

Speech by SJ at Law Society of Hong Kong's Forum on Doing Business in Hong Kong in a Rapidly Changing World (English only) (with photo)

Following is the speech by the Secretary for Justice, Mr Paul Lam, SC, at the Law Society of Hong Kong's Forum on Doing Business in Hong Kong in a Rapidly Changing World today (July 11):

Mr CM Chan (President of the Law Society of Hong Kong, Mr Chan Chak-ming), 陳東副主任 (Deputy Director of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (HKSAR), Mr Chen Dong), 方建明副特派員 (Deputy Commissioner of the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR, Mr Fang Jianming), distinguished guests, ladies and gentlemen,

A very good morning to everyone joining us here in person and online. I wish to start by thanking the Law Society of Hong Kong for inviting me to this Forum.

July 2023 marks the completion of the first year of the current term of the HKSAR Government as we recover from unprecedented challenges in the past few years. The world we live in today is indeed changing rapidly. The topic of today's forum - Doing Business in Hong Kong in a Rapidly Changing World could not be timelier. As the Chief Executive remarked earlier this month in celebration of the 26th anniversary of the establishment of the HKSAR, Hong Kong has emerged from the shadow of economic contraction, and we are now moving full steam ahead in an upward trajectory of economic growth.

Hong Kong as an international financial centre

Despite the challenges experienced in the past few years, based on objective information, I am very confident that Hong Kong is resilient, and remains as a leading international financial centre and an ideal place for doing business with its pro-business policies, low tax system, etc.

The statistics released by the Census and Statistics Department in March this year show that Hong Kong continues to be a prominent financial centre. At the end of the fourth quarter of 2022, both Hong Kong's external financial assets and liabilities stood at a very high level, amounting to \$47,437.8 billion and \$33,685.8 billion

respectively. As at the end of February 2022, Hong Kong is home to 78 of the world's top 100 banks; it is the world's largest offshore Renminbi hub with total deposits of RMB 924.9 billion; and is ranked fourth in the world and second in Asia for funds raised in 2021.

In a rapidly changing world, Hong Kong supports new development to complement our traditional financial markets. Even throughout the difficult pandemic, Hong Kong continued to excel with its thriving startup sector. Invest Hong Kong's 2022 Startup Survey showed that both the number of start-ups and their number of employees reached a record high, with a total of 3 985 start-ups, employing close to 15 000 staff members. To put things in perspective, in comparison to 2018, there is an increase of 52 per cent in the number of start-ups that set up in Hong Kong, and a 56 per cent increase in the number of staff employed. In 2021, 18 unicorns have emerged from Hong Kong, with successful stories of companies listed on the Hong Kong Stock Exchange as well as Nasdaq of the United States (US).

I firmly believe Hong Kong's ability to remain as an international financial centre is largely attributed to its stable environment with strong rule of law consisting of a robust legal system and a pool of diversified legal talents.

"One country, two systems" and the legal infrastructure

During his visit to Hong Kong in July last year, President Xi emphasised in his speech that the principle of "one country, two systems" must be adhered to in the long run. It is most significant to note that he mentioned common law twice in his speech, highlighting the need to maintain and develop the same.

Under the principle of "one country, two systems", Hong Kong retains its common law system and remains to be the only common law jurisdiction within China. Court hearings are conducted in either English or Chinese. All court proceedings, save for limited exceptions, are open to the public. Court judgments, and also reasons for sentences in criminal cases for District Court and above, are available on the Judiciary's website. As guaranteed under the Basic Law, our Judiciary exercises independent power of adjudication free from any interference. Article 85 of the Basic Law allows our Court of Final Appeal to invite eminent foreign judges to sit as Non-Permanent Judges (NPJ). Currently, there are 11 foreign NPJ, including the recently appointed the Honourable Mr Judge Patrick Anthony Keane from Australia. These foreign judges, from the United Kingdom (UK), Australia and Canada, are highly

regarded in their own jurisdictions and bring with them international judicial experience which enrich Hong Kong's jurisprudence. Judgments of our Court of Final Appeal are cited by the courts in other common law jurisdictions from time to time.

Major economies and the international business community are familiar with our common law system. With Hong Kong's impartial, independent and transparent judicial system, the international business community is assured with a predictable, certain and secure legal environment which is conducive to investment and business activities.

National Security Law

In order to maintain a stable environment, Hong Kong must not ignore or underestimate any possible risks to national security. The enactment of the National Security Law (NSL) not only safeguards our national sovereignty and territorial integrity, but also provides a stable and peaceful environment which is indeed an essential pre-condition for business development, and enjoyment of activities for both overseas tourists and people living and working in Hong Kong.

Hong Kong is certainly not the only jurisdiction with national security laws. Most, if not all jurisdictions, including for example the US, the UK, Australia, Canada and Singapore have enacted some forms of national security legislations, many of which are even more stringent than the NSL.

The foreign media's narrative of Hong Kong's NSL tends to be negative, untrue and unfair with twisted facts portraying the NSL as a draconian law that should be feared by all. But in fact, since the implementation of NSL three years ago, as at July 7, 2023, only 30 persons were convicted or are awaiting sentencing under the NSL, which is an extremely small number compared to Hong Kong's seven million population. Open judgments of the NSL, setting out the facts and reasons of those cases, which involve very extreme and radical acts, show that people engaging in normal business have no reason whatsoever to be concerned.

Rising geopolitical tensions and increasing protectionism may have generated false political rhetoric. At the Boao Forum Asia held in April last year, President Xi emphasised the need to uphold "true multilateralism" through safeguarding peace, advancing co-operation and jointly promoting Asian unity.

Contributing to national policies - Hong Kong's legal services

This year marks the 10th anniversary of the Belt and Road Initiative. As remarked by President Xi in May this year, "the ultimate purpose and goal of this initiative is to explore new ways for countries from near and far to achieve common development", opening up a "path of happiness" that benefits the world.

The National 14th Five-Year Plan supports Hong Kong to develop in eight key areas, amongst others, a centre for international legal and dispute resolution services. The Outline Development Plan for Guangdong-Hong Kong-Macao Greater Bay Area (GBA) aims to further deepen co-operation amongst the three jurisdictions within our country, opening up vast opportunities in the nine Mainland cities, with a population of over 86 million and GDP of over RMB13 trillion in 2022.

The objective of these national policies is clear - to build a community with a shared goal for mankind. Hong Kong proactively integrates into the national policies, bridging businesses between the Chinese market and the rest of the world.

To date, Hong Kong has signed nine arrangements on mutual legal assistance (MLA) in civil and commercial matters with the Mainland. These arrangements can be broadly categorised into three areas, namely, procedural assistance, arbitration-related assistance, and reciprocal recognition and enforcement of judgments. The MLA regime is a strong testimony to the principle of "one country, two systems", under which Hong Kong maintains its own legal systems on one hand, and continues to collaborate with the Mainland to enhance our legal and dispute resolution services to facilitate increasing cross-boundary trade and investments, thereby proactively contributing to national developments.

With a strong pool of around 13 000 solicitors and 1 600 barristers, it is not difficult to find a Hong Kong legal practitioner with multiregional experiences, proficiency in multiple languages and expert knowledge, providing top-notch professional legal and dispute resolution services for cross-border transactions and business activities.

Hong Kong's legal practitioners can now obtain GBA qualifications to practise in the nine GBA cities on specific civil and commercial matters to which Mainland laws apply. With dual qualifications, Hong Kong's legal practitioners have an edge in providing one-stop services for cross-boundary transactions.

Furthermore, Hong Kong and other foreign-invested enterprises registered in the Qianhai Cooperation Zone in Shenzhen have the option to choose Hong Kong law as the applicable law, and for those in the Free Trade Zones in the Mainland to choose Hong Kong as the seat of arbitration in their civil and commercial contracts. We will continue to actively seek the support of the Central People's Government in extending the initiative to all the GBA cities.

Dispute resolution services in Hong Kong

Hong Kong is constantly ranked among the world's top three most preferred seats for arbitration. Arbitral awards made in Hong Kong are enforceable in over 170 contracting parties under the New York Convention. Our Arbitration Ordinance has been amended over the years to ensure that Hong Kong's arbitration law stays abreast of international developments, with the most recent amendments in last December to allow flexible outcome-related fee structure arrangements in arbitration.

With the mediation culture taking root in Hong Kong, we have begun to bring our "Mediate First" brand outside of Hong Kong. The joint conference of the legal departments of Guangdong, Hong Kong and Macao have endorsed mediator accreditation standards, code of conduct best practices and cross-boundary dispute mediation model rules, contributing to the wider use of mediation in the GBA. With the staunch support of the Central People's Government, the International Organization for Mediation Preparatory Office was established in February this year. It is envisaged that the Preparatory Office will become a permanent multilateral international organisation established through negotiation among all contracting parties, providing friendly and efficient mediation services for resolving international disputes.

Conclusion

A robust legal infrastructure, an independent judiciary, a safe and secure environment are key considerations for businesses operating in Hong Kong. With the support of our motherland and abundant opportunities under the national policies, Hong Kong will continue to contribute to the shared vision of common development in this rapidly changing world. On this note, I wish today's forum every success. Thank you.

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