

**Speech by SJ, Mr Paul Lam, SC, at the 2022 Annual Conference of In-House Lawyers (English only)**

President of the Law Society CM, (President of the Law Society of Hong Kong, Mr Chan Chak-ming), distinguished guests, ladies and gentlemen,

Good afternoon. It gives me great pleasure to welcome you to Justice Place for the latter half of this wonderful event organised by the In-House Lawyers Committee of the Law Society.

2. Holding this Annual Conference in Justice Place, which is the headquarters of the Department of Justice (“DoJ”), is symbolic because, as a matter of fact, the DoJ is the largest employer of in-house counsel in Hong Kong. Speaking for myself, when I prepared this speech, it occurred to me that I have just become an in-house lawyer for a little over two months as Secretary for Justice. Most of you would know that I have been practising as a barrister for almost three decades. I am new to this job and I am still getting used to this new role; so any tips and tricks from my friends who are in-house counsel will be most welcome!

3. The theme for this year is in-house lawyers being a “Corporate Connector”. I am sure you are well aware of your important role within your respective companies or organisations acting as such “Corporate Connectors”,

who serve to enhance corporate governance and compliance, avoid disputes, and handle disputes if they do arise. What I wish to say is that: what you must not overlook is your important role in the context of the Hong Kong legal community, and indeed, Hong Kong as a whole. Back in 2016, Mr Justice Robert Tang PJ (as he then was) remarked that “in-house lawyers are a substantial force in the legal community in Hong Kong”. This is undoubtedly an utmost important and accurate statement.

4. The way I construe this statement is that in-house lawyers, because of the peculiar nature of their jobs, can very often do what other private practitioners cannot, or struggle very hard, to do - for example, they have the power to connect their employers’ businesses to a particular jurisdiction. You may take part in deciding where a business should be headquartered, what should be the governing law of the relevant contracts to which your employers are parties, and where and how any disputes arising out of these contracts should be resolved. I still remember that in a very famous Hollywood movie, a certain masked hero has said, “with great power comes great responsibility”. Not only do you have all these very potent and important powers, I would venture to suggest that you, as member of the Hong Kong legal community, also have a very serious responsibility. What I have in mind is the responsibility to connect businesses and matters under your sphere of influence with the jurisdiction that we are most familiar with, namely, Hong Kong. So,

for example, I would urge you to consider seriously to advise your employers to choose Hong Kong law as the governing law of the relevant contracts, and Hong Kong to be the jurisdiction where disputes should be resolved irrespective of how. In addition, when advising your employers which outside law firms or lawyers, including solicitors and counsel, should be engaged, I would also encourage you to seriously consider Hong Kong local law firms and lawyers, as you will no doubt agree with me that many and in fact most Hong Kong lawyers are immensely talented and no less competent than their foreign counterparts.

5. Hong Kong is already an international legal services and dispute resolution hub because of our common law system, and our diverse pool of legal talents, to name a few of our unique advantages. But a very unique and perhaps the most unique advantage enjoyed by Hong Kong is the substantial opportunities under, or created because of, the principle of “one country, two systems”.

6. President Xi in his recent speech made on July 1 marking the 25<sup>th</sup> anniversary of the establishment of the Hong Kong Special Administrative Region made it crystal clear that the principle of “one country, two systems” is a long term policy that must be adhered to, and will certainly go beyond 2047. This means that Hong Kong will remain as the only common law

jurisdiction in our country, China, bringing along with it fundamental features such as the rule of law and the independence of the judiciary. The National 14<sup>th</sup> Five-Year Plan, also mentioned by President Xi in his speech, explicitly supports Hong Kong's development into a centre for international legal and dispute resolution services in the Asia-Pacific region. This, coupled with other national development policies such as the (Guangdong-Hong Kong-Macao) Greater Bay Area initiative and the Belt and Road Initiative, makes Hong Kong truly a place full of opportunities for the business and legal communities.

7. Hong Kong must seize the opportunities created by these national development plans proactively. Among other things, it needs to enhance the co-operation and collaboration between the two legal systems in the Mainland and Hong Kong respectively. In this respect, Hong Kong has already entered into various legal assistance arrangements with the Mainland on various matters. And I would like to take this opportunity to highlight a few which may be of particular relevance to your work as in-house lawyers.

8. The first is the bundle of arrangements concerning arbitration, which provide a comprehensive regime for recognition and enforcement of arbitral awards between the two jurisdictions, and also allow parties to arbitral proceedings seated in Hong Kong to apply to Mainland courts for interim

measures. These arrangements are complemented by the recent legislative amendments to the arbitration regime in Hong Kong, which permit agreements using outcome related fee structures for arbitration (“ORFSA”) and also third party funding for arbitration. These measures were previously prohibited under for example the common law doctrines of maintenance and champerty.

9. The second is the bundle of arrangements with the Mainland concerning reciprocal enforcement and recognition of judgments covering a wide range of civil and commercial matters, including intellectual property rights. Although the arrangement concerning previous choice of court agreements is already in force for a number of years, the most recent bill to implement the latest arrangement concerning recognition and enforcement of civil and commercial matters is a very important development. It is currently at the Bills Committee stage in the Legislative Council. In fact, I am very pleased to say that we have already completed that part of the legislative procedure, and we are waiting for the resumption of the second reading of the bill. I hope and expect that the Ordinance will be formally enacted very soon before the end of this year. Once enacted, the new arrangement, which will become part of our Hong Kong law, will offer substantial improvements to the previous regime, for example, it will include the removal of the requirement of an exclusive jurisdiction clause as a precondition for recognition and enforcement of the judgment.

10. Lastly, I wish to mention the Record of Meeting concerning mutual recognition of and assistance to insolvency proceedings signed in May 2021 with the Mainland, which establishes a new mechanism which allows Hong Kong liquidators and administrators to apply to Mainland courts in three areas - having regard to the fact that it is a pilot scheme - the three pilot areas are Shanghai, Xiamen and Shenzhen, for the recognition of insolvency and debt restructuring proceedings in Hong Kong. In practice, this means that assistance may be granted in relation to, for example, the taking over of the debtor's property, and investigations into the financial position of the debtor who is subject to insolvency or similar proceedings. There is no question that this arrangement will provide better protection to safeguard the interests of the creditors. I sincerely hope that this pilot scheme may extend to other cities in the Mainland in the near future.

11. I would also like to take this opportunity to highlight to you the initiative for wholly owned Hong Kong enterprises to be allowed to adopt Hong Kong law and choose arbitration to be seated in Hong Kong in their contracts - we have a very simple term for that, it is 港資港法港仲裁 - which is already in place in part of the Greater Bay Area. This measure will create more options for companies and business enterprises seeking to grasp the opportunities in the Greater Bay Area. We are actively seeking to further

liberalise the measure in this respect and hope to expand this measure to the whole of the Greater Bay Area, once again, in the near future.

12. Ladies and gentlemen, I am confident that, with the support of the Central People's Government, there will be more opportunities, benefits and advantages to come for Hong Kong businesses and enterprises and, indeed, the legal community. My department, the DoJ, shall continue to strive for closer co-operation with the Mainland authorities with a view to providing further benefits and advantages to the business community and the legal community in the Greater Bay Area and beyond. I would encourage you to capitalise on Hong Kong's unique advantage, namely, while it is a part of China, it has a world renowned common law system with a very long history of success.

13. With these remarks, I hope you would enjoy the rest of today's Conference with more insightful discussions of common interests. Thank you very much.