

# Speech by SJ at ASIFMA Compliance and Legal Conference (English only)

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the Compliance and Legal Conference organised by the Asia Securities Industry and Financial Markets Association (ASIFMA) today (May 29):

Mr Austen (Mr Mark Austen, Chief Executive Officer of the ASIFMA), Mr Alder (Mr Ashley Alder, Chief Executive Officer of Securities and Futures Commission), distinguished guests, ladies and gentlemen,

It is my great pleasure to join you this morning at the Inaugural Compliance and Legal Conference organised by the ASIFMA. I am most honoured to be invited to address such a distinguished audience. First of all, on behalf of the Government of the Hong Kong Special Administrative Region (HKSAR), I would like to extend our warmest welcome to all participants of this Conference.

Today's event provides a very valuable platform for focused discussion on issues concerning the legal and compliance industry in face of, as the caption underneath the ASIFMA's logo reads, "Growing Asia's Markets". Among other Asian countries, China is in no doubt taking the lead in growth in terms of both the market size and market share. China is now the second largest economy in the world, with an annual GDP of over US\$12 trillion. Liberalisation plays a crucial role in facilitating China's development into a sustainable economy. In the next few minutes, I would like to talk about how Hong Kong's friendly business environment, coupled with a sound legal and regulatory regime, enable this city to operate as a strategic centre to facilitate international trade and investment, and as the pivotal gateway to the "Growing China's Market". I will first try to explain Hong Kong's unique role in the further opening up of the Mainland markets.

## Hong Kong's Role in Opening-up of the Mainland Market

Hong Kong is widely acclaimed as a major international financial centre, and plays a pivotal role in facilitating investment and efficient operation of the Asian and global financial markets.

The Heritage Foundation's 2019 Index of Economic Freedom report ranks Hong Kong as the world's freest economy for the 25th consecutive year. As regards our financial competitiveness, Hong Kong continues to be ranked first in Asia and third globally, just behind London and New York, in the latest Global Financial Centres Index. The Stock Exchange of Hong Kong (SEHK) has been ranked first for six years in terms of IPO funds raised during the past decade.

With the business-friendly environment mentioned above, a robust common law legal system familiar to the international business community, and a strong nexus with the Mainland China under the "one country, two systems"

principle, Hong Kong possesses the strengths as a modern but also modest international city and a special administrative region of China. This dual role and the unique convergence of the advantages of both worlds allow Hong Kong to be China's gateway to the world's financial markets and investors.

Hong Kong's role as a gateway and platform for inbound and outbound investment with Mainland China is exemplified by various mutual access schemes. The Shanghai-Hong Kong Stock Connect and Shenzhen-Hong Kong Stock Connect were launched in November 2014 and December 2016 respectively. The schemes allow eligible Mainland investors to trade eligible stocks listed on the SEHK through the the Shanghai Stock Exchange (SSE) and the Shenzhen Stock Exchange (SZSE). The schemes also allow Hong Kong and overseas investors to trade eligible stocks listed on the SSE and the SZSE through the SEHK.

This is a mutually beneficial development. The two schemes facilitate the further opening up of the Mainland's capital markets in a risk-controlled manner. Furthermore, they enable international investors to invest in the Mainland's markets through Hong Kong's markets, thereby reinforcing Hong Kong's position as an international financial centre.

With the increase in the daily quotas of Stock Connect from May 1, 2018, Hong Kong's capital markets will play a more significant role and make greater contributions in the two-way opening-up of the Mainland's capital markets to the rest of the world.

#### Hong Kong's Legal Framework on Protecting and Facilitating Investment

The initiatives of the HKSAR Government for enhancing our role in regional and international capital markets are underpinned by Hong Kong's modern and robust regulatory framework, which operates with an independent judiciary and strong rule of law in Hong Kong. On judicial independence, the World Economic Forum, for example, has ranked Hong Kong as the first in Asia for six consecutive years. According to the Worldwide Governance Indicators Project of the World Bank, Hong Kong's percentile ranking in rule of law has improved from 69.9 per cent in 1996 to 93.8 per cent in 2017 over 21 years. All these internationally recognised track records have been fundamental to the confidence of the Mainland and overseas companies in pursuing their business missions in Hong Kong.

Investment is also facilitated by a simple taxation regime, as provided for under the laws of Hong Kong. For example, with effect from April 1, 2019, all privately offered onshore and offshore funds operating in Hong Kong can enjoy profits tax exemption for their transactions in specified assets subject to meeting certain conditions.

Whilst I will leave it to Mr Alder to speak more on the legislative framework governing the operation of the capital market, i.e. the Securities and Futures Ordinance (Cap 571), I should also refer to the statutory protection to investors under the criminal law, which has an important place in the legal framework to minimise crime and misconduct in the markets while ensuring efficiency and fairness of the markets.

The Crimes Ordinance (Cap 200) and the Theft Ordinance (Cap 210) are important tools in prosecuting crimes, such as fraud and obtaining property by deception, in the context of the financial markets. Complementary to the above statutes, the well-established common law system of Hong Kong is also effective in deterring market players from committing financial crimes including the common law offence of conspiracy to defraud.

Maintaining Hong Kong's status as one of the most corruption-free places in the world is no less important than combating financial crimes. In the Transparency International's Corruption Perceptions Index 2018, Hong Kong is ranked the 14th least corrupt place among 180 countries/territories.

To this end, Hong Kong has an extensive statutory anti-corruption framework, with the Prevention of Bribery Ordinance (Cap 201) as our flagship anti-corruption legislation. It creates various bribery and corruption offences against solicitation or acceptance of advantages by public servants as inducement or reward relating to performance of their duties, or by agents in the private sector in conducting the affairs or business of their employers. The offerors of such advantages also commit an offence.

Not only do we spend great efforts in fighting financial crime and corruption in Hong Kong locally, we are also an active and responsible player in the context of international co-operation. The existence of a suitable legal framework for surrender of fugitive offenders and mutual legal assistance is a hallmark for the rule of law. Such a framework should be workable, provide the necessary safeguards for the fugitive offenders, and importantly be applicable to all the jurisdictions in the world.

Hong Kong's surrender of fugitive offenders and mutual legal assistance regimes contain prerequisites of co-operation which are in line with international standards. Grounds of refusal for co-operation include non-compliance with the dual criminality principle, double jeopardy, conviction in absentia, political offences and the death penalty. These grounds of refusal are also contained in the United Nations Model Treaties on extradition and Mutual Legal Assistance, and they form the basis of Hong Kong's legal framework. Amendments to further enhance the legal framework have been put in place and are under discussion at the moment.

## Dispute Resolution in Financial Sector

In the context of the financial services industry, dispute resolution has been gaining popularity as an alternative to litigation due to a number of advantages, including the parties' ability to appoint arbitrators with the experience and knowledge of a particular industry or product, the possibility of maintaining confidentiality of commercially sensitive information, and flexibility in terms of procedure and enforceability of the awards.

This trend can be exemplified by the 2018 Arbitration Guide of the International Swaps and Derivatives Association (ISDA). It contains various sets of model clauses which modify the ISDA Master Agreement, providing users with options for arbitration to be seated in different cities, and be subject to different institutional rules and laws, including the rules of the Hong

Kong International Arbitration Centre (HKIAC).

The HKIAC, as one of the major arbitral bodies in Hong Kong, is well equipped with expertise and skills in resolving financial disputes. In 2008, as a result of the Lehman Brothers incident, the Hong Kong Monetary Authority appointed the HKIAC to administer the Lehman-Brothers-related Investment Products Dispute Resolution Mediation and Arbitration Scheme to resolve mini-bonds claims between banks and investors. This scheme proved to have saved the parties' and the court's time and resources as it would otherwise have taken a number of years for the cases to proceed via litigation for a determination. Indeed that initiative led to the setting up of the Financial Dispute Resolution Centre, which I will also mention in a moment.

In addition to arbitration, mediation has also become a more prevalent tool in resolving dispute by virtue of its merit of maintaining harmonious business relationship after settlement. This is especially relevant in Asia, where there is a common culture of being less litigious and more conciliatory.

In this regard, Hong Kong is promoting the wider use of mediation in resolving commercial as well as investment disputes. The Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) was concluded in 2003 to strengthen trade and investment between the Mainland and Hong Kong. An Investment Agreement was signed under CEPA in 2017 to provide for a Mediation Mechanism for Investment Disputes between investors and institutions in Hong Kong and the Mainland.

#### Resolution of Financial Disputes in Hong Kong

In response to potential financial disputes similar to those which stemmed from the Lehman-Brothers incident, the Financial Dispute Resolution Centre (FDRC) was established in 2011. It administers a Financial Dispute Resolution Scheme (FDRS) which provides an independent and affordable avenue for eligible claimants to resolve their monetary disputes with financial institutions by way of the "mediation first, arbitration next" principle.

With a very high success rate in settlements, the FDRC has proven to be an important dispute resolver in the financial industry.

A total of 90 per cent of the cases received and handled in 2017 were successfully settled in the mediation process. From its inception in mid-2012 to 2017, about 90 per cent of the mediation service users have rated FDRC's services as "satisfactory" or above.

Taking into account its operational experience, views from various stakeholders, and the prevailing international practices, the FDRC implemented an enhanced FDRS from January 2018 with a greater scope of coverage, higher accessibility and more flexibility to the benefits of its users.

The service enhancements include increasing the maximum claimable amount from HK\$500,000 to HK\$1 million, extending the limitation period from 12

months to 24 months, and enabling the parties involved to mutually agree to refer claims that are beyond those limits to the particular scheme.

In addition, from July 1, 2018 onwards, small enterprises, which include limited companies and partnerships within the relevant financial thresholds, were included as eligible claimants.

## Conclusion

Ladies and gentlemen, the HKSAR Government is committed to capitalising on and further strengthening our competitive edge as a global financial centre and contributing actively to our country's development by serving as the gateway connecting the Mainland and the rest of the world. This Conference over the next two days raises important topics and issues for discussion amongst industry participants in the financial sector. In closing, may I express my gratitude to the ASIFMA for choosing Hong Kong to organise this inaugural conference on compliance and legal matters, and wish this conference every success. For those coming from overseas, I hope you will enjoy your stay in Hong Kong. Thank you very much.