

Speech by Secretary for Justice

Following is the speech by the Secretary for Justice, Ms Elsie Leung, at a luncheon organised by the Hong Kong-Canada Business Association (Vancouver), the Canadian Club and the Hong Kong Economic and Trade Office in Vancouver, on November 20, (Canadian Time).

"Hong Kong as Your Fast Track to China and Asia-Pacific : A Legal Perspective"

Good afternoon, ladies and gentlemen,

I'd like to thank the Canadian Club of Vancouver, the Hong Kong Canada Business Association and our Economic and Trade Office in Canada for organising this luncheon. It's a great pleasure for me to speak with you today, and simply to be here in this beautiful city of Vancouver, host of the 2010 Olympic and Paralympic Winter Games.

The connections between Hong Kong and the Lower Mainland [the local term for Greater Vancouver] are, of course, very strong. There are some 200,000 Canadian citizens living in Hong Kong, a great many of them Vancouverites, and they have made tremendous contributions to our cosmopolitan mosaic and business buzz. I trust the same holds true going in the other direction.

The Canadian Chamber of Commerce in Hong Kong is the largest Canadian Chamber outside Canada. About 150 Canadian companies operate in Hong Kong. They are there to take advantage of our free market, our pro-business climate and our strategic location. Besides being on China's doorstep, Hong Kong is within a few hours of all the Southeast Asian capitals as well as Korea and Japan. That's why we are such a popular choice for regional offices and operations.

My topic today is "Hong Kong as Your Fast Track to China and Asia-Pacific: A Legal Perspective". I'd like to tell you about our swift recovery from last spring's SARS outbreak; explain some exciting initiatives that bode well for the future of Hong Kong and China; and tell you how British Columbian businesses can use Hong Kong's legal and business services when entering the China market.

SARS

Hong Kong has weathered six years of economic restructuring brought on by the Asian financial crisis and the downturn in global markets. Last spring, just when we thought the worst was over, we were hit by a hitherto unknown virus, SARS, which caused a great deal of suffering and the tragic loss of lives. Our airlines, hotels, restaurants and retailers were hit particularly hard. But I'm happy to say that these sectors have now recovered to pre-SARS levels, and the other economic signs are very encouraging. Hong Kong's external trade was not badly affected by SARS, and our exports continue to grow at a healthy rate. Tourist arrivals have bounced back strongly. Deflation appears to be easing after five years, and the unemployment rate is edging down from its record high a few months ago. Funds are flowing into Hong Kong; stock market turnover doubled from the first quarter to the third. Our Financial Secretary recently raised the GDP growth forecast for this year from 2 per cent to 3 per cent.

Economic developments

Much of this economic resurgence has come from Hong Kong capitalising on China's remarkable growth. And several recent developments have accelerated the process.

One has been the emergence of the Pearl River Delta (PRD) as what some are calling "the factory of the world". Hong Kong investors got the ball rolling two decades ago by moving their manufacturing plants across the boundary into Guangdong Province. Now manufacturers from around the world operate tens of thousands of factories employing millions of workers in the PRD, making cars, electronics, textiles, toys and myriad other products. The PRD is the fastest-growing region of the fastest-growing large economy in the world.

To put the market potential into perspective, the Greater PRD region, including Hong Kong and Macau, has a population of nearly 50 million people in an area not much larger than Vancouver Island.

Another significant development was China's accession to the World Trade Organisation two years ago. This is having a profound effect on global trade and investment patterns, as the Mainland liberalises its huge market under WTO rules.

As China has begun to fully realise its economic potential, Hong Kong has been busy, too. Over the past two decades, as Hong Kong manufacturers moved their factories to the PRD, we have gone from "making things" to "making things happen". Hong Kong has become one of the world's leading financial and business services hubs, a place for international companies to venture into China, and a place for Mainland companies to raise funds and reach out to the world.

Most recently, we have taken big steps towards increasing economic co-operation between Hong Kong and the Mainland, particularly the PRD and Shanghai. Residents of several Mainland cities were recently allowed to visit Hong Kong as individual tourists, rather than as part of a group tour. This has had a tremendous positive effect on our tourism and retail sectors already.

We are implementing measures to increase the flow of people, goods and capital between Hong Kong and the Mainland. Besides upgrading our boundary crossing checkpoints, we are going ahead with several new infrastructure projects. These include a bridge to Shenzhen, and a 28-kilometre crossing to Macau and Zhuhai on the western side of the Pearl River Delta. These bridges are just part of an infrastructure programme that will include a culture and arts complex in West Kowloon, a new exhibition and convention centre near our award-winning airport, and Hong Kong Disneyland, which will open in two years. As always, Canadian engineering firms are welcome to bid on big Hong Kong projects.

CEPA

But perhaps the most significant development in economic co-operation is the Mainland-Hong Kong Closer Economic Partnership Arrangement, or CEPA. It is a WTO-compliant free trade agreement that will go into effect on January 1, and covers three broad areas - trade in goods, trade in services and facilitation of trade and investment.

Like NAFTA, it benefits the parties involved, without threatening the multilateral trading system. It is not called a "free trade agreement" because the parties felt that CEPA was a more appropriate term for an arrangement within a single country. The reason we were able to conclude a free trade agreement with our sovereign power is that we have separate memberships in the WTO and the World Customs Organisation. It's an example of how "One Country, Two Systems" works in practice, not just in theory.

Under CEPA, the Mainland will eliminate tariffs on Hong Kong exports in 273 product categories, covering about 90 per cent of our export portfolio. The rest will go tariff-free in 2006.

In terms of services, CEPA will open up the Mainland market to 18 service categories, including banking, legal, distribution and telecommunications services. The CEPA not only gives Hong Kong companies a head start on the Mainland's WTO commitments, in some cases it exceeds those commitments. The definition of a "Hong Kong company" includes any enterprise that's incorporated in Hong Kong and carries on substantive business there - whether it's foreign-owned or local.

In most of the services categories, a company must have been operating in Hong Kong for three to five years. That waiting period will be reduced to one year for foreign firms that acquire majority shares in a Hong Kong company through merger or acquisition. In the manufacturing sector, there's no waiting period, provided your products meet the CEPA rules-of-origin requirements. This arrangement is expected to benefit manufacturers of brand-name products and those using proprietary technology, which can take advantage of Hong Kong's strong legal system and intellectual property protection regime.

Legal services

One of the professional services industries covered by the CEPA is the legal sector, for which the Mainland has made the following commitments:

- * to allow Hong Kong law firms to operate in association [but not partnership] with Mainland law firms;
- * to allow Mainland law firms to employ Hong Kong barristers and solicitors;
- * to allow Hong Kong permanent residents with Chinese citizenship to acquire Mainland legal professional qualification by sitting the qualifying exam;
- * to allow Hong Kong lawyers with Mainland qualifications to engage in non-litigation legal work in the Mainland; and
- * to waive the minimum residency requirement for all Hong Kong representatives

stationed in the Mainland representative offices of Hong Kong law firms in Shenzhen and Guangzhou. For those in other cities, the minimum residency requirement is only two months per year.

As more foreign investment and imports pour into China, investors are increasingly turning to lawyers for legal advice in the negotiation and conclusion of China-related agreements, as well as for help in resolving disputes that arise from these agreements. Mainland companies venturing overseas are also making use of Hong Kong's legal services.

Two systems

The economic and legal systems of Hong Kong have remained unchanged since the Handover. This is a fundamental feature of our post-1997 constitutional order under "One Country, Two Systems". The rule of law, a clean government and an independent judiciary are cornerstones of our society. Our laws on financial affairs, trade, intellectual property and contracts have long been in line with international practice and our courts are experienced in dealing with such matters. We provide a level playing field for all businesses, whether local or foreign. Our financial, transport and communication systems are world-class. These are the foundations of Hong Kong's success as a leading international financial and commercial hub.

It's important to remember that between 1957 and 1978, China's entire legal system was dismantled. Until the late 1980s, lawyers in China were still state legal workers, and only in 1996 was an independent legal profession formally recognised. Substantial progress has been made since then. Some Mainland lawyers are extremely sophisticated in their practice, have a good command of English and information technology, and are up to date on legal developments elsewhere. Still, only a small percentage of lawyers in the Mainland are able to handle international legal practice.

Like the rest of the world, Hong Kong is undergoing an economic metamorphosis in the face of globalisation. The impact on lawyers has been tremendous. Between the 1950s and 1990s, the property market enjoyed flamboyant growth and many lawyers could rely on it as the sole area of their practice. The number of barristers and solicitors in Hong Kong grew far more rapidly than the population. An influx of foreign lawyers stimulated the local ones to develop their practice to meet the demand for expertise in capital markets, corporate finance,

securities, maritime law, intellectual property and information technology. As a result, Hong Kong lawyers are far more adept at international practice than their Mainland counterparts. This has made Hong Kong one of the most efficient and cost-effective legal services centres in Asia.

Dispute resolution

Hong Kong's legal system also offers a reassuring setting for litigation, arbitration, mediation and other forms of dispute resolution. This is particularly helpful to those who go into business with Mainland enterprises. Our common law system is well known and highly respected throughout the world.

Arbitration awards made in HK are enforceable in more than 130 jurisdictions, including the Mainland. We have a world-class International Arbitration Centre that is handling an increasing number of cases. With China's accession to the WTO and the opening of the country's interior to international commerce, Hong Kong is increasingly being stipulated in contracts as the venue for dispute resolution.

Dispute resolution is a form of service that is subject to competition and market forces, just like other services. International business people have a choice of the method of dispute resolution, the country whose laws are to be applied, and the place - anywhere in the world - where the dispute resolution is to take place.

When choosing a city in which dispute resolution is to take place, business people are likely to consider:

- * The quality and independence of the courts or arbitration centres in the city;
- * The quality of the lawyers and other professionals who may assist in the process; and
- * The extent to which the court judgment or arbitration award may be enforced in other places.

Hong Kong scores high marks in all three of these areas. Our judiciary, International Arbitration Centre and independent legal profession are widely acknowledged to meet the high standards of other international legal hubs. On top of that, Hong Kong alone enjoys three distinct advantages when it comes to resolving

disputes in the Mainland. They are, in a nutshell, location, language and Mainland experience.

All lawyers in Hong Kong are trained and operate effectively in English, and most of them can also speak fluent Cantonese or Mandarin, or both. Both foreign and Mainland parties can, therefore, communicate directly with lawyers in Hong Kong. In addition, Hong Kong lawyers know the Mainland well and have a good understanding of how its market operates. Hong Kong's proximity means that Mainland parties need not travel far to attend hearings.

CEPA further facilitates co-operation between Hong Kong and Mainland lawyers. As a result, Hong Kong and foreign investors in the Mainland market will be better served by lawyers of both jurisdictions, which in turn enhances the standard of service in both places.

Ladies and gentlemen, I've covered a lot of ground in the last few minutes, from international trade to contract arbitration. But my message is quite specific. Under "One Country, Two Systems", Hong Kong's economic, social and legal systems remain as free and efficient as ever. At the same time, we are taking advantage of our unique position as the financial and services hub for China and the Asia-Pacific. In the process, we have much to offer in the way of business and legal services to Canadians who want to enter the swiftly growing Mainland market. We welcome you to visit Hong Kong, Asia's world city, to see for yourselves.

Thank you very much.

End/Friday, November 21, 2003