

香港特别行政区
成立二十五周年

《基本法》

法律论坛汇编

The Proceedings of HKSAR
25th Anniversary
Legal Conference on Basic Law

2022年5月27日

27 May 2022



律政司
香港特別行政區政府
Department of Justice
The Government of the Hong Kong
Special Administrative Region

本固枝榮

Stability to Prosperity



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前言


2022年是香港特别行政区成立和《中华人民共和国香港特别行政区基本法》实施25周年。《基本法》第五条规定“香港特别行政区不实行社会主义制度和政策，保持原有的资本主义制度和生活方式，五十年不变”。25年来，香港特区在国家支持下，一直善用“一国两制”的优势，发展成世界领先的国际金融及贸易中心，更是全球最大的离岸人民币中心。香港特区沿用国际商业社会熟悉的普通法，联通内地与世界，发展成亚太区国际法律及争议解决服务中心。“一国两制”作为香港回归后保持繁荣稳定的最佳制度安排，必须长期坚持，¹不会以50年为限。律政司于2022年5月一连三日举行了三场法律论坛，与国内、本港及海外关心香港特区宪制秩序和“一国两制”发展的法律界及社会各界翘楚，一同回顾过去、前瞻未来，并蓄势待发，踏上“由治及兴”的新征程。其中5月27日举行的《基本法》法律论坛题为“本固枝荣”。论坛讲辞及现场讨论现汇编及翻译成书，希望能和更多关心香港特区、关心“一国两制”的人士分享讲者的真知灼见。

“本固枝荣”，以自然界的现象作比喻，说的是常识，也是道理。香港回归祖国是中华人民共和国不可分离的部分，是一个享有高度自治权的地方行政区域。香港重新纳入国家治理体系，建立起以“一国两制”方针为根本的特别行政区宪制秩序。“一国”既是根，根深才能叶茂；“一国”也是本，本固才能枝荣，这是显而易见的道理。我们应该自觉尊

1 习近平：高举中国特色社会主义伟大旗帜 为全面建设社会主义现代化国家而团结奋斗——在中国共产党第二十次全国代表大会上的报告，2022年10月16日。

重和维护国家的根本制度，“一国”原则越坚固，“两制”优势越彰显，“两制”从来离不开“一国”。

正如国家主席习近平所说：“‘一国两制’是一个完整的体系”。²要“全面准确、坚定不移贯彻‘一国两制’、港人治港……，高度自治的方针，……，坚持和完善‘一国两制’制度体系……。”³我们必须不断学习、落实、推广《宪法》、《基本法》和其他在香港特区实施的全国性法律。作为全国唯一的普通法司法管辖区，我们亦必须持续不懈推广发展香港特区的普通法和法律服务，彰显“一国两制”的优势，这是我们每一个香港法律工作者的使命、责任和光荣！

最后，我特别在此感谢香港城市大学出版社为本书提供专业的编辑及翻译服务，让律政司能够顺利出版这本汇编，见证香港特区走过的25年。



香港特别行政区律政司司长
林定国 SBS SC JP



² 2022年7月1日，国家主席习近平在庆祝香港回归祖国25周年大会暨香港特别行政区第六届政府就职典礼上的讲话。

³ 同注1。

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开幕式致辞



林郑月娥 大紫荆勋贤 GBS JP

中华人民共和国香港特别行政区时任行政长官

刘光源特派员（中华人民共和国外交部驻香港特别行政区特派员公署特派员）、王兆兵少将（中国人民解放军驻香港部队副政治委员）、关清华局长（中央人民政府驻香港特别行政区维护国家安全公署局长）、张举能法官（终审法院首席法官）、梁君彦主席（立法会主席）、各位嘉宾、各位同事、各位朋友：

早上好！欢迎大家到现场出席或通过网上参与今天由香港特别行政区（特区）政府律政司举办的《基本法》法律论坛——本固枝荣，作为我们同庆香港回归祖国 25 周年的重点活动之一。

《基本法》在香港特区已经实施了四分之一一个世纪，继 2020 年律政司就《基本法》的实施成功举行了“追本溯源”高峰论坛后，这次论坛采用“本固枝荣”作为主题，我认为非常適切。诚如国家主席习近平在 2017 年 7 月视察香港时发表的重要讲话中强调：“‘一国’是根，根深才能叶茂；‘一国’是本，本固才能枝荣。”香港作为国家不可分离的部分，“一国”毫无疑问是核心主干，同时也是保证“两制”能够持续壮大发展的大前提。

我在上世纪 80 年代加入政府，曾在不同岗位参与筹备香港特区成立的工作，自 1997 年后又见证了香港特区多方面的成长与发展。事实上，香港特区自成立以来，总体大致顺畅，虽然曾经历风浪，但在中央的全面支持，以及公务员同事和社会大众的努力下，香港一直砥砺前行、乘风破浪，发挥“一国两制”的独特优势，保持香港长期繁荣稳定，成绩斐然。


过去五年，香港经历了回归以来最严峻的挑战，国家安全受到威胁，香港前景岌岌可危，“一国”的根基、底线受



到严重冲击。面对如此局面，作为特区行政长官，我比任何时候都更明白“没有国，哪有家”的体会，更坚定相信唯有根据《宪法》和《基本法》办事，依靠中央，维护国家安全，才能确保香港的繁荣稳定。

各位朋友，我在2020年6月特区政府主办的《基本法》颁布30周年网上论坛中说，要认识《基本法》，必须回到“一国两制”的初心。当年邓小平先生提出“一国两制”的构想，是在维护国家统一和领土完整、保持香港繁荣稳定的前提下，考虑到香港的历史和现实情况，最大程度地保留了香港的特色和优势，让香港市民的原有生活方式维持不变。这个初心从来没有改变，也是中央一直以来对香港特区各项方针政策的根本宗旨。两年前的“修例风波”，就让我们深刻和沉痛地体会到任何偏离“一国两制”初心的行为，必会带来灾难性的后果。

这次论坛会讨论中央如何藉着颁布落实《香港国安法》和完善香港特区选举制度这两大举措，巩固特区的宪制秩序，让“一国两制”回到正轨。完善选举制度后的首轮三场选举已经顺利完成，是特区落实“爱国者治港”原则的重要里程碑。此外，今次论坛还会探讨《基本法》的解释与实践，以及普通法制度和《基本法》如何促进香港的自由经济。我们非常荣幸邀得多位重量级的国内外和本地嘉宾，就上述题目分享他们的精辟见解，大家将必获益良多，我也在此衷心感谢各位讲者的鼎力支持。

我深信各位能够通过这次论坛，更深入认识《基本法》和“一国两制”，贯彻“本固枝荣”。谢谢大家。



王灵桂

国务院港澳事务办公室副主任

尊敬的林郑月娥行政长官、各位嘉宾、各位朋友：

今年是香港回归祖国 25 周年暨香港《基本法》实施 25 周年，律政司隆重举办《基本法》法律论坛，探讨《基本法》实施中的重要问题，以及制定《香港国安法》、完善香港特区选举制度的重大实践，具有十分重要的意义。我谨代表国务院港澳事务办公室和夏宝龙副主席，对本次论坛的举办表示热烈祝贺！

上世纪 80 年代初，邓小平先生创造性地提出了“一国两制”的科学构想，并首先将之运用于解决香港、澳门回归祖国的问题。根据《宪法》制定的《中华人民共和国香港特别行政区基本法》，规定了在香港特别行政区实行的制度和政策，把中央政府对香港的各项方针政策以法律形式规定下来，为“一国两制”在香港特别行政区的实践提供了法律保障，奠定了香港繁荣稳定的基石。

香港回归祖国后，重新纳入国家治理体系，中央依照《宪法》和《基本法》对香港实行管治，与之相应的特别行政区制度和体制得以确立。25 年来，中央始终坚持“一国两制”方针，严格按照《宪法》和《基本法》办事，支持香港特别行政区政府依法施政，香港经济稳定增长、民生持续改善，文化、体育、社会保障等事业不断迈上新台阶，香港和祖国内地的联系交往日益密切，“一国两制”实践取得了举世公认的成功。实践充分证明，“一国两制”是处理历史遗留的香港问题、澳门问题的最佳解决方案，也是香港和澳门回归后保持长期繁荣稳定的最佳制度安排，是行得通、办得到、得人心的。坚持“一国两制”方针，深入推进“一国两制”实践，符合港澳居民利益，符合国家根本利益，符合全国人民共同愿望。




“一国两制”实践取得巨大成功的同时也遇到了一些新情况。2019年6月，香港爆发“修例风波”，“一国两制”在香港的实践遭遇前所未有的挑战。面对严峻的局势，中央始终坚守“一国两制”初心，全面准确、坚定不移贯彻“一国两制”方针，坚持和完善“一国两制”制度体系，健全中央依照《宪法》和《基本法》对特别行政区行使全面管治权的制度，完善特别行政区从《宪法》和《基本法》实施相关的制度和机制，维护国家主权、安全、发展利益。制定出台《香港国安法》，建立健全维护国家安全的执行机制，筑牢了特别行政区维护国家安全的法律制度屏障。完善香港特别行政区选举制度，修补选举制度存在的漏洞和缺陷，全面落实“爱国者治港”原则，为香港的民主健康发展打下了坚实基础。同时，还在宪制层面进一步明确香港特别行政区公职人员参选、任职和就职宣誓等制度，支持特别行政区完善公职人员宣誓效忠制度。这些重大举措和制度安排，正是新时代坚持和完善“一国两制”制度体系的生动实践和最新发展，对于确保“一国两制”实践始终沿着正确轨道行稳致

远、确保香港长期繁荣稳定和长治久安，具有重要而深远的影响。当前，“一国两制”实践迈入新阶段，无论是香港特别行政区政府还是社会各界人士，更有条件集中精力抓经济、谋发展、破解住房难和其他突出的民生问题，推动香港融入粤港澳大湾区建设，融入国家发展大局，提升香港的国际竞争力，开启良政善治。

各位嘉宾、各位朋友，“一国两制”是中国共产党百年奋斗历史的重要篇章。中国共产党十九届六中全会作出《关于党的百年奋斗重大成就和历史经验的决议》，“一国两制”作为重要内容写入其中，不仅充分肯定了“一国两制”实践的历史性成就，更彰显了中央继续全面准确、坚定不移贯彻“一国两制”方针的信心和决心。

随着《香港国安法》深入实施，选举制度修改完善，三场重要选举成功举行，“爱国者治港”原则得到落实，香港气象焕然一新。未来五年，是香港从由乱到治走向由治及兴的关键时期。中央人民政府将一如既往坚定支持行政长官和新一届特区政府依法施政。由治及兴，是更艰苦的过程和工作。天地立心，非畅快一人；万世太平，需能者舍身。我们相信，香港特别行政区政府一定能够团结带领香港社会各界砥砺前行，继续发扬“狮子山”精神，同舟共济，乘势而上，开创香港政治安全、经济繁荣、社会安定的新局面！我们相信，有包括七百四十多万香港同胞在内的全体中国人民的共同努力，中华民族伟大复兴的光明前景必将无比辉煌！

最后，我再次预祝本次论坛成果丰硕，取得圆满成功，谢谢大家！



陈冬

中央人民政府驻香港特别行政区
联络办公室副主任

尊敬的林郑月娥行政长官，各位嘉宾，女士们、先生们、朋友们，大家上午好！

很高兴通过视频参加《基本法》实施 25 周年法律论坛。这让我们有机会一起回顾历史、总结经验、展望未来。受骆惠宁主任委托，我仅代表中央人民政府驻香港特别行政区联络办公室，对论坛的举办表示热烈的祝贺！

两年前，律政司举办了以“追本溯源”为主题的法律论坛，今天又围绕“本固枝荣”这个主题进一步深入研讨。论坛抓住了《基本法》实施的核心要义，准确把握了“一国”与“两制”的内在关系，很有意义。

习近平总书记在庆祝香港回归祖国 20 周年大会上的讲话指出，“一国”是根，根深才能叶茂；“一国”是本，本固才能枝荣。**全面准确落实《基本法》，必须坚守“一国”原则。**《宪法》和《基本法》共同构成特别行政区的宪制基础，《宪法》是国家的根本大法，《基本法》是根据《宪法》制定的。《基本法》序言开宗明义，香港自古以来就是中国的领土。第一条和第十二条是《基本法》的根本条款，明确规定，香港特别行政区是中华人民共和国不可分离的部分，是中华人民共和国的一个享有高度自治权的地方行政区域，直辖于中央人民政府。回归 25 年来，《基本法》的贯彻实施维护了国家主权、安全、发展利益，维护了中央对香港的全面管治权。中央依法管理特别行政区外交、国防等事务，依法行使《基本法》解释权和重大事项决定权，先后任命了六任行政长官，行使对特区立法、预决算、法官任免等的备案权，依法决定特别行政区实行的制度，支持特别行政区政府依法施政。针对一个时期“反中乱港”活动猖獗，严重挑战“一国”底线的严峻局面，中央审时度势、果断出手，依照


《宪法》和《基本法》，制定实施《香港国安法》，完善香港选举制度，明确公职人员参选、任职和就职宣誓等法定要求和条件，落实“爱国者治港”的原则。通过一系列标本兼治的举措，推动香港局势实现由乱到治的重大转折，牢牢守住了“一国”底线，确保“一国两制”实践始终沿着正确方向前进。

全面准确落实《基本法》，必须充分发挥“两制”的优势。习近平总书记指出，在“一国”的基础之上，“两制”关系应该也完全可以做到和谐相处、相互促进。《基本法》第二条规定，全国人民代表大会授权香港特别行政区依据本法实行高度自治。《基本法》第三章从第二十四条至第四十一条都是保障权利自由的条款，只有第四十二条是关于遵守法律的义务规定，香港居民依照《基本法》享有前所未有的广泛权利和自由。《基本法》第五章明确规定，香港保持国际金融中心地位，自行制定货币金融政策；保持自由港地位，实行自由贸易政策，为单独关税地区；保持国际和区域航空中心地位，等等。这一切都赋予了香港背靠祖国、面向世界的广阔发展空间。25年来，香港经济保持平稳发展，各项社会事业迈上新台阶。本地生产总值从1997年的1.37万亿港元增至2021年的2.86万亿港元，增长了一倍多，人均收入位居世界前列。香港是全球最具竞争力的经济体之一。根据全球金融中心指数排名，香港位居全球第三；根据世界贸易组织统计，香港是全球第六大的贸易实体。香港整体法治水准在139个国家、地区中排名保持前列，持续获评为全球最廉洁的地方之一。毫无疑问，“一国两制”在香港的实践是成功的，取得的成就是有目共睹的。面向未来，“一带一路”倡议、粤港澳大湾区建设、“十四五规划”和2035年远景目标纲要等，为香港提供了重大发展机遇。



我们相信，香港只要坚守“一国”之本，善用“两制”之利，更好融入国家发展大局，就一定能有效应对各种风险挑战，续写“一国两制”实践的新篇章。

习近平总书记强调，中央贯彻“一国两制”方针，坚持两点：一是坚定不移，不会变、不动摇；二是全面准确，确保“一国两制”在香港的实践不走样、不变形。回归25年的实践充分证明，《基本法》是符合国家利益和香港实际，能够为“一国两制”提供制度保障的一部好法律。“法与时转则治，治与世宜则有功”。我们要始终坚定制度自信，完善特别行政区同《宪法》和《基本法》实施相关的制度和机制，坚定维护《宪法》和《基本法》确定的宪制秩序，持续加强《宪法》和《基本法》教育，推动“一国两制”实践行稳致远。

预祝此次论坛取得圆满成功！谢谢大家！

主题演讲

“一国两制”政策的发展与未来



沈春耀

全国人大常委会香港特别行政区
基本法委员会主任

尊敬的林郑月娥行政长官、郑若骅司长、尊敬的各位嘉宾、朋友们大家好。很荣幸受主办方的邀请，在香港特别行政区成立 25 周年法律论坛上作演讲。对于“一国两制”事业来说，2022 年是一个具有重要标志性意义的年份。

首先，是香港回归祖国及香港特别行政区成立 25 周年，是“一国两制”由国家方针政策付诸具体实践，香港特别行政区《基本法》正式施行的第 25 个年头。其次，2022 年也是邓小平同志首次公开提出“一国两制”伟大构想 40 周年，是国家现行《宪法》公布施行，并在《宪法》中创设特别行政区制度 40 周年。主办方选择在这个时间节点举办法律论坛，大家在一起感悟“一国两制”方针的精神实质，体会“一国两制”实践的伟大意义。这对于促进香港社会的《宪法》和《基本法》教育、国情教育、增强香港同胞的国家意识和爱国精神具有积极的意义，有利于在新时代更好地推动“一国两制”实践，沿着正确的方向前进。

2021 年是中国共产党成立 100 周年。“一国两制”是中国共产党百年奋斗光辉历史的重要篇章。党的十九届六中全会通过《中共中央关于党的百年奋斗重大成就和历史经验的决议》，充分肯定了“一国两制”方针及其实践的历史功绩，得出的重要结论就是“一国两制”实践取得举世公认的成功。同时，《决议》强调“必须全面准确、坚定不移、贯彻‘一国两制’方针，坚持和完善‘一国两制’制度体系”。全面准确、坚定不移、贯彻“一国两制”方针、坚持和完善“一国两制”制度体系，这就为新时代确保香港长治久安和繁荣稳定，推进香港“一国两制”实践行稳致远，提供了根本遵循和行动指引。

我们必须正确把握“全面准确”和“坚定不移”、“坚持”和“完善”这两个“辩证关系”，将其中的深刻内涵和实践要求贯彻落实体现到香港特别行政区治理的全过程和各方面。

第一个“辩证关系”是贯彻“一国两制”方针，既要“全面准确”又要“坚定不移”。一直以来，香港社会和海内外各界都很关注“一国两制”的实践走向，常常有人提出“一国两制”今后是否会有变化、会有什么变化。党的十八大以来，习近平主席多次强调，中央贯彻“一国两制”方针坚持两点，一是坚定不移、不会变、不动摇。二是全面准确，确保“一国两制”在香港的实践不变形、不走样，始终沿着正确方向前进。理解好、把握好“坚定不移”与“全面准确”之间的内在辩证的关系，对于新时代推进“一国两制”事业具有重要意义。

第一，“一国两制”是处理历史遗留的香港问题的最佳解决方案，也是香港回归后保持长期繁荣稳定的最佳制度安排。“一国两制”25年来的成功实践充分说明，这一个伟大构想及其制度方案是完全行得通、办得到、得人心的。坚定不移地贯彻“一国两制”方针，深入推进“一国两制”事业，符合香港居民利益，符合国家根本利益，符合全国人民共同愿望。我们要增强对“一国两制”的制度自信和实践自觉，只要是被实践证明是成功的东西、有益的东西，我们都要坚定不移地贯彻下去，传承发扬。无论遇到什么样的困难和挑战，对“一国两制”方针的信心和决心都绝不动摇，对推进“一国两制”事业的信心和决心都绝不动摇。

第二，坚定不移贯彻“一国两制”方针，确保“一国两制”实践行稳致远，必须做到“全面准确”。对“一

“一国两制”方针的理解和把握，应当是全面的，而不是片面的；应当是准确的，而不是曲解的。一旦在认识与实践出现了偏差，就要及时矫正。习近平主席曾指出，对香港来说，应该关心的不是“一国两制”方针会不会变的问题，而是怎样全面准确地把“一国两制”方针贯彻落实好。贯彻“一国两制”方针，必须准确把握“一国”和“两制”的关系，正确处理中央和特别行政区的关系，维护《宪法》和《基本法》确立的特别行政区宪制秩序，维护国家主权、安全、发展利益，保持香港的长期繁荣稳定。要把坚持“一国”原则和尊重“两制”差异，维护中央对特别行政区全面管治权和保障特别行政区高度自治权，发挥祖国内地坚强后盾作用和提高特别行政区自身竞争力结合起来，任何时候都不能偏废，都不能割裂开来、对立起来。我们绝不能允许任何危害国家主权安全、挑战中央权力和《基本法》权威，利用香港对内地进行渗透破坏的活动。贯彻“一国两制”方针，只有做到全面准确、坚定不移才能够持久，“一国两制”事业才能走得稳、走得好、走得远。

“一国两制”实践在香港已经走过了25年，纪念香港特别行政区成立25周年，人们回顾历史自然会想到今天、想到未来、想到再过25年会怎么样。邓小平同志当年曾经多次明确回答过，充满了对“一国两制”未来的信心。他说，“为了实现我们的发展目标，要更加开放。既然这样，怎么会改变对香港的政策呢？实际上，50年只是一个形象的讲法，50年后也不会变。前50年是不能变，50年之后是不需要变。”只要我们对“一国两制”坚信而笃行，“一国两制”的生命力和优越性就会持续地、充分地显现出来，“一国两制”就具有持久的生命力和独特的优越性。实践是检验真理的唯一标准。“一国两制”未来会怎么样，关键是要看

实践经验、实践效果。如果“一国两制”实践表明它是成功的、是有效的、是得人心的，“一国两制”事业就一定会行稳致远。

第二个“辩证关系”是对于已实行的“一国两制”制度体系，既要一以贯之“坚持”，又要与时俱进“完善”。“一国两制”是党领导人民实现祖国和平统一的一项重要制度，是中国特色社会主义的一个伟大创举。经过二十多年的实践，我们在“一国两制”方面，从国家层面到特别行政区层面，已经形成了一整套制度体系。党的十九届四中全会、六中全会都对坚持和完善“一国两制”制度体系提出了明确要求。坚持和完善“一国两制”制度体系，为新时代特别行政区制度建设和发展确定了重要原则。我们要理解好、把握好“坚持”与“完善”之间内在的辩证关系。

第一，一以贯之“坚持”“一国两制”制度体系，是深入推进“一国两制”事业的必然要求。“一国两制”作为党和国家的大政方针，必须通过具体的制度体系、制度安排、制度规则呈现出来，落到实处。这主要是通过《宪法》、《基本法》和一系列的法律、法规来实现的。《宪法》是国家根本大法，是全国各族人民共同意志的体现，是特别行政区制度的法律渊源。《基本法》是根据《宪法》制定的基本法律，规定了在特别行政区实行的制度和政策，是“一国两制”方针的法律化、制度化，为“一国两制”在特别行政区的实践提供了法律制度保障和支撑。在《宪法》和《基本法》的宪制基础上，形成和实行了“一国两制”制度体系。党的十九大确立的“十四个坚持”的基本方略，党的十九届四中全会概括的“十三个坚持”的显著优势，都将坚持“一国两制”列入其中，必须长期坚持。全面准确、坚定不移贯彻“一国两制”方针，必须有可靠管用、行之有效的制

度体系作保障、作依托。坚持依法治港，自觉维护《宪法》和《香港基本法》共同构成的香港特别行政区宪制基础。自觉维护《宪法》和《香港基本法》确立的香港特别行政区宪制秩序和法治秩序，在法制轨道上推进“一国两制”实践行稳致远。

第二，与时俱进地完善“一国两制”制度体系，是确保“一国两制”实践行稳致远的必然要求。形势在发展、时代在前进，“一国两制”也不是一成不变的。正如习近平主席所指出的，“一国两制”的制度体系也要在实践中不断加以完善。没有坚持“一国两制”就会失去正确方向。没有完善，“一国两制”就会失去生机活力。二者相辅相成、不可或缺。坚持并不意味着固守僵化、一成不变、一劳永逸。任何制度体系和法律规范，如果只是简单机械地坚持，没有与时俱进的完善，将会难以发挥其持久的功效，即使想坚持，也难以长久地坚持下去。“一国两制”是一项前无古人的开创性事业，需要在实践中探索前进，也必然在实践中，遇到一些可以预料和难以预料的新情况、新问题甚至风险挑战。国家层面也好，特别行政区层面也好，都需要在制度建设和制度发展方面作出积极应对、与时俱进，适应新形势、化解新矛盾、解决新问题、实现新发展。

各位嘉宾朋友们，香港回归祖国以来，党和国家坚定贯彻“一国两制”、“港人治港”、高度自治的方针，坚持依法治港，运用法治思维和法治方式处理香港事务，严格依照《宪法》和《基本法》办事。25年来，针对香港“一国两制”实践中出现的新情况、新问题，全国人大及其常委会依据《宪法》、香港《基本法》和有关法律，采用制定法律、修改法律、解释法律、作出决定、将有关全国性法律列入香港

《基本法》附件三等多种方式，坚决维护国家主权、安全、发展利益，保持香港长期繁荣稳定。

过去一个时期，受各种内外复杂因素影响，“反中乱港”活动猖獗，香港局势一度出现严峻局面。特别是2019年发生修例风波后的一段时间里，“反中乱港”势力蓄意破坏香港社会秩序，一些外国和境外势力肆意干涉中国内政，通过各种方式插手香港内部事务并进行渗透、捣乱。这些行为和活动严重挑战“一国两制”原则底线，严重损害法治权威，严重危害国家主权、安全、发展利益，必须采取有力措施，依法予以防范、制止和惩治。贯彻党中央重大决策部署，全国人大及其常委会根据《宪法》和《香港基本法》出台了一系列重大举措，作出了新的制度安排。

一是通过“决定+立法”的方式，建立健全香港特别行政区维护国家安全的法律制度和执行机制。香港《基本法》第二十三条明确规定，香港特别行政区应自行立法，禁止危害国家安全的有关行为和活动。然而，由于“反中乱港”势力和外部敌对势力的极力阻挠干扰，第二十三条立法一直没有完成。香港特别行政区维护国家安全的制度机制存在明显不设防问题。香港特区国家安全面临迫在眉睫的重大风险。鉴于这种情况，2020年5月28日，十三届全国人大第三次会议作出全国人民代表大会关于《建立健全香港特别行政区维护国家安全的法律制度和执行机制的决定》。6月30日全国人大常委会根据全国人大上述决定的授权，制定了《中华人民共和国香港特别行政区维护国家安全法》，并决定将其列入《香港基本法》附件三，在香港特别行政区公布实施《香港国安决定》和《香港国安法》弥补了香港特别行政区维护国家安全制度机制中存在的漏洞和缺陷，有效

地打击和震慑了香港特别行政区内危害国家安全的违法犯罪活动，一举扭转了香港乱局，使香港社会重回正轨。


《香港国安决定》和《香港国安法》的实施标志着香港实现了由乱及治的重大转折，也为香港今后由治及兴奠定了坚实的法治基础。

二是通过“决定+修法”的方式，落实“爱国者治港”原则，完善香港特别行政区选举制度。一直以来，“反中乱港”势力通过香港特别行政区选举平台和立法会议事平台，或者利用立法会议员等公职人员身份，瘫痪立法会运作，阻挠政府依法施政，妄图夺取香港管治权。这表明，香港特别行政区选举制度存在明显的漏洞和缺陷，必须采取有力措施完善选举制度，消除制度机制方面存在的隐患和风险。鉴于这种情况，2021年3月11日，十三届全国人大四次会议作出了《全国人民代表大会关于完善香港特别行政区选举制度的决定》；3月30日，全国人大常委会根据全国人大上述决定的授权，修订了香港《基本法》附件一《香港特别行政区行政长官的产生办法》和附件二《香港特别行政区立法会的产生办法和表决程序》。全面贯彻和落实“爱国者治港”原则，形成了一套符合香港法律地位和实际情况的民主选举制度，保障了香港特别行政区政权安全，确保香港管治权牢牢掌握在爱国爱港力量手中。

此外，全国人大常委会还先后就批准广深港高铁西九龙站设立口岸实施“一地两检”合作安排、香港特别行政区第六届立法会继续履行职责、香港特别行政区立法会议员资格问题等作出有关决定。

全国人大及其常委会近年来出台的有关决定和立法修法是全面准确，坚定不移贯彻“一国两制”方针的重大举措，

是根据《宪法》和《基本法》作出的具有重要宪制意义的制度安排，也是坚持和完善“一国两制”制度体系的生动实践和最新发展，具有重大制度创新意义，有力、有效地维护了国家主权、安全、发展利益，维护了香港的长治久安和繁荣稳定，也必将对香港“一国两制”实践，产生十分重大而深远的影响。

各位嘉宾、朋友们。2022年下半年，中国共产党第二十次全国代表大会将在北京召开，这是中国共产党在进入全面建设社会主义现代化国家，向第二个百年奋斗目标进军新征程的重要时刻召开的一次十分重要的会议，是党和国家政治生活中一件大事、盛事，也将给香港发展带来新的机遇。在这里，我衷心地希望并完全相信香港各界人士在爱国爱港伟大旗帜下，实现最广泛的团结，把握新机遇，顺势而发、乘势而上、齐心协力推动香港“一国两制”实践，沿着正确方向行稳致远，为实现中华民族伟大复兴作出自己独特的贡献。谢谢大家。

主题对谈

畅谈《基本法》实践二十五周年
——与时俱进

主题环节



郑若骅 大紫荆勋贤 GBS SC JP
时任律政司司长

各位嘉宾、各位朋友，大家早上好。1997年7月1日香港特别行政区成立，《中华人民共和国香港特别行政区基本法》生效，标志着香港和平地脱离英国殖民统治，回归祖国管治体系，成为中华人民共和国的一个特别行政区。国家通过《基本法》确立对香港的政策方针——“一个中国、两种制度”，“港人治港”，高度自治。这是人类文明、智慧的表现，是一件很了不起的事。有鉴于社会上一直存在着对香港的宪制秩序一些不正确的理解，到2019年“修例风波”后，我和律政司的同事商量筹备出版一本书，目的是追溯香港回归祖国这段重要历史，通过梳理《基本法》的起草过程、条文的演变等，去呈现这部宪制性法律的背景、目的和起草者通过文字表达的意思。此外，我们也将回归以来香港法院处理过的一些与《基本法》有关的案例汇集起来。希望这样一本书可让社会就《宪法》、《基本法》及其确立的香港特区宪制秩序有一个更准确更全面的理解。同时希望本书能够成为学习《基本法》的一个基础读本，引发香港市民对《宪法》及《基本法》有更深入的学习与探索。

经过两年多的工作，我很高兴在这里宣布《基本法起草材料及案例精选》这本书共两册的繁体中文版正式出版，并将于政府刊物销售处及其他平台上架。英文版和简体字版稍后会陆续出版发行。

由2020年开始本书的工作至今，我们团队获益不浅。我们发现很多现时就《基本法》的争议，当年起草期间已讨论过。

回归以来，有部分香港人，包括一些法律界人士，错误地认为《宪法》不适用于香港特区，认为《宪法》不见于《基本法》附件三，不是香港特区法律一部分。我们在本书

指出，这个问题在《基本法》起草工作开始时，特别是《宪法》提及社会主义在实行资本主义特区是否有法律效力及如何适用，草委们其实曾经激烈讨论过。草委会中央与香港特别行政区关系专题小组亦就此进行了研究。曾有建议在《基本法》中详细列明《宪法》哪些条文适用于香港，哪些条文不适用于香港。亦有意见表示《基本法》是子法、《宪法》是母法，如在《基本法》中规定《宪法》哪些条文是否适用于香港，在法律伦理上、法律程序上都是说不过去，在世界宪法史上亦没有先例，在技术上也有困难。1986年11月11日，该专题小组经过一轮讨论及研究后，在工作报告中说明：“委员们认为，中国的宪法作为一个整体对香港特别行政区是有效的，但是由于国家对香港实行‘一国两制’的政策，宪法的某些具体条文不适用于香港，主要是指社会主义制度和政策的规定。”

除此之外，香港有些人错误地认为全国人大和全国人大常委会的决定亦不适用于香港特区，或者是没有约束力。其实大家只要紧记香港特区的“诞生”正正是基于全国人大1990年4月4日根据《宪法》第三十一条所作的决定，便能明白全国人大和全国人大常委会就香港特区而作出的决定当然适用于香港并有效。

只要我们追本溯源，毋忘“一国两制”的初心，对《基本法》的误读就会越来越少，对“一国两制”的落实就会越来越顺畅，而过去25年的挑战有望成为香港特区成长过程中的历练和养分。

本书第二册收录了199宗案例，横跨1997年7月至2021年12月，可用作研究回归25年来“一国两制”遇到的各种挑战的材料。

马维骝案¹是对《基本法》延续香港特区法律和司法制度原则的挑战。几名犯了普通法串谋妨碍司法公正罪的被告，试图以普通法罪行在1997年7月1日国家对香港恢复行使主权的同时，已经失效和终止运作，审讯不应继续为由，以期能金蝉脱壳。被告的狡辩当然未能得逞。在判词中陈兆愷法官（时任高等法院首席法官，现任终审法院非常任法官）指出，在解释《基本法》时，必须知道《基本法》是中华人民共和国的全国性法律，更须牢记它的历史、性质和目的。

判词第17段说：“《基本法》的用意是明确的。香港的法律和法律制度不会有任何改变（违反《基本法》的除外）。这些就是我们社会的结构。连续性是稳定的关键。任何中断都将是灾难性的。即使是片刻的法律真空也可能导致混乱。除与《基本法》相抵触的条文外，与法律和法律制度有关的其他条文都必须继续有效。现行制度必须在1997年7月1日就已到位。这一定是《基本法》的用意。”

过去25年在“一国两制”下人大释法不断被误解被挑战。《基本法》第一百五十八条起草过程经历十稿，期间变化不少，亦引来很多不同意见。在处理《基本法》的起草材料时，我们发现以下讨论，可能亦是《基本法》第一百五十八条的核心之一：

“现在香港法院可审理英国政府的行政行为，但目前的制度下所有案件的终审权都在英国，不在香港，故不致造成地区宪制与宗主国利益不一致的情况。但在1997年后，香港会设立终审法院，香港的司法制度与其主权国的司法制度分离，这是问题的核心。”

1 HKSAR v Ma Wai Kwan, David & Others [1997] HKLRD 761.

就第一百五十八条第一款而言，当年争议人大常委应否拥有《基本法》的解释权。其中，不少意见指出，《基本法》是全国人大制定及颁布的全国性法律，根据《宪法》第六十七条，解释权自然在人大常委。另一方面，亦有意见认为，如中央对《基本法》拥有解释权，港人会视之为内地干预香港的司法独立，影响香港人心等。但同时亦有草委明确指出《基本法》不是一个纯粹地方性法律，它规定了许多中央与香港特区关系的内容，如果完全由一个地方法院在审理案件中对它进行无限制解释，不但影响香港，而且可能影响全国，是欠妥的。

最终，《基本法》第一百五十八条第一款规定全国人大常委拥有《基本法》的解释权。这完全符合香港特区的宪制地位，更与全国人大常委按《宪法》解释法律的权力及全国人大按《宪法》监督《宪法》的实施的权力一致，体现了中国人民代表大会制的政治制度下全国人大是国家最高权力机关。

至于香港法院的解释权，第二款规定全国人大常委授权香港法院自行解释自治范围内的条款。这也正正体现了高度自治的原则，然而在讨论时提到涉及中央管辖事务的案件的关注，第一百五十八条也自然需要有第三款来处理涉及国防外交事务等的争议。

有关《基本法》第一百五十八条第三款的解释机制的立法原意和相关的考虑，相信一会儿我们与基本法起草委员会委员谭惠珠大律师交流，一定有很多宝贵的回忆可与我们分享，亦让我们能正确理解第一百五十八条的原意及目的。

本书第一册收录了回归 25 年以来出现过的五次人大释法。牵涉的《基本法》条文包括第十三条、第十九条、第二十二条、第二十四条、第一百零四条等。其中 2011 年 8 月人大常委关于第十三条第一款和第十九条的解释，是首宗由

终审法院在**刚果（金）案**²中依据《基本法》第一百五十八条第三款的规定提请人大常委释法的案件。**刚果（金）案**的基本问题是，国家在1997年7月1日恢复对香港行使主权后，香港特区法院是否可以依循一个容许商业例外的国家豁免原则，以至不符合中国在与外国关系上一贯采用的绝对豁免原则。终审法院多数判决的临时命令裁定国家豁免政策是外交事务，香港特区作为中华人民共和国的一个地方行政区，不可以采用一个和国家豁免政策不同的豁免原则。在这种情况下，多数判决确认提请人大常委释法是责任，而临时命令的裁定最终亦得以确立。

“人权自由”是另一个过去25年不断被人关注的议题。由回归之初的**国旗案**³以言论自由挑战“一国”的主权权威及“两制”的宪制事实和新秩序，至近年**周诺恒、黄之锋**⁴的案件，被告皆以行使《基本法》赋予的示威游行自由为名，挑战香港特区因保护社会公共秩序、保护他人的权利和自由订立的法例和法庭判处的刑罚。香港法院在案件判词中均明确指出，《基本法》的相关权利并非绝对，且为了公共秩序和保护他人的权利和自由，可以对行使这些权利施以合法的限制。一旦示威者牵涉暴力或威胁使用暴力，便是越过了受宪制保护的和平示威的界线，进入非法活动的领域，可受到法律制裁和限制。

在**高铁一地两检案**⁵，法院面对新挑战的回应和对《基本法》条文的解读，足以影响香港这一制是封闭还是开放，是

2 *Democratic Republic of the Congo v FG Hemisphere Associates LLC (No.1)* (2011) 14 HKCFAR 95.

3 *HKSAR v Ng Kung Siu & Another* (1999) 2 HKCFAR 442.

4 *HKSAR v Chow Nok Hang* (2013) 16 HKCFAR 837; *Secretary for Justice v Wong Chi Fung* (2018) 21 HKCFAR 35.

5 *Kwok Cheuk Kin v Secretary for Justice* [2021] 3 HKLRD 140.

向前进步还是故步自封；与国家的关系是疏离还是融合。当然，有关的立法工作亦必须合法合宪。有市民就《广深港高铁（一地两检）条例》向法院申请司法覆核，理由是该新法例不符合《基本法》。该申请被高等法院原讼法庭驳回。申请人提出上诉，同样被上诉法庭驳回。

上诉法庭裁定，“一地两检”是《基本法》颁布时并未料及的新事物，法庭在决定该条例是否合宪时，必须视《基本法》为具生命力的文书，即在“一国两制”原则下维持香港的制度并非意味着原地踏步。反之，香港的制度可以并应当在《基本法》的框架下持续发展，以配合时代所需及社会情况，而某些需要及情况亦非起草人所能预期。

上诉法庭第 69 段指出：“……在内地与香港各自的制度下，在交汇处的主题事项须符合《基本法》，这点不言而喻。至于是否符合《基本法》的问题，两制的运作必须一致。两制同属一国和一个国家的宪制秩序，因此有如此要求。凡人大常委以通过决定的方式确认某项安排符合《基本法》，就内地法律而言，其决定即属最终决定。这是香港法庭在处理合宪问题（即其一受挑战事项在香港法律下是否违反《基本法》）时，所须充分承认和接受的重要事实。因此，对于法庭在诠释《基本法》方面而言，人大常委在其决定中表达的权威意见极具信服力。”

全国人大常委的决定不单有信服力，在法律角度亦有约束力，人大常委的决定就内地法律和香港法律而言均是最终的决定，这点从《宪法》的条文和国家的政治制度均可以明确知悉。

刚才沈主任（全国人民代表大会常务委员会香港特别行政区基本法委员会主任沈春耀）提到在 2019 年之后制定了

《香港国安法》。在制定了国安法后，我们仍然听到国际社会上有人指《香港国安法》破坏“一国两制”，令特区失去高度自治。此等说法是完全错误的，在法律层面上站不住脚。

首先，国家安全直接关乎到全国人民及国家的整体利益，属于中央事权，从来不属于香港特区“一国两制”下的自治范围。《基本法》第二十三条属于义务条款，不会改变国家安全立法完全是属于中央事权这基本原则，亦不应被视为中央放弃在其认为有需要的情况下就维护国家安全立法的权利和责任。

第二，根据《宪法》，全国人大是国家最高权力机关，有权行使国家立法权，制定法律，亦有权有责监督《宪法》的实施。既然维护国家安全属中央事权，全国人大在《宪法》下当然有权作出《528决定》（《全国人民代表大会关于建立健全香港特别行政区维护国家安全的法律制度和执行机制的决定》）授权人大常委制定《香港国安法》。《基本法》第十八条指出可列于附件三之全国性法律，“限于有关国防、外交和其他按本法规定不属于香港特别行政区自治范围的法律”。因此，《香港国安法》可按《基本法》第十八条列入附件三，然后在香港特区公布实施。

由此可见，《香港国安法》是完全合法合宪的。

《香港国安法》指出《基本法》第一条和第十二条是该法的根本性条款，任何机构、组织和个人均不得违背这两条条款，并重申了“一国两制”的初心及《基本法》的原意，两者有机结合让“一国两制”行稳致远。

为了推广社会对法治、《宪法》、《基本法》及国家安全的正确认识，律政司在过去两年举办了很多不同的活动。

譬如在推展法治教育方面，律政司于2020年推出了“愿景2030——聚焦法治”的十年计划。在这项计划下，我们制作了一系列“律政动画廊”动画短片为公众提供基本法律知识，有为小学生而设的法律常识问答比赛、为中学生而设的工作坊、“明法·传法”的活动、“法律之旅”，以及刚刚完成的“明法创未来”短片创作比赛。此外，律政司支持了基本法基金会于2020年11月推出的“法治及基本法网上教育资源中心”，为教师提供一系列以《宪法》、《基本法》和法治为主题的教材。

各位，乔晓阳主任在《基本法起草材料及案例精选》“前言”中提到，习近平主席明确指出，中央贯彻“一国两制”方针坚持两点：一是坚定不移，不会变、不动摇；二是全面准确落实，确保“一国两制”在香港的实践不走样、不变形，始终沿着正确方向前进。


今天国家领导人的话，与三十多年前的领导人邓小平先生的说法一致，是一脉相承的。1984年邓小平会见英国首相戴卓尔夫人时的谈话中解释了为什么“一国两制”五十年不变，五十年后也不变。

1987年邓小平会见了基本法草委，他再次说到“一国两制”五十年不变，五十年后也不变。他说：“今天我想讲讲不变的问题。就是说，香港在1997年回到祖国以后五十年政策不变，包括我们写的基本法，至少要管五十年。我还要说，五十年以后更没有变的必要。香港的地位不变，香港的政策不变。……一个是政局稳定，一个是政策稳定，两个稳定。不变也就稳定。如果到下一个五十年，这个政策见效，达到预期目标，就更没有理由变了。所以我说，按照‘一国两制’的方针解决统一问题后，对香港、澳门、台湾

的政策五十年不变，五十年之后还会不变。当然，那时候我不在了，但是相信我们的接班人会懂得这个道理的。……”

今年3月9日，很多媒体报道，引述全国政协副主席、港澳办主任夏宝龙指出，“一国两制”五十年不变，而五十年后亦不需要变，并会行稳致远，他亦强调在香港实施的普通法和法律制度也不会改变。夏宝龙先生的言论重申了习近平主席及中央人民政府各领导人一直明确支持和坚决在香港落实“一国两制”。

初心不改，大道不移。可以肯定的是，只要毋忘“一国两制”初心，牢固树立“一国”意识，坚守“一国”原则，“一国两制”是香港面向未来保持长期繁荣稳定的最好安排和最佳制度。故此，《基本法》下所说明的资本主义制度和生活方式，以至是香港的普通法制度，我深信也会一路运作下去，没有改动的必要。

国家主席习近平在2017年庆祝香港回归祖国20周年大会暨香港特别行政区第五届政府就职典礼说：“《中华人民共和国宪法》和《香港特别行政区基本法》共同构成香港特别行政区的宪制基础，是特别行政区制度的法律渊源。”可见《宪法》与《基本法》共同为“一国两制”奠下基石，同时具体说明了国家对香港特区的基本方针政策和制度，并且为“一国两制”的实践提供了最佳的法律保障。要让“一国两制”行稳致远，大家必须紧记“一国”既是根，根深才能叶茂，“一国”也是本，本固才能枝荣。只要继续全面正确贯彻落实《基本法》，相信必能达到“一法颁行国本固 万民欢庆共枝荣”。多谢各位！

对谈环节

与谈人



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谭惠珠 大紫荆勋贤 GBS JP
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郑若骅：首先，我谨代表律政司多谢谭惠珠女士抽空出席跟我们畅谈他们作为起草委员会时候的工作分享，刚才我所提及的都是我们从文字里面所见到的，但是实际情况及讨论过程是怎样呢？现在我们有一位直接当事人可以跟我们分享一下亲身的经历。在《基本法》里面，很多条文都是值得我们讨论的，但碍于时间所限，我们可以集中讨论一下我刚才所提及第一百五十八条。原因是第一百五十八条从文字看来，第一百五十八条的第一款和第二款都是比较容易理解的，因为宪制上当然是全国人民代表大会常务委员会拥有解释权，而香港自治范围亦都有香港法院，但是我们只是看到文字上的相关描述，而第一百五十八条的第三款其实是一个比较特别的安排，现在就请谭大律师跟我们分享一下。

谭惠珠：可以的，多谢司长。当时起草《基本法》的时候，我是在第一组中央地方关系专题小组及第二组政治体制小组一起参与工作。在早期于第一组工作的时候，已经遇到一个问题，就是“《宪法》是否适用于香港？”。刚才律政司司长的演辞已经分析得很清楚，当这个问题置于一旁时，我们便需要面对第二个问题，就是解释权的问题。律政司司长刚才亦有清楚地描述，回归前因为已有枢密院，因此它的功能就等同于香港的终审法庭，而并没有解释权和审判权分开的问题。

但是，在香港回归之后这个情况出现了变化，《宪法》内的第六十七条第四项指出，法律的解释权是属于全国人民代表大会常务委员会，司长刚才已经介绍了这一点。那么我们面对一个问题，就是回归之后香港设有一个终审庭，究竟《基本法》最终的解释权或者最高的解释权是属于哪一方呢？因为《宪法》是适用于香港的，顺理成章地就以第一款解决这个问题，就是全国人民代表大会常务委员会拥有解

释《基本法》的权利，原因是这是一个全国性法律，并不是香港本地法律。而第二方面，就是我们怎样处理香港的终审权及于非高度自治范围内的事宜，是否应该让法院在授权之下得到一个阔、广和灵活的解释权。当中我们亦有担心的考虑。第一点，我们不希望香港人误解香港的终审权是被人大释法所影响或干预。第二点，我们不希望大众有错觉认为终审法庭迁移至北京，原因是当时存在着这个错误的说法。

于是我们着手寻找世界上哪一个地方同一个载体，或者是一个国家、一个组织内以比较权威性的方法可以解决这个终审权，以及解释权不是同一个地方的问题。最终，我们在欧洲共同体这个体系内找到一个合适的参考。众所周知，欧洲共同体内参加的成员国家都会签订条约，其中有一项《罗马条约》，就是在欧洲共同体的条约内，各国成员已经同意有关欧洲共同体的法律的解释权是属于卢森堡的欧洲共同体法院。任何有关各国成员须共同遵守的欧盟法律，它的最终解释权就是属于这个法院。不论是在英国这个实行普通法的鼻祖，这个国家是实行司法解释权，终审权就是在法庭手上。不论是实行英国的系统，抑或是《大陆法》的系统，例如意大利，它是《罗马法》的鼻祖。而《大陆法》的解释权就是立法解释权了。当司法解释权和立法解释权之间有碰撞的时候，当时我们担心这样存在着一些矛盾或争议。于是，我们观察到欧洲共同体不论在英国或意大利审案时，在终审过程之前，若案件与欧洲共同体的法律有关的话，亦会把这一条相关的法律和条文带到卢森堡的欧盟法庭并取得解释，那么欧盟法庭所作出的解释，亦会一致应用于普通法管辖的国家及《大陆法》管辖的国家，而所有成员国都必须遵守，并且其解释是有约束力的。

在1972年1月的时候，英国加入了欧盟体系，当英国本土法律与欧盟的条约互相抵触时，欧盟条约的效力将凌驾于英国本土法律，这时英国便需要自行作出调整。这个安排让我们理解到这个解决矛盾的方法是适合于法制上成熟先进的国家。因此，我们参考这个方法，就如《基本法》第一百五十八条第一款的解释权是属于常委会，这是《宪法》第六十七条规定。而我们的法院获授权可以解释《基本法》。至于涉及中央地方关系，或者中央管理事务的条款，相关条款的解释将会影响案件的判决时，这时候香港法院便“应”，用的是“应”字，应该在终审法院判决前向全国人民代表大会常务委员会提请一个解释，而香港法院亦应该依照全国人民代表大会常务委员会作出的一个解释为案件判决，这个做法保持了对于《基本法》这个全国性法律的解释是全国一致的。这亦表示并非把终审权力送给北京，因为就等同于英国及意大利所有欧洲成员国的终审权都是本土国家拥有的，而这个做法亦避免若果涉及中央地方关系，或者中央管理的事务的解释时，引起与宪制相关的问题。总括来说，我们参考了欧盟在解决司法解释权和立法解释权、普通法以及《大陆法》之间所引起的矛盾，这不会影响终审权，亦可以把解释权和审判权按这个方法分开运作。这就是制定《基本法》第一百五十八条的背景。

郑若骅：谢谢你的解释。这非常重要。因为很多时候我们并不明白你刚才提及的两个词语，分别是立法解释权，以及司法解释权。这个工作层面上，在一个“一国两制”，以及一个成文法国家下的一个普通法制度的地区，内里应该是怎样运作呢？这是一个前无古人，非常创新的想法，所以当时你们能够想出这个方法来处理这个问题是真的很了不起。



譚惠珠：这是经过研究想出来的。

郑若骅：亦有一些说法不断说人大释法会影响司法独立，可以请你分享一下你的看法吗？

譚惠珠：这个做法完全不影响司法独立，因为它只是解释一个条文，审判一宗案件时，法官或者法庭需要考虑的其他元素，人大常委都不需要考虑。就着刚才提及在英国方面，他们都不认为由卢森堡的法庭来解释欧盟的一条法律时，是影响自己的终审权。因此，所有的成员国都照这个方法做，终审权在自己的国家。

郑若骅：刚才提及我们撰写书本时的第一件案件是马维骥案件，这案件亦提及了香港的法律制度由1997年前一天以至到后一天的连续性的一点。在起草基本法的工作时，譚

大律师你们那时候，以及我从张勇先生那边听说，为了确保法律可以过渡，就着《基本法》第一百六十条，在1997年2月23日作出一个决定。其实这个第一百六十条决定是对香港的法律制度可以这样延伸下去，我个人认为是十分重要的。而我明白当中亦涉及很多准备工作，可以请你跟我们分享一下制订第一百六十条的决定之前的工作吗？你们于当中参与了哪些工作？或者是怎样进行的？

谭惠珠：好的。这一项亦是中央地方关系小组的工作。正如刚才司长提及，我们不容许存在法律真空的情况。1997年7月1日零时的时候，香港特别行政区的法律需要即时生效，使到不影响权利和义务，以及不会引起不明朗的情况。那么我们是怎样把《基本法》第八条内所提及的原有法律可以顺利及无缝隙衔接呢？于是，在1993年时设立了一个特别行政区的筹备委员会预备工作委员会。

由当时开始，内地的基本法起草委员会及预备工作委员会内的法律小组的成员，当时本人亦是其中之一，这时候已经开始审阅，使用“审阅”这个词是比较贴切。审阅所有香港原有的法律是否与《基本法》相互抵触？是否可以被采用为香港特别行政区的法律？这项工作是由1993年预备工作委员会内的两年多的工作一直延续到在1996年香港特别行政区筹备委员会成立，前后大概是四年的工作，把所有当时的原有法律，包括附属立法，以及包含附则和附件的亦会彻底地翻读一遍。而我们小组里面香港的成员亦有参与其中，并实行双轨互不影响制度，我们给予意见，法律小组那边整理作出报告。

而另一方面，秘书处负责另一个更巨大的工作，就是把香港所有法律的每一条都翻读一遍。这项工作开首时主要排

除有殖民地统治性质，或是对主权有影响的、或不符合香港特别行政区新的地位的法律条文。然后到了筹委会工作的时候，便开始归纳有多少项法律条文需要处理。刚才司长提及人大常委会作出的决定，便把条文归纳了四种：第一种，完全不可以在香港采用的，包括本身法律包含有凌驾性，例如是我们的《人权条例》内第三及第四款，这些与《基本法》抵触的便不可以继续使用。第二种是包含了很多法律名词，亦有大部分不能使用。第三种是能够局部使用。而第四种决定就是若果在回归之后，亦发现有其他的法律是不应该采用的，而这种情况便依照《基本法》内规定的程序来处理。于是，在筹委会的时候，就是把香港特别行政区筹备委员会预备工作委员会的工作及分析归纳为四类，然后作出了司长所提及的决定，整个过程是认真的。据我所知，他们研究的工作范围不但很广泛，而且十分深入。原因是我们一直都收到研究的报告。

郑若骅：我现在看着书本内的第一百六十条决定，亦有记载到这个过程。例如第一段指出第一百六十条决定的第一点就是香港的原有法律，包括普通法等是采用香港的特区法律，这亦是填补了法律的真空期，因为时间点上对接了。第二点提及了于第一百六十条决定内的附件一，会把一些不会采用的法律条文亦记录下来，因为这些条文是抵触了《基本法》。而在附件二，就是部分条文抵触《基本法》，而附件二亦指出了某一个法例的某一些条文抵触《基本法》的话便不适用，所以当我们阅读相关法律条文时于何时把它抽出来，这些原因亦是我们需要知道的。

第四点亦是相当重要的，“采用为香港特别行政区法律的原有法律，自1997年7月1日起在适用时应作出必要的变

更、适应、限制或例外，以符合中华人民共和国对香港恢复行使主权后香港的地位以及《基本法》的有关规定。”例如决定列举的例子就是《新界土地豁免条例》，而后面亦有列出一些香港殖民地时期的用语。

现时香港政府亦努力地逐一修改这些条例。因为虽然我们可以适应，但我们亦不希望在阅读香港的法例时，仍然会看到旧有的词汇。而法律改革委员会的秘书处亦在推动这项工作，当然整个政府团队亦一起进行。所以，我们希望在完成了第一百六十条决定内的其中一点，希望可以整理好。感谢你的分享。在我们看完第一百六十条决定后看到这本《基本法》后面有一些附件，我们就会看到附件一及附件二。当我们翻开《基本法》第四十五条和第六十八条，在描述制度内容之后并提及了附件一和附件二。第四十五条是关于行政长官的选举安排，最终达至普选，并使用了附件一，而第六十八条是关于立法会选举的。为什么当时会选择用一个特别的做法，在《基本法》条文内加入附件这个概念呢？

谭惠珠：其实在中国的法律内并没有附件这个概念，直到现在都没有，现在没有一条全国性法律是有附件的，所以使用附件是一个突破的做法。而这个突破是如何发生的呢？刚才司长开宗明义提及《宪法》适用于香港这一个部分。因为当时有人提及可把《宪法》适用于香港的条文，以附件把它们列入《基本法》内，而其他的便不适用。这个想法在1985年的时候亦是有市场的，但这是错误的。司长亦提到，已经纠正过来，《宪法》对于香港来说是一个整体完全适用于香港，而经过第三十一条文提供了一个基础并诞生《基本法》，这是一个母法及子法的关系。但是，由于当时提出了使用附件，便开始研究附件的作用。

关于《宪法》是否适用于香港这个问题，这个大原则解决了，便没有使用附件的做法。其后，到了附件三，全国性法律是可以经过附件三引入香港公布或是立法实施，这时便使用上了附件，原因是从之前的讨论理解到附件是可以灵活地使用。其后，我们的政制小组需要制订行政长官及立法机关产生的办法，这个大原则亦清楚地厘定了，我们需要循序渐进地按香港的实际情况，然后用一个例如行政长官得到一个广泛代表性的提名，最终亦会达至行政长官是普选出来。而立法会议员最终亦达致是全部普选出来。

政制小组当时已经理解到在 50 年内，若在一开始人大已经决定第一任的行政长官及第一届立法会产生的方法，由那时候的决定演变或是进化，又或是与时俱进地发展而达致普选，当中《基本法》的条文是会经过未能预计在何时及未知道多广泛程度的修改。而修改条文是需要全国人大会议于 3 月时作出修改的，同时，于修改条文的过程当中有 2,798 位人大代表是可以提供意见的，这是为了希望有关香港的问题是由中央内既了解香港、又了解“一国两制”如何保障运作的工作人员负责处理。这样除了讲求灵活性外，也更准确地符合“一国两制”的需要。这样就不需要经过全国人民代表大会对条文作出修改，亦不需要经过投票作出通过。这个权力交给了人大常委，这样他们就可以把附件一及附件二在适当的时候，例如曾经运用过的五部曲来修改行政长官及立法会产生立法了。这使我们可以扎实地向着普选的目标前进。

去年 3 月，人大做了一个决定，亦是司长所提及的“完善香港选举制度”的一个决定。这个决定是人大常委会作出关于附件一及附件二的修改。这一次修改的目的是为了强化“爱国者治港”，一个非常重要的核心元素，因此特意在人

大作一个决定，然后交给常委会作出修改，而过往的附件一及附件二，虽然在 2007 年至 2014 年期间作出了三次修正，但是这两个附件并不会继续使用，而是使用去年人大常委会所通过的附件。

回应司长刚才的发问，与时俱进，中央协助我们处理在香港发生的问题，我们亦有很多宝贵的意见给中央决定如何处理。若我们可以在一个需要的时间、需要的范围及需要的核心内容作出处理，我们使用附件的方法，这样就不用惊动全国人民代表大会 2,700 多个代表来投票决定，亦符合我们在时间上的需要了。


郑若骅：所以，我认为这两条条文的制定其实是运用了十分聪明的方法，你们的工作小组是看见了循序渐进的方式，一直通过用附件慢慢来落实，而落实的时期你们便建议运用人大常委所提议的安排。刚才，你提及的是正确的。例如附件一及附件二的三次修改都是在同一天的。第一个是于 1990 年 4 月 4 日由全国人大负责，其后两次是于 2010 年及 2021 年由全国人大常委负责，这样正好体现了一个政治制度的架构，亦是中央的事权，但在中央事权之下，我们亦要操作，如何操作呢？你们那时便想到了使用附件的方式，这个亦是破天荒以及富有创意的一个做法。我本人十分感谢你们这一方面的安排。

谭惠珠：多谢。

郑若骅：另外，我亦希望在此为我们律政司撰写的一本书籍宣传一番。我估计我们的同事稍后将会为各位派发这本书籍。这是律政司第一次尝试把一些起草材料及案例的精选放在一本书里，希望使更多人可以看到及参与其中。若果当

中有任何地方需要更正，亦请各位多多指教，亦希望能得到各位提供意见。

谭惠珠：我们一定会拜读，以及多谢你的团队在香港回归 25 周年送给我们一份很好的礼物，多谢你们。

郑若骅：多谢，多谢谭惠珠大律师，多谢各位！

专题演讲

《基本法》的解释



烈显伦法官

大紫荆勋贤 JP
终审法院前常任法官

《基本法》的恰当解释乃植根于若干基本主张。

第一、《基本法》是中国在“一国两制”原则下因应香港实际环境而制定的宪制性文书。

第二、直白的文字须按其字面意思理解，律师的职责不是对文字故弄玄虚。

第三、一旦出现关于《基本法》条文意思的真正争议，应聚焦查究该条文的目的。一个好例子是第四十条下的片语“‘新界’原居民的合法传统权益”。这些“权益”是什么？在一宗近期案例郭卓坚诉地政总署署长¹（“丁权”案）中，终审法院透过查探该条文的历史背景以处理这项争议。法院没有引述外国案例，也没有援引欧洲人权法学理论，只直截了当地采用以事实为基础的方法处理涉案字词。这种处理方法，即使是不完全熟悉英语的人也能理解。这可说是把“透明度”付诸实践。

第四、外国案例往往无助阐明争议点，反而令争议点变得模糊，因为两者不能类比。尽管所使用的字词经翻译后看似相同，但不同的社会和政治背景会对字词的意思加添不同色彩。试问香港法庭有多认识欧盟各个成员国（例如斯洛伐克或比利时）的社会结构和价值观？

第五、《基本法》所保障的权利——例如第二十七条所述的言论和示威自由——并非绝对。这些都必然受限于其他人所享有且同样要受保护的权益。如何协调这些相冲突的权益，是社会问题而不是法律问题。这是明文法律无法解决的问题。解决这个问题涉及实际地权衡相称性，当中须考虑

1 (2021) 24 HKCFAR 349.

法庭力不能及的多个因素。令人遗憾的是，香港的上诉级法庭已将之提升至意识形态的层面，造成法律上的扭曲。

在方国珊²一案中，终审法院对下级法院造成困惑而并非给予实际指引。

案中一名区议员（被告人）被控以两度在立法会会议厅公众席上展示具煽动性的标语，从而在立法会小组委员会会议中引起骚乱，触犯立法会规则。该案的案情不受争议。被告人经原审后被判有罪，并且被判以社会服务令。她上诉至原讼法庭，而她的代表大律师质疑相关规则是否合宪，并引用被告人根据《基本法》及《香港人权法案条例》享有的个人权利，即言论和表达自由。原讼法庭法官以斩钉截铁、所有人都能理解的方式处理这点。

法官指出：“公众人士无权在立法会大楼内示威，特别是当会议正在进行时……本席认为上诉人所提及的权利未受侵犯。不论是《基本法》还是《人权法案》都没有赋予公众人士自由在立法会会议厅内行使这种权利，特别是当他们没有绝对权利进入会议厅之时为然”。

这项法律陈述简单清晰、完全合乎常理。然而，案件再上诉至终审法院时，此事被提升至超乎常理的层面，结果为下级法庭带来隐患。终审法院没有维持原讼法庭法官的处理方式从而提升法律的透明度，反而就一宗加拿大案例和多宗英国案例进行复杂分析，又讨论抗议的“不同规模”及其“方式和形式”，造成大量含糊之处。为了让法律的纪律重新彰显，终审法院实在有需要重新审视方国珊一案。

2 香港特别行政区诉方国珊 (2017) 20 HKCFAR 425.

第六、最后，让我谈谈大律师在这些案件中的角色。大律师不时被提醒早在接近 20 年前开始推行的民事司法制度改革，特别是《高等法院规则》第 1A 号命令，其中订明律师在民事诉讼中达致相称和公平的责任。然而，律师没有履行该责任，反而多番滥用司法覆核程序，把《基本法》用作削弱行政机关的大杀伤力武器。在多宗案件中，法官对大律师采取了卑躬屈膝的态度，没有宣示法院行使独立审判权的宪制角色，也没有运用其裁判权化解真正的争议。在一宗案件中，法庭更曾为“未有全面地处理大律师所提出的所有辩据”而道歉。

法律的纪律

法庭判案书并非天马行空，法庭亦不需要逐字逐句地处理大律师所抛出的争论点，它是一个讲求纪律的作业。法庭并非像街市般简单。判案书可说是建构于纪律，**以补救办法为焦点的逻辑思辩**。在香港，还必须在“一国两制”总体原则下运作。这意味着一位法官在裁决中使用的字词必须受限于这个纪律结构，其他一切均属无关宏旨和多馀的。这即是说判辞一般都应该是简明及扼要的，如以英文表达的判辞，不但应易于翻译成中文，还应小心留意香港法庭在“一国两制”原则下运作的独特地位。一旦放弃依循有纪律结构带来的后果之一，就是判决不但会变得冗长和复杂得令人费解，更会容许意识形态涌现。

原诉程序

每项涉及与讼方的法庭程序都有一份原诉程序文件。在特别诉讼中（例如受争议的选举或公司清盘），该文件称为呈请。在刑事法律程序中，该文件称为控罪书或起诉书。在

民事诉讼中，该文件称为令状。而在司法覆核程序中，该文件是一份法定的表格 86A，属于原诉传票，我将于稍后再作讨论。原诉程序文件述明与讼各方之间的实质争议，从而界定争议的范围。

受争议的事项

任何真正的争议，都应能以清楚精准的字词简述。令人遗憾的是，过去二十多年来，这项简单的准则渐被遗忘，法律的纪律亦渐被侵蚀。法律界出现了一种新文化，以大律师的辩据为主、真正的争议为副；以保障人权为名，把《基本法》转化成以削弱政府权威为目标的大杀伤力武器。随着司法审判过程不再奉行基本结构和纪律的缺失，判案书难免变得过份冗长和极为复杂，充斥着与真正的争议无关的案例提述、个人见解和沉闷陈述。

复杂性扼杀透明度

然而，由于判辞过于复杂和冗长，以致没有记者能加以分析和评论，因此普罗大众未能察觉这一点，这隐患没有被暴露出来。于是复杂性扼杀了透明度。与此同时，公众继续对法律的**神秘感**心存畏惧，而司法机构则沉浸在回避否认的氛围中。

单方面申请

司法覆核程序的架构由两项法例条文建立：《高等法院条例》第 21K 条及《高等法院规则》第 53 号命令。这实际上是构成这种法律程序的法典。相关规则已透过毫不含糊的文字述明。若然严守纪律，理应甚少需要诉诸本地或海外案例。

以《高等法院条例》第 21K(3) 条为例：

除非已按照法院规则取得原讼法庭的许可，否则不得提出申请司法覆核，而除非法院认为申请人与申请所关涉的事宜有充分利害关系，否则不得批予提出该项申请的许可。

订立这项条文的理由十分充分，与权力分立有关。法院不获赋权决定香港特别行政区的政策，因为那是政府行政机关和立法机关的领域。因此，当有人想质疑行政长官或其他高官就某些在管治香港过程中所作的行为或决定时，须通过这项法律所设立的屏障。

这道屏障的一个重要部分是第 53 号命令第 3(2) 条规则，它规定许可申请须单方面提出。“单方面”意指有关事宜只在申请人与法官之间处理，不涉及其他人。除非法官批出许可，否则建议答辩人不用被牵涉其中。由于是单方面提出的申请，申请人便有责任坦率地披露一切资料，申请人倘若知道任何对申请不利的事情，也必须如实向法官披露。

处理单方面申请的法官收到申请人呈交的文件后，须审阅该些文件并作出裁决：参阅第 53 号命令第 3(3) 条规则。在这方面，申请人须通过指定门槛。首先，没有延误提出申请：第 53 号命令第 4(1) 条规则规定申请须从速提出，并无论如何均须在申请理由首次出现之日起计三个月内提出。第二，“除非法庭认为申请人在申请所关涉的事宜中有足够权益，否则不得批予许可”：参阅第 53 号命令第 3(7) 条规则及《高等法院条例》第 21K(3) 条。

申请人获批许可后，须呈交表格 86A 作为原诉传票，而该传票必须于许可获批予后 14 天内送达所有直接受影响的人：参阅第 53 号命令第 5(5) 条规则。

只有当表格 86A 送达指认答辩人后，各方才会正式成为诉讼人，并会在庭上首次就表格 86A 所述事宜进行争辩。

“合并”聆讯

这项参照英格兰制度而采用的程序一直遭到严重误解，更制造了不少祸端。这项程序并非让处理单方面申请的法官用来推搪责任的方程式，情况恰恰相反。

如法官收到申请人所呈交的文件后，即使他认为应以紧急方式批予济助，也不能在没有聆听建议答辩人的陈词下合法地立即批予济助。举例说，若然申请人没有坦率地披露一切资料或曾作出失实陈述，那怎样办？因此，法官会指定较早的聆讯日期，并知会建议答辩人有关申请和邀请他们出庭。倘若申请人确已履行所有法定要求，而且该人的个案有充分理据支持，法官便可即场批予济助。这变相把表格 86（许可申请）视为原诉程序文件，而答辩人则放弃正式送达原诉程序文件的要求。

这项程序的原意是为了有需要向申请人提供紧急济助的特殊案件，但在香港却完全被扭曲。

以一宗近期案例 *Tam Sze Leung 及其他 3 人 诉 警务处处长*（HCAL 191/2021）为例：该案申请人于去年 2 月向法院呈交表格 86，寻求许可开展司法覆核程序。处理单方面申请的法官下令进行合并聆讯。案件最终由原讼法庭高浩文法官于八个月后果理。在他席前是多名年资有深有浅的大律师和事务律师。高浩文法官如此描述案中的单方面许可申请：“在本案中，表格 86 长达六十多页，所载的尽是密密麻麻的叙述和辩据……”。

原本应该只有一张 A4 纸的法定表格多了六十多页。

高浩文法官因此评论如下：“就司法覆核程序而言，司法覆核理据本应简洁，但近期兴起了一种冗长化和复杂化的文化，这往往令案情精要被蒙蔽而非阐明。”

高浩文法官的评语是“令案情精要被蒙蔽而非阐明”。纵使司法覆核许可申请人有责任坦率地披露一切资料，然而 *Tam Sze Leung* 一案中的申请人面对处理单方面申请的法官仍公然濫用法庭程序。为何法庭不第一时间驳回该申请？

上下颠倒的程序

诚然，这类“合并”聆讯本质上有荒谬之处。法官唯一要考虑的，是申请人提出以支持其诉求的案情是否可予争辩。若然没有，三言两语便可处理这点。既然如此，又怎能容许与案双方一连数天在庭上辩论不休、不断提出论据和反论据，但最终法官也只能断定案情根本无可争辩？若然法官要花上数天详细考量大律师的辩据，这岂不自然地表示案中有可争辩的地方？如此，为何不一开始便批予许可开展法律程序？答案当然是：从一开始，案件已没有丝毫可争辩之处。

如此公然濫用法庭程序的案件为数不少，但碍于时间限制，我只拣选了以下一例，以阐释法庭如何被人知情地利用为政治平台：梁丽帼诉政务司司长及其他人（HCAL 31/2015）。

梁丽帼一案

全国人民代表大会常务委员会（下称“人大常委会”）于 2014 年 8 月 31 日就选举来届行政长官（于 2017 年就任）

的过程作出决定（一般称为“831决定”）。政府随后展开公众谘询，然后于2015年4月22日发表谘询报告。

梁丽帼申请许可开展司法覆核程序，质疑多名政府高级官员（包括行政长官）就谘询公众作出的决定及其后发表报告的决定。她要求法庭颁令撤销整个程序。

该项申请本质上极其荒谬。司法覆核所针对的，是对申请人的权益造成真正影响的决定或行动。梁丽帼所提出的事项根本不属于司法覆核的范畴。处理单方面申请的法官理应即时察觉这点。单凭该理由，梁丽帼的申请便理应立即被撤销。

再者，处理单方面申请的法官收到相关文件时，便理应注意到下列显而易见的问题：

“梁丽帼是谁？公众谘询和谘询报告影响她的哪些个人利益？谁人委派她代表社会开展这项法律程序？这申请是否真诚地提出？抑或背后有不为人知的政治目的？”

处理单方面申请的法官没有提出上述任何问题，而且没有负责任地于当时对该项申请作出裁决，反而下令进行“合并”聆讯，结果导致一场几近闹剧的法律程序及一份长达二十一页的判案书。

拟提出的申请理据

简单看看梁丽帼拟提出的申请理据，阴暗色彩更加浓厚。撇除冗词赘语后，其申请理据是：人大常委会在作出“831决定”，勾划出藉普选办法选出行政长官的程序时，超越了其权力范围。因此，该论点指出，2015年4月22日的



报告既然采纳了该办法，也同样蒙上不合法的“污点”。这是梁丽帼拟提出司法覆核申请的首两项理据。

在原讼法庭区庆祥法官的判案书中，各项论据和反论据占去了不少篇幅。它们可归纳成一个令人震惊的论点：“831决定”不应完全被理解和采纳为对香港特别行政区具有约束力；“831决定”其中一部分不合法；香港法庭应如此裁定。换言之，一个地方行政区的法庭应行使司法管辖权，裁定人大常委会作为国家主权机关就香港特别行政区的宪制安排而作出的行为是否合法。这是何等自大的妄想！进行这种争辩等同于参与这场弄虚作假的游戏。这项申请显然被隐藏的政治目的玷污，而法官认真地处理相关争辩，不但助长这种滥用法律程序的恶行，更变相容许法庭被用作哗众取宠的政治平台。从这角度看，即使许可申请最终被撤销，梁丽帼可说是成功了。但事情未有随此告终。

拟修订的申请理据

梁丽帼的代表大律师可能察觉梁丽帼欠缺充分利害关系以提出质疑，因此提议修改表格 86，加入以下的新理据：2015 年 4 月 22 日的报告侵犯了她根据《基本法》第二十六条依法享有的选举权和被选举权。同样地，该报告被指侵犯了梁丽帼根据《人权法案》第二十一条享有的参与政事等权利。法官把这些在拟修订理据三及四中提出的权利称为“相关权利”。

这只令情况更加荒谬。试问进行公众谘询和发表报告如何能侵犯梁丽帼的任何个人权利？

单方面聆讯的范围

区庆祥法官把他的决定称为“判案书”，但它什么也没有“裁决”。开展司法覆核程序的许可并无批出，亦没有政府官员被加入为司法覆核程序的一方。法官本人也承认这点，在判案书第七段表示：“这是许可申请，因此法庭所要考虑的是拟提出的司法覆核是否可合理地予以争辩且带有实际的成功机会……”

法官所说的是“拟提出的司法覆核”。既然如此，他在聆讯中又担当什么角色？试问在尚未开展且在获批许可前根本无法开展的“拟提出的”法律程序中如何作出裁决？

沉沦至更荒诞的世界

我们大概会认为不可能找到一宗较梁丽帼一案更糟的案件吧。令人遗憾地，事实并非如此。

罗绮媚诉行政长官及其他人 (HCAL 151/2022; 2022年3月30日)

2022年2月，为了应对席卷全港的第五波疫情，政府制定规例，限制市民进入人们通常聚集的地方。没有疫苗通行证的人士不准进入这些地方。当时全球各地都采取类似的措施。可想而知，对没有接种疫苗的人士来说，这些措施造成了或多或少的不便。

一名市民罗绮媚自行呈交表格86，申请许可开展司法覆核程序，以期质疑上述规例是否合法。她表示已申请法律援

助，正等候回覆。她又说她的申请涉及“极度复杂的法律概念和程序”，而“我将要委聘资深的代表律师，但条件是法律援助署批准我的申请”。她要求获给予更长时间“存档更多文件”。

换句话说，她不讳言自己没有实质案情，但期望获批法律援助后律师会为她建构案情。她不要求进行口头聆讯。

为了维持法律的纪律，处理单方面申请的法官应怎样做？当然是撤销该申请。

后续事件

其后发生的事情其实是如此：首先，即使申请人不反对法官纯粹以书面形式处理申请，法官仍“邀请”指认答辩人由大律师代表面见法官。法官继而召开“指示会议”，并要求指认答辩人的代表大律师提供“初步回应”，又向申请人“批予许可”以提交“对初步回应的答覆”。这些步骤无一能在《高等法院规则》中找到，全都是法官的创作。

在判案书第二段，法官借他人的喉舌，对政府应对疫情的手法作出尖锐批评：他指政府的对策“不合逻辑或常理、往往自相矛盾、欠缺同理心和对人的谅解、与本地个人和商界现实脱节……无视对连贯一致的长远政策和应变计划的需求等等。”这与法官要裁决的事项毫无关系，但对传媒来说是理想不过的“新闻稿”，也自然被报道成司法界狠批政府的抗疫手法。该位法官似乎没有留意终审法院前首席法官于2020年5月25日发表的声明，当中述明法官“如无必要，务须避免在公开场合——包括在判决中——对社会上备受争议的事情表达任何意见……”。

纪律结构一旦被打破，随之而来的必然是虚妄与破碎，意识形态亦随之涌现。

在上述判案书“无法识别任何覆核理据”的标题下，法官首先表示：“这点早有定论：支持法庭推翻行政权力的行使的理据如有充分基础，只用短短数段便应能清楚简洁地述出……”（第48段）

而在该案中，法官指出申请人没有任何实质覆核理据，“只能提出笼统的投诉”（第51段）。

既然如此，还有什么要说？只须表示申请必须被撤销，毋须再多言。

但法官没有这样做。他继而撰写了三十一段长长的段落，处理他所指的“申请人依据她**可能倚仗**的基本权利而**有意提出的质疑**……”“**是否有理由成立**”。

法官问“**是否有理由成立**”，但实情显然是没有。

法官说“**有意提出的质疑**”。但那是什么？

至于申请人“**可能倚仗**”的权利。那又是什么呢？

这些都是电影情节，不应在法庭内出现。

法官没有批予许可，因此罗绮媚无法对相关规例提出宪制上的质疑。但法官运用斯特拉斯堡欧洲人权法院发展，并经由终审法院在案例**希慎兴业有限公司诉城市规划委员会**³中完善的原则，对相关规例进行全面压力测试。法官称该些规例为“**受质疑的措施**”。

3 (2016) 19 HKCFAR 372.


法官说“受质疑的措施”。被谁质疑？肯定不是申请人。指认答辩人的代表大律师？这真是荒谬。抑还是法官本人？

结果，整宗案件沦为不折不扣的闹剧。

按照法律纪律的要求，法官只须用两个短句作出裁决：“该许可申请没有提出任何要透过司法覆核程序给予济助的事宜，故被撤销。”

总结

法庭并非在与世隔绝的密室中运作。法庭的一举一动都会产生连锁效应。一旦司法机关失去纪律，整个社会架构便会变得脆弱，受过教育的人会以为“公民抗命”没有问题、占据中环 79 日不会带来不良后果。

中央政府于去年 12 月发表白皮书，清楚指出“一国两制”原则于 2047 年后继续在香港适用的方针坚定不移。法治是香港这一制的核心所在。试问香港司法机关有否做好本分，谨慎、积极和有效地落实“一国两制”原则？法院所实行的制度又是否与目标相符？

主旨演讲暨座谈会

国安法加完善选举制度的组合拳
——固本培元

主持人



朱国斌

香港城市大学法律学院教授

主旨演讲嘉宾



邓中华

原国务院港澳事务办公室副主任
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谭耀宗 大紫荆勋贤 GBS JP
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基本法委员会委员



邓炳强 PDSM JP
保安局局长



朱国斌：尊敬的讲者、各位嘉宾、各位线上听众，早上好。感谢律政司邀请我主持这个环节。本环节由主旨演讲和座谈会组成。主旨演讲的题目是“国安法加完善选举制度组合拳——固本培元”。在本环节里，各位讲者将会讨论如何实践“爱国者治港的原则”、完善《基本法》、维护国家安全的体制，巩固“一国”之本，使“一国两制”行稳致远。本环节主旨演讲人是全国港澳研究会会长邓中华先生。邓中华博士是资优外交官出身，早年就参与香港主权交接相关事宜，后来加入香港澳门管理团队并出任重要领导职务。邓中华博士在2018到2022年3月份出任国务院港澳办公室副主任。我们有请邓先生。

邓中华：尊敬的林郑月娥行政长官、各位嘉宾、各位朋友，大家上午好。很高兴受邀参加由律政司主办的香港《基本法》法律论坛。首先，我代表全国政协副主席国务院港澳事务办公室主任夏宝龙，并代表全国港澳研究会对论坛举办表示热烈的祝贺。

“一国两制”是中国共产党百年奋斗、光辉历史的重要篇章，是中国特色社会主义的一个伟大创举。《基本法》是“一国两制”方针的法律化、制度化。回归以来，“一国两制”和《基本法》的实践取得举世公认的成功。作为一个新事物，“一国两制”在实践过程中难免出现一些新情况、新问题。中央审时度势，与时俱进，坚持和完善“一国两制”制度体系，坚持依法治港，运用《宪法》和《基本法》赋予的权力制定《香港国安法》，完善香港选举制度，确保“一国两制”始终沿着正确方向行稳致远。下面我谈三点看法，与大家进行交流。

一、《基本法》是“一国两制”方针的法律化、制度化。回归以来，“一国两制”和《基本法》实践取得举世公认的成功，理论和实践不断发展

上世纪80年代初，邓小平先生站在历史和全局的高度，以中国共产党人的宏伟气魄和非凡胆识，创造性地提出了“一国两制”的科学构想，并首先应用于解决香港问题。经过几年艰苦的努力，1984年中英两国签订了关于香港问题的《中英联合声明》，确认中国于1997年7月1日恢复对香港行使主权。1985年4月，全国人民代表大会设立香港特别行政区基本法起草委员会，在内地和香港各界人士共同努力和广大香港同胞积极参与下，历时四年零八个月，完成了《基本法》这部“具有历史意义和国际意义的法律”。1990年4月4日，第七届全国人民代表大会第三次会议，根据《宪法》规定，审议通过了《中华人民共和国香港特别行政区基本法》，实现了“一国两制”方针的法律化、制度化。这部宪制性法律把国家对香港的基本方针政策和特别行政区制度确定下来。

1997年7月1日，香港回归祖国，洗刷了百年民族耻辱，香港《基本法》正式实施。25年来，中央始终坚持“一国两制”、“港人治港”、高度自治的方针，严格依照《宪法》和《基本法》办事，是“一国两制”和《基本法》的坚定守护者，是香港特别行政区各项事业全面进步的积极支持者，是香港同胞合法权益的忠实维护者。在香港《基本法》的保障下，香港保持原有资本主义社会、经济制度不变、生活方式不变、法律基本不变。香港特别行政区依照《基本法》的规定，实行高度自治，享有行政管理权、立法权、独立的司

法权和终审权。香港《基本法》确立的特别行政区行政主导的政治体制有效运行，香港居民依法享有的权利和自由得到充分保障，经济稳定增长、教育、医疗卫生、文化、体育、社会保障等社会事业不断迈上新台阶。香港走上了通往祖国内地优势互补、共同发展的宽广道路。“一国两制”实践取得举世公认的成功。

中国共产党的十八大以来，中央从国家发展大局和中华民族伟大复兴的高度看待港澳工作。面对“一国两制”实践中出现的新情况、新问题，坚守“一国两制”初心，果断出手采取了一系列标本兼治的重大举措，在确保“一国两制”航船沿着正确方向前进的同时，丰富和发展了“一国两制”和《基本法》的理论和实践。“一国两制”方针的强大适应性和生命力，在香港的治理实践中已经并将不断显现。在此，我愿与在座的各位朋友一起简要回顾和总结。在**重大理论方面**：一是始终准确把握“一国”和“两制”的关系，强调在处理“一国”和“两制”关系时，“一国”是实行“两制”的前提和基础，“两制”重塑和派生于“一国”，并统一于“一国”。二是《宪法》和《基本法》共同构成特别行政区的宪制基础。《宪法》是国家的根本大法，具有最高法律地位和法律效力，是“一国两制”在国家法治中的最高体现，《基本法》是根据《宪法》制定的、规定特别行政区制度和政策的基本法律。三是正确处理中央全面管治权与特别行政区高度自治权的关系，中央全面管治权是特别行政区高度自治权的前提和基础，中央全面管治权既包括中央直接行使的权力，也包括授权特别行政区，依法实行高度自治，对于特别行政区的高度自治权，中央具有监督权力。在**重大实践方面**：一是促进特别行政区融入国家发展大局，把发挥祖国内地坚强后盾作用和提高特别行政区自身竞争力

结合起来，高质量建设了粤港澳大湾区。二是完善特别行政区与《宪法》和《基本法》实施相关的制度和机制，建立健全特别行政区维护国家安全的法律制度和执行机制，制定《香港国安法》，落实“爱国者治港”、“爱国者治澳”原则，完善香港选举制度。需要强调的一点是，重大理论引领和指导重大实践，重大实践又进一步丰富和发展重大理论。

二、全面准确、坚定不移，贯彻“一国两制”方针，坚持和完善“一国两制”制度体系、推动“一国两制”实践重回正轨

香港回归以来，一个是《基本法》第二十三条立法迟迟未立的问题，一个是香港政治不断发展的问題。这两个问题一直是困扰香港社会的制度性难题，也是《基本法》实施面临的两大难题。这两个问题相互交织、相互影响。在“修例风波”中进一步激化，“港独”猖獗、“黑暴”肆虐、“揽炒”盛行，社会秩序和公共安全遭到严重破坏，特别是一些外国和境外势力公然干预香港事务，妄图将香港变成向内地渗透的“桥头堡”，颠覆中国共产党领导和我国社会主义制度。我国国家安全特别是香港特别行政区的政治安全受到了严重威胁，香港出现回归以来最为严峻的局面。正是在这样的背景下，中央果断采取制定《香港国安法》和完善香港选举制度等一系列重大举措。全面准确认识《香港国安法》加完善香港选举制度这套组合拳，要切实把握好以下三点：

一是坚持总体国家安全观，切实履行宪制责任。习近平主席强调，“国家安全是安邦定国的重要基石”。维护国家安全是国家的头等大事。党的十八大以来，中国共产党顺应时代发展，系统回答了中国特色社会主义进入新时代，如何既解决好大国发展过程中面临的共性问题，同时又处理

好中华民族伟大复兴关键阶段面临的特殊安全问题这个重大时代课题；创造性地提出了总体国家安全观的概念，强调总体国家安全观就是以人民安全为宗旨、以政治安全为根本、以经济安全为基础、以军事、文化社会安全为保障、以促进国际安全为依托，走出一条中国特色国家安全道路。总体国家安全观强调大安全理念，涵盖政治、军事、国土、经济、金融、文化、社会、科技、网络等诸多领域，并随着社会发展不断动态调整。其中，政治安全是总体国家安全观所有要素的核心，维护国家安全首先要确保政治安全。政治安全的核心是政权安全和制度安全。我国是中国共产党领导的社会主义国家，维护政治安全最根本的就是维护中国共产党的领导地位和执政地位，维护中国特色社会主义制度。《宪法》第五十二条、第五十四条规定，中国公民有维护国家统一、维护国家安全的义务。《国家安全法》第十一条、第四十条进一步明确港澳同胞应当维护国家主权、安全和领土完整，履行维护国家安全的责任。香港《基本法》和《香港国安法》还指明中央政府对特别行政区有关的国家安全事务负有根本责任，香港特别行政区负有维护国家安全的宪制责任。因此，在香港特别行政区维护国家安全，必须坚持总体国家安全观、确保政治安全和制度安全、切实维护《宪法》和《基本法》确定的特别行政区宪制秩序、尊重和维持中国共产党的领导地位和执政地位、尊重和维持内地和香港实行的两种不同的社会制度。

二是全面落实“爱国者治港”原则，画出最大同心圆。“爱国者治港”是“一国两制”的核心要义，是事关国家主权、安全、发展利益，事关香港长期繁荣稳定的根本原则。习近平主席强调，“要确保‘一国两制’实践行稳致远，必须始终坚持‘爱国者治港’”。作为中华人民共和国的一

个特别行政区，香港的管治权必须掌握在爱国者手中。爱国者的标准是客观的、清晰的。夏宝龙副主席在2021年2月22日全国港澳研究会举办的专题研讨会上明确指出，爱国者就是要真心维护国家主权、安全、发展利益，尊重和维护国家的根本制度和特别行政区的宪制秩序，全力维护香港的繁荣稳定。进入香港特别行政区政权架构的人士必须是坚定的爱国者，而且还要德才兼备，有管治才干。完善后的新选举制度，通过重新构建选举委员会、调整候选人提名机制、更好发挥选举委员会整体作用和完善候选人资格审查制度等，做到坚决把“反中乱港”势力排除在特别行政区政权机关之外，确实保证经由选举担任的特别行政区重要公职的人士都是坚定爱国者。实践证明，坚持“爱国者治港”原则是解决香港社会深层次矛盾和问题、确保香港繁荣稳定并在民族复兴伟业中发挥自身独特优势的根本前提，坚持“爱国者治港”的原则，能够在“一国两制”制度体系下寻求最大公约数，画出最大同心圆。

三是坚持《宪法》原则，在《宪法》和《基本法》框架下完善“一国两制”制度体系。《宪法》是国家的根本法，在全国范围内具有最高法律地位和效力。《宪法》是特别行政区设立的宪制依据，是《基本法》的立法依据和效力来源，更为《基本法》适用和解释提供了根本遵循。“一国两制”事业建基于《宪法》，源自于《宪法》。根据《宪法》的规定，全国人民代表大会是我国的最高权力机关，行使国家的主决权。香港回归以来，全国人大及其常委会为构建“一国两制”制度体系作出过数十项决定、决议和法律解释，专门制定了多部重要的法律，例如通过全国人大常委会的多次立法解释，阐明《基本法》条款的含义，稳妥解决了特别行政区政治发展、居留权、行政长官任期、任职宣誓及

国家豁免等重大问题，解疑释惑，定分止争。再如，通过全国人大常委会的专门授权，有效解决了内地与特别行政区之间“一地两检”等管辖权问题，促进了人员交流、经贸往来和共同发展。可以说“一国两制”事业从伟大构想到生动实践，再到各方面制度机制的构建完善，都是通过人民代表大会制度实现的。全国人大及其常委会通过的《香港国安法》决定和《香港国安法》，以及有关完善香港选举制度的决定和修改香港《基本法》附件一和附件二，更是进一步完善了“一国两制”制度体系，为“一国两制”提供了更加有力的宪制支撑和保障。

三、继续发挥“一国两制”治理优势，抓住机遇，迎接挑战，确保“一国两制”实践始终沿着正确方向，行稳致远

《香港国安法》和完善香港选举制度是全面准确、坚定不移贯彻“一国两制”方针的重大举措，是根据《宪法》和《基本法》作出的最重要宪制意义的制度安排，更是“一国两制”实践发展的重要里程碑。它犹如“车之两轮”、“鸟之双翼”，完善了跟《宪法》和《基本法》实施相关的制度和机制，确保香港《基本法》的各项规定得到全面落实，维护了香港《基本法》的完整性、权威性，确保了香港局势实现由乱到治的重大转折，开启了香港社会由治及兴的历史新阶段。随着《香港国安法》的有效执行和新选举制度付诸实践，越来越多贤能、爱国者将进入特别行政区管治架构。一支爱国爱港、担当作为、精诚团结、为民服务的爱国者治港队伍初步形成，但与此同时，香港特别行政区维护国家安全的形势依然严峻复杂，香港社会发展仍面临提高政府治理效能、增强发展竞争力、破解经济民生深层次问题等一系列重大考验，机遇和挑战并存。

面对机遇和挑战，我们要继续严格依照《宪法》和《基本法》办事，坚持依法治港，巩固《宪法》和《基本法》共同构成的特别行政区宪制基础，维护《宪法》和《基本法》确定的特别行政区宪制秩序，确保“一国两制”方针不会变、不动摇，确保“一国两制”实践不走样、不变形，始终沿着正确方向前进。

面对机遇和挑战，我们要继续坚定落实总体国家安全观，有效执行《香港国安法》，积极履行《基本法》第二十三条立法的宪制责任，完善相关法律，依照《宪法》和《基本法》继续塑造政治安全的香港，消除可能危害国家安全的各种风险和隐患，筑牢香港特别行政区维护国家安全的根基和防线。

面对机遇和挑战，我们要继续完善跟《宪法》和《基本法》实施相关的制度和机制，以强大的法律武器和勇于开拓的创新精神，继续去解决“一国两制”实践和《基本法》实施过程中遇到的新情况、新问题，攻坚克难，砥砺前行。

面对机遇和挑战，我们要继续全面贯彻落实“爱国者治港”原则，确保香港特别行政区政权牢牢掌握在爱国爱港人士手中，推动香港实现良政善治。着力于发展经济、改善民生、化解深层次矛盾，实实在在提高香港市民的获得感、幸福感。

各位嘉宾、各位朋友，2021年11月11日，中国共产党十九届六中全会通过的《关于党的百年奋斗重大成就和历史经验的决议》，首次将在港澳坚持和完善“一国两制”作为党百年奋斗重大成就和历史经验的重要组成部分载入党史决议。香港回归祖国25年不平凡的历程，充分证明实行“一国两制”有利于维护国家根本利益、有利于维护香港根本利

益、有利于维护广大香港同胞根本利益。站在新的历史起点上，我们坚信新选举制度选出的爱国者治港队伍一定能够团结带领香港社会各界人士并肩奋斗，共同谱写好中华民族伟大复兴的“香港篇”。

我的发言到此结束，请三位点评嘉宾指正。最后，我代表全国港澳研究会祝论坛取得圆满成功，祝各位嘉宾身体健康、万事如意。谢谢大家。

朱国斌：大家也知道全国人大及其常委会分别在2020年及2021年以“决定加立法”、“决定加修法”的方式为香港特区完成国家安全立法和完善选举制度。刚才邓主任用了一个词叫“标本兼治”，我觉得这个词概括得比较准确。这两部法律对为香港特区未来25年的管治起到最为关键的作用。所以，下面这一节我们将围绕这两个法律展开讨论。首先，我们有请全国人大常委会委员谭耀宗先生。谭先生曾经担任香港《基本法》起草委员会委员，并曾任行政会议议员、立法会议员，并长期出任香港政治团体“民建联”的主席，是一位经验丰富的政治家。谭先生。

谭耀宗：多谢朱教授。大会希望我讲述一下简报中这三点的内容，因为本人亦有出席人大常委会会议，所以我有亲身经历。那么我就凭着我的记忆跟各位分享一下，我想在三个方面讲述一下。第一点，全国人大常委会制定《香港国安法》及“完善选举制度的决定”的时候所依循的重要原则。第二点，《香港国安法》以及完善选举制度的立法方式。第三点，今后在中央的大力支持下，我们如何同启香港的新篇。

首先讲述一下，第一点是全国人大常委会制定的《香港国安法》及“完善选举制度的决定”所依循的原则。



我自己的体会是有三点的，这三点都是有一个最重要的原则，以及两个法例都是前后贯通、都是一致的。第一点就是维护国家安全，第二点是完善和准确落实“一国两制”，以及第三点是坚持依法治港。有关《香港国安法》的重要原则，我认为最权威的是当时我们在全国人大的全体会议中，即是在2020年3月举行的全体会议，当时由常委会的副委员长王晨先生在全体会议中发言，他说：“香港特区事务是中国的内政，不受外部势力干涉。必须坚决反对任何外国及其组织或者个人以任何方式干预香港事务。坚决防范和遏制外部势力干预香港事务和进行分裂、颠覆、渗透、破坏活动。对于任何外国制定、实施干预香港事务的有关立法、行政或者其他措施，我们将采取一切必要措施予以反制。”这点是说得十分清楚的。第二点，他强调在立法过程中会切实保障香港居民的合法权益，以及尊重和保障人权。而有关“完善选举制度的决定”的重要原则，王晨强调了两点：第

一点是要发展符合香港实际情况、体现社会整体利益的民主选举制度；第二点是要提高香港特别行政区的治理效能，依据这些重要的原则进行立法的工作。

《香港国安法》和“完善选举制度的决定”的立法方式存在不同的地方。《香港国安法》是采取“决定加立法”的方式，而完善选举制度是采取“决定加本地修法”的方式。稍后我们会分析两种方式的不同之处。

《香港国安法》的立法方式，第一步是由全国人民代表大会根据《宪法》和《基本法》的有关规定，作出《关于建立健全香港特别行政区维护国家安全的法律制度和执行机制的决定》，同时授权全国人大常委会制定相关法律。其实这一点我们当时在作为《基本法》起草委员讨论第二十三条时已经谈论过，原因是大家认为维护国家安全是必须的，这个范畴是一定要有的。大家可能会问如果我们当时起草《基本法》时将维护国家安全的条文也写进去不就一劳永逸了吗？这说法其实是对的，但当时在起草《基本法》的时候存在不同的意见。最后的决定有部分原因是尊重了香港方面的意见，决定在香港特区成立之后由香港特区自行进行有关立法。但是谁知过了23年也未能成功立法。最后到了2019年出了大事情便由全国人大常委会出手。这个做法是完全符合《宪法》和《基本法》，而且其实我们当时起草《基本法》的过程中亦曾考虑过。第二步是根据《宪法》制定法律后，将它列入《基本法》附件三，那便可以直接由香港特别行政区在当地公布实施。

当时，我亦有参与立法时的讨论。我十分佩服内地的起草工作，能够在短时间内制定了一条维护国家安全的法律以及其执行机制。若是只有法律而没有执行机制，效果便不相

同了。回想在北京进行会议时，我们特地邀请了刚才进行发言的邓中华副主任跟我们列席的代表一同讨论了两个多小时，其后我们亦找李飞主任再讨论，原因是我们希望这条法律制订了之后，可以顺利地执行下去。后来经过讨论和了解之后，我们认为这个法律做得很好。大家可以见到自从订立了这个法律后，香港的整个情况产生了变化，由乱到治，很多事情都有了法律依据，令香港可以恢复稳定。

而“完善选举制度的决定”跟刚才所谈及的维护国家安全的立法是不同的。这个决定是通过人大代表的全体会议作出的决定，并授权人大常委会修改了《基本法》附件一和附件二，但不牵涉《基本法》的正文。今天上午亦有提及修改附件一和附件二。这是当时我们起草《基本法》时安排的。原因是我们认为政制方面的事情，我们不可以一次性将 50 年的安排都写进去，这样亦容许我们根据社会情况的变化循序渐进，所以特别写清楚容许有些事情于 2007 年香港特区成立十年时可以作出检讨，若果需要改变的时候，有什么程序的要求。所以，在这次作出改变时，实际上修改了《基本法》附件一和附件二便可以，并不需要修改《基本法》的正文。这些安排亦是我们当年起草《基本法》的时候已有所准备。这里分了两个步骤，即附件一及附件二的修订，修订后便于本地立法机关香港立法会进行本地立法。香港的立法会亦很配合，他们于 2021 年 4 月 14 日进行条例草案的首读及二读，于 5 月 27 日三读通过了条例草案，使“完善选举制度”能够在本地落实并实施。

谈及了这两个法律之后，我想简单地说一下在中央支持下，香港未来应该要怎样。订立了这两个法律之后，事实上令香港可以稳定下来，香港亦在选举方面得到了保障。所

以我们希望今后能一起努力，为香港未来同启新的篇章。多谢朱教授。

朱国斌：谢谢谭先生。谭先生概括了这两部法律的立法原则和立法特点，还透露了立法过程的部分细节，这对我们学习研究两部法律有很重要的意义。下一位讲者是全国人大代表陈曼琪议员。陈议员是一位注册律师，同时是港区人大代表、全国湖南省政协委员、立法会议员，还有香港选举委员会第五界别委员。陈议员还担任多项社会公职。请陈议员。

陈曼琪：多谢主持，亦非常多谢大家。我今天跟大家分享的题目是从本人作为一位执业律师、立法会议员和全国人大代表，并曾担任四届区议员的角度探讨及分析完善选举制度如何进一步促进香港政治体制的广泛代表性、包容性，体现均衡参与及公平竞争的原则，对立法会的运作及政府依法施政产生的正面影响。亦欢迎在座各位前辈及专家作出指正。

本人的经历让我认为完善选举制度令香港的政治体制在正确的宪制及法治秩序里面运行。资格审查委员会确保我们参政和议政的人都是爱国者，确保落实“爱国者治港”。重要的是令不同的阶层、不同的党派从政者，甚至政府的行政和立法关系都有着共同的政治秩序、意识形态、核心价值及拥有稳固的互信，当存在分歧时，大家都可以以大局为重，令政治的生活可以在合宪和合法的框架里更加多元化，具有广泛性，和而不同，求同存异。“制度稳则香港稳，制度强则香港盛。”

香港曾经历由乱到治，由治及兴。香港更加需要以爱国者为大原则的政治体制，这样香港才可以在“一国两制”之

下合乎香港的实际情况，发展具有香港特色的民主道路，稳中求进。“完善选举的制度”进一步推进我们香港政治制度的广泛性、包容性、代表性，体现均衡参与及公平竞争的原则。本人建议有以下四点：第一，强调维护《宪法》的权威。第二，立法会议员及选委会的成员要有大局观、国家观和世界观。第三，培养及发掘更多的“爱国者治港”人才。第四，特区政府亦要令政治体制与时俱进，准确地反映和吸纳民意，讲求平衡之道。对于强调维护《宪法》的权威，巩固落实“爱国者治港”的原则，本人有以下数点建议：第一，提升香港基本法推广督导委员会的职能，改名为“宪法和基本法推广督导委员会”，设立《宪法》和《基本法》推广专员一职。二，根据《香港国安法》第六条扩大公职人员参选或就职时，应当依法宣誓拥护《中华人民共和国香港特别行政区基本法》，效忠中华人民共和国香港特别行政区的适用范围。第三，根据《香港国安法》第七条，香港特区切实执行《香港国安法》，尽早完成《基本法》第二十三条本地立法，以及完善现有维护国家安全的本地法律。第四，尽快完成本地法律的去殖民化，删除“女皇陛下”等殖民地词汇。第五，根据《香港国安法》第九条及第十条，香港特区政府及社会各界不仅要不断深入推进《基本法》的教育，还要推进源头，即《宪法》、《基本法》、《香港国安法》、爱国中华文化及法治的教育，令“爱国者治港”和“爱国爱港”不只是口号，而是每一个香港人与生俱来的基因。

立法会议员及选委会的成员是香港政治体制的重要组成部分，香港立法会议员需要有大局观、国家观和世界观。重要的是讲求平衡之道，防两极化、防分化，亦需要接地气，准确地把握民情，就着民生议题促进跨界别的合作，以香港整体的利益为依归，令香港的政治体制能够反映香港的社会、

政治、经济、民生的实际情况，亦需要把握我们国家最新的发展及政策，时刻以“‘一国两制’行稳致远”为履职的根本责任，令香港能够聚焦发展，解决民生问题，继续发挥香港作为国际大都会的独特优势，令香港继续保持繁荣稳定。

选委会的个人成员和团体机构需善用选委会新职能持续服务社会，而不仅是在竞选的时候才发挥作用，亦需要反映民意，使选委会更加能够成为香港社会的缩影，更宏观地反映香港整体的利益。在“爱国者治港”的共同基础下，我们既有包容性和协同作用，充分发挥、坚持“一国”的原则，亦尊重“两制”差异，把中央全面管治权和特区的高度自治权有机地结合起来。

而香港的政治体制本身亦需要不断提升自身的建设能力，本人建议建设多渠道，长期培训和发掘更多爱国爱港的参政、议政人才，为选委会不断地输送人才。本人亦鼓励和希望能够推动设立各种民间的爱国者研究中心，设立不同年龄层培养爱国者阶梯，善用中小学团体例如制服团体、升旗队及设立青年爱国者智库，为爱国者治港提供不同阶层、不同类型、不同专长的人才。另外，为吸引更多视“爱国者治港”为终身奋斗目标的有志之士，要建设“爱国者治港”的人才旋转门，为他们提供进出政府、议会各类非官方谘询机构以至研究中心的职位和机会。

香港特区政府有责任令政治体制与时俱进，准确反映和吸纳民意，以民为本，亦要讲求平衡之道。我认为香港特区政府在“行政主导；行政、立法、互相制衡、互相配合；司法和终审权独立”的原则底下需要换位思考，善用选委会由下而上多吸纳不同阶层的意见，以协助政府有更大的同理心。我认为这一届政府或“爱国者治港”拥有同理心是十

分重要的，因为这样便能够接地气，时刻有危机感，亦有底线思维，有微观、又有大局观、国家观和国际观。公务员学院需要提供课程和实习机会，让公务员能够与选委和社会各界有更多的互动交流，培养公务员接地气、懂民情，把握社会、政治、经济、民生的情况、发展和变化。

政府的管治班子需要推动香港政治体制的广泛代表性、包容性、均衡参与和公平竞争，亦需要团结香港，凝聚所有力量解决香港深层次问题，带领香港融入国家发展大局，保持香港继续长期繁荣稳定，令“一国两制”行稳致远。

最后，香港的政治体制必须落实“爱国者治港”的大原则，健全香港的宪制及法治秩序，更好地落实中央全面管治权和香港特区的高度自治权。最后很重要的是刚才很多领导、前辈和专家提及的确保政治安全、政权安全和制度安全。“爱国者治港”是我们香港七百多万人的最大公约数，团结一切可以团结的力量，在“一国两制”之下使香港的政制和民主发展道路更加符合我们香港实际的情况，决不把西方的民主形式硬套在香港特区，并时刻以维护国家主权、安全、发展利益和香港长期繁荣稳定为我们香港发展民主的目标，提高香港特区管治效能，达致良政善治，亦令到“一国两制”行稳致远，我们香港人能够安居乐业。多谢大家。

朱国斌：谢谢陈议员有建设性而且声情并茂的分享。下一位讲者是全国人大代表黄玉山教授。黄教授现时为港区全国人大代表和全国人大常委会基本法委员会委员，并担任香港特别行政区多个委员会的主席和委员。作为社会活动家，黄教授还担任了众多的社会公职，黄教授长期在香港高校教学、科研并承担行政工作，曾经出任两间大学的副校长和校长。有请黄教授。

黄玉山：谢谢主持人。各位朋友，刚才聆听了邓中华副主任的讲话，大家获益良多。我想在此分享一下我对于“爱国者治港”的看法。在2021年3月11日全国人大四次会议高票通过了关于“完善选举制度的决定”。这一个是继实施《香港国安法》之后中央亦是根据《宪法》和《基本法》进一步完善香港选举制度，包括行政长官和立法会产生办法，是从制度上和机制上确保“爱国者治港”的原则，确保“爱国者治港”作为主体的一个港人治港的方针能够得到全面的贯彻，从而保证了“一国两制”能够行稳致远。

各位知道在2019年“修例风波”之后，香港的极端反对派联同“反中乱港”的外部势力公然宣扬鼓吹“港独”，并且利用香港立法会和区议会的选举平台，利用他们作为一个公职人员的身份肆无忌惮地从事各种违法的“反中乱港”活动。种种迹象表明了香港原来的选举制度存在明显的漏洞和缺陷。因此，必须在法律上和体制上规定“爱国者治港”这个原则，才可以杜绝这些“反中乱港”分子进入管治队伍。

“爱国者治港”并不是一个新近提出来的一个原则。大家都知道早于1980年代中英谈判的时期，已故领导人邓小平先生多次阐明“爱国者治港”这个原则及其重要性。我还记得在1984年6月22日邓小平先生接见香港工商界访京团的时候说：“港人治港有个界线和标准，就是必须由以爱国者为主体的港人来治理香港。未来香港特区政府主要成分是爱国者……爱国者的标准是，尊重自己的民族，诚心诚意拥护祖国恢复行使对香港的主权，不损害香港的繁荣和稳定。”这是有很明确的定义的。

1997年英国终止对香港的管治，我们香港是主权回归、治权恢复。根据《基本法》和“一国两制”的方针，就是由

香港人来治理香港。但是，回归之后的香港是祖国神圣领土的一部分，所以香港管治者除了要贯彻“一国两制”，保持香港繁荣稳定之外，在各种施政领域里面还需维护国家的主权、安全和发展利益。刚才邓中华副主任亦说了维护国家安全是香港的宪制责任。所以假若我们的管治者不是爱国者，就不可能履行以上的责任，不可能完成以上的任务。而治港的爱国者既是香港人，同时亦是认同国家、尊重民族、努力维护国家主权、安全和发展利益的中国人。除了服务香港以外，治港的爱国者在意义上、在政治伦理上还包含了对国家的忠诚和拥护。

2019年各种“反中乱港”现象就带给我们非常好的反面教材，证明“爱国者治港”是必须的，是不可或缺的。这亦是邓小平先生所说的“港人治港”是有一个界线，亦有一个标准。纵观世界任何一个国家，热爱自己的国家和效忠祖国都是各级公务员必须遵守的一个基本政治伦理要求，我们必须有这一项要求，这不是香港独有的，而是放诸四海而皆准。这次“完善选举制度的决定”有效地保证了今后的选举制度会更加完善，亦堵塞了有关的漏洞和缺陷，是贯彻“一国两制”路程中的一个重要里程碑，庄重地宣告今后就是“爱国者治港”、“反中乱港者”出局这种崭新政治局面。这亦清晰地建立了新的政治规则以及法律规范，令特区政府能够真正承担起维护国家主权、安全、发展利益的重担，令香港能够更加顺畅地融入国家发展大局。

随着《香港国安法》和完善选举制度的全面落实之后，我们社会上有些人在担心这个举措是否表示中央对香港政策有所收紧呢？有些人担心二十多年后当中国发展成为社会主义现代化强国的时候，是否还需要“一国两制”呢？我个人认为“一国两制”是中央政府和领导人经过深思熟虑谋

划出来的构想，亦是几经挑战及实践取得的成果。过去三十多年，中国多位领导人不断地公开表明“一国两制”的政策是肯定的，是需要坚持的。从历史观点来看，“一国两制”是新生事物，是史无前例的，但是它拥有强大生命力。习近平总书记在2017年10月8日党的十九大报告内阐述我们国家的“十四个坚持”的基本方略，其中第12个基本方略就是“一国两制”，即是说“一国两制”是国家的方略之一。他是这样说的：“坚持‘一国两制’和推进祖国统一。保持香港、澳门长期繁荣稳定，实现祖国完全统一，是实现中华民族伟大复兴的必然要求。必须把维护中央对香港、澳门特别行政区全面管治权和保障特别行政区高度自治权有机结合起来，确保‘一国两制’方针不会变、不动摇，确保‘一国两制’实践不变形、不走样。”这是一个很重大的决定和承诺。

我认为落实《香港国安法》及完善选举制度不仅不会削弱“一国两制”，相反就好像习主席所说，将特别行政区的全面管治权和保障特别行政区的高度自治权两者有机结合起来。现在落实《香港国安法》和“完善选举制度”就只会使“一国两制”更加稳固，更加完备。个人认为中国是一个文明的古国，亦是一个具有中国特色社会主义的大国。只有我们这类国家才有这种宽宏的胸怀和气度，拥有这种高瞻远瞩的智慧和眼光来实现“一国两制”，创造和实践了一个国家两种制度，创造性地解决历史遗留下来的问题，回应了人类社会和平发展的期待，亦丰富了人类文明的内涵。“一国两制”的成功落实和将来发展，我认为中国共产党和中国政府对人类政治文明史的一个重要贡献。而我们各位能够身处其中实在是应该感到骄傲和光荣的。因此，我有信心“一国两制”必定能够行稳致远，对于“一国两制”的将来是抱有信心的。多谢。

朱国斌：谢谢黄教授分享关于“爱国者治港”的政治法律意涵和制度建设意义的深刻认识，非常的有启发意义。谢谢。最后一位同样是重量级讲者，他就是保安局局长邓炳强先生。他将会进行线上演讲。邓先生于1980年代加入香港警队，先后就任督察、高级警务处长、行动处处长、警务处副处长、警务处处长，于去年6月就任保安局局长。欢迎邓先生。

邓炳强：多谢朱教授。尊敬的邓中华先生、谭耀宗先生、谭惠珠女士、律政司司长郑若骅女士、各位朋友，大家好。今天我很高兴能够获邀出席由律政司主办的《基本法》法律论坛，与在座各位分享香港特区在完善维护国家安全的法律方面的经验。

《香港国安法》的实施，让香港由乱变治，令香港从动荡、暴乱的环境康复过来。通过回顾《香港国安法》的实践经验与分析特区的国家安全形势的变化，我希望能够让到大家理解到《香港国安法》作为让“一国两制”行稳致远的组合拳的重要组成部分，是如何能达到本固枝荣及固本培元的效果。

《香港国安法》是一套具针对性、到位，而且充分考虑了香港特区实际情况的法律。法律是在2019年“黑暴”肆虐的背景之下订立的。当时，暴徒肆无忌惮地破坏政府建筑物、商店、铁路及其他公共设施，纵火、强闯及破坏立法会，肆意殴打执法人员和持不同意见的人。外部势力试图通过渗透，在香港搞“颜色革命”，并透过代理人从事危害国家安全的活动，包括企图影响选举结果，以及颠覆国家的政权，香港面对前所未有的国家安全威胁，香港的繁荣安定岌岌可危。

在这个背景下，《香港国安法》针对性地就当时最严重和最迫切的四类危害国家安全的行为和活动订定罪行和罚则——包括分裂国家、颠覆国家政权、恐怖活动及勾结外国或者境外势力危害国家安全，为执法行动定下法律基础；又设立维护国家安全的相关机构，并订明它们的职责，包括香港特区的国安委、警务处的国家安全处、律政司的维护国家安全检控科，及中央人民政府的驻港国家安全公署等。

此外，《香港国安法》亦特别订明对个人权利和自由的保障，又体现重要法治原则，例如无罪推定、一罪不能两审、保障公平审讯等。

除罪行条文及执行机制外，法律更特别着重防范危害国家安全的有关行为：《香港国安法》订明了维护国家主权、统一和领土完整是包括香港人在内的全中国人民的共同义务，亦订明香港特区应开展国家安全教育和对学校、社会团体、媒体、网络等加强宣传、指导、监督和管理责任。这对全面准确贯彻“一国两制”、“港人治港”、高度自治的方针，保持香港特区的繁荣稳定极为重要。

当然，除了《香港国安法》外，特区政府亦透过激活现有法例，全面制止和惩治危害国家安全的行为和活动。过去两年的执法行动亦已初见成效，包括引用了《刑事罪行条例》第九和第十条，积极打击发表煽动言论和刊物，以及其他“软对抗”的行为。行政长官会同行政会议亦行使了《公司（清盘及杂项条文）条例》下的相关权力，命令公司注册处处长将带来危害国家安全风险的机构从公司注册册中剔除。

特区政府相关政策局及部门亦积极透过订立其他的新法例、规例和机制，以更好地履行就维护国家安全的宣传、指导、监督和管理的管理的责任，包括：

第一，通过《电讯（登记用户识别卡）规例》，落实预付储值卡实名登记制度；

第二，透过实施《2021年电影检查（修订）条例》和更新的《有关电影检查的检查员指引》，把国家安全列入为电影检查的考虑因素之一；

第三，透过《2021年个人资料（私隐）（修订）条例》，针对未经资料当事人同意而公开其个人资料的恶意行为订立新的“起底”罪行，又赋予私隐专员对“起底”罪行的刑事调查及检控权；

第四，将危害国家安全的罪行纳入《社会工作者注册条例》，令被裁定犯了任何危害国家安全罪行的人士，不能担任注册社会工作者。

在有了上述的法律基础的支持下，特区政府本着“有法必用、执法必严、违法必究”的原则，依法向危害国家安全分子采取执法行动。

自《香港国安法》生效后，截至目前，共186人因涉嫌从事危害国家安全的行为和活动而被警方拘捕，当中115人被检控，另有五间公司因涉嫌干犯危害国家安全罪行被检控。至于在法庭审讯方面，目前有八宗已完成审讯，涉及十个人的案件，所有被告皆已被定罪，目前最高判刑是监禁九年。

《香港国安法》的实施扭转了特区自 2019 年开始的乱局，暴力行为大幅下降，鼓吹“港独”的情况不断减少。此外，众多涉嫌危害国家安全的组织亦相继自行解散或停止运作。上述的成果清楚证明《香港国安法》的实施已发挥相当成效。

虽然《香港国安法》确实起了震慑作用，但是危害国家安全分子绝对不会轻易收手，而是伺机而动。香港仍面对不少国家安全风险，包括：

第一，危害国家及香港安全的势力持续以“软对抗”手法宣扬反中央和特区政府资讯，鼓吹“港独”；

第二，本土恐怖主义活动，例如 2021 年的“七一”刺警案和企图于铁路、法庭等公众地方发动炸弹袭击以图达致政治目的的“光城者”案件，均显示本土恐怖主义分子已转趋行动化；

第三，外部势力利用香港“一国两制”、高度自治的独特环境，不断干扰和抹黑特区事务，意图危害国家安全；及

第四，逃到海外的危害国家安全分子勾结外部势力，继续从事危害国家安全的活动，例如要求外国实施所谓制裁，并企图里应外合，与一些想危害国家安全的本地媒体或组织连成一线，煽动仇恨。

就此，特区政府会继续采取一系列策略，应对上述内部和外部的国安风险，其中特别包括：


第一，情报方面：我们会加强国家安全及反恐情报收集及分析，特别是网上资讯及反间谍情报，同时会加强与国家不同的组织及机构的信息和情报共享与交流；

第二，执法方面：包括继续针对涉嫌危害国家安全的人和组织展开深入调查，特别是他们的财政来源、开支及与外部势力的关系；并在各纪律部队及各政策局及部门全面协作，共同维护国家安全；

第三，立法方面：包括完成《基本法》第二十三条立法，以及订立网络安全法例，以进一步完善国家安全的法律制度；

第四，宣传教育方面：只有正确理解维护国家安全的重要性，才能确保香港繁荣稳定，特别是在加强青少年的国家安全意识方面，特区政府通过不同形式的比赛和活动，例如网上虚拟展览等，推动全港中、小学的师生共同参与，并透过全民国家安全教育日的各类比赛及各项活动，让国家安全教育植根校园及社会。保安局旗下的各纪律部队亦会继续透过其青少年团，协助青少年培养良好品格、正向思维和守法意识。

各位嘉宾，《香港国安法》让香港由乱变治，特区政府会继续努力不懈，做好维护国家安全的各项工作。凭藉大家的努力，我相信香港特区政府定能肩负起维护国家安全的责任，令“一国两制”行稳致远。多谢大家！

朱国斌：谢谢邓局长的专业分享，让我们对《香港国安法》在香港的实施有进一步的认识和期待。本节演讲与座谈会到此，感谢主讲人，感谢四位和在网上分享的与谈人。感谢线上的观众和在座各位，祝各位安好，谢谢大家。

巩固法治 同启新篇

谭耀宗

- 一. 全国人大常委会制定《香港国安法》和“完善选举制度的决定”时依循的重要原则
- 二. 《香港国安法》和“完善选举制度的决定”的立法方式；
- 三. 在中央大力支持下，同启香港新篇！

一. 全国人大常委会制定《香港国安法》和“完善选举制度的决定”时依循的重要原则

众所周知，全国人大常委会制定的《香港国安法》和“完善选举制度的决定”是一套“组合拳”，两者之间有着密切的关系，其中所依循的重要原则中有很多是一致的、是互联互通的。当然，《香港国安法》和“完善选举制度的决定”亦各自其具体侧重、和有其独特着力点。

三个重要原则是高度一致的，前后贯通的。

1. 维护国家安全、
2. 完善和准确落实“一国两制”、以及
3. 坚持依法治港等

《香港国安法》的重要原则

在《香港国安法》草案说明中全国人大常委会副委员长王晨在全国人大会议中强调了：

1. “香港特区事务是中国的内政，不受任何外部势力干涉。必须坚决反对任何外国及其组织或者个人以任何方式干预香港事务，坚决防范和遏制外部势力干预香港事务和进行分裂、颠覆、渗透、破坏活动。对于任何外国制定、实施干预香港事务的有关立法、行政或者其他措施，我们将采取一切必要措施予以反制。”

2. 《香港国安法》也特别强调了切实保障香港居民合法权益，尊重和保障人权。“依法有效防范、制止和惩治危害国家安全的极少数违法犯罪行为，是为了更好地保障香港绝大多数居民的生命财产安全，更好地保障基本权利和自由。任何维护国家安全的工作和执法，都必须严格依照法律规定、符合法定职权、遵循法定程序，不得侵犯香港居民、法人和其他组织的合法权益。”

“完善选举制度的决定”的重要原则

在“完善选举制度的决定”草案说明中，全国人大常委会副秘书长王晨在全国人大会议中强调了：

1. 要发展符合香港实际情况、体现社会整体利益的民主选举制度。“依法保障香港同胞广泛的、均衡的政治参与，依法保障香港永久性居民依法享有的选举权和被选举权，团结一切可以团结的力量，广泛凝聚香港社会正能量。”以及，
2. 要提高香港特别行政区治理效能。“要健全行政长官对中央人民政府负责的制度，维护行政主导的香港特别行政区治理架构和运行机制，支持行政长官和行政机关、立法机关、司法机关依法行使职权、履行职责，确保香港特别行政区政治体制和治理体制机制顺畅、有效运行。”

二. 《香港国安法》和“完善选举制度的决定”的立法方式

全国人大常委会从国家层面建立健全香港特区维护国家安全的法律制度和完善选举制度时在很大程度上兼顾了香港特区和内地法律制度的不同，因而分别采取了“决定+立法”或“决定+本地修法”等方式。

《香港国安法》的立法方式

《香港国安法》采取的是“决定+立法”，然后在香港公布实施的方式：

第一步，由全国人民代表大会根据宪法和香港基本法的有关规定，作出《关于建立健全香港特别行政区维护国家安全的法律制度和执行机制的决定》，同时授权全国人大常委会就建立健全香港特别行政区维护国家安全的法律制度和执行机制制定相关法律；

第二步，全国人大常委会根据宪法、香港基本法和全国人大有关决定的授权，结合香港特别行政区具体情况，制定相关法律并决定将相关法律列入香港基本法附件三，由香港特别行政区在当地公布实施。

“完善选举制度的决定”的立法方式

“完善选举制度的决定”采取的是“决定+本地修法”的推进方式：

香港以往实行的选举制度，是根据香港基本法、全国人大常委会有关解释和决定，以及香港本地有关法律规定确定的。香港基本法第45条、第68条等作出了原则性规定，基本法附件一和附件二以及有关修正案作出了具体明确的规定。

在综合分析和全面评估的基础上，中央从国家层面修改完善香港选举制度，主要是修改香港特区行政长官和立法会议员的产生办法；同时，考虑到保持香港相关制度的连续性和稳定性，本次完善只是修改了基本法附件一和附件二，不涉及修改基本法的正文。

第一步，全国人民代表大会根据宪法和香港基本法、香港国安法的有关规定，作出关于完善香港特别行政区选举制度的决定，明确修改完善香港特别行政区选举制度应当遵循的基本原则和修改完善的核心要素内容，并授权全国人民代表大会常务委员会根据本决定修改香港基本法附件一和附件二。

第二步，全国人大常委会根据宪法、香港基本法、香港国安法和全国人大有关决定，修订香港基本法附件一《香港特别行政区行政长官的产生办法》和附件二《香港特别行政区立法会的产生办法和表决程序》。

第三步，在国家层面完成对附件一和附件二的修订后，香港特区政府将据此对本地有关法律作出相应修改，当中包括修订8项主体法例及24项附属法例，并于4月13日将条例草案刊宪。

4月14日立法会进行条例草案的首读及二读。

4月27日立法会以40票赞成、2票反对，三读通过了条例草案

三. 在中央大力支持下，同启香港新篇！

“一国”是“两制”的前提和基础。从回归二十五年以来所总结的宝贵经验中我们可以清晰看到，中央大力支持是香港良政善治、“一国两制”行稳致远的最根本保证。

制定《香港国安法》和“完善选举制度的决定”是中央坚定落实“一国两制”初心的重要举措，标志着香港特色的民主制度从此正式展开了新征程，全体香港市民对香港迈向“由治及兴”充满着热切的期盼。

第六任行政长官选举是香港特区在《香港国安法》和完善选举制度下一次重要的民主选举，整场选举依法依规、公平公开公正。在选举期间，我们清晰地看到香港社会气氛团结和谐、众志成城、万众一心。良政善治的香港非常值得大家期待。

（一）“强化政府治理能力，团结一致为民解困”

- 为满足市民期待、更好迎接挑战，需要进一步革新、优化治理能力，打造忠诚、高效、贴地的施政团队。
- 以结果为目标，树立敢于做事的新风，提升公务员团队文化；以市民利益为依归，发挥各界力量，积极为市民解决问题。

（二）“精简程序多管齐下 提供更多安居之所”

- 打通土地、规划、建造、配套各个环节，善用政府、机构、民间各方力量。
- 以进一步提速、提效、提量为目标，加快造地建屋的速度，缩短公屋轮候时间。
- 令市民有更优质的居住环境，让更多市民置业圆梦，保民生安定，促百业兴旺。

（三）“全面提升竞争实力，创造持续发展空间”

- 香港要发挥好“八大中心”角色，以创新驱动发展，壮大实体经济根基，主动发掘大湾区的机遇，并配合国内国际双循环格局，做好国家与世界各国互动互通的桥梁。
- **四个传统中心：**国际金融中心、国际航运中心、国际商贸中心，以及亚太区国际法律及解决争议服务中心。
- **四个新兴中心：**国际航空枢纽、国际创新科技中心、中外文化艺术交流中心，以及区域知识产权贸易中心。

（四）“同建关爱共融社会，增加青年人上流机会”

- 市民的福祉是社会发展的关键目标。政府施政要以民为本。
- 教育、社福、医疗等各个制度互相配合，建构有利环境，使市民获得保障，同时提升个人能力，发挥所长。

结语：团结同心 实现新的历史篇章！

开启新篇章，就是要广泛凝聚社会共识，积极发挥民间力量，团结一致、携手合作，共同为香港创造最大的社会价值。

在中央支持下，只要“我和我们”同心共济、
一起努力，定能够“同为香港开新篇”！

座谈会 1

香港蓬勃发展的资本主义制度
——《基本法》第五章

主持人



梁定邦 JP

亚洲国际法律研究院主席

与谈人



史美伦 大紫荆勋贤 GBS JP

香港交易及结算所有限公司主席

与谈人

陈德霖 GBS

香港金融管理局前总裁



Ashok S. Kothari

Asia Pacific Capital (HK) Limited 董事总经理
兼高级合夥人



张建平

商务部研究院区域经济合作研究中心主任



梁定邦：多谢司仪。欢迎各位来到今日下午的第一个座谈会。这个座谈会的主题是“香港蓬勃发展的资本主义制度——《基本法》第五章”。希望今日讨论的主题能引起各位的兴趣。大家都知道在《基本法》的第五条内清楚列明香港不实行社会主义制度，而是实行资本主义制度及原有的生活方式。今天早上大家都已经听到了，其实这不仅是 50 年的时间，如若行之有效的话，50 年后也没有问题。在这个情况下，我们需要考虑的是在资本主义内，《基本法》于各个环节都在扶持我们现有的制度，包括法律制度那方面。而《基本法》第五章内十分重要的一点是专门讲述经济方面的。各位可以看到在经济的环节内，《基本法》是如何扶持和推进香港作为一个国际金融中心、国际贸易中心、航运中心，以及保护这几个中心和运作的各个环节及范畴内应有的权利，以及如何令它们发挥它们的义务。

另一方面，各位亦不要忘记《基本法》的第七章内有很重要的一点，就是香港本身是受到中央和《基本法》授权，可以在经济的范畴内与其他地区缔结国际的协议，这方面亦是非常重要的。因此，我们是国际贸易组织（WTO）的一个当然成员。香港亦在很多国际经济范畴内具有举足轻重的地位，包括金融范畴。稍后我们亦会讨论这一点。首先，有请史美伦女士为我们进行演讲。

史美伦：各位午安！首先，我衷心感谢律政司邀请我今天在这里发言。当我们聚首一堂庆祝香港特别行政区成立 25 周年之际，我们也很高兴能借此机会总结香港作为一个城市和一个金融和法律体系在过去 25 年来取得的成就，同时展望我们在未来可以共同抓住的机遇。每段历史时期都带来足以塑造和定义未来的事情、资讯和创意，过去 25 年也不例外。

回望过去 25 年，香港先后经历了 1997 年的亚洲金融危机、2008 年重塑全球金融格局的雷曼兄弟危机、彻底改变人类生活方式的高速互联网和科技的快速发展，以及 2019 冠状病毒病的爆发，事件之多，不亚于过往。香港这座城市多年来也经历了不折不扣的历史性转变，从制造业基地发展为拥有充满活力、深度和流动性的资本市场的国际金融中心。直至 2021 年底，香港的股票市场总市值已达到 5.4 万亿美元，较 1997 年底的 4,130 亿美元增长了足足 13 倍。香港已成为全球领先的集资中心之一，现时香港市场上有大约 2,500 家上市公司，当中接近 200 家是国际公司。香港市场也日趋活跃，证券市场的日均成交额从 1997 年的 150 亿港元倍增至 2021 年的 1,660 亿港元。香港目前是全球首屈一指的亚洲资产和财富管理中心；根据证券及期货事务监察委员会的统计数字，截至 2020 年底，香港的资产管理规模达 4.5 万亿美元。此外，按 2021 年的资产管理规模和集资额计算，香港是亚洲区内最大的对冲基金基地和第二大的私募基金中心。

在 2021 年全球金融中心指数报告中，香港在全球 116 个金融中心中名列第三，仅次于纽约和伦敦。此外，根据美国菲沙研究所的评估，香港是全球最自由的经济体。香港凭借健全的法律制度及坚定保持贸易和资本流动的自由度，过去十年来一直获冠以最自由经济体的美誉，而香港作为备受国际尊崇的金融中心，也意味着我们过去 25 年在国家的发展历程中发挥了独一无二的作用。香港担当着超级联系人的独特角色，支持国家金融市场的发展。香港现已成为全球最大的离岸人民币业务中心，截至去年 9 月底，存款总额达 8,550 亿元人民币；而作为离岸人民币交易、结算和清算中心，香港处理了全球离岸人民币付款交易的大约 75%。

股票方面，自 1993 年第一家 H 股公司上市以来，香港交易所（港交所）作为中国的离岸金融中心一直发挥了关键作用。在过去的八年里，港交所率先推出彻底改变了全球市场的“互联互通”机制，为国家与世界之间的双向资本流动提供可靠和高效的通道，并继续支持国家开放金融市场。

去年，随着港交所推出 MSCI 中国 A50 互联互通指数期货作为香港首项亚洲衍生产品，港交所现时拥有全球最具竞争力的离岸中国亚洲产品生态系统，为环球投资者提供独特和多样化的国家市场准入方式。过去 20 年间的另一个趋势，是亚洲创新领域的增长。近年来，我们目睹了不折不扣的科技革命，一些世界领先的科技集团和新经济公司在亚洲（特别是中国）诞生。我们 2018 年进行的上市规则改革使香港成为了新一代企业的首要集资中心，至今已有接近 200 家新经济公司在香港上市，集资总额超过 8,400 亿港元。这批上市占去了同期香港首次公开招股集资额接近 65%，也占去了同期本地市场总市值的 20% 以上。

我们的上市改革改变了本地市场的基因，更促使香港成为亚洲最大和世界第二大的生物科技集资中心。但我们并无自满，我们不断寻找方法提高本地市场的竞争力，以期丰富生态系统和吸引优质的新经济公司来港上市。让我举几个近期的例子。今年年初，我们推出了专以特殊目的收购公司为对象的新上市机制，市场反应非常积极。今年 3 月，我们迎来第一家特殊目的收购公司在香港市场上市。我们还精简了海外公司在港上市的程序。我们快将宣布更多强化和改革市场的措施。

我们过往所走过的历程、现在所珍惜的地位，以及所期待的未来，都以《基本法》为核心。在《基本法》的框架下，香港的法律制度和“一国两制”是公开、透明和扎根于规则的。我们的法律制度确保合约和具约束力的协议得到履行，有助增强企业和投资者对香港作为金融中心的信心。《基本法》保障信息和资本的自由流动，而这支持香港作为全世界最大的外国直接投资来源之一及全球各地公司的首要集资场所的地位。

有了《基本法》，加上香港的稳固基础设施、与国际接轨的监管制度、全球化的生态系统、透明的市场和强大的人才库，香港实在拥有许多具吸引力的特质，令这座城市坐享贯通中外的国际金融中心这独特地位。而最重要的是，这些核心特质至今仍完好无缺。过去 25 年，香港取得了巨大进步，实力不断增强；有赖香港金融市场在顺境和逆境下展现的韧性和适应力，香港得以持续发展。

对于香港的未来，我深感乐观。在我们身处的时代，世界各地需要更多而不是更少的联系。香港连同港交所可以担任东方与西方之间的促进者、桥梁和超级联系人的重要角色。中国与国际市场之间的跨境资本流动与日俱增、日趋成熟，为香港带来了庞大机遇。作为国家首屈一指的离岸融资中心，同时作为全球主要的资产配置和离岸风险管理中心，香港定将继续在开创中国与世界各地的相互市场准入或资本互流方面发挥关键作用。

可持续金融的发展缔造了另一良机，让香港在连接资本与机会方面发挥作用。据估计，全球每年需要投放 9.2 万亿美元来实现“净零”目标，而这表示亚洲和世界各地对绿色

金融的需求将日渐殷切，从中产生的机遇亦会十分庞大。港交所作为监管机构、运营者和上市公司，发挥着巨大的作用，我们也正尽力推动变革，协助香港成为区内的可持续金融中心。作为监管机构，我们透过关于环境、社会及管治（ESG）披露和终止由单一性别成员组成董事会的规则，带头推动负责任的企业治理、提升各界对 ESG 的认知及推动 ESG 的最佳实践。作为市场运营者，港交所在推动绿色和可再生领域的增长和发展方面发挥着主导作用，于 2021 年促成了 95 个绿色、社会 and 可持续债券上市，集资共超过 2,826 亿港元。作为上市公司，我们与全球合作夥伴和格拉斯哥净零金融联盟携手承诺最迟于 2050 年实现“净零”，而透过辖下的慈善机构——香港交易所慈善基金，我们积极走进社区，支持弱势群体，并且拨出资源推进环境和气候相关事业。

此外，随着亚洲的创新引擎继续高速运转，香港在连接资本与机会，以及为新一代企业提供资金方面担当着令人振奋的重要角色。我们在大湾区内的独特地位让我们有机会促进区内公司与国际投资者的连系，而大湾区本身拥有 8,600 万人口，经济规模与韩国看齐，并且是全球第二大创新科技聚集地。

总括而言，香港本身既是备受尊重的国际市场，也是连接东方与西方和促进中外资本、机遇和思想交流的重要纽带。这个独特角色建基于广获信赖和透明度高的法律制度，对于把香港建设成为首要的国际金融中心起了重要的作用。而今时今日，香港的角色可说是比以往任何时候都更加重要。

展望未来，《基本法》将会继续是香港法律制度的支柱，巩固香港在金融市场的实力和塑造香港市场的成就，而港交所的一切工作都会继续体现广获信赖的香港法律制度和正当程序的特徵。从带动市场变革到加强监管指导，我们将与所有持份者携手确保透明度、可预测性和问责制，让香港市场受益。我相信，透过所有持份者、管治机构、企业、社区和个人的相互联系和通力合作，我们定能建立更繁荣的香港，让这座城市继续发挥作为世界首要金融中心之一的影响力。谢谢各位。

梁定邦：多谢史美伦女士。大家都听到我们的香港交易所担当着十分重要的义务，亦可以看到法制的重要性。现在，有请陈德霖先生为我们继续讲解香港金融中心的重要性。有请，Norman。

陈德霖：多谢 Tony，亦多谢律政司司长邀请本人参加今天有重大意义的会议。《基本法》第一百零九条订明香港特别行政区政府应“提供适当的经济和法律环境，以保持香港的国际金融中心地位。”这条文充分地表明中央对香港作为国际金融中心的地位的重视，以及要求特区政府需要保持这个地位。各位亦明白一个地方当然不可以仅是依靠一条本地的法例，不论是《宪法》或普通法律，就能变成一个国际金融中心，以及持续保持到这个地位。本人会利用十分钟时间探讨以下三个题目。第一，香港作为国际金融中心究竟存在什么优势？第二，往后香港金融中心发展的前景是如何？第三，香港将来面对什么挑战？

关于第一个题目，成为亚洲首屈一指的国际金融中心需要什么条件？金融中心其实是透过不同的市场、一些渠道担当储蓄及投资之间的桥梁。全世界有很多金融中

心，有些甚至比香港更大。但是，有资格成为或称为国际金融中心的只有数个地方，而香港是其中一个。其实，国际金融中心与一些大型的金融中心的分别不在于规模，而是国际金融中心是有能力除了在本土的金融中介活动中担当一个角色之外，亦有能力在附近区内或国际的资金流通上担当一个重要角色。

要成为国际金融中心有很多先决条件，大家亦明白。最常提及的包括优良的金融市场、高度专业的人才、健全的监管、适合营商的法律和司法制度等。但是，其实很多人忽略了促使香港成为亚洲首屈一指的国际金融中心的三项十分独特的优势。第一，国际金融中心必须要接近和熟悉储蓄来源 (sources of savings)，以及它投资所在的市场 (investment market)。而香港与新加坡、东京、伦敦、纽约这些国际金融中心相比下，地理上没有一个地方比香港更接近中国市场，同时我们属于同一个国家，用同一种语言，没有其他金融中心比香港更加了解内地市场，这是第一点。第二，虽然内地的本土金融中心，如深圳、北京和上海，它们都是规模很大和十分活跃，但是内地的资本管理措施令这些地方在融通跨境资本流通方面的吸引力不及香港。第三，稍后座谈会亦会探讨，香港是全世界唯一一个实行双语法律制度的普通法司法管辖区，中英文同时拥有同等的地位，这一点令香港在引导资金流入和流出中国内地方面有着重大的优势和吸引力。我可以提供数字方面的数据：在过去数十年，中国经济起飞、腾飞的时候，香港同时发展成为国际金融中心。金融服务业总体（即银行、证券、理财各方面加起来）于1997年在中国的国内生产总值（GDP），香港的贡献是10.2%，并于2009年升至16.2%。在2019年，香港在国内生产总值

(GDP) 贡献了 23.3%。由此证明金融服务业在香港的经济增长方面所占的比例是越来越重的。

第二个题目是香港作为金融中心的发展前路有什么机遇呢？我在此提出三点。第一点，中国是世界第二大经济体，而且增长的势头持续，单是一年的经济增长的增量 (increment) 大约是 1.9 万至 2 万亿美元。这个数字是什么概念呢？是比意大利、澳洲或者加拿大整个国家的国内生产总值还要多。在这个巨大经济增长的引擎带动下，融通资金进出内地的需求和机会将会持续增加。第二个机遇是中国新的双循环经济增长模式，在任何情况下都是需要一个高效、可靠和安全的管道，把内循环和外循环连接起来。基于刚才提及的优势，没有其他金融中心比香港更适合担任这个角色。第三点，香港在粤港澳大湾区的未来发展拥有更加明显的机遇，资本管理的措施虽然可以令中国大陆较少受到外部因素影响，但同时亦会令跨境资金的流动率不变。在落实国家改革开放的政策过程中，香港和内地的资本市场已经建立了互联互通的桥梁。除了在股票市场内设有沪港通、深港通和债券通，最近亦推出了大湾区的个人理财通的试点计划。我们必须根据实际运作的经验进一步扩大深化这数项试点计划。另外，我认为大湾区内应该进一步开放区内企业层面的资金流动，可以考虑通过资本通的试验计划形式，并利用最新的区块链技术，确保通过这个计划筹集的资金留在大湾区而不会转移到中国的其他地区。

最后，我们谈论一下未来的挑战。世事往往并非一帆风顺，定会出现一些挑战，我提出三点挑战。第一点，中美之间的地缘政治紧张关系有可能进一步恶化，或会影响到香港现时作为国际金融中心的运作。因此，我们要保持警觉和灵活性来应对有机会出现的变化。第二点，《基本法》第一

百一十二条确立香港不实行外汇管制政策，以及港币自由流通及自由兑换。这条文为在香港的资本自由流动的港元的可兑换性提供了宪制保障，是香港作为国际金融中心的基石。但是，据我所知，其他国际金融中心或地区并没有任何法律或《宪法》的明文规定货币的自由流动及可兑换性，这是香港独有的，这亦意味着在极端情况或作为防范金融体系崩溃的最后一道防线，其他国家或国际金融中心可以在必要的情况下实施外汇管制。但香港受到《基本法》的制约，所以我们必须时刻保持警惕，确保我们的金融和货币体系稳健，并且有足够的资源能应对可能出现的冲击。最后一点，谈到资源方面，外汇基金是保障香港金融体系稳定的最后一道防线。早前有说法指外汇基金的总值多于40,000亿港元，代表香港政府的储备过多，要求政府还富于民。今日不是探究外汇基金资产负债表构成的适当场合，但我想说政府近期为应对疫情，以及推出大量支援经济和就业的措施，令香港出现巨额赤字，加速了财政储备的减少。这样充分证明了我们必须拥有足够的储备应付不时之需。更重要的是外汇基金是守护香港金融稳定的最后一道防线。当然，40,000亿港元是一个不少的数目，但若类似2008年的全球金融危机再次重临，40,000亿港元会否是太大或太多的数目？据资料提供，2008年外汇基金为香港银行提供百分百存款保障，当时银行体系总存款是67,000亿港元，这项特殊的保障从2008年10月开始一直持续到2010年年底。我们很幸运，既稳定了银行体系，亦无需动用外汇基金一分一毫。如果香港再次面临金融危机，政府再次推出类似的存款保障，但现时银行存款的总额已经从67,000亿港元上升到15万亿港元。若香港没有一个充裕的外汇基金作为后盾，到时候我们又可否跟以往一样安度难关呢？

最后我作出以下总结：香港背靠祖国，机遇无限，但同时我们亦面对不稳定和复杂的世界局势，所以我们一定要居安思危，作好准备，不可掉以轻心。这样，“一国两制”才可以行稳致远。多谢。

梁定邦：多谢，Norman。刚才 Norman 跟我们说，我们应该居安思危。他的一番话亦带出了一个十分重要的意义，就是“一国两制”对于我们整体的金融中心是十分重要的。就好像今天早上黄玉山教授提及“一国两制”在世界上的经济政治历史里是非常伟大的一个构思，为我们带来非常大的机遇。

下一位讲者是 Ashok Kothari 先生。Ashok 是一位私募股权专家。因此，他将从自己的角度谈谈“一国两制”。有请 Ashok。

Ashok S. Kothari：谢谢 Tony。身为一名长期的香港居民，我想借此机会感谢我的朋友 Tony，感谢他为香港和中国所做的一切。他多年来的无私服务，令我们所有人都受益匪浅。香港的种种优点显而易见，刚才各位与谈人都已讨论过。我现在想谈一谈投资者决定在香港投资或透过香港投资时的心态。

首先，我们经常谈及创新。谈论“一国两制”本身已是巨大的创新。然后，我们有《基本法》，它给我们一颗定心丸。我们已有一个架构，而且它行之有效。至于决策过程，这件事情非常重要，而且涉及一个不同的角度。我的工作经验主要是为大型机构投资者管理资金，包括主权财富基金、大型保险公司、养老基金和捐赠基金。让我们考虑一下他们如何看香港及他们的想法。我们都明白，中国是一个不容忽视的市场。但从更宏观的角度看，中国不仅拥有最多人

口，而且拥有最庞大的消费市场。它已经历人们以最低价格首次购买电视、洗衣机、冰箱、空调和汽车的周期。他们现正步入第二个周期：致力追求质量。这意味着中国市场正在转向质量更高、增值更多的产品和服务。整个世界都不能忽视这个市场。机构内部都设有资产配置过程。这是什么意思呢？人们普遍认同，在一个资产类别中购买什么资产，并不像如何分配资产那样重要。这意味着重要的并不是选择购买哪种股票，而是与私募股权相比、与房地产相比、与固定收益相比，你在公开市场上投入多少，以期从这样的组合中产生最大回报，而这又是一个动态的过程。就让我举一个例子，让你更易明白。我有一位来自美国加州的朋友 Phil，他曾修读机械工程，然后进了法学院，是个非常聪明的人。他写了一本影响深远、关于资产配置的书，送了一本亲笔签名的初版给我。然后他给我一些指示，说：“你绝不能把这本书放在你的图书室、办公室或客厅；你必须把它放在床边的桌子上。”我不太理解，于是问：“为什么？”他回答说：“如果你睡不着，翻开我的书看两 pages，马上就会有帮助。”这就是资产配置。这是一门数学科学，是动态的。

世界上有许多大型机构投资者。投资其实是一种吸引观众的体育运动，因为每个人都知道对手的结果，而且竞争激烈。所以投资者是理性的，他们要做得和其他人一样好，或者比其他人更好。所以他们设计这个资产配置模型时，不能忽视中国的消费市场。他们也不能不投资到中国的科技公司，因为中国去年批出的专利比任何其他国家都要多。这就是“错失恐惧症”（FOMO，全称 fear of missing out）的科学性。这对投资者来说是重要的动力。因此，当机构投资者看到其他投资者正在投资时，他们就会记起曾经错过澳门的机会。大约 20 年前，当澳门发出博彩牌照时，西方投资者

认为澳门只是一个非常遥远的小地方，根本无法与拉斯维加斯甚至大西洋城相比。最终，澳门变得比这两个城市的总和还要大，而投资者都错过了投资到澳门的机会。他们不会重蹈覆辙。因此，中国消费者和中国科技是现今所有资产配置模型的核心所在。

人们考虑投资到中国时，自然也会想到香港。香港的专业人士大多都能说普通话、粤语和英语。我们也有行之有效、悠久的普通法制度传统。我们有证监会，它是领导者之一——可以说不仅在合规方面，还有在环境、社会及管治（ESG）方面。香港交易所方面，我们的港交所是最早要求上市公司就 ESG 提交报告的证券交易所之一。因此，香港有不少发展都处于世界领先地位。我们也有资本和信息流动的自由。我们有硬货币。对有意投资于中国的人来说，驻足香港是合乎逻辑的做法，是容易作出的决定。同样，对有意走出去的国内企业来说，香港是合理不过的踏脚石。我们有自由流动的资本、可自由兑换的硬货币，这些都让人们感到安心，而且有充分储备作为后盾。因此，人们不用担心香港的货币或它的可兑换性。

考虑到所有风险和所有机遇后，中国提供着庞大的机遇，香港也是理想的驻足点。因此，我很有信心香港会继续蓬勃发展。这要归功于我们的监管机构，它们时刻为投资者着想，提出有效的新架构、进行高效的合规工作和维持公平的竞争环境，对投资者的需求反应积极。我认为香港的前途无可限量；这是经过深思熟虑后达致的观点，而不只是主观感受。我确信香港在首次公开招股、外来及对外投资的交易量方面都会屡创纪录，并定会在中国的国际发展道路上发挥重要作用。谢谢各位。

梁定邦：非常感谢你。谢谢你，Ashok。你刚才的谈话再次显示了“一国两制”的重要性。

下一位与谈人是商务部研究院区域经济合作研究中心张建平主任。有请张主任。

张建平：好的，谢谢主持人。非常荣幸能够参加今天这样的一个论坛。我个人认为“一国两制”在过去25年来实际上是有力地保证了中国国家的统一和完整，而且保证了中国的国家利益。这个制度的优势是非常显著的。我看到了通过“一国两制”和香港《基本法》的落实，保障了中国的国家安全和长治久安，防止了这个国家的分裂，体现了东方智慧和包容发展。可能在有些西方人的逻辑当中，他会觉得这个“一国两制”，这两种制度怎么会在一起，并且能够共同地支持香港和内地的合作与发展。但是过去25年，基于香港《基本法》的保障，也包括我们对香港《基本法》继续进行完善，时间证明了香港《基本法》使得香港能够克服各种困难、各种冲击，保持了稳定发展的状态。在中国，有一句大家都熟悉的话，就是“稳定是压倒一切的”。香港的稳定是为了香港持续繁荣发展的一个重要保障，所以在“一国两制”的框架之下，内地和香港的优势是能够互补的，通过两地之间的合作和互动，也正在为国家的高质量发展不断作出新的贡献。

在“十四五”期间，中国正在实施创新驱动的发展战略，以及双循环的战略。在这个过程当中，香港的作用和角色仍然是非常关键的。下面我会结合粤港澳大湾区的管治权规划的落实，还有国家对粤港澳大湾区未来发展的方向，也包括新的“十四五规划”所要求的发展方向，来谈一下香港未来在《基本法》的支持下的发展前景和发展机遇。



粤港澳大湾区目前已经成为中国市场化、国际化、发展最快的一个区域，而且市场机制也是最好、开放程度最高的一个区域经济的增长极。这个地区已经变成了中国创新发展的一个领头羊，也变成了在全球发展过程当中非常有竞争力的一个载体，一个世界级的城市群。所以粤港澳大湾区的提出，也意味着中国正在参与国际竞争的过程当中，例如世界第一大经济体美国，他们有纽约的金融湾区，有三藩市这个科技湾区，日本也有东京这样的综合性湾区，涵盖了金融和科技这种良好的发展。未来中国如果要有一个能参与世界级湾区竞争的区域，那么包括香港在内的粤港澳大湾区在其中便承载着非常重要的任务和责任。

首先，第一个方面就是未来粤港澳大湾区将会变成一个世界级的城市群，它也会成为全球基础设施互联互通，特别是海陆空交通运输的一个重要枢纽。实际上，现在我们香港也好，深圳也好，广州也好，目前正在亚太地区互联互通，还有在全球的无论是空运还是航运领域，香港现在的地

位已经非常突出。我看到国家的“十四五规划”已经赋予了香港在航运方面一个新的角色，那就是增加一个枢纽，就是未来香港要成为中国的国际航空运输的枢纽。未来我们可以看到香港的国际航空运输，特别是国际中转业务将会得到大量的发展。我过去也参与过关于如何提升香港航运业发展的一个研究。在比较的过程当中，大约十年前，我注意到香港在航空货运的国际中转业务这方面，它的比例是低于新加坡的，但是通过粤港澳大湾区的发展，还有国家赋予香港这样的一个新角色，我们期待未来香港在高附加值的国际航空中转业务这方面能够获得新的突破。

国家目前也把深港河套纳入了粤港澳重大合作平台建设。其实现在海南自贸港的建设，在中国新一轮的改革开放进程当中，已经成为一个新的开放平台。这个三万多平方公里的自贸港，未来是面向全世界开放的。对于香港而言，我觉得未来香港和海南自贸港的建设相互对接，优势互补，其实是有利于香港拓展自己的发展空间和业务空间，在“做大市场蛋糕”的过程当中，香港的优势是可以发挥得更为充分。比如说我注意到香港有一位年轻的经济学家，他的基地是在香港的，但是他的学术平台已经延伸到了海南大学，整体都在开放，还有中国的国际化，这个领域当中影响力也在不断地提升。

第二方面我想谈一下在国家开放发展过程当中，粤港澳大湾区对于国家高质量建设一带一路，还有对接国际经贸规则这方面，香港的作用是越来越大的。作为一个高度国际化的区域，实际上香港和粤港澳大湾区在中国的国际贸易，还有在中国对外投资及把资本引进来方面，都发挥着非常重要的作用。我也注意到香港在推动两岸四地贸易投资相互连通、共同发挥我们的优势方面，它的角色现在依然是非

常关键的。在国家的“十四五规划”当中，我们已经明确地提出要支持香港提升它的国际金融、航运和贸易中心的地位，为香港增添很多新的中心和枢纽的职能。这也意味着未来香港在高质量建设一带一路的进程当中，它超级联络人的角色会进一步强化，还有香港作为一带一路建设的排头兵和先锋队，这样的角色也会进一步得到强化。

第三方面就是在打造全球的创新创业的高地，对标美国的三藩市湾，还有对标东京湾，能够让香港和大湾区的其他城市共同合作打造全球的科技创新平台。那么，香港的优势是体现在研发、科技、创意、设计这些领域。我们也看到香港的优势和深圳、广州各大湾区制造基地的优势相结合。而我们现在已经打造出了全球，应该说最具竞争力的无人机的细分产业。我也听说现在在粤港澳大湾区，香港和内地合作，共同研发打造无人船产品和相关的产业发展。其实，未来在粤港澳大湾区围绕着新一代的资讯技术、云计算大平台、云计算大数据，也包括生物医药产业，还有新能源产业。我们未来在科技创新这个领域当中所面临的创新任务是非常多的。国家在“十四五规划”当中，把香港确立为未来的国际创新科技中心，以及区域智慧财产权的贸易中心，通过强化知识财产权的保护，期望粤港澳大湾区成为在全球主要的科技湾区竞争过程当中的佼佼者。这些发展将会为香港带来更高的附加值，也会为内地跨越中等收入陷阱、走向创新驱动的发展道路带来新的动力。

第四方面，我想强调就是香港服务业的优势。香港的服务业占 GDP 的 95%，包括对接粤港澳大湾区的现代制造业服务，也包括粤港澳大湾区的消费升级服务，因此在生产性的服务业，还有生活类的服务业方面，都具备着巨大的发展潜力和商机。尤其是粤港澳大湾区未来将加快制造业的转型

升级，通过在战略性新兴产业，还有在高新技术产业方面的发展，积极参与国际竞争。香港的金融服务、专业服务、物流服务，还有商务服务，它的高效系统和综合实际上很大程度上能够满足粤港澳大湾区未来的发展需要，也会给香港未来创造新的增值空间。

第五方面涉及到金融中心的建设。在“十四五”期间，为了强化香港作为全球国际金融中心的角色，国家为香港增添了全球离岸人民币业务枢纽国际资产管理中心及风险管理中心这个新角色。我注意到现在香港作为全球最大的人民币离岸交易中心，即使是在目前人民币国际化正在起步阶段，香港这个业务已经提供了巨大的市场空间。我们可以展望未来中国整个经济规模将不断放大。2021年，中国的经济总量已经达到18万亿美金左右，占美国的80%，而且中国的经济总量和欧洲的经济总量已经是基本相当。欧洲现在有多个国际金融中心，包括卢森堡、法兰克福、巴黎、苏黎世等。对于中国而言，这么庞大的经济体量，在未来可以有多个金融中心，就是未来中国的经济总量，按照很多国际机构的预测也会超过美国，变成全球最大的经济体。在这个过程中，客观上，中国也需要有国际级的金融中心，来与中国这个最大的经济体相匹配。同时，人民币的国际化水平会进一步提升。在最近这两年当中，中国的金融业已经基本上在自由贸易试验区先行先试，在银行、证券、保险、基金等各个细分行业，目前都已经取消了外资的股比限制。同时，我们也在通过改革对外资，就是既要扩大准入，同时也要转营，让更多的外资、金融机构能够在内地庞大的金融市场当中获得新的市场空间。所以，在竞争发展的过程当中，我非常期待香港和粤港澳大湾区能够结合起来，因为大家也知道深圳有VC和PE这个非常好的金融业态。在广州，我们也集聚

了大量的金融机构总部，所以未来粤港澳大湾区这样集合性的一个金融中心，是非常有希望成为未来中国在全球的重要金融中心，并且能够在人民币国际化的进程当中，打造出更大的市场空间，使得香港获得高附加值的产业。

最后一点，我想说的是未来我们的粤港澳大湾区致力于打造一个优质的生活圈，要建成绿色宜居、宜业、宜游的世界级城市群。在这个过程中，文化创意产业会得到大发展，文化产业和旅游产业的相结合，可让我们建设一个文化的湾区、艺术的湾区、健康的湾区。“十四五规划”当中，国家已经明确香港要建设中外文化艺术的交流中心，我也非常期待，比如说未来香港能够集合两岸四地优秀的艺术人才，能够打造出世界级的中国的音乐剧的这个精品，能够传唱全世界，就像现在有些发达国家在这个细分行业当中所拥有的地位，未来大湾区也有这样的条件。当然，文化旅游产业的大结合，也会为香港带来新的增长空间。中国现在整个大市场已经处于一个全球第二大消费市场的位置，商品消费目前和美国已经基本差不多，但是服务消费市场和美国的差距还是比较大的。未来，整个消费大市场发展的过程当中，无论是旅游产业，还是文化产业、健康、医药产业，都会得到大的发展。我也非常期待香港在其中能够找到自己的增值空间和发展空间，在推动香港繁荣发展的过程当中，更加深度融入国家高质量发展的进程当中，让中国未来在全球的竞争力能够得到不断的提升。我就讲到这里，谢谢。

梁定邦：谢谢张主任。我们现在马上要进入讨论环节。我想请教您一个问题。国家已经参加了这个“区域全面经济夥伴协定”（RCEP），你认为如果香港能参加的话，能不能加强您刚才所说的“我们的优势”呢？

张建平：好的。目前香港虽然没有加入到 RCEP，但是香港已经和东盟签订这个自由贸易协定。香港和内地之间也有一个 CEPA，而且 CEPA 已经经历了十多个版本的更新。RCEP 是代表了 21 世纪的贸易投资规则体系，在未来，它的相互贸易自由化程度将达到 90% 左右。在服务业的开放方面，六年之后将会在服务贸易领域所有的经济体推动负面清单的承诺、出价和管理模式，所以 RCEP 20 个章节的规则不仅涉及到了传统的货物贸易、服务贸易、投资，还有经济合作、贸易便利化，也涉及电子商务、知识财产权、政府采购、竞争政策等新的议题，所以我们很期待这个大市场未来将会为中国的双循环提供重要的新动力。在这个过程中，因为香港正好是在 RCEP 这个全球最大的一体化市场的核心位置，而且香港的高度开放，以及香港作为自由港，其贸易投资的自由度非常高，创新能力也比较强。所以 RCEP 作为巨型贸易协定会产生巨大的贸易创造效应、投资增加效应、GDP 的增长效应，那就意味着在 RCEP 未来区域内，我们相互贸易和相互投资规模不断放大的过程当中，香港的关键角色也会进一步提升，并会获得很多宝贵的附加值，这是我的看法。

梁定邦：谢谢张主任。我们会努力争取参加 RCEP。我们还有五分半钟。Norman，请问如果你能提出一项建议来改善你所提出的情况，你会希望香港或中央政府做什么？

陈德霖：你不介意的话，我想提出两点。谈到大湾区，我完全同意张主任的观点。我对大湾区非常乐观，但我们必须牢记大湾区与其他各个宏伟的湾区之间的最大分别。东京、纽约和三藩市跟我们不同，它们各自同属一国，没有两制。工厂生产、人员、资金和货物的流动都是自由的，只


受到交通基建限制。而我们有“一国两制”和单独的关税地区。一切都要经过海关和卫生检疫，而最重要的是金钱。如果不允许金钱在香港和大湾区其他地方之间更自由地流动，这将是一大障碍。这样是行不通的，必须切实允许资金准入。国家的开放是中央政府的政策。因此，我敦促当局以宏大的想法，大胆地前进，在试验的基础上允许资本、资金在香港与大湾区其他地方之间流动。这是我提出的第一点。

我们必须承担风险，因为“一国两制”是如此新颖。他们承担了险峻的、极大的风险，最终它行之有效。但前进到下一个阶段、下一个水平时，我们必须承担更多风险，对吗？我们可以在渐进的基础上一步步地做。如果实际效果不似预期，我们总可进行微调和调整。这是我提出的第二点。我们正在进入数码世界，而这与地缘政治、大湾区或任何地理考虑无关。我们正身处于数码时代，因此，我敦促当局再次大胆地行动，向前迈进，激发和鼓励创新、技术创新，特别是在数码技术的设计和应用方面。同样，我们创新的时候，必须承担一些风险。我们不可能控制所有事情。进行之前，可以聘请麦肯锡制备一份 500 页的谘询报告。勇往直前、大胆尝试。

梁定邦：Ashok，我们正迈向数字经济。如果有一件事你想做，那是什么？

Ashok S. Kothari：我认为 Norman 说得很对，数码化是前进的关键。在香港，显而易见的事情之一是一切都运作得非常快、非常有效率，但开立银行帐户则不然。我建议香港金融管理局和其他主管当局与银行携手制订效率更高、平衡的程序，为开立帐户的过程设定时限。交易进行得

很快、投资进行得很快、资金转移也很快，但开立银行帐户并不快。这并非香港的特色。我认为这个问题要得到正视和解决。

梁定邦：真的非常感谢你。我们衷心感谢一众与谈人，他们的发言甚具意义。谢谢。我还要感谢各位出席这个环节和耐心聆听。我们已经超时，在此向 Arthur 和 Allan 致歉，希望你们像我一样得到通融。谢谢各位。

座谈会 2

为什么普通法
对香港的自由经济体举足轻重？

主持人



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全国人大常委会
香港特别行政区基本法委员会委员

与谈人



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苏绍聪 JP

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全国人大常委会
香港特别行政区基本法委员会委员



李国章：各位午安！正如各位都知道，《基本法》让香港继续实行普通法。如此，我们要提出的问题是：为何普通法对香港的自由经济体如此重要？今天，我们很荣幸邀得四位非常杰出的嘉宾为我们解答这个问题。首先，我想邀请苏绍聪博士发言。苏博士曾任区域法院暂委法官及高等法院暂委司法常务官，亦曾担任律师会理事、副会长和会长，现时获广东省高级人民法院委任为粤港澳大湾区跨境商事纠纷特邀调解员。有请苏博士。

苏绍聪：感谢李教授。首先，请容我向各位致歉，因为我要跳过原定的次序，率先发言，然后提早离开，以处理其他事情；希望你们不会介意。

李国章：绝不会介意。

苏绍聪：好的。我们今天在此讨论普通法在自由经济体中的重要性。我曾尝试在《基本法》中搜寻“自由经济”一词，发觉不少句子都有提及这词，特别是在第五章，当中提及香港有责任保持国际金融中心地位。《基本法》第五章第一百一十条述及保障金融企业和金融市场的经营自由，而第一百一十二条述及资金的流动自由。

刚才 Norman 谈到资金流动自由的重要性，然后第一百一十四条述及自由港，第一百一十五条则述及自由贸易和货物的流动自由。更重要的是，跟在座各位一样，我身为律师，经常与海外投资者和在香港做生意的外国人打交道，而他们都会告诉我们，要成为国际贸易中心或金融中心，至关重要是货物、资金和人员的流动性。这些人员包括：海外公司若然决定在香港设立办事处，便要派主管人员和其他人才驻港。我的意思是，现时全世界都正在追求和争夺人才，所以资金、货物、人员及资讯的流动性均为重要。关于资



讯，现今我们身处数码世界，如果没有垂手可得的优质资讯，便会落后于人。因此，上述所有项目的自由流动都非常重要。

这些事项与普通法又有什么关系？海外投资者经常前往世界各地，在世界各地投资，重视自己和赴港人才的个人权利，以及他们对财产、投资和金钱的权利。他们希望这些权利可获得一个易于理解、为国际商界所熟悉、透明度高、务实及确定和贯彻一致的法律制度所保障。这些关键因素，是从我过去二三十年执业期间，与客户打交道的经验总结出来的。我认为这是所有海外投资者到某个司法管辖区投资、逗留和居住时都会关注的共同议题。

依我所见，普通法符合上述所有标准。我记得很久以前，一位法律教授曾对我说，“普通法”这个词简单不过，但包含了很多规范人们行为的原则。不过，归根究底，普通法的历史告诉我们，普通法是由于人们前往不同地方从商而

发展起来。各位都知道，多个世纪前，于英格兰，普通法原则是用作协助人们从商的。我还记得该位教授曾对我说过以下名句，他说，撇开种种复杂的法则，普通法的重要性在于：“使用普通的语言，向普通人表达普通的常理”。这就是普通法，因为我们需要的是易于理解、透明度高、务实、有效和能表达常理的法律原则。

所以我认为，根据现行的《基本法》第八条，普通法将继续实施，而普通法实际上是法官订立的法律。司法独立受到第八十一及八十二条保障。这点很重要，因为我们需要独立的法官，在不受无关宏旨的因素（法律或事实）干扰下作出充分理由支持的决定和判决，令民众得知他们在法律下的情况。因此，我希望普通法到了2047年之后会继续实施，也认为我们应尽最大努力，说服当局延续普通法制度。谢谢各位，我的发言至此结束；谢谢。

李国章：十分感谢苏博士。下一位讲者是陈兆恺法官。这位非常博学的法学家曾任终审法院常任法官；现为终审法院非常任法官。我认为陈法官所作的一大贡献是在香港推行双语法庭制度；因此，他获香港城市大学和香港大学颁授荣誉学位。他亦是香港大律师公会的终身荣誉会员。有请陈法官。

陈兆恺：谢谢李教授。各位，我今天可选择以粤语、普通话或英语发言；但既然有指我对双语法律制度作出过一些贡献，我想也许我应该使用中文。我本想使用普通话，但这样我担心我的发言会长达十分钟以上，因为第一，各位可能不会完全明白我的讲话；第二，这会需时五、六倍。因此，我别无选择，只能使用粤语。我现在会转用粤语，希望各位不会介意。谢谢。

李教授、各位，今天我很高兴及很荣幸可以与大家分享“香港的普通法制度对发展自由经济的作用和影响”这个题目。我预备了一份讲稿，希望能在十分钟内简单地把重点分享给大家。

我们常听说香港是一片福地。这些年来，香港作为一个国际商业、贸易和金融中心，它的成功因素有很多，包括先天的地理优势，是内地面向世界的窗口，亦是外地进入中国市场的跳板。同时，香港不但具备身家优厚的后天优势，基础也十分稳固，拥有完善法律和独立的司法制度，以及成熟的经济体制。今早的环节已有其他讲者提及了香港的金融经济体制，我就不在此班门弄斧了。

成熟的经济体制、完善的法律和独立的司法制度是香港的成功支柱，而这两项支柱是相辅相成、互相配合的，值得我们今天一起讨论。

法律制度涵盖已沿用了百多年的普通法制度，是一个独立的司法制度。当然独立的司法制度不是一朝一夕就能完成的事。在自由经济体系方面，我们享有自由贸易、市场开放的政策。大家知道，1997年香港回归，香港特别行政区成立，实行“一国两制”，并拥有高度自治。回归后，我们保留了什么？这两个最重要的基本制度也保留了，目的是继续维持香港的繁荣稳定。

在《基本法》和《中英联合声明》中，我们发现当中保留了三个事项：第一是保留原有的资本主义社会经济制度；第二是生活方式；第三是基本法律五十年不变。同时，我们亦发现当中有两个保持，保持国际金融中心和自由港的地位。因此，在制定《基本法》和《中英联合声明》时已很清楚这些制度是必须保留、必须保持的，是一个长远的计划。

香港其实具备很多良好条件，刚才也有提到香港的“威水史”，在国际拥有良好声誉。其他方面我就不多说了，我说说我认识的法治指标，亦即是“世界正义计划”的法治指标。2021年，在《香港国安法》订立后，香港的法治指标排行为第19位，挺不错的，排名比美国高8名（第27位）；而香港的廉洁排名则是全世界第9名，是十分好的。

为什么我们说香港的普通法制度及独立司法制度对自由经济体制是有利的？首先，我们探讨一下自由经济体制包含了什么？我刚才说，这是相辅相成、互相配合的，所以我们需先了解自由经济体制到底是什么。当然包含资本主义特色、贸易自由原则和开放政策。那么不是自己说是“自由”，便等同“自由”的，是需要符合若干规则与相关条件的，香港都符合这些条件。而自由贸易的原则呢？我不想班门弄斧，所以只说两项，就是供求的原则（supply and demand）及市场主导，这两个便是自由贸易原则中最重要的。

但是，较早前说《基本法》和《中英联合声明》中亦提到自由经济体制，其实有四个条件已是清楚写明的，这四个声明就是受到普通法和《基本法》的保障，到底是哪四个呢？

- （一）所有经济、贸易和商业活动需自行决定和进行；
- （二）私人企业和财产，包括知识产权均受到法律保障；
- （三）金融活动，包括外汇、黄金、证券、期货等市场是自由开放，资金进出自由，货币流通自由；
- （四）最后就是不受干预或规管。

当然，自由体制不是绝对自由的，就像人权一样是没有绝对的，是有限制的，在需要的时候是须受规管的。为什么呢？那在什么情况下才会出现规管？

因为经济迅速发展，有新的转变、新的贸易及经济模式，如有任何不正当、不规律或不合法的活动，便会引起巨大的经济风险，因此，必须通过立法规管，以杜绝不法商业活动。

以伦敦金买卖为例，很久以前，市民不清楚什么是伦敦金买卖，如没有规管，很多人便会蒙受重大损失；虚拟货币也一样，如没有规管，普罗大众便没有保障。时代转变、模式亦转变，我们是不可以落后的。

法律和司法制度对自由经济极为重要，当中有两个重要的层面。第一个层面是在经济活动的过程中，如讨论营商模式，以至在经济贸易中产生的权利、义务和责任均需受到法律的保障。第二个层面，就是跟刚才谈及的一样，在必须的情况下需要通过立法管制、规管。法庭的角色就是，如需要受到规管，这些规管必须要符合法治精神，不可以乱来，要合理，经得起法律的挑战，从而获得国际信心，营造良好的营商环境。

香港法律的司法制度，最主要的我先前已说过，普通法是保留下来的原有法律，同时亦保留了其司法制度。为免浪费大家时间，我也不多说了。现在，我分享一下独立司法的制度。

《基本法》第二、十九（一）条说明，在审理案件时须公平、公正、无偏、无私、不受行政和立法机关或任何人士干

预的。第二是终审权，根据《基本法》而成立终审法院，民事和刑事案件第三审（终审）最终裁决都是在终审法院。除了涉及《基本法》的解释权之外，终审法院亦必须受制于人大常委的解释。

举个例子，商业纠纷中如有争执需面临司法程序，最终只会在终审法院审理，而不会在人大或最高人民法院进行审理，这是十分重要的。因此，外商非常有信心及十分放心，如涉及诉讼是会在北京进行的，只会在香港终审法院由张举能首席法官、常任法官或非常任法官处理。

司法独立并不是空口说白话，最重要的是法官和司法人员是依据《基本法》第八十八、八十九、九十二条委任及免职。委任是根据司法和专业才能，经独立委员会推荐。李教授亦曾是独立委员会成员之一，由特首正式任命。这是十分重要的，不受干预的，特首只可以任命、只可否决，不可推荐，不能随意推荐任何人。而免职亦是不能随便免去职务，只在无力履行其职务（即生病），或涉行为不检（即犯罪）这两个情况下，经过特定程序，在确立后才可免职。

就我个人经验而言，打从1980年代起，我便出任法官，期间从未有人干扰过由我审理的案件；而从1990年代开始，我也有涉及委任和推荐法官，亦从没受到任何人士干预，中央政府没有，香港政府没有，任何人都没有。所以，以我亲身第一手作证，香港司法是真的独立的。

香港的普通法是如何有利于自由经济发展？首先，我们重温一下普通法中，法律原则的由来是什么？不是谁在那里说是“法律”，便是“法律”，而是需要基于特定条件的。在法庭内，由法官处理的案件，一定要经过法庭程序，公开审讯，根据事实证据和根据法律原则作出判决，并需要列出

理由。不是泛泛之谈要让人信服，才能成为法律的一部分，还要公之于世。法律原则便是基于以上条件以普通法为依据产生的。

今天，我想与各位讨论一下，除了独立的司法制度的重要性，令人们对香港有信心外，我个人觉得香港的普通法有七个特点，促使别人对这个自由经济制度产生一个积极和正面的作用，有利营造一个良好的商业环境。

（一）案例法（Case Law）——遵循先例（Precedent），这是普通法最基本、最基础的特点。案例法也不是随便乱说的，首先必须是上诉法庭审案时作出的判决，而这个判决订立了一些法律的原则。再者，对于下级法院将来处理类似案件是具有约束力的。其目的与作用是使法律原则具有确定性、清晰性、可预见性，同时减少很多诉讼或上诉，因而对贸易、经济、商业活动的进行、发展、推广以至纠纷解决是非常有用的，具有稳定性。

（二）灵活性——普通法的灵活性亦十分重要。如案例法中的案例过于刻板，即使在判决时是正确的，但若在往后日子，社会已经转变，新模式的出现，使其未能追上时代而变得不合时宜，那怎么办？普通法不是一成不变的，会随时代步伐，重新审视过时的原则，并不是从前做错了，而是因应社会需要而作出改变。这对营商是十分重要的。

（三）合约自由原则——这亦是普通法的一个特色，对于营商亦十分重要。普通法（即法官、法庭）是十分尊重商业协议的。双方有权在自由不受约束的情况下达成协议，着重公平公正、自由选择交易对象、制定有关条款，如交货期等，是与先前所说的 supply and demand 供求原则吻合，这才可达到公平的解决。所以，法庭尊重合约的精神对于自

由经济体是极其重要的。如有需要，亦会作出适当的立法管制，譬如涉及消费者的，是必须立法的。

（四）接纳商业现实——除刚才所说的几项事宜之外，普通法在这个制度内亦接纳社会实际的、务实的商业现实、经济状况及发展步伐，为商业社会提供指引。譬如新的模式或网上购物等，若只依据旧有的法律，便不能解决有关纠纷。这种情况与稍早所说的不同，这个最主要是没有一个案例是真空的，法庭在审理案件时需接受务实的商业现实，根据实际经验、商业实况处理。

（五）商业法——从历史上来看，商业法很多是取材于商人的习惯惯例（custom and practice）而慢慢演变出来的。由商业习惯慢慢成为一个法律上的判例，然后再成为商业法的一个部分，最后成为国际的一个商业标准，有利于营商。

（六）国际联系——刚才的环节也提过，国际联系是因为香港的法律和经济体制模式与国际标准较为接近，比如说 bill of lading 提货单，bill of exchange 汇票，这些都是有国际概念的，外商也会接受。因为香港普通法的制度是双语制，所以内地亦比较容易接受，因而有双向互动的交流。

（七）保障私人和企业财产——最后当然是香港的法例有普通法再加上《基本法》以保障私人和企业财产，我就不再详细讲了，第六条及第一百零五（一）条等，都让营商人士安心。

总结一下，我不是说香港的普通法是全世界最棒的，因为世上没有最标准、最完美的法律，而每一个法律都要视乎对当地是否合适。从生意人的主要角度来看：第一，法律必须要清楚；第二，地方必须要廉洁；第三，制度必须要稳当

可靠，而香港均具备以上元素，所以我觉得香港的普通法制度和独立的司法制度对于自由经济体有很大的影响和作用。谢谢。

李国章：十分感谢陈法官。你充分说明了普通法对香港的重要性，谢谢。下一位讲者是陈弘毅教授，他自1997年起担任全国人大常委会基本法委员会委员。陈教授是杰出的法律学者，曾任香港大学法律学系主任和法律学院院长，现时为香港大学法律系的郑陈兰如基金教授及宪法学讲座教授。有请陈教授。

陈弘毅：谢谢主持人。我想我会跟陈官一样，以广东话发言。

今天我非常高兴和荣幸有机会被邀请讲这个题目，就是有关香港普通法的发展与国际上的普通法联系等。首先，我先说普通法和经济发展的密切关系。

众所周知，普通法是源自英国的英格兰。英国是其中一个最早发展资本主义市场经济的欧美国家，她也是世界上第一个进行工业化的国家，所以英国的法律还有英国的法律经验与资本主义的发展、现代工商业的发展有着密切的关系。

英国的法律、普通法制度在历史上有助于或有利于其经济发展，这亦包括刚才陈官谈及的普通法的一些特徵，包括普通法重视合约的精神，普通法可以有效执行合约，同时有效保障财产权，这些都是现代经济发展的必须条件。

普通法的制度亦发展出雇佣法，或者所谓劳工法及公司法、银行、金融等相关的法律，这些都是在普通法制度之中比较早期就已经出现了，对于现代的劳工和资本市场的运作也有很大的帮助和很大的贡献。

英伦普通法，也就是我们所说的 English Common Law，在过去几个世纪扩展到世界上很多其他国家，包括北美，即现时的美国，以及一些过往曾属于大英帝国、目前已经独立了的国家。现在，她们都属于世界上所谓的普通法法系（Family of Common Law Legal System）。这些地方亦受惠于普通法，对当地的经济的发展有很大的帮助。

现在再看世界上最主要的金融中心、最主要的国际金融中心，其实都在普通法适用的地区当中，可是，那并不表示在不同国家是实行完全一样的普通法。普通法在当代世界已经形成了不同版本，我们可以说有美国版的普通法，也有澳洲版的普通法、加拿大版的普通法、新加坡版的普通法等，所以在不同普通法适用的地区都是根据当地的情况、当地的需要，把原本源自英国的普通法作出一些适应及新的发展，从而形成不同版本的普通法。

在香港回归之前，虽然英国法律是根据一条名为 *Application of English Law Ordinance*（《英国法律应用条例》）适用于香港，可是并不表示所有的英国法都在回归以前适用于香港，比方说成文法（legislation），其实大部分英国的成文法都不适用于香港，因为香港在殖民统治时期已经建立了自己的立法局，而大部分香港的成文法是由当时的港督会同立法局一起制定的。

至于以案例法所组成的普通法，英文为 judge-made common law，不是成文法。大部分英国的 judge-made common law 都适用于香港，但也不是百分之百的。因为根据 *Application of English Law Ordinance*（《英国法律应用条例》），如果有某些英国法律，如普通法本身不适合香港

的情况，那么香港法院是有权予以修改或适应化，即所谓 modify。

回归之后，正如今天的论坛已经有多位讲者提到，根据《基本法》，原有的法律是大致上保留的，当然有些违反《基本法》的就不会被保留。今早环节亦提到 1997 年 2 月全国人大常委会作出一个决定，这个决定基本上已列出了哪些在回归之前有效的法律是可以保留，哪些是不可以保留。回归之前的普通法中的案例法又怎样处理呢？因为普通法案例法不可能逐一把案例列出，然后说明哪些案例可以保留，哪些案例不可保留。因此，原则上在回归之前的案例法都能在回归之后继续适用。

然而，全国人大常委会在 1997 年 2 月的这个决定当中有一条说明，采用为香港特别行政区法律的原有法律。在适用的时候，即 1997 年 7 月之后适用的时候，应作出必要的变更、适应、限制或例外，以符合中华人民共和国对香港特别行政区恢复行使主权后，香港的地位和《基本法》的有关规定。简而言之，在 1997 年之前，香港法律包括普通法在内，在必要的时候需要作出变更和适应，以符合 1997 年之后，香港新的宪制地位。稍后，我们举一个案例来说明。

因时间有限，我会简单地提一下五个案例，可能每个案例只能说几句。

回归之后，先例的适用或者约束性的原则，刚才陈官提到 Precedent 先例，什么案例在回归之后具有约束力呢？基本上，在 2008 年一个叫 *Solicitor v Law Society*¹ 的案例中，终审法院已经定出有关原则。基本上终审法院本身不会受到任

1 *Solicitor (24/07) v Law Society of Hong Kong* (2008) 11 HKCFAR 117.

何英国判例的约束。即使在回归之前由香港上诉至英国枢密院、由枢密院作出的判例，在回归之后，终审法院亦不会受到该判例的约束。换言之，香港是可以发展自己的判例法。

另一个案例 *China Field*²，是于 2009 年终审法院的判例。我现在提到的很多判例，陈官也是判案法官之一。*China Field* 这个个案，基本上就处理了香港是可以发展自己的香港版，就是回归之后香港特别行政区版本的普通法。这个案件有一个英国土地法的某个原则，就是关于这个根据时效可取得的地役权的原则，这个案件涉及某些技术方面的问题，终审法院认为这并不适用于香港，香港要有一个自己版本的有关法律。

第三件案例说明我刚才所说的 1997 年 2 月人大常委会决定的适用事宜。这个就是今天早上已经提到的 *刚果金案*³。2011 年，终审法院第一次提请全国人大常委会解释《基本法》。人大常委会的解释亦清楚指出在 1997 年之后，香港普通法的适用就正如 1997 年 2 月人大常委会的决定所作出的指明，需要就香港新的宪制地位，在必要时作出变更或适应化。所以在 1997 年前的普通法中所谓外国国家豁免权原则，在 1997 年之后需要作出一个改变，以配合香港新的宪制地位。

第四和第五件案件都切合到近年来比较受到关注的英国普通法中一个叫做共同犯罪计划原则，英文为 *Joint Criminal Enterprise Rule*。在 2016 年，英国最高法院将这个原则废

2 *China Field Ltd v Appeal Tribunal (Buildings) (No. 2)* (2009) 12 HKCFAR 342.

3 *Democratic Republic of the Congo v FG Hemisphere Associates LLC (No. 1)* (2011) 14 HKCFAR 95.

除，可是在 2016 年终审法院的其中一个案例，*陈锦成案*⁴ 就认为香港是不应该跟随英国的做法，香港仍然可以保留这个共同犯罪计划原则，也就是说在谋杀的案件里面继续适用。

可是这个共同犯罪计划原则是否适用于非法集会及暴动案件呢？2021 年，终审法院在*卢建民一案*⁵ 中作出判决，认为由于香港的 *Public Order Ordinance* 《公安条例》内的条文应该作某些解释，因此，这个普通法的共同犯罪计划原则不适用于根据《公安条例》作出的关于非法集会及暴动的检控。

由此观之，香港法院沿用英国普通法原则是不断地有所适应和更新，以配合香港的实际情况，以及香港成文法的相关规定。总括来说，1997 年之后，香港作为世界上其中一个普通法的司法管辖区，其普通法制度是导致香港在经济上成功的其中一个要素。而这个普通法制度亦有海外法官参与的。

众所周知，终审法院拥有一些海外非常任法官。然而，《基本法》并没有说明终审法院必须聘用非常任的海外法官，这只是一个授权性条文，就是我们可以聘用非常任法官参与个别案件的审讯。我所指的是海外非常任法官，可是这并不是必须的。

近来，当然大家都知道有两位来自英国的非常任海外法官经已辞职，即使将来再有这种情况发生，亦绝不会影响香港普通法制度的运作。

4 *HKSAR v Chan Kam Shing* (2016) 19 HKCFAR 640.

5 *HKSAR v Lo Kin Man* (2021) 24 HKCFAR 302.

正如前首席大法官李国能法官在最近一篇文章里指出，在 1997 年之后到现在的情况已有很大的变化，未来不排除出现一种情况，就是海外的非常任法官参与终审法院的工作人员人数或许会减少，可是他还是充满信心，认为这绝对不会影响到我们终审法院或者香港司法制度的运作，因为我们本地的法官及本地的司法人才已经完全足够，足以应付香港司法制度的运作、需求与挑战，这是我十分认同的。由于时间有限，我的演讲到此为止，多谢大家。

李国章：谢谢陈教授。今日最后一位讲者是莫树联先生。他是一位资深大律师，自 2007 年起成为全国人大常务委员会基本法委员会委员。我不得不说，莫大律师一直站在道义一方，因为他曾在许多本地案件中代表政府和律政司。有请莫大律师。

莫树联：感谢李教授。各位来宾、讲者、先生女士，今天确实很漫长，现在也已经很晚了；因此，我想我可以先与大家动动脑筋，尝试延伸普通法的意义，以配合国家和香港的当今现实。不久前，我与一位已退休的毛里求斯法官攀谈，他的一席话实在有趣。他告诉我：其实，毛里求斯与中国关系非常好，两国有很多贸易往来；可是，尽管两国关系极好、贸易也频繁，但却遇到一个问题。问题是，一旦涉及不同商人或合约方之间经常发生的某种纠纷，由于毛里求斯人往往与大型的中国组织或公司打交道，他们的合约通常会列明须在深圳或中国某些地方仲裁，并遵循毛里求斯人不熟悉的法律或规则。毛里求斯人便会立刻想，这对他们来说非常困难，因为他们对千里之外的仲裁机制一无所知，更遑论仲裁过程的规则和规例了。这令我想起，普通法曾经在英格兰或英国有另一层意思，便是指适用于整个英格兰或英国的一套法律或规则。

但我可以想像，不论牵涉的国家是大是小，也不论立约方的业务规模是大是小，或许我们现时可以有一套法律，对所有自愿进行相互贸易往来的国家来说都是共通的；我们理应有一套共通惯例，特别是所有国家都能理解的商业惯例；我们也应有一个解决争议的过程。现今，我们几乎可以在世界上任何地方进行争议解决，亦可委任来自任何国家的法官——只要他们具备若干资格便可。我认为，如果涉及这种安排或程序，香港可以作出重大贡献，原因包括陈法官刚才谈及有关法治的众多因素，特别是司法独立、法官如何不受外部影响，以及关乎遴选和罢免法官过程的所有制度因素等。

我认为香港的历史和所扮演的角色都非常独特，因为我们有接近 180 年的普通法历史或传统。试想想：成为长达 180 年或以上的普通法传统的一部分有何意义？在我看来，这意味着，我们在香港每天都像呼吸般自然地遵行的传统，其实已代代相传了 180 多年。要确立此传统，既非透过写进法律书籍，也不是制定一项程序，然后说：“明天你遵循这个程序”便可。即使你拥有世界上最好的规则、最好的制度，若然没有这种传统，亦无法轻易采纳和成功执行这些规则和制度。

陈法官刚才举了一个令人印象深刻的例子。他表示可以亲自作第一手作供。他带出一件非常重要的事情，就是不论在审判案件时，还是在遴选法官到特定法庭任职的过程中，法官都从没有受任何人影响。尽管我们都知道贪污舞弊确实不时出现，有时更会在政府或私营界别内出现，但香港从没有法官在任何案件中，因受到外界影响而作出任何对与讼方有利的裁决。


这是难能可贵的，而其可贵之处在于香港法律制度一直以来均奉行这些规则和传统，历史悠久。究其原因，我认为香港的执业律师和法官都抱有相同心态，便是香港的司法制度有一条神圣的界线，不论是法官，还是与讼各方，都不会逾越，否则司法制度的诚信或公平性可能会遭到破坏。正如我所说，这种心态世代相传；在任何特定国家或司法管辖区的历史中，如果没有经过同等漫长的时间，就无法延续这种心态。我想这就是为何对香港……即今天的讲题“为什么普通法对香港的自由经济体举足轻重？”我的答案是，这不仅对我们的自由经济体很重要，对国家很重要，对所有与我国有关系（特别是贸易关系）的国家也很重要。我倾向认为普通法不仅为我们服务，实际上普通法也可以成为我们出口到这些国家的产品，因为香港的执业律师和专业人士可与这些国家和司法管辖区携手订立真正的普通法，当中我们拥有共同利益，并公平和平等地互相对待、一视同仁，不会基于经济规模或我们与哪个国家打交道而作出歧视。

而我认为，如果我们稍微发挥一下我们的想像力，便会发觉香港普通法的一般实践范围可远远超出香港这个地方。大家都知道，我们现时生活的世界非常分化，而且分化程度与日俱增。在这种新境况中，我认为我们可以回到普通法的根源，因为普通法乃香港法治之基石；我们要追本溯源，思考为何香港可以发挥如此重要的作用。香港的法治和普通法有数个独特之处。

首先，香港的普通法位处“一国两制”框架之内；世界上没有其他普通法制度像香港特区般设于“一国两制”框架之内，这是非常独特的因素。第二，香港的普通法非常特别，因为正如我所说，我们拥有非常悠久的普通法传统。第三，非常重要的一点是，我们在一国之内，而这一国与世界上许

多其他国家打交道。这三个因素非常重要；因此，在这种框架内，我认为我们现在必须认识到，香港的法治和香港的普通法是一种非常特别的法治。

为何如此特别？因为法治在各个国家和司法管辖区不尽相同。试想想，某些国家虽然确实施行法治，但可能只对某些人实施相同的原则——也许只限于该国本身或与它们友好的国家，但未必包括与它们不友好的国家和不甚友好的人士；所以某些司法管辖区确实有法治，但那是它们自己一套的法治，与我们的不同。那为什么我们与众不同？因为香港的法治是全面实施的，对所有人、所有国家和所有背景都一视同仁，毫无差别。这在我们的《基本法》中述明，也在《香港人权法案条例》中述明。我们不能基于种族、肤色、政治信仰、所属国家或任何其他理由而歧视任何人。因此，只要香港仍然是“一国两制”的一部分，我们便可以继续实施法治，而这个版本或分支的法治并不会歧视世界上任何人，这使香港的法治对很多确实与我们打交道的国家和人士极具吸引力，他们亦乐意拥抱香港所代表的普通法理念。由于时间关系，我的发言到此为止。谢谢。

李国章：谢谢。我衷心感谢所有讲者，特别要感谢律政司；我相信各位都跟我一样，十分感激律政司举办这场法律论坛。谢谢。

香港的普通法制度对发展自由经济 的作用和影响

陈兆恺

香港终审法院非常任法官

2022年5月27日

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2

香港 = 内地面向世界各地的窗口
世界各地进入中国市场的跳板
国际商业、贸易和金融中心之一

成功因素包括：

完善法律和独立司法制度 +
成熟的经济体制

普通法和司法制度与自由经济体制 回归后予以保留

法律制度 = 普通法制度 + 独立的司法制度

自由经济体制 = 奉行资本主义 + 采取自由贸易
市场开放政策

1997年 7月1日回归

成立香港特别行政区《中国宪法》第31条

实施一国两制方针政策 直辖于中央人民政府

除国防外交事务外 实行高度自治

回归后保留现有基本制度

- 保持香港继续繁荣和稳定
- 保留原有资本主义社会经济制度、
- 生活方式、基本法律 五十年不变
- 保持国际金融中心 and 自由港的地位
[《基本法》 第5、8、109、114条]

国际社会对香港的法律和司法制度 与经济体制的评价

- 香港具备良好条件
成熟的经济体制 + 完善的法律和司法制度
获得基本法的保障，良好的国际声誉
- 世界金融和法律的排行榜占很高位置 - 国际肯定，成功指标
2020年度国际 IPO Listing 上市 - 世界第二，521.8亿美元
2021年度 [世界正义计划] 法治指标 - 全球第19位，
(美国27位) 亚洲经常名列三甲
廉洁排名 - 世界第9名

自由经济体制包含和要求什么？

- 自由经济体制 - 资本主义特色
奉行自由贸易原则
遵守若干规则和符合一些条件
- 自由贸易原则：商业的运作，商品的生产和服务，包括成本
工资、价格，取决于供求定律，由市场主导
- 香港被视为遵守有关规则和符合相关条件
《中英联合声明》第三款第六、第七项
《基本法》第 105(3)、109、110、112 、114条

香港自由经济体制重点，受基本法和法律保障

- (一) 所有经济、贸易和商业活动 - 自行决定和进行；
- (二) 私人企业和财产，知识产权，受法律保障；
- (三) 金融活动，外汇、黄金、证券、期货等市场，自由开放，资金进出自由，货币流通自由兑换不受管制；
- (四) 经济、贸易和商业活动自由开放不受干预或规管

自由经济体制中的一些规管

- 经济迅速发展，新的转变和活动模式
- 任何不正当或不规则的情况，须受规管
- 以杜绝不法商业活动，减少经济风险

法律和司法制度对自由经济的重要性

法律和司法系统的保障：

- (一) 经济活动过程 权利和义务，受法律保障
- (二) 规管须符合法治精神，经得起法律上的挑战

完善的法律和独立的司法制度 –

- 有助经济活动顺利进行
- 确保规管政策和法律能公平公正地执行
- 增强国际信心，有利经济活动，良好营商环境

香港的独立司法权和终审权能增加营商信心

法律和司法制度

- 现行法律基本不变 – 普通法及衡平法，条例，附属立法习惯法，除与基本法相抵触或特区立法作出修改者外予以保留（《基本法》第8、18(1)条）

营商人士确实知道商业活动/纠纷，受法律和独立法院保护

独立司法权 - (《基本法》第2、19(1)条)

审理案件时，公平、公正、无偏、无私
不受行政和立法机关或任何人士干预

终审权- 终审法院 (《基本法》第2、19(1)条)

民事和刑事案件第三审(终审) 最终裁决
(《基本法》的最终解释权在人大常委会)

法官和司法人员 (《基本法》第88、89、92 条)

任命 - 根据司法和专业才能，经独立委员会推荐，
特首正式任命

免职 - 只在无力履行职责/行为不检，经特别程序审查
才可免职

香港的普通法有利自由经济发展

普通法：法官处理案件时，公开审讯，依据事实证据和有关法律作出判决，并列明理由，成法律一部分，公之于世

普通法特点 - 对自由经济体制，产生积极和正面作用
有利营造适合的自由市场经济和营商环境

(一) 案例法 - 增加法律的确定性，清晰性和可预见性

案例法：上级法院判决 所依赖的法律原则 对下级法院
后来须要处理类同案件 具约束力或说服力

法律原则，具高度确定性，清晰性，可预见性
减少诉讼或上诉案件

对于经济活动进行、推广和发展，非常重要。

(二) 灵活性 – 可因时制宜，能适应社会的转变

- ❑ 案例或未能追上时代/社会转变，不合时宜，造成不公
- ❑ 普通法不是一成不变，是持续发展，能因应社会需要和改变，重新审视过时的原则
- ❑ 对于发展经济活动和商业贸易模式更为重要。

(三) 合约自由原则 – 尊重商业协议，有助履行贸易承诺

- ❑ 奉行合约自由原则，尊重双方有权自由、不受约束签订合同，自由选择和制订双方交易的条件
- ❑ 法庭会公平公正地尽量执行双方所达成的协议，除非某些条款受法规规管
- ❑ 法院尊重私人合约的精神有利金融、贸易和商业成交。

(四) 接纳商业现实 - 法院在审理案件时接纳务实的商业现实

- 法庭接纳务实的商业现实，快速适应转变的环境，与时俱进，跟随财经发展步伐，为商业社会提供指引
- 普通法发展根据实际经验，商业实况，有利经济发展。

(五) 商业法 - 普通法中的商业法很多取材于贸易活动的惯例

- 普通法中的商业法形成的过程，受自由经济学说影响，成为法官判决商业纠纷的法律原则，国际商业贸易标准

(六) 国际联系 – 增强香港国际商业、贸易和金融中心的作用

- 香港的法律和经济体制与国际标准较为接近，容易接受
- 外地商人来香港进行商业、贸易和金融活动，藉此寻找机会到内地发展，也以仲裁形式采用香港的法律解决纠纷
- 内地商人也会藉香港的地位来进行商业、贸易和金融活动，如上市或融资，以图进一步打开国际市场
- 香港便成为内地和世界其他地方互动交流的中心。

(七) 保障私人和企业财产——《基本法》和普通法原则保障私人和企业财产

普通法和《基本法》保障私人财产受到法律的保护

(《基本法》第6条：依法保护私有财产权)

第105(1)条：依法保护私人 and 法人财产，依法征用财产，得到补偿

第105(3)条：企业所有权 外来投资均受法律保护)

普通法原则和《基本法》，保障私人和企业财产，制造良好营商环境，使安心在香港进行和发展业务。

结语

- 奉行普通法和拥有独立司法制度，有利推行自由经济和开放政策
- 得天独厚的地理环境和中央的大力支持，优秀人材，良好国际声誉，行之有效的制度和政策
- 回归后得到保留，更有效地保障商人合法权益，巩固商业、贸易和金融中心地位。

传媒访谈

坐言起行

主持人



盛智文 大紫荆勋贤 GBS JP
兰桂坊集团主席

嘉宾



捷成汉 BBS
捷成洋行主席

嘉宾

马绍祥 GBS JP
新创建集团有限公司行政总裁



李浩然 MH JP
华润集团粤港澳大湾区首席战略官



Toni Younes
Paul Lafayet创办人兼行政总裁



盛智文：谢谢。我知道今天在座多位都辛苦了一整天，但我们很荣幸邀得四位杰出的讲者莅临，谈谈为什么香港对世界各地的企业和商人如此具吸引力、为何人们选择香港，以及《基本法》如何协助提升香港的吸引力。它让香港成为全球瞩目的知名品牌。我们都知道企业喜欢稳定，稳定就是关键所在。《基本法》有助促进稳定，而稳定带来繁荣。这就是为何人们说“本固枝荣”。稳定为香港带来繁荣。

我知道在座每位讲者所从事的业务都有别于先前多位讲者。我很想你们每一位跟我们分享：是什么令你们在香港的业务如此成功的？我们在屏幕上看到了捷成汉先生。欢迎你，Hans Michael。我们不如先与 Hans Michael 谈谈吧。让我先作简介。Hans Michael 是香港捷成集团的主席。他是一位长驻香港的丹麦商人。他于 1981 年在香港加入捷成集团，自 2000 年起担任集团主席和主要股东。在香港成立的捷成集团在投资于广州方面经验丰富，而 Hans Michael 于 2021 年更获封广州市荣誉市民，十分特别。因此，Hans，我们很想你谈谈自己和你的业务。是什么令你一直在香港居住和工作？

捷成汉：好的。谢谢 Allan。各位午安！我明白各位在场已久，所以我的发言会尽量简短。我所属的家庭跟许多其他家庭一样，透过航运业来到东方，其后发展至贸易和制造业。今天，我们的业务遍布全球，并以中国为主要市场，但仍是一个全球家族企业和家族生意。

说到香港，我们基本上要问自己四个问题：是什么造就了香港？是什么令香港与众不同？是什么令香港成功？香港为何是我们这类企业设立总部的理想首选？当然，我们刚才已经听到很多非常重要的客观事实，例如香港的法律制度、

普通法、地理位置，以及我们作为贸易夥伴与全世界打交道的悠久传统。在航运方面我还可提供更多资料。毫无疑问，香港曾经是关键的转口港。现在，香港是进入中国的众多重要转口港之一，但这些资讯在如商会的传单中都可以找到。我认为更重要的是文化。我们无法摆脱自己的过去和身份。造就我们今天的眼界和心态的，就是前人所建立的价值观和世界观。

我认为香港的优势在于心态，在于应对变化、应对干扰的能力，以及不仅作为追随者，还要成为先驱的心态。这些令我想起大湾区计划，内地正带来全新的消费主义浪潮，香港理所当然地处于非常有利的地位，可同时扮演关键的参与者、先驱者和紧贴步伐的追随者。

我的公司很久以前已在中国建业营商。我最深刻的记忆之一，是父亲办公室内的多张照片。放在他工作桌上的照片除了有家庭照片外，还有“买办”和公司董事的照片，他们都是家族企业的主要推动者。这种人与人之间的无条件信任，一直给我留下深刻印象。当中蕴涵着文化。我认为以礼相待的传统、信任、可靠、荣誉这些观念都是建立心态、思维模式或传统时极其重要的元素，而这正是香港真正赖以成长的东西。无论我们如何看待在中国的所有投资，它们都并非无缘无故的存在。它们的存在是基于香港人和内地悠久的信任关系和传统。

当然，这造就了香港成为联系人，或我们所说的超级联系人、大门或入口。它们的意思基本上相同，就是我们要获得信任。我的公司选择以广州作为业务枢纽，原因很合情理。因为它靠近香港并使用粤语，它位于大湾区的中心点，而前往当地只需一个多小时，所以有很大的凝聚力。我们的



决定很明智，我认为这也是香港政府在制定如接触毗邻省份和《内地与香港关于建立更紧密经贸关系的安排》时的政策考量，而这当然只是起步。回归后，我们是最受国内欢迎的贸易夥伴。

而《基本法》正正是让香港得以稳占其地位的基石。许多人都认为这是理所当然的，但我们在这场论坛上听过实现这个目标背后要付出多大努力，我认为我们要明白这点和捍卫这个地位。就我的公司而言，驱使我们在香港和广东发展业务的另一重要因素是人才，这地区的人力资源。这个地区有很多潜质优厚、充满干劲的年青人。而我们当然都知道，我们正身处于科技不断变化的时代，而这一代年轻人的想法和处事方法与我的年代的人完全不同。

顺带一提，我真的很高兴能得到很多来自内地不同省市的人的启发，而这亦是另一个巨大的优势。我的意思是，在

香港，我们可以接通全球，而在内地，我们有当地优势，不少人足迹遍布上海、北京等大江南北，还有香港。不用多说，对我的公司以至香港来说，中国都是主要市场。让我们有信心的不是数字，我们当然可以看到不断增长的贸易数字，这固然很好，也是意料之内。但我所指的是韧力、是心态。我会说香港人经得起考验，也曾经历不少风雨、悠长的历史包括战争。我认为香港取得今天的成就之前所付出的一切值得仔细欣赏，但内地作为香港主要贸易夥伴是优势这点也不容忽视。因为内地既是一个庞大的市场，也是一个快速发展的市场。在我看来，这个市场必定会为许多积极的发展势头铺路，例如环境、碳足迹、“食物和厨馀”等。

我认为，像中国这样人口众多的国家在未来 20 年左右也将要面临人口老化等问题。香港将位处创新之地的中心点。香港的大学纷纷在内地开设校园。我有幸与科技大学合作一段颇长时间，也乐见科大在短短数年内已在离边境不远处兴建一个比香港校园大两倍的新校园。这些事情经常都被视为理所当然，因而被忽略。这就是我们培育下一代人才的地方。我必须向所有为未来提供资源的教育界贤能致敬。那么，为何香港在未来也会取得成功呢？其中特别的原因是因为香港固然不乏接受过学术培训的人，同时也有不少天生充满好奇心的人。我认为好奇心极为重要。最近我在听了其他人的话后采用了一招：不向求职者提出与履历表内容相同的问题，而是要问他们自己有哪些兴趣和嗜好。我认为这做法披露得更多。香港人以至很多内地人都对周遭世界深感兴趣，这些资料教人耳目一新，也难以用数字表达。我甚至会争辩，我们看到的国内生产总值和许多其他数字，全都是量化的，但质量的量度标准在哪里？我们又如何衡量可靠性？

如何衡量端正行止？举例说，我们如何衡量企业家精神或乐观精神？我不用再多言了。

我认为在心态和文化方面，我们处于理想的位置，因为中国不只是一个国家，它还有海外社区，而香港扮演重大的角色，是海外华人的秘密资本，但也是一种根深蒂固的文化，这点我们必须明白。而且我认为，香港越能与内地互动和感受这种悠久传统便越好。坦白说，我的公司内部现时有很多跨城市人际关系，人们以往都互不认识。但我很好奇，为何我们相信香港有如此特别的未来？香港确是独一无二的地方，我想我们已经听过很多。我要说的是，从没有一个地方能像香港般具有韧力、能够应对干扰、能够轻易适应新环境、可同时展现传统文化和进行创新，因为未来将有别于我们已习惯的过去。我的意思是，资源方面如何？气候方面如何？所有这些真正重要的问题又如何？我认为中国在这方面可以发挥非常重要的作用。香港越能贡献和参与其中，处境便越好。我的公司已经看到许多创新的事物，例如虚拟保时捷陈列室或汽车陈列室，中国可牵头与许多香港人携手开发这些事物。所以对我来说，这是最好的证明，而当然这些发展日新月异。毫无疑问，这确是关于未来。中国可与香港共同创造更绿色和更美好的未来，当中香港也会担当非常重要的角色。

珠江三角洲当然起着至关重要的作用。我们看看珠江三角洲的人口结构时，会留意到很多人从国内其他地方迁移到珠江三角洲。为什么呢？因为教育、生活质量和连通性，当然还有一群志同道合的人，这是非常强大的力量。我有兴趣知道这些群组是什么、为何人们会聚集在一起，而这令我觉得我们置身香港即置身亚洲最佳地方，因为我们可与其他亚洲地区联系起来，这也是我的公司正在做的事情。正因如

此，我们看到了一些非常健康的成长。当然，这也是一个学习的过程。我认为我们必须聆听现实，了解人们想要什么、将来想如何生活。而我认为香港的贡献和学习越多越好。就是这样。我的公司已经经营 130 年，而我可以这样说，多年来的环境变迁给我们上了很多课，特别是中国文化价值观，这文化渊源既是我们工作的核心，也是我们现在和将来选择以香港为总部的主要原因。

盛智文：好，谢谢 Michael。当然，捷成在香港历史悠久，也是已在中国经营多年的知名公司之一。我跟 Jebsen 家族相识多年，也相信 Michael 已经详尽地告诉我们为何香港是如此适合居住和营商的好地方。下一位讲者是新创建集团有限公司行政总裁马绍祥先生。马先生在工程师业界享有盛名，也是香港和海外多个备受尊崇的工程师学会的会员。他也具备与香港特别行政区政府合作的丰富经验。他于 2014 年加入政府，出任发展局副局长，其后于 2017 年 2 月获委任为发展局局长，任期至 2017 年。他是香港都会大学科技学院的名誉教授及香港理工大学客座教授。所以马先生一直身兼多个岗位。

马绍祥：谢谢 Allan。

盛智文：他还在 2014 年获任命为太平绅士。现在有请马先生分享他的故事。

马绍祥：谢谢 Allan。各位嘉宾，我很荣幸代表新世界集团分享商界在香港《基本法》下“一国两制”的经验。香港自 25 年前回归祖国以来，一直实行“一国两制”这项独特且没有先例可循的宪制新构思。过去 25 年，我们探索“一国两制”的过程曾出现挑战。有赖各界的坚持和耐心，香港得以保持竞争力和吸引力，使我们可自豪地展示自己是

国际金融中心、环球贸易中心和国际航运中心。没有《基本法》，一切都不可能实现。

今天，我想从商界的角度，分享我们在《基本法》对香港整体营商环境的影响方面的经验和观察。我也会探讨香港的一些前景，特别是“一国两制”下哪些地方应该改变、哪些地方应该保持不变。

25年前，香港回归祖国，标志着《基本法》生效。但事实上，《基本法》的草拟可追溯至40年前，即1982年。当年，内地刚刚启动改革开放，中英两国亦就香港前途展开谈判。国际社会仍对中国拥抱全球化的决心表示怀疑，对香港的未来亦持悲观态度。香港股价暴跌、货币贬值，恐慌性抛售随处可见。部分市民离开香港，不少企业也把业务迁移到其他地方。尽管充满变数和身处逆境，新世界集团从未惊惶失措，也从未想过离开这座城市。我们相信，只要中国坚持对外开放，香港的稳定繁荣必会得到保障。这座城市将在国家发展中发挥不可或缺的作用，成为连接内地与世界的桥梁，本地商界也必会从中受益。

因此，与其他人相反，新世界集团当时反而展现更大决心，加快在香港投资的步伐。毗邻我们现时所在地的香港会议展览中心一期就是坚实的证明。1980年代，殖民地政府计划兴建世界级设施，以便举办大型国际会议和展览。由于香港前途尚未明朗，许多企业都不愿承办这项庞大的工程。但当政府与新世界集团接洽时，我们毫不犹豫地接受了邀请。这表明我们对香港的未来充满信心。我们克服了重重困难，按时完成了兴建工程。时至今日，会议展览中心仍是这座城市的标志性建筑物。香港自1980年代起的发展，证明

了我们的乐观态度是正确的。《中英联合声明》签署后，香港实现平稳回归祖国。

自回归以来，香港的资本主义制度和生活方式维持不变，包括一切现有自由和权利。商业便利和法律保护是香港实力的重要支柱，这些都在《基本法》订明并得到保障，确保我们的业务在香港运作成功。请让我阐述这点。首先，《基本法》确认香港的简单税制和低税率，并保留香港的自由港地位。这让香港能够成为广受欢迎的人员、货物、信息和资本交流枢纽。此外，《基本法》容许香港以独立关税区的身份参与各种贸易安排。凭藉这种竞争优势，香港在经济自由度、营商便利度和繁荣指数方面长期处于世界领先的位置，成为全球的榜样。这座城市持续享有世界上最能吸引环球资本和企业的地区之一的美誉。

第二，《基本法》保证香港司法独立和实践普通法。过去25年，香港法律制度一直相当透明和有效，商业纠纷得到公平和公开的审判，加上政府廉洁公正并致力打击贪污，令企业可安心在香港营运。虽然国际社会曾一度担心香港的营商环境在《港区国安法》制定后将不再如昔，但统计数据证明他们的想法错误。举例说，在世界银行发布的“2021年环球治理指数”中，香港的法治水平排名亚洲第二，而在伦敦玛丽女王大学发表的“2021年国际仲裁调查结果”中，香港获评为全球第三大首选仲裁地。香港在这些方面的骄人表现，令商界对这座充满活力、稳定和吸引外国直接投资的城市更有信心。资本的涌入也证明了这一点。2020年5月，香港银行体系结余总额达3,370亿元以上，比《港区国安法》生效前的2019年6月多了一倍。《港区国安法》显然并无窒碍资本进入香港，亦反映了商界对香港的信心。

过去 25 年，在香港经营的中外企业一直受惠于《基本法》对“一国两制”的保障。在这个 50 年期的首半，我们都已见证、参与和受惠于香港的强劲经济增长。不过，我们不断在强调“不变”的持续优势之余，忽视了改变的必要性。尽管香港在过去 25 年屡创佳绩，但社会某些方面仍有待改进甚至改革。

我们的制度、政策和心态必须与时俱进，以迎合社会的需要。最明显的例子是土地和房屋短缺，背后的理由包括审批制度日趋僵化和复杂，以及土地发展和房屋供应极为缓慢，远远未达到社会的期望。另一个急须解决的问题是社区支援不足。第五波疫情揭示了我们在危机管理方面的缺陷，以致市民无法及时获得抗疫用品。我们需要思考，一旦再次出现危机，我们该如何为市民（特别是弱势社群）服务。这些只是其中两件涉及深层问题的事。现在就是作出改变和拥抱改变的时候。我相信作出改变的责任不单在政府身上，商界也应承担部分责任。

数年前，新世界集团已把“创造共享价值”设定为企业理念。我们相信我们的使命不仅是为股东带来回报，而在我们的业务中采纳创新和对社会负责的做法，为所有持份者带来更大福祉。在这个愿景的引领下，我们于去年创立了一间名为“新世界建好生活”的非牟利房社企，目标是就可负担房屋构思创新的替代方案，为首次置业者提供更多可负担的房屋。商界可与政府合作，透过定下较低买价、较低的首期金额和较低的每月分期付款额，让年青人更容易置业和“上车”。我们不但决心建设美好生活，而且立志令更多人得享美好生活。

今年3月，我们设立了全港首个大型的众捐平台“爱互送”，创新地让捐赠者与受惠者提供特定配对，为弱势社群提供支援。该平台让物资能够及时送到有需要人士手上。这个网上平台在首个阶段已筹得总值超过4,000万元的捐赠，惠及超过10万个弱势家庭。

简言之，我们相信，作为社会的重要持份者及“一国两制”的主要受惠者，商界也有义务贡献社会和承担社会责任。来年我们会继续致力促进公平分配，以满足广大市民的需要。只有这样，我们才能共享繁荣。

今年，“一国两制”政策的实践将正式踏入五十年“不变”的“下半场”。我们正迈向新的里程碑。过去25年，社会出现了新的挑战，也有声音促请政府和商界改变它们在社会上的角色。改变是为了确保“一国两制”的制度安排维持不变。只有牢牢掌握变与“不变”的艺术，“一国两制”这艘船才能顺利航行，继续为香港市民带来繁荣、为国家的开放作出贡献。感谢各位！

盛智文：谢谢马先生。众所周知，新世界是香港社会的支柱之一，“一国两制”也确实令香港获益匪浅。新世界是最早进入中国及其经济的先行者之一，更已驻足国内土地，也确实令内地获益良多。香港可说是伟大的领航员，引领内地取得今天的众多成就，也造就了我们今天的许多成就。十分感谢你！

下一位讲者是李浩然博士。他是香港特别行政区立法会议员，也是华润集团粤港澳大湾区首席战略官。他于2012年获清华大学颁授法学博士学位，是现任基本法基金会会长。他是许多知名法律协会和委员会的成员、一位广受尊敬的法律学者，也是团结香港基金的副总干事。身为国家的

青年学者，李博士是大湾区经济和商业发展专家。他先后于 2016 年和 2019 年获香港政府颁授荣誉勋章和太平绅士荣衔，并获选为 2017 年香港十大杰出青年。可见李博士成就斐然，幸好这已是全部，否则我们便一整晚也说不完。现在有请李博士和我们分享他的故事。

李浩然：谢谢 Allan。各位晚安！我很高兴出席这最后一场访谈环节。在之前的各个环节，多位讲者讨论过立法和《基本法》的概念问题，而到了这时候，我们讨论的是《基本法》和“一国两制”的实践。香港是国家的唯一普通法司法管辖区，对商界来说，普通法既能带来灵活性，又能带来确定性。

众所周知，灵活性来自法官的判决，它能迅速地回应日新月异的商业需求和发展。但法官们同时也依循先前的案例和考虑因素，保持原则贯彻一致，从而体现确定性。凡此种种，都凭藉《基本法》而得到保证、维护和发展。如果我们谈论《基本法》内与经济有关的条文，它们包括：第一百零八条谈及税收、第一百零九条谈及经济和法律环境、第一百一十二条谈及投资自由，第一百一十五条谈及自由贸易、第八条谈及普通法，而最后但同样重要的是第八十五条谈及司法独立。这些全都受到《基本法》保护。《基本法》最重要的立法原意清楚地反映在“总则”一章第五条中，该条指出香港特别行政区不实行社会主义制度和政策，而原有的资本主义制度和生活方式保持五十年不变。

简言之，就是“一国两制”方针政策及平稳过渡的精神。前者的意思是，在“一国”的原则下，香港不会实行社会主义市场经济，以赋予香港最大的经济发展自由。这种自由甚至大于苏格兰和北爱尔兰在英国主权范围内享有的自治权。事实上，根据《基本法》第十三条，中央政府负责管理与香

港特区有关的外交事务。中央政府同时授权香港特区政府按照《基本法》的规定自行处理相关对外事务，而这点在《基本法》第一百五十一条明确指出，其准许香港以“中国香港”的名义与世界各国、各地区及相关国际组织以经济发展的名义保持和发展关系，以及履行协议。

至于后者，它承诺延续原有的公共行政制度和香港人的生活方式，特别是市场经济原则、资本主义原则和背后的精神。资本主义的两项基础原则是立约自由和保障个人财产。整体来说，我们会留意到，在经济方面，《基本法》的条文实际上围绕着两个范畴来拟备：自由和保障。

从经济角度出发，《基本法》最重要的条文应该是第六条和第一百零五条，它们分别保障私有财产及公司所有权和外来投资。至于自由，《基本法》第五章对“经济”起了强化作用，在最大程度上承诺贸易自由，例如第一百一十条下货币和金融业务的经营自由、第一百一十二条下的外汇自由，以及第一百一十五条下自由贸易政策的延续性。尤其是，免关税政策是为了保持香港的自由贸易港地位。

简言之，1997年以前一直由政府采纳的各项原则和政策都要予以保留。除了第八条订明普通法和法律制度继续适用外，这些延续性原则在一宗近期的终审法院案例 *FACV 6 至 9/2020*¹ 中予以叙述和分析。单单是《基本法》载有促进业务运作的条文并不足够，切实地落实这个立法原意也非常重要。事实上，《基本法》得以成功实施，实有赖香港特区坚定维持因奉行法治原则而获全球高度赞扬的独立司法制度、廉洁和高效的公共行政体制，以及同样重要的稳定和安全社

1 郭荣铿及其他人 诉 行政长官会同行政会议及另一人 (2020) 23 HKCFAR 518.

会环境。我们应该明白，“一国两制”政策的一切都是为了解决香港和澳门问题以及实现国家和平统一，而这是以人民为中心的。事实上，多年来，中央政府曾再三强调香港特区政府有责任和义务发展经济、改善民生和促进繁荣。从中央政府在港实行的特殊政策和《基本法》赋予的高度自治中，我们可以看出，其中一个主要目的是让香港居民生活得美好、在回归祖国后更美好，而不是相反。

此外，一方面香港是东西方文化的桥梁、国家与世界其他地方之间的桥梁。另一方面，香港为有意在内地建立业务的外国企业充当通道。这种独特的安排和合作事实上塑造了香港独特的金融和经济地位。让我们谈一谈大湾区，我现时在华润工作的重点也在于大湾区的业务。

关于大湾区，一般来说，香港社会对大湾区的发展有一定的共识。社会普遍认为它可以为香港带来新的发展空间和机遇，不只是在商业领域，还有年轻人和社会各方面都会带来裨益。但面对不稳定的全球形势和日趋普遍的反全球化现象，我们需要更深入地了解国际形势，让我们可以更好地思考香港能如何发挥自身优势和配合国家发展。

关于华润的角色，我认为随着粤港澳三地深化合作和大湾区建设不断推进，预计大湾区及其他地区的企业对专业服务的需求一定会增加。香港应担当协助内地企业走出去的重要角色，成为协助大湾区企业拓展海外业务的首选平台。

香港以至整个大湾区都面对着具历史意义的机遇：国家的“双循环”重大战略判断，以及国际政治和经济形势长期变化带来的长期变革焦点。要解释这个问题，首先要清楚地认识国家过去40年来在引进全球科技、资本和市场的基础上取得的显著经济建设和成就。

未来，国家必将更积极地走出去，并将与世界上在科技、资本和市场方面领先的国家建立更紧密的经济联系。现时，随着“双循环”的启动和国家更积极地走出去，香港也将有机会协助国家走出去，并协助推动更深入、更高效、更公平的全球化。我们可能被中美贸易争端或反全球化浪潮困扰，但我们必须相信，全球化是世界大趋势，而当前的问題不外是全球化发展道路上的细微调整和迷途。在这进程中，认清新的重大历史机遇并为香港和整个大湾区定位，将为我们带来下一个战略和系统性的机遇。

我深信这些机遇会促进香港与大湾区所有城市深度融合，也会让香港成为国家走出去的桥头堡。与世界三大湾区相比，大湾区是唯一一个事实上在“一国”原则下完善实施两个制度的区域发展城市群。香港应当把握“一国两制”的优势，发挥香港的长处，满足国家发展的需要，创造跨境发展前景，为区域合作谱写新篇章。

身兼学者、立法机关成员和商界专业人士，我得以了解香港的特殊地位和吸引力是何等宝贵。在《基本法》规定的“一国两制”框架下，我们必须珍惜这种种机会。大湾区与“一带一路”倡议的共同发展，有赖香港的独立司法制度、高效的公共行政，以及稳定的社会和政治环境。我们可以携手再创新高，令香港和大湾区成为国际金融贸易大都会、争议调解和仲裁的区域枢纽，以及全球创意创新中心。感谢各位！

盛智文：谢谢李博士。有一件事是肯定的：我们每当提到大湾区，都一定要向你讨教。我们会经常邀请你提供关于大湾区的资料。我认为这必定是香港的未来。现让我介绍最后一位讲者 Toni Younes 先生。他是 Paul Lafayet 的创办人

兼行政总裁。各位如果喜欢品尝法式糕点，都必会认识 Paul Lafayet 这个糕点连锁集团。Paul Lafayet 于 2010 年由 Toni 和他的公子创立，希望从中品尝到家乡的味道和重拾他们对至爱法国糕点店的美好回忆。当时香港的精品糕点店只设于五星级酒店，而 Toni 看到了拓展市场的机会，于是将业务带离五星级圈子，进驻大众市场。Toni 于 2010 年在 K11 购物艺术馆开设首间糕点店，至今在香港设有 9 间分店、在深圳和上海设有合共 4 间分店。他们正计划扩展中国市场，包括在大湾区（包括澳门、深圳、广州）开设 10 至 15 间分店。Toni 的例子就像是香港的缩影：香港吸引来自世界各地的人士前来开业，而业务凭藉我们的《基本法》、“一国两制”和中国的吸引力而得以蓬勃发展。香港是拥有 14 亿人口的中国的一部分，因此企业家都期盼在香港开业和拓展业务。有请 Toni。

Toni Younes：好的。谢谢 Allan 的介绍。我也想感谢律政司邀请我参加这次盛会。感谢各位和一众同事。我是 Toni，而正如 Allan 刚才指出，我是 Paul Lafayet 的创办人。Paul Lafayet 是一家生于香港的公司，于 2010 年初创时属于中小型企业。也许各位会问我：为何选择香港？我在 1990 年代曾经常前往亚洲，后来留意到香港这个中转站，当时人们经过香港前往中国，而我们意识到香港是亚洲的旗舰窗口。我时常来港生活，觉得香港确实拥有优良的基础设施、具备健全的法律制度，还拥有大量人才。

我们是中小型企业，而香港有大约 34 万家中小企业。超过 95% 的香港公司都是中小型企业，它们雇用了超过 150 万人。因此，它们充满了企业家精神。香港真的像磁铁般吸引着我们。我不知道 Allan 是否认同我这种“香港磁铁”看法，但我可以说我被香港吸引了。此外，香港是一个非常安

全的城市。所以可以说，没甚么理由不选择香港吧。到了今天，我很高兴地说，香港是我可以自豪地称之为家的地方。

关于 Paul Lafayet 的故事：我在 1990 年代经常前往香港，而在 2000 年之前，香港根本没有咖啡连锁店。很抱歉，当时在香港，如要吃甜品、喝咖啡，便要光顾五星级酒店。像当时许多来港的人一样，我心目中有一个办公室设计和贸易业务。也许我来得有点迟，但迟来总比没来好。2000 年开始，我观察到这里的女士们经常聚在一起喝咖啡、吃蛋糕、品酒。我意识到香港人的生活方式出现转变。那我们会做什么？这是一个缺口，我们可以填补它，所以这个想法萌芽了。当时我正从事其他业务：设计和贸易。我爱食物，虽然我不是厨师，但喜欢这个想法。所以我意识到是时候开展连锁店业务。K11 于 2009 年刚刚准备好营业，所以我们当时在 K11 开设了一间小店。我们于 2010 年 1 月从 K11 开始（K11 不是连锁的，Paul Lafayet 也不是连锁店）。2010 年，我们开始营业，而位于 K11 的分店一直营业至今。当时我们决定要以合理价格提供大众负担得起的奢华蛋糕，因为并非每个人都能负担五星酒店的价钱。所以这个想法就来了，我们从一个中央厨房开始，由法国厨师建立团队，然后我们于 2010 年开业。Allan，请容我稍作纠正，至今我们有 10 家分店，而本年稍后我们在香港将会有 12 家分店，在中国则会有 4 家。

我可以这样说，从 2010 年到 2022 年的 12 年间，这个创业旅程很难忘，也是一种激情。这个旅程很有趣，但也涉及许多艰辛的工作。香港确能提供真正的机会，让我们由零开始构建一些东西。老实说，只要我们肯努力、有策略，香港可提供一切支援，政府会协助我们。香港也有很多配套，不乏人才和勤奋的人。我们能够做到一些事情，但必须聚焦、必须

贯彻始终。若然希望长期在食品行业经营，必须时刻保持“质量”、“质量”、“质量”。这些都是最重要的事情。

我们的业务发展相当不错，过去12年从一家店扩展到十家，做了大约超过1,500万件马卡龙饼。我们的焦糖炖蛋非常出名，这是一种“法式蛋挞”，不知道在座各位有没有吃过。我们在香港大约有86位同事，我稍后会到国内。人们问我们在做什么，我会说我们向顾客提供幸福，因为我们都知悉，吃早餐、午餐和晚餐是例行公事，但甜品和生日都代表着欢乐的时光。所以在某程度上，我们经营的是带来幸福的业务。但带来幸福的业务总是快乐的吗？并非总是如此。

我可以这样说，从2010年至今的过程当中，曾经有一段艰难的时期，面对太多竞争。而业主有点——只顾“价格”和“加租”。我可以这样说，2019年非常艰难，这与新型冠状病毒病有直接关系。2020年初确是非常艰难的时期。有些事情我们可以控制，但有些是我们无法控制的，可以肯定的是疫情已经失控。所以我们跟同事协定，也许我们需要调整工资，共渡时艰。我们没有任何同事被解雇，全都留下来。我们与业主的谈判也波折重重、耗时不少，但最终业主接受了我们的方案，我们深表感激。政府也推出各项计划，例如“保就业”计划和银行贷款担保。它们提供了很大的帮助。但如果我能说些什么，那就是虽然政府为银行贷款提供担保，但银行处理申请的速度太慢，提出的要求太多，所以也许要检讨一下。因此，这是一个颇为艰难的时期，但我们总算熬过去。我们的业务在2020年下半年开始改善，到了2021年更表现卓越。

也许我可以总结一下——我们就像一枝竹子，可能会弯但不会折断，因为我们小巧灵活。中小型企业就是这样。我

们从这部分可以学到什么？我们了解到香港的业主虽然很有权势，但也愿意与租户谈判。我们每当遇到困难，总可以向政府求助，政府也会乐意帮助。由此可见我们有很多工具，若然我们能加以善用，业务便会继续前进。但如果业务品质无法保持，而经营者又欠缺策略，则所有人都会受苦。

说完香港，现让我谈谈国内和大湾区。当我们于 2010 年开设第一家店舖时，我想在尖沙咀的中心地带开店；我不想选择跑马地，也不想选择半山区，因为我想为香港和中国开一家店。这是认识我和我的品牌的人都知道的基本事情，因此 12 年前我们从那里开始，经过数年的成功营运后，我们进驻上海，开设了一家旗舰店和三家分店。我们在 2019 年开了另一家分店，位于华润在深圳湾的总部所在地。但不幸的是，从 2019 和 2020 年起直至现在都是艰难时期，我们已有两年半无法出行。我们在国内的计划是把业务扩展到国内其他主要城市。我正在考虑大湾区，香港与澳门和珠海相连，前往深圳也很容易，我以前每逢星期二都到深圳去，它与广州有很完善的连系。我想说的是，我们有一个大型枢纽，它拥有大约 8,000 万人口，本地生产总值超过 1.7 万亿元，在未来数年内更可能达到 2 至 3 万亿元。因此大湾区集金融和服务于一身、集各类消闲娱乐于一身、集广州的贸易和工业及深圳的超级科技于一身。

在深圳，我们的对象顾客年龄平均约为 30 岁，而根据我们的顾客资料，我们的顾客年龄正是从 24 或 25 岁到 45 岁不等，70% 是女性。我们为此感到高兴，因为他们喜欢我们的甜品。我们的计划大概如此：我认为大湾区具有庞大潜力，而对于这个潜力，当通关措施放宽后，我们就可以把食品从中央厨房送到澳门和深圳。我们这里有一个由法国

厨师和 12 位同事组成的团队，也许我要说一些我以前没有说过的话。我们确实提供了自己的所有专业知识，在这里和国内有很多人向我们的厨师学习，数年后自行开店和发展自己的业务。因此，对于大湾区和国内，我们计划在未来五年内开设约 100 家分店，并预计其中 35% 会在大湾区开设。我们有信心吗？当然，毫无疑问，我们相信中国、相信香港的未来。过去两三年的整体情况无疑十分特殊，席卷全球，但我认为人类未走到尽头，因此自会慢慢地找到解决方案。我们要有耐心，在国内从商时要有耐心。今时已不同往日。我认为我们做的是令人快乐的生意。我们在香港有 85 名员工，在国内有 35 名，团队肯定会继续壮大。这就像一个社交团队，员工之间有团队合作，而若然没有这种群策群力的精神，我们的业务不可能成功和持续到今天。这就是我想跟大家分享的故事。Allan，我乐意回答任何问题。衷心感谢各位！

盛智文：谢谢 Toni。Toni 是一个完美的实例，代表着所有在香港建立基地的公司和个人，他们最初都是小企业家，不仅在香港发展，就像 Hans Michael、他的公司、Toni、我自己和许多其他人，我们都能够利用中国内地和香港作为一个整体而扩展业务。而这展示《基本法》和《国安法》真正协助了香港，建设香港成为西方与东方、东方与西方之间强大的超级联系人，而这一切都植根于我们的《基本法》制度。好的，我们没有忘记 Hans Michael，就让我再向他请教。Michael，你在中国内地和香港已从商多年，对有意在国内做生意的香港人甚至外国人，你会给予什么建议？他们会遇到哪些困难？他们如何才能像你一样排除万难并取得成功？

捷成汉：我会说贯彻始终是至关重要的。当然，我们在其他地方需要的东西，在这里一样需要。这包括尽职、保持清醒的头脑、还有经营方针等。但贯彻始终真的很重要，同样重要的是与各个层面的人士建立诚挚的关系。在中国，业务是公司与公司之间进行的，但个人也很重要，而记忆是长久的，对已经发生的好事的记忆也是长久的，我一次又一次地体会到。因此，我认为要付出时间，真正运用头脑，意识到中国不同——它不只是母亲大地，不，它是一种文化，有一些非常不同的价值体系，也有许多高度敏锐之处。因此，我认为我们要经常提问，说话之前要先聆听。我们需要朋友，而这是交朋友的好地方。我的个人经验告诉我，如果我们有一些令我们感兴趣而远超金钱符号的东西，这总是美好的，不是吗？我的意思是，当然我们是在做生意，生意就是生意，但它同时也是我们生活中的承诺。而且我们确实看见，为何我们的公司能够吸引优秀的人士加入？我想是因为企业社会责任的部分，走进社区并成为社区的一部分，而不仅只作为商业。我认为这方面很重要，它令我们的生活变得丰盛。因此，要贯彻始终，要坦白，要真诚，也要全情投入。

盛智文：好的。这很有意思。马先生，我们想请教：你会如何鼓励商界拥抱宝贵的机会，并充分发挥国家战略和融入内地所带来的益处？我们如何能利用国家战略，加强与内地融合？

马绍祥：这是非常好的问题。我认为商界普遍希望善用香港与内地的联系。我认为香港是非常独特的。香港也许不是亚洲唯一廉洁和高效的普通法制度城市，但香港是非常独特的。香港背后有多达 14 亿人口的内地市场，即使只在

大湾区，我们也有9,000万人口。因此，两地的联系非常紧密，而过去数年，两地政府一直致力加强彼此的联系。

现在香港有高铁，让我们轻易连接内地城市，前往广州不需一小时，前往毗邻的深圳也不需半小时。因此，这种非常高的连接度，为我们提供了种种便利。此外，在香港，我们在双方之间有非常好的连接，我们有这些额外能力，特别能惠及专业服务界别。他们“已打开一道大门”，我们现正等待那些界别打开小门，在那些领域建立业务。因此，就像中小型企业一样，我认为这是庞大的商机，因为我们享有这些机会和建设，而在疫情过后，我认为我们要重启一系列的活动和重新建立香港的角色，让国际社会了解香港在旅游、贸易、金融等领域的优势。这一切对香港都非常重要，也是内地与香港之间的桥梁。所以我认为这是一个非常好的地方。

盛智文：马先生，你的答案很好。随着香港政府锐意在疫情过后重塑香港的品牌，我希望这最终会让香港回到原来的位置和角色。李博士，我们都知道你是一位备受尊敬的学者，你对《基本法》也十分熟悉。根据你教育年青一代的经验，请问我们如何能协助海外投资者以更有活力、更务实的方式了解《基本法》？

李浩然：这是个好问题，事实上我们在这方面已工作了十多年。我认为，单单跟他们解说，并非理想的方法。我们不能只逐一读出《基本法》的条文，这做法太沉闷，而且不是每一位年轻人都会对《基本法》进行研究或学术研究。我认为最好的方法是提供机会，让他们进入内地体验不同事情。我想在此分享一个例子。我有一个名为“冲出梦想”的项目，我们所做的是尝试给年青人提供机会，让参与者学习

如何自制咖啡，随后在我们的咖啡馆“太平洋咖啡”接受实习培训。然后，我们和他们一起进行商业策划。我们若然遇到优良的商业计划和团队，便会对他们进行投资。现时已有两家店舖在深圳开业，这对他们来说是宝贵的经验。我认为这是让他们体验一切的最好方式，不仅认识大湾区，也有助加深他们对“一国两制”和《基本法》的了解。不只是谈话或向他们演讲，让他们亲身体验是最佳方法。

盛智文：我想这是理所当然的，经验永远是最好的，因为阅读《基本法》可能相当枯燥乏味。

李浩然：对我来说并不沉闷。

盛智文：对普通人来说并不如此，而我的职业生涯不断告诉我，经验总是最好的。现在让我提出最后一条问题，这是简短的问题，因为我们的时间不多了。关于大湾区，较早前另一位讲者陈先生提到一件非常有趣的事情：让香港与大湾区顺利协作。这肯定是“一国两制”，但两种制度始终有别。我们如何融合边境、金融、银行和一切，以实现这个伟大的项目？我们知道它必会成功。

李浩然：让我这样说：试想想为何设立大湾区。如果只是各个城市之间，这便是合作，那我们就没有必要设立大湾区。但是大湾区很独特，在世界上也独一无二，因为我们有“一国两制”和粤港澳三地。如何把最好的制度融入成为大湾区的整个体系，是大湾区成功的关键所在。举例说，当我们谈论横跨粤港澳三地的建造工程时，三地的标准、原则和制度各异，那么应采纳哪一个制度作为建造标准？我们选择一个最好的制度作为标准，这就是融合。因此，为何我们可以说大湾区将拥有全球最好的制度？这是因为在比较香港、澳门和内地的制度，当然还有广东省的制度之后，会选择最

好的制度作为大湾区的制度，这就是融合。当然，我们也知道，在法律领域内，我们有前海的律师，这是展现如何为整个地区和区域选择最佳标准和制度的另一例子。

盛智文：谢谢。Toni，你在国内有一个积极的业务拓展计划，特别是在大湾区。你们在这些地区面对哪些挑战和看到哪些机遇？你们在国内和大湾区开设新店时，面临着哪些挑战？

Toni Younes：在整体上，我认为国内大湾区、成都和部分其他地区是非常开放的。我想也许我们一开始就犯了某些错误。如果在某个地区开业，最好聘请当地人协助运作业务，因为他们熟悉当地环境。我们学懂的第一件事，是国内市场是很“地道”的市场。第二件学懂的事，是必须花时间在内地。在内地开店并非开完就算，而是更长期的事。我们也学懂：这是使用同一种语言的国家，是一个单一市场。我认为正如李博士刚才所说，大湾区涵盖四个最大的枢纽，总人口约为8,000万。所以它几乎是香港的十倍，对我们来说是庞大的市场，我可能容后再说。以我的业务为例，我们建基于香港，在这里有很大的中央厨房，我们是否愿意把食品运到澳门和深圳，抑或我们要在深圳另建设施？这取决于往后的架构是怎样、香港与大湾区其他地区之间的运输安排是怎样。如果它非常流畅，我们便可更迅速地扩展，这当然会是好事。我认为很多香港团队可以到大湾区工作，大湾区的主要团队也可前来香港，若非如此，便可能需要一些时间，但我认为在这两方面我们都愿意尝试。

盛智文：好的。我们还有一点时间，我知道现在已经很晚，所以我会尽量简短。让我再向马先生请教一下。香港正从疫情中恢复过来。你如何看这座城市的前景、经济发展、


机遇和挑战？你认为香港如何能在当前的营商环境下脱颖而出？

马绍祥：展望未来，我们当然对香港人充满信心。香港已具备所有人才。我们也看到，多年来香港人口改变不大，即使在受到新冠疫情困扰的过去两年，香港人口也大致保持不变，人们对香港仍满有信心。因此，展望未来，最重要的是我们要对自己有信心、要携手努力。正如我们提过，也正如你刚才提及，我们要重新启动自己，特别是发挥香港的角色。香港是一个非常独特的城市，兼容了东西方文化，也是东方与西方之间的桥梁。因此，我们除了强调商业业务外，还应强调这个角色。我们要有自己的文化，也要携手致力重返国际社会，告诉全世界：香港正从疫情中恢复过来。

盛智文：好。很高兴听到这个消息。现在已是黄昏六时，我知道各位已在这里久留。既然我是主持人，就让我代表各位作最后发言吧。我只想说，过去 25 年十分重要，而今年是《基本法》和“一国两制”实施 25 周年。回想在 1980 年代，邓小平先生提出一个构思，而人们非常担心，我记得当时也目睹人们对香港回归祖国这件事非常担忧。当时邓小平先生首先说的是：不用担心，我有一个想法，“一个国家，两种制度”，这会令我们顺利过渡。这是创新的实验，全世界都没有先例。过去 25 年，一直在这里的所有朋友都在这个实验中生活，也经历过不少高低起伏：1997 年的香港人离港潮、亚洲金融危机、“2014 年占领中环”事件，紧接着当然还有影响全球的新冠病毒疫情。因此，我们既经历过顺境，也经历过逆境。

我们都领会到，《基本法》和 2020 年的《香港国安法》确实有助香港稳定、令香港百业兴旺、令香港保持繁荣。而

国家当然也理解和明白我们过去的问题，并致力修补缺陷。2019年汇聚了各种问题，而国家透过选择爱国者加入立法会和选举委员会，解决了该些问题。志同道合的立法者令法案得以通过，以往任何事都拉布，让香港人困苦，因为立法会是推动香港的引擎，但法案却因拉布而无法获得通过，立法会内部严重分裂，令理应在数天内已可通过的法案要费时三个月、四个月、有时甚至五个月才能通过。

简言之，香港在过去这25年稳步发展，现已成为一座安全的优质城市，而我们将能克服所有难题。我可以告诉各位，未来25年，香港只会继续进步。随着国家不断发展，香港只会越变越强。这是我个人的看法。我刚刚知道还有几分钟的时间，就让我在此结束这场论坛。今天是极有意义的一天，我刚才亦作出了正面的结语，让每个人都对香港充满信心。各位可以邀请所有对香港有怀疑的海外朋友来港看看，这座城市现正处于历来最好的状况，并且只会越来越强大。非常感谢各位拨冗出席，也衷心感谢一众嘉宾讲者。

本刊物由律政司出版，主要为提供一般参考。律政司尽力确保内容包括翻译之准确性，惟本刊物的内容并非用作提供法律专业意见或决定采取任何行动的根据，故律政司对任何因过失或遗漏而导致的后果，概不负责。



中華人民共和國憲法

中華人民共和國
香港特別行政區基本法

2021年5月版本



THE CONSTITUTION
OF THE PEOPLE'S REPUBLIC OF CHINA

THE BASIC LAW
OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
OF THE PEOPLE'S REPUBLIC OF CHINA

May 2020 edition

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OF THE PEOPLE'S REPUBLIC OF CHINA
THE CONSTITUTION





**The Proceedings of HKSAR 25th Anniversary Legal
Conference on Basic Law**

Stability to Prosperity

27 May 2022

Foreword

The year 2022 marks the 25th anniversary of the establishment of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) and the implementation of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Basic Law). Article 5 of the Basic Law provides that “the socialist system and policies shall not be practiced in the HKSAR, and the previous capitalist system and way of life shall remain unchanged for 50 years”. Over the past twenty five years, with the support of the Motherland, the HKSAR has made good use of “one country, two systems” to develop into a leading international financial and trading center, and the largest offshore RMB center in the world. The HKSAR maintains the use of common law with which the international business community is familiar, connecting the Mainland with the world, and has developed into a hub for international legal and dispute resolution services in the Asia-Pacific. As the best institutional arrangement for ensuring the sustained prosperity and stability of Hong Kong after its return to the Motherland, “one country, two systems” must be adhered to

in the long term¹ and will not be limited to 50 years. In May 2022, the Department of Justice hosted three legal conferences over three consecutive days, which brought together leaders in the legal profession and various sectors from the Mainland, the HKSAR and abroad who care about the constitutional order of the HKSAR and the development of “one country, two systems” to review the past and look ahead, and to get fully prepared for the new stage of advancing to prosperity. In particular, the Legal Conference on the Basic Law held on 27 May was themed “Stability to Prosperity”. By publishing in this book the speeches and discussions at the Conference together with their English translation, we hope to share the valuable insights of the speakers with more people who care about the HKSAR and “one country, two systems”.

“Stability to prosperity” is a natural phenomenon analogy, depicting both general knowledge and common sense. Upon reunification with the Motherland, Hong Kong is an inalienable part of the PRC and a local administrative region enjoying a high degree of autonomy. Hong Kong has re-integrated into the national governance system and, on the basis of the “one country, two systems” principle, established a constitutional order as a special administrative region. “One country” is the root, the root must be deep so that leaves will bloom; at the same time, “one country” is also the foundation, the foundation must be stable so that branches will thrive. This reasoning is plain and obvious. We should consciously respect and protect the

1 Xi Jinping, *Hold High the Great Banner of Socialism with Chinese Characteristics and Strive in Unity to Build a Modern Socialist Country in All Respects — Report to the 20th National Congress of the Communist Party of China*, 16 October 2022.

fundamental system of the Motherland. The more solid the “One Country” principle, the more manifested the strengths of “Two Systems” will be. “Two Systems” can never be separated from “One Country”.

As President Xi Jinping said, “the principle of ‘one country, two systems’ embodies a complete system.”² It is necessary to “fully, accurately and unswervingly uphold the initiatives of ‘one country, two systems’, the people of Hong Kong administering Hong Kong and a high degree of autonomy, and adhere to and improve the system of ‘one country, two systems’.”³

We must steadfastly study, implement and promote the Constitution, the Basic Law, and other national laws which are applied in the HKSAR. As the only common law jurisdiction in the country, we must remain committed to promoting and developing the common law and legal services of the HKSAR and showcasing the strengths of “one country, two systems”. This is the mission, responsibility and honor for each and every one working in the Hong Kong legal sector!

2 President Xi Jinping’s address at a meeting celebrating the 25th anniversary of Hong Kong’s return to the Motherland and the inaugural ceremony of the sixth-term government of the HKSAR on 1 July 2022.

3 Ibid, footnote 1.

Last but not least, I would like to express my gratitude to the City University of Hong Kong Press for their professional editing and translation services, which has enabled the Department of Justice to publish this compilation, bespeaking the past twenty five years of the HKSAR. 林定國

Handwritten signature of Paul T K Lam in black ink, consisting of the Chinese characters '林定國'.

Paul T K Lam, SBS, SC, JP
Secretary for Justice
Hong Kong Special Administrative Region



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The Hon Ms Maggie Chan Man-ki, Deputy to the National People's Congress

Prof Wong Yuk-shan, Then Member of the Basic Law Committee of the HKSAR of the Standing Committee of the National People's Congress

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Mr Eric Ma Siu-cheung, Chief Executive Officer of NWS Holdings Limited

Dr the Hon Simon Lee Ho-ey, Chief Strategy Officer (Greater Bay Area) of China Resources Group

Mr Toni Younes, Founder and Chief Executive Officer of Paul Lafayet



WELCOME REMARKS



**The Hon Mrs Carrie Lam Cheng Yuet-
ngor** GBM GBS JP

Then Chief Executive of the HKSAR of the PRC

Commissioner Liu Guangyuan (Commissioner of the Ministry of Foreign Affairs of the PRC in the HKSAR), Major General Wang Zhaobing (Deputy Political Commissar of the Hong Kong Garrison of the Chinese People's Liberation Army), Director Guan Qinghua (Director of the Office for Safeguarding National Security of the Central People's Government in the People's Republic of China in the HKSAR), The Honorable Chief Justice Andrew Cheung Kui-nung (Chief Justice of the Court of Final Appeal), President Andrew Leung Kwan-yuen (The President of the Legislative Council), distinguished guests, colleagues and friends,

Good morning! Welcome to all of you who participate in person or online in today's Legal Conference on the Basic Law – Stability to Prosperity, organized by the Department of Justice of the HKSAR Government. It is one of our key activities in celebration of the 25th anniversary of Hong Kong's return to our Motherland.

The Basic Law has been in force in the HKSAR for a quarter of a century. Following the “Back to Basics” summit successfully held by the Department of Justice in 2020 on the implementation of the Basic Law, this conference adopts “Stability to Prosperity” as the main theme, which I think cannot be more appropriate. As President Xi Jinping emphasized in his seminal speech when he inspected Hong Kong in July 2017: “ ‘One country’ is the root and only when the root is deep and strong, can the leaves flourish; ‘one country’ is the foundation and only when the foundation is solid, can growth and prosperity be assured.” Hong Kong is an inalienable part of the country, and “one country” is undoubtedly the core backbone and also the major prerequisite for ensuring the continued growth and development of “two systems”.


I joined the government in the 1980s and was involved in the preparation for the establishment of the HKSAR in various capacities. Since 1997, I have also witnessed the growth and development of the HKSAR in many respects. In fact, since its establishment, the HKSAR has on the whole been running smoothly. Despite some turbulent times, with the full support of the Central Authorities and the joint effort of civil servants and the community at large, Hong Kong has strived ahead and braved the wind and billows, giving full play to the unique advantages of “one country, two systems” and maintaining Hong Kong’s long-term prosperity and stability, and has made outstanding achievements.

In the past five years, Hong Kong has experienced the most serious challenges since Hong Kong’s return to China. National security was threatened, Hong Kong’s future was in jeopardy, and the foundation and bottom line of “one country” were seriously undermined. Faced with such a situation, I, as the Chief Executive of the HKSAR, understand more than ever the feeling of “no country, no home”, and believe more firmly that we can only ensure the prosperity and stability of Hong Kong by acting in accordance with the Constitution and the Basic Law and by relying on the Central Authorities and safeguarding national security.

Dear friends, at the webinar for commemorating the 30th anniversary of the promulgation of the Basic Law organized by the HKSAR Government in June 2020, I said that in order to understand the Basic Law, we must go back to the original aspiration in the implementation of “one country, two systems”. Years ago, Mr Deng Xiaoping proposed the idea of “one country, two systems” on the premise of national unity and territorial integrity, and maintaining the prosperity and stability of Hong Kong, taking into account the history

and realities of Hong Kong. The characteristics and advantages of Hong Kong have been preserved to the greatest extent possible and people of Hong Kong are able to maintain their original way of life. This original intention has never changed and has always been the fundamental purpose of the Central Government's various policies towards the HKSAR. The disturbances arising from the opposition to the proposed legislative amendments to the Fugitive Offenders Ordinance two years ago have taught us a grave and painful lesson that any deviation from the original aspiration of "one country, two systems" will only bring disasters.

This conference will discuss how the Central Government has consolidated the constitutional order of the HKSAR and put "one country, two systems" back on track by the two major measures of promulgating and implementing the Hong Kong National Security Law and improving the electoral system of the HKSAR. The first three elections after the improvement of the electoral system have completed successfully, marking an important milestone in the implementation of the principle of "patriots administering Hong Kong" in the HKSAR. In addition, this conference will explore the interpretation and implementation of the Basic Law, and how the common law system and the Basic Law promote the free economy in Hong Kong. We are honored to have a number of distinguished guests from the Mainland, Hong Kong and overseas to share their insights on these topics, which will be of great benefit to all. I would also like to express my heartfelt thanks to all the speakers for their staunch support.

I am confident that through this conference, we will be able to gain a deeper understanding of the Basic Law and "one country, two systems" and implement "Stability to Prosperity". Thank you! 



Mr Wang Ling-gui

Deputy Director of the Hong Kong and
Macao Affairs Office of the State Council

The Honorable Chief Executive Carrie Lam Cheng Yuet-ngor, distinguished guests and friends,

This year marks the 25th anniversary of Hong Kong's return to the Motherland as well as the 25th anniversary of the implementation of the Basic Law of the HKSAR. It is truly meaningful for the Department of Justice to organize the Legal Conference on the Basic Law to explore major issues in the implementation of the Basic Law, the successful enactment of the HKSAR National Security Law and the improvement of the electoral system of the HKSAR. On behalf of the Hong Kong and Macao Affairs Office of the State Council and Vice Chairman Xia Baolong, let me express my hearty congratulations on the organization of this conference!

In the early 1980s, Mr Deng Xiaoping creatively put forward the scientific notion of “one country, two systems” and for the first time applied it to the return of Hong Kong and Macao to our Motherland. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, enacted in accordance with the Constitution, provides for the systems and policies to be implemented in the HKSAR and stipulates by law the various policies of the Central Government towards Hong Kong, thereby providing legal safeguards for the implementation of “one country, two systems” in the HKSAR and laying the foundation for the prosperity and stability of Hong Kong.

Since its return to our Motherland, Hong Kong has been re-incorporated into the national governance system. The Central Government has been exercising jurisdiction over Hong Kong in accordance with the Constitution and the Basic Law, and the corresponding systems of the HKSAR have been established. Over the past 25 years, the Central Government has firmly upheld the



“one country, two systems” principle, acted in strict accordance with the Constitution and the Basic Law, and supported the HKSAR Government in administering the territory in accordance with the law. As a result, Hong Kong has enjoyed stable economic growth, continuous improvement in residents’ livelihood and continuous advancement in all aspects of life including culture, sports and social security. The ties and interaction between Hong Kong and the Mainland have increasingly strengthened and the successful implementation of “one country, two systems” is universally recognized. Actual implementation has solidly proved that “one country, two systems” is the best solution to the issues of Hong Kong and Macao that history left behind. It is also the best institutional arrangement for Hong Kong and Macao to maintain long-term prosperity and stability after reunification. It is feasible, achievable and acclaimed. Adhering to the principle and further promoting the implementation of “one country, two systems” are in line with the interests of Hong Kong and Macao residents, fundamental national interests and the common aspirations of people across the nation.

While the implementation of “one country, two systems” has been a huge success, it has also encountered some new situations. In June 2019, disturbances arising from the opposition to the proposed legislative amendments to the Fugitive Offenders Ordinance broke out in Hong Kong, posing unprecedented challenges to the implementation of “one country, two systems” in Hong Kong. In the face of this critical situation, the Central Government has abided by the original aspiration of “one country, two systems”; firmly and accurately implemented the principle of “one country, two systems”; adhered to and improved the system and institutions of “one country, two systems”; strengthened the system whereby the Central Government exercises complete jurisdiction over the HKSAR in accordance with the Constitution and the Basic Law; improved the system and mechanism through which the Constitution and the Basic Law have been implemented in the HKSAR; and safeguarded the sovereignty, security and development interests of China.


The enactment and promulgation of the HKSAR National Security Law and the establishment and improvement of the enforcement mechanism for safeguarding national security have fortified the legal system and institutions of the HKSAR for safeguarding national security. The electoral system of the HKSAR has been improved, the loopholes and defects in the electoral system have been fixed, and the principle of “patriots administering Hong Kong” has been fully implemented. These have laid a solid foundation for the healthy development of democracy in Hong Kong. At the same time, at the constitutional level, the systems under which public officials of the HKSAR stand for election, take office and take oaths when assuming office, etc. have been further clarified, and support has been given to the HKSAR in improving the system of taking oaths of allegiance by public officials. These significant measures

and institutional arrangements represent the dynamic implementation and latest developments in the new era of adhering to and improving “one country, two systems”, and they have important and far-reaching effect in ensuring the steadfast and successful implementation of “one country, two systems” along the right track and in ensuring the long-term prosperity, stability and peace of Hong Kong. The practice of “one country, two systems” has now entered a new phase, and the HKSAR Government and people from all walks of life in the HKSAR are in a better position to focus on strengthening the economy, seeking development, addressing housing problems and other prominent social issues, promoting Hong Kong’s integration into the construction of the Guangdong-Hong Kong-Macao Greater Bay Area and the overall development of the country, enhancing Hong Kong’s international competitiveness, and pursuing good administration and governance.

Distinguished guests and friends, “one country, two systems” is an important chapter in the century-long march of the Communist Party of China. The Sixth Plenary Session of the 19th Central Committee of the Communist Party of China adopted the “Resolution on the Major Achievements and Historical Experience of the Party over the Past Century”. The inclusion of “one country, two systems” as an integral part of the Resolution not only affirms the historic achievements of the practice of “one country, two systems”, but also demonstrates the confidence and determination of the Central Government in continuing to implement it as originally intended; precisely and resolutely.

With the in-depth implementation of the HKSAR National Security Law, completion of the improvement to the electoral system, the successful holding of three important elections and the implementation of the principle of “patriots administering Hong

Kong”, Hong Kong has taken on a new and refreshing complexion. The next five years will be a critical period for Hong Kong in moving from chaos to order and then advancing from stability to prosperity. The Central People’s Government will, as always, firmly support the Chief Executive and the new-term HKSAR Government in administering the HKSAR in accordance with the law. The advancement from stability to prosperity is a more challenging process involving much hard work. The setting up of a value system with benevolence as the core value is not for the pleasure of only one person, and long-term peace comes only after sacrifices have been made by capable persons. We trust that the HKSAR Government will be able to unite and lead all sectors of the Hong Kong community in striving ahead, continuing to live out the “Lion Rock” spirit, working hand in hand and riding on the momentum together to achieve a new phase of political security, economic prosperity and social stability in Hong Kong! We believe that with the concerted efforts of all Chinese people including more than 7.4 million Hong Kong compatriots, the bright future of the great rejuvenation of the Chinese nation will be unparalleled!

Finally, may I again wish this conference a fruitful and complete success. Thank you! 



Mr Chen Dong

Deputy Director of the Liaison Office of the
Central People's Government in the HKSAR

The Honorable Chief Executive Carrie Lam Cheng Yuet-ngor, distinguished guests, ladies and gentlemen, and friends, good morning to you all!

I am very pleased to join via video the Legal Conference on the 25th anniversary of the implementation of the Basic Law. The conference gives us an opportunity to review history, sum up experiences and look ahead together. Entrusted by Director Luo Huining, and on behalf of the Liaison Office of the Central People's Government in the HKSAR, I would like to express my warm congratulations on the holding of the conference!

Two years ago, the Department of Justice organized a legal conference based on the theme of "Back to Basics". Today, we are going to have more in-depth discussions based on the theme of "Stability to Prosperity". The conference is very meaningful in that it captures the essence of the implementation of the Basic Law and accurately grasps the interrelationship between "one country" and "two systems".

In his speech at the ceremony in celebration of the 20th anniversary of Hong Kong's return to the Motherland, Xi Jinping, General Secretary of the Communist Party of China, pointed out that "one country" is the root, and only when the root is deep can the leaves flourish. "One country" is the foundation; only when the foundation is strong can the branches prosper. In order to fully and accurately implement the Basic Law, we must firmly abide by the "one country" principle. The Constitution and the Basic Law jointly form the constitutional basis of the HKSAR. The Constitution is the cardinal law of the country. The Basic Law was enacted in accordance with it. The preamble to the Basic Law states upfront that Hong Kong has been part of the territory of China since ancient times. Articles 1

and 12, the fundamental provisions of the Basic Law, provide in no uncertain terms that the HKSAR is an inalienable part of and a local administrative region of the People's Republic of China, which is to enjoy a high degree of autonomy and come directly under the Central People's Government. Over the past 25 years following reunification, the implementation of the Basic Law has safeguarded the interests of national sovereignty, security and development, and has also preserved the Central Government's complete jurisdiction over Hong Kong. The Central Government has administered the foreign affairs relating to the HKSAR and national defense in accordance with the law; exercised the power to interpret the Basic Law and decided on major issues in accordance with the law; appointed six consecutive terms of Chief Executive; exercised the power to record the laws enacted by the HKSAR, its budgets and accounts, and the appointment and removal of judges; decided on the systems to be implemented in the HKSAR in accordance with the law; and supported the HKSAR Government in administering the territory in accordance with the law. Faced with a period of rampant "anti-China, destabilizing forces" activities which seriously challenged the bottom line of "one country", the Central Government sized up the critical situation and acted decisively in response by enacting and implementing the HKSAR National Security Law in accordance with the Constitution and the Basic Law, improving Hong Kong's electoral system, clarifying the legal requirements and conditions for public officials to stand for elections, take office and take the oath upon assumption of office, and implementing the principle of "patriots administering Hong Kong". Through a series of measures which addressed both the problem and its causes, the situation in Hong Kong made a significant turn from chaos to order, firmly guarding the bottom line of "one country" and ensuring that "one country, two systems" is being implemented in the right direction.

To implement the Basic Law fully and accurately, the advantages of “two systems” must be given full play. General Secretary Xi Jinping has pointed out that on the basis of “one country”, the relationship between “two systems” should and certainly can be harmonious and mutually reinforcing. Article 2 of the Basic Law stipulates that the National People’s Congress authorizes the HKSAR to exercise a high degree of autonomy in accordance with the Basic Law. Under Chapter III of the Basic Law, Articles 24 to 41 are provisions which safeguard rights and freedoms, and only Article 42 provides for the obligation to abide by the law. By virtue of the Basic Law, Hong Kong residents enjoy rights and freedoms of unprecedented breadth. Chapter V of the Basic Law expressly provides that Hong Kong shall maintain its status as an international financial center and formulate its own monetary and financial policies; maintain its status as a free port, implement a free trade policy and be a separate customs territory; maintain its status as an international and regional aviation center, and so on. All these have given Hong Kong much room for development, with the Motherland at its back and the world at its doorstep. Over the past 25 years, the economy of Hong Kong has developed steadily and various social undertakings have reached new heights. The local GDP has more than doubled from HK\$1.37 trillion in 1997 to HK\$2.86 trillion in 2021, and the local per capita income ranks among the highest in the world. Hong Kong is one of the most competitive economies in the world. According to the Global Financial Centers Index, Hong Kong ranks third in the world; according to the World Trade Organization, Hong Kong is the sixth largest trading entity in the world. Hong Kong ranks top among the 139 countries and regions in terms of overall rule of law standards and keeps being ranked as one of the most corruption-free places in the world. The implementation of “one country, two systems” in

Hong Kong has undoubtedly been successful and its achievements are evident to all. Looking ahead, the “Belt and Road” initiative, the construction of the Guangdong-Hong Kong-Macao Greater Bay Area, the outline of the 14th Five-Year Plan and the Long-Range Objectives Through the Year 2035 will provide Hong Kong with significant opportunities for development. We believe that as long as Hong Kong adheres to the “one country” basis, makes good use of the advantages of “two systems” and better integrates itself into the overall development of the country, the territory will be able to effectively cope with various risks and challenges and will weave a new chapter in the practice of “one country, two systems”.

General Secretary Xi Jinping has emphasized that the Central Government, in implementing the principle of “one country, two systems”, will maintain two key points: first, the Central Government will remain resolute in implementing the principle, and will not change or vacillate in this stand; and second, the principle will be implemented as what it is originally intended precisely. The actual practice over the 25 years since the reunification has amply proved that the Basic Law is a good law which aligns with the national interests and the reality of Hong Kong and provides institutional protection for “one country, two systems”. As the saying goes: “If the law changes with the times, good order will ensue; if good order fits in with the world, achievements will result.” We have to remain confident in our system, improve the system and mechanism for implementing the Constitution and the Basic Law in the HKSAR, firmly uphold the constitutional order established by the Constitution and the Basic Law, and continue to strengthen education on the Constitution and the Basic Law, in order to promote the steadfast and successful implementation of “one country, two systems”.

I wish this conference a great success! Thank you!

KEYNOTE SPEECH

**“One Country, Two Systems” Policy:
Development and Way Forward**



Mr Shen Chun-yao

Chairperson of the Basic Law Committee of the HKSAR of
the Standing Committee of the National People's Congress

The Honorable Chief Executive Carrie Lam Cheng Yuet-ngor, Secretary for Justice Teresa Cheng Yeuk-wah, distinguished guests and friends,

Good morning! I am honored to be invited by the organizers to make a speech at the Legal Conference in celebration of the 25th anniversary of the establishment of the HKSAR. The year of 2022 is a milestone along the road of the development of “one country, two systems”.

First of all, the year marks the 25th anniversary of the return of Hong Kong to the Motherland and the establishment of the HKSAR. It is also the 25th year of the actual implementation of the national initiative and policy of “one country, two systems” as well as the official implementation of the Basic Law of the HKSAR. Secondly, 2022 also marks the 40th anniversary of the first public statement made by Comrade Deng Xiaoping of the great vision of “one country, two systems” and the 40th anniversary of the promulgation of the country’s current Constitution and the creation of the Special Administrative Region system under the Constitution. The organizers have chosen to hold a legal conference at this point of time so that we can all get together and understand the spirit and essence of the “one country, two systems” policy and appreciate the great significance of the implementation of “one country, two systems”. This is positively significant to the promotion of education on the Constitution and the Basic Law as well as national education in the community, and to the strengthening of national consciousness and patriotism among our compatriots in Hong Kong. It is also conducive to the better promotion of the practice of “one country, two systems” in the new era and in the right direction.

The year 2021 marks the centenary of the founding of the Communist Party of China (CPC). “One country, two systems” is a major chapter in the glorious history of the CPC’s century-long march. The Resolution of the Central Committee of the CPC on the Major Achievements and Historical Experience of the Party over the Past Century, adopted at the Sixth Plenary Session of the 19th Central Committee of the CPC, fully affirms the historic achievements of the “one country, two systems” policy and its implementation and reaches the important conclusion that the practice of “one country, two systems” has been a resounding success. At the same time, the Resolution underscores “the need to fully, firmly, and accurately implement the “one country, two systems” policy and to uphold and improve the systems of the policy”. The full, firm and accurate implementation of “one country, two systems” and the upholding and improvement of the regime provide the fundamental guideline to be complied with and acted upon, in order to ensure long-term peace, stability and prosperity of Hong Kong in the new era and to promote the steadfast and successful implementation of “one country, two systems” in Hong Kong.

We must correctly grasp the “dialectical relationship” between “fully and accurately” and “firmly”, and the “dialectical relationship” between “uphold” and “improve”; and in all processes and aspects of the administration of the HKSAR thoroughly implement the profound meaning and practical requirements embodied in the above concepts and relationship.

The first “dialectical relationship” is that “one country, two systems” policy needs to be implemented both “fully and accurately” and “firmly”. The Hong Kong community and various sectors in the Mainland and overseas have all along been very

concerned about the direction of the implementation of “one country, two systems”, with doubts expressed from time to time about whether and what changes will be made to “one country, two systems” in the future. Ever since the 18th National Congress of the CPC, President Xi Jinping has repeatedly emphasized that the Central Government, in implementing the principle of “one country, two systems”, will maintain two key points: first, the Central Government will remain resolute in implementing the principle, and will not change or vacillate in this stand; and second, the principle will be implemented as what it is originally intended precisely, and will always proceed in the right direction. A proper understanding and grasp of the intrinsic dialectical relationship between “firmly” and “fully and accurately” is indispensable to the advancement of the cause of “one country, two systems” in the new era.

First, “one country, two systems” is not only the best solution to the issues of Hong Kong that history left behind, but also the best institutional arrangement to maintain the long-term prosperity and stability of Hong Kong after the reunification.

The successful implementation of “one country, two systems” over the past 25 years has amply demonstrated that this great idea and its institutional initiatives are completely feasible, achievable and well-respected. It is in the interests of Hong Kong residents, the fundamental interests of the country and the common aspirations of the people in the whole country that the “one country, two systems” policy be firmly implemented and that the cause of “one country, two systems” be taken forward in depth. We should strengthen our confidence in the institution of “one country, two systems” and raise our awareness of the implementation of “one country, two systems”. As long as it is something demonstrated to be successful and beneficial, we should be determined to continue to implement it, pass

it on and carry it forward. No matter what difficulties and challenges we may encounter, our confidence and determination in the “one country, two systems” policy will never falter, and our confidence and determination in advancing the cause of “one country, two systems” will never waver.

Second, to firmly implement the “one country, two systems” policy and to ensure its steadfast and successful implementation, such implementation must be “full and accurate”. The understanding and grasp of the “one country, two systems” policy should be comprehensive and not superficial, accurate and not faulty. Any deviation that may occur in the understanding and practice should be corrected promptly. President Xi Jinping has pointed out that for Hong Kong, the concern should not be whether the “one country, two systems” policy will change, but should be how to fully and accurately implement it. In implementing “one country, two systems”, we must accurately grasp the relationship between “one country” and “two systems”; correctly handle the relationship between the Central Government and the HKSAR, safeguard the constitutional order of the HKSAR as established by the Constitution and the Basic Law, safeguard the sovereignty, security and development interests of the country, and maintain the long-term prosperity and stability of Hong Kong. We must adhere to the “one country” principle while respecting the differences between the “two systems”; uphold the Central Government’s overall jurisdiction over the HKSAR while safeguarding the HKSAR’s high degree of autonomy; and give full play to the strong back-up role of the Motherland while enhancing the HKSAR’s own competitiveness. At no time shall either system be neglected, and at no time shall the two systems be separated from or set against each other. We must never allow any activities that endanger the sovereignty and security of the country, challenge the

authority of the Central Government and the Basic Law, or infiltrate and sabotage the Mainland by making use of Hong Kong. Only when the “one country, two systems” policy is implemented fully, accurately and firmly will the cause of “one country, two systems” be able to advance stably, travel well and go far.

“One country, two systems” has been implemented in Hong Kong for 25 years. On the 25th anniversary of the establishment of the HKSAR, when people look back at history, they will naturally think about today and the future, as well as wonder what will happen in the next 25 years. Years ago, Comrade Deng Xiaoping had on many occasions expressed complete confidence in the future of “one country, two systems”. He said: “To achieve our development goals, we must be more open. In that case, why would we change our policy towards Hong Kong? In fact, 50 years is just a figure of speech, and there will be no change after 50 years. For the first 50 years it cannot be changed, and after that, it would not be necessary to change.” As long as we firmly believe in and faithfully implement “one country, two systems”, its vitality and superiority will continue to be fully manifested, and “one country, two systems” will be enduringly vital and uniquely superior. Practice is the sole criterion to test the truth. The experience and effects of practice hold the key to the future of “one country, two systems”. If actual practice shows that “one country, two systems” is successful, effective and acclaimed, its cause will definitely be steadfast and successful.

The second “dialectical relationship” is that the “one country, two systems” regime, being implemented, should be consistently “upheld” and “improved” with the times. “One country, two systems” is an important system for the peaceful reunification of the Motherland under the leadership of the CPC and also a great

pioneering undertaking of socialism with Chinese characteristics. After more than two decades of practice, we have formed a complete set of systems and institutions for “one country, two systems” from the national level to the special administrative region level. Both the Fourth Plenary Session and Sixth Plenary Session of the 19th Central Committee of the CPC spelt out express requirements for upholding and improving the “one country, two systems” regime. Upholding and improving the regime has laid down important principles for the establishment and development of the special administrative region framework in the new era. We must properly understand and grasp the inherent dialectical relationship between “uphold” and “improve”.

First, consistently “upholding” the regime is an inevitable requirement for further advancing the cause of “one country, two systems”. As a major policy of the CPC and the country, “one country, two systems” must be manifested and implemented through specific institutional systems, institutional arrangements and institutional rules. This is achieved mainly through the Constitution, the Basic Law and a series of laws and regulations. The Constitution is the cardinal law of China, the manifestation of the common aspiration of the people of all ethnicities across the country, and the legal source of the Special Administrative Region system. The Basic Law is a fundamental law enacted pursuant to the Constitution and provides for the system and policies to be implemented in the Special Administrative Region. It is the legalization and institutionalization of the policy of “one country, two systems” and provides legal and institutional protection and support for its implementation in the Special Administrative Region. The formation and implementation of “one country, two systems” rest upon the constitutional basis of the Constitution and the Basic Law. The basic strategy of 14 commitments established at the 19th National Congress of the CPC and the 13 areas of achievement outlined in

the Fourth Plenary Session of the 19th CPC Central Committee, have both included adherence to “one country, two systems”, and we must adhere to it in the long run. To fully, accurately and firmly implement the policy, it is necessary to have a reliable and effective institutional system as safeguard and support. It is important to adhere to the administration of Hong Kong in accordance with the law and to consciously safeguard the constitutional basis of the HKSAR which is established jointly by the Constitution and the Basic Law of Hong Kong. By consciously safeguarding the constitutional order and legal order of the HKSAR established by the Constitution and the Basic Law of Hong Kong, the implementation of “one country, two systems” will steadfastly and successfully proceed on the track of the legal system.

Second, improving the institutional system of “one country, two systems” in keeping with the times is an inevitable requirement to ensure its steadfast and successful implementation. Situations are always developing and the times keep advancing, and “one country, two systems” is not static either. As President Xi Jinping has pointed out, the regime must be constantly improved in practice. Failure to uphold “one country, two systems” would miss the right direction. Without improvement, “one country, two systems” will lose its vitality. The two are complementary and indispensable. Upholding does not mean rigidity, immutability or “once and for all”. Any institutional system and legal framework which is simply upheld mechanically, without improvement in keeping with the times, will hardly achieve its enduring efficacy and, however well-intentioned, can hardly persist for a long time. Being an unprecedented pioneering cause, “one country, two systems” has to be explored and advanced by means of actual implementation; and in the process, new situations, new problems or even risks and challenges, both predictable and

otherwise, will inevitably arise. Whether on the national level or on the Special Administrative Region level, it is necessary to make active responses in respect of institutional establishment and development, keep pace with the times, adapt to new situations, resolve new conflicts, solve new problems, and achieve new development.

Distinguished guests and friends, ever since Hong Kong's reunification with the Motherland, the CPC and the country have firmly implemented the principles of "one country, two systems", "Hong Kong people administering Hong Kong" and high degree of autonomy, adhered to the administration of Hong Kong in accordance with the law, applied the rule of law mindset and approach in handling Hong Kong affairs, and acted in strict compliance with the Constitution and the Basic Law. Over the past 25 years, in response to situations and problems newly arisen in the implementation of "one country, two systems" in Hong Kong, the National People's Congress (NPC) and its Standing Committee (NPCSC) have, in accordance with the Constitution, the Hong Kong Basic Law and relevant laws, adopted a myriad of approaches including enacting laws, amending laws, interpreting laws, making decisions and listing relevant national laws in Annex III to the Hong Kong Basic Law, with a view to firmly safeguarding the sovereignty, security and development interests of the country and maintaining the long-term prosperity and stability of Hong Kong.

In the recent past, influenced by various internal and external complications, "anti-China, destabilizing forces" activities were rampant and the situation in Hong Kong once became critical. In particular, for a period following turbulence over the proposed amendments to the Fugitive Offenders Ordinance in 2019, "anti-China, destabilizing forces" deliberately disrupted the social order in Hong

Kong, while some foreign and overseas forces willfully interfered with China's internal affairs, meddled with Hong Kong's internal affairs by various means and caused infiltration and disruption. It became necessary to take robust measures to prevent, stop and impose punishments for these acts and activities which seriously challenged the bottom line of the "one country, two systems" principle, significantly undermined the authority of the rule of law, and gravely endangered the sovereignty, security and development interests of the country. Implementing the major policy decisions of the CPC Central Committee, the NPC and the NPCSC introduced a series of major measures and made new institutional arrangements pursuant to the Constitution and the Hong Kong Basic Law.

The first was adopting a "decision + legislating" approach and establishing a sound legal system and enforcement mechanism for safeguarding national security in the HKSAR. Article 23 of the Hong Kong Basic Law expressly stipulates that the HKSAR shall enact laws on its own to prohibit acts and activities that endanger national security. However, due to the blatant obstruction and interference of "anti-China, destabilizing forces" and external hostile forces, the enactment of legislation pursuant to Article 23 was never completed. There existed an obvious loophole in the institutional mechanism of the HKSAR for safeguarding national security, and the national security of the HKSAR was facing imminent and significant risks. In view of this situation, on 28 May 2020, the Third Session of the 13th NPC adopted the "Decision on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security". On 30 June 2020, on the authority of the abovementioned NPC Decision, the NPCSC enacted "The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special

Administrative Region” and resolved to list it in Annex III to the Hong Kong Basic Law. The promulgation and implementation of the “HKSAR National Security Decision” and the “HKSAR National Security Law” in the HKSAR have served to remedy the loopholes and defects in the institutional mechanism for safeguarding national security in the HKSAR and have effectively cracked down on and deterred illegal and criminal activities in the HKSAR that endangered national security, reversed the chaotic situation in Hong Kong at one go and put Hong Kong society back on track.

The implementation of the “HKSAR National Security Decision” and the “HKSAR National Security Law” have signified a major turnaround from chaos to order in Hong Kong and also laid a solid legal foundation for Hong Kong’s future advancement from stability to prosperity.


The second was adopting the “decision + legislating” approach and implementing the principle of “patriots administering Hong Kong” as well as improving the electoral system of the HKSAR. The “anti-China, destabilizing forces” had never been slow in recklessly trying to grab the power to administer Hong Kong by paralysing the operation of the Legislative Council or obstructing the government’s law-based administration through the election platform and the Legislative Council platform of the HKSAR, or by making use of public office such as membership in the Legislative Council. This revealed clear loopholes and deficiencies in the electoral system of the HKSAR, and robust measures had to be taken to improve the electoral system and remove existing institutional deficiencies and risks. In view of this situation, on 11 March 2021 the Fourth Session of the 13th NPC adopted the “Decision of the National People’s Congress on Improving the Electoral System of the Hong Kong

Special Administrative Region”; and on 30 March, on the authority of the above-mentioned NPC Decision, the NPCSC amended Annex I to the Hong Kong Basic Law (“Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region”) and Annex II to the Hong Kong Basic Law (“Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and its Voting Procedures”). By fully implementing the principle of “patriots administering Hong Kong”, a democratic electoral system has been formed that fits in with Hong Kong’s legal status and actual situation, and this serves to safeguard the security of the administration of the HKSAR and ensure that the jurisdiction over Hong Kong is held firmly in the hands of those who love the Motherland and love Hong Kong.

In addition, the NPCSC has made relevant decisions on the approval of the “Co-location Arrangement” at a port in the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, the continuing discharge of duties by the Sixth Term Legislative Council of the HKSAR, and the qualification of the members of the Legislative Council of the HKSAR.

The relevant decisions and legislative enactments and amendments by the NPC and the NPCSC in recent years are major measures which exemplify the full, accurate and firm implementation of the “one country, two systems” policy. They are institutional arrangements of constitutional significance made pursuant to the Constitution and the Basic Law, and also are lively illustrations of and latest developments in upholding and improvement of the “one country, two systems” regime. These innovative measures have great institutional significance and have effectively preserved the sovereignty, security and development interests of the country and

safeguarded the long-term security, prosperity and stability of Hong Kong, and will certainly have a significant and far-reaching impact on the practice of “one country, two systems” in Hong Kong.

Distinguished guests and friends, the 20th National Congress of the CPC will be held in Beijing in the second half of 2022. This very important meeting, to be held at an important time when the CPC will enter the phase of building China into a modern socialist country in all respects and embark on a new journey to advance toward the Second Centenary Goal, is a major event in the political life of the CPC and the country and will also create new opportunities for the development of Hong Kong. Here, I sincerely hope and deeply believe that, under the great banner of loving the Motherland and loving Hong Kong, people from all walks of life in the HKSAR will achieve the widest possible solidarity, grasp new opportunities, ride on the momentum, join hands in promoting the steadfast and successful implementation of “one country, two systems” in Hong Kong in the right direction, and make their own unique contribution to realizing the great rejuvenation of the Chinese nation. Thank you! 

KEYNOTE DIALOGUE

**Staying Abreast of Times –
25 years' Implementation of the Basic Law**

KEYNOTE SESSION



The Hon Ms Teresa Cheng Yeuk-wah

GBM GBS SC JP

Then Secretary for Justice

Distinguished guests and friends,

Good morning! The establishment of the HKSAR on 1 July 1997 and the commencement of operation of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China marked the peaceful liberation of Hong Kong from British colonial rule and the return of Hong Kong to the governance system of the Motherland as a special administrative region of the PRC. Through the Basic Law, the PRC confirmed her policy initiatives on Hong Kong, namely "One China (Country), Two Systems", "Hong Kong people administering Hong Kong" and a high degree of autonomy. This is a remarkable thing which demonstrates the civilization and wisdom of mankind. In light of the fact that there had long been some misunderstanding in the Hong Kong community of the constitutional order of Hong Kong, in the wake of the turbulence over the proposed amendments to the Fugitive Offenders Ordinance in 2019, my colleagues in the Department of Justice and I discussed and prepared for publication of a book intended to trace the crucial history of Hong Kong's reunification with the Motherland and, by sorting out the drafting process of the Basic Law and evolution of its provisions, to present the background and purpose of this constitutional law and the meaning of its contents as expressed by the drafters. We also compiled some Hong Kong court cases related to the Basic Law since Hong Kong's return to China. We hope this book assists the community in more accurately and fully understanding the Constitution, the Basic Law and the constitutional order of the HKSAR as established by them. At the same time, we hope the book serves as fundamental reading for study of the Basic Law and encourage Hong Kong people to study and examine the Constitution and the Basic Law more closely.

After more than two years of work, I am pleased to announce here the official publication of the traditional Chinese version of the two-volume set entitled *Basic Law: Selected Drafting Materials and Significant Cases*, which will be available for sale at the Government's Publications Sales Unit and on other platforms. The English and simplified Chinese versions will be published later.

Our team has benefitted greatly since we started working on this book in 2020. We have found that many of the current arguments about the Basic Law had in fact been discussed during its drafting process.

Since the reunification, some Hong Kong people, including legal professionals, have wrongly thought that the Constitution does not apply to the HKSAR and that the Constitution, which is not listed in Annex III to the Basic Law, is not part of the laws of the HKSAR. As *Basic Law: Selected Drafting Materials and Significant Cases* points out, this issue had in fact been hotly debated by the members of the Drafting Committee when the drafting of the Basic Law first started, particularly on the question of whether socialism, as mentioned in the Constitution, would have legal effect in a special administrative region which practices capitalism and how it could be applicable. The Special Group of the Drafting Committee on the Relationship between the Central Government and the HKSAR had also conducted studies in this regard. It had been proposed to set out in detail in the Basic Law which provisions of the Constitution were or were not applicable to Hong Kong. It had also been suggested that, as the Basic Law was a sub-law and the Constitution was the mother-law, it would go against legal ethics and legal procedure to stipulate in the Basic Law which provisions in the Constitution were or were not applicable to Hong Kong, and such an approach had no precedent in the constitutional history of the world and would encounter technical difficulties. On 11

November 1986, after extensive discussions and research, the Special Group explained in the working report: “The members think that the Constitution of the People’s Republic of China as a whole is valid in the Hong Kong Special Administrative Region, but as the country implements the policy of “one country, two systems” in Hong Kong, certain specific provisions of the Constitution do not apply to Hong Kong, particularly those stipulations concerning the socialist system and policies.”

Besides, some people in Hong Kong have taken the wrong view that the decisions of the National People’s Congress (NPC) and the Standing Committee of the National People’s Congress (NPCSC) are also not applicable to or not binding on the HKSAR. In fact, if we bear in mind that the very “birth” of the HKSAR was based on the decision of the NPC on 4 April 1990 pursuant to Article 31 of the Constitution, we will understand that decisions made by the NPC and NPCSC in respect of the HKSAR are certainly applicable to and valid in Hong Kong.

As long as we are clear about the source and never forget the original intention of “one country, two systems”, our misunderstanding of the Basic Law will gradually reduce, implementation of “one country, two systems” will become smoother, and the challenges over the past 25 years can hopefully become precious experiences and nutrients supporting the growth of the HKSAR.

The second volume of *Basic Law: Selected Drafting Materials and Significant Cases* contains 199 judicial cases from July 1997 all the way to December 2021, which provide materials for studying the various challenges to “one country, two systems” over the 25 years following reunification.

The case of *Ma Wai Kwan*¹ was a challenge to the principle of the Basic Law continuing the legal and judicial system of Hong Kong. The defendants, who had committed the common law offence of conspiracy to pervert the course of public justice, sought to wriggle out of liability by arguing that, as the common law offence had lapsed and ceased to operate on 1 July 1997 when the PRC resumed exercise of sovereignty over Hong Kong, the trial should not continue. The defendants' sophistry was, of course, unsuccessful. In his judgment, Mr Justice Patrick Chan (then Chief Judge of the High Court, currently a Non-Permanent Judge of the Court of Final Appeal [CFA]) pointed out that in interpreting the Basic Law, it is necessary to appreciate that the Basic Law is a national law of the People's Republic of China and, more importantly, to bear in mind its history, nature and objective.

Paragraph 17 of the judgment has this to say: "... the intention of the Basic Law is clear. There is to be no change in our laws and legal system (except those which contravene the Basic Law). These are the very fabric of our society. Continuity is the key to stability. Any disruption will be disastrous. Even one moment of legal vacuum may lead to chaos. Everything relating to the laws and the legal system, except those provisions which contravene the Basic Law, has to continue to be in force. The existing system must already be in place on 1 July 1997. That must be the intention of the Basic Law."

Over the past 25 years, the interpretation of the Basic Law by the NPCSC under "one country, two systems" has been constantly misunderstood and challenged. The drafting of Article 158 of the Basic Law went through ten versions, involving numerous changes and attracting diverse opinions. In reviewing the drafting materials of

1 *HKSAR v Ma Wai Kwan, David & Others* [1997] HKLRD 761.

主題對談
暢談《基本法》實踐二十五周年，與時並進
Keynote Dialogue
Staying Abreast of Times -
25 years' Implementation of the Basic Law



the Basic Law, we came across the following discussion which may go to the core of Article 158:

“Now the Hong Kong courts can try the administrative acts of the British government, but under the present system the power of final adjudication of all cases rests with Britain not Hong Kong, and so there is no question of inconsistency between the regional constitutional system and the interests of the sovereign state. But after 1997, the CFA will be established in Hong Kong and the judicial system of Hong Kong will be separated from that of her sovereign state. This is at the core of the problem.”

In respect of the first paragraph of Article 158, there was a dispute over whether the NPCSC should have the power to interpret the Basic Law. Many people opined that, as the Basic Law was a national law enacted and promulgated by the NPC, pursuant to Article 67 of the Constitution, it was just natural for the power of interpretation to rest with the NPCSC. On the other hand, there was also a view that if the Central Government had the power to interpret the Basic Law, it would be regarded by Hong Kong people as an interference by the Mainland in the judicial independence of Hong Kong, thus putting Hong Kong people ill at ease. At the same time, however, some members of the Drafting Committee pointed out clearly that, instead of being merely a local law, the Basic Law stipulated a number of provisions on the relationship between the Central Government and the HKSAR, and it would be improper to leave its interpretation entirely to local courts in adjudicating cases, which would affect not only Hong Kong but also the whole country.

In the end, the first paragraph of Article 158 of the Basic Law provides that the NPCSC has the power of interpretation of the Basic Law. This is fully consistent with the constitutional status of the

HKSAR and is also in line with the power of the NPCSC pursuant to the Constitution to interpret laws and the power of the NPC pursuant to the Constitution to supervise the enforcement of the Constitution, and also demonstrates that, under the people's congress political system in China, the NPC is the highest state organ of power.

As for the Hong Kong courts' power of interpretation, the second paragraph of Article 158 provides that the NPCSC authorizes the Hong Kong courts to interpret, on their own, the provisions within the limits of the autonomy. This manifests the principle of a high degree of autonomy. However, during the discussion, concerns were expressed about cases involving affairs which are the responsibility of the Central Government, and Article 158 naturally needed a third paragraph to deal with issues concerning national defense, foreign affairs and the like.

Regarding the legislative intent of the interpretation mechanism under the third paragraph of Article 158 of the Basic Law and the relevant considerations, I believe that Ms Maria Tam, barrister and a member of the Drafting Committee for the Basic Law, will in a while share with us a lot of valuable memories to enable us to correctly understand the original intent and purpose of Article 158.

The first volume of *Basic Law: Selected Drafting Materials and Significant Cases* contains the five interpretations of the Basic Law, involving Articles 13, 19, 22, 24 and 104, made by the NPCSC over the 25 years following reunification. Among them, the NPCSC's interpretation of the first paragraph of Article 13 and Article 19 in August 2011 was made in the *Congo* case,² the first case in which the CFA, pursuant to the third paragraph of Article 158 of the Basic

² *Democratic Republic of the Congo v FG Hemisphere Associates LLC (No.1)* (2011) 14 HKCFAR 95.

Law, sought an interpretation from the NPCSC. In the *Congo* case, the fundamental issue was whether, subsequent to the resumption of the exercise of sovereignty by the People’s Republic of China over Hong Kong on 1 July 1997, the courts of the HKSAR could adopt a doctrine of state immunity which recognized a commercial exception, and hence at variance with the doctrine of absolute state immunity that the PRC had always been adopting in her foreign relations. The CFA, by a majority, held by way of provisional order that the state immunity policy was part of foreign affairs and that, as a local administrative region of the PRC, the HKSAR was not in a position to adopt a principle of immunity different from that adopted by the state. In this case, the majority judgment confirmed there was a duty to seek an interpretation from the NPCSC, and in the end the decision in the provisional order was upheld.

“Human rights and freedom” is another oft-discussed topic over the past 25 years. From the “flag desecration case”³ shortly after reunification, in which the sovereign authority of “one country” and the constitutional fact and new order of “two systems” were challenged in the name of freedom of speech, to the recent cases of *Chow Nok Hang* and *Wong Chi Fung*,⁴ the legislation and penalties imposed by the courts for the maintenance of public order and the protection of the rights and freedoms of others were challenged by the defendants under the banner of exercising the freedom of demonstration and procession conferred by the Basic Law. As the Hong Kong courts made clear in their judgments, the relevant rights under the Basic Law are not absolute and lawful restrictions may be imposed on the exercise of those rights in the interest of public

3 *HKSAR v Ng Kung Siu & Another* (1999) 2 HKCFAR 442.

4 *HKSAR v Chow Nok Hang* (2013) 16 HKCFAR 837; *Secretary for Justice v Wong Chi Fung* (2018) 21 HKCFAR 35.

order and for the protection of the rights and freedoms of others. Once a demonstrator becomes involved in violence or threatens to use violence, he or she crosses the line separating constitutionally protected peaceful demonstration from unlawful activity and is subject to legal sanctions and constraints.

In the case of “Express Rail Link co-location arrangement”,⁵ the court’s response to the new challenges and interpretation of the Basic Law provisions went to the question of whether the Hong Kong system is closed or open and progressive or stagnant, and whether the relationship between Hong Kong and the state is alienated or integrated. Of course, the relevant legislative work must also be legal and constitutional. In that case, a Hong Kong resident applied for judicial review of the newly enacted Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance on the ground that it was not consistent with the Basic Law. The application was dismissed by the Court of First Instance of the High Court. The applicant lodged an appeal, which was also dismissed by the Court of Appeal.

The Court of Appeal held that “co-location” was a novel matter not envisaged when the Basic Law was promulgated and that, in determining whether the new Ordinance was constitutional, the court must approach the Basic Law as a living instrument, which meant that maintaining the Hong Kong system under the “one country, two systems” principle did not suggest stagnation. On the contrary, the Hong Kong system could and indeed should continue to develop within the confines of the Basic Law to suit the contemporaneous needs and circumstances of our society, some of which may even be beyond the drafters’ contemplation.

⁵ *Kwok Cheuk Kin v Secretary for Justice* [2021] 3 HKLRD 140.

In paragraph 69 of the judgment, the Court of Appeal pointed out that “... it is axiomatic that a subject matter lying at the interface must conform with the Basic Law under each of the Mainland and Hong Kong systems. And on the question of conformity, the two systems must operate coherently. The two systems being within one country and one national constitutional order requires it to be so. When the [NPCSC] has by way of a decision confirmed that an arrangement conforms with the Basic Law, its decision as a matter of the Mainland law is final. This is a crucial fact that the courts in Hong Kong must fully acknowledge and accept when approaching a constitutional challenge that the subject matter contravenes the Basic Law under Hong Kong law. The [NPCSC]’s authoritative view expressed in the NPCSC Decision must therefore carry a highly persuasive weight in the courts’ construction of the Basic Law.”

As clearly shown by the provisions of the Constitution and the political system of the country, decisions of the NPCSC are not only persuasive but also legally binding and, as a matter of both Mainland and Hong Kong laws, final.

Just now Mr Shen (Mr Shen Chunyao, Chairperson of the HKSAR Basic Law Committee of the NPCSC) mentioned the enactment of the HKSAR National Security Law after 2019. After its enactment, we still hear voices in the international community saying that the HKSAR National Security Law stands against “one country, two systems” and deprives the HKSAR of the high degree of autonomy. Such views are completely misconceived and untenable from a legal perspective.

First, national security is directly related to the interests of the state and its people as a whole and, as such, is within the purview of the Central Government and never a matter that falls within the

scope of autonomy of the HKSAR under “one country, two systems”. Article 23 of the Basic Law is an obligatory provision and does not change the fundamental principle that legislating for national security is a matter entirely within the purview of the Central Government. Nor should Article 23 be taken to mean that the Central Government is abdicating its right and obligation to enact legislation as it considers necessary for safeguarding national security.

Second, according to the Constitution, the NPC is the highest state organ of power, possessing both the national legislative power to enact laws and the power to supervise the enforcement of the Constitution. Given that safeguarding national security is a matter within the purview of the Central Government, it is trite that the NPC has the power under the Constitution to make the “528 Decision” (“Decision of the National People’s Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security”) authorizing the NPCSC to enact the HKSAR National Security Law. Article 18 of the Basic Law provides that national laws listed in Annex III are “confined to those relating to defense and foreign affairs as well as other matters outside the limits of the autonomy of the [HKSAR] as specified by this Law”. It follows that the HKSAR National Security Law can be listed in Annex III in accordance with Article 18 of the Basic Law and then promulgated and implemented in the HKSAR.

This shows that the HKSAR National Security Law is completely legitimate and constitutional.

The HKSAR National Security Law provides that Articles 1 and 12 of the Basic Law are the fundamental provisions of that Law and that no institution, organization or individual shall contravene those

two Articles. The HKSAR National Security Law also reiterates the original aspiration of “one country, two systems” and the original intention of the Basic Law, and the organic integration of the two enables “one country, two systems” to be steadfastly and successfully implemented.

Over the past two years, the Department of Justice has organized various events with a view to promoting a correct understanding of the rule of law, the Constitution, the Basic Law and national security in the HKSAR. For example, in taking forward the rule of law education, the Department of Justice launched a 10-year plan entitled “Vision 2030 for Rule of Law” in 2020. Under this project, we produced a series of “Studio DoJ” short animations to impart basic legal knowledge to the public, and we also organized law quiz competition for primary school students, workshops for secondary school students, the “Rule of Law Enlightenment” Program, “Rule of Law Journey” and the recently completed “Key to the Future” Short Video Competition. In addition, the Department of Justice supported the “e-Resources for Rule of Law and the Basic Law” launched by the Basic Law Foundation in November 2020, which provides teachers with a series of teaching materials covering topics on the Constitution, the Basic Law and the rule of law.

Ladies and gentlemen, in the Foreword to *Basic Law: Selected Drafting Materials and Significant Cases*, Mr Qiao Xiaoyang refers to the clear statement by President Xi Jinping that the Central Government, in implementing the policy of “one country, two systems”, will follow two principles: first, the Central Government remains firm to the “one country, two systems” policy and will keep the policy unchanged and unswerving; and second, the policy must be implemented fully and accurately to keep the practice of “one country,

two systems” in Hong Kong on the right track always, and away from distortion or deviation.

This statement by our national leader today echoes and accords with what our former national leader Mr Deng Xiaoping said more than 30 years ago. Back in 1984, during his meeting with the former British Prime Minister Margaret Thatcher, Deng Xiaoping explained why “one country, two systems” would remain unchanged for 50 years and would also remain unchanged after 50 years.

In 1987, at his meeting with members of the Drafting Committee for the Basic Law, Deng Xiaoping reiterated that “one country, two systems” would remain unchanged for 50 years and would also remain unchanged after 50 years. He said, “Today I would like to talk about the question of remaining unchanged. That is to say, after Hong Kong’s return to the Motherland in 1997, the policy will not change for 50 years, including the Basic Law we are now drafting, which will have to govern for at least 50 years. I also have to say that there will be even less need for a change after 50 years. Hong Kong’s status will not change, nor will the policy towards Hong Kong.

“There are two stable things: one is a stable political situation, and the other is a stable policy. Making no change means stability. When the next 50 years come, if this policy works and achieves the expected objective, there will even be less reason for a change. So I say, when the unification question is resolved in accordance with the “one country, two systems” policy, the policy towards Hong Kong, Macao and Taiwan will not change for 50 years and will remain unchanged after 50 years. Of course, I won’t be around by then, but I believe our successors will understand this principle.”

On 9 March of this year, a number of media reports quoted the statement of Xia Baolong, Vice-Chairman of the National Committee

of the Chinese People’s Political Consultative Conference and Director of the Hong Kong and Macao Affairs Office, that “one country, two systems” will remain unchanged for 50 years, will not have to be changed after 50 years, and will be implemented steadfastly and successfully. He also stressed that the common law and legal system in force in Hong Kong will also remain unchanged. Mr Xia’s remarks reaffirm that President Xi Jinping and the leaders of the Central People’s Government have all along unequivocally supported and insisted on the implementation of “one country, two systems” in Hong Kong.

If we hold on to our original aspiration, we will never lose our way. We can be sure that, as long as we always keep in mind the original intention of “one country, two systems” and work hard towards raising awareness of and adherence to the principle of “one country”, “one country, two systems” will be the best arrangement and system for maintaining the long-term prosperity and stability of Hong Kong. Therefore, I firmly believe that the capitalist system and way of life stated in the Basic Law, as well as the common law system in Hong Kong, will continue to operate without any need for change.

At the meeting celebrating the 20th Anniversary of Hong Kong’s Return to the Motherland and the Inaugural Ceremony of the Fifth-term Government of the HKSAR in 2017, President Xi Jinping said: “The Constitution of the People’s Republic of China and the Basic Law of the Hong Kong Special Administrative Region jointly form the constitutional basis of the HKSAR. The Constitution represents the legal origin of the system of special administrative region.” It follows that the Constitution and the Basic Law jointly lay the foundation for “one country, two systems”, specify the basic initiatives and policies of the country towards the HKSAR and the systems to be

implemented in the HKSAR, and also provide the best legal protection for the implementation of “one country, two systems”. To enable “one country, two systems” to be steadfastly and successfully implemented, we must all bear in mind that “one country” is like the roots of a tree, and deep roots yield flourishing leaves; “one country” is also the trunk, and a solid trunk yields thriving branches. I believe that as long as we continue to implement the Basic Law fully, accurately and firmly, the foundation of the country will be strengthened with the implementation of the law, and all of us will enjoy and celebrate great prosperity. Thank you! 🇭🇰

DIALOGUE SESSION

Panelists:



The Hon Ms Teresa Cheng Yeuk-wah

GBM GBS SC JP

Then Secretary for Justice



The Hon Ms Maria Tam Wai-chu

GBM GBS JP

Then Vice-chairperson of the Basic Law
Committee of the HKSAR of the Standing
Committee of the National People's Congress

Teresa Cheng Yeuk-wah: First of all, on behalf of the Department of Justice, I express our gratitude to Ms Maria Tam for sparing time to attend and share with us the work of the Drafting Committee for the Basic Law. What I mentioned just now is all we see from the words appearing in the Law, but what were the actual circumstances and how did the discussions proceed? Here we have someone directly involved in the process who can share with us her personal experience. Many provisions in the Basic Law are worth discussing, but due to time constraint, let us focus on Article 158 which I have mentioned. The reason is that, on a literal reading, the first two paragraphs of Article 158 are easier to understand because there is no doubt that constitutionally the Standing Committee of the National People's Congress (NPCSC) has the power of interpretation, and the Hong Kong courts are there to deal with matters within the autonomy of Hong Kong. However, we only see the relevant descriptions as they are written, and the third paragraph of Article 158 is in fact a rather special arrangement. Now let us hear what Ms Tam has to share with us.

Maria Tam Wai-chu: Certainly. Thank you, Secretary for Justice. Back then, when drafting the Basic Law, I participated in both the first Special Group on the Relationship between the Central Authorities and the HKSAR and the second Special Group on the Political Structure. In the early stage, while working in the first Special Group, we already encountered one question: "Does the Constitution apply to Hong Kong?" The Secretary for Justice (SJ) made a clear analysis in her speech just now, and when this question was set aside, we had to tackle the second question which concerned the power of interpretation. As the SJ clearly explained just now, prior to Hong Kong's reunification with the Motherland, there was the Privy Council which performed the same function as the Hong Kong

Court of Final Appeal (CFA), and there was no question of separation of the power of interpretation and the power of adjudication.

However, the situation has changed after the reunification. As SJ pointed out just now, the fourth paragraph of Article 67 of the Constitution states that the power of interpreting laws rests with the NPCSC. So one question we encountered was: given the establishment of the CFA in Hong Kong after the reunification, with which party should the power of final interpretation or the highest power of interpretation of the Basic Law rest? As the Constitution applies to Hong Kong, this question should logically be answered by the first paragraph, that is to say, the NPCSC shall have the power of interpreting the Basic Law, for the reason that it is a national law and not a local law of Hong Kong. The second aspect was how we should deal with the power of final adjudication of Hong Kong and matters outside the limits of the high degree of autonomy, and whether the courts should be granted under authorization a wide, extensive and flexible power of interpretation. There were considerations which concerned us. First, we did not want Hong Kong people to misunderstand that the power of final adjudication of Hong Kong would be influenced or intervened with by the interpretation of NPCSC. Second, we did not want the public to have the mistaken impression that the CFA would be moved to Beijing, because such a wrong view did exist at that time.

So we started to check which place and institution in the world, or which country or organization adopted a more authoritative approach in resolving this question of the power of final adjudication and the power of interpretation not resting with the same place. At last, we found an appropriate reference in the institution of the European Communities. As we all know, member states participating in the

European Community will sign treaties, one of which being the Treaty of Rome, which provides that all member states under the treaties of the European Communities have agreed that the power of interpreting the laws of the European Community rests with the Court of Justice of the European Communities (ECJ) which is located in Luxembourg. This court possesses the power of final interpretation of the laws of the European Communities which all member states have to comply with. Even in the United Kingdom, the very first country to practice the common law, the power of judicial interpretation is implemented, with the power of final adjudication resting with the court. It does not matter whether a country practices the system of the United Kingdom or the civil law system, such as Italy which is the primogenitor of the Roman law. And the power of interpreting the civil law is the power of legislative interpretation. Back then, we were concerned that certain contradiction or disputes might arise in case of conflict between the power of judicial interpretation and the power of legislative interpretation. We then observed that regardless of whether the European Communities adjudicate cases in the United Kingdom or in Italy, before the process of final appeal, if a case involves a law of the European Communities, then that law and the relevant provision(s) will be taken to the ECJ in Luxembourg for an interpretation, and the interpretation made by the ECJ will be consistently applied both to countries governed by the common law and to countries governed by the civil law. All member states are required to comply with the ECJ's interpretation, which is legally binding.

In January 1972, the United Kingdom joined the European Union. When the local law of the United Kingdom was in conflict with the treaties of the European Union, the latter would prevail over the former and the United Kingdom would then have to make adjustments by itself. This arrangement prompted us to appreciate that this way



of resolving conflicts was suitable for countries with sophisticated and advanced legal systems. As a result, we took reference from this solution, so that the first paragraph of Article 158 of the Basic Law provides that the power of interpretation is vested in the NPCSC, which is what Article 67 of the Constitution stipulates. And our courts are authorized to interpret the Basic Law. When provisions concerning the relationship between the Central Authorities and the HKSAR or affairs which are the responsibility of the Central Authorities are involved and if the interpretation of such provisions will affect the judgments on the cases, the Hong Kong courts “shall” (the word “shall” is used here), before judgment is made by the CFA, seek an interpretation from the NPCSC, and the Hong Kong courts shall follow the NPCSC’s interpretation in adjudicating the cases. This practice also maintains national-wide consistency of the interpretation

of the Basic Law which is a national law. This also means that the power of final adjudication has not been given to Beijing, because it is equal to the situation of the United Kingdom and Italy and all European member states in which the power of final adjudication rests with the states themselves. This approach also avoids constitution-related problems which may arise from the interpretation of provisions on the relationship between the Central Authorities and the HKSAR or affairs which are the responsibility of the Central Authorities. In summary, we referred to the approach of the European Union in resolving conflicts between the power of judicial interpretation and the power of legislative interpretation and between the common law and the civil law. That approach does not affect the power of final adjudication and allows the power of interpretation and the power of adjudication to operate separately. This is the background to the enactment of Article 158 of the Basic Law.

Teresa Cheng Yeuk-wah: Thank you for your explanation. This is also very important because very often we do not understand the two terms you mentioned just now, namely the power of legislative interpretation and the power of judicial interpretation. On a practical level, in a region which implements “one country, two systems” and which practices the common law system within a country practicing the civil law, how should it operate internally? This is an unprecedented and very innovative idea, so it was truly amazing that you and your team could come up with this solution to the problem.

Maria Tam Wai-chu: We came up with the idea after doing research.

Teresa Cheng Yeuk-wah: And there are voices which keep saying that interpretation by the NPCSC would affect judicial independence. Can you share with us your views?

Maria Tam Wai-chu: This practice does not affect the judicial independence at all as it only involves interpreting a provision, and the NPCSC does not have to consider the other elements which the judge or the court has to consider while adjudicating a case. As for the situation in the United Kingdom mentioned earlier, they do not think that their own power of final adjudication is affected either by having a law of the European Union interpreted by the Luxembourg court. Therefore, all member states are following this approach while the power of final adjudication remains in the states themselves.

Teresa Cheng Yeuk-wah: As I mentioned just now, when we compiled the book, the first case was *Ma Wai Kwan*, which also touched upon the issue of continuity of the legal system of Hong Kong from the day before the reunification in 1997 to the day after. When you and your team were drafting the Basic Law, as I heard from Mr Zhang Yong, in order to ensure transition of the law, a decision was adopted on 23 February 1997 in respect of Article 160 of the Basic Law. In fact, I personally think that this Article 160 Decision is very important in that it allows the legal system of Hong Kong to continue as it did. And I understand much preparation work was involved. Can you share with us the work prior to the formulation of the Article 160 Decision, and which part of the work did you join in? Or how was it carried out?

Maria Tam Wai-chu: Certainly. This was also the work of the Special Group on the Relationship between the Central Authorities and the HKSAR. As SJ mentioned just now, we did not allow the existence of a legal vacuum. At 12:00 a.m. on 1 July 1997, the laws of the HKSAR had to take immediate effect so that rights and obligations would not be affected and no uncertainty would arise. So how did we smoothly and seamlessly maintain the laws previously

in force in Hong Kong as mentioned in Article 8 of the Basic Law? For that purpose, the Preliminary Working Committee (PWC) for the Preparatory Committee of the HKSAR was set up in 1993.

From then on, the Drafting Committee for the Basic Law on the Mainland and members of the legal team of the PWC including myself started to “review” (it is more appropriate to use the word “review”) whether any of the laws previously in force in Hong Kong were inconsistent with the Basic Law and whether such laws could be adopted as the laws of the HKSAR. This work was carried out by the PWC for two-odd years from 1993 and was extended until the establishment of the Preparatory Committee of the HKSAR in 1996. During this whole period of roughly four years, we thoroughly read all the laws previously in force, including subsidiary legislation, and including annexures and appendices. And the Hong Kong members in our team also participated, adopting a dual-track approach with no mutual influence. We provided opinions to the legal team who then consolidated views and prepared reports.

On the other hand, the Secretariat took charge of another daunting task, which was to read each and every provision of all the laws of Hong Kong. Initially, the task mainly involved excluding legal provisions which suggested colonial rule, affected the sovereign power or did not accord with the new status of the HKSAR. Subsequently, when the Preparatory Committee started its work, we began to check the number of provisions that needed to be dealt with. According to the decision of the NPCSC, which SJ referred to just now, the provisions fall into four categories: first, those which cannot be adopted in Hong Kong at all, including those laws of an overriding nature by themselves, such as sections 3 and 4 of our Bill of Rights Ordinance. These provisions which contravene the Basic Law could

no longer be used. Second, those containing a lot of legal terms, most of which could not be used either. Third, those which can be used in part. Fourth, it was decided that, after the reunification, if it is discovered that any other laws should not be adopted, they would be dealt with in accordance with the procedure as prescribed by the Basic Law. So the work of the Preparatory Committee was to categorize the works and studies of the PWC into four types, and then the Decision mentioned by SJ was adopted. The entire process was serious. As far as I know, the scope of their research was not only very broad but also very deep. It is because we had been receiving reports of their research.

Teresa Cheng Yeuk-wah: I notice that the book also records this process in relation to the Article 160 Decision. For example, the first paragraph indicates that the first point of the Article 160 Decision is that the laws previously in force in Hong Kong, including the common law, etc. are adopted as the laws of the HKSAR. This has also filled the legal vacuum as the two temporal points were seamlessly joined. The second point mentions Annex I to the Article 160 Decision, which records legislation not adopted for contravening the Basic Law. And Annex II sets out legislation which partially contravenes the Basic Law and also points out that any particular provision(s) in any legislation which are in contravention of the Basic Law shall not apply. Therefore, we have to bear these reasons in mind when we read the relevant legal provisions and consider when to take out a particular provision.

The fourth point is also very important. “Such of the laws previously in force in Hong Kong which have been adopted as the laws of the Hong Kong Special Administrative Region shall, as from 1 July 1997, be applied subject to such modifications, adaptations,

limitations or exceptions as are necessary so as to bring them into conformity with the status of Hong Kong after resumption by the People's Republic of China of the exercise of sovereignty over Hong Kong as well as to be in conformity with the relevant provisions of the Basic Law." For example, the Decision has given the example of the New Territories Land (Exemption) Ordinance and then also listed some expressions used in Hong Kong during the colonial period.

Currently, the HKSAR Government is working hard to amend these ordinances one by one. It is because although we can adapt these laws, we do not want to see the old terms when we read the legislation of Hong Kong. The Secretariat of the Law Reform Commission is also promoting this exercise, and certainly the entire Government team is also working on this. Therefore, we hope to complete one of the points in the Article 160 Decision and clear things up properly. Thank you for your sharing. When we read the annexes to the Basic Law after reading the Article 160 Decision, we will see Annex I and Annex II. When we turn to Article 45 and Article 68 of the Basic Law, we will notice that they describe the respective systems and then mention Annex I and Annex II. Article 45, which concerns the method for selecting the Chief Executive with the ultimate aim of universal suffrage, makes use of Annex I, while Article 68 concerns Legislative Council elections. Why was this special approach chosen and why was the concept of annexes introduced to the provisions of the Basic Law?

Maria Tam Wai-chu: In fact, up to now the concept of an annex has never existed in the laws of China. Currently none of the national laws has an annex, so the use of an annex is a breakthrough. And how was this breakthrough achieved? SJ in her speech just now made it clear at the outset that the Constitution applies to Hong Kong. At

that time some people came up with the idea that those provisions of the Constitution which were applicable to Hong Kong could be listed in the Basic Law by way of an annex, and the other provisions would not apply. This idea found some support back in 1985, but this is wrong. SJ has also mentioned the correct position, which is that the Constitution as a whole is fully applicable to Hong Kong, and a foundation was laid through Article 31 for the birth of the Basic Law. This is a relationship between the mother law and the subsidiary law. But, as the use of annexes had been suggested at that time, we started to look into the functions of annexes.

On the question whether the Constitution is applicable to Hong Kong, once this major principle was clarified, it was not necessary to use annexes. And then an annex has been used in the form of Annex III, by which national laws can be introduced in Hong Kong by promulgation or legislation. An annex is used here because previous discussions revealed that annexes could be used flexibly. Later, our Special Group on the Political Structure had to formulate the methods for the selection of the Chief Executive and the formation of the Legislative Council. The major principle has been established: we have to take things in accordance with the principle of gradual and orderly progress having regard to the actual situation of Hong Kong, for example, by requiring a broadly representative nomination for the Chief Executive, with the ultimate aim being the selection of the Chief Executive by universal suffrage. The same ultimate aim of election by universal suffrage also applies to members of the Legislative Council.

The Special Group on the Political Structure at that time appreciated that within 50 years, if the NPC had at the outset decided on the methods for selecting the first Chief Executive and forming the first term of the Legislative Council, and afterwards the situation evolved

or advanced or developed with times to achieve universal suffrage, then the provisions of the Basic Law would be subject to amendments at an unpredictable time and to an unknown extent. And amendments to the provisions have to be done by the NPC at its meeting in March, and in the process of amending the provisions, the 2,798 NPC deputies may provide opinions. It is hoped that issues related to Hong Kong are dealt with by officials in the Central Authorities who are familiar with Hong Kong and understand how to safeguard the implementation of “one country, two systems”. This will not only allow for flexibility but will also ensure more accurate responses to the needs of “one country, two systems”. This way, there will be no need for the NPC to amend the provisions or pass any resolution through voting. The power has been given to the NPCSC, who may at appropriate time amend Annex I and Annex II, such as the “five-step mechanism” previously used, to amend the methods for selecting the Chief Executive and forming the Legislative Council. This allows us to proceed solidly towards the goal of universal suffrage.

In March of last year, the NPC made a decision, namely on “improving the electoral system of Hong Kong” as mentioned by SJ. This decision involved amendments by the NPCSC to Annex I and Annex II. As the amendment this time aimed to strengthen the essential core element of “patriots administering Hong Kong”, a decision was specifically made by the NPC and then the NPCSC took charge of the amendments. And although the previous Annex I and Annex II were amended three times between 2007 and 2014, these two annexes would no longer be used. Instead, the annexes adopted by the NPCSC last year would be used.

In response to the question raised by SJ just now, as time passes, the Central Authorities have been helping us solve the problems

arising in Hong Kong, and we have been offering valuable opinions to assist the Central Authorities in deciding how to deal with the problems. If we are able to deal with a problem at the required time, to the required extent and with the required core contents, then the use of an annex will obviate the need to trouble more than 2,700 NPC deputies to vote and resolve, and will also fit in with our temporal needs.


Teresa Cheng Yeuk-wah: Therefore, I think that these two provisions have in fact been enacted using a very smart method. Your Special Group recognized the approach of gradual and orderly progress and took time for implementation by using annexes all along, and during the implementation stage your Special Group proposed to adopt the arrangements suggested by the NPCSC. What you mentioned just now is correct. For example, the three amendments to Annex I and Annex II were all made on the same day. The first one was carried out by the NPC on 4 April 1990, and the next two were carried out by the NPCSC in 2010 and 2021 respectively. This has exemplified the structure of a political system. This is also a matter within the purview of the Central Authorities, but notwithstanding this, we still had to operate, and the question was how to do so? At that time your Special Group came up with the approach of using an annex, which was at once unprecedented and innovative. I myself am very grateful to your teams for your arrangements in this respect.

Maria Tam Wai-chu: Thank you.

Teresa Cheng Yeuk-wah: I would also like to take this occasion to promote a book compiled by our Department of Justice. I guess our colleagues will soon distribute copies of this book to you all. This is the first attempt of the Department of Justice to put together some drafting materials and selected court cases into one book, in the hope

that more people can read it and get involved. If you find anything in the book which requires correction, please do not hesitate to let us know, and I also look forward to receiving valuable comments from all of you.

Maria Tam Wai-chu: We will certainly read it. And a big “thank you” to your team for giving us a great gift on the 25th anniversary of the establishment of the HKSAR. Thank you.

Teresa Cheng Yeuk-wah: Thanks. Thank you Ms Tam. Thank you every one! 

THEMATIC SPEECH

Interpretation of the Basic Law

THEMATIC SPEECH



The Hon Mr Henry Denis Litton GBM JP
Former Permanent Judge of the Court of Final Appeal

The proper interpretation of the Basic Law is founded on certain basic propositions.

One: The Basic Law is a Chinese constitutional instrument adapted to the circumstances of Hong Kong under the principle of “one country, two systems”.

Two: Plain words must be given their plain meaning. It is not the role of counsel to make a mystery of the words used.

Three: When a real issue arises as to the meaning of a provision in the Basic Law, the inquiry focuses on the purpose of that provision. A good example is the phrase “the lawful traditional rights and interests of the indigenous inhabitants of the New Territories” as they appear in Article 40. What are these “rights and interests”? In the recent case – *Kwok Cheuk Kin v Director of Lands*¹, the “*Ding Rights*” case – the Court of Final Appeal approached this issue by going into the historical background which gave rise to that provision. There was no citation of overseas cases, no invocation of European human rights jurisprudence; just a straightforward factual approach to the words used, an approach anyone not wholly conversant with the English language would have understood. This was, if you like, “transparency” in action.

Four: Overseas authorities tend to obscure rather than illuminate the issue, as one is not comparing like with like. Even if the words used are similar – seen through the prism of translation – there are the societal and political backgrounds which differ, adding flavour to the meaning of the words used. What does a Hong Kong court know about the social organization or sense of value of the multiple nations that constitute the European Union? Say, Slovakia or Belgium?

1 (2021) 24 HKCFAR 349.

Five: The guaranteed rights in the Basic Law are not absolute – say, the freedom of speech and of demonstration in Article 27. They are always subject to the rights of others which also need protection. How these competing rights and interests are reconciled is a societal matter, not a legal matter. No black-letter law can resolve such an issue. It is a proportionality exercise on a practical plain, taking into account a myriad of things beyond the reach of a court of law. Unfortunately, the appellate courts in Hong Kong have raised this into an ideological level, causing distortion in the law.

In *Fong Kwok Shan*,² the CFA gave obfuscation rather than practical guidance to the lower courts.

In that case, the defendant, a District Councilor, was charged with causing a disturbance at meetings of a LegCo subcommittee on two occasions by displaying provocative slogans in the public gallery, contrary to the LegCo rules. The facts were not in dispute. She had no defense to the charges, and was sentenced to community service. On appeal to the Judge of First Instance, counsel challenged the constitutionality of the rules, citing the defendant's personal rights to freedom of speech and expression in the Basic Law and the Hong Kong Bill of Rights. The judge dealt with this in a robust straightforward way, which everyone would have understood.

He said: “*Members of the public do not have the right to demonstrate in the Legislative Council Building, especially when meetings are in sessionI take the view that the rights the appellant mentioned have not been infringed. Neither the Basic Law nor the Bill of Rights gives members of the public the freedom to exercise such*

2 *HKSAR v Fong Kwok Shan Christine* (2017) 20 HKCFAR 425.

rights inside the Legislative Council Chamber, especially when they do not have the absolute right to enter the Chamber”.

This is a simple, clear statement of the law, totally in accordance with common sense. On further appeal to the CFA, the matter was lifted to a realm not reached by common sense and, in the outcome, left to the lower courts a poisoned chalice. Instead of upholding the judge’s approach, thus reinforcing transparency in the law, the court embarked on a complex analysis based on a Canadian case and English cases, discussing “*various dimensions*” of protest, and its “*manner and form*”, producing a bucket of ambiguities. For discipline of law to re-assert itself, the CFA would need to re-examine the case of *HKSAR v Fong Kwok Shan Christine*.

Six: And finally, a few words about counsel’s role in these cases. Time and time again, counsel have been reminded of the civil justice reforms effected nearly 20 years ago; in particular Order 1A of the Rules of the High Court which places on counsel a positive duty to achieve proportionality and equity in civil proceedings. Far from discharging this duty, counsel have repeatedly abused the process of judicial review, using the Basic Law as a weapon of mass destruction to weaken the institutions of government. The judges have, in many instances, adopted a servile attitude towards counsel, rather than asserting their constitutional role as an independent judiciary, exercising their magisterial authority in resolving the real issues. In one instance, the court apologized for “*not comprehensively dealing with all of counsel’s arguments*”.

The Discipline of Law

A judgment is not a free-standing exercise, where the court deals with everything thrown at it by counsel. It is a disciplined process. A

courtroom is not a market-place, where there are few rules. A judgment can be said to be a *disciplined structure of logical thought focused on remedies*; and, in the Hong Kong context, within the overarching principle of “one country, two systems”. It follows that the words used in any determination by a judge must be confined within that structure. Everything else is irrelevant and superfluous. This means, generally, that judgments will be brief and concise. And, if expressed in English, easily translated into Chinese, and sensitive to the unique position of the Hong Kong courts operating within the principle of “one country, two systems”. One consequence when a disciplined structure is abandoned is not only does it lead to mind-bending prolixity and complexity; it allows ideology to come flooding in.

The Originating Process

Every court proceeding involving parties has an originating process. In special litigation – such as disputed elections or companies winding-up – it is a petition. In criminal proceedings it would be a charge or an indictment. In civil litigation a writ, and in judicial review proceedings, it is a statutory form, Form 86A, the originating summons. I will come back to the matter of Form 86A later on. The substance of the matter in issue between the parties is set out in the originating document. That defines the scope of the dispute.

The Matters in Issue

If there are real issues raised, they should be capable of being stated simply, in clear precise terms. Regrettably, over the past 20-odd years, by slow degree, this simple precept is lost and discipline of law eroded. A new culture has emerged where arguments of counsel take precedence over real issues; where, in the name of the protection of human rights, the Basic Law has been turned into a weapon of

mass destruction, aimed at eroding the authority of the Government. Because basic structure and discipline are missing in the judicial process, the inevitable outcome is judgments of inordinate length and mind-bending complexity, crammed with citation of authorities, observations and ponderous statements detached from the real issues.

Complexity Smothers Transparency

This, however, is not appreciated by the public at large for this reason: the judgments are so dense and lengthy that no journalist is able to analyze and comment upon them. Hence this malaise is hidden from public view. Complexity smothers transparency. In the meanwhile, the public remains awed by the *mystique* of the law, as the Judiciary rests in a state of denial.

Ex parte Applications

The structure of the judicial review process is contained within two pieces of legislation: Section 21K of the High Court Ordinance, and Order 53 of the Rules of the High Court. This comprises, in effect, a legislative code for such legal process. The rules are set out in clear unequivocal terms. If strict discipline were applied, there should be few occasions to resort to case law, local or overseas.

Take section 21K(3) of the Ordinance:

No application for judicial review shall be made unless the leave of the Court of First Instance has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

This is legislated for good reasons. It has to do with the separation of powers. The courts are not given power to decide on policies for the HKSAR. That is the realm of the executive arm of government, and of the legislature. Hence, when someone comes along and seeks to impeach the Chief Executive or some other high official for some act or decision made in the course of governing Hong Kong, the law provides a shield.

One aspect of that shield is Order 53 rule 3(2) which requires an application for leave to be made *ex parte*, which means the matter is between the applicant and judge alone. No one else. The proposed respondents are not to be vexed unless the judge grants leave. It being *ex parte*, the applicant is under a duty of full and frank disclosure: so any matters adverse to the applicant's case, known to him, must be disclosed to the judge.

Upon receipt of the papers lodged by the applicant, the *ex parte* judge is required to examine them and make a determination: Order 53 rule 3(3). As to this, there are threshold conditions placed on the applicant. Firstly, no delay: Order 53 rule 4(1) requires the application to be made promptly, and in any event within three months from the date when the grounds for application first arose. Secondly, the court "*shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates*": Order 53 rule 3(7) and section 21K(3) of the Ordinance.

When leave is granted, the applicant then lodges Form 86A which is an originating summons; this must be served on all persons directly affected within 14 days of the grant of leave: Order 53 rule 5(5).

It is only when Form 86A has been served on the putative respondents that the parties are engaged as litigants, and the matters

set out in Form 86A are argued out in court between the parties for the first time.

“Rolled up” Hearings

This process, borrowed from England, has been grievously misunderstood, and it has caused great mischief. It is not a formula for the *ex parte* judge to shirk his responsibility. Quite the opposite.

If, on receipt of the papers lodged by the applicant, the judge determines that relief should be granted, perhaps on an urgent basis, he cannot lawfully do so right away without the proposed respondents being heard: what if, for instance, the applicant had not made full and frank disclosure or had misrepresented the position? So the judge appoints an early hearing date, gives notice of the application to the proposed respondents and invites their appearance. If the applicant has indeed fulfilled all the requirements of law and his case is meritorious, the judge grants relief there and then; treating Form 86 (the application for leave) as the originating process, and the respondents waive formal service of that originating document.

This procedure seeks to give urgent relief in exceptional cases; but it has been turned on its head in Hong Kong.

Take a recent case where applicants lodged a Form 86, seeking leave to start judicial review proceedings in February last year: *Tam Sze Leung & Others v Commissioner of Police* (HCAL 191/2021) where the *ex parte* judge had ordered a “rolled up” hearing. This was eventually heard by Coleman J eight months later. He had before him an array of senior and junior counsel, and solicitors. This is what Coleman J said about the *ex parte* application for leave: “*In this case, the Form 86 comprised over 60 pages of closely typed description and arguments ...*”.

Over 60 pages in a statutory form which should not have been more than one sheet of A4 paper.

Coleman J commented thus: “*The recent culture in the context of judicial review proceedings for there to be excessive prolixity and complexity, in what are supposed to be concise grounds for judicial review, as often as not serves to conceal rather than illuminate the essence of the case being advanced*”.

“*Conceal rather than illuminate the essence of the case*”, said the judge. There, in *Tam Sze Leung v Commissioner of Police*, was blatant abuse of process staring the *ex parte* judge in the face, in an application where the applicants had a duty of full and frank disclosure. Why was the application not simply dismissed out of hand?

The Upside Down Process

There is something intrinsically absurd in these “rolled up” hearings where the matter before the judge is simply whether the applicant has an arguable case for relief: if none, that could be expressed in a couple of sentences. How could the matter then be debated in court for days on end, argument being met by counter-argument, only for the judge to conclude at the end of the day that there was nothing arguable after all? If he was to spend days chewing over counsels’ arguments does it not follow, as night follows day, that there was something to argue about: so why not just give leave to start proceedings in the first place? The answer, of course, is that, from the outset, there was nothing remotely arguable.

Of the dozens of cases where there has been blatant abuse of process of this kind, because of time limitation, I have picked out one

to illustrate how the court was knowingly being used as a political platform: *Leung Lai Kwok Yvonne v the Chief Secretary & Others* (HCAL 31/2015).

Leung Lai Kwok Yvonne's Case

Following the decision of the Standing Committee of the National Peoples' Congress (NPC) on 31 August 2014 ("the 831 Decision") regarding the selection process for the Chief Executive (to take office in 2017), the government embarked on a public consultation exercise and subsequently issued a report on that exercise on 22 April 2015.

Leung Lai Kwok applied for leave to start judicial review proceedings to impeach the top Government officials (including the Chief Executive) for their decision to consult the public and for subsequently issuing a report. She sought an order from the court to quash the entire process.

This was, by its very nature, utterly absurd. Judicial review is concerned with decisions and actions having real impact on the rights and interests of applicants. The matters put forward by Leung Lai Kwok simply did not come within the realm of judicial review. That should have been immediately apparent to the *ex parte* judge. On that basis alone the application should have been dismissed outright.

Furthermore, on receipt of the papers, the questions staring the *ex parte* judge in the face were these:

"Who is Leung Lai Kwok? What personal interests of hers were affected by the public consultation exercise and the report? Who appointed her to represent the community in taking out the proceedings? Is this application made in good faith or is there a political agenda undisclosed?"

None of these questions were asked. The *ex parte* judge shirked his responsibility to determine the application as it stood, and ordered a “rolled up” hearing, resulting in a farcical process and a 21-page judgment.

The Proposed Grounds of Application

When one looks at the proposed grounds of application, it takes on an even more sinister hue. Stripped of verbiage, it amounted to this: The Standing Committee of the NPC in making the 831 Decision exceeded its own powers when it outlined the procedure for selecting the Chief Executive by the method of universal suffrage. Hence, as the argument went, since the 22 April report had adopted that method, it was “tainted” by the same illegality. These were Grounds 1 & 2 of the proposed application for judicial review.

The arguments and counter-arguments cover multiple pages of Au J’s judgment. They boil down to one startling point: that the 831 Decision was not to be read and applied in its entirety, binding upon the HKSAR; part of it was unlawful; the Hong Kong court should so hold. In other words, a regional court should assume jurisdiction in deciding on the legality of an act of the sovereign power, the Standing Committee of the NPC, concerning the constitutional arrangement for the SAR. Such illusion of grandeur! To engage in such arguments is to take part in the charade. The application was plainly tainted with a hidden political agenda; for the judge to solemnly entertain arguments on it gives oxygen to such abuse, permitting the court to be used as a platform for political grand-standing. To this extent, it can be said that Leung Lai Kwok succeeded, even though the application for leave was dismissed at the end of the day. But there is more.

The Proposed Amended Grounds

Perhaps realizing that Leung Lai Kwok did not have sufficient interest to mount her challenge, counsel proposed amending Form 86 by adding new grounds to this effect: that the 22 April report infringed her right under Article 26 of the Basic Law to vote and to stand for election in accordance with law. And it likewise allegedly infringed her right under Article 21 of the Bill of Rights to take part in the conduct of public affairs etc. The judge called these “Relevant Rights”, as set out in Grounds 3 and 4 of the proposed amendments.

This was just piling absurdity on absurdity. How could conducting a public consultation and issuing a report infringe Leung Lai Kwok’s personal rights of any kind?

The Scope of an *Ex parte* Hearing

Au J called his determination a “judgment”. But it “adjudged” nothing. Leave to start proceedings had not been granted, and the government officials had not been brought into court as parties to judicial review proceedings, as the judge himself acknowledged in para 7 of his judgment where he said: *“As this is the leave application, what the court has to consider is whether the proposed judicial review is reasonably arguable with a realistic prospect of success....”*

The “proposed judicial review”, said the judge. So what then was his role at the hearing? How do you adjudicate on “proposed” proceedings which had not begun, and could never begin until you grant leave?

A Further Descent into the Bizarre World

It would seem impossible to find a case worse than that of *Leung Lai Kwok Yvonne*. Sadly, that is not so.

Law Yee Mei v The Chief Executive & Others **(HCAL 151/2022; 30/3/2022)**

When the 5th wave of the pandemic threatened to overwhelm Hong Kong in February 2022, the Government enacted Regulations to limit access to various places where people normally gathered. Those not having a Vaccine Pass were barred. Similar measures were taken all over the world. It naturally caused much inconvenience, to greater or lesser extent, particularly to those who were unvaccinated.

Law Yee Mei, acting in person, took out a Form 86 for leave to start proceedings to challenge the lawfulness of those Regulations. She said she had applied for Legal Aid and was waiting for a response. She also said that her application involved “*extremely complicated legal concepts and processes*” and that “*highly qualified lawyers will need to be engaged by me, but only upon approval by the Legal Aid Department of my application*”. She asked for more time to “*file further documents*”.

In other words, she had no case, and said so; but hoped that lawyers might construct a case for her if she got legal aid. She did not want an oral hearing.

What did discipline of law require of the *ex parte* judge? To dismiss the application, of course.

The Subsequent Events

What in fact happened was this. Firstly, the judge “invited” the putative respondents to appear before him, represented by counsel, even though the applicant was content that the judge dealt with the matter on paper. He then convened a “directions meeting” at which he required counsel for the putative respondents to provide an “Initial

Response” and he “gave leave” to the applicant to file a “Reply to the Initial Response”. None of these steps are to be found in the Rules of the High Court. They were the judge’s invention.

In para 2 the judge gave vent to a stinging criticism – through the voice of others – of the government’s handling of the pandemic: it was, he said, “*lacking in logic or common sense; riddled with inconsistencies; short on empathy and human understanding; detached from local personal and business realities...blind to the need for a coherent longer-term strategy and contingency planning etc., etc.*”. This had nothing whatever to do with the matter for his determination, but was good “copy” for the press; it was, inevitably, picked up as judicial criticism of the Government’s handling of the pandemic. The judge appears not to have heeded what the former Chief Justice said on 25 May 2020, in a published statement: Judges, he said “*must refrain from unnecessarily expressing in public, including in their judgments, any views on matters that are controversial in society...*”.

When the structure of discipline is broken, it leads inevitably to irrelevance and incoherence, and ideology comes flooding in.

Under the heading of “Failure to Identify any Grounds of Review”, the judge began by saying: “It is well-settled that grounds for quashing the exercise of administrative power by the Court, if well founded, should be capable of being stated clearly and succinctly in a few numbered paragraphs ...” : para 48.

And, in this case, the judge said, there were none; the applicant could “*only make a general complaint*”: para 51.

What more was there to say? The application must be dismissed. Full stop.

But not so. There then followed 31 long paragraphs where the judge dealt with the “merits” of what he called the “*intended* challenge by reference to the fundamental rights *potentially or conceivably* relied upon by the Applicant ...”.

“Merits”, said the judge, when clearly there were none.

“Intended challenge”, said he. What is that?

Rights “potentially or conceivably relied upon” by the applicant: What are they?

This is the stuff of theatre, not of courtrooms.

There was no possible constitutional challenge by Law Yee Mei to the Regulations because the judge had not given leave to do so. But he nevertheless conducted a full-scale stress test of those Regulations under principles evolved in the European Court of Human Rights in Strasbourg, as refined by the CFA in *Hysan Development v Town Planning Board*.³ He referred to the Regulations as the “*impugned measures*”.

“Impugned measures”, said the judge. Impugned by who? Certainly not the applicant. By counsel for the putative respondents? That would have been absurd. Impugned by the judge himself?


The exercise descended into total farce.

What discipline of law mandated was the determination in two short sentences: the application of leave raised nothing capable of relief in judicial review proceedings, the application dismissed.

3 (2016) 19 HKCFAR 372.

Conclusion

Courts do not operate in an isolated bubble. How a court acts has a knock-on effect. Indiscipline in the Judiciary softens the fabric of society as a whole. It leads to educated people thinking that “civil disobedience” is OK, and that you can occupy Central for 79 days with no adverse consequences.

The White Paper issued by the Central Government in December last year makes it clear that the course is set for the principle of “one country, two systems” to apply long after 2047. At the heart of the Hong Kong system is the rule of law. Is the Hong Kong Judiciary doing its part to implement that principle sensitively, vigorously and effectively? Is the system as administered in the courts fit for purpose? 

KEYNOTE SPEECH & PANEL DISCUSSION

**Joint Force of the Enactment of the National
Security Law and Improvement of the
Electoral System – Consolidating the Basics**

Moderator



Prof Zhu Guo-bin

Professor,
School of Law of City University of Hong Kong

Keynote Speaker



Mr Deng Zhong-hua

Former Deputy Director of the Hong Kong and
Macao Affairs Office of the State Council,
President of the Chinese Association of Hong Kong &
Macao Studies

Panelists

The Hon Mr Tam Yiu-chung GBM GBS JP

Then Member of the Standing Committee of
the National People's Congress



The Hon Ms Maggie Chan Man-ki MH JP

Deputy to the National People's Congress



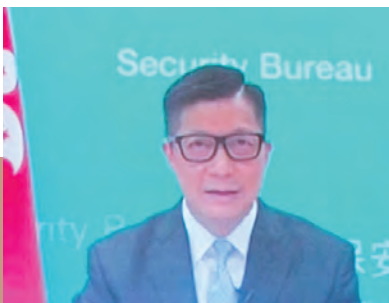
Professor Wong Yuk-shan SBS BBS JP

Then Member of the Basic Law Committee of the HKSAR of the
Standing Committee of the National People's Congress



The Hon Mr Tang Ping-keung PDSM JP

The Secretary for Security



Zhu Guo-bin: Distinguished speakers, guests and online audience, good morning! I would like to thank the Department of Justice for inviting me to host this session. This session comprises a keynote speech and a panel discussion. The topic of the keynote speech is “Joint Force of the Enactment of the National Security Law and Improvement of the Electoral System – Consolidating the Basics”. In this session, the speakers will discuss how to enable “one country, two systems” to be implemented steadfastly and successfully by implementing the principle of “patriots administering Hong Kong”, improving the Basic Law and the system for safeguarding national security, and strengthening the foundation of “one country”. The keynote speaker of this session is Mr Deng Zhonghua, President of the Chinese Association of Hong Kong & Macao Studies. As a talented diplomat, Mr Deng was involved in matters relating to the handover of the sovereignty over Hong Kong in his early years. He later joined the management team for Hong Kong and Macao affairs and took up leading positions. Mr Deng served as Deputy Director of the Hong Kong and Macao Affairs Office of the State Council from 2018 to March 2022. Please welcome Mr Deng.

Deng Zhong-hua: The Honorable Chief Executive Carrie Lam Cheng Yuet-ngor, distinguished guests and friends, good morning! I am happy to be invited to this Legal Conference on the Basic Law organized by the Department of Justice. First of all, on behalf of Mr Xia Baolong, Vice-Chairman of the National Committee of the Chinese People’s Political Consultative Conference and Director of the Hong Kong and Macao Affairs Office of the State Council, and on behalf of the Chinese Association of Hong Kong & Macao Studies, I would like to extend my warm congratulations to the conference.

“One country, two systems” is an important chapter in the century-long march and glorious history of the Communist Party of China (CPC), and is also a great initiative of socialism with Chinese characteristics. The Basic Law is the legalization and institutionalization of the “one country, two systems” initiative. Since the reunification, the implementation of “one country, two systems” and the Basic Law has achieved universally recognized success. In the course of implementing “one country, two systems”, which is a brand new initiative, new situations and new problems inevitably arise. The Central Government, carefully considering all the circumstances and keeping abreast of the times, adheres to and improves the “one country, two systems” regime and insists on administering Hong Kong in accordance with the law. The Central Authorities has exercised the powers conferred by the Constitution and the Basic Law to enact the HKSAR National Security Law and improve the electoral system of Hong Kong in order to ensure the steadfast and successful implementation of “one country, two systems” in the right direction. I would now like to share with you three points of view.

1. The Basic Law is the legalization and institutionalization of the “one country, two systems” policy. Since the reunification, the implementation of the “one country, two systems” policy and the Basic Law has achieved universally recognized success, with theory and practice continuing to develop

In the early 1980s, Mr Deng Xiaoping, standing at the height of history and overall situation and with the grand ambition and extraordinary courage of a CPC member, innovatively put forward the scientific idea of “one country, two systems”, which was first applied to resolve the question of Hong Kong. In 1984, after a few years

of strenuous effort, the People's Republic of China and the United Kingdom signed the Sino-British Joint Declaration on the Question of Hong Kong, which confirmed that China would resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997. In April 1985, the National People's Congress (NPC) formed the Drafting Committee for the Basic Law of the HKSAR. With the joint effort of people from various sectors of the Mainland and Hong Kong and the active participation of Hong Kong compatriots, the drafting of the Basic Law, "a law of historical and international significance", was completed after four years and eight months. On 4 April 1990, pursuant to the Constitution, the Third Session of the Seventh NPC adopted the Basic Law of the HKSAR of the People's Republic of China, giving effect to the legalization and institutionalization of the "one country, two systems" initiative. This constitutional law establishes the fundamental policies of China towards Hong Kong and the systems to be practiced in the HKSAR.

On 1 July 1997, Hong Kong reunited with the Motherland, washing away a century of national shame, and the Basic Law came into effect. Over the past 25 years, the Central Government has always adhered to the principles of "one country, two systems", "Hong Kong people administering Hong Kong" and "high degree of autonomy" and acted in strict compliance with the Constitution and the Basic Law; and has been a determined guardian of "one country, two systems" and the Basic Law, an active supporter of the overall progress of various undertakings in the HKSAR and a faithful defender of the legitimate rights and interests of Hong Kong compatriots. Under the protection of the Basic Law, the previous capitalist socio-economic system and way of life in Hong Kong have remained unchanged, and the laws of Hong Kong by and large have also remained unchanged.

Under the Basic Law, the HKSAR exercises a high degree of autonomy and enjoys executive power, legislative power, independent judicial power and the power of final adjudication. The executive-led political system of the HKSAR established by the Basic Law operates effectively. The rights and freedoms enjoyed by Hong Kong residents in accordance with the law are fully safeguarded. The economy of Hong Kong enjoys stable growth and the social undertakings in Hong Kong including education, medical and health care, culture, sports and social security are scaling new height continuously. Hong Kong has entered the highway of complementing with and developing jointly with the Motherland. The implementation of “one country, two systems” has achieved universally recognized success.

Since the 18th National Congress of the CPC, the Central Government has dealt with the affairs of Hong Kong and Macao from the perspectives of the overall national development and the great rejuvenation of the Chinese nation. Facing new situations and issues arising in the course of implementing “one country, two systems”, the Central Government has adhered to its original aspiration and resolutely taken a series of significant measures which address both the symptoms and the root causes, thereby ensuring that the “one country, two systems” flagship is sailing in the right direction and at the same time enriching and developing the theory and practice of “one country, two systems” and the Basic Law. The strong adaptability and vitality of the “one country, two systems” policy have been and will continue to be manifested in the practice of the governance of Hong Kong. I would like to do a brief review and summary with all of you here.

On the major theoretical aspect: first, always accurately grasp the relationship between “one country” and “two systems” and

emphasize that, when dealing with the relationship between “one country” and “two systems”, “one country” is the prerequisite and basis for the implementation of “two systems” whereas the “two systems” is reproduced and derived from “one country” and unites in “one country”. **Second**, the Constitution and the Basic Law jointly form the constitutional basis of the HKSAR. The Constitution, as the cardinal law of the country, enjoys the highest legal status and legal effect and is the highest manifestation of “one country, two systems” in the country’s rule of law. The Basic Law, enacted pursuant to the Constitution, provides for the systems and policies of the HKSAR. **Third**, correctly handle the relationship between the overall jurisdiction of the Central Government and the high degree of autonomy of the HKSAR. The former is the prerequisite and basis for the latter. The overall jurisdiction of the Central Government includes the powers exercised by the Central Government directly and also the powers delegated by the Central Government to the HKSAR for exercising a high degree of autonomy in accordance with the law. The power of supervising the high degree of autonomy of the HKSAR rests with the Central Government. **On the major practical aspect: first**, the integration of the HKSAR into the overall national development has been facilitated. The Guangdong-Hong Kong-Macao Greater Bay Area has been developed with high quality by combining the strong backing role of the Motherland with the HKSAR’s own competitiveness. **Second**, the systems and mechanisms of the HKSAR in relation to the implementation of the Constitution and the Basic Law have been improved, the improved legal system and enforcement mechanism for safeguarding national security of the HKSAR have been established, the HKSAR National Security Law has been enacted, the principles of “patriots administering Hong Kong” and “patriots administering Macao” have been implemented,

and the electoral system of Hong Kong has been improved. It has to be reiterated that major theories lead and guide major practice, and major practice further enriches and nurtures major theories.

2. Fully, accurately and firmly implement the “one country, two systems” policy; adhere to and improve the “one country, two systems” regime; and steer the implementation of “one country, two systems” back on track

Ever since the reunification of Hong Kong with the Motherland, two thorny institutional issues have troubled the Hong Kong society and become major hindrances to the implementation of the Basic Law. One is the protracted delay in enacting legislation on Article 23 of the Basic Law, and the other one relates to the continuous politicization in Hong Kong. These two issues are intertwined and mutually influential, and were intensified following the turbulence over the proposed amendments to the Fugitive Offenders Ordinance, which involved rampant advocacy of “Hong Kong independence”, prevalence of “black violence” and widespread ideas of “mutual destruction”. Social order and public safety were severely undermined, and in particular, some foreign and external forces openly meddled in Hong Kong’s affairs and attempted to turn Hong Kong into a “bridgehead” for infiltration into the Mainland and subversion of the leadership of the CPC and the socialist system of China. All these posed a great threat to the national security of China, especially the political security of the HKSAR, and the HKSAR faced the most critical situation since the reunification. Against this background, the Central Government resolutely took a number of important measures including the enactment of the HKSAR National Security Law and improvement of the electoral system of the HKSAR. In order to fully and accurately understand the joint force of the enactment of the HKSAR National



Security Law and improvement of the electoral system, it is necessary to properly grasp the following three points:

First, adhere to the holistic view of national security and properly perform constitutional responsibilities. President Xi Jinping has stressed that “national security is the cornerstone of the safety and stability of a nation.” Safeguarding national security is a matter of top priority for our nation. Since its 18th National Congress, the CPC has kept up with the times, systematically answered the important question of the times of how, as socialism with Chinese characteristics enters a new era, to properly resolve the common problems faced by major countries in the process of development and, at the same time, properly deal with the unique security issues faced by the Chinese nation at the critical stage of its great rejuvenation. The CPC has also creatively put forward the holistic view of national security, which stresses that in establishing a national security system

with Chinese characteristics, the people's security is the aim, political security is the basis, economic security is the foundation, military and cultural/social security is the safeguard, and the promotion of international security is the underpinning. The holistic view of national security emphasizes the concept of mega security which encompasses numerous areas such as politics, military, homeland, economy, finance, culture, society, technology and network and which is constantly and dynamically adjusted with social development. Of all the elements of the holistic view of national security, political security is at the core, and ensuring political security is the prerequisite for safeguarding national security. The essence of political security is regime security and institutional security. Our nation is a socialist country led by the CPC, and the most fundamental requirement of safeguarding political security is to protect the leadership and ruling position of the CPC and to preserve the socialist system with Chinese characteristics. Articles 52 and 54 of the Constitution stipulate that Chinese nationals are under the obligation to safeguard national unity and national security. Articles 11 and 40 of the National Security Law further provide expressly that compatriots of Hong Kong and Macao shall safeguard national sovereignty, security and territorial integrity and are under the duty to safeguard national security. The Basic Law of the HKSAR and the HKSAR National Security Law also stipulate that the Central People's Government has an overarching responsibility for national security affairs relating to the HKSAR and that it is the constitutional duty of the HKSAR to safeguard national security. Therefore, in safeguarding national security in the HKSAR, the holistic view of national security has to be adhered to, political security and institutional security have to be ensured, the constitutional order of the HKSAR as established by the Constitution and the Basic Law has to be properly safeguarded, the leadership and

ruling status of the CPC have to be respected and protected, and the two different social systems in force in the Mainland and Hong Kong have to be respected and preserved.

Second, fully implement the principle of “patriots administering Hong Kong” and maximize the convergence of interests. The principle of “patriots administering Hong Kong” is at the heart of “one country, two systems” and is fundamental to national sovereignty, security and development interests as well as the long-term prosperity and stability of Hong Kong. President Xi Jinping has stressed that “in order to ensure the steadfast and successful implementation of ‘one country, two systems’, the principle of ‘patriots administering Hong Kong’ must always be adhered to”. The power to administer Hong Kong, as a special administrative region of the People’s Republic of China, must be in the hands of patriots. The criteria for a patriot are objective and clear. At a symposium organized by the Chinese Association of Hong Kong & Macao Studies on 22 February 2021, Vice Chairman Xia Baolong expressly pointed out that a patriot is someone who truly safeguards China’s national sovereignty, security and development interests, respects and upholds the fundamental system of the country and the constitutional order of the HKSAR, and makes every effort to maintain the prosperity and stability of Hong Kong. Those who participate in the political structure of the HKSAR have to be unflinching patriots with talent and integrity and also ability to govern. The newly improved electoral system, with a reconstituted Election Committee, an adjusted candidate nomination mechanism, enhanced exercise of the functions of the Election Committee and an improved mechanism for checking candidates’ eligibility, serves to exclude “anti-China, destabilizing” forces from the political structure of the HKSAR and to ensure that those elected to key public positions of the HKSAR are staunch

patriots. Actual practice has proved that adherence to the principle of “patriots administering Hong Kong” is a fundamental prerequisite for resolving deep-seated conflicts and problems in the Hong Kong society, ensuring the prosperity and stability of Hong Kong and giving full play to the unique advantages of Hong Kong in the context of great national rejuvenation. By adhering to the principle of “patriots administering Hong Kong”, the “highest common factor” under the “one country, two systems” regime can be found and convergence of interests maximized.

Third, adhere to the principles of the Constitution and improve the “one country, two systems” regime under the framework of the Constitution and the Basic Law. The Constitution is the cardinal law of the nation and enjoys the highest legal status and legal effect within the country. It is the constitutional basis for the establishment of the HKSAR and the legislative basis and source of validity for the Basic Law, and also provides the fundamental principles which must be followed for the application and interpretation of the Basic Law. “One country, two systems” is based on and originates from the Constitution. According to the Constitution, the NPC is the highest organ of state power and exercises sovereign powers of the state. Since Hong Kong’s return to the Motherland, the NPC and its Standing Committee (NPCSC) have made a number of decisions, resolutions and legal interpretations to develop the “one country, two systems” regime and have specifically enacted a number of important laws. For example, the NPCSC has made a number of legislative interpretations which clarify the meaning of specific provisions of the Basic Law, properly resolving major issues such as the political development of the HKSAR, right of abode, the term of office of the Chief Executive, the oath of office and state immunity, and thereby removing doubts and settling disputes. As another example, through

the NPCSC's specific authorization, jurisdictional issues including the "co-location arrangement" between the Mainland and the HKSAR have been effectively resolved, facilitating exchange of personnel, economic and trade interactions and joint development. It can be said that from great conception through vital implementation to refinement of relevant systems and mechanisms, "one country, two systems" has been realized through the system of the People's Congress. The HKSAR National Security Law and the decision on it, the decision on improving the electoral system of Hong Kong and the amendments to Annexes I and II of the Basic Law passed by the NPC and the NPCSC have further improved the "one country, two systems" regime and provided even stronger constitutional support and protection for "one country, two systems".

3. Continue to leverage on the governance advantages of "one country, two systems", seize opportunities and embrace challenges to ensure it is implemented steadfastly and successfully in the right direction

The HKSAR National Security Law and improvements to the electoral system of Hong Kong are major steps in fully, accurately and firmly implementing the "one country, two systems" policy; arrangements made pursuant to the Constitution and the Basic Law which are of the greatest constitutional significance; and also the milestones in the development of the implementation of "one country, two systems". Like wheels of a car and wings of a bird, such major measures have improved the systems and mechanisms relating to the implementation of the Constitution and the Basic Law; ensured full implementation of the provisions of the Basic Law; preserved the integrity and authority of the Basic Law; ensured the major turn of Hong Kong from chaos to order; and opened a new chapter for the

progress of the Hong Kong society from stability to prosperity. With the effective implementation of the HKSAR National Security Law and the putting into practice of the new electoral system, more and more talented and capable patriots will enter the political structure of the HKSAR. A team for administering the HKSAR, which comprises patriots who love the country and love Hong Kong and who are willing to shoulder responsibilities, sincere and united and ready to serve Hong Kong people, has gradually taken shape; but at the same time, the situation of safeguarding national security in the HKSAR is still precarious and complex. The development of Hong Kong society is still facing a series of severe tests on enhancing the governance efficacy of the government, strengthening competitiveness and solving deep-seated socio-economic problems, etc. Opportunities and challenges co-exist.

In the face of opportunities and challenges, we have to continue to act in strict compliance with the Constitution and the Basic Law; insist on administering Hong Kong in accordance with the law; solidify the constitutional basis of the HKSAR as jointly established by the Constitution and the Basic Law; preserve the constitutional order of the HKSAR as laid down by the Constitution and the Basic Law; ensure that the “one country, two systems” policy will remain unchanged and unswerving; and ensure that the practice of “one country, two systems” will be on the right track always, and away from distortion or deviation.

In the face of opportunities and challenges, we have to continue to steadfastly implement the holistic view of national security; effectively implement the HKSAR National Security Law; actively perform the constitutional duty to enact legislation on Article 23 of the Basic Law; improve the relevant laws; continue to shape a

politically secure Hong Kong in accordance with the Constitution and the Basic Law; eliminate any actual and potential risks which may endanger national security; and solidly establish the foundation and line of defense for safeguarding national security in the HKSAR.

In the face of opportunities and challenges, we have to continue to enhance the systems and mechanisms relating to the implementation of the Constitution and the Basic Law and, with powerful legal weapons and the courage to innovate, continue to deal with new situations and new issues that may be encountered in the course of implementing “one country, two systems” and the Basic Law and to overcome all difficulties and strive ahead.

In the face of opportunities and challenges, we have to continue to fully implement the principle of “patriots administering Hong Kong”, ensure that the administrative power over the HKSAR rests firmly with those who love the country and love Hong Kong, and promote good governance in Hong Kong. We have to step up our effort in developing the economy, improving livelihood and resolving deep-rooted conflicts, so as to solidly enhance the sense of ownership and contentment among Hong Kong people.

Distinguished guests and friends, on 11 November 2021 the Sixth Plenary Session of the 19th Central Committee of the CPC passed the “Resolution on the Major Achievements and Historical Experience of the Party over the Past Century” and, for the first time, included in the Resolution the adherence and improvement to “one country, two systems” in Hong Kong and Macao as an important part of the CPC’s remarkable achievements and historical experience over the century. The extraordinary journey of Hong Kong since its reunification with the Motherland 25 years ago has amply proved that the implementation of “one country, two systems” is conducive to

safeguarding the fundamental interests of the country, Hong Kong and all compatriots in Hong Kong. At a new starting point in history, we firmly believe that the team of patriots elected under the new electoral system to administer Hong Kong will be able to unite and lead all sectors of our society in working hard towards weaving the “Hong Kong chapter” of the great rejuvenation of the Chinese nation.

This concludes my speech and I welcome valuable comments and enlightenments from the three panelists. Finally, on behalf of the Chinese Association of Hong Kong & Macao Studies, I wish the conference a great success and wish all of you good health and prosperity. Thank you.

Zhu Guo-bin: As we all know, the NPC and the NPCSC completed the national security legislation and improvement to the electoral system for the HKSAR by means of “decision plus legislating” and “decision plus amendment” in 2020 and 2021 respectively. Just now, Mr Deng used the expression “address both the symptoms and the root causes”, which I think is an accurate summary. These two laws play the most crucial role in the governance of the HKSAR over the next 25 years. Therefore, in this session we will focus on discussing these two laws. First of all, I would like to invite our guest speaker Mr Tam Yiu-chung, a member of the NPCSC. Mr Tam is an experienced politician. He was a member of the Drafting Committee of the Basic Law of Hong Kong, the Executive Council and the Legislative Council, and has been a long-time chairman of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). Mr Tam please.

Tam Yiu-chung: Thank you, Professor Zhu. The organizer would like me to talk about these three points as shown in the Power Point, as I have been attending meetings of the NPCSC and have

the benefit of personal experience. So, based on what I can recall, I am going to talk about three aspects. First, the cardinal principles followed by the NPCSC in enacting the HKSAR National Security Law and the Decision on Improving the Electoral System. Second, the legislative approach regarding the HKSAR National Security Law and improvement to the electoral system. Third, in future, with the strong support of the Central Government, how we can start a new chapter for Hong Kong.

Let me start by talking about the first point, namely the principles followed by the NPCSC in enacting the HKSAR National Security Law and the Decision on Improving the Electoral System.

I have come to appreciate three points. These three points have one overriding principle and the two laws are interrelated and consistent. The first point is to safeguard national security, the second is to improve and accurately implement “one country, two systems”, and the third is to insist on administering Hong Kong in accordance with the law. As to the important principles underlying the HKSAR National Security Law, I think they were most authoritatively spelt out by Mr Wang Chen, Vice Chairman of the NPCSC, in his speech at the plenary session of the NPC in March 2020. He said, “The affairs of the HKSAR are the internal affairs of China and are not subject to interference by external forces. We must resolutely oppose any form of interference in Hong Kong’s affairs by a foreign country or any foreign organization or individual. We must resolutely prevent and curb external forces from meddling with Hong Kong’s affairs and conducting any act of secession, subversion, infiltration or sabotage. We will take all necessary measures to counter any legislative, administrative or other measure formulated or implemented by the foreign countries to interfere in the affairs of Hong Kong.” This point was very clearly stated. Second, he stressed that the legitimate

rights and interests of Hong Kong residents would be effectively protected and human rights would be respected and safeguarded in the legislative process. As regards the important principles relating to the Decision on Improving the Electoral System, Vice Chairman Wang emphasized two points: first, develop a system of democratic elections that fits in with Hong Kong's actual conditions and reflects the overall interests of the society; second, enhance the governance efficacy of the HKSAR. The legislation was enacted on the basis of these important principles.

Different legislative approaches were taken for the HKSAR National Security Law and the Decision on Improving the Electoral System. The former adopted the “decision plus legislating” approach while the latter adopted the “decision plus amendment” approach. We will analyze the differences between the two approaches later.

As to the legislative approach to the HKSAR National Security Law, the first step involved the NPC passing the “Decision on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security” pursuant to the relevant provisions of the Constitution and the Basic Law and, at the same time, authorizing the NPCSC to enact the relevant laws. In fact, we had already talked about this when the Drafting Committee for the Basic Law discussed Article 23, the reason being that we all considered it necessary to safeguard national security and this area was indispensable. You may ask, had provisions on safeguarding national security been included in drafting the Basic Law, would it not have resolved the issue once and for all? This is indeed correct, but then there were different views during the drafting of the Basic Law. The final decision, namely

that the HKSAR was to enact the relevant law on its own after its establishment, was made partly out of respect for the opinions from Hong Kong. But who could have imagined that 23 years would have passed without the relevant law being enacted. Finally, when something detrimental happened in 2019, the NPCSC stepped in. This fully accorded with the Constitution and the Basic Law and was indeed something we had considered when drafting the Basic Law in the first place. The second step was to add the law enacted pursuant to the Constitution to Annex III of the Basic Law so that it could be directly promulgated and implemented by and in the HKSAR.

At the time of enacting the legislation, I also participated in the discussions. I do admire the Mainland for their drafting work as they were able to formulate, within a short period of time, a law on safeguarding national security and its enforcement mechanism. If there were only a law with no enforcement mechanism, the effect would not have been the same. I recall that, during our meetings in Beijing, we specially invited Vice Chairman Deng Zhong-hua, who spoke just now, to discuss with our delegates for more than two hours. We also discussed further with Chairman Li Fei afterwards because we hoped that this law, once enacted, could be implemented smoothly. Following the discussions and understanding, we think that this law has done a good job. We can see that since the enactment of this law, the entire situation of Hong Kong has changed from chaos to order and many things are now underpinned by law, so that the stability of Hong Kong has been restored.

The Decision on Improving the Electoral System is different from the enactment of national security law that we have just mentioned. This Decision was made at a plenary session of the NPC, which also authorized the NPCSC to amend Annex I and Annex II to the

Basic Law without involving the main text of the Basic Law. The amendments to Annex I and Annex II were also mentioned at the session this morning. We made this arrangement when we drafted the Basic Law because, in respect of matters on the political system, we took the view that we could not provide for all the arrangements for the coming 50 years at one go, and this would also allow us to proceed in a gradual and orderly manner in light of changes to the social situation. Therefore, it was specifically stated in clear terms that certain matters could be reviewed in 2007, that is 10 years after the establishment of the HKSAR, and the procedural requirements for amendments were also clearly stated. Therefore, on this occasion it was sufficient just to amend Annex I and Annex II to make changes, without having to amend the main text of the Basic Law. These arrangements are also what we had prepared for when we drafted the Basic Law in the first place. Here we have two steps, namely the amendments to Annex I and Annex II and then the enactment of local legislation by the local legislature, i.e. the Legislative Council of Hong Kong. The Legislative Council was very conscientious. They held the First and Second Readings of the relevant Bill on 14 April 2021 and held the Third Reading of and passed the Bill on 27 May, thereby enabling the implementation of “improving the electoral system” in Hong Kong.

Having talked about these two laws, I would like to briefly talk about **what the future of Hong Kong should be with the support of the Central Government**. Following the enactment of these two laws, Hong Kong has in fact been stabilized and enjoys protection in respect of elections. So we hope to work together from now on to open a new chapter for the future of Hong Kong. Thank you, Professor Zhu.

Zhu Guo-bin: Thank you, Mr Tam. Mr Tam has outlined the legislative principles and features of these two laws and also revealed some details of the legislative process, which is of great significance when we study both laws. The next speaker is the Hon Ms Maggie Chan Man-ki, a deputy to the NPC. The Hon Ms Chan is a registered lawyer and also a Hong Kong deputy to the NPC, a member of the National Committee of the Chinese People's Political Consultative Conference of Hunan Province, a member of the Legislative Council, and a member of the Fifth Sector of the Election Committee of Hong Kong. She also holds a number of public offices. Let us welcome the Hon Ms Chan.

Maggie Chan Man-ki: Thank you, Professor Zhu, and thank you all. The topic I am going to share with you today is to explore and analyze, from my perspective as a practicing lawyer, a member of the Legislative Council, a deputy to the NPC and a former member of the District Council for four terms, how an improved electoral system has further enhanced the broad representativeness and inclusiveness of Hong Kong's political system, realized the principles of balanced participation and fair competition, and produced a positive effect on the operation of the Legislative Council as well as the government's administration in accordance with the law. I also welcome comments and enlightenments from our senior audience and experts.

Based on my own experience, I think that improving the electoral system enables Hong Kong's political system to operate correctly in the constitutional order and the rule of law order. The Candidate Eligibility Review Committee ensures that political candidates and politicians are patriots and that "patriots administering Hong Kong" is implemented. It is important that politicians from different classes and parties, or even the executive and legislative branches of the

government, share a common political order, ideology and core value and have solid mutual trust. When there are disagreements, we can all focus on the larger picture, so that there can be greater political pluralism and broader representativeness within the constitutional and legal framework, allowing for both common ground and differences, both harmony and diversity. “A stable system will make Hong Kong strong, and a strong system will make Hong Kong prosperous.”

Hong Kong has recovered from chaos to order and progressed from stability to prosperity. It is necessary for Hong Kong to run a political system with patriotism as the overriding principle. Only through this can Hong Kong develop, under “one country, two systems” and, in line with the actual situation of Hong Kong, a democratic path with Hong Kong characteristics and make progress while maintaining stability. “Improvement of the electoral system” has further promoted the breadth, inclusiveness and representativeness of our political system and given effect to the principles of balanced participation and fair competition. I would suggest the following four points: first, protection of the authority of the Constitution should be emphasized. Second, members of the Legislative Council and the Election Committee should have an overall perspective, a national perspective and a global perspective. Third, more patriotic talents for administering Hong Kong should be identified and nurtured. Fourth, the HKSAR Government should ensure that the political system progresses with the times, accurately reflects and absorbs public opinions, and upholds the principle of balance. As regards firmly defending the authority of the Constitution and strengthening and implementing the principle of “patriots administering Hong Kong”, I also have a few suggestions. First, the functions of the Basic Law Promotion Steering Committee should be enhanced and the Committee should be re-named “Constitution and Basic Law

Promotion Steering Committee”, and a position of Commissioner for Promoting the Constitution and the Basic Law should be created. Second, pursuant to Article 6 of the HKSAR National Security Law, expand the scope of the requirement for public officers to swear to uphold the Basic Law of the HKSAR of the People’s Republic of China and swear allegiance to the HKSAR of the People’s Republic of China in accordance with the law when standing for election or assuming office. Third, in accordance with Article 7 of the HKSAR National Security Law, the HKSAR should strictly enforce the HKSAR National Security Law, complete the enactment of local legislation on Article 23 of the Basic Law as soon as possible, and improve the existing local laws on safeguarding national security. Fourth, all colonial features in local laws should be removed as soon as possible and colonial terms such as “Her Majesty” should be deleted. Fifth, in accordance with Articles 9 and 10 of the HKSAR National Security Law, the HKSAR Government and various sectors of the community should step up education not only on the Basic Law, but also on the origin, i.e. the Constitution, the Basic Law, the HKSAR National Security Law, patriotic Chinese culture and the rule of law, so that “patriots administering Hong Kong” and “love the country and love Hong Kong” are not just slogans but are in the blood of every Hong Konger.

Members of the Legislative Council and the Election Committee form an integral part of the political system of Hong Kong, and members of the Legislative Council of Hong Kong must have an overall perspective, a national perspective and a global perspective. It is important to uphold the principle of balance and prevent polarization and fragmentation. It is also necessary to be “down to earth” and accurately understand the sentiments of the community, promote cross-sectoral collaboration on livelihood issues, and work

for the overall interest of Hong Kong, so that our political system can reflect the actual social, political, economic and livelihood conditions in Hong Kong. In addition, it is essential to keep abreast of the latest developments and policies of our country, and always take the steadfast and successful implementation of “one country, two systems” as a fundamental responsibility in the performance of our duties, so that Hong Kong can focus on development, resolve livelihood issues, continue to leverage its unique advantages as an international metropolis, and maintain its prosperity and stability.

Individual members of the Election Committee and the related organizations and institutions have to make the best use of the new functions of the Election Committee to serve the community on an ongoing basis. The Election Committee should not play a role only during elections but should also reflect public opinions, so that the Election Committee can become a microcosm of Hong Kong society and reflect the overall interest of Hong Kong on a macro level. On the common basis of “patriots administering Hong Kong”, we should be inclusive and synergistic and fully uphold the “one country” principle, and at the same time respect the differences between the “two systems” and facilitate the organic combination of the overall jurisdiction of the Central Government with the high degree of autonomy of the HKSAR.

As for the political system of Hong Kong, it has to constantly strengthen itself and enhance its own capacity. I suggest that multiple channels be developed to discover and offer long-term training to more talents who love the country and Hong Kong and who participate in politics and debate public policies, so that talents can continuously be injected into the Election Committee. I also encourage and hope to promote the establishment of various non-governmental

research centers for patriots, set up systems for cultivating patriots of different age groups, make good use of primary and secondary school organizations such as uniformed groups and flag-raising teams, and establish think tanks of youth patriots in order to provide talents of various classes, types and expertise for the implementation of “patriots administering Hong Kong”. In addition, to attract more aspiring individuals who regard “patriots administering Hong Kong” as their lifetime goal, it is necessary to construct a revolving door for talents who uphold “patriots administering Hong Kong”, by providing them with jobs and opportunities in the government, the legislature, various non-governmental consultative bodies and research centers.

The HKSAR Government is obliged to keep the political system abreast of the times, ensure accurate reflection and absorption of public opinions, follow the principle of people-based governance and uphold the principle of balance. I think that under the principle of “executive-led; mutual checks and balances as well as cooperation between the executive and the legislature; judicial independence and independent power of final adjudication”, it is necessary for the HKSAR Government to think from others’ perspectives and make proper use of the Election Committee to seek views and opinions from various sectors, to take a bottom-up approach, in order to assist the government in showing greater empathy. I think it is very important for the current Government or the principle of “patriots administering Hong Kong” to have empathy because it enables them to be “down to earth”; always have a sense of crisis and bottom-line thinking; and have micro perspective as well as an overall perspective, a national perspective and a global perspective. The Civil Service College has to provide programs and internship opportunities to allow civil servants to have more interaction with the Election Committee and various sectors of the community, and to train them to become down to earth,

to be sensitive to the community's sentiments, and to firmly grasp the situations, developments and changes in the society, politics, economy and livelihood.

The principal officials of the Government have to promote broad representativeness, inclusiveness, balanced participation and fair competition in the political system of Hong Kong, and also have to unite all forces in Hong Kong to resolve deep-rooted issues of Hong Kong, lead Hong Kong in its integration into the overall development of the country, maintain long-term prosperity and stability of Hong Kong, and facilitate the steadfast and successful implementation of “one country, two systems”.

Finally, the political system of Hong Kong must implement the general principle of “patriots administering Hong Kong”, improve the constitutional system and rule of law in Hong Kong, and better manifest the Central Government's overall jurisdiction and the HKSAR's high degree of autonomy. Last but not least, as many leaders, seniors and experts mentioned just now, it is important to ensure political security, regime security and system security. “Patriots administering Hong Kong” is the largest common denominator of the 7 million-strong Hong Kong community. All the forces that can be united have to be united so that under “one country, two systems”, the development of the political system and democracy in Hong Kong will accord more with the actual situation of Hong Kong. The western form of democracy should never be blindly applied to the HKSAR, and in developing democracy in Hong Kong, the goal should always be to safeguard national sovereignty, security and development interests as well as lasting prosperity and stability of Hong Kong. By enhancing the governing effectiveness of the HKSAR and achieving good governance, “one country, two systems” will be steadfastly and

successfully implemented and we Hong Kong people will enjoy a safe, stable and fruitful life in Hong Kong. Thank you.

Zhu Guo-bin: Thank you, the Hon Ms Chan, for your constructive and impassioned sharing. Our next speaker is Professor Wong Yuk-shan. Professor Wong is currently a Hong Kong deputy to the NPC and a member of the Basic Law Committee of the NPCSC. He has also served as chairman and member of various committees of the HKSAR. As a social activist, Professor Wong also held a number of public offices. He has been teaching, conducting research and undertaking administrative work at tertiary institutions of Hong Kong for a long time, and served as Vice-Chancellor and Pro-Vice-Chancellor of two universities. Please welcome Professor Wong.

Wong Yuk-shan: Thank you, Moderator. Distinguished friends, just now we have heard and learnt a lot from the speech made by Deputy Director Deng Zhong-hua. Here, I would like to share my views on “patriots administering Hong Kong”. On 11 March 2021, the Fourth Session of the NPC adopted, by an overwhelming majority, the Decision on Improving the Electoral System. Following the implementation of the HKSAR National Security Law, the Central Government, also pursuant to the Constitution and the Basic Law, further improved the electoral system of Hong Kong, including the methods for selecting the Chief Executive and forming the Legislative Council. This is to manifest, on an institutional level, the principle of “patriots administering Hong Kong” and ensure that the policy of having Hong Kong people administering Hong Kong, with “patriots administering Hong Kong” at the core, can be fully implemented, and hence guarantee the steadfast and successful implementation of “one country, two systems”.

As you all know, following the turbulence over the proposed amendments to the Fugitive Offenders Ordinance in 2019, the extreme opposition camp in Hong Kong, together with the external “anti-China, destabilizing” forces, blatantly propagated “Hong Kong independence” and, making use of the election platforms of the Legislative Council and District Councils of Hong Kong and of their capacity as public officers, flagrantly engaged in various illegal “anti-China, destabilizing” activities. There was every indication that obvious loopholes and flaws existed in the electoral system of Hong Kong as it then stood. Therefore, the principle of “patriots administering Hong Kong” must be stipulated on the legal and institutional levels in order to prevent those “anti-China, destabilizing” elements from entering the governing team.

The principle of “patriots administering Hong Kong” is by no means a recent creation. As we all know, back in the 1980s during the Sino-British negotiations, the late leader Mr Deng Xiaoping repeatedly explained the principle of “patriots administering Hong Kong” and its importance. I still remember that on 22 June 1984, while receiving a delegation to Beijing from the Hong Kong industrial and commercial sectors, Mr Deng Xiaoping said: “Some requirements or qualifications should be established with regard to the administration of Hong Kong affairs by the people of Hong Kong. It must be required that patriots form the main body of administrators, that is, of the future government of the Hong Kong special region. A patriot is one who respects the Chinese nation, sincerely supports the Motherland’s resumption of sovereignty over Hong Kong and wishes not to impair Hong Kong’s prosperity and stability.” This is a very clear definition.

Year 1997 marked the end of the British administration of Hong Kong, Hong Kong reunified with the Motherland and China has resumed exercise of sovereignty over Hong Kong. According to the Basic Law and the “one country, two systems” policy, Hong Kong is to be administered by Hong Kong people. Following the reunification, Hong Kong has become part of the sacred territory of the Motherland. Therefore, in addition to implementing “one country, two systems” and maintaining the prosperity and stability of Hong Kong, those who administer Hong Kong have to protect the sovereignty, security and development interests of the country in various areas of administration. As Deputy Director Deng Zhong-hua said earlier, Hong Kong is under the constitutional obligation to safeguard national security. Therefore, if our administrators were not patriots, it would not be possible to perform the said obligation or complete the said mission. Patriots who administer Hong Kong are not only Hong Kongers but also Chinese people who identify with their own country, respect the nation, and strive to protect national sovereignty, security and development interests. In addition to serving Hong Kong, patriots who administer Hong Kong are also loyal to and supportive of the country as a matter of principle and political ethics.

The various “anti-China, destabilizing” phenomena in Hong Kong in 2019 are salient negative examples which show that “patriots administering Hong Kong” is necessary and indispensable. This also exemplifies the statement by Mr Deng Xiaoping that there are parameters and qualifications for “Hong Kong people administering Hong Kong”. In every country in the world, love for one’s own country and allegiance to the Motherland are basic requirements of political ethics that civil servants at all levels must comply with. We must have these requirements which are not unique to Hong Kong but ubiquitous worldwide. The Decision on Improving the

Electoral System has effectively guaranteed a better electoral system in future with the relevant loopholes plugged and defects fixed. It is an important milestone on the road of implementing “one country, two systems” and also a solemn declaration of a new political situation in which “patriots administer Hong Kong” and in which “anti-China, destabilizing” elements have no place. It also clearly establishes new political rules and legal standards which will enable the HKSAR Government to truly shoulder the weighty responsibility of safeguarding the sovereignty, security and development interests of the country, and which will also enable Hong Kong to integrate into the overall development of the country more smoothly.

With the full implementation of the HKSAR National Security Law and the improvement of the electoral system, some people are concerned about whether this means that the Central Government has tightened its policy towards Hong Kong. Some people wonder whether “one country, two systems” will still be necessary after 20 years when China develops into a modernized socialist power. My own view is that “one country, two systems” is an idea conceived by the Central Government and its leaders after much thought and planning, and is also an achievement which can withstand repeated challenges and testing. Over the past 30-odd years, many leaders of China have repeatedly and publicly stated that the “one country, two systems” policy is constructive and has to be upheld. From a historical perspective, “one country, two systems” is pioneering and unprecedented, but it has strong vitality. In his report at the 19th National Congress of the CPC on 8 October 2017, General Secretary Xi Jinping set out our country’s basic policy of “fourteen points of insistence”, the twelfth of which is “one country, two systems”, which means that “one country, two systems” is part of our country’s strategic policy. This is what General Secretary Xi said: “Maintaining

lasting prosperity and stability in Hong Kong and Macao and achieving China's full reunification are essential to realizing national rejuvenation. We must ensure both the Central Government's overall jurisdiction over the Hong Kong and Macao special administrative regions and a high degree of autonomy in the two regions. We should ensure that the principle of 'one country, two systems' remains unchanged, is unwaveringly upheld, and in practice is not bent or distorted." This is a major decision and commitment.

I believe that the implementation of the HKSAR National Security Law and the improvement of the electoral system will not undermine "one country, two systems" but rather, as President Xi has said, will organically combine the overall jurisdiction of the Central Government over the HKSAR and the high degree of autonomy of the HKSAR. The implementation of the HKSAR National Security Law and improvement of the electoral system will simply further strengthen and refine "one country, two systems". In my view, China is an ancient civilization and a great socialist country with Chinese characteristics. Only a country like ours would have such open-mindedness and magnanimity, and such insightful wisdom and vision, to realize "one country, two systems". By creating and implementing two systems in one country, China has creatively solved the problems left behind by history, responded to the expectations for peaceful development of mankind, and enriched the meaning of human civilization. The successful implementation of "one country, two systems" and future development are, in my view, a significant contribution by the CPC and the Chinese Government to the history of human political civilization. We should all be proud and honored to be part of it. For these reasons, I have no doubt that "one country, two systems" will be steadfastly and successfully implemented and I am confident in the future of "one country, two systems". Thank you.

Zhu Guo-bin: Thank you, Professor Wong, for sharing your wealth of insights on the political and legal implications as well as the institutional meaning of “patriots administering Hong Kong”. Thank you for your very inspiring speech. Our last speaker, who is also a heavyweight speaker, is Mr Tang Ping-keung, the Secretary for Security of the HKSAR. He will be giving an online speech. He joined the Hong Kong Police Force in the 1980s and served as an Inspector, Senior Assistant Commissioner of Police, Director of Operations, Deputy Commissioner of Police and then Commissioner of Police, and in June of last year became the Secretary for Security. Let us welcome Mr Tang.

Tang Ping-keung: Thank you, Professor Zhu. Mr Deng Zhong-hua, Mr Tam Yiu-chung, Ms Maria Tam Wai-chu, the Secretary for Justice Ms Teresa Cheng Yeuk-wah and distinguished friends, today I am very delighted to be invited to participate in the Legal Conference on the Basic Law organized by the Department of Justice and to share with all of you the HKSAR’s experience in improving the law on safeguarding national security.

With the implementation of the HKSAR National Security Law, Hong Kong has turned from chaos to order and recovered from a turbulent and riotous environment. Through a review of the experience in implementing the HKSAR National Security Law and an analysis of the changes to the national security situation in the HKSAR, I hope you all would understand how the HKSAR National Security Law, as a key component of the “combination of punches” supporting the steadfast and successful implementation of “one country, two systems”, achieves the effect of elevating Hong Kong from stability to prosperity and consolidating the basics.

The HKSAR National Security Law is a targeted and pertinent law that fully takes into account the actual situation of the HKSAR. The law was enacted against the background of rampant “black violence” in 2019 when rioters flagrantly vandalized government buildings, shops, railways and other public facilities, committed arson, forcibly entered and vandalized the Legislative Council, and wantonly assaulted enforcement officers and dissenters. External forces tried to infiltrate Hong Kong and stage a “color revolution” and, through agents, engaged in activities endangering national security, including attempting to influence the outcome of elections and subvert the state power. Hong Kong was facing an unprecedented threat in respect of national security and the prosperity of Hong Kong was put in grave jeopardy.

Against such background, the HKSAR National Security Law lays down targeted offences and penalties for the four most serious and pressing types of behavior and activities that endanger national security, including secession, subversion, terrorist activities and collusion with a foreign country or external elements to endanger national security, thereby providing a legal basis for enforcement actions. The law also provides for the establishment of relevant organizations for safeguarding national security and stipulates their duties, including the Committee for Safeguarding National Security of the HKSAR, the National Security Department of the Hong Kong Police Force, the National Security Prosecutions Division of the Department of Justice, and the Office for Safeguarding National Security of the Central People’s Government in the HKSAR.

In addition, the Hong Kong National Security Law specifically provides for the protection of personal rights and freedoms and also realizes important principles of the rule of law such as the

presumption of innocence, protection against double jeopardy and ensuring a fair trial.

In addition to providing for offences and enforcement mechanism, the HKSAR National Security Law also places particular emphasis on the prevention of acts which endanger national security. The HKSAR National Security Law stipulates that it is the common responsibility of all the people of China, including the people of Hong Kong, to safeguard the sovereignty, unification and territorial integrity of the People's Republic of China. It also stipulates that the HKSAR should promote national security education and strengthen public communication, guidance, supervision and regulation over schools, universities, social organizations, the media and the internet. This is of paramount importance to the full and accurate implementation of the policies of "one country, two systems", "Hong Kong people administering Hong Kong" and a high degree of autonomy, and to the maintenance of the prosperity and stability of the HKSAR.

Of course, apart from the HKSAR National Security Law, the HKSAR Government has also revived existing legislation to fully suppress and punish acts and activities that endanger national security. The effects of the enforcement actions over the past two years have begun to be felt, including the invocation of sections 9 and 10 of the Crimes Ordinance to actively combat seditious speeches and publications and other acts of "soft resistance". Furthermore, the Chief Executive in Council has, in exercise of the relevant powers under the Companies (Winding Up and Miscellaneous Provisions) Ordinance, ordered the Registrar of Companies to remove from the Companies Register those organizations that pose a risk to national security.

The relevant bureaux and departments of the HKSAR Government have also sought to better perform their obligations of public communication, guidance, supervision and regulation in relation to safeguarding national security by actively enacting new ordinances, regulations and mechanisms, including:

First, implementing a real-name registration program for prepaid stored value cards through the Telecommunications (Registration of SIM Cards) Regulation;

Second, including national security as one of the considerations for film censorship through the implementation of the Film Censorship (Amendment) Ordinance 2021 and the updated Film Censorship Guidelines for Censors;

Third, by passing the Personal Data (Privacy) Amendment Ordinance 2021, creating a new “doxxing” offence to combat the malicious act of disclosing any personal data without consent of the data subject, and conferring on the Privacy Commissioner the power to carry out criminal investigations and conduct prosecutions;

Fourth, incorporating offences of endangering national security into the Social Workers Registration Ordinance, so that any person convicted of any offence endangering national security cannot work as a registered social worker.

With the support of the abovementioned legal framework, the HKSAR Government follows the principle of “laws are observed and strictly enforced, so as to bring offenders to account” and, in accordance with the law, takes enforcement actions against those who endanger national security.

Since the HKSAR National Security Law took effect, to date a total of 186 persons have been arrested for suspected involvement

in acts and activities endangering national security, of whom 115 have been prosecuted, and five companies have been prosecuted for suspected commission of crimes endangering national security. As for court trials, eight trials involving ten defendants have been completed, and all of them have been convicted. The heaviest sentence imposed so far is imprisonment for nine years.

The implementation of the HKSAR National Security Law has reversed the chaotic situation in the HKSAR that started in 2019, with a significant reduction of violent acts and a continuous decline in the advocacy of “Hong Kong independence”. In addition, many organizations suspected of endangering national security have dissolved by themselves or ceased operation. These results are clear proof that the implementation of the HKSAR National Security Law has produced notable results.

Although the HKSAR National Security Law does serve as a deterrent, those who endanger national security will not give up easily and will wait for the next opportune moment to do their heinous acts. Hong Kong still faces considerable national security risks, including:

First, forces that endanger the security of the country and Hong Kong will continue to use “soft resistance” tactics to propagate messages against the Central Government and the HKSAR Government and advocate “Hong Kong independence”;

Second, domestic terrorism activities, such as the “1 July stabbing of police” case in 2021 and the case of the “Returning Valiant” who attempted to launch bomb attacks in public places such as railways and courts in order to achieve political goals, show that domestic terrorists have become more operational;

Third, making use of Hong Kong's unique environment of "one country, two systems" with a high degree of autonomy, external forces constantly meddle with and discredit the affairs of the HKSAR with the intention to endanger national security; and

Fourth, those endangering national security who have fled overseas collude with external forces and continue to engage in activities that endanger national security, such as requesting foreign countries to impose so-called sanctions, and attempt to conspire with local media or organizations which intend to endanger national security, in order to jointly incite hatred.

In light of these, the HKSAR Government will continue to adopt a series of strategies to combat the abovementioned internal and external national security risks, including, in particular:


First, in terms of intelligence: We will strengthen the collection and analysis of intelligence on national security and counter-terrorism, especially online information and counterintelligence, and at the same time, we will strengthen sharing and exchange of information and intelligence with various national organizations and institutions;

Second, in terms of law enforcement: We will, among other things, continue to conduct in-depth investigations into persons and organizations suspected of endangering national security, in particular their sources of finance, expenditure and ties with external forces; and we will fully collaborate with various disciplined forces, bureaux and departments to jointly safeguard national security;

Third, in terms of legislation: We will, among other things, complete the enactment of legislation on Article 23 of the Basic Law and enact legislation on cyber security so as to further improve the legal system for national security;

Fourth, in terms of promotion and education: Only through a correct understanding of the importance of safeguarding national security can the prosperity and stability of Hong Kong be ensured. In particular, as regards raising awareness of national security among young people, the HKSAR Government has been encouraging the participation of teachers and students of all local primary and secondary schools through various competitions and activities such as online virtual exhibitions; and through the competitions and activities on the National Security Education Day, enables national security education to root in schools and the society. And the disciplined forces under the Security Bureau will, through their youth groups, continue to help young people develop good character, positive thinking and law-abiding sense.

Ladies and gentlemen, the HKSAR National Security Law has turned Hong Kong from chaos to order. The HKSAR Government will continue to work hard towards safeguarding national security. With the effort of everyone, I believe that the HKSAR Government will be able to shoulder the responsibility of safeguarding national security so that “one country, two systems” will be steadfastly and successfully implemented. Thank you!

Zhu Guo-bin: Thank you, Secretary Tang, for sharing with us your professional insights which deepen our understanding and raise our expectations on the implementation of the HKSAR National Security Law in the HKSAR. This discussion session is now coming to an end. I would like to thank our keynote speaker and the four panelists. A big “Thank You” to our online audience and everyone of you here. I wish you all the best. Thank you. 

Strengthen the Rule of Law and Start a New Chapter Mr Tam Yiu-chung

- i. Important principles that the NPCSC followed in enacting the HKSAR National Security Law ("HKNSL") and the "Decision on Improving the Electoral System" ("Decision")
- ii. The legislative approach of the HKNSL and the Decision;
- iii. Start a new chapter for Hong Kong with the strong support of the Central Government!

I. Important principles that the NPCSC followed in enacting the HKNSL and the Decision

As we all know, the HKNSL and the Decision enacted by the NPCSC form the joint force are closely related, and many of the important principles underlying them are consistent and interconnected. Of course, each of the HKNSL and the Decision also has its own focus and unique emphasis.

There are three important principles which are highly consistent and interrelated:

1. Safeguard national security,
2. Improve and accurately implement "One Country, Two Systems", and
3. Insist on administering Hong Kong in accordance with the law, etc.

Important Principles of the HKNSL

In the explanations on the draft of the HKNSL, Wang Chen, Vice Chairman of the NPCSC, emphasized at the NPC session that:

1. "The affairs of the HKSAR are the internal affairs of China and are **not subject to interference by any external forces**. We must resolutely oppose any form of interference in Hong Kong affairs by a foreign country or any foreign organisation or individual. We must resolutely prevent and curb external forces from meddling with Hong Kong's affairs and conducting any act of secession, subversion, infiltration or sabotage. We will take all necessary measures to counter legislative, administrative or other measures formulated or implemented by the foreign countries to interfere in the affairs of Hong Kong."

2. The HKNSL also places specific emphasis on the firm protection of the lawful rights and interests of Hong Kong residents and the respect for and protection of human rights. "The purpose of effectively preventing, suppressing and punishing, in accordance with the law, a very small number of illegal and criminal acts that endanger national security is to better protect the lives and properties of the vast majority of Hong Kong residents and to better safeguard fundamental rights and freedoms. Any work or law enforcement in safeguarding national security must strictly comply with the law, conform to legal authority and follow legal procedures, and must not infringe on the legitimate rights and interests of the residents, legal persons and other organizations of Hong Kong."

Important Principles of the Decision

In the explanations on the draft Decision, Wang Chen, Vice Chairman of the NPCSC, emphasized at the NPC session that:

1. **It is necessary to develop a system of democratic elections that fits in with Hong Kong's actual situation and reflects the overall interests of the society.** "It is imperative to guarantee in accordance with the law the extensive and balanced political participation of the Hong Kong compatriots, and guarantee in accordance with the law the right to vote and the right to be elected which are lawfully enjoyed by Hong Kong permanent residents. It is imperative to unite all that can be united and build extensive, positive energy in the Hong Kong society.", and
2. **It is necessary to improve the governance efficacy of the HKSAR.** "It is imperative to improve the system under which the Chief Executive is responsible to the Central People's Government and maintain the executive-led governance structure and operational system of the HKSAR. It is imperative to support the Chief Executive, the executive authorities, the legislature and the judiciary in exercising power and performing duty in accordance with the law, so as to ensure the smooth and efficient operation of the political and governance systems and mechanisms of the HKSAR."

II. Legislative Approach of the HKNSL and the Decision

In establishing and improving, at the national level, the legal system for safeguarding national security and improving the electoral system of the HKSAR, the NPCSC has, to a large extent, taken into account the differences between the legal systems of the HKSAR and the Mainland, and has therefore adopted the approaches of "decision + legislating" and "decision + amendment" respectively.

Legislative Approach of the HKNSL

The HKNSL adopted a "decision + legislating" approach, followed by promulgation and implementation in Hong Kong:

As the first step, the NPC made, in accordance with the relevant provisions of the Constitution and the Hong Kong Basic Law, the "Decision on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to safeguard for Safeguarding National Security" and, at the same time, authorized the NPCSC to enact relevant laws on establishing and improving the legal system and enforcement mechanisms in the HKSAR for safeguarding national security:

As the second step, in accordance with the Constitution, the Hong Kong Basic Law and the NPC's authorization in the relevant decisions, and taking into account the actual situation of the HKSAR, the NPCSC enacted the relevant law and decided to include it in Annex III to the Hong Kong Basic Law, and have it promulgated and implemented by the HKSAR.

Legislative Approach of the Decision

The Decision adopted a "decision + amendment" approach:

The electoral system previously practised in Hong Kong was established in accordance with the Hong Kong Basic Law, the relevant interpretations and decisions of the NPCSC, and the relevant local legal provisions of Hong Kong. Articles 45 and 68 of the Hong Kong Basic Law set out the principles, while Annexes I and II to the Basic Law and the relevant amendments set out specific and express provisions.

On the basis of comprehensive analysis and overall assessment, the Central Government amended and improved, at the national level, the electoral system of Hong Kong, mainly by amending the methods for selecting the Chief Executive and members of the Legislative Council of the HKSAR; at the same time, taking into account the need to maintain the continuity and stability of the relevant systems of Hong Kong, this improvement only involved amending Annexes I and II to the Basic Law and did not involve amending the main text of the Basic Law.

As the first step, the NPC made, in accordance with the Constitution and the relevant provisions of the Hong Kong Basic Law and the HKNSL, a decision on improving the electoral system of the HKSAR, which expressly states the fundamental principles to be followed in amending and improving the electoral system of the HKSAR and the core elements of the amendment and improvement, and also authorizes the NPCSC to amend Annexes I and II to the Hong Kong Basic Law in accordance with this decision.

As the second step, in accordance with the Constitution, the Hong Kong Basic Law, the HKNSL and the relevant decision of the NPC, the NPCSC amended Annex I "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region" and Annex II "Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and its Voting Procedures" to the Hong Kong Basic Law.

As the third step, after the completion of the amendments to Annexes I and II at the national level, the HKSAR Government made consequential amendments to the relevant local laws, including amendments to 8 pieces of primary legislation and 24 pieces of subsidiary legislation, and the Bill was gazetted on 13 April.

The First and Second Readings of the Bill by the Legislative Council took place on 14 April.

The Bill was passed by the Legislative Council on the Third Reading on 27 April, with 40 votes in favour of the Bill and 2 votes against the Bill.

III. Start a new chapter for Hong Kong with the strong support of the Central Government!

"One country" is the premise and foundation of "two systems". From the valuable experience gained in the past 25 years since the reunification, we can clearly see that the strong support of the Central Government is the most fundamental guarantee of the good administration and governance of Hong Kong and the steadfast and successful implementation of "one country, two systems".

The enactment of the HKNSL and the Decision is an important measure taken by the Central Government to firmly implement the original aspiration of "one country, two systems" and marks the official start of a new journey for the democratic system with Hong Kong characteristics. All Hong Kong residents eagerly expect Hong Kong to advance from stability to prosperity.

The election of the sixth-term Chief Executive was an important democratic election of the HKSAR under the HKNSL and the improved electoral system. The election was conducted in accordance with the law and in a fair, open and just manner. Throughout the election, we clearly saw that the atmosphere in Hong Kong was unified and harmonious and that all people were united. The good administration and governance of Hong Kong is very worthy of our expectation.

(1) **"Strengthen the government's governance capacity and unite to tackle problems for the people."**

- In order to meet the expectations of the public and embrace challenges, it is necessary to further innovate and optimise governance capacity and build a loyal, efficient and practical governance team.
- Adopt a result-oriented approach, establish a new style of working with courage, and enhance the team culture of the civil service; take the interests of the public as the basis, and give full play to the strengths of all sectors to actively tackle problems for the public.

(2) **"Streamline procedures and adopt a multi-pronged approach to provide more secure homes for the people."**

- Streamline the aspects of land, planning, construction and supporting facilities, make good use of the strength of the government, organizations and private sector.
- Set objectives of enhancing speed, efficiency and quantity, speed up the construction of land and houses, shorten waiting time for public housing.
- Improve living environment for residents, enable more people to realize their dream of home purchase, ensure stability of people's livelihood and promote prosperity of all industries.

(3) **"Comprehensively enhance competitive edge and create room for sustainable development."**

- Hong Kong should properly play its role as the **"eight centres"**, drive development through innovation, strengthen the foundation of real economy, proactively explore opportunities in the Greater Bay Area, and serve as a bridge for interaction between China and the rest of the world in line with the domestic and international dual circulation policy.
- **Four traditional centres:** international financial centre, international shipping centre, international business and trading centre, and international legal and dispute resolution services centre in the Asia-Pacific region.
- **Four emerging centres:** international aviation hub, international innovation and technology centre, East-meets-West centre for international cultural exchange, and regional intellectual property trading hub.

(4) **"Build a caring and inclusive society, and enhance upward mobility for young people."**

- The well-being of the public is the key objective of social development. The government has to be people-oriented in its administration.
- The education, social welfare and medical systems should work together to create a favourable environment for protecting the general public, and at the same time individuals should enhance their capabilities and utilise their strengths.

Conclusion: Unite to realise a new chapter in history!

To open a new chapter means forging a broad consensus in the community, actively bringing into play the power of the people, uniting and working together to create the greatest social value for Hong Kong.

With the support of the Central Government, as long as **"I"** and **"we"** are of one mind and work in tandem, we will be able to **"open a new chapter for Hong Kong"**!

PANEL DISCUSSION 1

**Hong Kong's Blooming Capitalist System –
Chapter V of the Basic Law**

Moderator



Dr Anthony Neoh SC JP
Chairman of the Asian Academy of
International Law

Panelists



The Hon Mrs Laura Cha Shih May-lung
GBM GBS JP
Chairperson of the Hong Kong Exchanges and
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Panelists

Mr Norman Chan Tak-lam GBS

Former Chief Executive of
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Mr Ashok S. Kothari

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Mr Zhang Jian-ping

Director General of the Center for
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of International Trade and Economic Cooperation of
the Ministry of Commerce



Anthony Neoh: Thank you, Master of Ceremonies. Welcome to our first panel discussion this afternoon. The theme of this seminar is “Hong Kong’s Blooming Capitalist System – Chapter V of the Basic Law”. I hope that the topic under discussion today will be of interest to you. As you know, Article 5 of the Basic Law clearly states that Hong Kong does not practice the socialist system, but instead practices the capitalist system with the previous way of life. As we have all heard this morning, this is in fact not just for 50 years; if the system works, it can go on after 50 years. In this context, what we need to consider is that, under the capitalist system, the Basic Law supports our existing systems in every aspect, including the legal system. A very important point is that Chapter V of the Basic Law is devoted to the economy, and in matters concerning the economy we can see how the Basic Law supports and promotes Hong Kong as an international financial center, an international trade center and a shipping center, how the Basic Law protects the rights and entitlements of these centers and the various aspects and areas of their operations, as well as how the Basic Law enables them to perform their obligations.

On the other hand, we must bear in mind a very important point in Chapter VII of the Basic Law, which is that Hong Kong itself is empowered by the Central Government and the Basic Law to enter into international agreements with other regions in the economic field. This is also very important. Therefore, we are an *ex officio* member of the World Trade Organization (WTO). Hong Kong is also a major player in many areas of the international economy, including the financial sector. We will also discuss this point later in this session. First of all, let us invite Mrs Laura Cha Shih May-lung to give us a speech.

Cha Shih May-lung: Good afternoon. I would like to first thank the Department of Justice for inviting me here to speak today. As we gather to celebrate the 25th anniversary of the establishment of the Hong Kong Special Administrative Region, it is a pleasure to take stock of our achievements as a city and as a financial and legal system over the past 25 years. It is also a good time to look ahead to the opportunities that we can seize together in the future. Every period in history brings with it events, news and innovations that shape and define our future, and the last 25 years have been no different.

From the Asian financial crisis of 1997, the Lehman Brothers crisis in 2008 that has reshaped the global financial landscape, the rapid development of high speed internet and technology that has drastically changed the way people live to the onset of the COVID-19 pandemic, the last 25 years have been as eventful as any that have gone before. Hong Kong as a city has also gone through nothing short of a historic transformation over the years, evolving from a manufacturing base to become an international financial center with vibrant, deep and liquid capital markets. Hong Kong's total stock market capitalization has grown to US\$5.4 trillion at the end of 2021, a thirteen fold increase from US\$413 billion at the end of 1997. We have become one of the world's leading capital raising centers, with about 2,500 listed companies on our markets. These include almost 200 international companies, and our markets have grown ever more vibrant, with average daily turnover of Hong Kong security markets growing to HK\$166 billion in 2021, compared with HK\$15 billion in 1997. Hong Kong stands now as a premier asset and wealth management hub for Asia in the world with AUM of US\$4.5 trillion at the end of 2020, according to statistics of the Securities and Futures Commission. And we are Asia's top base for hedge funds and the

second largest private equity hub in terms of AUM and funds raised in 2021.

Hong Kong also ranks third out of 116 financial hubs in the 2021 Global Financial Center Index Report following New York and London. In addition, Hong Kong stands as the world's freest economy as appraised by the US based Fraser Institute. That is a position we have held for the past ten years due to our robust legal system and commitment to free trade and capital flows, and our position as an internationally respected financial center meant we have played a unique role in China's growth story over the past 25 years. The unique role that Hong Kong has played is that of the super connector, which supported the development of China's financial markets. Hong Kong has grown into the world's largest offshore Renminbi (RMB) center, with total deposit of RMB855 billion at the end of September last year. And as a hub for offshore RMB trading, settlement and clearing, Hong Kong handled an estimated 75% of global offshore RMB payments.

On the equities front, since 1993, with the listing of the first H-share company, HKEX has played a crucial role as China's offshore financial center. In the last eight years, HKEX is pioneering the connect scheme which has revolutionized global markets, providing a trusted and efficient gateway that connects the two way capital flow between China and the world and continue to support the opening up of China's financial markets.

Last year, with the introduction of the MSCI China A 50 Connect Index Futures, which is Hong Kong's first Asia derivative product, HKEX is now home to the world's most competitive offshore China Asia product ecosystem, offering global investors unique and diversified access to China. Another trend that has emerged from

the past two decades has been the growth of Asian innovation. We have seen nothing short of a technology revolution in recent years with Asia and especially China giving birth to some of the world's leading technology giants and new economy companies. Our listing rule reforms in 2018 have made Hong Kong a premier capital raising center for the companies of tomorrow. Since then, nearly 200 new economy companies have listed in Hong Kong, raising over HK\$840 billion. These listings account for nearly 65% of the IPO fund raised in Hong Kong and over 20% of Hong Kong's total market capitalization during the period.

Our listing reforms have changed the DNA of our market and established Hong Kong as Asia's largest and the world's second largest biotech fundraising center. But we aren't complacent. We are constantly looking for ways to enhance the competitiveness of our markets in order to enrich the ecosystem and attract quality new economy companies to list in Hong Kong. Let me give you a few recent examples. In the beginning of this year, we introduced a new listing regime dedicated to Special Purpose Acquisition Companies (SPACs) with very positive market reception. And we welcomed the first SPAC listing in our markets in March this year. We also streamlined our process for overseas companies to list in Hong Kong. We will be announcing further market enhancement and reform in the near future.

The journey that we have been on, the status we now cherish, and the future we look forward to all has Basic Law at its core. Hong Kong's legal system and "one country, two systems", resting on the Basic Law framework, are open, transparent and rule-based. Our legal system ensures that contracts and binding agreements are honored, hence instilling business and investor confidence in Hong Kong as a

financial hub. Under the Basic Law, the free flow of information and capital is protected, in turn supporting Hong Kong's position as one of the world's largest source of foreign direct investment and a premier capital raising venue for companies from around the world.

When we couple the Basic Law with Hong Kong's robust infrastructure, internationally aligned regulatory regime, globalized ecosystem, transparent markets and deep pools of talent, Hong Kong has many attractive qualities that underpin its very special and unique position as the international financial center that connects East and West. And crucially, all of these core elements remain intact today. Hong Kong has made huge progress over the last 25 years, going from strength to strength as the resilience and adaptability of our financial markets during good times and bad have continued to support the city's development.

Now, looking to the future, I'm very optimistic. We live in a time when the world needs more connections, not less. And Hong Kong, together with HKEX, has a major role to play as a facilitator, conduit and super connector between East and West. Cross-border capital flows between China and international markets are becoming larger and more mature every day, and this presents a great opportunity for Hong Kong. As China's premier offshore financing center in addition to being a major global asset allocation and offshore risk management center, Hong Kong will continue to play a key role in creating mutual market access or capital flows between China and the world.

The growth of sustainable finance is where Hong Kong can play a role in connecting capital with opportunities. With an estimated US\$ 9.2 trillion of global investment needed annually to hit net zero targets, demand and opportunities for green finance in Asia and around the world will be enormous. Here at HKEX, we have a huge

role to play as a regulator, operator and a listed company, and we are doing all we can to lead the change towards establishing Hong Kong as the region's sustainable finance hub. As a regulator, we have taken the lead in promoting responsible corporate governance, ESG awareness and best practices with our regulations on ESG disclosure and ending single gender boards. As a market operator, HKEX has played a leading role in driving the growth and development of the green and renewable sector by facilitating the listing of 95 green, social and sustainable bonds that raised over HK\$282.6 billion in 2021. As a listed company, we have joined with global partners and Glasgow Financial Alliance for Net Zero to commit to net zero by 2050, and through our charitable arm, the HKEX Foundation, we are active in the community to support the vulnerable and channel resources to environmental and climate related causes.

And as Asia's innovation engine continue to run at high speed, Hong Kong has a vital and exciting role to play in connecting capital with opportunities and funding the businesses of tomorrow. With our unique position in the Greater Bay Area, itself home to a population of 86 million with an economy the size of Korea, and as the second most innovative science and technology cluster in the world, we have an opportunity to connect the Greater Bay Area companies with international investors.

So to conclude, Hong Kong is a highly respected international destination market in its own right, as well as a vital connector between East and West, facilitating the flow of capital, opportunities and ideas. This unique role in which our trusted and transparent legal system serves as a foundation has been instrumental in building Hong Kong into a premier international financial center. And today, Hong Kong's role is arguably more relevant than ever.

Looking forward, the Basic Law will continue to be the backbone of our legal system underpinning Hong Kong's strength in financial markets, shaping the success of our markets and HKEX will continue to embed the hallmarks of Hong Kong's trusted legal system and due processes in all that we do. From pioneering market changes and reforms to enhancing regulation and guidance, we will engage with all of our stakeholders to ensure transparency, predictability and accountability for the benefit of our markets. I believe that with connection and collaboration among all stakeholders, governing bodies, businesses, communities and individuals we can build an ever more prosperous Hong Kong that continues to play an influential role as one of the world's premier financial centers. Thank you.

Anthony Neoh: Thank you, Mrs Cha. We have just learnt about the important role of our Hong Kong Stock Exchange and the importance of our legal system. Now, I would like to invite Mr Norman Chan Tak-lam to continue to explain the importance of Hong Kong as a financial center. Please, Norman.

Norman Chan Tak-lam: Thank you, Tony, and thanks to the Secretary for Justice for inviting me to this very significant conference today. Article 109 of the Basic Law states that the HKSAR Government "shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial center". This provision is a clear indication of the importance that the Central Government attaches to Hong Kong's status as an international financial center and the requirement for the HKSAR Government to maintain this status. As we all understand, a place can hardly become and remain as an international financial center simply by relying on a piece of local legislation, be it the Constitution or an ordinary law. I will spend the next ten minutes

discussing the following three topics. First, what competitive edge does Hong Kong have as an international financial center? Second, what are the prospects of development of the Hong Kong financial center? Third, what challenges will Hong Kong face in the future?

On the first question, what does it take to become Asia's premier international financial center? A financial center actually serves as a bridge between savings and investments through various markets and channels. There are many financial centers around the world, some of which are even larger than Hong Kong. However, only a handful of places are eligible to become or be called international financial centers, and Hong Kong is one of them. In fact, the difference between an international financial center and some large financial centers lies not in scale, but in the ability of an international financial center not only to play a role in local financial intermediary activities, but also to play a pivotal role in facilitating capital flow in the neighboring region or internationally.

As we all know, there are many prerequisites for becoming an international financial center. The most commonly mentioned ones include excellent financial markets, highly professional talents, sound regulation, and a legal and judicial system which is conducive to doing business, etc. However, many people overlook three unique advantages that mold Hong Kong into the premier international financial center in Asia. First, an international financial center must be close to and familiar with the sources of savings and its investment market. Compared to Singapore, Tokyo, London and New York, none of these international financial centers is geographically closer to the PRC market than Hong Kong, and at the same time, we belong to the same country and speak the same language. No other financial center has a better understanding of the Mainland market than Hong Kong.

This is the first point. Second, although the local financial centers of the Mainland, such as Shenzhen, Beijing and Shanghai, are very large and active, the capital management measures of the Mainland make these centers less attractive than Hong Kong in terms of allowing cross-border capital flow. Third, as will be explored later in the panel discussion, Hong Kong is the only common law jurisdiction in the world that implements a bilingual legal system, with the Chinese and English languages enjoying equal status, and this gives Hong Kong a significant advantage and attractiveness in channeling capital into and out of Mainland China. I can provide some statistical figures. Over the past few decades, as China's economy took off and soared, Hong Kong simultaneously developed into an international financial center. The entire financial service sector of Hong Kong, comprising banking, securities and financial management, made a contribution of 10.2% to China's GDP in 1997. In 2009, the percentage increased to 16.2%. In 2019, Hong Kong's contribution to the national GDP was 23.3%. This shows that the financial service sector is playing an increasingly important part in Hong Kong's economic growth.

The second question is: What are the opportunities along the road of Hong Kong's development as a financial center? I would like to raise three points here. The first point is that China is the second largest economy in the world and its economy keeps growing, with the increment in a single year amounting to about US\$1.9 trillion to US\$2 trillion. What do we make of this figure? It is even more than the GDP of the whole of Italy, Australia or Canada. Driven by this engine of enormous economic growth, the demand and opportunities for allowing capital flow to and from the Mainland will continue to grow. The second opportunity is China's new mode of economic growth of "dual circulation", which in any case requires an efficient, reliable and secure conduit to connect the internal and

external circulations. Given the advantages I mentioned just now, no other financial center is better placed than Hong Kong to play this role. Third, Hong Kong enjoys even more obvious opportunities in the future development of the Guangdong-Hong Kong-Macao Greater Bay Area. Capital management measures will make Mainland China less vulnerable to external factors, but will also result in a stagnant cross-border capital flow. In the process of implementing the national reform and opening-up policy, the capital markets of Hong Kong and the Mainland have already established interconnection and inter-accessibility. Besides the Shanghai-Hong Kong Stock Connect, the Shenzhen-Hong Kong Stock Connect and the Bond Connect in the stock market, we have recently launched a pilot scheme on Cross-boundary Wealth Management Connect Scheme in the Greater Bay Area. We have to further expand and deepen these pilot schemes in light of the experience in their actual operation. In addition, I believe that the flow of capital at the corporate level in the Greater Bay Area should further open up. One possibility is to implement a pilot scheme in the form of Capital Connect, with the latest blockchain technology to be applied to ensure that the capital raised through this scheme is kept in the Greater Bay Area instead of being transferred to other parts of China.

Finally, let us talk about the challenges ahead. Things are never easy and there are bound to be challenges. I will point out three specific challenges. First, geopolitical tensions between the United States and China may deteriorate, and this may affect Hong Kong's current operation as an international financial center. We must therefore remain vigilant and flexible to enable us to respond to any change that may occur. Second, Article 112 of the Basic Law stipulates that Hong Kong shall not apply any foreign exchange control policies and that the Hong Kong dollar shall circulate

freely and be freely convertible. This provision, which provides a constitutional safeguard for the convertibility of the Hong Kong dollar for the free flow of capital in Hong Kong, is the cornerstone of Hong Kong's status as an international financial center. But as far as I know, this provision is unique to Hong Kong because there are no laws or constitutional provisions in other international financial centers or regions that expressly provide for the free movement and convertibility of currency. This also means that in extreme circumstances or as a last line of defense against the collapse of the financial system, other countries or international financial centers can impose foreign exchange controls where necessary, but Hong Kong cannot do so as it is bound by the Basic Law. Therefore, we must always be vigilant to ensure that our financial and monetary systems are sound and that we have sufficient resources to respond to possible challenge.

Lastly, talking about resources, the Exchange Fund is the last line of defense for safeguarding the stability of Hong Kong's financial system. Previously there was a suggestion that, with the Exchange Fund totaling more than HK\$4 trillion, the Hong Kong Government had excessive reserves and should return wealth to the people. Today is not an appropriate occasion to explore the composition of the Exchange Fund balance sheet, but I would point out that the Government's recent response to the pandemic and launch of numerous measures to support the economy and employment have resulted in a huge deficit and accelerated the decline in the fiscal reserves of Hong Kong. This amply shows that we must maintain sufficient reserves to meet contingencies. More importantly, the Exchange Fund is the last line of defense in preserving Hong Kong's financial stability. HK\$4 trillion is of course a lot of money, but if a global financial crisis like the one in 2008 were to return, would

HK\$4 trillion be too much? According to information available, the Exchange Fund provided to the banks of Hong Kong 100% protection for deposits in 2008, when the aggregate deposits in the banking system totaled HK\$6,700 billion, and this exceptional protection was in place from October 2008 until the end of 2010. Fortunately, we were able to stabilize the banking system without using a single cent of the Exchange Fund. Now that the aggregate bank deposits have increased from HK\$6,700 billion to HK\$15 trillion. If Hong Kong were to face another financial crisis and our government were to introduce a similar deposit protection again, would we be able to ride out the storm like before if Hong Kong did not have an adequate Exchange Fund as backup?

To conclude, I would like to say: Hong Kong has unlimited opportunities with the support of the Motherland, but at the same time, we are facing an unstable and complicated global environment. Therefore, even in times of peace, we must fully prepare ourselves for danger and must not take anything lightly. Only in this way can “one country, two systems” be steadfastly and successfully implemented. Thank you.

Anthony Neoh: Thank you, Norman. Norman told us just now that we should be prepared for danger in times of peace. His remarks also conveyed the very important message that “one country, two systems” is essential to our financial center as a whole. This echoes what Professor Wong Yuk-shan mentioned this morning, namely that “one country, two systems” is a great idea in the economic and political history of the world and has generated tremendous opportunities for us.

Our next speaker is Mr Ashok Kothari. Ashok is a private equity expert. So he's going to talk about "one country, two systems" from his point of view. Ashok please.

Ashok S. Kothari: Thank you, Tony. As a very long term Hong Kong resident, I want to take this opportunity to thank my friend Tony Neoh for all he has done for Hong Kong and for China. And it has been for many years and selfless service and I think we have all benefited from it. Because all the benefits of Hong Kong are obvious and have already been covered. I want to talk a little bit about the mentality of how investors arrive at the decisions of investing in Hong Kong or investing through Hong Kong.

First of all, we talk about innovation a lot. Talking about "one country, two systems" is in itself a huge innovation. And then we have the Basic Law. So it gives people comfort. We have the structure in place and it actually works. Now, the decision process is a very important thing and it's a different angle. So, my experience has been mainly managing money for large institutional investors that would include sovereign wealth funds, big insurance companies, pension funds and endowments. And let's think about how they look at Hong Kong and what they think about. Everybody understands that China is a market which you cannot ignore. But on a bigger scale, China not only has the largest population, it has the biggest consumer market. It already has gone through the cycle of people buying at the lowest price for first time purchases of TVs, washing machines, refrigerators, air conditioners and cars. Now they're going to a second cycle where they're looking for quality. That means the Chinese market is shifting to higher quality, more value-added products and services. This is a market the whole world cannot ignore. So there is the process of asset allocation within institutions. To give you a sense of it, it is generally

accepted that what assets you buy within an asset class is not as important as how you allocate amongst assets. That means it's not as important to choose which shares you buy, but how much you put into public markets compared to private equity, compared to real estate, compared to fixed income so that balance is going to yield the highest returns. And this is a dynamic process to give you a sense of it. My friend from California, Phil, who also studied mechanical engineering and then went on to law school, a very smart guy, wrote a seminal book on asset allocation, and he gave me a first edition autographed copy. Then he gave me instructions. He said, "Make sure you don't put it in your library, you don't put it in your office, you don't put it in your living room, and you must keep my book on your bedside table." And I was puzzled. So I said, "Why?" He said, "If you can't sleep, two or three pages of my book will help right away." So this is asset allocation. It's a mathematical science and it's dynamic.

There are all the big institutional investors. Investing is really a spectator sport because everybody knows everybody's results and it is highly competitive. So the investors are rational and they need to do so as well as or better than anybody else. So when they do this asset allocation models, they cannot afford to ignore the Chinese consumer market. They also cannot afford not to invest in Chinese technology companies because China now has issued more patents last year than any other country. So there is this scientific point of FOMO (fear of missing out). This is an important motivation for investors. So when they see that other investors are investing, they have institutional memories of missing out in Macau. When Macau gave out licenses for gaming about 20 years ago, the western investors said this was just a small place very far away and it had no chance against Las Vegas and even Atlantic City. Ultimately, Macau became bigger than both of them combined, and they missed out. They don't make the same

mistake again. So Chinese consumers and Chinese technology are central to any asset allocation model today.

When people think about investing in China, naturally Hong Kong comes to mind. Most professionals in Hong Kong can speak Putonghua, Cantonese and English. We also have a long tradition of common law legal system that works. We have SFC which is one of the leaders... you can say not only in compliance but also in ESG (Environment, Social, Governance). In the case of the Stock Exchange, our Stock Exchange is one of the first one to require public companies to report on ESG. So Hong Kong is at the forefront of a number of developments worldwide. We also have free flow of capital and information. We have hard currency. If people want to invest in China, this is a logical place to come. I think it is a no-brainer. Similarly, for Chinese companies wanting to go out, Hong Kong is a reasonable stepping stone. The fact that we have free flow of capital, currency that can be freely converted and hard currency gives people comfort and it is secured by the reserves. So there is no concern about either Hong Kong currency or convertibility.

When you think about all the risks and all the opportunities, China is a big opportunity and Hong Kong is the place to come. So I'm quite confident that Hong Kong is going to continue to thrive and flourish. And it is thanks to our institutions that are responsive to the investors in terms of coming up with new structures that work, doing compliance that works and keeping fair play in place. I think that Hong Kong has a great future and it is a considered opinion rather than just an emotional view. I'm sure Hong Kong is going to break new records in IPOs and trade volumes in both incoming and outgoing investments, and it will play an important part in the development of China internationally. Thank you.

Anthony Neoh: Thank you very much. Thank you Ashok. Again the importance of “one country, two systems”, by what you’ve just told us.

Our next panelist is Mr Zhang Jian-ping, Director General of the Center for Regional Economic Cooperation of Chinese Academy of International Trade and Economic Cooperation of the Ministry of Commerce. Please, Director Zhang.

Zhang Jian-ping: Great, thank you, Moderator. It is a great honor for me to participate in the conference today. I myself think that over the past 25 years, “one country, two systems” has firmly ensured China’s national unity and integrity and safeguarded China’s national interests. Our system enjoys very obvious advantages. I can see that the implementation of “one country, two systems” and the Basic Law of Hong Kong has ensured China’s national security and long-term stability, prevented the division of the country, and manifested the wisdom of the East as well as inclusive development. I think some Westerners may question the logic of “one country, two systems”: how can the two systems come together and jointly support the cooperation between and the development of Hong Kong and the Mainland? But I think that, with the safeguard of the Basic Law of Hong Kong and the continuous improvement to the Basic Law, the past 25 years is solid proof that the Basic Law enables Hong Kong to overcome all kinds of difficulties and impacts and to maintain stable development. In China, there is a familiar saying that “stability crushes all”. Stability in Hong Kong is an important safeguard for its sustained prosperity and development. Therefore, I think that under the framework of “one country, two systems”, the Mainland and Hong Kong can complement each other, and the cooperation and interaction between the Mainland and Hong Kong are continuously making new contributions to the high-quality development of our country.



During the 14th Five-Year period, China is implementing an innovation-driven development strategy and a dual circulation strategy. In this process, I think Hong Kong is still playing a very crucial role. I will now discuss the prospects and opportunities of Hong Kong's future development under the support of the Basic Law, by reference to the implementation of the Guangdong-Hong Kong-Macao Greater Bay Area's governance plan and the national direction for the future development of the Greater Bay Area, including the development direction mandated by our recent 14th Five-Year Plan.

The Greater Bay Area has become a regional economic growth pole enjoying the fastest development in marketization and internationalization, and having the best and most accessible market mechanism. This region has become a pioneer in China's innovation and development as well as a very competitive carrier and world-class city cluster in the global development process. Therefore, the proposal of developing the Greater Bay Area also means that, in the process of participating in international competition, China notices that the United States, the world's largest economy, has a financial bay area

in New York and a technology bay area in San Francisco, and that Japan also has a consolidated bay area of Tokyo which covers positive developments in both finance and technology. In future, if China is to have a similar region that can compete with the world-class bay areas, then the Greater Bay Area, including Hong Kong, will shoulder pivotal tasks and responsibilities.

The first aspect is that the Greater Bay Area will become a world-class city cluster and a major hub for the interconnection of global infrastructures, especially land, sea and air transport. In fact, Hong Kong, Shenzhen and Guangzhou are already occupying prominent positions in the interconnection of the Asia-Pacific region and in the global freight and shipping sectors. I can see that the national 14th Five-Year Plan has already entrusted Hong Kong with a new role in transportation, which is to add a hub, namely to develop Hong Kong into a hub of international air transport of China. So, looking ahead, we can see that Hong Kong's international air transport, especially international transit business, will develop substantially. I did participate in a study on how to enhance the development of the Hong Kong shipping industry. In the process of making comparisons, which was ten years ago, I noticed that Hong Kong's international air cargo transit business was weaker than that of Singapore. But I think that, with the development of the Greater Bay Area and the new role assigned to Hong Kong by our country, we expect Hong Kong to make a new breakthrough in high value-added international air transit business in future.

Our country has now also included the Shenzhen-Hong Kong Loop in the construction of a major cooperation platform between Guangdong, Hong Kong and Macao. In fact, the construction of the Hainan Free Trade Port has now become a new open platform

in the new round of China's reform and open-up process. This free trade port of more than 30,000 square kilometers in area will be open to the whole world in the future. For Hong Kong, I think that the interconnection of Hong Kong and the Hainan Free Trade Port, complementing each other with their respective advantages, will benefit Hong Kong itself in expanding room for development and business, and that Hong Kong's advantages can be brought into full play in the process of "scaling up the market". For example, I noticed that a young economist in Hong Kong, although based in Hong Kong, has extended his academic platform to Hainan University, and his influence in the field of China's opening-up and internationalization is increasing.

The second aspect I would like to talk about is the increasing role that Hong Kong plays as our country is in the process of opening up, with the Greater Bay Area contributing to the country's high-quality construction of the Belt and Road, and with the alignment of international economic and trade rules. As a highly internationalized region, Hong Kong and the Greater Bay Area play a very important and pivotal role in China's international trade and also in China's outward investments and capital inflow. I also notice that Hong Kong is still playing a crucial role in promoting trade and investment connectivity among the cross-strait four regions and in leveraging the strengths of all four regions. The national 14th Five-Year Plan has clearly expressed support for Hong Kong in enhancing its status as an international financial, shipping and trade center and has assigned to Hong Kong many new functions as a center and hub. This also means that Hong Kong's role as a super connector will be further strengthened in the process of the high-quality construction of the Belt and Road, and that Hong Kong's role as the spearhead and

vanguard in the construction of the Belt and Road will also be further strengthened.

The third aspect is to create a global highland for innovation and entrepreneurship, benchmarking against San Francisco Bay in the United States and Tokyo Bay, to enable Hong Kong and other cities in the Greater Bay Area to work in tandem to create a new global platform for technology and innovation. In this connection, Hong Kong's strengths are displayed in the areas of research and development, technology, creativity and design. We also see a combination of the strengths of Hong Kong and those of the major manufacturing bases in Shenzhen and Guangzhou. And we have now created what I would say is the most competitive drone sub-sector in the world. I have also heard that in the Greater Bay Area, Hong Kong and the Mainland are jointly developing unmanned ship products and related industries. In fact, the future of the Greater Bay Area will revolve around our new generation of information technology, cloud computing platform and cloud computing big data, as well as our biomedical industry and new energy industry. We will have a large number of such innovative missions in this field of technological innovation. In the 14th Five-Year Plan, the State has positioned Hong Kong as a future international center for innovative technology and a regional center for trading in intellectual property rights. We very much hope that, by strengthening the protection of intellectual property rights, the Greater Bay Area will become a leader in the competition among the world's major technology bay areas. Such a development will also bring higher added value to Hong Kong and a new impetus for the Mainland to jump across the middle-income trap and move towards innovation-driven development.

The fourth aspect I would like to emphasize is, of course, the strengths of Hong Kong's service industry, which accounts for 95% of our GDP. In connecting with the modern manufacturing services of the Greater Bay Area, our consumption upgrading services are also included, hence there are huge development potentials and business opportunities in both the producer services industry and the life services industry. In particular, the Greater Bay Area will in future speed up the transformation and upgrading of its manufacturing industries and actively participate in international competition by developing strategic emerging industries and new high-tech industries. With its financial services, professional services, logistics services, business services and efficient and integrated systems, Hong Kong can to a large extent meet the future development needs of the Greater Bay Area, and this in turn will make new room for Hong Kong for adding value in future.

The fifth aspect involves the construction of a financial center. During the 14th Five-Year period, in order to strengthen Hong Kong's role as a global international financial center, the State has assigned to Hong Kong the new roles as a global offshore RMB hub and an international asset management and risk management center. I notice that Hong Kong now is the world's largest offshore RMB trading center, this business of Hong Kong is already offering tremendous market potential even though the internationalization of RMB is at the initial stage. We can expect this business to scale up continuously with the economy of China. In 2021, the aggregate economic volume of China already reached about US\$18 trillion, being approximately 80% of that of the United States, and the aggregate economic volume of China is already almost equal to that of Europe. As we all know, in Europe there are now a number of international financial centers including Luxembourg, Frankfurt,

Paris and Zurich. Therefore, for China, with such a huge economic volume, we can also have a number of financial centers in future. And of course, the aggregate economic volume of China in future will, according to the predictions of many international institutions, exceed that of the United States, making China the largest economy in the world. In this process, objectively speaking, China in fact needs an international financial center to match its status as the largest economy. At the same time, the internationalization of our RMB will be further enhanced. Over the past two years, China's financial sector has basically been piloting in the Free Trade Pilot Zones, and in various sub-sectors including banking, securities, insurance and funds, the restrictions on foreign shareholding have been removed. At the same time, we are carrying out reform in terms of expanding access and transformation of business to enable more foreign capital and financial institutions to acquire a share in the huge financial market of the Mainland. Therefore, in the process of competitive development, I very much hope that Hong Kong and the Greater Bay Area can integrate because, as we all know, in Shenzhen we have VC and PE which are good forms of financial businesses. Guangzhou also houses the headquarters of a large number of financial institutions, and so I think that in the future a collective financial center like the Greater Bay Area will have a great prospect of becoming an important global financial center in China and creating more market space in the process of the internationalization of RMB, so that Hong Kong can have the benefit of acquiring high value-added industries.

The final point I would like to make is that our Greater Bay Area is committed to building a quality living sphere and a world-class city cluster which is green, pleasant to live in, pleasant to work in and pleasant to visit. In this process, our cultural and creative industries will develop substantially, and the combination of the cultural

industry and the tourism industry will enable us to establish a cultural, artistic and healthy bay area. In the 14th Five-Year Plan, Hong Kong is expressly tasked with building a hub for East-West cultural and artistic exchange, and I am holding high hopes, for example, that Hong Kong will gather outstanding artistic talents from the cross-strait four regions to create world-class Chinese musicals so that these gems will be treasured all over the world, just like the status that some developed countries currently have in this sub-sector. I think the Greater Bay Area is well qualified to achieve the same status in future. Needless to say, the integration of the cultural and tourism industries will also generate new opportunities for growth for Hong Kong. China's market, in its entirety, is now already the second largest consumer market in the world. Our consumption of commodities is now more or less the same as that of the United States, but our service consumption market is still lagging considerably behind that of the United States. As our big consumer market develops, I think our tourism industry, cultural industry, healthcare industry and medical industry will develop significantly. I also very much hope that Hong Kong will in the process find its own room for value-addition and development, and in the course of promoting Hong Kong's prosperous development, will integrate more deeply into the country's high-quality development, so that China's future competitiveness in the world can be continuously enhanced. This is all I have to say. Thank you.

Anthony Neoh: Thank you, Director Zhang. We will now move on to the discussion session. I wonder if you could enlighten me on one point. Our country has already participated in the Regional Comprehensive Economic Partnership (RCEP). In your opinion, if Hong Kong can participate in RCEP, will this help strengthen our advantages that you mentioned just now?

Zhang Jian-ping: Sure. At present, although Hong Kong is not a member of RCEP, Hong Kong has entered into a free trade agreement with the Association of Southeast Asian Nations (ASEAN). There is also the Closer Economic Partnership Arrangement (CEPA) between Hong Kong and the Mainland, and it has been updated more than ten times. As RCEP represents a system of trade and investment rules for the 21st century, the degree of mutual trade liberalization will reach about 90% in the future. As regards liberalization of services, in six years' time all economies will have to implement negative list commitments and pricing and management models in the trade of services. So we can see that the rules in the 20 chapters of RCEP not only cover traditional trade in goods, trade in services, investments as well as economic cooperation and trade facilitation, but also cover new subjects such as e-commerce, intellectual property rights, government procurement and competition policies. We therefore very much hope that such a large market will provide a major new impetus to China's dual circulation in future. In this process, Hong Kong is at the heart of RCEP, the largest integrated market in the world. Also, Hong Kong has a high degree of openness and, as a free port, a very high degree of freedom in trade and investment and a relatively high capacity for innovation. Therefore, in my view, given that RCEP, as a large-scale trade agreement, will generate huge effects in trade creation, investment growth and GDP growth, this means that in the course of continuously expanding mutual trade and investment in the RCEP region in future, Hong Kong's key role in it will be further enhanced and Hong Kong will also gain a lot of precious added value. This is my view.

Anthony Neoh: Thank you, Director Zhang. We will strive to participate in RCEP.

Now we have been given five and a half more minutes. Norman, I'd like to ask if you were able to suggest one thing to improve the positions that you have put forward, what would you like Hong Kong or the Central Government to do?


Norman Chan Tak-lam: I would like to raise two points if you don't mind. To talk about the Greater Bay Area, I entirely agree with Director Zhang. I am very optimistic about it but you have to bear in mind the biggest difference between all these great bay areas elsewhere. Tokyo, New York and San Francisco – they are different from us. They are within the same country and do not have two systems. The movements of factory production, people, money and goods are free and only constrained by the transport infrastructure; whereas we have “one country, two systems” with separate customs territories. Everything has to go through the customs, health quarantine and most importantly, money. If you don't allow money to flow more freely between Hong Kong and other parts of the Greater Bay Area, it would be a big barrier, my friend. It doesn't work that way and you have to really allow access. The opening up of China is government policy. Therefore, I urge the authorities to think big, to have bold steps to move forward, allowing on an experimental basis movement of capital, money between Hong Kong and other parts of the Greater Bay Area. That's my first point.

You have to take risks because “one country, two systems” is so novel. They took bold risk, big risk and it works but then moving forward to the next stage and next level, we have to take more risks, right? We can do it on an incremental basis step by step. You can always fine-tune and adjust if it doesn't work out as you thought. My second point: Regardless of geopolitics, regardless of greater bay, the geographical consideration, we are entering into a digital world.

The digital age is with us. Therefore, I urge the authorities to move boldly again. Move forward. Stimulate and encourage innovation, technological innovation, especially in the design and application of digital technologies. Again, when you innovate, you have to take some risks. You cannot have everything under control. Have a McKinsey to do your 500-page consultancy report before you proceed. Move forward and be bold.

Anthony Neoh: Ashok, we're moving into digital economy. If there's one thing you want to do, what is it?

Ashok S. Kothari: I think Norman is quite right about digitalization is key to moving forward. One of the obvious things in Hong Kong is that everything works very fast and very efficiently except opening bank accounts. And I would recommend HKMA and other authorities to work with the banks to make a streamlined, balanced process where they have a finite time. Because the deals happen fast, the investments happen fast and the money transfers fast, but bank accounts do not move fast. This is uncharacteristic of Hong Kong. I think it needs to be remedied.

Anthony Neoh: Thank you very much indeed. I think we should thank all our panelists for their very interesting presentations. Thank you. And I would like to thank you all for your presence, for your patience in listening. We have gone over time and with apologies to Arthur and Allan. I hope they will give you the same indulgence as they have given me. Thank you all. 

PANEL DISCUSSION 2

**Why is the Common Law So Important
to Hong Kong's Free Economy?**

Moderator



Prof the Hon Arthur Li Kwok-cheung

GBM GBS JP

Member of the Basic Law Committee of
the HKSAR of the Standing Committee of
the National People's Congress

Panelists



The Hon Mr Justice Patrick Chan Siu-oi GBM

Non-Permanent Judge of
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Panelists

Prof Albert Chen Hung-ye GBS JP

Then Member of the Basic Law Committee of
the HKSAR of the Standing Committee of
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Dr Thomas So Shiu-tung JP

Former President of the Law Society of Hong Kong



Mr Johnny Mok Shiu-luen SC BBS

Member of the Basic Law Committee of
the HKSAR of the Standing Committee of
the National People's Congress



Arthur Li Kwok-cheung: Good afternoon, ladies and gentlemen. As you know, the Basic Law allows the common law to continue to be practiced in Hong Kong. The question we then have to ask is why is the common law so important to the free economy of Hong Kong? And today, we are very lucky to have four extremely distinguished panelists to answer this question for us. So, first of all, I would very much like to ask Dr Thomas So to start. Dr So has been the deputy judge of the District Court, as well as Deputy Registrar of the High Court. He has served as a council member, vice president and president of the Law Society, and currently he has been appointed by the Guangdong Provincial High Court as a Greater Bay Area cross-border commercial mediator. Dr So please.

Thomas So Shiu-tsung: Thank you. Professor Li. First of all, my apologies for jumping the queue, in terms of order of speech because of my commitment that I need to make. So I would finish my piece first and I will leave early. I hope that you don't mind.

Arthur Li Kwok-cheung: No, not at all.

Thomas So Shiu-tsung: Okay. Well, we are now here to talk about the importance of common law in a free economy. I try to do a keyword search of the word "free economy" in the Basic Law, and it comes out in quite a few sentences particularly under Chapter V when we talk about Hong Kong has a duty to maintain Hong Kong as an international financial center. It talks about Article 110, talks about safeguarding free operation of financial business and financial markets. Then Article 112 talks about free flow of capital.

Just now, I think Norman talks about the importance of free flow of capital. Then Article 114 talks about free port, Article 115 talks about free trade, free movement of goods. And on top of all that, I think that I being a lawyer as well as many of you who sit around here,



who deals with foreign investors, foreign people doing business in Hong Kong, they would all tell you that in order to be an international trading center or financial center, what is important is mobility of goods, mobility of capital, mobility of people; people includes if you have foreign companies deciding to set up office in Hong Kong, they need to send their executive people to be stationed in Hong Kong plus talents. I mean, the whole world is now chasing and competing for talents; so mobility of capital, mobility of goods, mobility of people; and lastly, mobility of information. Information, when we are now in the digital world, if you do not have first grade information that is at your fingertips, you will be losing out. So the free flow of all these are very important.

And what is the link between these to the common law? Now, foreign investors, they travel around the world. They invest in different parts of the world and they would like their rights for personal rights, and for talents coming to Hong Kong, their personal

rights and their rights towards their property, investment and money. They would like that to be protected by a system of law that is easy to understand, familiar to the international business community, transparent and practical with certainty and consistency. So those are, I think, some of the crucial elements that for my experience as a lawyer dealing with clients over the past 20 to 30 years. I think it is a common theme that foreign investors would look for when they go to a jurisdiction and invest, stay there and live there and all that.

So common law, in my view, met all those criteria. I remember in the old days, one law professor told me the word, “common law”, is so simple but it embraces a lot of principles that regulate people’s behavior. But then at the end of the day, when you look at the history of common law, it develops because of people traveling and doing business. You know, back in the old days in England, if you look at the history of common law, the common law principle was there to assist people to do business. And I remember one very famous phrase he told me; forget about all those complicated doctrines, common law means, the importance of common law is: “use common language, talk to common people and talk common sense”. That is common law. Because you need a law principle that is easy to understand, transparent, practical, and it works and it talks common sense.

So my view is that under our existing Basic Law, Article 8, common law is to continue and common law is in fact judge-made law. So the independent judiciary is guaranteed under Articles 81 and 82. That is important because you will need to have judges who are independent, who are not interfered by any law or fact, unrelated factors in affecting the decision to deliver reasoned decision and judgment so as to enable people to understand where they stand in their legal position. So I would like to see the continuation of the

practice of common law even beyond 2047. And I think that we should all try our very best to persuade the authorities to let this system continue. Thank you and I think I've said my piece, thank you.

Arthur Li Kwok-cheung: Thank you very much, Thomas. Our next panelist is a very learned jurist. The Honorable Mr Justice Patrick Chan. Patrick has been a permanent judge of the Court of Final Appeal, as well as now a non-permanent judge of the Court of Final Appeal. I think one of the greatest contributions that Patrick has made is the implementation of a bilingual court system in Hong Kong. For that, Patrick has been honored by the City University of Hong Kong, as well as the University of Hong Kong with honorary degrees. He is also an honorary life member of the Hong Kong Bar Association. Patrick please.

Patrick Chan Siu-oi: Thank you very much, Professor Lee. Ladies and gentlemen, I was given three options to deliver my contributions today: Cantonese, Putonghua and English. But since I was told that I made some contribution to the bilingual legal system, therefore I thought maybe I should use Chinese. And I wanted to use Putonghua. But if I use Putonghua, then I will worry exceeding ten minutes. Because one, you may not fully understand and, two, it is going to take five or six times longer. So I've only one option and that is Cantonese. So, I change the channel now and hope that you do not mind. Thank you.

Professor Lee, ladies and gentlemen, I am pleased and honored to share with you my view on the topic "The Role and Effect of Hong Kong's Common Law System in Developing a Free Economy". I have prepared a script and hope to share with you the key points in brief within ten minutes.

It is often said that Hong Kong is a blessed land, and Hong Kong has for years been an international commercial, trading and financial center. A number of factors contribute to Hong Kong's success, including its innate geographical advantages, it being the Mainland's window to the world, and it being a springboard for foreign countries to enter the China market. At the same time, Hong Kong not only has a substantial acquired advantage, but also has a very solid foundation, with a sophisticated legal system, an independent judiciary and a mature economic system. As other speakers have already talked about Hong Kong's financial and economic system at the session this morning, I will refrain from displaying my slight knowledge in front of the experts.

A mature economic system, a sophisticated legal system and an independent judiciary are the pillars of Hong Kong's success. The latter two pillars are complementary and mutually reinforcing and are worth discussing today.

Our legal system consists of the common law system that has been implemented for more than 100 years and is an independent judicial system. Of course, an independent judiciary is not something that can be developed overnight. As regards a free economy, we enjoy the policies of free trade and open market. As we all know, following Hong Kong's reunification with China in 1997, the Hong Kong Special Administrative Region has been established which practices "one country, two systems" and enjoys a high degree of autonomy. What have we preserved after the reunification? These two most essential basic systems have also been preserved with a view to maintaining the prosperity and stability of Hong Kong.

We notice that, under the Basic Law and the Sino-British Joint Declaration, three things have been preserved: First, the previous

capitalist socio-economic system is preserved; second, the way of life; third, the fundamental laws are to remain unchanged for 50 years. At the same time, we notice that two things are to be maintained: the status as an international financial center and the status as a free port. Therefore, in the course of drafting the Basic Law and the Sino-British Joint Declaration, it was already made clear that these systems must be preserved and maintained; this has been a long-term plan.

However, Hong Kong in fact has many good qualities, and the brilliant history of Hong Kong has also been mentioned just now. The city enjoys a good reputation in the world. I won't talk about the other aspects in detail but will focus on the Rule of Law Index with which I am familiar; that is, the Rule of Law Index of the World Justice Project. In 2021, following the enactment of the HKSAR National Security Law, Hong Kong's Rule of Law Index ranked 19th, which was quite good, being eight places higher than the United States (ranked 27th). Hong Kong's global ranking in "absence of corruption" is 9th, which is very good.

Why do we say that Hong Kong's common law system and independent judiciary are conducive to a free economy? Let us start by exploring what a free economy comprises. As I said just now, these are complementary and mutually reinforcing, so we first have to understand what a free economy is. It certainly includes capitalist characteristics, the principle of free trade and an open-door policy. Rather than mere self-labelling, there are certain rules and criteria to be met for an economy to qualify as a "free" economy. And Hong Kong meets these criteria. What about the principle of free trade? I will not profess to be an expert, so I will just mention two things, the supply and demand principle and the market-led principle, which are the most important aspects of free trade.

But as mentioned earlier, the Basic Law and the Sino-British Joint Declaration also refer to a free economy. In fact, four conditions have been clearly stated and guaranteed by the common law and the Basic Law. What are they?

- (1) All economic, trading and commercial activities shall be determined and conducted at people's own discretion;
- (2) Private enterprises and properties, including intellectual property rights, are protected by the law;
- (3) Financial activities, including foreign exchange, gold, securities, futures and other markets are free and open; capital flow is free, circulation of currency is free;
- (4) Last but not least, there is no interference or regulation.

Of course, a free system is not absolutely free, just as human rights are not absolute. Such freedom is subject to restrictions and, where necessary, must be regulated. Why? And under what circumstances does regulation arise?

With rapid economic development come new changes and new trading and economic models. Any improper, irregular or illegal activities will create huge economic risks, so statutory regulation is necessary to eradicate unlawful commercial activities.

Taking London gold trading as an example. A long time ago, the public did not know what London gold trading was, and if it was not regulated, many people would suffer a great loss. By the same token, if virtual currencies are not regulated, the general public will be left unprotected. Times change and models change, and we can never lag behind.

The law and the judiciary are extremely important to a free economy, and such importance has two key aspects. First, in the course of economic activities, such as negotiating business models, the rights, obligations and duties arising from economic trading must be protected and defined by the law. Second, as mentioned just now, it is sometimes necessary to exercise control and regulation by way of legislation. The role of the courts is to ensure that these regulations, if any, are in line with the rule of law. Instead of being arbitrary, these regulations have to be reasonable and able to withstand legal challenge, in order to gain international confidence and create a favorable business environment.

Regarding the judiciary under Hong Kong law, I have already talked about the main point; that is, the common law is the law previously in force which has been maintained, and at the same time, its judiciary has also been maintained. I will say no more on this in order to save everyone's time. Now, let me talk about an independent judiciary.

Articles 2 and 19(1) of the Basic Law stipulate that, in adjudicating cases, the court must be fair, just, impartial, selfless and free from interference by the executive or legislative authorities or by any person. Second, the power of final adjudication, the Court of Final Appeal, which was established under the Basic Law, is empowered to make the third (and final) judgments in both civil and criminal cases. Apart from matters relating to the power of interpretation of the Basic Law, the Court of Final Appeal must also be subject to the interpretations of the Standing Committee of the National People's Congress.

For example, it is very important that any commercial dispute referred to litigation will ultimately only be adjudicated by the Court of Final Appeal, not by the National People's Congress or the Supreme People's Court. For this reason, foreign investors are very confident and can rest assured that any litigation will not be conducted in Beijing but will only be dealt with by our Chief Justice Andrew Cheung and permanent judges or non-permanent judges in the Hong Kong Court of Final Appeal.

Judicial independence is not just an empty promise. The most important thing is that judges and judicial officers are appointed and removed in accordance with Articles 88, 89 and 92 of the Basic Law. Appointments are made on the basis of judicial and professional qualities and upon the recommendation of an independent commission of which I think Professor Li was a member. Formal appointments are made by the Chief Executive. This is very important in that the process is free from interference. The Chief Executive only has the power to appoint and veto, not to recommend, and he cannot recommend anyone at his will. And judges and judicial officers cannot be removed casually. They can only be removed on two grounds, namely inability to discharge their duties (that is, falling ill) or misbehavior (that is, committing criminal offences), and these grounds have to be established in accordance with specified procedures before removal can take place.

For my part, I have served as a judge since the 1980s and no one has ever interfered with the cases I adjudicated. Since the 1990s, I have also been involved in appointing and recommending judges; again I have never been interfered with by anyone, not by the Central Government, not by the Hong Kong Government, not by anyone. So I can give first-hand testimony that the Hong Kong judiciary is truly independent.

How is Hong Kong's common law conducive to the development of our free economy? First, let us revisit how legal principles are formed under the common law. "Law" is not what anyone anywhere says it is. Certain specific criteria have to be met before a judgment becomes part of the law. It must be made in cases heard by judges in the courtroom; it must go through the court procedures and an open trial; it must be made on the basis of factual evidence and legal principles with convincing reasons given as opposed to being abstract and general; and it has to be made public. Legal principles are formed on the basis of the above criteria and in accordance with the common law.

Today, I would like to share with you that, in addition to the importance of an independent judiciary which helps boost public confidence in Hong Kong, I personally believe that Hong Kong's common law has seven characteristics that exert a positive effect on public perception of our free economy and help create a favorable business environment.

(1) Case Law – The doctrine of precedent is the most basic and fundamental feature of the common law. Case law is not something casually made up; there must first be a judgment delivered by the appellate court after trial, which lays down some legal principles. Moreover, these principles are binding on the lower courts when they deal with similar cases in future. Its objective and function are to ensure the certainty, clarity and predictability of legal principles, and at the same time reduce lawsuits or appeals, and this stabilizing effect is very useful for the conduct, development and promotion of trading, economic and commercial activities as well as dispute resolution.

(2) Flexibility – Flexibility of the common law is equally important. What happens if the case law is too rigid such that even

though the judgment was correct at the time it was made, it becomes obsolete in the future when society has changed and new models are at play? The common law is not immutable; it revisits outdated principles in keeping with the times. Not that a mistake had been made before, but that changes are made to respond to the needs of society. This is very important for doing business.

(3) The principle of freedom of contract – This is also a feature of the common law which is very important for doing business. The common law (that is, judges and courts) fully respects commercial agreements. Parties are entitled to freely enter into an agreement in unrestricted circumstances. With emphasis on what is fair and just, parties are free to choose their counterparties and formulate relevant contractual terms such as the date of delivery. This is consistent with the supply and demand principle I mentioned before, in order to achieve a fair deal. Therefore, the court's respect for the spirit of the contract is extremely important to a free economy. If necessary, appropriate legislative control will also be exercised; for example, legislation is necessary where consumers are involved.

(4) Acceptance of commercial reality – Besides the matters mentioned before, the common law system also provides guidance to the business community, embracing the actual and practical commercial realities, economic conditions and development. For example, for new models such as online shopping, relevant disputes cannot be resolved by just relying on pre-existing laws. This situation is different from the one discussed just now, in that this situation involves a lacuna with no previous case law. The court has to accept practical commercial realities when hearing this type of cases and deal with them by reference to actual experiences and commercial practices.

(5) Commercial law – Historically, much of the commercial law gradually evolved from the custom and practice of businessmen. Commercial custom gradually becomes legal precedent and then part of the commercial law, and finally becomes an international business standard. This is conducive to business.

(6) Connection with the world – As mentioned in the previous session, connection with the world is a result of the close proximity of Hong Kong’s legal and economic systems and models to international standards. Take the bill of lading and bill of exchange as examples, these concepts are commonly used around the world and will be accepted by foreign businessmen. Further, as the common law system of Hong Kong is bilingual, it is easier for the Mainland to accept these concepts, thereby facilitating two-way interaction and exchange.

(7) Protection of private and corporate properties – Last but not least, needless to say, under Hong Kong laws, the common law together with the Basic Law protect private and corporate properties, and I shall not go into details. Articles 6 and 105(1) of the Basic Law, etc, are all reassuring to the business community.

To conclude, I am not saying that Hong Kong’s common law is the best in the world, because there is no such thing as the most exemplary and perfect law and every law has to be suitable for its jurisdiction. From the perspective of a businessman, first, the law must be clear; second, the place must be corruption-free; third, the system must be sound and reliable. Hong Kong meets all these requirements, so I think Hong Kong’s common law system and independent judiciary play a significant role in our free economy. Thank you.

Arthur Li Kwok-cheung: Patrick. Thank you very much. You made a great case for the importance of the common law to Hong

Kong. Thank you. Our next panelist is Professor Albert Chen, who is a member of the Basic Law of the Standing Committee of the National People's Congress since 1997. Professor Chen is an outstanding legal scholar who has been the head of Department of Law and Dean of the Faculty of Law at the University of Hong Kong. He is currently Cheng Chan Lan Yue Professor and Chair of Constitutional Law in the Department of Law at the University of Hong Kong. Professor Chen, please.

Albert Chen Hung-ye: Thank you, Chairman. I think I will follow Justice Chan's example and speak in Cantonese.

Today, I am very pleased and honored to have the opportunity to speak on this topic, which is about the development of Hong Kong's common law and its connection with other common law systems in the world. I will start by talking about the close relationship between the common law and economic development.

As we all know, common law originates from England of the United Kingdom. The UK is one of the first Western countries to develop a capitalist market economy and also the first industrialized country in the world, so the laws and legal practice of the UK are closely related to the development of capitalism and of modern industry and commerce.

Over the centuries, the laws and common law system of the UK have contributed to or benefited its economic development. This includes some of the features of the common law that Mr Justice Chan discussed just now, such as respect for the spirit of the contract, the ability to effectively enforce contracts, and the ability to effectively protect property rights. These are all prerequisites for economic development in the modern era.

Under the common law system, employment law (or the so-called labor law) as well as company law and laws relating to banking, finance and so on have also developed. These actually appeared relatively early in the history of the common law system and have been significantly assisting in and contributing to the operation of modern labor and capital markets.

Over the past few centuries, the English common law has spread to many other countries around the world, including North America, i.e. the United States today, and also some countries that once belonged to the British Empire but are now independent. Now, they all belong to the so-called Family of Common Law Legal System in the world. These places have also benefited from the common law, which has greatly assisted in local economic development.

Now, look at the world's major financial centers. In fact, all the major international financial centers are within territories to which the common law applies, but this does not mean that exactly the same common law is implemented in all these countries. Various versions of the common law have taken shape in the contemporary world, and we can say that there is the US version of common law, the Australian version of common law, the Canadian version of common law, the Singaporean version of common law, etc. So, each of the territories in which the common law applies has come up with its own version of the common law by making adaptations and updates to the original English common law in light of local circumstances and needs.

Before Hong Kong's reunification with China, although UK laws were applied to Hong Kong by way of the Application of English Law Ordinance, it did not mean that all UK laws were applied to Hong Kong prior to the reunification. Take legislation as an example. In fact, most of the UK legislations did not apply in Hong Kong because

Hong Kong had already established its own Legislative Council back in the colonial era, and Hong Kong statute laws were mostly enacted by the then Governor together with the Legislative Council.

As for the common law which consists of case law, it is called judge-made common law as opposed to statute. Most of the English judge-made common law applied to Hong Kong – most but not all, because according to the Application of English Law Ordinance, where certain English laws, such as the common law itself, did not fit in with the circumstances of Hong Kong, the Hong Kong courts were entitled to amend or adapt (that is, to modify) those laws.

Following the reunification, as many speakers have mentioned in the conference today, the Basic Law maintains by and large the laws previously in force in Hong Kong, except of course those which contravene the Basic Law. At the session this morning, mention was also made of a decision adopted by the Standing Committee of the NPC (NPCSC) in February 1997, which basically set out which laws previously in force could or could not be maintained. How, then, was the case law under the common law prior to the reunification dealt with? As it was impossible to list all the common law cases one by one and then state which could be maintained and which could not, the whole body of case law previously in force in Hong Kong can, in principle, continue to apply after the reunification.

However, this decision of the NPCSC in February 1997 contains a provision that the laws previously in force in Hong Kong, which have been adopted as laws of the HKSAR, shall be applied after July 1997 with such modifications, adaptations, restrictions and exceptions as may be necessary so that they conform with the status of Hong Kong after the People's Republic of China resumes the exercise of sovereignty over it and with the relevant provisions of the Basic Law.

In short, Hong Kong laws, including the common law, which were in force prior to 1997 are to be modified and adapted as necessary in order to conform to Hong Kong's new constitutional status after 1997. I will illustrate this point later with a case.

Due to time constraint, I will briefly mention five cases and may only be able to say a few words about each case.

After the reunification, on the application of precedents (as Mr Justice Chan mentioned just now) or the “binding authority” principle, what cases are binding after the reunification? In essence, in a 2008 case, *Solicitor v Law Society*,¹ the Court of Final Appeal (CFA) already set out the relevant principles. Basically, the CFA itself is not bound by any UK case. Even for a decision made by the UK Privy Council on an appeal from Hong Kong prior to the reunification, the CFA is not bound by that decision after the reunification. In other words, Hong Kong can develop its own case law.

Another case, *China Field*,² was a CFA case decided in 2009. In most of the cases that I am referring to, Mr Justice Chan was also one of the presiding judges. The *China Field* case basically ruled that Hong Kong can develop its own version of common law, that is, the HKSAR version of common law, after the reunification. This case concerned a principle of the UK land law called easement by prescription and involved certain technical issues. The CFA held that the principle was not applicable to Hong Kong which needed its own version of the relevant law.

1 *Solicitor (24/07) v Law Society of Hong Kong* (2008) 11 HKCFAR 117.

2 *China Field Ltd v Appeal Tribunal (Buildings) (No. 2)* (2009) 12 HKCFAR 342.

The third case illustrates the application of the NPCSC decision in February 1997 which I mentioned just now. This is the *Democratic Republic of the Congo* case³ which was referred to this morning. In 2011, the CFA for the very first time sought an interpretation of the Basic Law from the NPCSC. The NPCSC interpretation made it crystal clear that after 1997 the application of Hong Kong's common law would, as indicated in the NPCSC decision in February 1997, require such modifications and adaptations as necessary in order to conform to Hong Kong's new constitutional status. Therefore, the so-called doctrine of foreign state immunity under the common law before 1997 had to be modified after 1997 in line with Hong Kong's new constitutional status.

The fourth and fifth cases are concerned with a UK common law principle called the joint criminal enterprise rule, which has received quite a bit of attention in recent years. In 2016, the UK Supreme Court abolished this principle, but in one of the CFA cases in 2016, namely the *Chan Kam Shing* case,⁴ it was held that Hong Kong should not follow the UK approach and that Hong Kong could still maintain this joint criminal enterprise rule, which means it continues to apply in murder cases.

But does the joint criminal enterprise rule apply to cases of unlawful assembly and riot? In 2021, in its judgment in the *Lo Kin Man* case,⁵ the CFA held that the joint criminal enterprise rule under the common law does not apply to prosecutions for unlawful assembly and riot under the Hong Kong Public Order Ordinance for the reason that the provisions in the Public Order Ordinance should be interpreted in a certain way.

3 *Democratic Republic of the Congo v FG Hemisphere Associates LLC (No. 1)* (2011) 14 HKCFAR 95.

4 *HKSAR v Chan Kam Shing* (2016) 19 HKCFAR 640.

5 *HKSAR v Lo Kin Man* (2021) 24 HKCFAR 302.

From this, we can see that the UK common law principles as applied by the Hong Kong courts have been constantly adapted and updated in response to the actual circumstances of Hong Kong and the relevant provisions of Hong Kong legislation. To sum up, since 1997, Hong Kong, as one of the common law jurisdictions in the world, has maintained a common law system which is a key factor behind Hong Kong's economic success. And overseas judges have been participating in this common law system.

As we all know, the CFA has a number of overseas non-permanent judges. However, the Basic Law does not stipulate that the CFA must appoint non-permanent overseas judges. It is only an empowering provision to the effect that we may appoint non-permanent judges to participate in adjudicating individual cases. I am referring to overseas non-permanent judges, but this is not obligatory.

We of course know that two overseas non-permanent judges from the UK have recently resigned. Even if something similar happens again in future, it will in no way affect the operation of the common law system in Hong Kong.

As the former Chief Justice Mr Andrew Li pointed out in a recent article, the situation has changed considerably since 1997 and it cannot be ruled out that the number of overseas non-permanent judges serving for the CFA may drop in future. That said, Mr Li is still fully confident that this will not affect the operation of our CFA or the Hong Kong judiciary, because our local judges and local judicial talents are more than sufficient to meet the operational needs and challenges of the Hong Kong judiciary. I couldn't agree more. Due to time constraint, this concludes my speech. Thank you very much.

Arthur Li Kwok-cheung: Thank you Albert. Our last panelist for today is Mr Johnny Mok, who is a senior counsel and he is also a

member of the Basic Law Committee of the Standing Committee of the National People's Congress since 2007. I have to say that Johnny has always been on the side of angels because he always represented the Government and Department of Justice in many of our cases in Hong Kong. Thank you very much, Johnny.

Johnny Mok Shiu-luen: Thank you Professor Li. Honored guests, speakers, ladies and gentlemen, this has been a long day and this is a very late hour of a very long day. So I thought I might start by stimulating our thinking a little bit, by trying to stretch the meaning of the common law to suit the present day realities of our country and of Hong Kong. Not very long ago, I had a conversation with a retired judge of Mauritius and we had a very interesting conversation and he was telling me that, you know, Mauritius actually has a very good relationship with China, has a lot of trade with China. And even though the relationship has been very good, the trade has been very good but there is one problem. The problem is that when it comes to some sort of disputes which often happen between business parties, contractual parties, if you look at the contract very frequently because they are dealing with very huge organization or corporations in China it would say arbitration, say in Shenzhen or some part of China and to follow some kind of laws or rules that they are not familiar with. And very immediately they thought, this is very difficult for us because I don't know the first thing about arbitration, somewhere thousands of miles away, even less the rules and the regulations that are applicable to the process. So I thought that common law used to have a meaning in England or in the United Kingdom which means that it is a law or a set of rules that is applicable to the whole of England or the United Kingdom.

But I can imagine in the present day, there might be a law which is common to all the nations that willingly trade with each other, regardless of whether or not a country is big or small, whether or not the contractual party is very substantial or a relatively small operation. There ought to be a common set of practices, particularly commercial practices that all the countries could understand. And there should be a process of dispute resolution. These days, you can have it take place virtually anywhere in the world and have judges appointed from any country of the world so long as they have certain qualifications. And I would have thought that Hong Kong, if it comes to that kind of arrangement, can make a major contribution and the reason why we can make a major contribution to this kind of process is not only because of the many factors of the rule of law which Mr Justice Chan had talked about, particularly judicial independence, how judges are not affected by external influences and all the institutional factors that goes into the selection of judges and goes into the process of removal of judges and so on and so forth.

I think Hong Kong has a very unique role and history because we have a history or a tradition of close to 180 years of the common law tradition. Just think about it, what does it mean to be part of a tradition of common law which has lasted for over or close to 180 years? In my view, what it means is that something that is being practiced which is being followed every day in Hong Kong without us thinking about it and almost as an automatic kind of reaction, is something that has been passed on from generation to generation for over 180 years. This is not something that you can write into the law books or you can institute as a kind of procedure and say: “Tomorrow you follow this”. Even though you may have the best rules in the world and the best system in the world, if you don’t have the tradition, it’s not something that you can readily take on and apply and do it successfully.

Mr Justice Chan has used a very marked example. He said he can be a first-hand witness. Well, one very important thing is that there has not been a single case whereby a judge is being influenced by a party in the process of the decision of a case or in the selection of the judges to a particular court. Even though we all know that corruption does take place from time to time, and particularly sometimes within government and sometimes in the private sector, there has not been a single case where a judge in Hong Kong is being influenced to make a decision a particular way which favors a particular party.

Now this is very remarkable and it is particularly remarkable because Hong Kong has such a long time in the history of its legal system where these rules and this tradition are applied; and the reason why I think that is the case is because Hong Kong practitioners and judges all share the same mentality, which is that there is a sacred line which neither the judges would cross nor the parties on the other side would cross, which might undermine the integrity or the fairness of the judicial system. This is a mentality which, as I said, has been passed down from generation to generation and is something that cannot be replicated without an equal amount of time having elapsed in the history of any particular country or jurisdiction. And I think that is why in Hong Kong, the question today is “why is the common law so important to Hong Kong’s free economy?” And my answer to that is that it is not only important to our free economy, it is also important to the country and also important to all the other countries that our country has relationships with, particularly trade relationship. And I tend to think of common law not just for our own consumption, but actually the common law can be a product of our export to many of these countries because practitioners in Hong Kong and people who are professionals in Hong Kong can help to join hands with all these other countries and jurisdictions and to write a truly common law


whereby we share a common interest, where we treat each other fairly and equally and with an even hand, without discrimination against the size of the economy or what country you happen to be dealing with.

And I think that, stretching our imagination a little bit, I think the common law in Hong Kong can go far beyond what is commonly practiced within the four corners of Hong Kong as a place. Now we all live and we all know that we're living now in a very divisive world which is getting more and more divided every day. In this kind of new realities, I think we can come back to the root of the common law which really formed the bedrocks of the rule of law in Hong Kong. We come back to the root of it and to examine why Hong Kong can play such an important role. Hong Kong's rule of law and the Hong Kong common law is special and unique in several ways.

First of all, it is within "one country, two systems". There is not another common law system in the world which is within "one country, two systems" such as in the HKSAR. That's one very special factor. Secondly, it is very special because, as I said, we have a very long tradition. And thirdly, very importantly, it is because we are part of the one country and this is one country dealing with many other countries of the world. These are the three very important factors. And therefore, within this kind of framework, I think we have to now recognize that, in fact, Hong Kong's rule of law and the Hong Kong common law is a very special brand of rule of law.

Why is it special? Because the rule of law is not equal in all countries and all jurisdictions. Just think of it, in some countries they do practice the rule of law. But they may only apply the same principle to certain people; maybe their own country or maybe their friendly countries or maybe not the unfriendly country and not so friendly people. So in some jurisdictions, you do have the rule of

law but it is their brand of the rule of law. It is different from us. And why are we different? Because the Hong Kong brand of rule of law is applied across the board and can be applied to all people, all countries and all backgrounds without any form of discrimination. This is written in our Basic Law and this is written in the Hong Kong Bill of Rights. You cannot discriminate a person on the basis of his race, his color, his political belief, his country or anything else. So Hong Kong, so long as it remains as a part of the “one country, two systems”, we can continue to practice a branch or a brand of the rule of law which does not discriminate against any people in the world, which in terms makes it highly attractive to many other countries and many other people that we actually deal with – to come and embrace the concept of the common law that Hong Kong represents. So I think because of time, that’s all I’m going to say. Thank you very much.

Arthur Li Kwok-cheung: Thank you very much. Can I just thank all panelists for their presentation and particularly I would like to thank the Department of Justice. I’m sure we all like to join me to thank the Department of Justice for organizing this Legal Conference. Thank you very much. Thank you. 

The Role and Effect of Hong Kong's Common Law System in Developing a Free Economy

Mr Justice Patrick Chan
Non-Permanent Judge, Court of Final Appeal
27 May 2022

1

2

Hong Kong =
Mainland's window to the world
Springboard for foreign countries to enter China market
One of the international commercial, trading and financial centres

Factors contributing to success include:
Sophisticated legal system and independent judiciary +
Mature economic system

3

Common law system, judiciary and free economy: preserved after reunification

Legal system = common law system + independent judiciary

Free economy = upholding capitalism + policies of free trade and open market

Reunification on 1 July 1997

Establishment of HKSAR [PRC Constitution] art.31

Practices "One Country, Two Systems", comes directly under Central People's Government

Exercises high degree of autonomy except for defense and foreign affairs

4

Existing basic systems preserved after reunification

- ❑ Maintain prosperity and stability of Hong Kong
- ❑ Preserve previous capitalist socio-economic system
- ❑ Way of life and general laws shall remain unchanged for 50 years
- ❑ Maintain status of international financial centre and free port

[Basic Law arts.5, 8, 109, 114]

5

Evaluation by international community of Hong Kong's legal and judicial systems and economic system

- ❑ Hong Kong possesses good qualities
 - Mature economic system + sophisticated legal and judicial systems
 - Enjoys protection under Basic Law and good international reputation
- ❑ Top global rankings in financial and legal fields – international recognition, indicators of success
 - 2020 global IPO Listing – ranked second in the world, USD 52.18 billion
 - 2021 [World Justice Project] Rule of Law Index – ranked 19th in the world (USA ranked 27th), consistently ranked among top three in Asia
 - Global corruption-free ranking – 9th in the world

6

What does a free economy comprise and require?

- ❑ Free economy – capitalist characteristics
 - upholds free trade principle
 - complies with certain rules, meets certain criteria
- ❑ Free trade principle: business operations, manufacturing and services (including capital, wages and price) hinge on law of supply and demand and led by market
- ❑ Hong Kong is considered to be complying with relevant rules and meeting relevant criteria
 - Sino-British Joint Declaration art.3 (6) and (7)
 - Basic Law arts.105(3), 109, 110, 112, 114

Essence of free economy of Hong Kong: protected by Basic Law and laws

- (1) All economic, trading and commercial activities – determined and conducted at people's own discretion;
- (2) Private enterprises and properties and intellectual property rights – protected by law;
- (3) Financial activities and foreign exchange, gold, securities, futures and other markets – free and open, free capital inflow and outflow, free circulation and exchange of currency without restriction or control;
- (4) Economic, trading and commercial activities – free and open, not subject to interference or regulation

Some regulations in free economy

- ❑ Rapid economic development, new changes and modes of activity
- ❑ Any improper or irregular circumstances have to be regulated
- ❑ In order to eradicate unlawful commercial activities and reduce economic risks

Importance of legal and judicial systems to free economy

Protection by legal and judicial systems:

- (1) Economic activities and processes rights and obligations protected by law
- (2) Regulation must abide by rule of law and be able to withstand legal challenges

Robust legal system and independent judiciary:

- Conducive to smooth conduct of economic activities
- Ensure fair and just enforcement of regulatory policies and laws
- Strengthen international confidence, favourable to economic activities, good business environment

Independent judicial power and final adjudication power of Hong Kong can enhance confidence in conducting business

Legal and judicial systems

Current laws basically remain unchanged – common law, rules of equity, ordinances, subordinate legislation and customary law to be maintained except for any that contravene the Basic Law and subject to any amendment by the HKSAR legislature (Basic Law arts.8, 18(1))

Business people know precisely business activities/disputes are protected by laws and independent courts

11

Independent judicial power – (Basic Law arts.2, 19(1))

fair, just, impartial, selfless and free from interference by executive or legislative authorities or any person in adjudicating cases

Final adjudication power – Court of Final Appeal (Basic Law arts.2, 19(1))

make the third (and final) judgment in civil and criminal cases

(Final power to interpret the Basic Law rests with NPCSC)

12

Judges and judicial officers (Basic Law arts.88, 89, 92)

Appointment – based on judicial and professional qualities, recommended by independent commission and formally appointed by Chief Executive

Removal – can only be removed by reason of inability to discharge duties or misconduct and only in accordance with specified procedures

13

Common law of Hong Kong conducive to development of free economy

Common law: a judge hears cases by way of open trial and makes judgment on basis of factual evidence and relevant laws, and reasons for judgment are set out, forming part of the law which is made public

Characteristics of common law – exert positive effect on free economy and help create appropriate free market economy and business environment

14

(1) Case law - enhances certainty, clarity and predictability of law

Case law: legal principles relied on by high courts in adjudicating cases are binding or persuasive on lower courts in dealing with similar cases in future

Legal principles are highly certain, clear and predictable, reducing lawsuits or appeals

Very important to the conduct, promotion and development of economic activities

15

(2) Flexibility – can make changes in response to changes in society

- ❑ Case law that cannot catch up with changes in time/society - outdated, leading to injustice
- ❑ Common law is not immutable; it develops continuously and can revisit outdated principles in response to needs and changes of society
- ❑ Even more important for developing economic activities and business models

16

(3) Principle of freedom of contract – respects commercial agreements, helps honour trade promises

- ❑ Uphold principle of freedom of contract, respects parties' right to freely enter into contracts in unrestricted manner and to freely choose and formulate terms and conditions of transactions
- ❑ Courts will fairly and justly strive to enforce parties' agreements save for certain terms which are regulated by legislation
- ❑ Courts' respect for spirit of private contract is conducive to financial, trading and commercial transactions

17

- (4) Acceptance of commercial reality – courts accept practical commercial reality in adjudicating cases
- ❑ Courts accept practical commercial reality, rapidly adapt to changing environment, stay current and closely follow financial developments, providing guidance to business community
 - ❑ Development of common law, based on actual experience and commercial reality, is conducive to economic development

18

- (5) Commercial law – under common law, much of commercial law draws on custom and practice of trading activities
- ❑ Under common law, evolution of commercial law is influenced by free economy theory and becomes legal principles and international trading standards with which judges adjudicate commercial disputes

(6) Global connection – strengthens role of Hong Kong as international commercial, trading and financial centre

- ❑ Hong Kong's legal and economic systems are relatively close to international standards and are readily acceptable
- ❑ Foreign business people come to Hong Kong to conduct business, trading and financial activities, through which they look for opportunities to develop business in Mainland China, and apply Hong Kong law to resolve disputes by way of arbitration
- ❑ Mainland business people will also make use of Hong Kong's status to conduct business, trading and financial activities such as listing and financing, with a view to further exploring international market
- ❑ Hong Kong then becomes a centre for interaction and exchange between Mainland and rest of the world

(7) Protection of private and corporate properties – Basic Law and common law principles protect private and corporate properties

Common law and Basic Law provide legal protection for private properties

- (Basic Law
- art.6: protects right of private ownership or property in accordance with law
 - art.105(1): protects private and corporate properties in accordance with law, with right to compensation for lawful deprivation of property
 - art.105(3): ownership of enterprises and foreign investments are protected by law)

Common law principles and Basic Law protect private and corporate properties and create good business environment, so that people will feel at ease when doing and developing business in Hong Kong.

Conclusion

- ❑ Practices common law and possesses independent judiciary, conducive to implementing policies of free economy and open-up
- ❑ Unique geographical environment and staunch support by the Central Government, outstanding talents, good international reputation, effective systems and policies
- ❑ Preserved after reunification, more effectively protect lawful rights of business people, consolidate status of commercial, trading and financial centre

MEDIA INTERVIEW

Walk the Talk

Moderator



Dr Allan Zeman GBM GBS JP
Chairperson of Lan Kwai Fong Group

Guests



Mr Hans Michael Jebsen BBS
Chairperson of Jebsen Group

Guests

Mr Eric Ma Siu-cheung GBS JP
Chief Executive Officer of NWS Holdings Limited



Dr the Hon Simon Lee Ho-ey MH JP
Chief Strategy Officer (Greater Bay Area) of
China Resources Group



Mr Toni Younes
Founder and Chief Executive Officer of Paul Lafayet



Allan Zeman: Thank you very much. I know it's been a long day for many of you and so but we are lucky to have four illustrious speakers here and really talking about what makes Hong Kong so attractive to business from all over the world, international business people. Why do people open up and how does the Basic Law really really help Hong Kong to attract so much. It's given Hong Kong such a brand in the world brand name. We know businesses love stability. Stability is the key. The Basic Law helps stability. And that's something that brings prosperity. That's why they say "stability to prosperity"; that brings the prosperity to Hong Kong.

So I know all of you are with many businesses different to many of the speakers that have been up here; and just want to hear from each of you that what makes everything work for you? So basically, we have Mr Hans Michael Jebsen on the screen so Hans Michael welcome, and so why don't we start with Hans Michael first? I'll give a brief introduction. Hans Michael is the chairperson of Jebsen Group in Hong Kong. Hans is a Hong Kong based Danish businessman. He joined the Jebsen Group in Hong Kong in 1981 and has been chairman and main shareholder of the group since 2000. Jebsen Group, established in Hong Kong, has extensive experience investing in Guangzhou and he was awarded as Guangzhou honorary citizen in 2021, something very, very special. And so we'd like to hear from Hans, about you and your business. What keeps you here in Hong Kong?

Hans Michael Jebsen: Well, thanks Allan and good afternoon everybody. Understand it's been a long day, so I'll try to be really short. Now I'm a member of a family of like so many others who came to the East through shipping and have been developing into trade and manufacturing. And today, we are quite a far-flung concern

with China as our main market, but as a global family-owned company and family-run.

And for us, Hong Kong is a place where we basically ask ourselves four questions. What makes Hong Kong? What makes it different? What makes it successful? And why is it the right place for a company like ourselves to be headquartered in? And of course, we've heard all those very important hard facts; the legal system in Hong Kong, the common law, the geographical position, our long tradition in dealing with the entire world as a trading partner. And I could add many things in terms of shipping. Of course, we used to be the absolute key entrepot. Now, we are one of many vital entrepots into China, but these are all things you will find, you might say, in a sort of chamber of commerce flyer. I think what is so important is culture. You cannot run away from your past and run away from your identity. We are who we are and we are always standing on the shoulders of other generations in the mindset that has become ours.

Now, what makes Hong Kong is, I think, is the mindset and it's ability to cope with changes, to cope with disruptions and indeed to be not only followers, but to be also spearheads. And I think the latter part is where the GBA comes in, where the Chinese Mainland comes in with a whole revolution of consumerism. And of course, Hong Kong is extremely well placed in being a key player, the spearhead and a fast follower all at the same time.

Now, our company has been in China, entrenched in business there since a long, long time. And I mean, one of my first memories was really the many pictures that were in my father's office. On his desk, there were family pictures, but there were pictures of the "compradors" and the company directors who were those key movers of the family concern. And that always impressed me deeply, that



unconditional trust that individuals placed in each other. And here we have culture. I think the notion of decency, the notion of reliability and the notion of honor are extremely important elements of the mentality or mindset or the tradition. And that is something which Hong Kong really thrives on. And whatever you look at all the investments in China, they are there for a reason and they are there because Hong Kong individuals have a long tradition of trusting relationships across the board.

And that's where, of course, Hong Kong comes in as the connector, we call it a super connector or main gate or entrance. It all means basically the same; that you have to be trusted. We are, as a company, we decided that Guangzhou would be our hub because it's close to Hong Kong and it is Cantonese speaking, it is in the heart of the GBA and it just makes a lot of sense. I only takes an hour and something to get there. So there's a lot of cohesion. That has been

a good decision and I think it's been carried by also Hong Kong Government policies in terms of reaching out to our neighboring provinces and CEPA; of course it was just a first step. We were the most favored trading partner, if you like, of the Chinese Mainland right after the handover.

And the Basic Law is the very bedrock on which Hong Kong's status stands. So I think we take that pretty much for granted. But we've heard during the course of the conference how much work it took to get there. And I think it's really worth appreciating that and also defending that position. Now, in our case, the other very important element for being in Hong Kong and in Guangdong is manpower, its human resources. This is an area with a lot of young people; young, up and coming. And of course, you know, we are living in times of great also technological disruptions where young people have a totally different approach from people, for instance, of my vintage.

So I'm really enjoying tremendously to be inspired by a lot of individuals that are from all provinces of the Chinese Mainland, by the way. And that's another huge advantage. I mean, in Hong Kong, we have the outreach to the global sphere and in the Chinese Mainland there is both the local sphere where individuals have a footprint in Shanghai, in Beijing, in all sorts of places, and Hong Kong, and of course, China is our main market as a company and I think as a place in Hong Kong. Now, what will make us confident is not figures. I mean, of course you can see the trade figures and it is always growing and it's so wonderful, also to be expected. But it is the resilience and is the mindset. People in Hong Kong are found weatherproof, I would say, and they've come through an awful lot. And of course, the long history of going through wars, and I think it is

worthwhile to really appreciate what it has taken to make Hong Kong the success it is, and also to appreciate that having the Mainland as your main trading partner is a very good place to start. Because this is not only a large market, it is also a fast developing market. And it is a market which will, in my view, definitely pave the way to quite a few positive disruptions; take the environment, take the footprint, take all that is to do with “food and waste” etc.

I think with that large population, with the age situation that the country like China also is going to face in terms of an ageing population in 20 years or so on, we will have Hong Kong sitting right in the middle of a place of innovation. Universities open campuses in the Chinese Mainland. I’ve had the pleasure of being associated to the HKUST for quite some time, and I’m so impressed that it has a new campus being built straight across the border twice the size of Hong Kong in a matter of a few years. I mean, these are all things that often go a little unnoticed because they’re taken for granted. That’s where our people for the future are being groomed. And I must say, I take my hat off to all those people in the educational sphere who are providing the resource for the future. So why is Hong Kong going to be a success also in future? It is because of, particularly, the mix of individuals being both trained academically, but also having that natural curiosity. Curiosity I think is extremely important. And I’ve lately developed one thing which I was told: don’t ask people the same questions that you see in the CV, but ask them what are their personal, private interests? And I think that is so revealing. I think Hong Kong individuals are, including very much Mainlanders, immensely interested in the world around them. And this is so refreshing and it’s something which is difficult to put in figures. I would even argue when we look at GDP and a lot of other things, they are all quantitative. But where are the qualitative measurements? And,

how do you measure reliability? How do you measure decency? How do you measure, let's say, a sense of entrepreneurship, of optimism etc.? So I rest my case.

I think in terms of mentality and culture, we are truly in the right spot because China is more than the country. It is of course a nation and also overseas communities where Hong Kong plays a vast role. It's a sort of secret capital of the overseas Chinese, but it is also a culture that rests on very, very deep roots and I think that has to be appreciated. And I think the more Hong Kong can be interfacing with the Mainland and feel part of that long tradition, I think the better. Frankly, I can see that in our company, there's a lot of cross-relationships now within the company, from city to city, of people who wouldn't know each other before. But I get curious, why do we believe Hong Kong has that special future? Well, there's no place like it, purely. And I think we've heard it in so many words. And I would say that if ever there has been proof of resilience, of being able to cope with disruptions; if ever there has been a place that has been tremendously adaptable to new situations and at the same time can rest on an ancient culture and deal with innovations; because the future will be different from what we are used to. I mean, how about resources? How about climate? How about all these issues which really, really matter? I think that China has such an enormously important role to play in that. And the more we in Hong Kong can contribute to being part of that, the better we are placed. Our company has seen that a lot of innovative things, like the virtual Porsche showroom or car showroom is something which will develop as China was the spearhead, and together with a number of Hong Kong individuals. So I think for me that's the best proof and of course that's moving beyond the day. It's about really the future and a

greener future and better future will be produced, no doubt, and/or co-produced in China with Hong Kong in a very important spot.

The Pearl River Delta, of course, plays a vital role when you look at the composition of individuals over there; there are many people who move from other parts of the Mainland to the Pearl River Delta. And why? Because education, quality of life and connectivity and of course, the cluster of like-minded people, that's a very strong power. And I think it would be interesting to see what are these clusters and why do people congregate? And this is where I feel that we are in the best place in Asia, for that matter in Hong Kong, because we can connect with all those other parts of Asia and that's what we are doing as a company. We've seen some very healthy growth because of that. And of course it's an educational process. I think we have to listen to the reality and see what do the people want, how do they want to live in the future? And there I think the more we in Hong Kong can contribute and learn, the better we are. That's where we are. We have been in business for 130 years and I can say that the dynamics have been teaching us a lot of lessons, but one in particular: That the concept of Chinese cultural values is at the core of what we are doing and why we are choosing Hong Kong as our headquarters now and for the future.

Allan Zeman: Well, thank you Michael. Jebsen, of course, has been here for many, many years, one of the famous companies that has been in China for many years. I've known the Jebsen family for a long, long time. And I guess he's told us all the reasons why Hong Kong is such a great place to stay here and do business. Next, we have Eric Ma, he is the CEO of NWS Holdings Ltd. He's a well-respected engineer. He's also a member of the fellow in various highly regarded engineers institute in Hong Kong and overseas. He also has extensive

experience working with the HKSAR Government. He joined the Government in 2014 as Undersecretary for Development and subsequently appointed the Secretary for Development in February 2017, remained in the post until 2017. He's an Honorary Professor of the School of Science and Technology at Hong Kong Metropolitan University and Adjunct Professor of the Hong Kong Polytechnic University. So Eric gets around.

Eric Ma Siu-cheung: Thank you Allan.

Allan Zeman: And he's also been appointed to Justices of the Peace in 2014. So, Eric, let's hear your story.

Eric Ma Siu-cheung: Thank you, Allan. Distinguished guests, I'm privileged to represent the New World Group to share the business sectors' experience of "one country, two systems" under the Basic Law in Hong Kong. Since its return to the Motherland 25 years ago, "one country, two systems" is a unique constitutional invention with no precedent case to take reference from. Challenges have arisen in the last 25 years along our course of exploration. Thanks to the endurance of different sectors, Hong Kong was able to retain its competitiveness and attractiveness, allowing us to proudly present ourselves as an international financial hub, a global trading hub and also an international maritime center. All couldn't have been achieved without the Basic Law.

So today, I would like to share our experience and observation on the impact of the Basic Law on the overall business environment in Hong Kong from the perspective of the business community. Also, I shall explore some prospect of Hong Kong in particular: What should be changed and remain unchanged under "one country, two systems"?

Two and a half decades ago, Hong Kong returned to the Motherland, marking the enactment of the Basic Law. But in fact, the drafting of the Basic Law dated back to 40 years ago, in 1982. That year, the negotiation on the future of Hong Kong began as the Mainland had just kick-started the reform and opening up. The international community was still skeptical of China's determination to embrace globalization and was pessimistic about the future of Hong Kong. Stock prices plummeted, currency depreciated and panic selling occurred everywhere. Some citizens left Hong Kong, while a number of enterprises relocated their operations. Despite all these uncertainties and adversity, the New World Group never panicked and the thought of leaving the city never crossed our mind. We believed that as long as China persists in opening up, Hong Kong's stability and prosperity will be safeguarded. The city will play an indispensable role in national development, becoming the bridge linking the Mainland with the world, and the local business sector will certainly benefit from it.

Therefore, contrary to others, the New World Group instead strengthened its determination at that time and accelerated our pace of investment in Hong Kong. The Hong Kong Convention Exhibition Center, Phase one, next to where we are now, is a solid proof. In the 1980s, the colonial government planned to build a world class facility to hold large scale international conference and exhibitions. Due to the uncertain future of Hong Kong, many corporates were hesitant to take up this huge commitment. However, when the Government came to the New World Group, we accepted the invitation without a second thought. It was signifying our confidence in our city's future. We overcame many difficulties and completed the project on time. To this date, the Convention Exhibition Center remains a landmark structure in the city. The subsequent development of Hong Kong from the 1980s has proven that our optimism was right. After the signing

of the Sino-British Joint Declaration, Hong Kong achieved a stable transition back to the Motherland.

Since the handover, the capitalist system and the way of living, including all existing freedoms and rights, have remained unchanged. As enshrined in the Basic Law, business convenience and legal protection which have formed integral parts of Hong Kong strength have been safeguarded, ensuring the successful operation of our businesses in the city. Let me elaborate my point. First, the Basic Law guarantees a simple and low tax regime in Hong Kong and preserves her status as a free port. This enables the city to become a favorable hub for exchange of personnel, goods, information and capital. Besides, the Basic Law allows Hong Kong to participate in a wide range of trade arrangements as a separate customs territory. By virtue of these competitive advantages, Hong Kong has long been a world leading example in terms of economic freedoms, ease of doing business and prosperity index. The city retains its reputation as one of the most attractive places in the world for global capital and enterprise.

Second, the Basic Law assures judicial independence and the common law practice in Hong Kong. In the past 25 years, the local legal system has been highly transparent and efficient, where commercial disputes can be adjudicated fairly and openly, together with a clean and impartial Government dedicated to combat corruption. Enterprise can operate here fearlessly. Although the international community has once worried that Hong Kong's commercial environment will no longer be the same after the enactment of the national security law, statistics have proven them wrong. For example, the 2021 Worldwide Governance Index by the World Bank ranked Hong Kong as the second-best place in Asia under

the dimension of rule of law, while the 2021 International Arbitration Survey by Queen Mary University of London rated Hong Kong the third most preferred seat for arbitration worldwide. Hong Kong's performance in these areas has given the business community greater confidence in the city that it is a vibrant, stable and attractive place for foreign direct investment. The influx of capital speaks for itself as well. The aggregate balance of the banking system exceeded HK\$337 billion in May 2020, double the amount in June 2019 before the national security law became effective. Obviously, the legislation does not hinder capital from coming to Hong Kong, reflecting the business community's confidence.

Over the past 25 years, Chinese and foreign businesses operating in Hong Kong have benefited from the Basic Law's assurance of "one country, two systems". We are all witnesses, participants and beneficiaries of Hong Kong's tremendous economic growth in the first half of the 50 years. However, while we have been emphasizing the continuous advantages of "no change", we have been neglecting the necessity for change. Despite the numerous successes in the past 25 years, certain aspects of the society require improvements and even reforms.

Our system, our policy, our mindset have to be evolved over time to suit the community needs. The most prominent example is the land and housing shortage. Due to the increasing rigidity and complexity of the vetting system, land development and housing supply has been extremely slow, far from meeting the expectations of the community. Insufficient community support is another pressing issue. The fifth wave of the pandemic unveiled the challenges in our crisis management and citizens were unable to obtain the anti-epidemic supplies in time. We need to think about how we can serve citizens,

particularly the vulnerable ones, when the next crisis comes. They are just two incidents with deep-rooted problems. It's time for us to make changes and embrace changes. And I believe the responsibility of making changes doesn't simply lie on the government. The corporate sector has to become a part of the solution.

A few years ago, the New World Group made “*Creating Shared Values*” as our corporate philosophy. We believe our mission is not only to bring returns to our shareholders, but also to improve the well-being of all stakeholders by launching innovative and socially responsible practices into our business. Guided by this vision, we founded a non-profit making social housing enterprise “Build for Good” last year, which aims to create an innovative alternative in affordable housing, providing more affordable housing for first time buyers. Working together with the Government, the business sector can offer an alternative for the young to get onto the housing ladder easier with a lower purchase price, smaller down payment and lower monthly installments. And not only are we determined to build for good, but we also vow to share for good.

In March, we set up Hong Kong's first large scale crowd-donation platform “Share for Good” to deliver support to the underprivileged by adopting an innovative solution to allow all targeted matching between the donors and beneficiaries. The platform enables supply to reach individuals just in time. In the first phase, the online platform has raised over HK\$40 million worth of donation and benefited over 100,000 underprivileged families.

In a nutshell, as an important stakeholder in the society and a significant beneficiary under the “one country, two systems”, we believe the business sector is also obliged to be a contributor and a duty bearer in the community. In the upcoming years, we shall

continue our effort to facilitate fair distribution to address the need of the general public. Only then we can achieve common prosperity.

This year, the practice of “one country, two systems” policy will officially enter the second half of 50 years of “no change”. We are sailing towards a new milestone. New challenges have arisen in the society in the past two and a half decades, calling for changes in the role of the government as well as business sector in the society. These changes are to ensure the institutional arrangement of “one country, two systems” remains unchanged. Only by mastering the art of change and “no change”, can the “one country, two systems” vessel be able to sail smoothly, bring prosperity to the people of Hong Kong and contribute to the opening up of our country. Thank you very much.

Allan Zeman: Well, thank you Eric. As we all know, New World is one of the pillars of our Hong Kong society, and “one country, two systems” has really benefited. New World was one of the early first movers into China, into the Chinese economy, and really had most land in China earlier, and really taught the Mainland a lot. Hong Kong really was the great leader in teaching the Mainland many of the great success that the Mainland has today, much of the success that we have today. Thank you very much.

Okay. Next, we have Dr Simon Lee Ho-ey, MH, JP. He’s a Legislative Council member of the HKSAR. He’s also Chief Strategy Officer of China Resources Group for the Greater Bay Area at the China Resources Company. Simon received his PhD in Law from Tsinghua University in 2012 and is the chairperson of the Basic Law Foundation. He is part of many renowned law associations and committees and is a well-respected law scholar, and is also the Deputy Executive Director of Our Hong Kong Foundation. And as one of the nation’s young academics, Simon is an expert on the economic

and business development on the GBA (the Greater Bay Area) and Simon was granted the Medal of Honor and the Justices of Peace by the Hong Kong Government in 2016 and 2019 respectively. Simon was also elected as the Hong Kong Ten Outstanding Young Persons in 2017 with the same recognition. I'm lucky that's all you have, Simon. Otherwise, we'd be here all night listening to all your achievements. But okay. Tell us your story.

Simon Lee Ho-ey: Thank you Allan. Good evening, ladies and gentlemen. I am very happy to be here in the last session. Before this session, speakers were talking about the lawmaking and also some conceptual things about the Basic Law, and up to now, we are talking about the usage of the Basic Law and the “one country, two systems”. Hong Kong is the only common law jurisdiction within China, the common law can bring to us the business sector with both flexibility and also certainty at the same time.

As we all know, flexibility comes from the judge-made law, it is able to respond to the very up-to-date business needs and developments very quickly. But our judges obey with previous cases and consideration, which keeps the consistency of principle. And therefore comes up with certainty. And all these are guaranteed and protected and developed under the Basic Law. If we are talking about the statutes within the Basic Law, talking about economics, it includes Article 108 talking about the tax, Article 109 talking about the economic and legal environment, Article 112 talking about the freedom of investment, Article 115 free trade, Article 8 talking about common law, and last but not least, Article 85 talking about the independence of judiciary. These are all protected under the Basic Law. The most important legislative intent of the Basic Law clearly is reflected from Article 5 of the General Principles Chapter under which

it states that the socialist system and policies shall not be practiced in the HKSAR and the previous capitalist system and way of life shall remain unchanged for 50 years.

Simply speaking, it is the policy of “one country, two systems” together with the spirit of smooth transition. For the former one, it means that under the principle of “one country”, the socialist market economy will not be practiced here so as to grant Hong Kong the greatest freedom in economic development. Such freedom is even greater than the autonomy of Scotland and Northern Ireland enjoying within the UK sovereign. In fact, in accordance with Article 13 of the Basic Law, the Central Government shall be responsible for the foreign affairs relating to the HKSAR. And meanwhile, the Central Government also authorizes the HKSAR Government to conduct relevant external affairs on its own in accordance with the Basic Law; which is clearly stated in Article 151 that allows Hong Kong using the name of “Hong Kong, China” to maintain, to develop and to implement agreements with foreign states and regions, as well as relevant international organizations in the name of economic development.

In respect of the latter, it promises the continuity of the existing public administrative system and the way of living of people in Hong Kong, in particular, the principle of market economy, of capitalism and the spirit behind. The two important founding principles of capitalism are, first, freedom of contract and protection of personal properties. As a whole, one would notice that in relation to economy, the formulation of the articles contained in the Basic Law in fact focus around two sectors: freedom and protection.

Starting from the economic perspective, the most important provisions there, it should be Articles 6 and 105 which respectively

guarantee the protection of personal properties and ownership and foreign investments of corporations. Regarding the matter of freedom, it is further fortified by Chapter V, Economy of the Basic Law that promises trade freedoms which have been provided to the greatest extent. For example, operation freedom of monetary and financial business under Article 110, freedom of foreign exchange under Article 112 and the continuity of the free trade policies under Article 115. In particular, the tariff free policy is to maintain Hong Kong's free trade port status.

In simple words, it is to keep those principles and policies all along being adopted by the government before 1997. Apart from the continuous application of common law and legal systems as stipulated in Article 8, such principles of continuity has been recited and analyzed in the recent Court of Final Appeal Case FACV 6 to 9/2020.¹ The fact of containing article facilitating operation of business in the Basic Law does not suffice. A practical implementation of this legislative intention is also very important. In fact, the success of the implementation of Basic Law depends much on the insistence of the HKSAR on maintaining an independent judiciary which has been highly praised worldwide for the upholding of the principle of rule of law, a corruption-free and also efficient public administration, and last but not least, a stable and secure social environment. We should understand that everything about the “one country, two systems” policy is to resolve the issue of Hong Kong and Macau, and realize the peaceful reunification of the country – it's people-centered. Indeed, the Central Government has emphasized repeatedly over time that the Government of the HKSAR has the responsibility and obligation to develop its economy and improve people's livelihood

1 *Kwok Wing Hang & Others v Chief Executive in Council & Another* (2020) 23 HKCFAR 518.

and the city's prosperity. It is desirable from the special policies practiced by the Central Government in Hong Kong and the high degree of autonomy granted by the Basic Law that one of the key purposes is to make the life of Hong Kong residents better, and even better after the reunification with the Motherland, not the other way round.

In addition, Hong Kong, on the one hand, serves as a bridge between eastern and western culture, our nation and the rest of the world. And on the other hand, we act as a gateway for the foreign enterprises who want to establish business in the Mainland. Such a unique arrangement and cooperation in fact shape the unique financial and economic status of Hong Kong. Let's talk something about the Greater Bay Area, which is mainly what I'm working for China Resources now, on the Greater Bay Area Business.

Regarding the Greater Bay Area, generally speaking, there is a certain consensus in Hong Kong on the development of the Greater Bay Area; believing that it can open up new spaces for development and new opportunities to Hong Kong, not only in the business field, but for the young people, for different aspects in the society. However, in the face of the unstable global situation and the increasingly common phenomenon of anti-globalization, we need to have a deeper understanding of the international situation so that we can think more about how Hong Kong can give full play to its own strengths, and to link in development direction closely with the country.

In my view, about the role of China Resources, as Guangdong, Hong Kong and Macau deepen their cooperation and as the construction of the Greater Bay Area continues to progress, it is expected that the demand for professional services from enterprises in the Greater Bay Area and other regions will definitely increase. Hong

Kong should take up the important role of going out from Mainland enterprises and become the preferred platform for enterprises in the Greater Bay Area to expand their business overseas.

Hong Kong and the whole Greater Bay Area are presented with historic opportunity: China's major strategy judgement of a dual circulation and the long-term focus of change brought about by the long-standing changes in the international political and economic situation. To explain this issue, we must first clarify and have a correct understanding of China's remarkable economic construction and achievements over the past 40 years which have been based on the introduction of global technology, capital and markets.

In the future, China will definitely go out more deeply and will establish deeper economic links with other countries around the world that lead technology, capital and markets. Nowadays with the opening of the dual circulation and development of China's more profound going out, Hong Kong will also have the opportunity to serve China's going out and to serve a deeper, more efficient and fairer globalization. We may be surrounded by the trade disputes between the US and China or the wave of anti-globalization. But we must believe that the globalization is a global trend, and that is only a small adjustment and wandering in the development path of globalization. In such a progress, recognising a new and significant historical opportunity and finding a place for Hong Kong and the whole Greater Bay Area will give us the next strategic and systematic opportunities.

I firmly believe that these are opportunities for Hong Kong and all the cities in the GBA to integrate deeply and for Hong Kong to become a bridgehead for China's going out. Comparing with the world's three largest bay areas, the GBA is the only *de facto* regional development community where two systems under the "one country"

principle are well implemented. Hong Kong should make good use of the advantages of the “one country, two systems” to serve the need of the country with Hong Kong’s strengths, create border development prospects and write a brand new chapter in the regional cooperation.

I, as an academic scholar, a lawmaker and a professional from the commercial sector, give me the ability to understand the value of Hong Kong’s special status and attractiveness. We have to treasure such opportunity under the framework of the “one country, two systems” as provided in the Basic Law; the GBA development together with the Belt and Road Initiative, relying on our independent judiciary, efficient public administration and also social and political stability. We can strike to attain a new level as an international metropolis for financial trading, a regional hub for dispute mediation and arbitration and a global center for creative innovations. Thank you very much.

Allan Zeman: Thank you very much, Simon. One thing for sure when it comes to GBA, you’re definitely the man to see. We’ll get to you a lot about the GBA for more information. I think that’s the future of Hong Kong for sure. And our last speaker we have here, Mr Toni Younes. He is the founder and CEO of Paul Lafayet. And any of you that have French pastry must know Paul Lafayet. It’s a pastry chain. Paul Lafayet was founded in 2010 by Toni and his son, longing for a taste of home and the fond memories of their favorite patisserie in France. As fine patisserie in Hong Kong were limited to five-star hotels back then, Toni saw an opportunity to fill a gap in the market, and he shifted the business from five-star and made it more accessible to the public. He opened the first store in 2010 in K11 Art Mall and then having nine boutiques in Hong Kong and four in the Mainland cities of Shenzhen and Shanghai now. They plan to open

10 to 15 more boutiques in the GBA including Macau, Shenzhen and Guangzhou as part of its China expansion plan. And Toni is an example of what Hong Kong is all about: attracting international people from all over the world and opening businesses in Hong Kong, flourishing because of our Basic Law, because of all the “one country, two systems”, the lure of China. That’s just while we’re part of China today, 1.4 billion people, and that gives entrepreneurs the dream to open in Hong Kong and expand your business. So, Toni, up to you.

Toni Younes: Okay. Thank you Allan for introducing me. And I would like to thank the Department of Justice for their invitation for this esteemed event. Thanks for the audience and dear colleagues. So I am Toni, as Allan said, the founder of Paul Lafayet. Paul Lafayet is a Hong Kong born company. It is a SME in 2010. So maybe you may ask me why Hong Kong? I used to travel to Asia in the 90s and since then I realized the stopover to Hong Kong was the way to China at that time, that Hong Kong is an Asian flagship window. Hong Kong really has a very good infrastructure, Hong Kong has a robust law legal system. Hong Kong has a lot of talents.

We are SME, but Hong Kong has around 340,000 SMEs. Over 95% of the Hong Kong companies are SMEs. And they employ over 1.5 million people. So it has a lot of entrepreneurial spirit. Really, it’s like a magnet, it attracts you. I don’t know if Allan agrees with me on this magnet of Hong Kong so I can say I was attracted. And moreover, it is a very safe city. So why not? And by today I am happy to say Hong Kong is proudly where I can call it home.

So our story about Paul Lafayet, when I used to travel to Hong Kong in the 90s, before 2000, there was no single coffee chain. Sorry, in Hong Kong, if you need a dessert, a coffee, maybe you have to go to some five-star. I had an office design and trading business like many

who came to Hong Kong in that time. Maybe I came late, but late is better than nothing. So I saw the ladies here together, they started consuming coffee, consuming cakes, consuming wine. I realized that it's a shift in the lifestyle. So what do you do? There is a gap and we can fill the gap. So the idea came and I was in other business, design and trading. I was in love with food, but I am not a chef. But I like this concept. So I realized that it's time to launch a chain. K11 was just under preparation in 2009, so we have a little tiny shop in K11 at that time. We start in January 2010 with K11 and we're still in the same shop. So we decide at that time we need to offer an affordable luxury cake at a reasonable price because not everybody at the time can afford five-star. So this is how the idea came and we started by a central kitchen. A French chef built a team and we opened in 2010. Since then, maybe I can correct Allan, we have ten shops going to be twelve this year in Hong Kong and four in China.

So can I say how was the journey now from 2010 to 2022? Twelve years ago it was a passion. It was fun, it was a lot of hard work. Hong Kong really can offer a chance to someone to build something from nothing. Honestly, if you work hard and you have a strategy, Hong Kong has all the tools, the Government helps and you have a lot of tools in Hong Kong, you have a lot of talent, a lot of hard-working people. You can do something but you have to be focused, you have to be consistent. And also, if you are in the food industry, to last long, you have to be "quality", "quality", "quality". So these are the most important things.

There were very good days, we moved from one shop to ten shops and I can say in 12 years we did around over 15 million macarons. We are very famous for our creme brulee it's a French egg tart. I don't know if somebody has tried here. We have around 86 people in Hong

Kong and I will go to China later. And we can say, people ask us what we do, we offer happiness because you see, for food, you have to have breakfast, lunch and dinner. But for dessert and birthday, it is a happy time. So somehow it is a business of happiness. But is this business of happiness always happy? Not always.

I can say from the journey 2010 till now, it was some tough time in the middle, too much competition. And the landlord was a bit – “price”, “price”, “price”, and “lease”, “lease”, “up”. But I can say 2019 was very tough and it was directly connected to COVID. Early 2020 was really a very difficult time. There are some issues we can control, some are out of our control, and for sure the pandemic is out of control. So we agree with the staff, maybe we need to make some effort on the salary. Nobody was fired and they stayed. It was hard time with the landlord, but it took some time for the landlord to accept and negotiate. But finally they did and we appreciate it. The Government did different plans like ESS (Employment Support Scheme), like bank loan guarantee. It helps a lot. But if I can say something, the bank loan was guaranteed by the Government but the banks were too slow, asking too many things over, so maybe to think about it. So somehow it was a tough time, we made it over and by 2020 in the second part, the business improved, and 2021 was an excellent year.

So maybe I can summarize – it is like a bamboo theory. We bent but we did not break because we are quite small and flexible. So this is the life of SME. From this part, what can we learn? We learn that in Hong Kong even though the landlords are very powerful, but also they are willing to negotiate. You can find always the Government when it’s tough time and they will give help. So there are a lot of tools, if you know how to use it, you can move on in your business.

But if your business is not consistent and you don't have a strategy, it's difficult time for everyone.

From Hong Kong, let's go now maybe to China and to the GBA area. When we opened our first shop in 2010, I wanted to open in the heart of Tsim Sha Tsui; I didn't want Happy Valley; I didn't want the Mid-Levels because I wanted to open a shop for Hong Kong and for China. It was the basics that people who know of me and they know of the brand in 12 years, and so we started there. And after a few years of success, we moved to Shanghai and opened a flagship and three shops. We opened a shop by 2019 and it is at head office of China Resources in Shenzhen Bay, but unfortunately to us, it was tough 2019 and tough 2020 till now. We couldn't travel for two years and a half. So our plan in China was to extend to other major cities. But I do think for the GBA area, now Hong Kong is connected to Macau, to Zhuhai, it is easy to go to Shenzhen and I used to go to Shenzhen every Tuesday, it is very well connected to Guangzhou. I mean, we have a hub with around 80 million people with a GDP over US\$1.7 trillion, maybe going to US\$2 to 3 trillion later in the coming years. So it's a mix of finance and service, a mix of entertainment, a mix of trading and industry in Guangzhou, a mix of super technology in Shenzhen.

In Shenzhen, the average age of our target customers is around 30 years and it is exactly the profile of our customers 24, 25 to 45 and 70% are ladies. We are happy for it because they love our sweets. So somehow we plan for this, I think there is a big potential in the GBA area and once its border is more flexible to open, we can deliver from our central kitchen to Macao and Shenzhen. So we have a team here of French chef and our 12 people, maybe I need to say something I didn't say before. Really, we offer all our know-how and many people

here and in China who learnt from our chefs, a few years later they open their own shop and grow their business. So, for the GBA area and for China, we plan from now to the five years to come to open around 100 shops and we expect around 35% will be in the GBA area. Do we believe? Yes, we believe in China, we believe in the future of Hong Kong, it's no doubt. For sure the whole circumstances in the last two or three years were exceptional, it was global, but I think humanity is not at the end, things will come slowly to have a solution. You have to be patient and also when you do business in China, you have to be patient. Time is different. So I think this is a happy business we do, we have around in Hong Kong 85 staff. In China, we have 35 and for sure we will grow. It's like a social and group-team. The staff is teamwork and without this teamwork, I didn't think we could succeed and last till today. So this is what I would like to share with you all. This is our story and feel free for any question, Allan. Thank you very much.

Allan Zeman: Thank you, Toni. Toni is a perfect example of every company, everybody's setting up their base here, who started as a small entrepreneur in Hong Kong and grew not just in Hong Kong, Hans Michael, his company, Toni, myself, many, many people, we've been able to expand using Chinese Mainland and Hong Kong as one. And that's basically how the Basic Law and the security law have really helped Hong Kong, to build Hong Kong, and build Hong Kong to the strong super connector that we are between the West and the East, the East and the West, and all based on our Basic Law system. So we'll go to Hans Michael, we don't want to forget you. Michael, basically, you've done a lot of business in Chinese Mainland for many years and Hong Kong, what advice would you give to people in Hong Kong or even international overseas people that want to do

business in China? What difficulty will they face and how can they be successful like you seem to have mastered all those problems.

Hans Michael Jebesen: Well, I would say consistency is really what matters. Of course, we need all the things we need everywhere else. This is due diligence, this is sound mind, this is a business approach, etc. But consistency matters and it matters to really build up, you know, a sincere relationship with people on all levels. In China, it's business between corporates but individuals do matter and there's a long memory and there's also a long memory for the good things that have happened which I've seen time and time again. So I think spend time and really apply your mind and be aware that China is different. It's not just a mother country. No, it is a culture and it has some very different, you know, value systems and lots of sensitivities. So I think we need to ask a lot of questions and listen before we talk. And we need friends and it's a good place to make friends. My personal experience really is that it's always great when you have things that interest you that are beyond just the dollar sign, right? I mean, of course we are in business and business is business, but at the same time, it's also our life commitment. And we have seen that in our company, why can we attract good people? I think because of the CSR (Corporate Social Responsibility) part, reaching out to the communities, being really part of it and not just the commercial part. This interface I think is important that it's very enriching. So consistency and you know, be real, be sincere and really involve yourself.

Allan Zeman: Okay. That makes sense. For Eric, learning from your sharing, how would you encourage the business sector to embrace the valuable opportunities and maximize the benefits of the national strategies and integration with the Mainland? How can we

strengthen the integration with the Mainland and integrate Hong Kong people into the Mainland using all the national strategies we have?

Eric Ma Siu-cheung: I think that's a very good question. I think a lot of the business sector would like to leverage on the connection between Hong Kong with the Mainland. I think Hong Kong is very unique. I think in Asia we may not be the only clean and efficient common law system city in the world, but we are very unique. Behind us, we got the Mainland with a market of 1.4 billion people and even within the GBA area, we have 90 million population within. So we are very highly connected and in the past years the governments of the two sides have been enhancing the connectivity between both places.

So now in Hong Kong we have the high-speed rail, we can just connect to Mainland cities and go to Guangzhou in just less than an hour, even to neighbor Shenzhen in less than half an hour. So it's very highly connected and gives us all this accessibility. And also in Hong Kong, we got a very good connection between both sides and we have this surplus, enabling in particular for those professional service sectors. They got "a big door opened already" and we are now waiting for the sector to open their small door, to build their operations in those areas. So, like SME, I think that's great opportunities because we have all these opportunities and the framework laid down, and after the pandemic, I think we need to launch a series of re-launching, to re-establish the role of Hong Kong, make the international community know about Hong Kong's advantage, like tourism, trade, the financial sector. All these are very important for Hong Kong and as a bridge between the Mainland and Hong Kong. So I think it's a very good place.

Allan Zeman: It's a very good answer, Eric. And hopefully the Hong Kong Government's listening about re-branding Hong Kong

after this virus leaves us finally and really getting back to where we were and who we are. For yourself, Simon, we all know you're a well-respected scholar and you know the Basic Law very well. Is there any way we can help overseas investors to understand the Basic Law in a more vibrant and pragmatic approach based on your experience in educating the younger generation?

Simon Lee Ho-ey: Well, it's a good question, and we are working on it for more than a decade already. I think it's not a very good way to just talk to them. You can't just mention what Article 1 is talking about and Article 2 and Article 3 etc. and it is too boring and not every young people is going to have their research or academic research on Basic Law. I think the best way is giving them an opportunity to try or to go into the Mainland or experience different kind of things. I think of an example for sharing here, I have a program called "Beyond Your Dream"; trying to give opportunity to the young people and participants to learn how to make their own coffee and then have a training and internship in our cafe, Pacific Coffee. And then we do a business plan with them. If we find a very good business plan and team, we will make investment in them. And there are two shops now opening in Shenzhen already. That is an experience to them. I think it is the best way to let them experience everything; not only in the GBA and also knowing more about the "one country, two systems" and also the Basic Law; not only about talking or giving them a speech; but experience is the best way.

Allan Zeman: I think that of course, experience is always the best thing because of course reading about the Basic Law can be quite boring.

Simon Lee Ho-ey: Not boring to me.

Allan Zeman: For the average person it's not, you know, and so of course experience is always the best thing that I've always found in my career. Just for a while, one last question and a quick one since we're running out of time. For the GBA, Mr Chan was up here earlier and had a very interesting case for Hong Kong and the GBA to work very well. It's "one country, two systems" for sure but two different systems. How do you integrate the borders, the finance, the banks, everything in order to make this great project that we think it will be? We know it will be.

Simon Lee Ho-ey: Let's put it this way; think about why we have the GBA. If we are just talking about cities and cities, they are cooperation. We don't have the necessity to have the GBA. But the uniqueness of the GBA, it is very unique in the world, it is because we have the "one country, two systems" and three places including Guangdong, Macau and Hong Kong. How we can integrate the best system, or the best system to be the whole system in the GBA, is the key to the success of the GBA. For example, when we talk about some construction between Hong Kong, Macao and Guangdong, they have different kind of criteria and principles and systems on which system will be used as the construction criteria. We choose the best one to be the criteria that is an integration. And therefore why we can say that the GBA will have the best system in the world is because after comparing the Hong Kong system, Macao system and the Mainland system, of course the Guangdong system, they have the best system as the system for the GBA and that is an integration. And also of course, we can see that in the legal field, we have the Qianhai lawyer as this is another example that is choosing the best criteria and system for the whole area and region.

Allan Zeman: Thank you. Okay, Toni, you've had an aggressive expansion plan in China, especially in the GBA. And what challenges do you face or opportunities do you see in the regions? What are the challenges you face when you're opening new shops in China and for the GBA?

Toni Younes: I think China as a whole is very open in the GBA or in Chengdu or some other. I think maybe there was something we did wrong in the beginning. If you open in one area, in some operation it is better to have somebody from this area because he knows better. It's a local market and this is the first learning. Maybe the second learning is you have to spend time in China, it is not in one go and when we open a shop, it is a more long-term period. The other learning is: it's a country with one language so it is one market. For the GBA, I think as Simon just said, you have four biggest hubs and it's around 80 million people plus in total. So it's almost ten times Hong Kong and it is a very big market for us. But I may come to you later. Like us, we are based with big central kitchen in Hong Kong. Are we willing to ship to Macau and ship to Shenzhen, or do we have to open another structure in Shenzhen? So this depends on how the structure will be later, how the transport will be between Hong Kong and the GBA area. If it's very fluid, I think it is very good that we can expand faster. And I think many teams from Hong Kong can work in the GBA and main team from the GBA can come to Hong Kong. If it is not it may take some time, but I think in both ways we are willing to go for it.

Allan Zeman: Okay. We still have a little time left and I'll try to make it quick because I know it's getting late. Just going back to Eric for a minute. Well, Hong Kong is recovering from the epidemic. How do you see the city's future prospects and economic development, its


opportunities and challenges? And how do you think it might differ from the existing business environment?

Eric Ma Siu-cheung: I think looking ahead, certainly we have confidence in Hong Kong's people. We've got all the talents here. And you can see over the years, even after these two years in the COVID situation, still the expected population is still roughly maintained and they have confidence in here. So, the most important thing, moving ahead, we need to have trust in ourselves and need to work together. As we already mentioned, as you mentioned earlier, we need to relaunch ourselves, in particular looking at the role of Hong Kong. We are a very unique place in meeting the culture between East and West and we are the link bridge in between. So we should emphasize on the role but not just the business. We need to have our culture, we need to work together and relaunch to the international community: Hong Kong is coming back after the COVID.

Allan Zeman: Good. Good to hear that since it is now 6 pm and I know people are here for a long time. Since I'm the moderator, I'm just going to have the final say for everyone. And so I would just like to say that how important these last 25 years have been, on the 25 year anniversary of the Basic Law, the "one country, two systems". And I feel that in the 1980s, Mr Deng Xiaoping had this idea that people were very nervous I remember I was here and people were very nervous about Hong Kong going back to China. And the first thing Mr Deng Xiaoping said in the 80s, was don't worry, I have an idea "one country, two systems" and this will carry us through. Now, this is an experiment that was never done anywhere else in the world. And these last 25 years, all of you that have been here for 25 years, we have been living the experiment and we've had ups and downs. We've people leaving Hong Kong in 1997. We had the Asian financial

crisis, we had “Occupy Central 2014” and finish-to-start with, of course the COVID virus that everyone else in the world experienced. So we’ve had some very good years, some difficult years.

The one thing we learned is that the Basic Law and actually the security law in 2020 really did help the stability of Hong Kong, help businesses in Hong Kong to prosper and help Hong Kong to prosper. And then, of course, China, understanding, learning about the problems we had in the past and fixing it. 2019 was the combination of the problems, being able to fix it whereby selecting patriots to be in LegCo and patriots to be on the election committee. Like-minded people that can get bills passed because everything in the past was filibustered and that’s why people suffered in Hong Kong because LegCo’s the engine that drives Hong Kong and the bills could not get passed. There was too much division in the LegCo, it took three months, four months, five months sometimes to pass a bill that should take a few days.

In essence, these last 25 years have brought us to where we are today, a safe city, a great city and we will overcome all the problems. And I can tell you in the next 25 years, this will only be up for Hong Kong. We’ll only get stronger and stronger as China continues to grow. And this is my own personal opinion. I just figure that we have a few more minutes and I would end the conference. It’s been a very great day and I just end on these high notes so everyone can have confidence and you can tell all your overseas people who are doubting Hong Kong to come and see Hong Kong. It’s the best it’s ever been and will only get stronger and stronger. So thank you very much everyone for being here and thank you to all the speakers. 

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