

Speech by Secretary for Justice

Following is the speech by the Secretary for Justice, Ms Elsie Leung, at the Seminar on Cooperation and Exchange between Beijing and Hong Kong Lawyers today (Beijing, October 24):

It is a great pleasure for me to attend one of the important sessions of the Seventh Symposium on Economic Cooperation between Beijing and Hong Kong: the Seminar on Cooperation and Exchange Between Beijing and Hong Kong Lawyers. May I extend my gratitude to the leaders of the Ministry of Justice, Beijing Municipality and Beijing Municipal Bureau of Justice for their participation at the seminar and their support of co-operation and exchanges between lawyers of both places. My special thanks also go to the Lawyers Association of Beijing Municipality and the Hong Kong Law Society for jointly organising the event.

Since the First Symposium on Economic Cooperation between Beijing and Hong Kong was held at Beijing in 1997, we are delighted to have witnessed a phenomenal growth in our country's economy. With the accession of China to the World Trade Organisation (WTO) on December 11, 2001, the country took a further step on the road to reform and opening up of its economy. Accession to WTO has also laid a firm foundation for establishing a comprehensive and open international trade system and economic globalisation. Today's seminar is of special significance as it is held right after the signing of the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) and the Six Annexes.

The purpose of the Seminar on Cooperation and Exchange Between Beijing and Hong Kong Lawyers is to study the policy of liberalising the legal services under CEPA as well as the interpretation of the clauses, the services provided by the lawyers of Beijing and Hong Kong, and ways to achieve closer cooperation under the provisions of CEPA. Moreover, the seminar will cover special topics including the conflict of regional laws, the protection of intellectual property, and the financing of enterprises and areas for anti-dumping. I believe that much will be gained at this seminar.

The signing of CEPA on June 29 this year and the Six Annexes on September 29 is a shot in the arm for Hong Kong as it brings many opportunities here. Some may

ask what Hong Kong could offer to Mainland enterprises and service industry, particularly if the former is already one of the cities that enjoy the most free trade. Is CEPA a free gift from the Central People's Government to HK only? Is the arrangement in violation of WTO's requirements? The answer to these questions is that: there is legal basis for the arrangement, it lies in Article 24 (8) of the General Agreement on Tariffs and Trade (GATT) and Article 5 of the General Agreement on Trade in Services (GATS). According to these provisions, Hong Kong and the Mainland may accord preferential treatment to each other as regional economies, so long as the treatment is not detrimental to other WTO members and those areas that are excluded from the undertaking of China upon its entry in WTO. Before China is fully opened to the outside world, the trading experience between the two places will have long-term benefits at the macro level for it helps them to adjust to the impact of globalisation, raise our standard of trading and services to that of international level, and develop the talents of the two places. It is only within one country that the two territories could enjoy such a close relationship and share in the prosperity without any boundary between them. It is only under two systems that two WTO members within the same country could make a CEPA arrangement.

CEPA facilitates Hong Kong lawyers to gain market entry to the Mainland. Residency requirements for Hong Kong lawyers is waived or relaxed. They are allowed to sit for the National Judicial Examination, which could not be taken by foreign lawyers. In so doing, much benefit could be gained by Hong Kong lawyers. They can acquire legal profession qualifications for limited practice in China. They are allowed to be employed by Mainland lawyers. A new system is established for Hong Kong and Mainland law firms to form associations. However, it is inevitable that the services provided by Hong Kong lawyers in the Mainland will be related to the investments or business of the Mainland or foreign enterprises in the Mainland, and therefore they need to cooperate with their Mainland counterparts, particularly in the area of litigation. A Mainland enterprise seeking to be listed in Hong Kong will need the services of both Hong Kong and Mainland lawyers. Therefore, liberalisation of the Mainland market will not give rise to any cut-throat competition between the legal professions of the two sides. Rather, it will encourage the two sides to complement each other. This will strengthen and enhance the quality of legal services at both places particularly in the specialised fields of international trade, corporate finance, financial business, securities, intellectual property and information technology. It is hoped that through cooperation, lawyers of the two sides can form a strong coalition of highly competitive international legal professionals. By taking advantage of China's rapid economic growth, they can enter the international market

and contribute to our country becoming a leader in the world economy.

I am grateful to Mr Zhou Yuansheng, Deputy Director of the Department of Lawyers and Public Notary of the Ministry of Justice for explaining to us the policy behind the relevant regulations for the mutual opening up of legal services in respect of CEPA and for introducing to us the relevant rules. The signing of CEPA, like the endorsement of the Basic Law of the Hong Kong Special Administrative Region, is only a start. It is no easy task to implement the specific arrangements. There is much work to be done. Firstly, the relevant authorities are drafting the regulations for Hong Kong lawyers to be employed in the law firms in the Mainland, the method for Hong Kong lawyers to sit for the National Judicial Examination and the management of the associations formed, etc. Members of the Hong Kong legal profession have expressed their views on the matter with a view to perfecting the regulations. Secondly, CEPA could be fully utilised only if lawyers of both places could find out how they could take advantage of CEPA. This could be obtained through better understanding of each other's market, enhancing communication between the lawyers of both places, and building a service network. A certain period of time for observation and practical experience is also needed before we could take full advantage of CEPA. Thirdly, apart from the setting up of a Joint Steering Committee as suggested in Article 19 of CEPA, I also suggest working groups should be set up with various justice departments and bureaux in the Mainland. These working groups provide a consultation forum to help resolve problems which may arise in the interpretation or implementation of CEPA in a timely manner. The working group could also actively study mutual recognition of qualifications of legal service providers of the two places and to promote the exchange of legal talents between each other under Article 15. Lastly, CEPA adheres to five principles, namely, to abide by the "one country, two systems" principle; to be consistent with the rules of the WTO; to accord with the needs of both sides to adjust and upgrade their economic regime; to achieve mutual benefits and prosperity by complementing each other; to progress with a step-by-step approach by dealing with the easier issues first. The scope of CEPA will continue to be enriched and expanded. As the demands of the legal profession cannot be met at one go, we need to further explore ways to achieve closer cooperation between the two sides. CEPA is a dynamic system. It will continue to be expanded and perfected through practical experience.

Ladies and gentlemen, China's accession to the WTO is a major decision of our country in the new millennium. The accession will bring along wide and deep changes to the development of economies in the Mainland and Hong Kong. It will not

only bring great benefits to enterprises, but, more importantly, enhance China's competitiveness in the international market, improve the country's system of market economy, and cultivate more talent so that China will adapt to economic globalisation and turn a new leaf in our country's history. For this great leap forward to take place, CEPA is indeed the catalyst. At this historic juncture, legal professions in Beijing as well as Hong Kong must contribute all they can to the economic and legal development of our motherland.

May I wish the seminar every success.

Ends/Friday, October 24, 2003