

Speech by SJ at business seminar and dinner in Amsterdam, Netherlands (English only)
(with photo)

Following are the welcome remarks by the Secretary for Justice, Mr Paul Lam, SC, at a business seminar and dinner organised by the Netherlands Hong Kong Business Association with the support of the Hong Kong Economic and Trade Office in Brussels and Invest Hong Kong on July 7 (Amsterdam time):

His Excellency Mr Tan Jian (Ambassador Extraordinary and Plenipotentiary of the People's Republic of China to the Kingdom of the Netherlands), dear friends from the Association, and distinguished guests in the Netherlands,

Firstly, I'm really delighted and honoured to be given the chance to speak to these distinguished audience this evening. Perhaps I should begin by telling you a little bit more about myself and the purpose of my present trip. I have used to practice in Hong Kong as a civil and commercial barrister. I've been practicing in Hong Kong for almost 30 years and then joined the Government about three years ago. So that's when I became the Secretary for Justice.

I had considered to come to the Netherlands and this part of the world for a very long time. Unfortunately, for many reasons I was unable to do this until this occasion. So this is in fact my first trip to Europe after I took my office. So I've chosen the Netherlands.

For personal reasons, I love travelling in the past. I travelled quite a lot. Amsterdam is very top on my list, I always come to Amsterdam to stay a couple of days, go to museums, restaurants, just to walk around, and then I move on as a stopover, and move on to other destinations. But Amsterdam is always a stop that I could not miss, so I have very good personal reasons to come to Amsterdam once again.

For official reasons, the Netherlands is the second-largest trading partner of Hong Kong within Europe. There are more than 170 companies in Hong Kong. And I was invited to join the National Day Reception in late April. So, I have too many reasons to choose the Netherlands as my best destination.

Returning to today's seminar, I understand that you have heard from many eminent speakers this afternoon who have shared with you many important information about the latest development in Hong Kong in different areas. I know that you are all very keen supporters of Hong Kong and there must be reasons why you were attracted to Hong Kong. Maybe the probable reason is that you see Hong Kong as a very open society. We offer a very fair, transparent, predictable environment for you to explore business opportunities, either in Hong Kong, in China, or the Asia Pacific region. But I think all these characteristics are highly concerned with the political and legal landscape of Hong Kong. This is an important point in the sense that we are living at a rather difficult time. And Hong Kong has faced a lot of challenges in recent years. You are all keen supporters of Hong Kong. But outside this room, I'm clearly aware of the fact that many people do

have a lot of questions about the future of Hong Kong. They may not be as confident as you of the future of Hong Kong. There are a lot of misgivings, misunderstandings, so on and so forth. I do believe that it's my duty, not simply as a government official, but as a Hong Kong citizen, to bite the bullet, to face the music, to try to convince people why Hong Kong is still the Hong Kong that you are familiar with, why Hong Kong is still the Hong Kong that we all love.

There's one single message that I wish to convey, and that is "Hong Kong is still Hong Kong". I wish to perhaps look at the latest development or something that I regard to be of great importance insofar as political landscape and legal landscape are concerned. Let me begin by the political landscapes of Hong Kong. I make it all boiled down to one very important thing. The gist of the matter is the principle of "one country, two systems". It's because of "one country, two systems", Hong Kong enjoys a number of very unique strengths and characteristics which are unparalleled. For example, we have our own independent legal system based on common law, our own independent financial system, our own currency, free flow of capital, we have trade port, we have no tariffs, no trade barriers, but all these things are because of the fact that we have "one country, two systems".

So the elephant in the room is this, is the principle of "one country, two systems" to be maintained, or is it going to be changed in whatever way in future? I wish to give you three reasons, why there shouldn't be any worry or concern that the principle of "one country, two systems" will be altered or changed in future. The first reason is that the principle of "one country, two systems", notwithstanding the fact that it's a political concept, but actually it's constitutional entrenched in the sense that its implementation is guaranteed by a constitutional document which is the Basic Law. I'm sure that many people in this room is familiar with the Basic Law. But what I wish to highlight is that on July 1, we celebrated the 28th anniversary of China's resumption of sovereignty over Hong Kong. And for 28 years, and notwithstanding the fact that we had encountered a number of difficulties and challenges, not a single word, not a single clause in our Basic Law had been changed.

Secondly, which is a matter of law, I think lawyers would be interested in what I am saying. In the Basic Law, there's a provision which allows amendment to be made to the Basic Law, subject to a very important qualification. There's a very clear, expressed provision, that any amendment cannot contravene, or cannot change the basic policy of the People's Republic of China regarding Hong Kong, and that basic policy is precisely "one country, two systems". So legally speaking, as a matter of constitutional, our constitutional order, you cannot really change the fundamental principle of "one country, two systems". So if you feel that I'm not too legalistic, I move on to my second point, my second reason.

The second reason is highly political, but it's of crucial importance in the present context. That goes to the reassurances given by the top state leaders of the People's Republic of China. I would mention three very important speeches, two made by President Xi Jinping. And the last speech was given by Wang Yi, the Minister of Foreign

Affairs. First, President Xi Jinping said on July 1, 2022, it was the 25th anniversary of China's resumption of sovereignty over Hong Kong. It was when I assumed my current position as the Secretary for Justice. In his very important speech, he made a very important point. He said that the principal of "one country, two systems" is a good policy that must be adhered to in the long run. I think he was trying to convey a very important message, to dispel any misgivings, any doubts that Beijing had any intention whatsoever to change its basic policy towards Hong Kong. The "one country, two systems" principle also applies to Macau. So more recently, on December 20, 2024, also at the 25th anniversary of China's resumption of sovereignty over Macau, President Xi Jinping made another very important speech, repeating why the principle of "one country, two systems" is a good system. At the end, he said that the principle of "one country, two systems" actually embodies very important universal values - peace, openness, inclusiveness, and sharing. And he said that these values are valuable, important, not just to China, Macau, or even China as a whole, but to the whole world. So the China's national strategy is to make use of this principle of "one country, two systems" to assist its modernisation. So as a matter of logic and common sense, it's unthinkable that either HKSAR (Hong Kong Special Administrative Region) or Beijing would shoot ourselves in the foot by damaging or destroying the most valuable asset which makes Hong Kong being in a position to contribute to the success or even survival of Hong Kong.

The last speech was given by Mr Wang Yi, the Minister of Foreign Affairs, when he attended the signing ceremony of a very important international convention. It's known as the Convention on the Establishment of the International Organization for Mediation. It is an international treaty signed by 33 countries, including China. And most of these countries include countries in Southeast Asia, Africa, and even one in Europe, Serbia. The Swiss foreign minister came to Hong Kong to give a speech. The purpose of the convention is to set up the first inter-governmental international organisation, which is devoted to use mediation as a means to resolve different types of international disputes, including disputes between sovereign states, disputes between states and foreign nationals, say, for example, investor-state disputes, and even international civil and commercial disputes. The important thing is that the state parties, in particular China, supported that the headquarters of this new organisation will be situated in Hong Kong. The question is why. Just imagine for Beijing or even other countries, they have a lot of options. Why not in Beijing, why not in Shanghai, why not in Shenzhen or anywhere? But Hong Kong, why Hong Kong? I think Mr Wang Yi gave the answer in his important speech. He mentioned once again it's because of "one country, two systems". Because under "one country, two systems", Hong Kong inherits the common law tradition, but at the same time, the Mainland China practises a civil law system. There's a synergy between the systems. So we are the best of both worlds, so to speak. And that's precisely the reason why such an important international organisation, the headquarters of such an organisation will be situated in Hong Kong. This is a very important message. It is a very strong vote of confidence and given by not just China, but other state parties in the future of Hong Kong. So that's my second reason.

The third reason concerns a piece of law passed last year in Hong Kong. For people familiar with Hong Kong, you would be aware that all lands in Hong Kong are held

pursuant to government leases, except for St. John's Cathedral. For people who have been to Hong Kong, you know that St. John's Cathedral is a freehold land for historical reasons. But otherwise, all lands in Hong Kong that were held pursuant to government leases, which means that they were for a fixed time, very often for 99 years. And the reality is that many of these government leases, hundreds and thousands, will expire by 2047. That is 50 years after China's resumption of sovereignty over Hong Kong. So last year, we passed a legislation, the effect of which is that all these leases, which are going to expire before, or by 2047 will be automatically renewed for 50 years, without any additional premium. That means that these land ownership will be guaranteed, they will continue, they will go beyond 2047. Of course, land ownership is extremely important. It is not simply concerned with the provision of shelter or home for people. It serves as very important security, a very valuable asset for business people, for financial institution. So that's the way we assure people that our system will not change because I cannot find a more important example showing the distinguished feature of "one country, two systems" by referring to our land ownership system. So I think this is a very compelling piece of evidence. I have three pieces of evidence to convince people that any misgiving would be misplaced. So this is about the political landscape.

What about the legal landscape? I mentioned a moment ago that one of the essential characteristics of "one country, two systems" is the fact that we are still using the common law system. I wish to highlight three very important features of our common law system that will be maintained, enhanced, and of great importance in ensuring Hong Kong's continued success in the future.

Firstly, the credibility of our common law system. Our people are willing to come to Hong Kong because they believe in Hong Kong's legal system. And one of the key reasons is that in Hong Kong we have a very reputable and credible independent judiciary. Judicial independence is a very key element of a legal system. How do we show to people that Hong Kong's judicial system, Hong Kong's judiciary, will remain independent? The answer is that we are a very open system. We have invited many eminent foreign judges from other common law jurisdictions to sit in our court. I wish to give two very concrete examples. Under the Basic Law, Hong Kong enjoys the power of final adjudication, because before 1997, all the final appeal cases would have to be heard in Privy Council in London. But after 1997, we enjoy the final power of adjudication. So the highest court will be the Court of Final Appeal and that's a very special arrangement, which I'm sure that some of you would be aware of. We are at liberty, we are permitted to invite judges from other common law jurisdictions to sit as foreign non-permanent judges. At the moment, and I would say that even after 2019 and 2020 when Hong Kong experienced some challenges, even after 2020, or since 2020, we have three foreign judges agreeing to come to Hong Kong. So for the time being, there are altogether six foreign non-permanent judges. Two from England, Lord Hoffmann and Lord Neuberger. For lawyers, they would be very familiar names. And then three judges from Australia, and one from New Zealand. The most recent appointment was Sir William Young, a former judge of the Supreme Court of New Zealand. He was appointed in June, so less than a month ago. So why would these eminent judges agree to come to Hong Kong if they are not confident and do not believe in Hong Kong itself? The other thing is that

even at the Court of First Instance level, the judiciary has been inviting judges from other common law jurisdictions to sit as part-time judges. And I can also give a very recent example. I know that very soon, a judge who is a British, a very eminent British lawyer, will come to Hong Kong to sit in commercial cases. So these are the continuous efforts made by Hong Kong to ensure that we will retain the international characteristic to give people confidence.

And of course, I have to mention, it's something that I hesitate to mention, that the Government still loses cases from time to time, but it's the most compelling evidence to prove the existence of judicial independence. Of course I would not say that I was very happy with the outcome, but I described it as a very healthy phenomenon. It's very cogent and conclusive proof of the fact that our legal and judicial system functions properly. So this is my first point, the credibility of a judicial system.

The second characteristic goes to the fact that we have a very user-friendly system - common law system. One thing that may be very often can be overlooked is that Hong Kong is the only bilingual common law system using both English and Chinese.

Notwithstanding that China has resumed sovereignty over Hong Kong, one would have naturally expected that Chinese would be the only authentic language, but that's not true. Even in our legislation, in our court judgments, things would be written in both languages, which is of course important to the international community.

The second thing is that we have made tremendous effort to ensure that our law will meet the changing needs of society, not just within Hong Kong but also the international community. I give two examples. The first example is that we have just amended our company ordinance, which came into effect in late May. It provides a scheme to enable companies being operated overseas to re-domicile to Hong Kong, by a very simple mechanism, so that they can enjoy tax advantage, a relatively simple regulatory regime, so on and so forth. I understand that two major insurance companies have indicated that they will re-domicile to Hong Kong probably in November this year. The second example goes to digital assets, the Stablecoins Ordinance. The ordinance will come into effect on August 1. I think it's an indication of our determination to strike a balance. You have to have some sort of regulation, some sort of licensing, but at the same time, you have to enable this digital thing to be able to develop in a healthy manner. So this is my second point, we have a very user-friendly common law system.

The last point, which is really unique, which is something that cannot be found, is our connection with the Mainland legal system. Under "one country, two systems", we have our common law system, we do not use the Mainland legal system. It doesn't mean that there's no connection or no linkage between the two systems. On the contrary, there are very important connections between the two legal systems, which are of great practical importance to the international business community. And once again, I wish to use some examples. The first example concerns arbitration. Can arbitration awards in Hong Kong be recognised or enforced in Mainland China? The answer is that we have a very special mutual legal assistance arrangement with Mainland China. There are altogether nine, but

suffice for me to mention that's an arrangement which enables an arbitration award in Hong Kong to be easily recognised and enforced in China. It's modelled on a well-known New York convention. So it's no different as any other international award. And another special thing which also about arbitration is that Hong Kong and Mainland China has entered into a very special arrangement to enable arbitration to start or commence in Hong Kong. People engaged in this sort of arbitration would be entitled to apply for interim measures like interim injunction to freeze the assets of the opposing party to preserve evidence in Mainland China by making application in the Mainland court. For example, you start an arbitration in Hong Kong, then you can go to the Mainland court to apply to freeze the assets of your opponent to preserve evidence. I can give you the statistics to see how important and how successful this arrangement is. The arrangement came into existence on the October 1, 2019, and up to mid-May this year, there were altogether around 146 applications. And the value of assets which were subject to this interim preservation order would be around US\$5 billion. That will be a very important and practical legal tool to use Hong Kong as a legal dispute resolution centre. And the second more recent example, that I wish to introduce to you, concerns the Greater Bay Area (GBA). The Greater Bay Area consists of Hong Kong, Macau, and mainly the nine important cities in the Guangdong province. The population is 86 million. I think the size is more like Croatia, but the GDP has exceeded Australia. I think it would be top 10 as it seen as a single entity. So a lot of opportunities. So just on the February 14, we have introduced special measures to enable Hong Kong enterprise, if they set up an office or their own company in GBA cities, they would have the right to choose Hong Kong law to govern their contracts. In the old days, there were very serious restrictions. Even if you're a foreign company, a Hong Kong company, if you set up your company in Mainland China, you have no option. You have to use Mainland law to govern your contractual relationship. The second thing is that you can also choose Hong Kong as the seat of arbitration to resolve any potential dispute. And once again, in the past, that option would not be open. You have to use the dispute resolution mechanism or arbitration in Mainland China. So these are special measures which were recently introduced to give people more options. We can readily understand that, in particular for people outside Hong Kong, they may feel more familiar with Hong Kong's legal system, whether it's used as the governing law or whether it's used as the place to resolve disputes. The choice belongs to the end users, but you have to give people the choice. So we are offering people this choice.

Another important thing is the definition of Hong Kong enterprise. It doesn't mean that it has to be a 100 per cent owned Hong Kong company. So long as there's some Hong Kong interest, say 1 per cent Hong Kong interest. So if you get a business partner who's willing to invest 1 per cent in a business venture, then you will be qualified to be a Hong Kong enterprise. And if you use this in the name of this Hong Kong enterprise, you go into a GBA area, then you can take advantage of the measures that I have just mentioned. I'm using this example to highlight the very unique connection between the Hong Kong common law system and the Mainland legal system, which offers very important practical advantages to the international business community.

Lastly, you may say that I'm just selecting the good news. What about external views on the state of the rule of law in Hong Kong? I wish to refer to two very recent

international surveys to support that what I have been telling you is not some sort of self-serving statement trying to paint a rosy picture. Firstly, the IMD, the Institute for Management Development in Switzerland, published a competitiveness survey in June, so about a month ago. In terms of global competitiveness, Hong Kong is the third. In the last survey, we were the fifth, so we moved two places up. We ranked second in terms of government efficiency and also business efficiency. And most importantly, Hong Kong ranked the first when it comes to business legislation, which means our business law and also our tax policy. This is the external view based on a very credible international survey. The second international survey that I wish to refer to is an international survey concerning international arbitration. It's a survey done by the Queen Mary University of London, together with the law firm White & Case. It's a regular survey done once every three or four years. In the very recent survey, Hong Kong is regarded to be the second most preferred seat of arbitration in the world. Hong Kong and Singapore both enjoy the second place. And in fact, Hong Kong is the most preferred place for arbitration in the Asia-Pacific region. So once again, this serves as a very strong piece of objective evidence to demonstrate people's confidence in our legal system.

We are living at a time of uncertainties and challenges, many of these challenges were caused by reasons or factors beyond our control. Some of them goes to geopolitical situations, things like that. The role of Hong Kong can play from the perspective be considered in a wider context, not just as a matter of bilateral relationship between Hong Kong and the Netherlands. It has to be perhaps considered in the wider context of the overall relationship between Europe and China, or perhaps Europe and Asia-Pacific, as a whole. I think the relationship between Europe and China and Hong Kong has become even more relevant and important at this time of great uncertainties and challenges. But amid all these challenges and difficulties, in sharp contrast to these challenges and difficulties, what Hong Kong can offer would be certainty and opportunities. Certainty that you will have a very secure, very user-friendly, very credible legal system to safeguard interests, to manage risk, but enormous opportunities to be found, not just in Hong Kong, not just in the GBA, but China as a whole.

So I do believe, I speak from the bottom of my heart that there are very good reasons for us to remain very confident and optimistic in the future of Hong Kong. And for this, of course, I'm most grateful to the continued support by our friends in this room. I do ask you to continue your support. Whenever people speak in front of you, express any doubt, I do invite you to speak on our behalf to convince them that there's no reason whatsoever to feel pessimistic. There's no reason whatsoever for them to be concerned about the future of Hong Kong, because Hong Kong will still be the Hong Kong that we all love, that we are all familiar with. This is all I wish to say. Thank you very much.

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