national security law is that the suggestion that one would inadvertently violate the law cannot withstand scrutiny and must be rejected.

There is no need to worry that businesses would be subjected to search without proper legal basis. Investigative powers under the national security law have to be exercised in accordance with the provisions on human rights and rule of law principles, as provided for in Articles 4 and 5 of the national security law and the Basic

Law.

These powers are subject to the safeguards provided in the relevant implementation rules, many of which are adapted from the investigative powers and procedures that have been in operation in Hong Kong for decades and well before the enactment of the national security law.

In sum, one must look at the objective facts and evidence before an opinion is formed. Views or comments made without any factual basis or in defiance of them cannot survive the truth of objective facts.

The people best placed to express views on the business environment and legal system in Hong Kong are the local and expatriate communities that work and live here.

Indeed, as prominent experts in the business, legal and financial sectors have expressed in the [“Why Hong Kong”](#)

series of webinars, not only is it business as usual, but the abundance of opportunities in Hong Kong and the Greater Bay Area means that the city's businesses will continue to grow, flourish, and prosper.

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