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INFORMATION PAPER

LEGAL AID SERVICES COUNCIL

Speeches at the Ceremonial Opening of the Legal Year 2022

The Ceremonial Opening of the Legal Year 2022 was held on 24 January 2022. For Members' information, copies of the speeches delivered by the Chief Justice of the Court of Final Appeal, the Secretary for Justice, the Chairman of the Hong Kong Bar Association and the President of The Law Society of Hong Kong at the Ceremonial Opening are attached at *Appendices I to IV* respectively.

File Ref : LASC 5/5/8/1

Date : January 2022

CJ's speech at Ceremonial Opening of Legal Year 2022

The following is issued on behalf of the Judiciary:

Following is the full text of the speech delivered by the Chief Justice of the Court of Final Appeal, Mr Andrew Cheung Kui-nung, at the Ceremonial Opening of the Legal Year 2022 today (January 24):

Secretary for Justice, Chairman of the Bar, President of the Law Society, fellow judges, distinguished guests, ladies and gentlemen,

On behalf of the Hong Kong Judiciary, I extend a warm welcome to all of you to the Opening of the Legal Year. This important occasion focuses public attention on the administration of justice and the rule of law. It reminds our community of the essential role played by an independent judiciary in the continued success of Hong Kong under the "one country, two systems" arrangement. It also provides an occasion for us to address the public on the challenges we face.

Hong Kong is a society governed by the rule of law. Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law, and Article 22 of the Hong Kong Bill of Rights further states that all persons are entitled without any discrimination to the equal protection of the law. Government and other public authorities are accountable under the law, just as all private individuals and organisations. As a mature common law jurisdiction, Hong Kong has an established public law regime which ensures that the Government and other public bodies operate within the law and that public powers are exercised in accordance with the requirements of the law.

The rule of law ensures and promotes fairness, equality and justice, which are the core values in the administration of justice under our system of law. Many regard the protection of fundamental human rights as a key component of the rule of law. In Hong Kong, fundamental rights are constitutionally guaranteed in Chapter III of the Basic Law, as well as the Hong Kong Bill of Rights, which is constitutionally entrenched under Article 39 of the Basic Law. Our law reports are full of cases where these

fundamental rights are generously interpreted and restrictions narrowly confined by reference to their aim, relevance, necessity and proportionality.

An essential lynchpin of the rule of law in Hong Kong is an independent judiciary. Judicial independence in Hong Kong is constitutionally guaranteed by the Basic Law. Articles 2, 19 and 85 of the Basic Law specifically provide that the judicial power, including that of final adjudication, enjoyed by the Hong Kong Special Administrative Region under the Basic Law is exercised by the Judiciary independently, free from any interference. The Basic Law and the relevant legislation also provide clear and strict provisions regarding the appointment and removal of judges. Article 88 of the Basic Law provides that judges and judicial officers (collectively "judges") are appointed by the Chief Executive on the recommendation of the independent Judicial Officers Recommendation Commission. The Commission is chaired by the Chief Justice, and also comprises the Secretary for Justice as an ex-officio member and seven members appointed by the Chief Executive. Of these seven members, two are judges, one is a barrister appointed after consultation with the Bar Council, another one is a solicitor appointed after consultation with the Council of the Law Society, and the remaining three are persons who are not connected with the practice of law. Appointment of judges, whether local or from overseas, must be based on and only based on judicial and professional qualities, as stipulated under Article 92.

For those who are interested in finding out how the constitutional guarantee on judicial independence in Hong Kong is practised on the ground, our court hearings are open to the public, our judicial decisions are publicly announced, and the courts' reasons are published for everyone to study.

For cases concerning offences endangering national security, only judges designated by the Chief Executive under Article 44 of the National Security Law can handle them, and this has given rise to comments in some quarters in relation to the impartiality of the designated judges. It is of course not my role as Head of the Judiciary to make extra-judicial comments on the law or its operation. However, it is conducive to public

confidence in our judicial system to assure the community that, from the Judiciary's perspective, there is no question of the impartiality of our courts being affected by this special arrangement under Article 44. In this regard, I would like to highlight several important facts.

First of all, judges are designated by the Chief Executive who may consult the Chief Justice before making a designation. The Chief Justice also makes suggestions to the Chief Executive on possible designations where appropriate.

In this connection, it should be noted that judges hearing national security cases are designated from serving judges only. By definition, they are persons who have satisfied the high requirement of judicial and professional qualities under Article 92 of the Basic Law to be appointed as judges in the first place.

Moreover, designated judges, like all other judges, are subject to the Judicial Oath which all judges are required to take under Article 104 of the Basic Law. Under the Judicial Oath, a judge swears to serve Hong Kong conscientiously, dutifully, in full accordance with the law and with integrity, and to safeguard the law and administer justice without fear or favour, self-interest or deceit. In particular, this means that no political or other personal considerations of the judge can be entertained in the judicial decision-making process. The Judicial Oath is binding on a designated judge when he or she sits on a national security case, just as it is binding on them when hearing other types of cases.

It is also important to point out that whilst the general power to designate judges to hear national security cases vests in the Chief Executive, the actual assignment of designated judges to hear individual cases remains the responsibility of the Court Leaders, just like all other types of cases.

Finally, where three designated Court of First Instance judges sit without a jury to hear a national security case that falls within Article 46 of the National Security Law, their verdict is given in a fully reasoned judgment which is published online for public scrutiny. Moreover, the same procedural safeguards are in place to ensure a fair trial as in a jury

trial, and the same appeal procedure is available to a defendant in case of a conviction.

In the past two years, the subject of judicial independence in Hong Kong has attracted a fair amount of attention and comments, not only locally but overseas also. Healthy attention and constructive comments on the Judiciary and its work are always to be welcomed as they help to improve our work and remind us of the utmost importance of judicial independence to the maintenance of the rule of law and the continued success of Hong Kong under the "one country, two systems" arrangement. However, when such attention and comments are not based on objective facts and rational arguments, but rather on surmises, political stances or geopolitical considerations, they are of no value to the advancement of the rule of law in Hong Kong or the upholding of judicial independence. Criticisms of court decisions which are made without first ascertaining the facts in a case or reading and understanding the reasons for the court's decision are as meaningless as they are hollow. So is any unsubstantiated doubt over the courts' independence. Judicial independence in Hong Kong exists as a fact. And we are here today to bear witness to this fact.

In recent months, attempts to intimidate or otherwise exert improper pressure on judges involved in trying cases arising from the events in 2019 or national security cases are on the rise. These attempts are a direct affront to the rule of law and judicial independence. They certainly deserve condemnation and indeed many have spoken out against them in strong terms.

What should also be stressed is that these attempts to threaten and pressurise our judges are completely futile and pointless. The work of our courts remains wholly unaffected by them and our judges continue to dispense justice as it ought to be. Criminal liability will continue to be determined in accordance with the applicable law and the strength of the evidence presented before the court. Those who are proven guilty will be convicted and those not so proven will be acquitted. Convicted defendants will be given punishments that their crimes deserve, no more and no less. This is our job as judges, and we are determined to discharge our duty without regard to any threats that are made to deter us from it.

Without giving these distracting threats and interferences any more attention than they require, we have appropriately stepped up security measures in our court buildings so as to ensure the personal safety of all our judges and court users, as well as the due administration of justice and the solemnity of judicial proceedings.

Turning to a different but related topic, in my address given at the Opening of the Legal Year last year, I mentioned that we would review our existing mechanism on handling complaints against judicial conduct. The review has since been completed, and the enhanced mechanism with a two-tier structure was set up and came into effect on August 16 last year. In short, pursuable complaints against judicial conduct which are serious or complex, or have aroused wide public attention will now be dealt with under the two-tier system. A panel of judges comprising more than one High Court judge will first investigate these complaints. The second tier Advisory Committee, comprising senior members of the Judiciary and members from the community with a good and balanced mix of expertise and experience in professional and public services, will then review and advise on these cases before the Chief Justice makes a final decision on each complaint. All results are made public and annual reports are published. The first meeting of the Advisory Committee was successfully held in September last year and the next one will be held in just over a month's time. Premised on the principle that there should be no undermining of judicial independence, this revised mechanism of handling complaints against judicial conduct will further enhance the transparency and accountability of our system, as well as public confidence in the Judiciary.

Allied to the enhancement of the complaints handling mechanism is the updating of the Guide to Judicial Conduct which was first published in 2004. Judges hold positions of trust and responsibility with regard to the cases and other judicial work that they handle. We owe it as much to ourselves as to the public to observe at all times the highest standards of judicial conduct. At the time the Guide to Judicial Conduct was first published, the topic of judicial ethics, or judicial conduct, was still in its early stages. Indeed the Guide was a pioneer work. In the years since the Guide was first published, the topic of judicial conduct has seen much growth and development. Given the increasingly complex conditions in

which judging takes place, and the increased public interest in the performance of judicial duties, the time has come to review the Guide. Accordingly, in March last year, I set up a Working Party, chaired by the Chief Judge of the High Court, to conduct a review of the Guide. In reviewing the provisions of the Guide, the Working Party consulted the Bangalore Principles of Judicial Conduct developed by the United Nations Office on Drugs and Crime, as well as overseas material from major common law jurisdictions. I have since accepted the report of the Working Party and the new edition of the Guide is now being finalised. I believe that when published, this new edition will continue to assist our judges to maintain the highest standards of judicial conduct, and give the public a better understanding of our judicial work and the uncompromised standards we set for ourselves.

Turning lastly to the question of judicial efficiency, I would like to assure the community that Hong Kong is blessed with dedicated judges at all levels of court who are committed day in, day out to the practical administration of the law, regardless of praise or criticism. The workload is always heavy, and manpower tight. All this must be firmly borne in mind in any discussion on further improving judicial efficiency and output. In my address at the Opening of the Legal Year last year, I mentioned the importance of judicial recruitment. I am happy to say that in the latest recruitment exercises for different levels of court, the responses have been encouraging. Three appointments to the Court of First Instance of the High Court were made in November last year and earlier this month. In the coming months, there will be further announcements made on judicial appointments to different levels of court. Moreover, deputy appointments from the legal profession will continue to be made to provide temporary manpower relief. However, the quality of justice is not something we can compromise on in the pursuit of efficiency, and only those who are of the appropriate judicial and legal qualities may be appointed to deputise in our courts.

Apart from increasing manpower, various measures have been and will be adopted to improve judicial efficiency. One important measure is to better manage the inevitable tension between efficient listing of cases for hearing and allocation of adequate time for judges to read into cases and judgment writing. In some cases, this would mean the imposition of

more stringent case management directions, as to which I would ask the legal profession for its support and co-operation. It would also mean longer waits for trials in some cases, or longer waits for judgments in others. Striking the right balance is never an easy task. We are fully aware of the public's expectations and are doing all we can to meet them.

Another measure, which was first experimented with last year in cases and appeals falling within the Constitutional and Administrative Law List in the High Court, is the giving of a judgment handing down date at the conclusion of a hearing when judgment is reserved. Once given, the date will not be subsequently changed save for exceptional circumstances. This measure will in the course of this year be generally extended to all civil cases in the High Court and the District Court. It will align the practice, in this regard, between civil courts and criminal courts. The measure will also be extended to all criminal appeals and reviews in the High Court. New Practice Directions will be issued to give guidance on the timeframes within which judgments in different types of hearings are normally expected to be handed down. Judgment handing down dates will be given at the conclusion of hearings in accordance with these timeframes. For judgments reserved before the coming into effect of this new arrangement, administrative measures are in place to ensure that they are handed down within a reasonable time, and to this end extra efforts are being made.

Thirdly, we will continue to expand our judicial assistant scheme to provide support for more judges. In the High Court, we now have both full-time and part-time judicial assistants providing much needed assistance to some of our judges. Their service is of particular importance given the huge number of non-refoulement cases that are still pending before the Court of First Instance and the Court of Appeal. Of course, the judicial assistants also provide legal and research assistance in other types of cases and work.

Fourthly, as has been widely reported, we have renovated the mega court in the West Kowloon Law Courts Building and are in the process of constructing new court rooms in the Wanchai Law Courts Building to cater for the hearing of criminal cases which involve a large number of parties and lawyers. There are still a significant number of criminal cases

pending before the District Court arising from the events in 2019. The availability of court rooms with a higher seating capacity and the more flexible use of existing court rooms will go some way towards expediting the hearing of these cases. The bottom line remains, however, that there can be no compromise on the fairness of the legal process.

Lastly, the Judiciary has been developing by phases an integrated court case management system across all levels of court for handling court-related documents and payments through an electronic mode. The entire project is expected to be completed in around three years.

We will implement e-filing in the District Court by phases from March this year starting with civil proceedings. As for the Summons Courts at the Magistrates' Courts, the rollout is tentatively planned for December this year. For the other courts, detailed planning has started. The Judiciary aims to roll out the external functions of the integrated court case management system for the other courts incrementally starting from 2024.

Besides, the Judiciary is working on the necessary legislative amendments to fully enable both the civil and criminal courts to conduct remote hearings as they see fit, having regard to all relevant circumstances, including in particular the dual requirements of open justice and fairness. Taking into account the need to further consult stakeholders and finalise the proposed legislative amendments, we plan to introduce the Bill into the Legislative Council later this year.

In conclusion, I would reiterate that the Hong Kong Judiciary is fully committed to maintaining an independent, impartial and efficient judicial system which upholds the rule of law and safeguards the rights and freedoms of everyone in Hong Kong in accordance with law.

It remains for me to wish you and your families good health and every happiness in the new year. Thank you.

Ends/Monday, January 24, 2022

Issued at HKT 19:43

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SJ's speech at Ceremonial Opening of the Legal Year 2022

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the Ceremonial Opening of the Legal Year 2022 today (January 24):

Chief Justice, Members of the Judiciary, Chairman of the Bar Association, President of the Law Society, ladies and gentlemen,

The rule of law, and with it the common law, remains the cornerstone of Hong Kong's status as an international financial centre and an international legal and dispute resolution hub. It underpins our capitalist system and way of life. These attributes are protected in the Basic Law which codifies the innovative "one country, two systems" constitutional policy of China. The original aspiration of the Basic Law, as set out in its preamble, is upholding national unity and territorial integrity, and maintaining the prosperity and stability of Hong Kong. If we are able to uphold, honour and respect the fundamental precondition of "one country", there is no reason why the two systems underpinned by the common law would not continue.

First, Article 5 of the Basic Law (Note 1) guarantees that Hong Kong shall retain the capitalist system and way of life for 50 years. It does not mean that this will cease thereafter. Secondly, as a matter of common sense, if "one country, two systems" functions effectively and serves our country and Hong Kong well, there is no reason for it to change. Thirdly, as can be seen in the discussions surrounding the formulation and implementation of "one country, two systems", and as stated by Mr Deng Xiaoping, 50 years was just "a figure of speech", and "for the first 50 years it cannot be changed, and after that, it would not be necessary to change" (Note 2). Importantly, President Xi Jinping and various leaders of the Central People's Government have repeatedly expressed unequivocal support and stern determination to implement "one country, two systems". It is therefore a matter for us to uphold the root of "one country" so that the "two systems" continue to flourish, and with it the continued application of the common law.

Judicial independence

One of the most valuable assets of the common law is the reasoned judgment, upon which stare decisis is premised and which, by reflecting transparency, is a testament to judicial independence (Note 3). In exercising judicial function, it is a constitutional duty to act impartially and independently, free from any interference. This duty has not wavered notwithstanding the contemptible attempts to threaten our judicial officers and their families, made with a view to undermining the core value of our rule of law. The statements made judicially and extra-judicially by members of the permanent judiciary expressing commitment to judicial independence are supported by their unbiased consideration of law and evidence when adjudicating cases, as evidenced in the reasoned judgments.

25th anniversary of the establishment of the HKSAR

2022 is the 25th anniversary of the establishment of the Hong Kong SAR. The fundamental foundation of "one country" that underpins our constitutional order has been reinforced in the past two years. 2021 has seen case law reaffirming the constitutional order, protecting national security whilst observing human rights safeguards guaranteed under the Basic Law.

National Security Law

In the enforcement of the National Security Law (NSL), case law has laid down with certainty and clarity how the NSL is to be applied. In the case of Lai Chee Ying (Note 4), Article 42(2) (Note 5) was considered. The Court of Final Appeal examined the background, context, and purpose of the NSL, observing that it is intended to operate in tandem with constitutional rights and freedoms and other applicable statutory norms as part of a coherent whole, noting:

"The cardinal importance of the primary purpose of the NSL, namely to safeguard national security and to prevent and suppress acts endangering national security, is clear. That is why changes, including the NSL 42(2) exception applying more stringent conditions to the grant of

bail in relation to offences endangering national security have been introduced." (Note 6)

Another significant case on the NSL in 2021 is the case of Tong Ying Kit (Note 7). The Court of First Instance comprising three judges (Note 8), analysed the elements of the offences of incitement to secession and terrorist activities under Articles 21 and 24 of the NSL respectively, held that the slogan "Liberate Hong Kong Revolution of Our Times" was, in the relevant circumstances, capable of carrying a secessionist meaning, and the defendant was convicted.

The Appeal Committee in the case of Ng Hau Yi Sidney (Note 9) considered the scope of the phrase "offence(s) endangering national security" referred to in various provisions of the NSL and held that such phrase should be construed as referring to all offences under the NSL and offences of that nature under existing Hong Kong laws without distinction. The Court further clarified that the offence of publishing seditious publications under section 10 of the Crimes Ordinance qualified as an offence endangering national security.

Basic Law

The wisdom of the Basic Law lies in facilitating development over time whilst preserving the fundamentals that must be observed. The Court of Appeal, in upholding the constitutionality of the Co-location Ordinance (Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance) (Note 10), affirmed the important principle that the Basic Law is a living instrument which meets changing needs and circumstances, noting:

"The Basic Law is accordingly drafted with an eye to the future. ... Maintaining the Hong Kong system under the "one country, two systems" principle, however, does not mean stagnation. On the contrary, the Hong Kong system is expected to 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." (Note 11)

Improving the Electoral System

Another vital development made in the light of the actual situation in Hong Kong is the passing of the Improving Electoral System (Consolidated Amendments) Bill 2021 pursuant to the amended Annexes I and II of the Basic Law as promulgated by the National People's Congress Standing Committee. The enhanced electoral system aims to promote a consultative environment towards a common goal and minimises polarisation, leading to the gradual and orderly progress towards universal suffrage as provided for in Articles 45 and 68 of the Basic Law.

Rule of law education

The Department of Justice (DoJ) complemented these developments through education under the three "Es" program of our "Vision 2030 for Rule of Law" ("Vision 2030") initiative by taking an active role in educating students and teachers on the Constitution, the Basic Law and national security. At the professional level, the 2021 National Security Law Legal Forum entitled "Security Brings Prosperity" drew together distinguished speakers sharing experiences on national security legislations locally and abroad. The "Articles and Reference Materials on the Law of the People's Republic of China on Safeguarding National Security in the HKSAR" and the proceedings of the Basic Law 30th Anniversary Legal Summit "Back to Basics" held in 2020, were also published, providing a learned source for the proper understanding of the Basic Law and NSL.

Insolvency framework with the Mainland

As mentioned in my speech in 2019, an expert group has been formed to look at mutual recognition of and assistance in insolvency and corporate debt restructuring matters with the Mainland. In May 2021, we have completed the first stage by signing a Record of Meeting with the Supreme People's Court. I understand that cases have already benefitted from this framework.

International collaboration

In 2019, I also announced the establishment of the Inclusive Dispute Avoidance and Resolution Office (IDAR Office) and since then, with the support from the Central People's Government, a number of international collaborations have been concluded. Of particular importance is the hosting of the 59th Annual Session of the Asian-African Legal Consultative Organization (AALCO) in Hong Kong and, for the first time, in hybrid mode. Premier Li Keqiang delivered the Opening Remarks and announced the setting up of the AALCO Hong Kong Regional Arbitration Centre, stating that it will "provide more accessible and efficient dispute settlement services to Asian and African countries, and add more brilliance to Hong Kong as the Pearl of the East". AALCO, as an inter-governmental international organisation, provides a unique and important platform for collating perspectives from Asian and African states in engagement with international law. I have the honour of being elected as President of this 59th Annual Session, and active steps are taken to bring the Regional Arbitration Centre into operation.

Another inter-governmental meeting, the Intersessional Meeting of Working Group III of UNCITRAL (Note 12) was held in hybrid form in Hong Kong last year. The UNCITRAL Commission in July 2021 endorsed the suggestion of its Secretariat to collaborate with the DoJ Project Office for Collaboration with UNCITRAL to take part in the Inclusive Global Legal Innovation Platform on Online Dispute Resolution (iGLIP on ODR) that was set up in Hong Kong as referred to in my speech in 2021. We hope that, through projects with UNCITRAL, we will be able to cooperate in promoting, raising awareness and providing bespoke capacity building for online dispute resolution.

Last year's Legal Week featured the biennial UNCITRAL Asia Pacific Judicial Summit and the launch of our Rule of Law Database. The latter was a milestone event in our Vision 2030 initiative, and its study aims to bring together empirical and objective data to review the practice of the rule of law.

In terms of capacity building, arrangements with various international organisations have been concluded and practitioners from

the public and private sectors would be seconded to HCCH (Note 13) in The Hague and UNIDROIT (Note 14) in Rome. Under the JPO program (Note 15), we will be seconding a legal officer to the headquarters of UNCITRAL in Vienna.

As for the legal profession, the implementation of the Greater Bay Area (GBA) Legal Professional Examination, allowing our practitioners to practice PRC law in the GBA, is vital to opening up the legal market and merging with developments of the Motherland. The dual qualification of Hong Kong lawyers will put ourselves in a most advantageous position to serve the businesses in the GBA.

Amendments to the Legal Practitioners Ordinance

Finally, I am pleased that the Legal Practitioners Ordinance (Note 16) has been amended, permitting all legal officers (be they barristers or solicitors) who satisfy the eligibility requirements to be considered for appointment as Senior Counsel as a recognition of their competence.

Looking forward

Looking ahead, the first and foremost task for the HKSAR as a whole is to fulfil its constitutional duty to enact local legislation to implement Article 23 of the Basic Law to safeguard national security. This constitutional duty is not only expressed in the Basic Law but also in paragraph 3 of the National People's Congress' Decision on May 28, 2020 (the "528 Decision") (Note 17) and Article 7 of the NSL. The DoJ will continue to provide full support and independent professional legal advice to the Security Bureau and draft the relevant laws.

The Law Reform Commission has published a report on Outcome Related Fee Structures for Arbitration (ORFSA). The Advisory Committee on Promotion of Arbitration has expressed support to adopt its recommendations and the DoJ is actively pursuing this. The adoption of the proposal is necessary to preserve and promote Hong Kong's competitiveness as a leading arbitration centre, enhance access to justice, and respond to increasing client demand for pricing and fee flexibility, and is supported by the business community.

Apart from arbitration, Hong Kong has also been promoting international mediation, in particular in the area of investor state mediation. Our trainings with ICSID (Note 18) on this have received good rapport and we will continue to capitalise on this strength. Mediation is well suited to resolve international commercial disputes, especially those arising from long term projects involving states. It is the best form of conflict resolution between states, focusing on common interests whilst preserving relationships, in line with international principles of peaceful co-existence and the peaceful settlement of disputes as set out in key documents such as the United Nations Charter (Note 19). We are also actively promoting the use of mediation under Working Group III of UNCITRAL. We are primed to provide services for and to promote international mediation. We have also worked with our counterparts in the GBA to have the GBA Mediator Accreditation Standards and the GBA Mediator Code of Conduct Best Practice, endorsed by the third Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference last December, and will continue to work together on other areas. We will spare no efforts in the pursuit of these matters and hope to bring to fruition some ideas that have been explored.

Various projects under Vision 2030 will continue and in particular, the study on the use of objective data launched in the 2021 Legal Week. This year we will hold the Basic Law Legal Summit entitled "Stability to Prosperity", and launch a publication titled "Basic Law: Selected Drafting Materials and Significant Cases". The National Security Legal Summit entitled "Thrive with Security" will be held to further the better understanding of the concept of national security.

Conclusion

Ladies and gentlemen, with the present consolidation of "one country" as the fundamental premise in place and national security protected, I am confident that the common law will continue to apply in Hong Kong beyond 2047. It is high time we genuinely appreciate the "one country, two systems" policy. The DoJ will continue to further the proper understanding of the rule of law and the constitutional order, to protect the independence of our judiciary, to perform our professional role as government legal advisor, and to discharge our prosecution duties

independently as required under the Basic Law. None of the above could be achieved without the full support from all my brilliant colleagues in the DoJ. I am most grateful to them for their dedication, resilience and professionalism.

On this note, I wish you all a very happy and healthy year of the tiger, and flourish and forge ahead with vigor and vitality. Thank you.

Note 1: Article 5 of the Basic Law reads: "The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years."

Note 2: Original text in Chinese: "對香港的政策，我們承諾了一九九七年以後五十年不變，這個承諾是鄭重的。為什麼說五十年不變？這是有根據的，不只是為了安定香港的人心，而是考慮到香港的繁榮和穩定同中國的發展戰略有著密切的關聯。中國的發展戰略需要的時間，除了這個世紀的十二年以外，下個世紀還要五十年，那麼五十年怎麼能變呢？現在有一個香港，我們在內地還要造幾個「香港」，就是說，為了實現我們的發展戰略目標，要更加開放。既然這樣，怎麼會改變對香港的政策呢？實際上，五十年只是一個形象的講法，五十年後也不會變。前五十年是不能變，五十年之後是不需要變。所以，這不是信口開河。" in "We Should Draw on the Experience of Other Countries" (《要吸收國際的經驗》), 3 June 1988, in Selected Works of Deng Xiao-ping, Vol. III.

Note 3: Article 85 of the Basic Law reads: "The courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, free from any interference. Members of the Judiciary shall be immune from legal action in the performance of their judicial functions."

Note 4: HKSAR v Lai Chee Ying (2021) 24 HKCFAR 33, [2021] HKCFA 3

Note 5: Article 42(2) of the National Security Law reads: "No bail shall be granted to a criminal suspect or defendant unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security."

Note 6: HKSAR v Lai Chee Ying (2021) 24 HKCFAR 33, [2021] HKCFA 3 at 62.

Note 7: HKSAR v Tong Ying Kit [2021]HKCFI 2200 (verdict); [2021]

HKCFI 2239 (sentence). The Court of Appeal (before Hon Poon CJHC, Yeung VP and Lam VP) also considered in separate proceedings [Tong Ying Kit v Secretary for Justice [2021] 3 HKLRD 350, [2021] HKCA 912] a challenge to a direction by the Secretary for Justice for the criminal proceedings in the Court of First Instance to be tried without a jury under Article 46 of the NSL, and ruled that the said direction is a prosecutorial decision protected from interference under Article 63 of the Basic Law which can only be reviewed on limited grounds under common law and is not open to challenge on conventional judicial review grounds based on the principle of legality and procedural safeguards as contended. The Court of Appeal also ruled that jury trial should not be assumed to be the only means of achieving fairness in the criminal process.

Note 8: Before Hon Toh J, Hon Anthea Pang J (as she then was), and Hon Wilson Chan J.

Note 9: HKSAR v Ng Hau Yi Sidney [2021] HKCFA 42

Note 10: Kwok Cheuk Kin, Lui Chi Hang, Hendrick, Leung Chung Hang, Sixtus, Leung Kwok Hung v Secretary for Justice, Chief Executive of HKSAR and Secretary for Transport and Housing [2021] 3 HKLRD 140 (CACV 8, 10, 87 and 88/2019, June 11, 2021)

Note 11: Kwok Cheuk Kin, Lui Chi Hang, Hendrick, Leung Chung Hang, Sixtus, Leung Kwok Hung v Secretary for Justice, Chief Executive of HKSAR and Secretary for Transport and Housing [2021] 3 HKLRD 140 (CACV 8, 10, 87 and 88/2019, June 11, 2021) at 40.

Note 12: United Nations Commission on International Trade Law

Note 13: Hague Conference on Private International Law

Note 14: International institute for the Unification of Private Law

Note 15: United Nations Junior Professional Officers Programme

Note 16: Cap. 159.

Note 17: "Decision on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security" made by the 13th National People's Congress in its meeting on May 28, 2020.

Note 18: International Centre for Settlement of Investment Disputes

Note 19: See, e.g. Chapter VI of the United Nations Charter, and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations passed by the United Nations General Assembly on

October 24, 1970.

Ends/Monday, January 24, 2022

Issued at HKT 19:43

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**Speech given at the Opening of Legal year 24 January 2022
by the Chairman of the Hong Kong Bar Association**

Victor Dawes SC

[Chief Justice, Secretary for Justice, President of the Law Society, Judges, Distinguished Guests, Members of the Legal Profession, Ladies and Gentlemen]

1. The Hong Kong Bar Association has a long and honourable history and many eminent members have previously occupied the position of chairman. I have the honour of addressing you today as the new chairman having been elected together with a number of new council members at our AGM last week. My new colleagues and I look forward to the opportunity of working with those members whose tenure carried over this election.
2. The Hong Kong Bar Association came into being with clear aims, to maintain the honour and independence of the Bar, to improve administration of justice, and to establish rules of conduct and discipline among barristers. The aims are set out in the general Rules and Regulations of the Bar and have become the established high standards to which we are held.
3. Today I am grateful for this opportunity to share with you our vision for the Bar as Hong Kong moves forward.

The role of the Bar in upholding the rule of law

4. A strong and independent bar exists to serve the public and to further the administration of justice. As specialist advocates, we help litigants uphold their legal rights and play a part in the efficient and effective operation of our courts. But our duties do not stop in the courtroom. It has been

repeatedly emphasized by my predecessors that the Bar has a societal role in promoting the rule of law and explaining it to the community.

5. The rule of law is the bedrock of our democratic society. A lot has been said over the years on its two key facets: the independence of the judiciary, and the fundamental requirement of equality and fairness before the law. The maintenance of the rule of law, and the authority of the Court, are matters of special importance in our society and essential parts in the Hong Kong's success story.
6. What we stress today is that whilst the law plays the role of keeping politics within certain limits that are dictated by the ideas of justice and social order, there is no place for politics in the administration of justice.
7. Over the years there have been a significant number of cases before the Courts with important political, economic and social repercussions. However, it is important for the community to understand that judges do not function in the political arena. They decide cases strictly in accordance with the law based on facts and evidence presented, without being influenced by any extraneous considerations. While the Courts may, in appropriate cases, carefully consider the views of the legislative and executive branches, it is the court that has the ultimate responsibility of determining cases by reference to legal principles based on arguments presented.
8. Even in the United States where the appointment of Supreme Court justices has been described by its Congress as “an event of major significance in American politics”, senior judges have repeatedly warned against the politicisation of the US Supreme Court. In a recent speech at the Scalia

Lecture in Harvard Law School, Supreme Court Justice Breyer has this to say:

“If the public sees judges as ‘politicians in robes’, its confidence in the courts, and in the rule of law itself, can only diminish, diminishing the Court’s power, including its power to act as a ‘check’ on the other branches.”

9. Politics also has no role to play in the affairs of the Bar. If barristers are seen as “politicians in wigs”, public confidence in the Bar and the role we play in the administration of justice will diminish. One is not suggesting that members of the Bar cannot get involved in politics, but the role of the association itself is a different story.
10. As part of the interface between the judiciary and members of the public, the Bar has an important role to play in speaking out on issues concerning the rule of law and the administration of justice. The line between law and politics can in some instances be a fine one, but as exemplified by our judges who are accustomed to dealing with multidimensional issues, the Bar will continue to speak out on rule of law issues without political considerations.

Unique role of the Bar

11. Next I would speak about the unique role of the Bar in upholding the rule of law and how the existence of an independent self-regulated Bar is in the best position to discharge that role.

12. Like the Hippocratic Oath which binds the doctor to a patient, barristers must take up any case which comes their way, irrespective of the public perception of the client or the cause advanced.
13. The growth of the internet and social media platforms in many places, including Hong Kong, has been said to result in an increased polarization of society.
14. In the legal context, it must be borne in mind that in a society governed by the rule of law, everyone is entitled to a fair trial and this entails unhindered access to the Courts and to legal advice and representation. Trial purely by public opinion – including through the internet and social media platforms – which is not only instantaneous but without any natural justice protection, has no place in a democratic society.
15. Regrettably in Hong Kong and elsewhere there has been a trend whereby lawyers are subjected to an increasing amount of pressure by segments of the public to prevail upon the lawyers not to act for certain clients or in certain cases. This trend must not be allowed to grow. It is for the Courts to determine the legal rights and wrongs of entities and individuals. It would be a sad day indeed where individuals were unable to obtain legal advice and representation because lawyers were pressured whether morally or economically not take up certain cases deemed to be sensitive.
16. I would venture to remind us all that having legal representation is a fundamental right irrespective of who the person seeking that representation is, no matter how “good” or “bad” that person appears to be. The purpose of having lawyers in a Court is to assist the Court in reaching a reasonable decision on the facts and based on the law. In the same vein, it is sad to see

lawyers being castigated or depicted as if they and their client were the same. I would urge members of the public to be mindful of the role actually played by lawyers. Failure to recognize that may result in an insidious and dangerous encroachment of the fundamental right I have referred to.

17. The Bar's Code of Conduct requires barristers to be uncompromisingly independent, and to act irrespective of our personal views. It is the high level of independence and the degree of freedom from conflict of interests that place the Bar in a unique role in the legal profession in Hong Kong.
18. Specifically, paragraph 6.1 of our Code of Conduct preserved the “Cab-Rank Rule”, which, for those unfamiliar, provides that if the brief or instruction is within the barrister’s capacity, skill and experience and that he is available and properly remunerated, the barrister is obliged to act irrespective of the nature of the case, the party on whose behalf he is instructed and the belief or opinion which he may have formed as to the character, reputation, cause, conduct, guilt or innocence of that person.
19. This ensures that everyone in Hong Kong can be assured that he or she will have access to fearless legal representation and advice.
20. In 2013 the Bar Standards Board in England commissioned an independent report to evaluate whether the “Cab-Rank Rule” was still relevant. The conclusions were clear: removing the rule would threaten access to justice; the rule protects the interests of litigants by ensuring the availability of a wide pool of counsel from which real and meaningful choices of suitable counsel can be made.
21. Barristers do not choose who they prosecute nor defend, whether they are acting for a consumer or a bank, whether they are acting for the Government

or individuals. They act to the best of their abilities and always remembering their higher duty owed to the Court so that it could discharge its constitutional duties in administering justice.

22. An independent Bar of course does not mean a Bar which is purely self-interested, nor one which is aloof. Internally, in the coming year we will look into a wide range of measures to further enhance training for our members. Externally, the Bar shall continue to play its role in providing its input on law reform, legal education and general awareness of the rule of law principles. The Bar is always to be guided by the public interest.
23. This year marks the 25th anniversary of the establishment of the HKSAR. We are half-way through the 50 years of unchanged way of life provided for in Article 5 of the Basic Law. It is, therefore, natural for aspiring law students to ask whether there is a future for them if they are to enter into the legal profession as they will be leaders of the profession going forward and beyond 2047.
24. The same question was asked of myself and the two new Vice-Chairmen of the Bar when the three of us commenced our legal studies shortly before the handover. In the eyes of our critics, there were considerable doubts over our future back then. The 3 of us together with other young lawyers who joined the legal profession then put in a vote of confidence for Hong Kong. If I had decided otherwise I would not have the privilege of addressing you today.
25. We are living in challenging times. The Rule of Law here and elsewhere faces constant challenges, and Hong Kong is not alone in this regard. Law students and our young lawyers will have a significant role to play in the years to come. I urge you to continue to believe in Hong Kong, just as we did 25 years ago and continue to do. Hong Kong has weathered many storms

over the years and has always emerged stronger, with the rule of law safeguarded we can be sure it will continue to thrive.

26. It remains for me to wish you a happy new year, good health and good fortune.

Victor Dawes SC

Chairman

Hong Kong Bar Association

**SPEECH OF MR C M CHAN
PRESIDENT OF THE LAW SOCIETY OF HONG KONG
AT THE CEREMONIAL OPENING OF THE LEGAL YEAR 2022
24 JANUARY 2022**

Good afternoon, Chief Justice, Secretary for Justice, Chairman of the Hong Kong Bar Association, Members of the Judiciary, Members of the Legal Profession, Distinguished Guests, Ladies and Gentlemen,

25th Anniversary

1. It is a great privilege to me to have the opportunity to speak to you at this year's Ceremonial Opening of the Legal Year. This year is particularly memorable, because it marks the 25th Anniversary of the establishment of the Hong Kong Special Administrative Region since 1997.
2. It is thus timely for us to reflect on the development of our profession over the years.

Development of the legal profession

3. The Law Society of Hong Kong is the professional body of the solicitors' branch of the profession and this year will be the 115th anniversary of its establishment in 1907.
4. Our membership has almost tripled from around 4,500 Hong Kong solicitors in 1997 to about 12,800 at the end of 2021. For foreign lawyers, the number has more than tripled from about 450 coming from 17 jurisdictions in 1997 to nearly 1,500 from 34 jurisdictions in 2021.

5. Hong Kong's open door policy has successfully attracted legal talent from around the world, enriching the diversity of Hong Kong's legal services market.
6. The steady growth of Hong Kong solicitors and foreign lawyers is also evident of the increasing demand of legal services to support the city's rapid development as an international legal service and dispute resolution hub.

Strength of the legal and judicial systems in upholding the rule of law

7. Apart from the support provided by an abundance of local and international legal practitioners offering a wide range of professional legal services to meet multi-jurisdictional needs, the success of Hong Kong as a world class legal and dispute resolution service hub is also attributable to the strength of Hong Kong to uphold the rule of law.
8. Compared to 1998, Hong Kong advanced its percentile rank for rule of law in the World Bank's Worldwide Governance Indicators from 82.5 to 91.8 in 2020. Further, in the 2021 Rule of Law Index of the World Justice Project, Hong Kong ranked 19th across 139 jurisdictions.
9. Such achievement is particularly impressive considering the increasing challenges to the rule of law.
10. In recent years, the city has been repeatedly confronted with open defiance of law and order, intimidation against judges and legal practitioners, abusive graffiti against named judges, life threatening calls and mail to judicial officers, impulsive and unsound public criticisms of court judgments as well as political interferences in the independence of the legal profession and the criminal justice system.
11. These incidents attempted to improperly influence the independent decision-making process of judges, tarnish the global reputation of Hong Kong's robust legal and judicial systems and isolate the city from the long-standing support by eminent senior judges around the world who serve as non-permanent judges ("NPJs") in Hong Kong's Court of Final Appeal ("CFA").
12. The positive side effect of these attempts is that their failure has highlighted the strength of our legal and judicial systems and reinforced our confidence in their staunch ability to uphold the rule of law and to carry on their proper functions under "One Country Two Systems" in accordance with the Basic Law.
13. The participation of overseas NPJs in our final appellate court is an important avenue through which the Hong Kong Judiciary draws on foreign experience and develops Hong Kong's own jurisprudence. Having overseas judges on

the CFA also demonstrates diversity and inclusion. The fact that Hong Kong is able to attract eminent foreign judges is also an acknowledgement of the CFA's stature in the international legal community.

14. It is reassuring to note that during the past year, six NPJs from other common law jurisdictions, including the former Chief Justices of Australia and Canada respectively and two former Presidents of the UK Supreme Court, have shown their support and confidence in the Hong Kong Judiciary by extending their term of office for another three years.

Self-regulatory profession

15. An independent legal profession is fundamental to the maintenance of the rule of law. The steady development of a strong and independent solicitors' profession in Hong Kong is largely attributable to its well-established self-regulatory regime.
16. Self-regulation is vital in buttressing the independence that lawyers need to fulfil their professional and legal roles.
17. An important pre-requisite with respect to a self-regulatory regime is the demonstration of the profession's ability to uphold the credibility of the regime. The fact that the Hong Kong solicitors' profession is allowed to shoulder the responsibility of regulating itself speaks volumes about its high standards and the trust that the profession commands in society.
18. Our current regulatory system is an effective and balanced regime and there is no case for any fundamental change. The well-established regime benefits with appropriate involvement of other stakeholders, like the Judiciary and the Legislative Council in vetting the legislative framework within which the profession exercises its self-regulatory functions, as well as the public through their membership on the Solicitors Disciplinary Tribunal Panel.

Maintain highest standards

19. The practice of law in Hong Kong is a highly regulated profession because lawyers play an important role in society in protecting the lawful rights of clients and in facilitating access to justice.
20. As the regulatory body of the solicitors' profession, the Law Society is vigilant in ensuring solicitors' compliance with professional practice requirements. In the past decade between 2012 and 2021, the Law Society has exercised its statutory powers pursuant to the Legal Practitioners Ordinance to intervene in the practices of 25 law firms. Although this involved a very tiny fraction of the solicitors' profession considering that there are over 940 Hong Kong law firms, the Law Society takes a serious view of the situation and has formed a Steering Committee to conduct an overall review aiming to enhance its compliance role and functions.

Forward looking

21. The COVID-19 pandemic has brought unprecedented challenges to every walk of life. We are blessed that the legal sector has demonstrated exceptional agility in adapting to changes to their practice to tackle the disruptions caused by the pandemic. The Law Society has been taking proactive actions to assist the profession in these challenging times by, for instance, initiating the Legal Talent Recruitment Scheme (Trainee Solicitors) and securing government funding (with the assistance of the Department of Justice) to facilitate the recruitment of trainee solicitors to retain talent within the legal sector and to ensure that the required manpower resources are in place when the market picks up.
22. Unfortunately, the pandemic situation is still fluid, but let us stay united in our fight against the virus and be hopeful that the battle will be over soon.
23. Looking forward, opportunities arising from the National 14th Five-Year Plan and national development plans such as the Greater Bay Area development and the Belt and Road Initiative present immense potential for market expansion for the legal sector. The first batch of dually qualified Hong Kong and Greater Bay Area lawyers are undergoing practical training currently. Once in practice, their clientele may expand to the entire Greater Bay Area. Those aspiring to bring their legal practice to the next level will find many opportunities open to them in Hong Kong.
24. On this note, I wish everyone a fulfilling 2022. Please stay safe and healthy. Thank you.