

SJ's speech at Ceremonial Opening of the Legal Year 2019

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the Ceremonial Opening of the Legal Year 2019 today (January 14):

Chief Justice, members of the Judiciary, Chairman of the Bar Association, President of the Law Society, distinguished guests, ladies and gentlemen,

In the past year, our commitment to the rule of law has helped inform, augment and re-energise our work in confronting a range of challenges – from providing professional, impartial and independent deliverables, to promoting good governance and legality in governmental decisions and actions, and ensuring equal and fair opportunities for all.

PRC Constitution, Basic Law and common law of Hong Kong

One fundamental aspect of the constitutional order of Hong Kong that is sometimes overlooked is that it is premised on both the Constitution of the People's Republic of China (PRC) and the Basic Law of the Hong Kong Special Administrative Region (HKSAR). As the Court of Final Appeal stated in *Democratic Republic of the Congo v FG Hemisphere Associates LLC (No. 1)* (Note 1): "The HKSAR was established by the National People's Congress (NPC) pursuant to Article 31 of the Chinese Constitution. It did so by promulgating the Basic Law on April 4, 1990"

The PRC Constitution has also been referred to in a number of important judgments, including those of the Court of Final Appeal. In one case, Sir Anthony Mason, non-permanent judge (NPJ), reminded us that the Basic Law "is a national law of the PRC, being an enactment of the National People's Congress made in the exercise of legislative powers conferred upon the NPC by the PRC Constitution". (Note 2) In another case, Lord Cooke of Thorndon NPJ referred to the Preamble of the PRC Constitution when dealing with the question of recognition of Taiwan court orders. (Note 3)

That the PRC Constitution and the Basic Law together form the constitutional basis of the HKSAR cannot be seriously disputed, whether as a matter of law or fact. Like any other legal problem, the interpretation and extent of the application of the provisions of these two laws will be a matter that has to be analysed by applying the proper applicable law, and in context, in particular with Article 11 of the Basic Law in mind, so as to derive a legally correct answer.

Another matter that cannot be disputed is that the common law is maintained and continues to develop in Hong Kong, as guaranteed by Article 8 of the Basic Law. One should appreciate that, here, the common law refers to the common law of Hong Kong. As pithily stated by Lord Millett NPJ in *China Field Ltd v Appeal Tribunal (Buildings)* (No. 2) (Note 4):

"... our judges must develop the common law of Hong Kong to suit the circumstances of Hong Kong. It is well recognised that the common law is no longer monolithic but may evolve differently in the various common law jurisdictions ... [The Court of Final Appeal] will continue to respect and have regard to decisions of the English courts, but it will decline to adopt them not only when it considers their reasoning to be unsound or contrary to principle or unsuitable for the circumstances of Hong Kong, but also when it considers that the law of Hong Kong should be developed on different lines."

Writing extra-judicially, Sir Anthony Mason put it this way:

"The differences that distinguish the jurisprudence of the various common law jurisdictions are largely doctrinal. The variations in doctrine may be attributed, however, to different judicial responses to variations in the material circumstances and conditions of society in the various jurisdictions or to different judicial perceptions about particular societal values" (Note 5)

Bearing in mind these basic jurisprudential notions allows us to appreciate the beauty of the common law – the ability to adapt to evolving circumstances in the development of a legal system that tailors to what is asked of it given the social, cultural and economic fabric of our society.

Another major appeal of the common law, of which case law forms an indispensable part, is that detailed reasons, including the legal analysis and findings of fact, are set out in the judgments. Unfortunately, we have seen totally baseless, arbitrary and even malicious attacks on some of our judges simply because the outcome of particular cases was not to the liking of those making the attacks. Such acts and utterances are not to be tolerated and where evidence and circumstances justify, legal action will be taken.

Careful reading and correct understanding of court judgments would often dispel any unwarranted misunderstanding. With a view to raising public awareness and assisting the public to better understand significant decisions of the courts, the Department of Justice has prepared summaries of judgments of notable cases with substantial media or public interest. They are made available on the department's website shortly after the judgments are handed down. We hope that this initiative, together with the Hong Kong e-Legislation database which provides free access to all legislation of Hong Kong, would enhance accessibility of the law for the general public and foster better understanding of the law so as to encourage healthy and informed discussions.

Establishment of IDAR Office

Our rule of law and common law system have together formed a solid foundation for Hong Kong's status as the leading centre for international legal and dispute resolution services in the Asia-Pacific region. It is reported that "[t]o a majority of developing countries covered by the Belt and Road routes, Hong Kong believes it offers the promise of a mature and independent legal system and a neutral venue to resolve disputes arising between parties from the region's complex political and legal cultures". (Note 6) While it is also reported that the Department of Justice recently

"has been more proactive in getting Hong Kong's name out as a dispute resolution hub for Asia-related cases" (Note 7) and launched other initiatives, we should not be complacent about our existing competitive edge.

Indeed we have not overlooked the keen competition posed by other jurisdictions in this region and beyond. No doubt, there is a pressing need for our legal practitioners and the Department of Justice to be more proactive and join hands to strengthen the interface between the local and international legal communities, thereby facilitating the export of our legal services, enhancing Hong Kong's position as a leading legal and dispute resolution centre, and importantly, conveying the strength of our rule of law.

To better cope with the challenges and to harness the additional opportunities offered by the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Greater Bay Area plan, the Inclusive Dispute Avoidance and Resolution Office (IDAR Office) has been established within the Department of Justice, which will work directly under my steer.

The establishment of the IDAR Office will help better co-ordinate and implement various initiatives that the department has been undertaking in the areas of dispute avoidance and resolution.

The IDAR Office will pursue and conclude co-operation or partnership arrangements with other jurisdictions and international organisations. It will also organise, support or encourage a number of important international events and activities in Hong Kong, as well as raise the international profile of Hong Kong in deal making and dispute resolution through capacity building and promotional activities overseas.

The IDAR Office's objective is to facilitate access to justice and provide equal opportunities for people from all walks of life and for all sectors of the economy without boundary, advancing Goal 16 of the United Nations 2030 Sustainable Development Goals in this region and beyond.

Goal 16 emphasises the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all and the building of effective, accountable and inclusive institutions at all levels. As President Xi Jinping explained, the United Nations 2030 Sustainable Development Goals are part of our national development strategies, and we should "promote coordinated advances in the economic, social and environmental fields, pursue inclusive development in keeping with our respective national conditions, and forge equal and balanced global development partnerships". (Note 8)

Mediation

The promotion of mediation has long been an important focus. Domestically, last year saw the milestone of the opening of the West Kowloon Mediation Centre and the implementation of a Pilot Mediation Scheme for Small Claims Tribunal and other suitable cases. At the cross-boundary level, the Mediation Mechanism for investment disputes established in accordance with

the Investment Agreement under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) was implemented in December 2018. The lists of mediation institutions and mediators mutually agreed by the two sides have been published.

In light of the international trend and with the CEPA Mediation Mechanism in place, we have, together with the International Centre for Settlement of Investment Disputes of the World Bank Group and Asian Academy of International Law, launched a training course on investment law and investment mediation skills in mid-October 2018, which was the first in Asia. We plan to conduct further rounds of such training with the goals of building up a team of investment mediators in Asia and developing Hong Kong into an international investment law and international investment dispute resolution skills training base.

The department is actively pursuing and formulating how to capitalise on Hong Kong's strengths established over the years in mediation to better serve the local and international communities in light of the opportunities that are available under the Belt and Road Initiative and the Greater Bay Area plan.

Arbitration

Turning to arbitration, the Code of Practice for Third Party Funding of Arbitration was issued on December 7, 2018. On the same day, a commencement notice to bring the relevant provisions of the Arbitration Ordinance into operation was gazetted. The new regime for third party funding of arbitration will come into operation on February 1.

Legal Hub

All these advances in legal infrastructure are complemented by new physical infrastructure which supports dispute resolution and other legal services in a most tangible way. The renovation works for the Legal Hub at the West Wing of the former Central Government Offices and the nearby heritage-listed former French Mission Building are making good progress and due to be completed by the first quarter of this year and mid-2020 respectively.

LawTech

Another important area of development is the use of technology in the provision of legal services. In 2016, the United Nations General Assembly observed that online dispute resolution (ODR) "can assist the parties in resolving the dispute in a simple, fast, flexible, and secure manner, without the need for physical presence at a meeting or hearing". (Note 9) More recently, the Asia-Pacific Economic Cooperation (APEC) has responded to the call and is currently embarking on a project to establish an ODR platform with micro, small and medium-sized enterprises as major beneficiaries.

The Chief Executive announced in her 2018 Policy Address that the Government supports the development by non-governmental organisations of a

Belt and Road e-arbitration and e-mediation platform, so that Hong Kong will be able to provide efficient and cost-effective online dispute resolution services. The Government will provide funding for the cost of development of this meaningful project. We are now working very closely with the stakeholders in the development of the ODR platform and also taking the lead in the ODR project under APEC.

Law Reform Commission's study on cybercrime

While we seek to reap the benefits of new technologies, the challenges posed by them cannot be ignored. The Law Reform Commission is well aware of the rapid developments in this area, as well as the potential for new technologies to be exploited for carrying out criminal activities. Therefore, a sub-committee has recently been formed to study the topic of cybercrime.

Mutual legal assistance with the Mainland

I am pleased to announce that the long-awaited arrangement between Hong Kong and the Mainland on reciprocal recognition and enforcement of judgments in civil and commercial matters will be concluded and signed in the near future.

With the generous and expert assistance from the legal sector, efforts have also been stepped up in the department to pursue the study of establishing a legal mechanism between Hong Kong and Mainland for mutual recognition of and assistance in insolvency and corporate debt restructuring matters. Other measures and arrangements that will enhance Hong Kong's position as a dispute resolution hub are being actively discussed with promising feedback.

Legal profession

Since taking the office, I have been eager to engage and hear from the legal profession. Through quarterly meetings with the Bar Association and the Law Society, we have established a channel of communication for frank and open exchange of issues of concern to legal practitioners. The department's briefing out policy has been under review since our first meetings and some fruitful outcome has been achieved last year, with emphasis on the exploration of opportunities for young practitioners. Measures to facilitate wider use of Hong Kong's high-quality, renowned and professional legal services will continue to be pursued.

Conclusion

None of the progress achieved in the past year would have been possible without the dedication and devotion of my colleagues in the department and the contributions of legal practitioners in private practice. I express my sincerest gratitude to them for their efforts. In these efforts to strengthen the rule of law, the department that I am privileged to lead is honoured to be part of Hong Kong's strong, robust and professional legal fraternity. Like you, we approach the challenges ahead with resolve, humility and professionalism. We are eager to join hands in driving this work into the

future.

Thank you very much.

Note 1: (2011) 14 HKCFAR 95, at [307].

Note 2: Lau Kong Yung & Others v Director of Immigration (1999) 2 HKCFAR 300, at 344.

Note 3: Chen Li Hung & Others v Ting Lei Miao & Others (2000) 3 HKCFAR 9, at 25.

Note 4: [2009] 5 HKLRD 662, at [78] and [81].

Note 5: Sir Anthony Mason, "The Common Law", in "Hong Kong's Court of Final Appeal: The Development of the Law in China's Hong Kong", eds. Young and Ghai (Cambridge University Press, 2014), p. 338.

Note 6: See "Does Hong Kong Have What It Takes to Be Asia's Arbitration Hub?" (November 25, 2018) (www.law.com).

Note 7: Ibid.

Note 8: See President Xi Jinping's speech at the APEC CEO Summit on November 17, 2018 (www.xinhuanet.com/english/2018-11/17/c_137613904.htm).

Note 9: Resolution adopted by the United Nations General Assembly on December 13, 2016 (A/RES/71/138).

CE to visit Guangzhou

The Chief Executive, Mrs Carrie Lam, will depart for Guangzhou in the afternoon tomorrow (January 15) to meet with the Secretary of the CPC Guangdong Provincial Committee, Mr Li Xi, and the Governor of Guangdong Province, Mr Ma Xingrui, to discuss various areas of collaboration between Hong Kong and Guangdong in relation to the development of the Guangdong-Hong Kong-Macao Greater Bay Area.

Government officials joining the visit include the Secretary for Constitutional and Mainland Affairs, Mr Patrick Nip; the Secretary for the Environment, Mr Wong Kam-sing; the Secretary for Home Affairs, Mr Lau Kong-wah; the Secretary for Transport and Housing, Mr Frank Chan Fan; the Secretary for Food and Health, Professor Sophia Chan; the Director of the Chief Executive's Office, Mr Chan Kwok-ki; and the Under Secretary for Commerce and Economic Development, Dr Bernard Chan.

Mrs Lam will return to Hong Kong in the evening on the same day.

Speech by FS at Asian Financial Forum 2019 cocktail reception (English only) (with photo)

Following is the speech by the Financial Secretary, Mr Paul Chan, at the Asian Financial Forum 2019 cocktail reception at the Hong Kong Convention and Exhibition Centre this evening (January 14):

Diana (Group General Manager and Chief Executive, Hong Kong of the Hongkong and Shanghai Banking Corporation Limited, Ms Diana Cesar), Margaret (Executive Director of the Hong Kong Trade Development Council, Ms Margaret Fong), distinguished guests, ladies and gentlemen,
Good evening.

Welcome to the cocktail reception of the 12th Asian Financial Forum. After a long and rewarding day, you all deserve a refreshing pause. Now is a good time to slow down and chat with some of the more than 3 300 business leaders and investors, government officials, academics, regulators and professionals from all over the world, here in Hong Kong for this two-day financial summit.

Now is a chance, too, to digest some of that invaluable financial intelligence and insights you've heard today, while making plans for tomorrow.

If you haven't already done so, I recommend you pay a visit to the Fintech Showcase newly launched this year. With financial innovation continually reshaping and reimagining the global marketplace, the FinTech Showcase features the latest fintech solutions, as well as the companies and entrepreneurs behind them. You can see from there the shape of the future, explore business opportunities and invest in your own future.

That, of course, is what the Forum does so well. What Hong Kong is renowned for. Bringing people together, creating connections, finding ways to excel, at local, regional and global levels.

Hong Kong has long been the international financial bridge connecting the Mainland and the rest of the world, bringing investment, capital, ideas and talent together.

In a world today buffeted by trade clashes, Hong Kong remains open and inclusive, embracing challenges as opportunities.

Our markets remain open and welcoming. Our legal system is built on the rule of law and buttressed by an independent judiciary. Information flows as freely as global capital. And our regulatory regime is transparent and aligns with international standards.

In short, you can count on Hong Kong, on our status as one of the

world's leading international financial centres, and China's international financial capital.

We take pride in our place and achievements in the global economy. And we are determined to build on them, to expand our role as the go-to economy – with financial and professional services that embrace the traditional and the innovative, the global and the local, the corporate and the start-ups.

It's why, last year, the Government implemented a new listing regime, enabling the listings of companies from the emerging and innovative sectors.

It's why, just a few months ago, we launched the Faster Payment System, which allows the public to transfer funds anytime, anywhere, across banks and stored-value operators, almost instantly.

It's why we will, very soon in the coming months, announce Hong Kong's first batch of virtual bank license.

Looking ahead, I can tell you we will take full advantage of the opportunities that China, the world's second-largest economy, presents. That, ladies and gentlemen, very much includes the Guangdong-Hong Kong-Macao Greater Bay Area development and the far-reaching Belt and Road Initiative, as well as the financial services, investment and business promise they offer Hong Kong today and long down the road.

As for tomorrow, day two of the Asian Financial Forum, the agenda will be led by financial technology and the boundless prospects they offer us all.

The InnoTalks series tomorrow spotlights a dazzling range of transformative technology, from fintech and blockchain to cyber security and AI.

Then there's InnoVenture Salon, which includes a start-up zone showcasing some 50 start-ups, and their products and concepts. The Salon also features Investor Alley. There, start-ups get to pitch their ideas – their future and of course ours – to investors at project demonstration sessions.

Now in its second year, the Salon is supported by some 60 investment mentors. This year, we welcome new collaborators from Germany, Korea, Singapore and the United States, all eager to meet with participating start-ups.

Those looking to find an investor also turn to the Forum's annual Deal Flow Matchmaking Session.

Last year, more than 90 per cent of Deal Flow participants found AFF Deal Flow effective in identifying potential deals and investors. This year, I'm told, nearly 700 one-on-one meetings have been arranged, the majority of them taking place tomorrow. I'd say that adds up to a full and, no doubt, fruitful day.

Ladies and gentlemen, I know you will enjoy this evening's well-deserved

break. I wish you the best of business at the Asian Financial Forum, and a happy, healthy and prosperous 2019.

Thank you very much indeed.



CHP investigates outbreak of acute gastroenteritis at kindergarten-cum-child care centre in Tuen Mun

The Centre for Health Protection (CHP) of the Department of Health is today (January 14) investigating an outbreak of acute gastroenteritis (AGE) at a kindergarten-cum-child care centre in Tuen Mun, and hence reminded the public and management of institutions to maintain personal and environmental hygiene against AGE.

The outbreak involves 17 boys and 18 girls aged 2 to 5, as well as two female staff members, who developed vomiting, diarrhoea, abdominal pain and fever since January 10. Twenty sought medical attention and three of them required hospitalisation for further management. All patients have been in a stable condition.

Officers of the CHP conducted a site visit and provided health advice to the staff of the school concerning proper and thorough disinfection, proper disposal of vomitus, and personal and environmental hygiene. The school has been put under medical surveillance.

The CHP's investigations are ongoing.

A spokesman for the CHP advised members of the public to take heed of the following preventive measures against gastroenteritis:

- Ensure proper personal hygiene;
- Wash hands thoroughly before handling food and eating, after using the toilet or after changing diapers;
- Wear gloves when disposing of vomitus or faecal matter, and wash hands afterwards;
- Clean and disinfect contaminated areas or items promptly and thoroughly with diluted household bleach (by adding one part of bleach containing 5.25 per cent sodium hypochlorite to 49 parts of water). Wash hands thoroughly afterwards;
- Maintain good indoor ventilation;
- Pay attention to food hygiene;
- Use separate utensils to handle raw and cooked food;
- Avoid food that is not thoroughly cooked;
- Drink boiled water; and
- Do not patronise unlicensed food premises or food stalls.

The public may visit the CHP's website (www.chp.gov.hk) or call the Health Education Hotline (2833 0111) for more information.

DH urges not to buy or use facial mask with controlled substance (with photos)

The Department of Health (DH) today (January 14) appealed to the public not to buy or use a facial mask named MYRTUS 8 MASK, which was found to contain an undeclared and controlled substance.

Acting upon a public enquiry, the DH found that the above facial mask has been offered for sale at two retail shops in Causeway Bay. Samples of the product were collected from the two shops for analysis. The Government Laboratory's test results revealed that the samples contained fluocinolone acetonide, a Part 1 poison under the Pharmacy and Poisons Ordinance (Cap 138).

Fluocinolone acetonide is a steroid substance. Products containing fluocinolone acetonide should only be sold at pharmacies under the supervision of registered pharmacists upon a doctor's prescription. Inappropriate or excessive application of steroids could cause skin problems and body-wide side effects like moon face, high blood pressure, high blood sugar, muscle atrophy, adrenal insufficiency and osteoporosis.

According to the Ordinance, illegal sale and possession of Part 1 poisons are criminal offences. The maximum penalty for each offence is a fine

of \$100,000 and two years' imprisonment.

The DH's investigation is ongoing.

People who have purchased the above product should stop using it and consult healthcare professionals if they are in doubt or feeling unwell after use. They can submit the product to the DH's Drug Office at Room 1856, Wu Chung House, 213 Queen's Road East, Wan Chai, Hong Kong, during office hours for disposal.

